Regulatory impact assessment in New Zealand

Introduction

Before Christmas, there was a great deal of media discussion of Regulatory Impact Analysis (also called Regulatory Impact Assessment) (RIA) following news that the government would suspend RIA for some proposals in its 100 day plan, especially the repeal of legislation such as the Smokefree Act and the Natural and Built Environment Act.

Although RIA is a recognised form of impact assessment, it is not as familiar as more mainstream forms such as ecological or social impact assessment. In view of the level of media interest, and given the importance of RIA in government policy processes, NZAIA has prepared this short overview of RIA.

Some history

What we now call RIA emerged in the 1980s, initially in OECD countries, following political pressure to speed economic growth and support the business sector. In particular, RIA was to ensure new government policies did not add to existing red tape affecting the business sector, and ideally would help to reduce it. Australia introduced RIA in 1985; New Zealand was among a later group that introduced it in the mid to later 1990s. RIA is now widely used in developed and developing countries around the world.

Originally focussed on economic considerations, RIA in many countries evolved to include social and environmental considerations, albeit still within an overall economic and regulatory framework. In the early 2000s, the European Commission (EC) renamed the process Integrated Impact Assessment, later to become just Impact Assessment, and brought economic, social and environmental considerations into one policy assessment framework. Although New Zealand did not go that far, by 2007 the existing guidelines for RIAs required that:

> all impacts should be identified, including all costs (including business compliance costs), benefits, risks, and other impacts – this includes <u>health, environmental, economic, social, and cultural costs and benefits</u>.

Guidelines on the Regulatory Impact Analysis Requirement. Ministry for Economic Development, Wellington, 2007, p.17 [*underlining added*]

In addition the guidelines encouraged analysts to think beyond just direct impacts, to identify indirect, unforeseen impacts that might be important.

At this time, the RIA process was administered and supported by the then Ministry for Economic Development (MED). However, in 2008, with a change of government, the administration of RIA was moved to the Treasury where it has remained. This move has seen RIA given greater prominence and importance in the evaluation of policy proposals with potential regulatory consequences. The broader model inherited from MED in 2008 has largely been retained under Treasury guidance.

RIA practice in New Zealand

Introducing or amending legislation or regulations in New Zealand requires a Regulatory Impact Statement (RIS) that summarises the Regulatory Impact Analysis (RIA) undertaken by the department driving a change. Treasury has developed extensive supporting documentation to explain the process and how it should be implemented, and has also introduced an important quality assurance component.

As the Cabinet guide on RIA requirements explains:

> Cabinet's Impact Analysis Requirements support and inform decisions by Ministers on regulatory proposals… to help advisers and decision-makers avoid the potential pitfalls that arise from natural human biases and mental short-cuts, including by seeking to ensure that:
>
> - the underlying problem or opportunity is properly identified, and is supported by available evidence
> - all practical options to address the problem or opportunity have been considered
> - all material impacts and risks of proposed actions have been identified and assessed in a consistent way, <u>including possible unintended consequences</u>
> - it is clear why a particular option has been recommended over others.

(*Guide to Cabinet's Impact Analysis Requirements* The Treasury, Wellington, 2020, p. 4) *[underlining added*]

The notion of impact is important of course. The Best Practice guide for RIA provides the following guidance on the nature of impacts:

> Impacts can be positive or negative (ie, include both costs and benefits), and include <u>economic, fiscal, compliance, social, environmental and cultural impacts</u>. They include direct and indirect (flow-on) effects; one-off and recurring or on-going impacts. Impact Analysis needs to identify whether an option would increase or decrease the net-benefit to society compared with the status quo.

(*Best Practice Impact Analysis*, The Treasury, Wellington, 2017, p. 12) [*underlining added*]

Based on information about a proposal from a government agency, the Treasury's Regulatory Quality Team identify the appropriate RIA template the agency should follow, and organise independent quality assurance for the final Regulatory Impact Statement (RIS).

Issues with RIA

The new Government wants to change RIA to include more economic and cost benefit analyses. With the prospect of a new Ministry of Regulation following the disestablishment of the Productivity Commission, this could also be an opportunity to think carefully about policy-making and the need to recognise environmental and societal wellbeing are not based entirely on economic factors.

The Treasury commissioned a series of reviews of the RIA process between 2010 and 2017, which are available on its website. A clear message is that the best RIAs and regulatory impact statements (RISs) – the document that goes to Cabinet - are produced when RIA is an integral part of the culture of policy development. But the review found there is a wide variance within and across departments. How RIA is used in practice, and the quality of the RISs produced, are largely dependent on the experience and available time of the small team of policy analysts working on any particular proposal.

According to the Treasury's 2020 Guide, the process is required "for any government policy initiative that includes consideration of regulatory options (that is, options that will ultimately create, amend, or repeal primary or secondary legislation)." There are exemptions, but the expectation is that all initiatives that could have more than minor impacts on a given sector should be subject to RIA. In some cases the proposed legislation or regulations will be technical, with potential impacts largely confined to monetary costs on certain sectors of the economy. But many legislative/regulatory proposals will have wider social, environmental, and/or cultural implications consequences. It is vital that the broader scope of RIA be retained, where relevant, to ensure such proposals receive adequate attention. Further, the ability of government agencies to address those wider consequences more effectively needs to be strengthened. The 2017 Best Practice Guide provides little advice on how to go beyond economic impacts, and fiscal and compliance costs to social, environmental and cultural impacts.

Reviews of the RIA process have commented on the variable performance across government agencies, reflecting in part analysts' comparative experience with the process. We suggest variable performance may well also be a reflection of the challenges of assessing social, environmental and/or cultural impacts by analysts more familiar with economic and monetary issues. Moreover, any member of the public downloading an RIS will usually be overwhelmed by the technocratic nature of the process which emphasises justification for choice of recommended option, at great length, usually accompanied by cost-benefit analyses.

Improving RIA

The new Ministry for Regulation will have an opportunity to improve RIA practice by taking it from a technocratic tick-box process that focuses on cost-benefit analysis to something far more valuable. The first step, we believe, is to recognise that RIA is a specific form of impact assessment and to draw on the well-established body of good practice principles to underpin future RIA guidance.

Second, the wider family of impact assessment includes forms such as social, ecological, cultural, and health, plus cumulative assessment, and strategic environmental assessment. With a few exceptions, RIAs in this country rarely seem to draw on expertise from other areas of impact assessment. There is a sizeable impact assessment community of practice in New Zealand, supported by the New Zealand Association for Impact Assessment (NZAIA), that can provide advice and assistance to policy analysts preparing RISs.

Third, a quality assurance process already exists to help lift the quality of RISs before they are submitted to Cabinet, but perhaps the new ministry might have a centre of excellence with advisors to assist policy teams across government to implement RIA as part of the policy process and enhance practice across government. Incorporating the above suggestions should lead to a more streamlined RIA process, and more informative and reader friendly RISs.

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Links to Treasury publications referenced in this document can be found on the Regulatory impact assessment resource page of the NZAIA website