

# REGULATORY IMPACT STATEMENTS AND ACCOUNTABILITY: RECENT AUSTRALASIAN EXPERIENCE

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*Arguably the most powerful and potentially invasive tool of a sovereign nation is its ability to impose taxation obligations on its citizens and others carrying out activities within its jurisdiction. Parliament, comprising the elected representatives of the citizens, has ultimate accountability for taxation levied. As part of satisfying this accountability, governments and unelected officials are normally made accountable to Parliament for their use of delegated authority to impose and collect taxes.*

*One of the oldest maxims of taxation is Adam Smith's 'economy in operation'. Essentially this provides that a tax should be devised in such a manner so as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the treasury of the state. Compliance costs and administrative costs, along with their associated obligations, represent part of this additional cost. Accountability by Parliaments and public officials to taxpayers involves not only the taxes imposed and collected but also these additional costs and obligations.*

*Measures of assessing the accountability for compliance costs and obligations imposed by sovereign nations may take the form of regulatory impact statements ('RISs', or some variant of the name). This article reviews the recent experience with respect to RISs in Australia and New Zealand, building upon the earlier work of Evans and Walpole and that of Sawyer. It concludes that application of the RIS concept continues to fall short of an acceptable measure of accountability by Parliament for the costs and obligations of taxes it imposes on its citizens and other taxpayers in New*

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## REGULATORY IMPACT STATEMENTS

*Zealand, but performs demonstrably better in Australia (although with scope for improvement).*

The power to tax involves the power to destroy.<sup>1</sup>

### 1. INTRODUCTION

Compliance costs, their measurement and the distribution of their impact on taxpayers is an important issue that needs addressing, since most reforms that have concentrated on closing tax loopholes and implementing new tax regimes have dramatically increased the complexity of the tax system of many countries in the Organisation for Economic Co-operation and Development ('the OECD'). Identification of compliance costs and their size and impact, by governments and officials, has been the next step in the process. Mechanisms to measure compliance costs for new legislative initiatives and how to minimise the level of compliance costs (and administrative costs) within the context of the associated benefits of legislative change, is a growing practice internationally, and one receiving close attention in Australia and New Zealand ('NZ') especially.

Every regulation may seem reasonable in isolation but it imposes a cost, which may be reflected in wasted time, resources and lead to economically inefficient decisions. The annual cost of regulation to the United Kingdom ('the UK') economy in 2006, for example, is estimated at 10–12 per cent of GDP, according to the Better Regulation Commission.<sup>2</sup> An important instrument for measuring the impact of regulation is a Regulatory Impact Assessment ('RIA'). According to the Small Business Project:

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<sup>1</sup> *McCulloch v Maryland*, 17 US (4 Wheat) 316, 431 (1819).

<sup>2</sup> Better Regulation Commission, *Better Regulation: From Design to Delivery — Annual Report* (2005) 2.

An RIA is a mechanism to ensure that ministers and officials have a shared understanding of what they are doing, why they are doing it and what the consequences are likely to be. RIAs should be simple, concise documents, using clear non-technical language and crafted in such a way that anyone reading the RIA can assess the proposed regulation, even those unfamiliar with the proposal. Positive and negative impacts of proposed regulation are presented in quantitative terms and outline the magnitude, timing and likelihood of impacts. Public consultation is conducted in parallel with the actual assessment. RIAs also provide recommendations and strategies for achieving the desired outcome and highlight areas where more work is needed. Ultimately they also provide a useful evaluation tool. Importantly, RIAs can be used as an integrating framework to identify and compare the linkages and impacts between economic, social and environmental regulatory changes. ... The detail included within the RIA should be proportional to the scale and impact of the proposed regulation.<sup>3</sup>

Cook et al observe that RIA is a term used to describe the process of systematically assessing the costs and benefits of a new regulation or an existing regulation, with the aim of improving the quality of regulatory policy.<sup>4</sup> Through assessing the positive and negative impacts of potential and existing regulatory measures, RIA can be used as a tool in the design and implementation of regulatory measures. Of particular interest to this article, Cook et al note that through adopting the principles of transparency and accountability, RIA can also help in establishing the legitimacy of state regulation.

Thus essentially an RIA is a document setting out measures that quantify and calculate the transaction costs of doing business, and testing the costs, benefits and risks of each potential course of action.<sup>5</sup>

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<sup>3</sup> Small Business Project, *SME Alert: Understanding Regulatory Impact Assessments: Key Issues from the International Experience* (2003) 20.

<sup>4</sup> P Cook et al, *Competition, Regulation and Regulatory Governance in Developing Countries: An Overview of the Research Issues* (2003) 15–16.

<sup>5</sup> Small Business Project, above n 3, 1.

## REGULATORY IMPACT STATEMENTS

The United States ('the US') has the longest experience of RIAs, dating back to the *Regulatory Flexibility Act* of 1980, while the UK experience is much more recent, dating back to 1998.<sup>6</sup> The European Union's ('the EU's') RIAs imposed on UK businesses £30 billion of direct costs in 2006.<sup>7</sup> Open Europe is calling for a focus on less rather than 'better' regulation. Open Europe also wishes to see RIA analysis as compulsory for all EU regulations, rather than its use for less than 1 per cent (0.2 per cent in the 2003–4 financial year) of regulations currently.<sup>8</sup> Furthermore, where RIAs are prepared, costs are quantified in approximately 70 per cent of RIAs but benefits estimated in only 20 per cent of RIAs.<sup>9</sup>

Alexander, Bell and Knowles observe that given the necessity that there be some regulation of business activities (while acknowledging that regulation imposes costs), there is a need for cost-benefit analysis of both new and existing regulatory frameworks.<sup>10</sup> The authors note that an increase in regulation will see a corresponding increase in the costs of compliance.

In order to focus the analysis, this article examines developments in Australia and NZ over the last eight years concerning Regulatory Impact Statements ('RISs') encompassing taxation-related legislative material. In the remainder of this introduction the article briefly summarises what is meant by compliance costs prior to building upon the comprehensive work of Evans and Walpole,<sup>11</sup> with their

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<sup>6</sup> Ibid 1–2.

<sup>7</sup> Open Europe, *Less Regulation: 4 Ways to Cut the Burden of EU Red Tape* (2006).

<sup>8</sup> Ibid 8.

<sup>9</sup> Ibid 9.

<sup>10</sup> W Alexander, J Bell and S Knowles, 'Quantifying Compliance Costs of Small Businesses in New Zealand' (Economics Discussion Paper No 0406, University of Otago, 2004).

<sup>11</sup> C Evans and M Walpole, 'Compliance Cost Control: A Review of Tax Impact Statements in the OECD' (Research Study No 27, Australian Tax Research Foundation, 1999).

international review of the use of taxation impact statements (or taxation RISs), and Sawyer,<sup>12</sup> with his review of developments in NZ.

Sawyer observes that compliance costs are those costs incurred by taxpayers, or third parties in complying with a tax, or tax system, over and above the revenue paid to the authorities, and over and above any costs of distortion arising from the tax.<sup>13</sup> Tax compliance costs are incurred by taxpayers, and comprise monetary, psychic and time costs; efficiency costs result from price distortions caused by the tax system; and administrative costs are incurred by the government in operating and policing the tax system. Compliance costs may be further divided into categories which have implications for tax policy. These categories are: start-up costs arising from the introduction or major reform of a tax; temporary costs occur until the taxpayer becomes conversant with new tax requirements and has developed a suitable means of complying with them; and regular costs are the continuing costs of complying with the tax system once the taxpayer has become conversant with the tax requirements.<sup>14</sup>

Wilkinson asks several fundamental questions often overlooked with RIS analysis, namely what is meant by a cost-benefit analysis, and delving even further, what is a 'cost' and what is a 'benefit'?<sup>15</sup> The presumption underlying an economist's cost-benefit test of the quality of a regulation is that the estimated benefits to human welfare from a sound regulation should exceed the costs to human welfare. The NZ Cabinet Office guidelines do not define what is a benefit or a cost, although Wilkinson discusses the definitions used in *The MIT*

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<sup>12</sup> A Sawyer, 'Compliance Cost Impact Statements in New Zealand: How Far Have We Come?' (2002) 17 *Australian Tax Forum* 441.

<sup>13</sup> See *ibid* 443–4.

<sup>14</sup> For an excellent overview of research into taxation operating costs, see C Evans, 'Studying the Studies: An Overview of Recent Research into Taxation Operating Costs' (2003) 1(1) *e-Journal of Tax Research* 64.

<sup>15</sup> B Wilkinson, *Improving the Quality of Government Regulation* (2002).

## REGULATORY IMPACT STATEMENTS

*Dictionary of Modern Economics*<sup>16</sup> which define the benefit in a cost-benefit analysis to be ‘any gain in utility that results from the project under examination.’<sup>17</sup> It also defines the cost to be ‘any loss in utility, as measured by the opportunity cost of the project.’ It states that a person gains utility from a good if they would prefer its existence to its non-existence. It also states that individuals may gain utility from an event if they prefer it to occur. Wilkinson also suggests that the use of dollar values may not accurately reflect the change in utility or welfare of those affected by regulation, and neither will the use of discount rates (if at all) to future benefits and costs necessarily provide greater precision.<sup>18</sup>

The basis for valuing costs and benefits, according to the Small Business Project,<sup>19</sup> is their ‘opportunity cost’: the cost or price per item in its next best alternative use. These costs can then be divided into ‘policy costs’ and ‘implementation costs’. Policy costs are those costs directly attributable to the policy goal of regulation, such as loss of production or additional labour costs (or both), and purchasing a licence to operate a business. Implementation costs of regulation (or ‘red tape’) are those costs that are not directly associated with the achievement of the aims of the regulation but are incurred when the regulation is implemented, such as legal and advisory costs, and staff training. The immediate costs and benefits, as well as the costs and benefits associated with the dynamic effects of the implementation of the regulation, should be measured. Importantly, the Small Business Project<sup>20</sup> recognises that social and environmental costs and benefits are just as important as the impact on business, and therefore when proposing changes in regulation, the linkages between the environmental, social and economic aspects need to be included and the trade-offs examined.

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<sup>16</sup> David Pearce (ed), *The MIT Dictionary of Modern Economics* (4<sup>th</sup> ed, 1992).

<sup>17</sup> See Wilkinson, above n 15, 3.

<sup>18</sup> See Evans, above n 14, 7–8.

<sup>19</sup> See Small Business Project, above n 3, 4.

<sup>20</sup> *Ibid.*

Guerin notes that the OECD has undertaken a major programme with respect to regulatory governance to ensure quality in the design and implementation of regulations.<sup>21</sup> NZ is gradually implementing these approaches, including use of RIA in its decision making processes. This development is expected given increased interaction with Australian practices through institutions such as the Council of Australian Governments and obligations arising under Trans-Tasman agreements.

Against this background the importance of high quality and effective RISs is evident. Consequently, the remainder of this article is as follows. The next Part briefly reviews the prior research on taxation RISs in Australia and NZ, along with some emerging themes internationally. The article then examines in Part 3 the important role that tax RISs play in terms of providing a form of accountability of Parliament and unelected officials to taxpayers and the public generally. This Part also revisits the critical role that tax RISs should provide as a representation of the compliance costs and administrative costs associated with tax regulation. Parts 4 and 5 of the article review the state of play, during the eight years to the end of 2007, in terms of tax RIS practice in Australia and NZ, respectively. This analysis is followed in Part 6 by a critical review of tax RIS practices in Australia and NZ, including the overall conclusions and limitations of this review.

## **2. PRIOR RESEARCH ON (TAX) REGULATORY IMPACT STATEMENTS**

Evans and Walpole undertake an in-depth analysis of the use of tax impact statements (a type of RIS) in OECD countries.<sup>22</sup> In their report they examine the extent to which OECD members use taxation

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<sup>21</sup> K Guerin, 'Encouraging Quality Regulation: Theories and Tools' (Working Paper No 03/24, New Zealand Treasury, 2004).

<sup>22</sup> See Evans and Walpole, above n 11.

## REGULATORY IMPACT STATEMENTS

impact statements as part of the process of developing tax policies and legislation. Taxation RISs are considered to be attempts to predict, monitor and control the compliance cost impact of tax changes. Specifically, Evans and Walpole evaluate the effectiveness of such statements where they are used in the OECD and assess their role in the Australian context. The authors conducted in-depth surveys of OECD members by means of postal questionnaires, additional correspondence, telephone and facsimile communication and personal visits. Valid responses were received from 21 out of the then 25 OECD member countries contacted.

The results of Evans and Walpole's research indicate that taxation RISs (or their equivalents) are extensively used by five OECD members (Australia, the EU generally, NZ, the UK and the US). Nine OECD members make partial use of such statements, and seven members make minimal use of them. In the countries making extensive use of taxation RISs certain common features were evident, namely: mandatory nature; some quantitative analysis; and prepared by a central administrative authority using established guidelines (at the initial proposal stage of the legislation, for legislative consideration, with outside consultation, focussed principally on the compliance cost for business, rather than personal, taxpayers, and either published, or available to the public on request).

Evans and Walpole conclude that Australia compares favourably with other OECD countries in that the Australian government is both politically and administratively committed to the completion of taxation RISs, and has a well developed, systematic approach to their completion. Nevertheless, the authors caution that Australia compares poorly with other OECD countries in certain important respects. Specifically, there is inadequate quantification of the likely costs of compliance for taxpayers (often inexplicably so), and there is inadequate consultation with business and other stakeholders outside the revenue authorities on the issue of taxpayer compliance costs. Evans and Walpole also make suggestions as to how the Australian use of taxation RISs can be improved.

Sawyer examines the progress made in NZ since 1997–98 with taxation RISs,<sup>23</sup> which were then better known as Compliance Cost Impact Reports (‘CCIRs’) (and comprising two main types: Compliance Cost Assessments and Compliance Cost Statements). Sawyer provides a brief overview of what is meant by compliance costs prior to building upon the comprehensive work of Evans and Walpole,<sup>24</sup> although limiting this extension to developments in NZ. Sawyer observes that prior analysis of taxation RISs in NZ is very scarce if internal analysis conducted by the Inland Revenue Department (‘the IRD’) is excluded.<sup>25</sup> He then follows this review with an analysis of the early CCIRs, focussing on the IRD’s internal analysis, including the position under the pre-2001 regime.

Sawyer then turns to examining the new (and current) approach to preparing RISs and Business Compliance Cost Statements (‘BCCSs’) following NZ Cabinet Office *Circular (01) 2*.<sup>26</sup> Cabinet Office *Circular (01) 2* requires a RIS and BCCS with every proposed legislative change (with a few stated exceptions). Guidelines provided by the Ministry of Economic Development (‘the MED’) for preparing best practice RISs and BCCSs are reviewed. Examples of best practice under the new approach to compliance cost recognition by the NZ government are presented, including both tax and non-tax examples.

With one central agency having the responsibility for coordinating the new form of RIS and BCCS (except for taxation RISs and BCCSs), Sawyer suggests that greater consistency should be the result through the sharing of best practice approaches and the emphasis on quality assurance within government departments generally in preparing their RISs and BCCSs. However, a notable feature with NZ taxation RISs is their distinct lack of any quantitative analysis but rather extensive use of vague qualitative statements.

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<sup>23</sup> See Sawyer, ‘Compliance Cost Impact Statements’, above n 12.

<sup>24</sup> Evans and Walpole, above n 11.

<sup>25</sup> See Sawyer, ‘Compliance Cost Impact Statements’, above n 12.

<sup>26</sup> New Zealand Cabinet Office, *Circular CO (01) 2* (2001).

## REGULATORY IMPACT STATEMENTS

In relation to the 10 key principles of taxation RISs summarised by Evans and Walpole,<sup>27</sup> Sawyer argues that the NZ CCIRs, in theory at least, overall performed more satisfactorily against these benchmarks than their Australian, UK, European and US equivalents.<sup>28</sup> These 10 key principles are: integration, iteration, measurement (qualitative and quantitative), comprehensiveness, consultation, transparency, timeliness, flexibility, proportionality and monitoring.

Sawyer follows this analysis with a critical analysis of the new approach to RISs and BCCSs, with a summary of the major findings and the limitations concluding the study. In particular, Sawyer concludes that the NZ taxation RIS and BCCS do not reach the standards that are expected of them in practice for recognising the impact of regulatory and statutory changes on tax compliance costs. In fact, he argues (supported by evidence) that they fall well short especially in the measurement (lack of any quantitative analysis) and transparency (the taxation RIS is not made available to the public until the last step in the RIS process) areas.

A number of other scholars have made important contributions with respect to specific aspects of the RIS process. Tran-Nam, for example, provides a review of how compliance costs were used and misused in evaluating the Goods and Services Tax ('the GST') in Australia.<sup>29</sup> He critically evaluates the Australian government's RIS accompanying the GST Bills, with two main findings emerging. First, taxation RISs in Australia are intended to quantify the impacts of the proposed legislation on business taxpayers. Taxation RISs are not appropriate for analysing the simplification impacts of tax changes from a social perspective (which would require use of social compliance costs instead of the private-sector compliance costs).

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<sup>27</sup> Evans and Walpole, above n 11.

<sup>28</sup> See Sawyer, 'Compliance Cost Impact Statements', above n 12.

<sup>29</sup> B Tran-Nam, 'Use and Misuse of Tax Compliance Costs in Evaluating the GST' (2001) 34(3) *Australian Economic Review* 279.

Second, Tran-Nam argues that the Australian government appeared to underestimate significantly the increase in compliance costs to the business sector.

Nevertheless, Tran-Nam acknowledges that tax reform is politically a very sensitive issue and the weaknesses of the Australian government's GST RIS should be viewed in terms of its various political constraints. Referring back to Evans and Walpole,<sup>30</sup> he reminds readers that Australia belongs to a group of few OECD countries that have developed a sophisticated and extensive process for evaluating the likely compliance cost impact of proposed tax changes (this group includes NZ). In terms of the formal process of compilation and documentation, Australia is in his view on par with international 'best practice'. Tran-Nam is optimistic that taxation RISs in Australia will gradually evolve into rigorous economic statements that provide a useful basis for evaluating tax policy.<sup>31</sup> This situation, he suggests, may be achieved by expanding the role of outside consultation, and by distinguishing between the business and social perspectives.

Guerin observes in NZ that in 2003 (after Sawyer<sup>32</sup> was published), in order to reduce the length of BCCSs, the NZ government agreed to include only a summary of key information on compliance costs in BCCSs covering the sources of costs, the parties affected, estimated costs and steps taken to minimise costs.<sup>33</sup> Consequently, a RIS does not have to provide details of implementation or monitoring strategies, or refer to implications of the proposal for the Trans-Tasman Mutual Recognition Arrangement. Guerin,<sup>34</sup> correctly in my view, identifies these gaps as potentially significant in the current regime. One issue not readily apparent from

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<sup>30</sup> Evans and Walpole, above n 11.

<sup>31</sup> See Tran-Nam, above n 29.

<sup>32</sup> Sawyer, 'Compliance Cost Impact Statements', above n 12.

<sup>33</sup> Guerin, above n 21, 15.

<sup>34</sup> See Guerin, above n 21.

## REGULATORY IMPACT STATEMENTS

Guerin's work is that tax RISs are drafted separately from all other RISs, since it is the IRD that is responsible for all tax legislation and regulation (and associated materials), compared to the MED for all others.

Dirkis and Bondfield focus on the impact of compliance costs resulting from tax reform on small business and the importance of consultation in the reform process.<sup>35</sup> The point of particular interest to this article is their second recommendation in which the authors recommend that in order for the Australian Parliament to be fully informed about the cost of compliance with a regulatory measure, a more publicly accountable RIS process needs to be established.<sup>36</sup> This process must set out taxpayer compliance costs arising from the proposed change in order that Parliament can weigh up the public good against the compliance costs imposed. Their report considered the Ralph Review reforms<sup>37</sup> to simplifying the tax system for small business and introducing the GST.

Jacobs provides an excellent overview of trends in regulatory impact analysis in seven countries plus the EU,<sup>38</sup> where extensive use of regulatory impact analysis forms a key component of regulatory policy making. Specifically, he examines the level of mainstreaming of RIA in policy making. While not specifically concerned with taxation RIA, Jacobs observes that mainstreaming raises new issues and tensions, with RIA becoming more responsive to political concerns, such as highly visible paperwork burdens as a broader group of officials are required to deal with the various analytical techniques

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<sup>35</sup> M Dirkis and B Bondfield, *Small Business: The First Casualty of Tax Reform Compliance Costs — A Qualitative Study of the Impact of Tax Reform on the Compliance Costs for Small Business* (2004).

<sup>36</sup> Ibid 54.

<sup>37</sup> J Ralph, R Albert and B Joss, *Review of Business Taxation: A Tax System Redesigned — More Certain, Equitable and Durable* (1999).

<sup>38</sup> S Jacobs, *Current Trends in Regulatory Impact Analysis: The Challenges of Mainstreaming RIA into Policy-Making* (2006).

utilised in RIA (for which they have not been adequately prepared).<sup>39</sup> Jacobs concludes that the quality of RIA seems to be declining as its application widens, stating that

to reach a sustainable level of RIA quality, governments need a clear strategy aimed at the institutionalization of capacities and incentives within the machinery of government. Such a strategy rests on a whole series of good RIA practices: clearer targeting strategies, development of multi-level consultation strategies, more attention to data collection and data quality issues, much more investment in training, more effective quality control through central RIA units and ministerial accountability, better use of scarce scientific resources, and better technical RIA manuals.<sup>40</sup>

Jacobs comments that in Australia the quality of RIA is declining, with the reason apparently due to more intense monitoring and broader application, which has not been accompanied by sufficient investment in oversight and skills. Indications are that the Australian government is working to remedy this situation. Jacobs observes in relation to all countries surveyed (including Australia and NZ) that:

The quality of analysis continues to disappoint. In country after country, RIA does not quantify enough impacts, and does not rigorously examine alternatives. Quantification of benefits is an enormous problem affecting the majority of RIAs in every country. Part of the reason for this seems to be a lack of investment in skills and incentives ... and part seems to be inattention to key constraints on good quality analysis, particularly the availability of good data at affordable cost. Another problem is ineffective prioritization, or targeting, of RIA resources.<sup>41</sup>

There is no country in the survey where the assessment of alternatives to classical forms of regulation is considered to be

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<sup>39</sup> Ibid 3.

<sup>40</sup> Ibid 9.

<sup>41</sup> Ibid 8.

## REGULATORY IMPACT STATEMENTS

completely adequate. In Jacobs' view, the structural problem is probably that regulators simply do not have enough information to adequately assess alternatives. This is a direct result of insufficient experience and case studies on alternatives to allow analysts to assess key variables. The remedy is more investment in case studies, evaluation, and analytical criteria for assessment of alternatives to help regulators do a better job in this area. In another problem area, the growing costs associated with regulation, Jacobs notes that the UK adopted in 2005 a 'one in-one out' approach in which the RIA must find compensating reductions in regulatory costs. Other countries have adopted radical cost reduction targets for administrative burdens (for example, the Netherlands). Jacobs argues that these approaches miss the real benefits of RIA: increasing the benefit-cost ratio of regulation. Thus, if RIA works well, society should be getting more benefits for each dollar expended on regulation.

In relation to Australia, Jacobs notes that a major problem is the continual growth in regulation, as well as non-compliance for reasons of poor understanding of requirements, regulatory impacts, consultation process failure and failure to follow pertinent advice.<sup>42</sup> On a positive note, Jacobs commends Australia for the way in which RIA guidance handles distributional impact issues (in relation to costs and benefits, and obligations).<sup>43</sup> Australia has also developed a sophisticated calculator for cost determination and measurement.<sup>44</sup>

With respect to NZ, Jacobs notes that the MED's stated problem with RIA is that the RISs and BCCSs are not meeting the publication requirements.<sup>45</sup> However, in my view, this statement misses their real deficiencies, namely of useful quantitative data for assessing the impact of regulation in terms of its costs and benefits. Jacobs notes

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<sup>42</sup> Ibid 9.

<sup>43</sup> Ibid 40.

<sup>44</sup> See Australian Government, *Business Cost Calculator: Your Compliance Costing Tool* <<https://bcc.obpr.gov.au/>>.

<sup>45</sup> Jacobs, above n 38, 11.

that the MED is expected to release updated guidelines in late 2006,<sup>46</sup> but as at the time of writing (late 2007) these are yet to emerge.<sup>47</sup> An important omission from Jacobs' analysis is any mention that tax RIS are not completed by the MED but by the IRD. Data quality is also an issue in NZ, with RIA guidance advocating that when presenting the results of the cost-benefit analysis, it is important to document the methods used to calculate the costs and benefits, including 'all major assumptions' and 'deficiencies in the information used.'

The essential question facing governments in their use of RIA, in Jacobs' view, is 'How can RIA be used most effectively to speed up learning in problem-solving?'<sup>48</sup> The answer to this question lies in the processes of RIA and the techniques of RIA. Most RIA-related reforms in recent years have focused on increasing oversight and quality control of RIA through several methods:

- strengthening the challenge function from a central RIA watchdog;
- involvement in RIA quality control and monitoring by other institutions;
- earlier timing and preparation of the RIA to permit more discussion;
- more monitoring and reporting of RIA quality by central institutions followed by public reporting of performance, or 'name and shame';

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<sup>46</sup> Ibid 21.

<sup>47</sup> The MED released a report in early 2008 on RIS analysis: see New Zealand Institute of Economic Research, *Compliance with Regulatory Impact Analysis Requirements: 2007 Evaluation Report* (2008). Overall, this report finds that the quality of RISs reviewed was adequate but a major weakness was the low level of cost and benefit analysis. Furthermore, new Cabinet guidelines were released in 2008. See *CAB Min (08) 25/1*; Department of the Prime Minister and Cabinet, *Regulatory Impact Analysis* (2008) CabGuide — Guide to Cabinet and Cabinet Committee Processes <<http://cabguide.cabinetoffice.govt.nz/procedures/regulatory-impact-analysis>>.

<sup>48</sup> Jacobs, above n 38, 14–33.

## REGULATORY IMPACT STATEMENTS

- increased individual ministerial accountability;
- expert scrutiny from scientific peers;
- more training; and
- two other methods to increase quality: tighter criteria for data quality and more stringent analytical requirements.<sup>49</sup>

Jacobs observes that cost-benefit analysis is not the only method that may be employed as part of the analytical methods used in RIA.<sup>50</sup> Other analysis methods used by the countries surveyed include:

- forms of benefit-cost analysis, integrated impact analysis and sustainability impact analysis to integrate issues into broad analytical frameworks that can demonstrate links and trade-offs among multiple policy objectives;
- forms of cost-effectiveness analysis based on comparison of alternatives to find lowest cost solutions to produce specific outcomes;
- a range of partial analyses such as small and medium enterprises ('SME') tests, administrative burden estimates, business impact tests and other analyses of effects on specified groups and stemming from certain kinds of regulatory costs;
- risk assessment, aimed at characterising the probability of outcomes as a result of specified inputs; and
- various forms of sensitivity or uncertainty analysis that project the likelihood of a range of possible outcomes due to estimation errors. Uncertainty analysis is used to provide policy makers with a more accurate understanding of the likelihood of impacts.

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<sup>49</sup> Ibid 19.

<sup>50</sup> Ibid 34.

Jacobs identifies a major difference between RIA in Australia and NZ, with Australia adopting the most rigorous and data-intensive approach of all countries surveyed through requiring that the RIA ‘assesses feasible options and include a cost-benefit, impact and risk analysis of each option.’ By way of contrast, NZ has preferred an approach that emphasises clarity and brevity: ‘Achieve objectives at lowest cost, taking into account alternative approaches to regulation.’<sup>51</sup> The article now turns to consider the accountability role of RIS in the context of legal rights analysis.

### **3. THE IMPORTANCE OF ACCOUNTABILITY AND MINIMISING COMPLIANCE COSTS**

#### **3.1 The Importance of Accountability in Taxation Policy and Implementation**

Barnett, Levaggi and Smith note that accountability is a concept which has interested political scientists for some time.<sup>52</sup> Much of the literature suggests that the need for accountability arises when principals, such as the electorate, devolve responsibility to agents, such as local authorities or governments. The authors refer to Jones,<sup>53</sup> who defines accountability as:

The liability to give an account to another of what one has done or not done. Responsibility as accountability implies a liability to explain to someone else, who has authority to assess the account, and allocate praise or censure.<sup>54</sup>

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<sup>51</sup> Ibid 39.

<sup>52</sup> R Barnett, R Levaggi and P Smith, ‘Accountability and the Poll Tax: The Impact on Local Authority Budgets of the Reform of Local Government Finance in England’ (1991) 7(4) *Financial Accountability and Management* 209, 211–12.

<sup>53</sup> G Jones, *Responsibility in Government* (1977).

<sup>54</sup> Barnett, Levaggi and Smith, above n 52, 211.

## REGULATORY IMPACT STATEMENTS

Using this definition, there are two key elements of accountability: the provision of information, or giving account of behaviour; and a judgement, or holding to account, for that behaviour. The pattern of accountability in the public sector is complex, and the authors comment on Stewart, who found it necessary to introduce a ‘ladder’ of accountability to facilitate analysis.<sup>55</sup> The steps in the ladder are:

- policy accountability;
- programme accountability;
- process accountability; and
- accountability for probity.<sup>56</sup>

Barnett, Levaggi and Smith comment that the bottom three steps in the ladder are concerned with what might loosely be termed ‘managerial accountability’, and reflect the need to control the machinery of government from within the bureaucracy.<sup>57</sup> Probity accountability is concerned principally with the legality of the agent’s behaviour, and might, for example, reflect the auditor’s traditional concern with stewardship of public money. Process accountability is concerned with managerial efficiency, the efficacy with which managers translate the resources at their disposal into outputs. This aspect of accountability is addressed on voters’ behalf by value-for-money studies. Programme accountability addresses the extent to which the programmes pursued by the agent are congruent with the goals of the principal. This is a more elusive concept than the first two steps on the accountability ladder because goals are often difficult to identify with any precision. For this reason, programme accountability may only be applicable to subordinate parts of government, for which relatively clear objectives can be set. The top step in the ladder is

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<sup>55</sup> J Stewart, ‘The Role of Information in Public Accountability’ in A Hopwood and C Tomkins (eds), *Issues in Public Sector Accounting* (1984) 15.

<sup>56</sup> Barnett, Levaggi and Smith, above n 52, 211.

<sup>57</sup> *Ibid* 212.

policy (or political) accountability, which is directly concerned with the relationship between a government (central or local) and its electorate (or taxpayers).

Krotoszynski argues that taxing powers are, as a matter of history and practice, different from other sorts of government authority.<sup>58</sup> When a government requires that a taxpayer surrender their money or property, it is essential that the decision reflect a degree of democratic accountability. Taxation without any democratic accountability is fundamentally unjust. Krotoszynski recognises that if the realities of modern government preclude the Parliament itself from addressing every detail associated with implementing a complex regulatory scheme, the Parliament should be required to take responsibility for decisions to tax.<sup>59</sup> A limited requirement of democratic accountability in the specific context of revenue measures would not, argues Krotoszynski, disrupt the operation of the modern administrative state, but would ensure that political accountability for basic tax policies rests with those elected to make such decisions.

Accountability relates to the efficiency of the public decision making process. Grewal observes, in relation to the federal and state revenue sharing issues in Australia, that the accountability argument in relation to taxes is that if a government does not raise all the revenue that it spends, it will not be fully accountable to its taxpayers, and its spending decisions are likely to be inefficient.<sup>60</sup> Therefore, accountability in this sense refers to the need to explain, justify, convince or demonstrate to taxpayers that the revenue is indeed necessary and that the funds raised will be spent responsibly. Grewal

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<sup>58</sup> R Krotoszynski, 'The Nondelegation Doctrine Revisited: Universal Service and the Power to Tax' (Washington and Lee Public Law and Legal Theory Research Paper No 03-17, School of Law, Washington and Lee University, 2003) 13.

<sup>59</sup> *Ibid* 71–2.

<sup>60</sup> B Grewal, 'Vertical Fiscal Imbalance in Australia: A Problem for Tax Structure, Not for Revenue Sharing' (Working Paper No 2, Centre for Strategic Economic Studies, Victoria University, 1995) 10.

## REGULATORY IMPACT STATEMENTS

emphasises that, other things being equal, a loss of accountability for taxation revenue would be higher for a government which raises a larger proportion of its revenue from non-discretionary growth of tax bases.<sup>61</sup> For the Australian federal government, its revenue structure has a much greater scope for the loss of accountability as a result of non-discretionary growth in its tax base (primarily through the income tax).

The Inspector General of Taxation suggests that there is ‘no real difference between the principles of good tax policy and the principles of good tax administration policy, since tax administration is simply the way in which tax policy is rolled out.’<sup>62</sup> It is well established that the fundamental principles of tax policy are equity, efficiency and simplicity.<sup>63</sup> Nevertheless, within these broad principles are important criteria such as certainty, transparency and accountability, neutrality, stability (and growth), flexibility and integrity.<sup>64</sup>

### 3.2 Adam Smith’s Core Principles

Turning to the contributions of Adam Smith, for over 200 years there has been fundamental agreement on what constitutes the principles of ‘good’ tax policy. In the seminal work *An Inquiry into the Causes and Nature of the Wealth of Nations*,<sup>65</sup> Smith expounded some basic principles of taxation. With regard to the costs of taxation and the design of the tax system, Smith’s key principle was that:

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<sup>61</sup> Ibid 11.

<sup>62</sup> Inspector General of Taxation, *Policy Framework for Review Selection*, Issues Paper No 2 (2003) 2.

<sup>63</sup> See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (first published 1776, 1910 ed).

<sup>64</sup> These and other criteria are included in the excellent review of Adam Smith’s tax design criteria by C Alley and D Bentley ‘A Remodelling of Adam Smith’s Tax Design Principles’ (2005) 20 *Australian Tax Forum* 579, 586–8.

<sup>65</sup> Smith, above n 63.

Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state.<sup>66</sup>

That is, Smith believed that taxes should be designed so as to minimise economic waste, which requires the cost of collection of the tax (primarily compliance costs and administrative costs) to be kept to a minimum. A loss of efficiency also distorts economic behaviour and can also be a significant cost. Smith recognised that even if the tax system was simple, easy to comply with and easy to administer, it could still have economic costs. Specifically, he observed:

It [a tax] may obstruct the industry of the people, and discourage them from applying to certain branches of business which might give maintenance and unemployment to great multitudes. While it obliges the people to pay, it may thus diminish, or perhaps destroy, some of the funds which might enable them more easily to do so.<sup>67</sup>

Smith also noted that, in addition to the disincentive effects discussed above, taxation would have additional costs. He classified these costs as follows:

First, the levying of [a tax] may require a great number of officers, whose salaries may eat up the greater part of the produce of the tax, and whose perquisites may impose another additional tax upon the people [known as Administrative and Enforcement Costs].

...

Fourthly, by subjecting the people to the frequent visits and the odious examination of the tax-gatherers, it may expose them to much unnecessary trouble, vexation, and oppression; and though vexation is not, strictly speaking, expense, it is certainly equivalent to the expense

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<sup>66</sup> Ibid 654.

<sup>67</sup> Ibid.

## REGULATORY IMPACT STATEMENTS

at which every man would be willing to redeem himself from it [known as Compliance Costs].<sup>68</sup>

Such costs remain relevant and identifiable today. In many cases the administrative costs and compliance costs of taxation have become indistinguishable from one another, because responsibility for administration has been transferred to the private sector. In principle, the administrative and compliance costs of regulation should be compared to the benefits arising from the regulation, thereby promoting efficiency in the administration of the regulation. However, Cook et al suggest that it may be difficult to estimate the benefits, in which case the objective should be to minimise the costs of regulation to achieve a given (assumed) regulatory benefit.<sup>69</sup> While governments can measure directly the administrative costs, compliance costs are usually hidden from view. Nevertheless, these costs can be appreciable.

The Small Business Project observes that new laws and regulations, if deemed absolutely necessary, should ideally be:

- transparent — open, simple, user-friendly;
- *accountable* — to ministers, Parliament, users and the public;
- consistent — predictable, so that people know where they stand;
- targeted — focused on the problem, with minimal side effects; and
- enforceable — a regulation that cannot be enforced will not achieve its policy objective.<sup>70</sup>

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<sup>68</sup> Ibid 654–5.

<sup>69</sup> Cook et al, above n 4, 15.

<sup>70</sup> See Small Business Project, above n 3, 5 (emphasis added).

Bondfield aptly states that to

ensure a transparent and accountable process involves effective consultation in the development of the relevant regulatory initiative from its inception. This includes entering into a debate over the policy itself and not just its articulation and implementation.<sup>71</sup>

The key issue, therefore, is to engender a regulatory culture of: government openness; process transparency; and *accountability*.

The Council of Australian Governments includes accountability as a key feature of good regulation, and observes:

As set out in the protocols for the operation of Ministerial Councils, it is the responsibility of Ministers to ensure that they are in a position to appropriately represent their Government at Council meetings. Therefore, to the greatest extent possible, Ministers should obtain full government agreement on matters which may involve regulatory action before they are considered at Ministerial Council level.

Where a Minister is dissatisfied with the outcome of the impact assessment process, the Minister may seek the agreement of his/her Head of Government to request an independent review of the assessment process.<sup>72</sup>

Cook et al argue that:

Regulatory legitimacy exists when the regulatory institutions, while still subject to criticism because of particular decisions or behaviour, are generally accepted within society. Achieving this public

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<sup>71</sup> Submission to Independent Pricing and Regulatory Tribunal, New South Wales, Sydney, 19 May 2006, 4 (Brett Bondfield).

<sup>72</sup> Council of Australian Governments, *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (2004) 7.

## REGULATORY IMPACT STATEMENTS

acceptance occurs over time and as public confidence in the regulators is built.<sup>73</sup>

Haskins defines an accountable regulatory regime as one in which regulation is answerable to the public or more usually to the public's representatives in Parliament and is legitimate.<sup>74</sup> In order to achieve this legitimacy, regulation is commonly linked to the following attributes of 'good' regulation, namely:

- transparency;
- *accountability*;
- targeting;
- proportionality; and
- consistency.<sup>75</sup>

Jacobs specifically comments on how ministerial accountability for RIAs under their jurisdiction may be improved.<sup>76</sup> Jacobs observes that in the early days of RIA, it was common that 'RIA was considered to be a technocratic discipline suitable for analysts, economists, and other low-level drones, but not sufficiently important to come to the attention of the minister.'<sup>77</sup> Thus ministers were rarely aware of the contents of RIA, and bureaucrats quickly realised that RIA was a low priority.

With RIA becoming mainstreamed and the quality of RIA becoming a concern, not only for analysts but for Parliaments and governments (via cabinets), a technique adopted in Westminster

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<sup>73</sup> Cook et al, above n 4, 14.

<sup>74</sup> See C Haskins, 'The Challenge to State Regulation' in J Blundell and C Robinson, *Regulation without the State ... The Debate Continues* (2000) 52.

<sup>75</sup> Ibid 60.

<sup>76</sup> Jacobs, above n 38, 29–30.

<sup>77</sup> Ibid 29.

parliamentary systems was to make ministers (or high-level civil servants) personally accountable for the quality of the RIAs in their departments. The logic for this approach is that if the minister was personally responsible, he or she would actually read the RIA, and want to be sure that the RIA is up to standard. For example, in NZ, officials preparing Cabinet papers on behalf of the minister must include a certifying statement in the Cabinet paper that the RIS and BCCS, where relevant, comply with the requirements.

This ministerial responsibility approach has generally worked in the sense that ministers are aware of the RIA and the quality issues around RIA take a higher profile. Nevertheless, it is important that this is not reduced to little more than a paperwork exercise with ministers generally unaware of the content and quality of the RIA underpinning a draft regulation.

In practice, what would need to change if NZ as a nation wishes to get serious about ‘turning back the regulatory tide’? Kerr suggests that the answer is a great deal, including the need for much more respect in government, the public service and the judiciary for the sanctity of legitimately obtained property rights and freedom of contract.<sup>78</sup> Furthermore, he suggests that the general public needs to understand that regulation is often the problem not the solution. Importantly in this context, Kerr argues,<sup>79</sup> correctly in my view, that there needs to be *more accountability for bad regulations, and better analysis*. Ideally, Kerr suggests, NZ (and for that matter, I would include Australia as well) needs a zero-based analysis by competent experts of all the major legislation affecting businesses. Legislation that fails the RIS tests should be discarded or modified until what is left does satisfy them. Kerr asks the question: how big would this residual amount of legislation be? He suggests it is not insurmountable if a government is serious about the problem.

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<sup>78</sup> R Kerr, ‘The Quagmire of Regulation’ (Speech delivered at the Otaki Rotary Club, Otaki, 12 October 2000).

<sup>79</sup> Ibid 7 (emphasis added).

## REGULATORY IMPACT STATEMENTS

Writing in the NZ context, Wilkinson supports Kerr,<sup>80</sup> observing that political and other constraints might ensure that a cost-benefit analysis is inadequately performed.<sup>81</sup> For example, the problem may be inadequately defined, the policy objective may have been selected so as to pre-justify a preferred policy and relevant alternatives may be considered superficially, or ignored altogether.

In NZ, no obvious sanctions apply where a RIS is not up to standard and the responsible minister takes no action. The minister responsible for an agency that produces an unprofessional RIS may be content if the RIS reaches a preferred conclusion. In other circumstances the agency is less likely to get away with it. A basic problem here, Wilkinson notes, is that the politicians inevitably assess policy proposals by weighing up their political costs and benefits.<sup>82</sup> However, officials are also partly to blame for this situation.

Wilkinson argues that the empirical evidence suggests that these problems are cumulatively very serious. The experience to date with RISs in NZ and elsewhere (such as in Australia) indicates that cost-benefit analysis is not sufficiently robust to provide an effective constraint on the tendency of governments to regulate excessively. In March 2001, Wilkinson states that Tasman Economics reviewed the effectiveness of the RIS regime in NZ for the MED and the Treasury.<sup>83</sup> The review found that ‘many regulatory impact statements were far too brief, given the importance and complexity of the issues being addressed and were of poor quality’.<sup>84</sup> The review did not say whether any were satisfactory overall but it did make a number of recommendations for improving the design of the regime and compliance with its requirements. Wilkinson acknowledges that cost-benefit analysis does not possess scientific objectivity and

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<sup>80</sup> Kerr, above n 78.

<sup>81</sup> Wilkinson, above n 15, 9–11.

<sup>82</sup> See generally Wilkinson, above n 15.

<sup>83</sup> Ibid 10.

<sup>84</sup> Ibid.

efficiency, with its more ambitious interpretations subject to a number of limitations, including those discussed above. The practical application of cost-benefit analysis involves significant and controversial value judgments. Importantly, Wilkinson concludes that his criticism should not be taken to imply that a decision taken without the benefit of a cost-benefit analysis is likely to be better than one that is informed by a competent cost-benefit analysis.

In this article, I have established the importance of government (and officials') accountability for regulation, including the use of RIS as the measurement tool for accountability. I now turn to reviewing the practical implementation of tax RISs in Australia and NZ.

#### **4. (TAXATION) REGULATORY IMPACT STATEMENTS: AUSTRALIA**

RISs in Australia generally come within the Australian government's Productivity Commission, which oversees the regulatory performance indicators ('the RPI') requirements. According to the Australian Productivity Commission, RPIs are to measure how effectively agencies meet six objectives, namely:

- to ensure that all new or revised regulation confers a net benefit on the community;
- to achieve essential regulatory objectives without unduly restricting business in the way in which these objectives are achieved;
- to ensure that the regulatory decision making processes are transparent and lead to fair outcomes;
- to ensure that information and details on regulation and how to comply with it are accessible and understood by business;
- to create a predictable regulatory environment so business can make decisions with some surety of future environment; and

## REGULATORY IMPACT STATEMENTS

- to ensure that consultation processes are accessible and responsive to business and the community.<sup>85</sup>

The Office of Regulation Review ('the ORR') in Australia (which is part of the Productivity Commission) has oversight and responsibility for the review of RISs prepared by the Australian Taxation Office ('the ATO'). The ORR's *A Guide to Regulation*<sup>86</sup> provides detailed advice on how to prepare a RIS, including the following adequacy criteria for RISs:

- Is it clearly stated in the RIS what is the fundamental problem being addressed, and is a case made for why government action is needed?
- Is there a clear articulation of the objectives, outcomes, goals or targets sought by government action?
- Are a range of viable options assessed including, as appropriate, non-regulatory options?
- Are the groups in the community likely to be affected identified, and what will be the impacts on them? There must be explicit assessment of the impact on small businesses, where appropriate. Both costs and benefits for each viable option must be set out, making use of quantitative information where possible.
- What was the form of consultation? Have the views of those consulted been articulated, including substantial disagreements? If no consultation was undertaken, why not?
- Is there a clear statement as to which is the preferred option and why?

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<sup>85</sup> Australian Productivity Commission, *Regulatory Performance Indicators: A Guide for Departments and Agencies* (2006) 3.

<sup>86</sup> Office of Regulation Review, *A Guide to Regulation* (2006).

- Is information provided on how the preferred option would be implemented and on the review arrangements after it has been in place for some time?<sup>87</sup>

Relevant to all of these seven criteria or sections of a RIS is an overriding requirement that the degree of detail and depth of analysis must be commensurate with the magnitude of the problem and with the size of the potential impact of the proposals.

The Australian Office of Best Practice Regulation ('the OBPR') is charged with promoting the Australian government's objective of effective and efficient legislation and regulations. One key facility is the development of a 'Business Cost Calculator' ('a BCC'), a web-based tool developed by the Australian government to assist policy officers to estimate the business compliance costs of various policy options. It provides an automated and standard process for quantifying compliance costs of regulation on business using an activity-based costing methodology.<sup>88</sup> Within the OBPR there is a Cost-Benefit Analysis Unit ('a CBAU'), set up to provide training, advice and technical assistance on cost-benefit analysis. A key goal of the CBAU is to help build the capacity of departments and agencies to improve the quality of regulatory proposals. A process for best practice consultation also forms part of the OBPR's brief.

In its *Best Practice Regulation Handbook*, the OBPR provides succinct advice and guidance for officials within government departments in developing regulation and the associated regulatory impact analysis.<sup>89</sup> Best practice regulatory practice for tax is separately addressed in this handbook as the guidelines are modified to encompass the different policy environment for taxation. Specifically

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<sup>87</sup> Ibid 7–8.

<sup>88</sup> See Office of Best Practice Regulation, *Business Cost Calculator* (2008) Australian Government <<http://www.finance.gov.au/obpr/bcc/index.html>> and related materials, such as user guides.

<sup>89</sup> Office of Best Practice Regulation, *Best Practice Regulation Handbook* (2006).

## REGULATORY IMPACT STATEMENTS

the OBPR observes that the full RIS process may not be suitable for taxation measures for a number of reasons, including:

- prior public consultation on taxation measures could release sensitive information, which could be used by taxpayers to engage in tax avoidance or minimisation schemes;
- many taxation measures are announced in the budget or by way of special ministerial statements;
- there can be difficulties in identifying the ultimate bearer of a tax, which places constraints on the public consultation process; and
- review processes for taxation measures are already in place.<sup>90</sup>

A key role of the Australian Treasury and the ATO is to keep the taxation system as a whole under continuous review. Therefore, taxation measures are generally difficult to review in isolation, because it is the interaction of taxation measures in the taxation system that is important.

A RIS for proposed taxation measures examines the options for ensuring compliance with taxation proposals designed to meet government policy objectives, and the costs and benefits of each alternative implementation option where more than one is available. This, the OBPR argues, will ensure that compliance costs and other considerations are fully taken into account by the government.

The regulatory framework requires a preliminary consideration of compliance cost impacts for all measures; a quantitative assessment of compliance costs for proposals with a medium compliance cost impact on business and individuals; and preparation of a RIS for proposals with a significant impact on business and individuals or the economy.

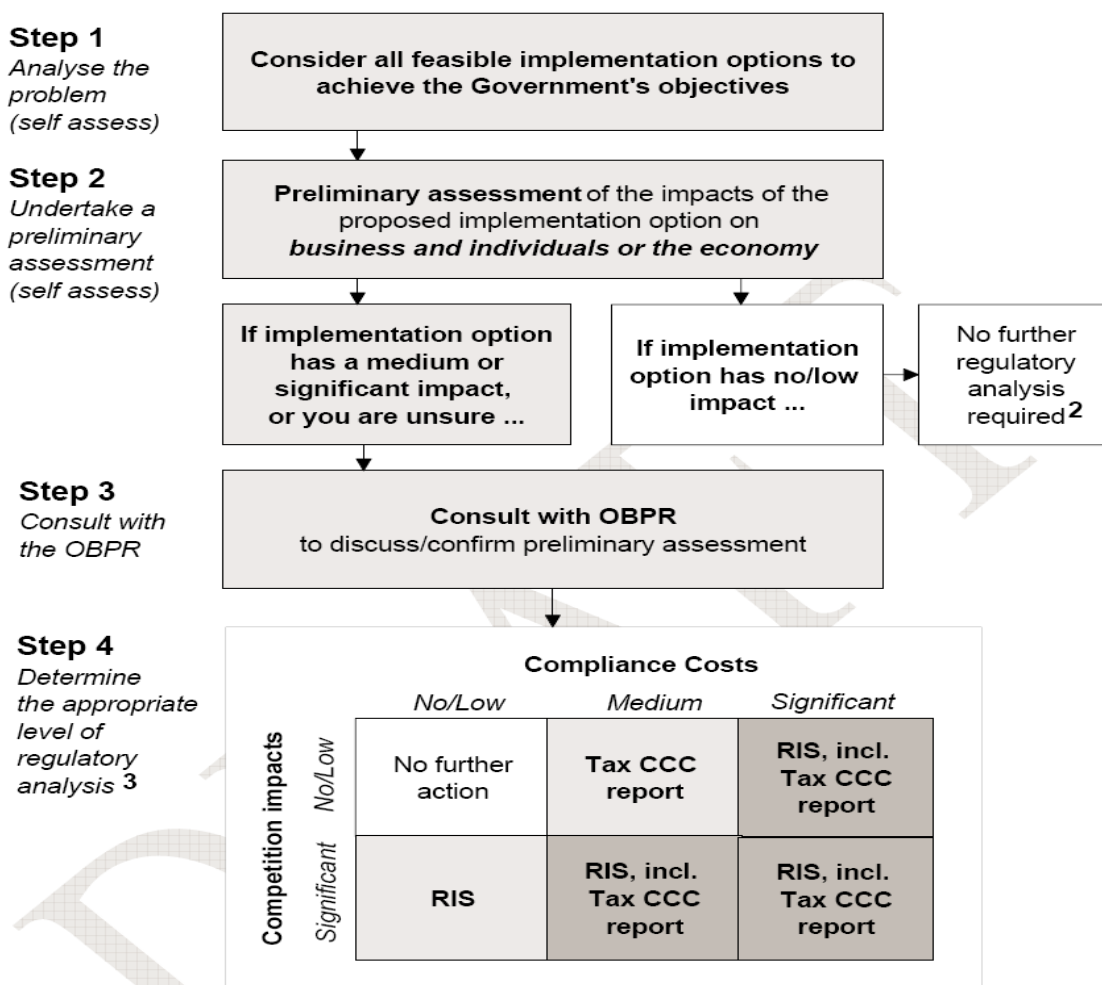
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<sup>90</sup> Ibid 5-1.

Figure 1 summarises the preliminary regulatory assessment requirements for taxation measures.<sup>91</sup>

### Figure 1: Preliminary Regulatory Impact Analysis for Taxation Measures

Figure 5.1 Preliminary regulatory impact analysis for taxation measures <sup>1</sup>



1. These procedures and processes are *mandatory* and apply to *all* government entities which review or make taxation measures.
2. Record the reasons why you decided there are likely to be no or low impacts and report these to your agency's best practice regulation coordinator.
3. The OBPR determines whether a Tax CCC report or RIS is required.

<sup>91</sup> Figure 1 reproduces Figure 5.1 from Office of Best Practice Regulation, *Best Practice Regulation*, above n 89, 5-3.

## REGULATORY IMPACT STATEMENTS

The Australian Treasury and ATO Tax-Specific Compliance Cost Calculator ('Tax CCC') can be used to assess the compliance cost impacts (qualitative and quantitative) of taxation measures on various taxpayer groups (for example, individuals, small business and large business) and third parties (for example, software developers and tax agents). The qualitative analysis includes assessment of factors such as behavioural effects, cash flow impacts and overall tax system complexity. The guide that accompanies the Tax CCC recommends that the Tax CCC should be used to undertake an initial qualitative assessment of compliance costs to assess whether they are nil, small, medium or significant. In each case, the impact on small business should be separately identified. Where the impacts are assessed as being nil or low, no further action is required. Further action will generally not be required where a tax proposal:

- only involves a minor change to existing tax rates or user charges;
- only involves making minor technical corrections to the existing law; or
- only involves changes consistent with existing law (for example, indexation).

Where the overall compliance costs are considered to be medium or significant, a quantitative assessment of the compliance cost impact is required and is included as part of any RIS. The compliance cost assessment report is circulated with a submission or memorandum when seeking coordination comments and is available for ministers upon request.

The OBPR determines whether a RIS is required or whether an exception might apply. In cases where an exception does not apply, but the RIS requirements have not been met, a post-implementation review is required within 1–2 years.

As with full RISs, once prepared and assessed as adequate by the OBPR, a tax RIS is to accompany the proposal at the time of seeking

approval from the decision maker. If approval is obtained, the tax RIS should be attached to the relevant explanatory memorandum or statement when the proposal is tabled in the Australian Parliament. The information requirements for a RIS for taxation measures include:

- the objective(s) of the government;
- implementation options (including consideration as to whether the design of the tax measure should include transitional arrangements, incorporate tiered thresholds, options for ensuring taxpayer compliance, alternative reporting arrangements (including frequency and detail) and detailed information or other supporting material);
- impact analysis on all affected groups (including identification of such groups, assessment of compliance and administrative costs, assessment of benefits, and other impacts);
- consultation; and
- conclusion and recommended action (with reasons for the selection of the preferred option).

With respect to the cost-benefit analysis, estimates of compliance costs to businesses and other taxpayers affected by each option should be given, including initial (start-up) and ongoing costs. These costs might derive from ‘paper burden’ or administrative costs to businesses associated with complying with or reporting on particular regulatory requirements, or both of the above. Where the existing compliance regime is to be changed and ongoing compliance costs are likely to be reduced, these would be assessed as benefits of the proposed change. Nevertheless, initial compliance costs are still likely to apply in these cases. As a minimum, estimates of compliance costs included in a RIS are to include those costs mandated by the government policy. The OBPR considers that it is a matter of judgement as to the extent to which compliance costs that are incurred voluntarily by taxpayers in response to the policy change, such as through tax planning efforts, are to be included. Where these impacts are substantial they should be

## REGULATORY IMPACT STATEMENTS

included. However, an assessment of the impact of each option on compliance costs for various taxpayer groups, and specifically identifying any impact on small business, should be included, and quantified (using the Tax CCC).

Estimates of the administration cost to government of each implementation option should also be given, including where relevant: numbers and levels of staffing, salary costs (including on-costs), costs of other relevant items such as any special advertising, accommodation or travel, and enforcement costs. The OBPR recommends that the ATO should produce assessments of administration costs as part of the broader ATO and Australian Treasury policy costing process. The sources of revenue against which the costs will be charged should be included, for example, from general budget appropriations or fees. Estimates of revenue from any cost recovery process should be given, thereby enabling a net administration cost to government to be indicated.

With respect to benefits, information on the benefits to affected groups or to the community at large (or both) should be identified for each option put forward in the RIS. These benefits could derive from: government revenues, enhancing the integrity of the taxation system and administrative simplicity. Where appropriate, other impacts on business and other taxpayers of the implementation options should be identified, such as: resource allocation, impacts on international trade, changes in the timing of introduction of goods to the marketplace or the availability of goods (or both), and environmental and social impacts, health and safety outcomes, and other non-monetary outcomes.

In addition to the requirement to quantify compliance and administrative costs, the OBPR recommends that the overall costs and benefits of an option should be quantified, where the impacts, or the impacts on particular stakeholder groups, are significant. Importantly, data sources and assumptions made when conducting the impact analysis should be included in the tax RIS so that the reasoning behind

the conclusions is open to scrutiny. The tax RIS should clearly indicate any gaps in data underpinning the analysis, or assumptions that have been made with little supporting evidence. Where there is significant uncertainty about any key data inputs, the tax RIS should include a sensitivity analysis that considers outcomes for a range of values. Finally, when assessing aggregate costs, it is important to avoid double-counting.

How good is the theory in practice? Tran-Nam, as noted earlier in this article, is critical of Australian tax RISs in terms of their lack of rigorous economic analysis that can be used to evaluate the underlying policy.<sup>92</sup> He does acknowledge that Australian RISs are on par with international best-practice for the formal process of compilation and documentation as part of the RIS process.

Banks, Chairman of the Regulation Taskforce ('the Taskforce') and Productivity Commission, notes in a public lecture in 2006 that the Taskforce considered that priority action was needed to reduce regulatory creep in areas such as GST registration requirements; fringe benefits tax minor benefits reporting; the superannuation guarantee exemption; and the definition of 'large proprietary company' for the purpose of determining the stringency of financial reporting requirements.<sup>93</sup> Banks also offered six principles for good regulatory process, namely:

- governments should not act to address 'problems' through regulation unless a case for action has been clearly established. This should include evaluating and explaining why existing measures are not sufficient to deal with the issue;

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<sup>92</sup> See generally Tran-Nam, above n 29.

<sup>93</sup> G Banks, 'Reducing the Regulatory Burden: The Way Forward' (Speech delivered at the Inaugural Public Lecture of the Monash Centre for Regulatory Studies, Melbourne, 17 May 2006) 5–6, 11.

## REGULATORY IMPACT STATEMENTS

- the range of relevant policy options need to be assessed within a cost-benefit framework (including analysis of compliance costs and, where relevant, risk);
- only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted;
- effective guidance should be provided to regulators and regulated parties to ensure that the policy intent of the regulation is clear, as well as what is needed to be compliant;
- mechanisms such as sunset clauses and periodic reviews need to be built into legislation to ensure that regulation remains relevant and effective over time; and
- there needs to be effective consultation with regulated parties at the key stages of regulation-making and administration.<sup>94</sup>

Earlier in 2005, Banks asks whether the Australian regulatory system is broken.<sup>95</sup> He concludes that it is in need of widespread fixing and reform, observing:

What is needed is a deeper recognition within government of the value of good process itself, which the RIS ‘paperwork’ simply records. That will require more fundamental cultural change, which can really only be inculcated from the top down. Fortunately, there is no shortage of suggestions from business and elsewhere as to how this might be implemented! It is now up to governments to respond to the challenge.<sup>96</sup>

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<sup>94</sup> Ibid 11–12.

<sup>95</sup> G Banks, ‘Regulation-Making in Australia: Is It Broke? How Do We Fix It?’ (Speech delivered at The Australian Centre of Regulatory Economics and Australian National University Faculty of Economics and Commerce Public Lecture Series, Canberra, 7 July 2005) 9–16.

<sup>96</sup> Ibid 16.

Interestingly, in the ORR's 2005–06 *Annual Report*, the Australian Treasury provided, with respect to taxation, the highest number of regulatory proposals and had the second highest number with adequate RISs prepared.<sup>97</sup> However, for a more useful review, a larger sample period should be taken.

Table 1 provides an overview of the content of a sample of RISs on a number of tax Bills in Australia from 2000 to the end of 2007. The reason for reviewing only a sample of RISs is that there were in total 160 tax-related Bills over the period 2000 to 2007 (a complete list appears in the Appendix), comprising 26 in 2000, 14 in 2001, 27 in 2002, 21 in 2003, 24 in 2004, 13 in 2005, 17 in 2006 and 23 in 2007. Some of these tax-related Bills are referred to by more than one name, and consequently the total number is nearer to 150. A random sample of three Bills is selected for each year for 2000 to 2007 inclusive. A summary of this analysis appears in Part 6 of this article.

**Table 1: A Sample of Taxation Bills' RISs — Australia 2000–07**

Bill	Objectives	Implementation Options	Impact Groups	Analysis of Costs and Benefits	Consultation	Conclusion and Recommended Option
A New Tax System (Fringe Benefits) Bill 2000 (Cth)	Stated clearly	No other option identified other than the one proposed	Identifies groups generally	Provides some quantification of costs and benefits and revenue impacts	Brief mention of types of organisations	Only one option: brief
Indirect Tax Legislation Amendment Bill 2000 (Cth) (and supplementary Bills)	Stated succinctly	Not stated	No details: concludes net gains	Compliance cost minimal or reduced: no revenue impact	Not stated	Not stated
New Business Tax System (Alienation of Personal Services Income) Bill 2000 (Cth) ((No 1) and (No 2) Bills)	Stated clearly	Refers to original discussion paper options	No details: concludes net gains to various groups	General discussion: no attempt to quantify costs; some evidence of benefits	Refers to discussion paper consultation process	Refers to discussion paper consultation process

<sup>97</sup> Office of Regulation Review, *Annual Report* (2006) xvii.

## REGULATORY IMPACT STATEMENTS

International Tax Agreements Amendment Bill 2001 (Cth)	Stated clearly	Two options: conclude double tax agreement or do nothing	Clearly outlined impact on groups	Minimal impact on compliance costs	As appropriate for a double tax agreement	Clearly stated: Option 2 to conclude preferred
New Business Tax System (Thin Capitalisation) Bill 2001 (Cth) (and amendments)	Stated clearly	Various options as from the <i>Review of Business Taxation</i>	Clearly examines affected groups	Detailed qualitative analysis only, plus revenue impact	Refers to <i>Review of Business Taxation</i> consultation	Clearly states combination of options preferred
Taxation Laws Amendment Bill (No 5) 2001 (Cth)	Stated succinctly	Miscellaneous areas: only one (capital gains tax) clearly sets out an option	Only details on capital gains tax area	Minimal impact only, capital gains tax area some discussion	No details other than for capital gains tax area	Minimal, capital gains tax area only
Income Tax (Superannuation Payments Withholding Tax) Bill 2002 (Cth)	Stated succinctly	Three options provided and analysed	Considers groups for each option	Considers costs and benefits in general terms only for each group: not quantified	Provides details of organisations consulted	Option 2 recommended with explanation provided
New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002 (Cth)	Stated succinctly: more detail for demergers portion	Not stated except for demergers: four options given	Only considered for demergers portion	Minimal cost change and revenue impact; extensive analysis for demergers	General statement only	Option 4 preferred with reasons given
Taxation Laws Amendment (Film Incentives) Bill 2002 (Cth)	Stated clearly	Not stated	Groups affected noted	Benefits and costs extensively discussed and analysed quantitatively	Details of groups provided	Not stated
New International Tax Arrangements Bill 2003 (Cth)	Stated clearly	Refers to prior consultation papers	Clearly identifies groups affected	Extensive discussion of costs, benefits and revenue impact (later quantitative)	General statement only	Not stated
Taxation Laws Amendment Bill (No 2) 2003 (Cth)	Stated succinctly	Not stated	Groups affected noted	Minimal impact, some reductions and revenue impact given	Not stated	Not stated
Taxation Laws Amendment Bill (No 9) 2003 (Cth)	Stated succinctly (clearly for partnership rollover relief)	Not stated	Groups affected noted	Minimal impact, some reduction, some revenue impact; more detail for rollover relief — some increases but not quantified	Organisations noted for rollover relief, others general only	Not stated
Administrative Appeals Tribunal Amendment Bill 2004 (Cth)	Stated succinctly	Not stated	Taxpayers and judiciary	No reference to compliance costs, states no impact on government revenue	Not stated	Not stated
New International Tax Arrangements (Managed Funds and Other Measures) Bill 2004 (Cth)	Stated clearly	Refers back to earlier consultative work and identifies options	Refers to groups affected	Additional compliance costs, some benefits, some indication of revenue impact	Not stated	Not stated

Tax Laws Amendment (2004 Measures No 5) Bill 2004 (Cth)	Stated succinctly	Not stated	Refers to groups generally	Minimal impact, some reductions, some estimates of revenue impact	Not stated	Not stated
Tax Laws Amendment (2005 Measures No 1) Bill 2005 (Cth)	Stated succinctly	Not stated	Refers to groups generally	Compliance costs minimal or negligible, estimates of revenue impact	Not stated	Not stated
Tax Laws Amendment (Improvements to Self Assessment) Bill (No 1) 2005 (Cth)	Good background and stated succinctly	Not stated	Refers to groups generally	Impact on costs and benefits for each area, some with attempts to quantify	Refers to earlier consultation material	Not stated
Tax Laws Amendment (Personal Income Tax Reduction) Bill 2005 (Cth)	Stated succinctly	Not stated	Covers given groups and rate reduction impact	No compliance cost impact; enormous revenue impact given	Not stated	Not stated
Tax Laws Amendment (2006 Measures No 2) Bill 2006 (Cth) (and corrections)	Not stated, overview only	Not stated	Briefly only	Compliance costs minimal or negligible	Not stated	Not stated
Tax Laws Amendment (2006 Measures No 7) Bill 2006 (Cth)	Not stated, overview only	Not stated	Briefly only	Financial impact on government revenue, compliance costs minimal or negligible	Not stated	Not stated
Tax Laws Amendment (Simplified Superannuation) Bill 2006 (Cth) (and associated Bills)	Stated succinctly	Identifies at least two options for each issue with analysis	Considers groups for each option for each issue	Financial impact and some limited cost and benefit quantification for each issue and option. Cost recovery impact statement also included	Not stated	Recommendations given for each issue
Tax Laws Amendment (2007 Measures No 1) Bill 2007 (Cth)	Not stated, overview only	Not stated	Briefly only	Nil or reduced compliance costs; some revenue impact details	Not stated	Not stated
Superannuation Legislation Amendment (Simplification) Bill 2007 (Cth) (and associated Bills)	Not stated, overview only	Not stated	Briefly only	Refers to main simplified superannuation reforms	Not stated	Not stated
Tax Laws Amendment (Small Business) Bill 2007 (Cth)	Stated succinctly	Not stated	Briefly only	Reduction in compliance costs, some revenue loss	Not stated	Not stated

## REGULATORY IMPACT STATEMENTS

### 5. (TAXATION) REGULATORY IMPACT STATEMENTS: NEW ZEALAND

The overarching comment for NZ is that the country is playing ‘catch-up’ to Australia in terms of its tax RIS policy and analysis (and RIA more generally). The most recent general statement on RIS preparation in NZ is Cabinet Office *Circular CO (07) 3*,<sup>98</sup> which replaces a 2004 Cabinet Office Circular,<sup>99</sup> (which in turn replaced a 2001 Cabinet Office Circular).<sup>100</sup> The new RIA requirements apply from 1 April 2007, with the main changes including:

- changes to the format and requirements for RISs, including new sections on the adequacy of the RIS and on implementation and review;
- a new RIA section is to be included in Cabinet papers (replacing the RIS and BCCS section);
- discussion documents for proposals that require a RIS must include questions or discussion (or both) of each of the substantive RIS sections, or a draft RIS;
- all RISs are to be published (publishing a RIS includes making the RIS available from the responsible department’s website and from the dedicated pages of the MED’s website; a RIS should also be included in the explanatory note to Bills that are introduced into Parliament);
- departments must confirm that the principles of the *Code of Good Regulatory Practice* and the RIA requirements have been complied with when submitting Cabinet papers with a RIS; and

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<sup>98</sup> New Zealand Cabinet Office, *Circular CO (07) 3* (2007).

<sup>99</sup> New Zealand Cabinet Office, *Circular CO (04) 4* (2004).

<sup>100</sup> New Zealand Cabinet Office, *Circular CO (01) 2* (2001).

- the MED's Regulatory Impact Analysis Unit ('the RIAU') is to focus on proposals likely to have a significant impact on economic growth.<sup>101</sup>

*Circular CO (07) 3* provides that a RIS must contain the following information:

### ***Executive Summary***

One paragraph of no more than 150 words summarising the problem, the preferred option and the main impacts.

### ***Adequacy Statement***

A statement about who has reviewed the RIS (RIAU or name of department that has reviewed the RIS) and whether the RIS is adequate according to the criteria agreed by Cabinet.

### ***Status Quo and Problem***

- A brief, high-level summary of relevant key features of the current situation, not just features of the current regulation.
- A summary of why government action is needed, including why the current arrangements are insufficient to address the problem. This should contain an appropriate level of detail on the costs and benefits of the status quo (including compliance costs, risks and opportunities).

### ***Objectives***

The objectives that the options are to be measured against must be included.

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<sup>101</sup> New Zealand Cabinet Office, *Circular CO (07) 3* (2007) 1.

## REGULATORY IMPACT STATEMENTS

### *Alternative Options*

For each option that is neither the status quo nor the preferred option:

- a brief, high-level summary of key features of the option; and
- why it is not the preferred option, including an appropriate level of detail on the benefits and costs (including compliance costs, risks and opportunities).

### *Preferred Option*

- A brief, high-level summary of key features of the preferred option must be included.
- Why it is preferred and a statement of all of the proposal's impacts, including an appropriate level of detail on the benefits and costs (including compliance costs).
- A risk assessment with a description of how risks will be, or are being, mitigated.
- Steps that have been taken to minimise compliance costs, if any.
- A paragraph that briefly describes how the preferred option would impact on the stock of regulation, including whether the proposal overlaps and interacts with existing rules, whether the proposal makes any existing rules redundant, and whether these rules are being removed or altered as part of the proposal.

### *Implementation and Review*<sup>102</sup>

- How the proposal will be given effect, including timetables where available.

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<sup>102</sup> This section does not need to be completed for tax policy proposals.

- Plans for notifying affected parties of what they need to do to comply with any new requirements, if any.
- The enforcement strategy that is to be implemented to ensure that the preferred option achieves the public policy objective, if any.
- Plans for monitoring and evaluating the preferred option, including key dates, if any.

### *Consultation*

Who was consulted? What was the form of consultation? Key feedback from stakeholders and government departments on each of the options considered, with particular emphasis on any significant concerns that were raised about the preferred option, how the department authoring the RIS altered the proposal to address these concerns, and, if they did not alter the proposal, why not.

The RIS should provide a summary of the required information and should focus on the analysis of the options, including why the preferred option is best. The RIS needs to be able to stand alone. Government departments need to clearly specify the assumptions they have made about the drivers of the problem or issue and how the proposed solutions will influence these drivers. The length of the RIS will depend largely on the complexity of the problem under consideration, the number of options considered, and the extent of the analysis conducted on the proposal and the alternatives, which should be appropriate given the magnitude of the proposal. Of considerable importance is the requirement that when providing a discussion of impacts of options, the RIS should not be limited to economic concerns, and should examine the full range of outcomes including social, cultural, health and environmental outcomes.

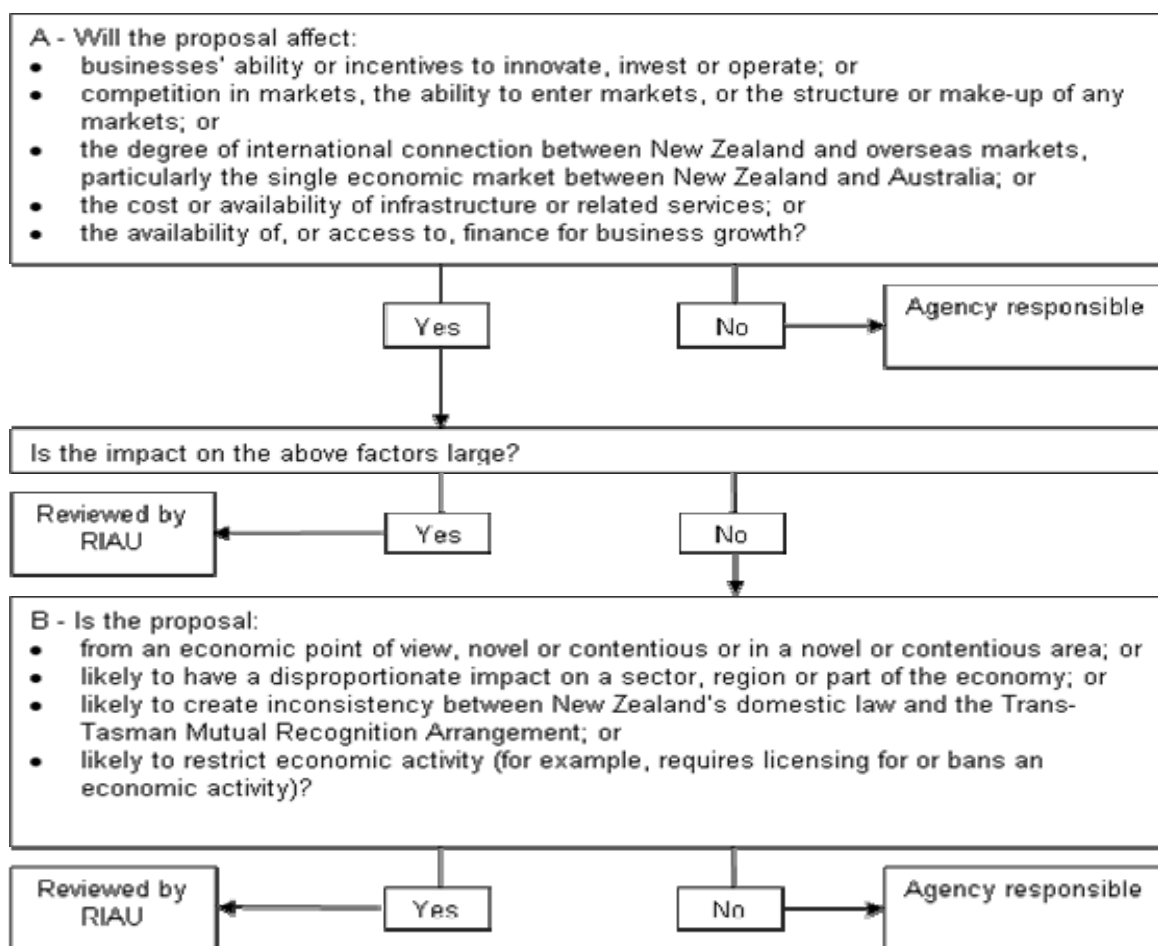
One of the exemptions for the need to prepare a RIS is of particular importance to taxation, namely to give effect under urgency, in terms first announced in the budget, to a specific budget decision, where the decision is to, for example, repeal, impose or adjust a tax,

## REGULATORY IMPACT STATEMENTS

fee or charge. It is somewhat odd that the Implementation and Review section is not required for tax RISs, yet the Generic Tax Policy Process ('the GTPP') incorporates an implementation and review phase.<sup>103</sup>

To determine whether proposals should be reviewed by the RIAU, departments, in consultation with the RIAU, must apply the following tests as set out below in Figure 2.

**Figure 2: Processes for Determining if a Review of a RIS Is Required by the RIAU**



<sup>103</sup> See further A Sawyer, 'Broadening the Scope of Consultation and Strategic Focus in Tax Policy Formulation: Some Recent Developments' (1996) 2(1) *New Zealand Journal of Taxation Law and Policy* 17.

It is important to note that there is no separate process identified for tax RISs in NZ compared to Australia, even though tax RISs are prepared by the IRD and not the RIAU. The RIAU provides useful information on its website including tips and hints for preparing a RIS and BCCS, and publishes an electronic newsletter, *Regulatory Review*, approximately every six months (since August 2004). This guidance is of a general nature and should not be relied upon for preparing tax RISs, since the IRD has responsibility to prepare its own RISs for tax policy and administrative changes in NZ. The RIAU's website also contains the *Protocol between the Office of Regulation Review and the Regulatory Impact Analysis Unit*,<sup>104</sup> a document detailing the working arrangements between the Australian government's ORR and the NZ RIAU in relation to the assessment of RISs.

The Small Business Advisory Group ('the Group') reported in February 2006 that RIS analysis needed to improve for small businesses.<sup>105</sup> The Group's report comments that there is clear, concise and useful guidance available for government policy analysts on how to undertake RIA, yet policy proposals continue to emerge where the costs have only been narrowly drawn, or where no weight has been given to possible unintended consequences of the proposal, particularly for SMEs.<sup>106</sup> The Group believes that ministers (and their officials) need only to adhere to the rules in order to produce high quality, well thought through and clear cost-benefit analyses. However, this will only happen, in the Group's view, if there is rigorous, independent and well-supported monitoring and reporting on the quality of RISs. The Group also argues for regular measurement of the actual costs of compliance, which are to be compared to the costs that were estimated by the government when passing the regulations.

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<sup>104</sup> Office of Regulation Review and Regulatory Impact Analysis Unit, *Protocol between the Office of Regulation Review and the Regulatory Impact Analysis Unit 2004–05* (2004).

<sup>105</sup> Small Business Advisory Group, *Small and Medium Business in New Zealand* (2006).

<sup>106</sup> *Ibid* ch 4.

## REGULATORY IMPACT STATEMENTS

Of particular interest is the comment that implementing the Dutch Standard Cost Model ('the DSCM') or the Australian Standard Costing Model ('the ASCM', known as the Australian On-line Costing Tool) variant of the DSCM, or both, would significantly assist.

In its response, the NZ government indicates its intention to ensure the quality of RIA (and in particular the cost-benefit analysis of all regulatory proposals) is improved across the public sector.<sup>107</sup> Specifically, the NZ government thanked the Group for initiating its own independent review of a sample of recent RISs and extracting what could be learned from the processes by which those regulations were developed. The NZ government advised that Cabinet agreed in May 2006 to a series of actions to strengthen the quality of the information available to ministers when they are making decisions on business regulation.<sup>108</sup> These include:

- introducing a requirement to prepare a draft RIS prior to starting consultations on regulatory proposals with business groups, rather than doing it at the tail-end of the process;
- focusing the scrutiny of the MED's RIAU on those proposals with significant potential impact on economic growth;
- extending the basis on which the RIAU can deem a RIS inadequate. That assessment will now include a judgement on whether the RIS —
  - fails to explain why the existing framework would not suffice to deal with the problem being addressed;
  - fails to include an appropriate cost-benefit analysis, risk assessment and statement of compliance costs; or
  - has been subject to manifestly inadequate consultation;

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<sup>107</sup> New Zealand Government, *Government Response to the Small Business Advisory Group Second Report* (2006) 5.

<sup>108</sup> See generally New Zealand Government, above n 107.

- requiring the RIS to explain how the impacts and effectiveness of the implementation of the proposed regulation will be monitored and evaluated; and
- undertaking a two year trial of the Australian government's BCC, a web-based tool enabling the additional administrative costs of proposed regulations (and the alternatives to regulation) to be consistently and transparently calculated across government.

The NZ government also indicated that it is confident that as a consequence of these decisions (and others that will flow from the review of regulatory frameworks), there will be a marked improvement in the quality of the regulatory impact analysis available to ministers when decisions regarding regulation are made.<sup>109</sup>

PricewaterhouseCoopers ('PwC') was commissioned by the MED to review the DSCM and the ASCM. In its May 2006 report PwC concludes that neither model is considered to be completely adequate, with both receiving a low rating for overall accuracy and appropriateness to business, a mid ranking for efficiency and for effectiveness as a policy making tool, and a high rating for user friendliness.<sup>110</sup>

The NZ Minister of Commerce advised the Cabinet in October 2006 that a number of projects are in progress that focus on providing for high quality regulatory design, namely:

- strengthening the RIA requirements on agencies developing new or amending existing regulation;

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<sup>109</sup> See generally *ibid.*

<sup>110</sup> PricewaterhouseCoopers, *Measuring Compliance Costs: Evaluation of the Dutch Standard Cost Model and the Australian Cost Model (Incorporating a Trial Measurement of the Costs Arising from the Schedules to the Securities Regulations 1983) — Report for Ministry of Economic Development* (2006).

## REGULATORY IMPACT STATEMENTS

- implementing the BCC through a two year pilot programme within agencies (through working closely with the Australian Office of Small Business (‘the OSB’) and developing the software platform for implementation of the tool at the policy analyst level);
- establishing a stand alone group to focus on issues arising after a regulation has been implemented; and
- promoting the use of ‘regulatory flexibility’ as a tool to ease compliance requirements for classes of businesses where the costs of compliance would otherwise outweigh the benefits from doing so.<sup>111</sup>

Turning to the issue of consultation, Bondfield has high praise for the NZ approach with respect to consultation, observing that

it is the New Zealand recognition that it is a political decision to engage in early consultation and this openness comes at a cost of politicians and government departments being accountable and having to explain themselves in some detail and/or argue their case and seek to take the community with them (thus lead not follow public opinion).<sup>112</sup>

Bondfield observes that the openness of the NZ process, the breadth of the policy put out for consultation and the willingness of the government to change its position, both policy and detail, based on feedback stands in contrast to the Australian taxation position.<sup>113</sup> However, the power of consultation should not be overplayed, Bondfield argues, and that what is important is accountability. He concludes:

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<sup>111</sup> See L Dalziel, *Quality Regulation Review: First Milestone Report* (2006) 10–11.

<sup>112</sup> Submission to Independent Pricing and Regulatory Tribunal, New South Wales, Sydney, 19 May 2006, 5–6 (Brett Bondfield).

<sup>113</sup> See generally *ibid.*

There is a need for transparency of process and engagement in good faith by the government in the policy debate at all its phases. This includes undertaking independent and methodologically robust post implementation reviews. This comes with a cost both in terms of resources and time. ... [I]n order to combat compliance costs it is crucial to know what are the costs of particular measures at both the initial consultative phase and at the Parliamentary debate phase. Only with such knowledge can different approaches be evaluated and Government made aware and accountable for the costs it imposes.<sup>114</sup>

The quality of RISs generally in NZ is variable although there are some very good examples of best practice outside of taxation. One such example on the MED's website is the RIS that accompanied the 2006 proposal to adjust the minimum wage, with extensive qualitative and quantitative analysis of the costs and benefits of the various options.

Focusing on RISs for taxation Bills since 2000, the total number of tax-related Bills from 2000 to 2007 is 21, with 5 in 2000, 2 in 2001, 2 in 2002, 1 in 2003, 3 in 2004, 3 in 2005, 3 in 2006 and 3 in 2007. Consequently, the population of tax-related Bills is reviewed rather than a sample. One observation that in part accounts for the lower number of tax Bills is that in NZ tax Bills tend to be more general and cover a variety of taxes, amendments and remedial changes, rather than as in Australia where the trend is for separate Bills for specific changes. An analysis of these NZ findings appears in the next Part of the article.

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<sup>114</sup> Ibid 6–7.

## REGULATORY IMPACT STATEMENTS

**Table 2: Taxation Bills' RISs — New Zealand 2000–07**

Bill	Objectives	Implementation Options	Impact Groups	Analysis of Costs and Benefits	Consultation	Conclusion and Recommended Option
Taxpayers' Charter Bill 2000 (NZ) (private member's Bill)	Succinctly stated	Only option is a legislated taxpayers' charter	No RIS, not stated	Not stated	Not stated	Not stated
Taxation (Care and Management) Bill 2000 (NZ) (private member's Bill)	Succinctly stated	Only option is to explicitly define 'care and management' provisions	No RIS, not stated	Not stated	Not stated	Not stated
Taxation (FBT, SSCWT and Remedial Matters) Bill 2000 (NZ)	Stated clearly	No RIS publicly available, not stated	Not stated	Not stated	Not stated	Not stated
Taxation (Annual Rates, GST and Miscellaneous Provisions) Bill 2000 (NZ)	Stated clearly, refers also to IRD commentary	No RIS publicly available, not stated	Not stated	Not stated	Not stated	Not stated
Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Bill 2000 (NZ)	Stated clearly, refers also to IRD commentary	No RIS publicly available, not stated	Not stated	Not stated	Not stated	Not stated
Taxation (Annual Rates, Taxpayer Assessment and Miscellaneous Provisions) Bill 2001 (NZ)	Stated clearly, refers also to IRD commentary	No RIS publicly available, not stated	Not stated	Not stated	Not stated	Not stated
Taxation (Relief, Refunds and Miscellaneous Provisions) Bill 2001 (NZ)	Stated clearly and in detail	No options stated, refers to previous discussion documents	No specific groups mentioned	Areas where compliance costs will decrease or increase, no attempt to quantify	Groups consulted with identified	Not stated
Taxation (Annual Rates, Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Bill 2002 (NZ)	Stated clearly and in detail	No options stated, refers to previous discussion documents	No specific groups mentioned	Areas where compliance costs will decrease, increase or not change, no attempt to quantify	Groups consulted with identified	Not stated

Income Tax Bill 2002 (NZ)	Public policy objective clearly stated, along with background	Two options provided and analysed	All taxpayers affected	Excellent qualitative analysis: compliance cost impact, benefits, long term implications, level of confidence in cost estimates (no attempt to quantify), steps to minimise costs	Refers to issues papers, discussion documents and submissions received	Recommended option stated with reasons
Taxation (Annual Rates, GST, Trans-Tasman Imputation and Miscellaneous Provisions) Bill 2003 (NZ)	Stated clearly and in detail	No options stated, refers to previous discussion documents	No specific groups mentioned	Areas where compliance costs will decrease or not change, no attempt to quantify	Groups consulted with identified	Not stated
Taxation (Disaster Relief) Bill 2004 (NZ)	Stated succinctly	No RIS prepared, changes of a minor nature	Not stated	Not stated	Not stated	Not stated
Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill 2004 (NZ)	Stated clearly and in detail	No options stated, refers to previous discussion documents	No specific groups mentioned	Areas where compliance costs will decrease, not change or <i>may</i> increase, no attempt to quantify	Groups consulted with identified	Not stated
Taxation (Base Maintenance and Miscellaneous Provisions) Bill 2004 (NZ)	Stated clearly and in detail	No options stated, refers to previous discussion documents	No specific groups mentioned	Areas where compliance costs will decrease, not change or <i>may</i> increase, no attempt to quantify	Groups consulted with identified	Not stated
Child Support Amendment Bill 2005 (NZ)	Stated succinctly	No RIS prepared	Not stated	Not stated	Not stated	Not stated
Taxation (Depreciation, Payment Dates Alignment, FBT and Miscellaneous Provisions) Bill 2005 (NZ)	Stated clearly and in detail	No options stated, refers to previous discussion documents	No specific groups mentioned	Areas where compliance costs will decrease, not change or <i>will</i> increase: extensive discussion but no attempt to quantify	Groups consulted with identified	Not stated
Taxation (Annual Rates and Urgent Measures) Bill 2005 (NZ)	Stated succinctly, implements 2005 general election promises	No RIS prepared, enacted as a matter of urgency	Not stated	Not stated	Not stated	Not stated
Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill 2006 (NZ)	Stated clearly and in detail	No options stated, refers to previous discussion documents	No specific groups mentioned	Areas where compliance costs will decrease, not change or <i>will</i> increase: extensive discussion without attempt to quantify costs but attempt on revenue impact	Groups consulted with identified	Not stated

## REGULATORY IMPACT STATEMENTS

Student Loan Scheme Amendment Bill 2006 (NZ)	Stated succinctly	No RIS prepared	Not stated	Not stated	Not stated	Not stated
Income Tax Bill 2006 (NZ)	Public policy objective clearly stated, along with background	Two options provided and analysed	All taxpayers affected	Excellent qualitative analysis: compliance cost impact, benefits, long term implications, level of confidence in cost estimates (no attempt to quantify), steps to minimise costs	Refers to issues papers, discussion documents and submissions received	Recommended option stated with reasons
KiwiSaver Bill 2006 (NZ)	Public policy objective clearly stated, along with background	Two options provided and analysed	Employees, employers, financial sector, government and society	Good qualitative analysis: compliance cost impact, one-off and on-going (no attempt to quantify, seems to be too hard to do)	Refers to groups and government departments that were consulted	Recommended option stated with reasons
Taxation (KiwiSaver and Company Tax Rate Amendment) Bill 2007 (NZ)	Stated succinctly	No RIS prepared, enacted as a matter of urgency	Not stated	Not stated	No comment other than for portfolio investment entity proposals in a prior discussion document	Not stated
Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Provisions) Bill 2007 (NZ)	Stated succinctly	Identifies at least two options for each issue with analysis, some reference to discussion document for details	Considers groups for each option for each issue	Financial impact and some limited cost and benefit quantification for each issue and option	Groups consulted are provided	Recommendations given for each issue
Limited Partnerships Bill 2007 (NZ)	Stated succinctly	No RIS prepared	Not stated	Not stated	No comment	Not stated

## 6. DISCUSSION, CONCLUSIONS AND LIMITATIONS

In analysing the Australian RISs for taxation-related Bills it is important to note that there has been a substantial amount of major structural change to the Australian tax system over the period from 2000 to 2007, including the introduction of radical tax changes, such as the Ralph reforms. This in part accounts for much of the level of activity on the legislative front. It should also be remembered that the Australian data is from a sample of three Bills for each year, representing 24 out of 160 tax-related Bills (approximately

15 per cent). One overall observation is that the standard of Australian RISs over the period reviewed in Table 1 is of a noticeably higher quality than those in NZ (refer to Table 2). The requirements of RISs in Australia have been higher, and the efforts made in practice to apply the theory, have been more concerted than is the case for NZ. Nevertheless, the RISs reviewed do not meet the expectations of researchers such as Tran-Nam<sup>115</sup> in terms of the level of compliance cost and benefit analysis. One further observation common to both countries is that the more technical and remedial changes have received less attention in the RIS analysis compared to the major change proposals.

Thus in terms of accountability through the RIS measure in Australia with respect to taxation legislation, the result is a solid pass but with room for improvement in areas such as the level of compliance costs and benefit analysis (especially start-up costs versus recurring costs), the timing of benefits and the use of proven compliance cost methodology.<sup>116</sup> It is thus extremely difficult to assess the efficiency of the tax system under Smith's maxim of economy in operation,<sup>117</sup> given the lack of useful quantitative data.

Focusing on NZ, the period of analysis commenced with almost a year when the new Minister of Finance dispensed with the GTPP in 2000 for eight months. This is illustrated by an absence of both genuine consultation and RISs accompanying tax Bills. From 2001, the Cabinet introduced major changes to the RIS process which were reflected in the development of rudimentary RISs.

Overall, the quality of the RISs produced by the IRD for the population of tax Bills over the period from 2000 to 2007 is low and disappointing, especially given the quality of some RISs in other areas

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<sup>115</sup> Tran-Nam, above n 29.

<sup>116</sup> B Tran-Nam et al, 'Tax Compliance Costs: Research Methodology and Empirical Evidence from Australia' (2000) 53 *National Tax Journal* 229.

<sup>117</sup> See Smith, above n 63.

## REGULATORY IMPACT STATEMENTS

produced by RIAU. Indeed this may be an argument in support of centralising the RIS process for tax Bills with the RIAU rather than leaving it to the IRD. The analysis of tax-related Bills indicates only two good examples of tax RISs in NZ: the Income Tax Bill 2002 (NZ) and the Income Tax Bill 2006 (NZ). These two Bills represent important stages in the rewrite project.<sup>118</sup>

On a positive note, with the new approach for preparing RISs introduced by Cabinet in 2007, the May 2007 tax Bill appears to be closer in quality to RISs in Australia. In part this may be due to the move to adopt many of the Australian practices for RIS preparation, albeit some of these being on a trial basis only. The formal memorandum of understanding between Australia and NZ clearly has been of benefit to users of RISs in NZ. One reason for the smaller number of tax Bills is that the period was one of less major change in the tax system in NZ compared to Australia, along with the drafting style to produce omnibus tax Bills.

The overall trend appears to be minor improvement in Australia to an acceptable level of RISs (but with scope to improve) and significant improvement in NZ to a level closer to the Australian benchmark (but from a much lower starting position). It is too early to conclude if NZ RIA will remain at the higher level of 2007, and indeed if it will come close to the standard of the tax rewrite project's income tax Bills.

Relating these findings to a major theme of this article, accountability for tax regulation, the use of RISs appears to promise much in theory but deliver less in reality. Australia is recognised as requiring international best practice in its RIA, although the practice does not appear to live up to expectations. Taxpayers are short changed in terms of their ability to measure the accountability of government and unelected tax officials, via Parliament, for legislating

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<sup>118</sup> See further A Sawyer, 'New Zealand's Tax Rewrite Program: In Pursuit of the (Elusive) Goal of Simplicity' (2007) 4 *British Tax Review* 405.

on taxation. This is especially evident in terms of the level of useful quantitative compliance cost analysis and reasoning behind options considered in pursuing a direction of legislative change. In terms of a Hohfeldian analysis of legal rights (especially that of Justified-Constraints Theory and the consequential duty to pay the tax) the exercise of power by governments to levy taxes on taxpayers is deficient in terms of sufficient checks and balances reflected in an associated obligation to justify the constraints imposed on the taxpayers with the levying of tax in a particular manner.

As the Small Business Project observes, controlling inappropriate regulation is a difficult task.<sup>119</sup> No country has been able to deal adequately with the problem. A RIA or RIS can only go so far and is not a substitute for high quality decision making; rather it is a tool to enhance the quality of debate and understanding, and to strengthen the evidence base of policy making: a crucial condition for improving the quality of policy. The real test, therefore, is whether compliance burdens are reduced. High quality RIAs and RISs are not enough in isolation, but can play an important part in the effort to reduce compliance burdens and enhance accountability.

There are several limitations to this article. First, only a random sample of tax RISs in Australia were reviewed in detail. Had another (larger) sample been selected from the population, the position may have been different. It is possible that in determining the population of tax-related Bills, some Bills which also affect taxation were omitted, although this was not clear from their title. The website used<sup>120</sup> may be missing some tax-related Bills, while several Bills on this website are listed more than once. The period of coverage (2000–07) represents one of transition in Australia in terms of major tax reform and in NZ in terms of recommended RIS best practice. A further limitation common

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<sup>119</sup> Small Business Project, above n 3, 3.

<sup>120</sup> Attorney-General's Department, *ComLaw: Commonwealth of Australia Law — Incorporating the Federal Register of Legislative Instruments (FRLI)* <<http://www.comlaw.gov.au>>.

## REGULATORY IMPACT STATEMENTS

to both countries is that the study only reviews tax-related Bills (that is, draft legislation), and not regulations and other forms of parliamentary material. In Australia this is further limited to federal Bills; no State Bills were reviewed.

Future research should extend this analysis to include further years as more tax Bills are introduced and examine whether the quality of their associated RIS improves, moving closer to the theoretical best practice benchmarks. Comparisons with other legislative areas, such as commercial law, could be made to see if tax Bills' RISs have their own peculiarities. As the quality of RISs improve, particularly in terms of the quantitative compliance cost analysis, this may lead to more critical evaluation of the impact of regulation and the level of accountability of governments for the imposition of taxes on taxpayers.

## 7. POSTSCRIPT

After this article was accepted for publication, an announcement was made that as from 3 November 2008 responsibility for regulatory impact analysis will be transferred from the MED to the Treasury's Regulatory Impact Analysis Team. The Treasury will also release new guideline requirements for regulatory impact analysis in November 2008.<sup>121</sup>

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<sup>121</sup> Regulatory Impact Analysis Team, *Guidelines on the Regulatory Impact Analysis Requirements* (2008).

**Appendix: List of Australian Tax-Related Bills  
from 2000 to 2007 Inclusive<sup>122</sup>**

**2000**

A New Tax System (Family Assistance and Related Measures) Bill 2000 (Cth).

A New Tax System (Fringe Benefits) Bill 2000 (Cth).

A New Tax System (Medicare Levy Surcharge Fringe Benefits) Amendment Bill 2000 (Cth).

A New Tax System (Tax Administration) Bill (No 1) 2000 (Cth).

A New Tax System (Tax Administration) Bill (No 2) 2000 (Cth).

A New Tax System (Trade Practices Amendment) Bill 2000 (Cth).

Australian Wool Research and Promotion Organisation Amendment (Funding and Wool Tax) Bill 2000 (Cth).

Indirect Tax Legislation Amendment Bill 2000 (Cth).

International Tax Agreements Amendment Bill (No 1) 2000 (Cth).

New Business Tax System (Alienated Personal Services Income) Tax Imposition Bill (No 1) 2000 (Cth).

New Business Tax System (Alienated Personal Services Income) Tax Imposition Bill (No 2) 2000 (Cth).

New Business Tax System (Alienation of Personal Services Income) Bill 2000 (Cth).

New Business Tax System (Consolidation) Bill 2000 (Cth).

New Business Tax System (Integrity Measures) Bill 2000 (Cth).

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<sup>122</sup> Obtained from Attorney-General's Department, above n 120. Bills that are listed twice on this website appear only once below.

## **REGULATORY IMPACT STATEMENTS**

New Business Tax System (Miscellaneous) Bill (No 2) 2000 (Cth).

New Business Tax System (Simplified Tax System) Bill 2000 (Cth).

Sales Tax (Customs) (Industrial Safety Equipment) Bill 2000 (Cth).

Sales Tax (Excise) (Industrial Safety Equipment) Bill 2000 (Cth).

Sales Tax (General) (Industrial Safety Equipment) Bill 2000 (Cth).

Sales Tax (Industrial Safety Equipment) (Transitional Provisions) Bill 2000 (Cth).

Taxation Laws Amendment Bill (No 5) 2000 (Cth).

Taxation Laws Amendment Bill (No 6) 2000 (Cth).

Taxation Laws Amendment Bill (No 7) 2000 (Cth).

Taxation Laws Amendment Bill (No 8) 2000 (Cth).

Taxation Laws Amendment (Excise Arrangements) Bill 2000 (Cth).

Taxation Laws Amendment (Superannuation Contributions) Bill 2000 (Cth).

### **2001**

International Tax Agreements Amendment Bill 2001 (Cth).

New Business Tax System (Capital Allowances Transitional and Consequential) Bill 2001 (Cth).

New Business Tax System (Capital Allowances) Bill 2001 (Cth).

New Business Tax System (Debt and Equity) Bill 2001 (Cth).

New Business Tax System (Simplified Tax System) Bill 2001 (Cth).

New Business Tax System (Thin Capitalisation) Bill 2001 (Cth).

Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Bill 2001 (Cth).

Taxation Laws Amendment Bill (No 2) 2001 (Cth).

Taxation Laws Amendment Bill (No 3) 2001 (Cth).

Taxation Laws Amendment Bill (No 4) 2001 (Cth).

Taxation Laws Amendment Bill (No 5) 2001 (Cth).

Taxation Laws Amendment Bill (No 6) 2001 (Cth).

Taxation Laws Amendment (Changes for Senior Australians) Bill 2001 (Cth).

Taxation Laws Amendment (Research and Development) Bill 2001 (Cth).

## **2002**

Income Tax (Superannuation Payments Withholding Tax) Bill 2002 (Cth).

International Tax Agreements Amendment Bill (No 1) 2002 (Cth).

International Tax Agreements Amendment Bill (No 2) 2002 (Cth).

New Business Tax System (Consolidation and Other Measures) Bill (No 1) 2002 (Cth).

New Business Tax System (Consolidation) Bill (No 1) 2002 (Cth).

New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002 (Cth).

New Business Tax System (Franking Deficit Tax) Amendment Bill 2002 (Cth).

New Business Tax System (Franking Deficit Tax) Bill 2002 (Cth).

New Business Tax System (Imputation) Bill 2002 (Cth).

New Business Tax System (Over-Franking Tax) Bill 2002 (Cth).

New Business Tax System (Venture Capital Deficit Tax) Bill 2002 (Cth).

Taxation Laws Amendment Bill (No 1) 2002 (Cth).

## **REGULATORY IMPACT STATEMENTS**

Taxation Laws Amendment Bill (No 2) 2002 (Cth).

Taxation Laws Amendment Bill (No 3) 2002 (Cth).

Taxation Laws Amendment Bill (No 4) 2002 (Cth).

Taxation Laws Amendment Bill (No 5) 2002 (Cth).

Taxation Laws Amendment Bill (No 6) 2002 (Cth).

Taxation Laws Amendment Bill (No 7) 2002 (Cth).

Taxation Laws Amendment Bill (No 8) 2002 (Cth).

Taxation Laws Amendment (Baby Bonus) Bill 2002 (Cth).

Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002 (Cth).

Taxation Laws Amendment (Film Incentives) Bill 2002 (Cth).

Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2002 (Cth).

Taxation Laws Amendment (Structured Settlements) Bill 2002 (Cth).

Taxation Laws Amendment (Superannuation) Bill (No 1) 2002 (Cth).

Taxation Laws Amendment (Superannuation) Bill (No 2) 2002 (Cth).

Taxation Laws Amendment (Venture Capital) Bill 2002 (Cth).

### **2003**

A New Tax System (Commonwealth-State Financial Arrangements) Amendment Bill 2003 (Cth).

International Tax Agreements Amendment Bill 2003 (Cth).

New Business Tax System (Taxation of Financial Arrangements) Bill (No 1) 2003 (Cth).

New International Tax Arrangements Bill 2003 (Cth).

Taxation Laws Amendment Bill (No 2) 2003 (Cth).

Taxation Laws Amendment Bill (No 3) 2003 (Cth).

Taxation Laws Amendment Bill (No 4) 2003 (Cth).

Taxation Laws Amendment Bill (No 5) 2003 (Cth).

Taxation Laws Amendment Bill (No 6) 2003 (Cth).

Taxation Laws Amendment Bill (No 7) 2003 (Cth).

Taxation Laws Amendment Bill (No 8) 2003 (Cth).

Taxation Laws Amendment Bill (No 9) 2003 (Cth).

Taxation Laws Amendment (A Simpler Business Activity Statement) Bill 2003 (Cth).

Taxation Laws Amendment (Personal Income Tax Reduction) Bill 2003 (Cth).

Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 (Cth).

Taxation Laws (Clearing and Settlement Facility Support) Bill 2003 (Cth).

## **2004**

A New Tax System (Goods and Services Tax Imposition (Recipients) Customs) Bill 2004 (Cth).

A New Tax System (Goods and Services Tax Imposition (Recipients) Excise) Bill 2004 (Cth).

A New Tax System (Goods and Services Tax Imposition (Recipients) General) Bill 2004 (Cth).

Administrative Appeals Tribunal Amendment Bill 2004 (Cth).

Administrative Appeals Tribunal Amendment (Review of Decisions) Bill 2004 (Cth).

Indirect Tax Legislation Amendment (Small Business Measures) Bill 2004 (Cth).

## **REGULATORY IMPACT STATEMENTS**

New International Tax Arrangements (Managed Funds and Other Measures) Bill 2004 (Cth).

New International Tax Arrangements (Participation Exemption and Other Measures) Bill 2004 (Cth).

Tax Laws Amendment (2004 Measures No 1) Bill 2004 (Cth).

Tax Laws Amendment (2004 Measures No 2) Bill 2004 (Cth).

Tax Laws Amendment (2004 Measures No 3) Bill 2004 (Cth).

Tax Laws Amendment (2004 Measures No 4) Bill 2004 (Cth).

Tax Laws Amendment (2004 Measures No 5) Bill 2004 (Cth).

Tax Laws Amendment (2004 Measures No 6) Bill 2004 (Cth).

Tax Laws Amendment (2004 Measures No 7) Bill 2004 (Cth).

Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 (Cth).

Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2004 (Cth).

Tax Laws Amendment (Personal Income Tax Reduction) Bill 2004 (Cth).

Tax Laws Amendment (Retirement Villages) Bill 2004 (Cth).

Tax Laws Amendment (Small Business Measures) Bill 2004 (Cth).

Tax Laws Amendment (Superannuation Reporting) Bill 2004 (Cth).

Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004 (Cth).

Taxation Laws Amendment Bill (No 2) 2004 (Cth).

## **2005**

Tax Laws Amendment (2005 Measures No 1) Bill 2005 (Cth).

Tax Laws Amendment (2005 Measures No 2) Bill 2005 (Cth).

Tax Laws Amendment (2005 Measures No 3) Bill 2005 (Cth).

Tax Laws Amendment (2005 Measures No 4) Bill 2005 (Cth).

Tax Laws Amendment (2005 Measures No 5) Bill 2005 (Cth).

Tax Laws Amendment (2005 Measures No 6) Bill 2005 (Cth).

Tax Laws Amendment (Improvements to Self Assessment) Bill (No 1) 2005 (Cth).

Tax Laws Amendment (Improvements to Self Assessment) Bill (No 2) 2005 (Cth).

Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Bill 2005 (Cth).

Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2005 (Cth).

Tax Laws Amendment (Personal Income Tax Reduction) Bill 2005 (Cth).

Tax Laws Amendment (Superannuation Contributions Splitting) Bill 2005 (Cth).

Taxation Laws Amendment (Scholarships) Bill 2005 (Cth).

## **2006**

Fuel Tax Bill 2006 (Cth).

Fuel Tax (Consequential and Transitional Provisions) Bill 2006 (Cth).

International Tax Agreements Amendment Bill (No 1) 2006 (Cth).

New Business Tax System (Untainting Tax) Bill 2006 (Cth).

Petroleum Resource Rent Tax Assessment Amendment Bill 2006 (Cth).

Petroleum Resource Rent Tax (Instalment Transfer Interest Charge Imposition) Bill 2006 (Cth).

## **REGULATORY IMPACT STATEMENTS**

Superannuation (Departing Australia Superannuation Payments Tax) Bill 2006 (Cth).

Superannuation (Excess Concessional Contributions Tax) Bill 2006 (Cth).

Superannuation (Excess Non-Concessional Contributions Tax) Bill 2006 (Cth).

Superannuation (Excess Untaxed Roll-Over Amounts Tax) Bill 2006 (Cth).

Tax Laws Amendment (2006 Measures No 1) Bill 2006 (Cth).

Tax Laws Amendment (2006 Measures No 2) Bill 2006 (Cth).

Tax Laws Amendment (2006 Measures No 3) Bill 2006 (Cth).

Tax Laws Amendment (2006 Measures No 4) Bill 2006 (Cth).

Tax Laws Amendment (2006 Measures No 5) Bill 2006 (Cth).

Tax Laws Amendment (2006 Measures No 6) Bill 2006 (Cth).

Tax Laws Amendment (2006 Measures No 7) Bill 2006 (Cth).

Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2006 (Cth).

Tax Laws Amendment (Personal Tax Reduction and Improved Depreciation Arrangements) Bill 2006 (Cth).

Tax Laws Amendment (Repeal of Inoperative Provisions) Bill 2006 (Cth).

Tax Laws Amendment (Simplified Superannuation) Bill 2006 (Cth).

### **2007**

Income Tax Amendment Bill 2007 (Cth).

Income Tax Rates Amendment (Superannuation) Bill 2007 (Cth).

Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007 (Cth).

Income Tax (Former Non-Resident Superannuation Funds) Amendment Bill 2007 (Cth).

International Tax Agreements Amendment Bill (No 1) 2007 (Cth).

International Tax Agreements Amendment Bill (No 2) 2007 (Cth).

Superannuation Laws Amendment (2007 Budget Co-Contribution Measure) Bill 2007 (Cth).

Superannuation Legislation Amendment Bill 2007 (Cth).

Superannuation Legislation Amendment (Simplification) Bill 2007 (Cth).

Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2007 (Cth).

Tax Laws Amendment (2007 Budget Measures) Bill 2007 (Cth).

Tax Laws Amendment (2007 Measures No 1) Bill 2007 (Cth).

Tax Laws Amendment (2007 Measures No 2) Bill 2007 (Cth).

Tax Laws Amendment (2007 Measures No 3) Bill 2007 (Cth).

Tax Laws Amendment (2007 Measures No 4) Bill 2007 (Cth).

Tax Laws Amendment (2007 Measures No 5) Bill 2007 (Cth).

Tax Laws Amendment (2007 Measures No 6) Bill 2007 (Cth).

Tax Laws Amendment (Personal Income Tax Reduction) Bill 2007 (Cth).

Tax Laws Amendment (Simplified GST Accounting) Bill 2007 (Cth).

Tax Laws Amendment (Small Business) Bill 2007 (Cth).

Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2007 (Cth).

Taxation (Trustee Beneficiary Non-Disclosure Tax) Bill (No 1) 2007 (Cth).

## **REGULATORY IMPACT STATEMENTS**

Taxation (Trustee Beneficiary Non-Disclosure Tax) Bill (No 2)  
2007 (Cth).