Handbook on Designing and Implementing Regulatory Impact Assessment Systems

The Commonwealth

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Foreword

The Commonwealth Secretariat has consistently championed the principles of good governance, sustainable development, and good regulatory practices across its member states. By promoting transparency, accountability, and inclusivity in governmental processes, the Secretariat aims to foster environments where democratic values can thrive and businesses can flourish and grow.

Regulatory Impact Assessment (RIA) is a crucial tool for these wider socio-economic goals. It helps in formulating and assessing public policies which balance economic growth with environmental stewardship and social equity. Through a systematic analysis of the potential effects of proposed regulations, RIA ensures that the regulations are effective and efficient, and do not create unnecessary burdens on businesses, individuals, and society. Moreover, this process promotes transparency, accountability, and creates a more equitable and prosperous future for all our stakeholders.

It is my pleasure to present this Guide on Designing and Implementing Regulatory Impact Assessments. This Guide highlights our commitment to assisting member states in implementing sound regulatory practices. It is designed to help countries in enhancing the quality of their regulations and aligning them with national and regional development goals. It offers practical guidance on the design and implementation of RIA at country level, tailored to the diverse contexts and needs of our member states.

This Guide is the product of extensive research, consultation, and collaboration with experts and stakeholders from across the Commonwealth and beyond. I extend my deepest gratitude to all those who contributed their expertise and insight into the process of creating a resource which can have a lasting impact on regulatory practices across the Commonwealth.

I believe that this manual will serve as a tool for building capacity and promoting a culture of evidence-based policymaking within the Commonwealth. By integrating RIA into regulatory processes, policymakers, regulators, and practitioners in member states can enhance the effectiveness of their policies, optimise resource allocation, and ultimately improve the welfare of our citizens.

The Rt Hon. Patricia Scotland KC

Secretary-General of the Commonwealth

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1. Purpose

The *Handbook on Designing and Implementing RIA Systems* (the '*Handbook*') is intended to assist Commonwealth governments in designing and implementing programmes of Regulatory Impact Assessment (RIA) across multiple regulatory institutions. It identifies major risk factors that have led to failure of RIA programmes in other countries and suggests options that countries should consider to reduce the risks of failure. It is impossible to reduce risks to zero, but this *Handbook* will help increase the probability that RIA programmes will, in the end, improve the quality of government policies.

2. Background

Since 1980, Regulatory Impact Analysis or Assessment (RIA) has been one element in the rapid development of the craft of good regulation, one of the distinguishing characteristics of modern public management. RIA has become, like budgeting, one of the essential systems of governance. RIA, in turn, is a key tool of the larger 'better regulation' toolbox that has been widely adopted around the world.[1] Canada, for example, calls the broader regulatory quality system the 'regulatory life cycle approach'. Most Commonwealth countries have yet to adopt an RIA system, although several Commonwealth countries are among the best in the world in carrying out RIA.

There is no single model for an effective RIA system. Every RIA system in the world has been customised and adapted to the administrative and political reality in that country. The over-use of models from other countries that are exported to the reforming country should be avoided, as this increases the risks of failure compared to a system that is customised. Regulatory reform is highly contextual and should be tailored to suit existing government structures.

As with other major governance reforms, RIA systems are at high risk of failure. Most countries that have formally adopted RIA have been unable to consistently produce RIA of sufficient quality to support better public policy decisions. In country after country, RIA is prepared too late, is rejected by ministers who want faster action, does not involve consultation with stakeholders, fails to quantify enough impacts and define problems using market principles, and does not rigorously examine or compare a range of possible solutions.

Yet these same country experiences provide support for RIA because they indicate that where RIA is done well, it is welcomed by decision-makers at the top of government and legislatures. RIA is also welcomed and used by civil society to better understand what the government is doing and respond to government proposals through consultation processes. In fact, the quality benchmark for good RIA is rising as governments and stakeholders have become more demanding of high-quality information and transparency before making decisions that affect the lives of people.

Where RIA is analytically weak, it is widely agreed that even these weak RIA systems are better than no systems at all – because they create the foundation for improvement. RIA is not a quick fix, but rather a step-by-step change in governance that will require years before full maturity.

1 The better regulation toolbox includes RIA and also quality tools such as forward regulatory planning, centralised review, public consultation, ex poste evaluation, regulatory co-operation, trade and competition policy, and backward-looking regulatory reviews and updating.

3. What is RIA and RIA failure?

Regulatory Impact Assessment/Analysis (RIA) is a system to inform better policy designs by establishing a systematic and consistent framework for assessing the potential impacts of policy options before a specific solution is adopted. The kind of RIA addressed here is *ex ante* RIA, or analysis that is done before a policy decision is made.[2] RIA is carried out at the point in time before the government has decided to adopt a legal text and that is why the methods of RIA explicitly include analysis of non-regulatory and regulatory options.

RIA is intended to increase the quality of public policy. This *Handbook* takes RIA failure to mean that:

1. Due to problems of design or implementation, RIA does not improve the outcomes of public policy. That is, RIA fails if it does not either increase the effectiveness (benefits) of government action or reduce the negative consequences (costs) of government action, or both. OR
2. RIA does not improve trust and participation in public processes by making policy processes more transparency and participative.

These two kinds of failures can be rooted in a wide range of design and implementation problems, which are discussed below. RIA success is possible with the right conditions and designs. The risks and good practices identified below are drawn from a broad and growing literature on RIA implementation. There has been tremendous international learning on RIA in the past few years as practices have been disseminated across borders. International benchmarks for RIA have created higher expectations for the practice and methods of RIA. Countries are becoming more skilled at assessing the adequacy of their own RIA. Formal rankings and assessments of national RIA systems have also driven more attention to the quality of RIA systems and there is visible convergence in core RIA methods and processes.

In particular, two international benchmarks of what is involved in good national RIA systems have become prominent. These have been incorporated into the good practices in this *Handbook*:

- The Better Regulatory Governance (BRG) project, led by the World Bank, the UK's Department for International Development (DFID – now the Foreign, Commonwealth and Development Office [FCDO]) and the Government of the Netherlands, examined a range of indicators of regulatory quality (2007–09) and this subsequently led to the World Bank's *Global Indicators Of Regulatory Governance (GIRG),* most recently published in 2017.[3]
- The work of the Organisation for Economic Co-operation and Development (OECD) Project on Quality Indicators in Government produced comparative work, such as its 2009 paper on 'Indicators of Regulatory Management Systems'.[4] These evolved into the OECD's *Policy and Regulatory Governance Indicators (iREG),* which were last published in 2021.

2 A more proper name for RIA would be policy impact analysis, but since RIA is widely understood and used around the world, most institutions have stayed with that name.

3 World Bank Group (2017), *Global Indicators of Regulatory Governance: Trends in Participatory Rulemaking A Case Study*, Washington, DC, https://documents.worldbank.org/en/publication/documents-reports/documentdetail/288511511216658101/global-indicators-of-regulatory-governance-

4 Arndt, C, G Bounds, S Jacobzone and E Job (2009), *Indicators of Regulatory Management Systems*, Regulatory Policy Committee, Organisation for Economic Co-operation and Development (OECD), Paris, http://www.oecd.org/gov/regulatory-policy/44294427.pdf

4. Key issues and risks impeding RIA implementation

This Handbook divides the RIA design and implementation process into four areas, with the risks of failure clarified for each area. These four areas are chosen because the diagnostics of RIA failures almost always show that the roots of failure lie in mistakes made in one or more of the areas. Many of these barriers are normal problems in governance reforms and can be resolved through actions learned from good international practice.

The central issue for RIA implementation is clear planning for who, when, what and how. Many RIA programmes seem designed for failure because their timeframes, strategies and resources are not consistent with what has been learned about successful implementation.

The core lesson is: to reach a sustainable level of RIA quality, governments need a clear strategy aimed at the institutionalisation of new capacities and incentives within the machinery of government. Such a strategy rests on a series of good RIA practices: sustained political commitment; phased roll-out sequences; clearer targeting strategies; development of more effective and evidence-based 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.

Each of the four sections finishes with a table laying out, for high risk elements of the RIA system, the best practices, common mistakes, and specific steps that would reduce or eliminate that risk factor.

4.1 Rolling out (mainstreaming) RIA

One lesson learned universally from 40 years of RIA is that a 'Big Bang' approach almost never works. Countries will fail if they begin too rapidly or expect civil servants to comply with new procedures that they do not know and do not have the skills to implement. The RIA universe is full of examples of countries that mandate the classical OECD RIA system without a single good RIA to show years later.

Good risk reduction strategies at the roll-out phase are planning for upscaling, communication, standardisation and customisation of RIA to existing policy processes.

Planning for upscaling: Governments cannot go from zero RIA to full RIA without a multi-year, phased programme of preparation, training, institutional development and assessment. The lowest-risk system starts realistically, is up-scalable and can be ramped up over time as capacities are built.

Communication at political levels: An early aspect of RIA planning is good communication with, and support from, the highest political levels. A common reason for RIA failure is that politicians and policy officials at high levels do not support or even understand the purpose of RIA in a policy system. There is, for example, a common belief that RIA is a way to estimate the costs of a regulatory draft. That kind of misunderstanding leads to many kinds of failure, such as carrying out the RIA too late in the process to change the policy design or the failure to include options or even a problem definition.

RIA is not a consensus reform in that it is not necessary to have the agreement of every ministry before the government adopts it, but it is necessary to have active political support and understanding from the top of government before RIA is rolled out. RIA is, in essence, a political commitment: a commitment by the government to the people of the country to produce higher-quality and more transparent public policy that improves their lives. Every successful RIA system is actively supported, monitored and reviewed at the political levels.

Communication at administrative levels: Civil servants react best when they understand exactly what is required of them. RIA must become a standard and routine government procedure, just like other government management systems such as human resources or budgeting. This requires, once decisions have been made on the form and speed of RIA roll-out, clear instructions to civil servants on how to comply. These instructions normally take the form of standardised RIA handbooks, guidance and so forth.

Standardisation: Just like other government management systems, key elements of the RIA system cannot be decentralised, but instead must be standardised for the whole of government. While some flexibility must be left to the ministries, for example in the areas of consultation or data collection, standardisation of the RIA process and the RIA content is essential. In other words, everyone must be subject to the same process of developing and reviewing RIA within the scope of the RIA programme, and the RIA method must produce an RIA document that is standardised in content. This is important for transparency so that everyone understands what everyone else is doing, and for consistency so that every RIA produced follows basically the same process and format.

Customisation: The RIA roll-out plan is normally a three- to five-year plan, with steps or phases of roll-out, each one depending on the previous step. This action plan cannot be based on models from other countries because it rests on the assessment of the readiness of the current system to produce and use RIA as part of the policy system.

The main constraints are not only the understanding by ministries of their new responsibilities, but also the strength of administrative habits, such as control of markets, the analytical skills of the regulators, and access to and cost of data collection; and the use of public consultation as a learning mechanism. Typical steps in a multi-year phased roll-out plan include:

- Development of a political strategy for RIA, providing explicit political support for the RIA reform, and designating political champions who will oversee development and implementation.
- Development of a legal strategy for RIA implementation, defining the scope and application of RIA within the legislative system, and reforming the legal (and political) framework for RIA as needed.
- Development of administrative processes for RIA, together with staffing and resources plans that are integrated into annual budgets. Increasingly, the administrative processes for RIA are based on internal information technology (IT) systems, called regulatory management systems, that greatly speed up the RIA, review and consultation processes.
- Building the capacities of the RIA institutions (discussed in the next section).
- Executive briefings for ministers and legislators who will be the users of RIA, so that they understand the importance of RIA in making policies that are more likely to be successful.
- Gradual expansion of the scope of RIA from the most important pieces of legislation to all significant regulatory and policy actions that affect citizens and businesses in the country. Typically, a country will start with only a handful of RIAs per year and will gradually escalate this to cover all the most significant actions.

4.2 Preparing and building RIA institutions

The basic RIA institutions are those that already exist in every governing system: the regulators (usually contained within ministries or expert agencies); the centre of government accountable to a council of ministers or to a prime minister or president; and the legislature.

Yet the roles, actions and powers of those institutions change with the introduction of RIA. As with budgeting, RIA in every mature RIA system is mandatory in its scope of application – regulators cannot choose for themselves if they will or will not carry out an RIA. It is essential to state from the very beginning of an RIA programme the authority and responsibilities of each institution involved in the production, consultation, co-ordination, review, approval and use of RIA. In some countries, the RIA system is mandated by a decision of cabinet and elaborated in a cabinet office circular. In others, reformers have decided that an RIA framework that is embedded in primary law and in institutions less vulnerable to change (such as constitutional institutions) would better protect the RIA process from future government changes, until it becomes a permanent part of the administrative habit.

An important part of the institutional plan focuses on the regulators themselves. The regulators are responsible for their own RIA and the quality of their own policy proposals. While RIA is imposed from the top, actual implementation of RIA inside the ministry must be customised to the regulatory authorities and capacities of that regulator. The skill level needed by, for example, environmental regulators is very different from the skill level needed by agencies that only occasionally issue regulations under the scope of RIA. Consultation practices and needs are different among agencies because they deal with different parts of civil society. That is why Canada states that,

Table 4.1. Risk reduction in rolling out RIA

#	Best practice	Common failure	Ways to reduce risks of failure
1	RIA should be rolled out in phases corresponding to the resources and capacities of the government.	'Big Bang' approaches that launch RIA too widely and quickly, without adequate preparation, are likely to fail.	There should be preparation in advance of a multi-year, phased programme of preparation, training, institutional development and assessment. Human and budget resources should be estimated for each phase. The lowest-risk system design is up-scalable and can be ramped up over time as capacities are built. Annual assessments should be built-in, so that the RIA programme can be continually adjusted for better results.
2	High-level political commitment must be obtained, along with support for RIA before implementation and sustained involvement during implementation.	Without clear political commitment from the top, RIA always succumbs to internal resistance. Ministers of regulatory bodies themselves often sabotage RIA systems by refusing to allow sufficient time for the RIA to be carried out and refusing to use RIA to make policy decisions, particularly when the analysis is contrary to the preferred solution.	• Executive briefings for top-level politicians should be carried out, so they are comfortable with the purpose and the programme of roll-out. • RIA should be mandated from the top of government through a mandatory instrument (such as a cabinet decision, presidential order, law etc.). • The RIA system should be designed to sustain active political involvement in RIA, such as through oversight of RIA compliance (via an annual review of key performance indicators [KPIs]), refusal to accept policy proposals from regulators without an approved RIA, and/or delegation to a high-ranking cabinet committee of oversight, with annual progress reports.
3	RIA should be customised, step by step, to the existing policy system.	Models from other countries produce 'paper RIA' that is not implemented in actual administrative processes and has no discernible effect on the quality of policy.	Existing policy processes should be mapped from 'cradle to grave' – including all steps for development, analysis, consultation, review, drafting and approval – and RIA embedded into the system, starting from initial policy development through to end approval. The step-by-step 'RIA map' shows who will develop RIA, review RIA and use RIA to make decisions through the policy system.Integration into existing administrative processes also reduces the cost and time needed to prepare RIA.

(*Continued*)

Table 4.1. Risk reduction in rolling out RIA

#	Best practice	Common failure	Ways to reduce risks of failure
4	A country should start with a few RIAs and expand as capacities are built.	Some countries launch the RIA programme with a broad scope covering dozens or hundreds of regulations in the first year.	Typically, a country will start with only a handful of RIAs per year and will gradually escalate these to cover all the most significant actions. • A few pilot RIAs should be carried out to start, to build skills and demonstrate the usefulness of RIA to politicians and civil society. • The RIA method and process should be assessed after the pilots and adjustments made as needed. • The scope of RIA should be gradually expanded from the pilots to a few important regulations in Year 2, to a widening scope in Years 3 and 4, and thence to all significant regulatory and policy actions that affect citizens and businesses in the country (see discussion below on analytical thresholds).
5	Key elements of the RIA process and content should be standardised, so that everyone knows how RIA should be done and what is included.	Failure is more likely when countries leave too much discretion to the ministries to decide when and how to do RIA, which results in different interpretations of what RIA should do and unpredictable procedures for developing, consulting and reviewing RIA.	The elements of the RIA system that should be standardised to include: • the process of RIA development, starting from the very beginning of the policy process with the problem definition and any pre-approvals, and extending through consultation and review by any quality control units; and • the methods of RIA and the format of the RIA document, which should include a standardised outline – so that no key parts of the analysis and logic are skipped.

'Departments and agencies are responsible for determining the size and scope of the consultations or engagement' at early stages, while at a later stage, publication in the gazette for comment is standardised.[5] Data needs are also different, while skill levels are different and hence training needs are different. Some ministries are highly decentralised into autonomous units and other ministries are highly centralised under the minister.

The good practice is for ministries to develop their own implementation plan to ensure that their own RIA capacities and procedures are aligned with their regulatory responsibilities. Such a ministerial implementation plan should be reviewed at the central level to ensure that it is complete and will result in full compliance with the RIA policy.

Building the analytical capacities of the RIA institutions – that is, of the central RIA units, the ministerial capacities and stakeholders – is another essential component. Even with the best of intentions, ministries will be unable to produce acceptable RIA without technical support and preparation. The most important part of this support is the guidance and supervision of RIA specialists – an RIA helpdesk – which will operate on a day-to-day basis in advising, assisting, answering questions and helping maintain attention to the RIA activities. Another part is training services that are practical, continuous and focused on compliance with RIA requirements. Training almost always includes a certain number of RIA pilots that are used simultaneously to train the civil servants involved and to demonstrate to the rest of government the value of RIA.

One of the issues often neglected in the implementation of RIA is the distinction between those that *supply* RIA and those who *use* RIA. There is an enormous information asymmetry between the expert agencies that write RIA as part of a policy development and those that read and use the RIA, either at the political, legislative or stakeholder level. This information asymmetry is one of the reasons why RIA is needed, but it can also sabotage the usefulness of RIA – because those who use the RIA are rarely able to determine if the RIA is sufficiently reliable, complete and honest as a basis for public policy. This is the reason why so many RIA systems use an intermediary called the 'central RIA unit' to police the quality of the RIA and the resulting proposed policy based on the analysis. Without some kind of independent quality control, the RIA rapidly becomes a sort of fake analysis/marketing tool for the ideas of the regulator.

The institutionalisation of some kind of RIA oversight is in fact the only genuinely new institution needed in an RIA system. After decades of trial and error, most countries with mature RIA systems have developed new central RIA units or adapted existing institutions, such as cabinet secretariats, to include that new role. There are basically two main choices today for the oversight role,[6] which can be basically seen as, first, a middle and large country choice, and, second, a small country approach.

- Most OECD countries have created an oversight body in charge of enforcing RIA requirements before promulgation of new legal measures. The centralised RIA model is based on an authoritative, well-staffed and funded oversight body with technical independence to challenge regulators on substantive aspects of their regulatory proposals. This approach follows political traditions for checks and balances, accountability, and transparency in the decision-making processes. In most mature RIA systems, this approach has been the preferred approach to ensure that RIAs have passed honesty and quality tests before submission to ministers or the cabinet as part of decision materials.
- However, for many new RIA adopters, the political and financial investments needed for an effective centralised solution are too steep during the first few years, given scarce resources and the low technical capacities among public officials. A second approach for emerging and developing countries is to start mainstreaming RIA through a 'decentralised model', where the central unit is empowered with a limited challenge function (and resources), while much of the oversight is done by stakeholders through a 'notice and comment' discipline that can 'challenge' the quality of proposals. RIA quality is verified through extended consultation mechanisms to find agreement and consensus with affected

5 https://www.canada.ca/en/government/system/laws/developing-improving-federal-regulations.html

6 For a longer discussion, see: Barreto, R, C Cordova Novion and I Gutan (2015), 'A Model for a Regulatory Impact Analysis System in Tajikistan', Asian Development Bank (ADB), https://www.adb.org/sites/default/files/publication/177527/model-regulatory-impact-analysis-system-tajikistan.pdf

groups and government stakeholders. This approach relies more on a 'Trust but Verify' principle[7] than on 'central oversight'.

- New Zealand, a small country, seems to have found a third approach that combines self-assessment with central review. The New Zealand Cabinet requires that *independent* quality assurance (QA) is undertaken on all Regulatory Impact Statements (RISs). But, if any of the options considered in the RIS are likely to have a significant impact or risk, then this review is undertaken by the Regulatory Impact Analysis Team (RIAT) in Treasury. For all other RISs, the review is provided by the regulator itself. According to the Treasury, 'The purpose of independent QA of RISs is to provide assurance to Cabinet that it is making decisions on the basis of the best possible advice. It does this by requiring that an appropriate person (someone who is not responsible for producing the RIS) has considered whether the analysis and information summarised in the RIS is of a sufficient standard to properly inform the decisions being taken. The reviewer's assessment is summarised in a formal statement that is included in the Cabinet paper accompanying the RIS.'[8]

A period of consolidation and investment is needed to boost the capacities of public administrations to implement within existing policy processes the new procedural and analytical dimensions of RIA. Where this is done well, RIA changes the future of countries. The European Commission reported in 2008, three years after RIA was adopted, that RIA was inducing a cultural change as well as reducing unjustified regulations: 'As part of a more general culture change, impact assessment has become embedded in the working practices and decision making of the Commission, and has changed how policy is shaped. Commission decisions on whether and how to proceed with an initiative are based on transparent evidence, stakeholder input and thorough analysis of options...'[9]

That brings us to the issue of incentives for RIA compliance. Incentives supporting the status quo are very strong. RIA changes the status quo and therefore attracts substantial resistance from civil servants.[10]

Clearly, the RIA unit and its authority to react to the quality of the documents submitted by the regulators can create a key incentive to carry out a good RIA. However, oversight RIA units cannot do the job by themselves.

Incentives for RIA compliance must be established to change the behaviour of regulators. The regulatory governance agenda has – by changing the machinery of government inside the policy process – directly attacked the issue of incentives to regulate better. For example, in the United States, RIAs that demonstrate the agency has selected a good solution greatly increase the speed of policy-making and reduce conflict in the system. The use of RIA and stakeholder consultation in several countries has broken through information monopolies that permitted much 'insider' behaviour and has generated stronger incentives for reasoned, evidence-based rules. In mature RIA countries, regulators cannot submit proposals to ministers, to the public or to cabinet without an approved RIA attached.

All these conditions change the internal incentives inside government to focus more on the quality and speed of regulation rather than its quantity.

There is much work to be done here, with civil service reforms that go deeper than policy-making and into salaries, skills and professionalism. For example, a country might put RIA quality into the KPIs of its ministries, which in turn affects the professional careers of the minister and top officials, and the distribution of bonuses and even salary increases for technical staff. At the same time, RIA training might lead to professional certification as an RIA analyst that speeds up promotions and enhances career tracks.

7 The 'Trust, but Verify' model was developed by Jacobs, Cordova et al. based on Chile, Denmark and Ireland, as they have set up weak oversight bodies relying mostly on publication and consultation.

8 See: The Treasury, Government of NZ (2010), 'Independent Quality Assurance of Regulatory Impact Statements: Guidance for Agencies', https://regulatoryreform.com/wp-content/uploads/2015/02/New-Zealand-Independent-Quality-Assurance-of-Regulatory-Impact-Statements-2010.pdf

9 EUR-Lex - 52008DC0032 - EN (europa.eu)

10 Jacobs and Ladegaard have written, 'The quality characteristics of a good regulatory governance system do not arise spontaneously – indeed, the incentives for quality are perverse in most regulatory systems due to fragmented government institutions, career incentives, short time horizons, revenue goals, risk aversion, and capture. The incentives of businesses that benefit from a distorted business environment to resist market reforms are well recognized.'

Table 4.2. Preparing and building RIA institutions

#	Best practice	Common failure	Ways to reduce risks of failure
6	RIA should be supported with clear policies and legal framework.	Failure is more likely where a country has an unclear RIA mandate, unclear authority for review and unclear consequences for failure to prepare an adequate RIA.	A clear legal framework that empowers RIA units is needed. The more discretion that policy officials have to ignore, escape or minimise the role of RIA, the faster that RIA will become marginalised and irrelevant to policy. RIA cannot be voluntary. The best legal framework is one that is simple, universal and fair: everyone working on a legal norm and strategy affecting businesses and citizens must conduct RIA using a standard template and quality control procedures. The decision about how to adopt such a mandatory policy is best left to each government. Some governments have made good use of cabinet decisions, while others have used parliamentary law.
7	Cabinet and top political officials (the users of RIA) should be ready to use RIA in their decisions.	RIA is sometimes seen as a technical exercise for analysts rather than as information for policy-makers when they make decisions.	A high-level of awareness is needed at the top of government about how to use RIA in their decisions. Means to do this include: • executive briefings for new ministers on what to expect in an RIA and how to use the RIAs to make decisions; • discussions at cabinet level of each RIA submitted, even if just a brief summary of its main conclusions; and • declarations signed by the responsible minister that the RIA has been fully considered and the policy decision reflects the analysis.

(*Continued*)

Table 4.2. Preparing and building RIA institutions

#	Best practice	Common failure	Ways to reduce risks of failure
8	Regulators themselves must be responsible for carrying out their own RIAs. Ministries should plan to integrate RIAs into policy processes and be accountable for the quality of their RIA work.	Failure can result from ministerial lack of preparation and scheduling of policy preparation, inadequate understanding, little accountability for RIA and policy quality, few resources and little time, particularly when the minister is urging faster and faster action.	Each regulatory body should prepare an action plan for implementing RIA, showing how it will control quality, create accountability at the level of the minister, build the skills needed, and ensure that policy decisions reflect RIA conclusions. .Australia • Each Australian Government department and agency has appointed a senior executive officer to champion sound policy development processes. These best practice regulation coordinators are responsible for administering the government's framework at a departmental or agency level, and help ensure compliance with the government's guidelines. .United Kingdom • Robust departmental processes include: Better Regulation Units in each department, access to training through the Better Regulation Units and internal sign-off mechanisms; peer group review by economists at an early stage in the policy development process; appropriate use of external panels of key stakeholders or professional experts to review the evidence; or a requirement that chief economists are consulted on all submissions to ministers that address policy matters that would normally also require an impact assessment.
9	Clear incentives should be created for compliance with the RIA programme.	At the ministerial level, RIA units face continuous resistance from civil servants who feel overworked and under-supported, yet only with the support of the minister will they be able to promote and produce acceptable RIAs. Instead, ministers often sabotage RIA by pushing regulators to move too quickly or to support the minister's preferred solution.	• Department heads and the minister's signatures should be required on RIAs. • All cabinet policy documents should be required to have an approved RIA before submission to cabinet. • RIAs should be approved through an independent central RIA unit. • RIAs should be included in ministerial KPIs and annual performance reviews of RIA quality should be published. • Annual performance reviews should be published of each regulator's compliance with RIA requirements. • RIA quality reviews should be included in annual budget reviews. • Procedural and professional penalties should be adopted for producing low-quality RIAs, such as in department head KPIs for promotion. In New Zealand, an RIA 'not independently quality assured before it is lodged with the Cabinet paper' is subject to additional analytical and procedural requirements.[a]

(*Continued*)

Table 4.2. Preparing and building RIA institutions

#	Best practice	Common failure	Ways to reduce risks of failure
10	Quality control should be established for technical RIA content through some kind of independent mechanism. A well-organised and monitored reform process, driven by 'engines of reform', is important for success.	Some countries begin RIA reforms by allowing ministries to develop their own RIAs without external scrutiny. This can work as a preliminary step, but there seems to be no exception to the conclusion that decentralisation of RIA without some kind of external scrutiny fails to produce a complete and accurate analysis that can be used for public decisions.	Whether placed in a ministry, in the consultation process or, as most countries have done, in an independent quality control unit, some kind of oversight is essential to balance the incentives of regulators to produce RIA that justifies their own preferences. The centralised and decentralised models of oversight must be customised to each country. Some examples: • Canada*: Special Committee of Council, the Regulatory Affairs and Orders in Council Secretariat (RAOICS),* all part of the Council of Ministers and Prime Minister's apparatus (council decision). If there are RIA problems, the Regulatory Affairs Directorate (RAD) may request additional information from the regulator and ensures that all questions are answered before the regulation goes to ministers. • United Kingdom*: Panel for Regulatory Accountability, Regulatory Impact Unit (RIU), Departmental Regulatory Impact Units, Regulatory Reform Ministers, Small Business Service* (government decisions). The Panel for Regulatory Accountability may reject regulatory proposals if it concludes that RIA is not satisfactory. • New Zealand: A *Regulatory Quality Team* in the Treasury may decide to review an RIA itself if sufficiently important. If not, independent review is still required. The quality assurance assessors must determine whether ministers have enough information, of sufficient quality, to make an informed decision. A statement on RIA quality is included in the cabinet paper submission.
11	The legal text should reflect the results of the RIA.	Oddly, some countries have produced an RIA so late in the system that the regulatory text has already been drafted. This results in a conflict between the RIA analysis and the decisions of the regulators.	The independent check on the quality of the RIA should also check that the legal text reflects the conclusions of the RIA. For this to happen, both the RIA and any draft text must be submitted at the same time for review, either in draft or final stages.
12	Dedicated resources should be budgeted for RIA.	Some countries simply add RIA on top of existing procedural requirements, without any additional resources.	Specific resources should be dedicated to compliance with the RIA policy. The human resources needed to implement the RIA programme should be assessed along with other resources needed, such as for data collection and stakeholder consultation. These resources should be assessed centrally and also within each ministry, and included in the annual budget process.

(*Continued*)

Table 4.2. Preparing and building RIA institutions

#	Best practice	Common failure	Ways to reduce risks of failure
13	Skills for RIA and public consultation should be built up in each regulatory body.	Many countries do not have any training programme for RIA or consultation and instead depend on on-the-job training that produces inconsistent skills not suited to new requirements.	Mature RIA systems have built RIA training into the mandate of the central RIA unit or the civil service training facility to assist the ministries in training cadres of RIA analysis. Options include: • Building a small cadre of RIA experts at the centre who can assist departments as they carry out RIA. • Creating regular general RIA training sessions to build RIA cadres in each regulatory institution. This can be done by wider networks. The NZ Government Economic Network provides training in skills required for regulatory and other policy development. • Periodic executive briefings for users of RIA, such as ministers and legislators.
14	The adequacy of consultation processes should be checked as part of the independent RIA check.	When ministries are moving too quickly, one of the first procedural steps to be overlooked is stakeholder consultation. Consultation can also be abridged or ignored if ministries have already selected a solution without regard to stakeholder input.	The consultation processes used should be evaluated to determine if they can support more evidence-based dialogue and inputs. The feedback from consultation should be included in the final RIA, with a discussion of how the consultation inputs changed the analysis and final policy design. • Australia: RIA Review Checklist for Consultation | | | |---|---| | | There was consultation with main affected parties–Cross reference to groups identified in step one, three and four. | | | The views of those parties are identified and summarised | | | The RIS identifies the planned consultation process and those groups who will be consulted. *(including the period and reasons)* |
15	Stakeholders must be informed about and trained on the RIA programme, including on how to use RIA in providing input on government policies.	Some countries are frustrated that civil society does not respond well to published RIAs, but they have made little effort to inform and prepare civil society on how to read and use an RIA to comment on public policy proposals.	All documents associated with the RIA programme should be published for public view, while essential documents such as the RIA method and consultation policy should be published in draft form for input before finalisation. Stakeholders must understand how to access RIAs and how to use the RIAs to formulate their input in consultation processes. This might require outreach programmes, such as training through business federations on the content and expectations of RIAs. Each RIA should begin with a clear summary document written in non-technical language, so that public access can be as wide as possible.

[a] Independent Quality Assurance of Regulatory Impact Statements: Guidance for Agencies', https://regulatoryreform.com/wp-content/uploads/2015/02/New-Zealand-Independent-Quality-Assurance-of-Regulatory-Impact-Statements-2010.pdf

4.3 Designing embedded and sustained RIA procedures

Regulatory procedures mean the administrative and political procedures through which regulations are proposed, developed, consulted, reviewed, adopted, published, implemented, monitored and evaluated. Every government has a set of procedures, evolved over decades or centuries, to develop new regulations and revise old regulations. In some countries, procedures for developing new regulations are extraordinarily detailed, requiring a step-by-step approach that is routine, orderly and clear. Such procedures slow down policy-making, but protect systemic values such as the role of institutions, accountability, transparency, legality and substantive policy quality. In other countries, the legal/policy system is chaotic, and new regulatory instruments emerge unpredictably, moving ahead quickly or slowly due to the influence of supporters or opponents. Such systems permit rapid response to political priorities, but undermine systemic values such as transparency, quality and predictability. They are at high risk of producing regulatory failures.[11]

The goal of governments today is to increase the ability to react more quickly to problems, but to do so with higher-quality policy instruments that are less prone to failure. These two objectives are not always co-ordinated very well, and RIA does not make this goal any easier.

The challenge is to carefully embed all the steps of RIA into existing regulatory processes. It is important that RIA is not simply added onto existing processes and institutions, but is instead efficiently integrated into the policy process so that it is part of policy thinking from cradle to grave, from government experts to stakeholders to ministers to parliamentarians. The RIA system is like a multi-piece machine embedded into the existing administrative system. Each part has its function within the administrative system, but this machine can be gradually sped up by adding more functions and horsepower over time.

The preferred approach to embedding RIA processes is to design them expressly to be consistent with the existing procedures for processing and approval of legal documents, with a minimum of change. This approach embeds RIA into the existing system, rather than requiring any substantial reform to how that system operates. But often this is not possible because the existing policy system is simply too chaotic and unpredictable to impose a quality control regime such as RIA. RIA itself cannot impose order where there is extreme disorder. This kind of policy system is so vulnerable to capture, capriciousness and personal agendas that analytical requirements will have little effect. This is why some RIA failures are not due to RIA design or implementation at all, but because of the more fundamental issues of how the government operates under the rule of law. In these cases, a proper sequencing of reforms would focus first on creating an orderly policy process and then using quality control techniques so that the policy process produces the right outputs.

It is particularly critical that RIA be designed into public consultation processes. Public debate is the most important learning tool in democratic governments and public consultation is the means by which RIA fosters public debate. RIA has become a cornerstone of the stakeholder consultation process on regulations. As Canada's Treasury Board Secretariat states, 'encouraging stakeholder consultation early in the process is perhaps the most important feature of the RIA programme'.

4.4 Designing a realistic and relevant RIA method

The RIA process, when embedded in the policy process, trains decision-makers to ask and answer targeted questions, at the beginning of the policy cycle, about the need for and goals of regulation, and the possible consequences of government action. The many methods used in RIA – including benefit–cost, cost-effectiveness and least-cost tests, and partial tests such as administrative burden and small-business tests – are simply means of giving order to complex qualitative and quantitative information about the potential effects of regulatory measures.

RIA is part of the policy quality control process based on explicit quality standards, such as a positive benefit–cost ratio or lowest cost to small businesses. The RIA is, in effect, the declaration of compliance with quality standards. Any regulation or policy that is not demonstrated to meet those quality standards through the RIA must be revised, abandoned or explained as needed for other reasons. The RIA in that sense 'regulates the regulators': it creates a higher burden of proof for their actions. The transparency of RIA allows more

11 Regulatory Reform through Regulatory Impact Analysis: The Canadian Experience at https://www.tbs-sct.canada.ca/pubs_pol/dcgpubs/manbetseries/vol1401-eng.asp

Table 4.3. Designing RIA processes

#	Best practice	Common failure	Ways to reduce risks of failure
16	The overall administrative process for policy development should be orderly, standardised and transparent for all types of legal and policy instruments.	Existing policy processes are sometimes too disorderly and informal for a quality control process to work. In particular, legal drafting often begins even before any analytical work on the right policy has been completed.	The key is clarity and ease of application. RIA is applied most effectively when it is based on a clear set of orderly procedures for the development of legal norms that are practical and easy to follow, and that are graduated to concentrate more attention on the more important norms. • A step-by-step process for compliance with RIA procedures and content should be put into place that simplifies and standardises RIA through the policy development process. • If needed, the law drafting process should be re-engineered so that there is a policy analysis phase early, before drafting begins.
17	RIA should be integrated fully into the policy structure, from cradle to grave, so that the application and timing of RIA are clear and predictable, both inside government and to stakeholders.	Chaotic or unpredictable policy processes, particularly across multiple kinds of primary and subordinate regulatory instruments, lead to RIA gaps and uncertainty.	It is recommended for the roll-out phase that a detailed system map of processes for development of policy and legislation should be developed, and that RIA should be embedded into the system. RIA, ideally, should embrace a 'whole-of-government' approach across institutions and policies. The regulatory quality policy and RIA should apply to all regulatory bodies in the system to create an orderly, coherent and transparent regulatory system based on common concepts of quality.
18	Countries should start the RIA early, long before drafting legal text.	Some countries schedule the RIA too late, after legal drafting of a new policy, which renders the conclusions of the RIA useless.	Countries should ensure that the RIA process begins at the earliest stages of policy development with the critical first question of the RIA logic: What is the problem to be solved? This question must be answered correctly for any further analysis or policy development work to be targeted at the right problem. Some countries require a pre-approval process in which a preliminary partial RIA is prepared answering the key questions about problem definition, government goals and options, and then this is approved or consulted with stakeholders, before further policy development work can proceed. New Zealand, for example, uses an 'Early Engagement for Impact Analysis Form' to 'to test your initial ideas'.[a]

(*Continued*)

Table 4.3. Designing RIA processes

#	Best practice	Common failure	Ways to reduce risks of failure
19	Clear and standard procedures for RIA should be communicated to civil servants as part of the overall administrative process for policy development.	Sometimes countries do not clearly lay out the requirements for RIA to civil servants and so there is substantial confusion about how to comply with the RIA programme.	The key is clarity and ease of application. RIA is applied most effectively when it is based on a clear set of orderly procedures for development of legal norms that are practical and easy to follow, and that are graduated to concentrate more attention on the more important norms. A step-by-step process for compliance with RIA procedures and content should be put in place that simplifies and standardises RIA through the policy development process.
20	RIA should be published for public comment and input. Public consultation is an essential quality control measure to ensure that the RIA reflects the reality of impacts on the economy and society.	Some countries consider RIA to be confidential to the ministry or believe that it takes too much time to get public comment, and so the RIA is carried out entirely in-house without the ability for affected stakeholders to challenge the data or assumptions.	RIA cannot be done well without validation by stakeholders of basic assumptions, such as the problem definition, the options chosen, the impacts included in the analysis and the data used. Consultation is also needed to fill in data gaps through consultation. Minimum consultation methods are publication on the internet (passive consultation) with at least 30 days for response and, if time allows, various forms of active consultation such as public hearings and focus groups. • New Zealand has published a guide to mandatory stakeholder consultation on the RIA process.[b] • UK: While the impact assessment is a continuous process, there are certain points or stages within the process where it must be published. These are: a. the consultation stage (if a public consultation is carried out); and b the final proposal stage.

(*Continued*)

Table 4.3. Designing RIA processes

#	Best practice	Common failure	Ways to reduce risks of failure
21	RIA should be co-ordinated with other regulatory quality tools, particularly stakeholder consultation and interministerial co-ordination.	Some countries do not use RIA in consultation or publish RIA only after decisions have been made. This greatly reduces the usefulness and credibility of the RIA for policy-makers, because they do not have the feedback of those who are directly affected by the policy. Similarly, other ministries should be able to see draft RIAs for comment, because the RIA enables them to see how a regulators proposal might affect their particular mandate.	RIAs must, at minimum, be published for at least 30 days for public input. RIAs work best when accompanied with a clear consultation document that summarises the issues in a non-technical way and asks the key questions on which the regulator needs more information. These typically include the problem definition, the cost elements and the options considered.
22	RIA should be budgeted so that resources are available.	Ministries around the world are overstretched and adding RIA to their workload without the necessary resources undermines implementation.	Administrative processes for RIA should be developed together with staffing and resourcing plans that are integrated into annual budget processes.
23	RIA should be integrated early in processes for the development of policy. Never start an RIA after a solution has been chosen. An RIA is **not** a cost assessment of one option.	RIA may be carried out too late, often even after the ministry has already made its decision.	There should be a clear policy development schedule, review of the RIA by a central unit before drafting of any legal text, and publication of regulatory agendas with clear schedules.

[a] The Treasury, Government of New Zealand (2020), *Guide to Cabinet's Impact Analysis Requirements*, https://www.treasury.govt.nz/sites/default/files/2020-06/guide-cabinet-ia-requirements-june2020.pdf

[b] The Treasury, Government of New Zealand (2019), 'Guidance Note: Effective Consultation for Impact Analysis', https://www.treasury.govt.nz/publications/guide/effective-consultation-impact-analysis

actors to challenge or contest the regulators. This is one reason why RIA is so highly resisted in the initial years by regulators who resent the loss of freedom to regulate solely on their own expertise.

It is critical that the analytical method adopted in the new RIA system be compatible with the skills and data constraints of the regulators. This is where 'other country' models have sabotaged new RIA programmes. RIA consultants sometimes focus on analytical precision and unrealistic data collection, missing the fact that good RIA does not always depend on analytical precision or quantification. The classical RIA cost–benefit method, initially developed by the OECD to simplify RIA by providing a model, has itself become a barrier.[12] Practical and realistic analytical methods must be adopted. Even simple analysis based on qualitative information and stakeholder consultation can help identify better and worse options.

The methods used in RIA are highly adaptable to a wide range of administrative capacities. The logic of RIA can be implemented through many methodologies. Much thought must be given to the priorities of the country and the kind of analysis that can answer the key questions for that country. In this sense, the design of the RIA method is as much an art as a science.

The 'classical RIA method' has been widely adapted and takes many forms. It is founded on the concept of the Kaldor–Hicks criterion applied through the benefit–cost method, which requires that the analyst quantify, value and compare a wide range of social welfare impacts.

These concepts have been melded into a generalised policy analysis framework to create a distinctive RIA approach that is characterised by several distinct features, as described below:

Problem definition: Every RIA guide in the world instructs the analyst to begin with a problem definition that attempts to link the problems to be solved with the causes of those problems. This important step is meant to determine where and how government action might contribute to a solution. It is universally described as the most important part of the RIA, since: 1) logically, no problem can be solved unless its causes are clearly understood; and 2) many problems should not be solved by governments, but by markets, and the problem definition should identify where this is true.

Yet the problem definition is the most neglected part of most RIAs. Clarity about the causes of problems runs head-on into the controlling regulatory cultures of most ministries, because they assume that governments must act, because many problems are caused by government failures that they prefer not to identify, and because they by habit immediately focus on solutions rather than diagnostics of problems. The problem definition typically becomes a self-serving statement about a general problem that justifies government action, without any logical format or inquiry into market failures.

Choosing solutions to assess in the RIA: The value of the RIA depends on choosing a range of feasible policy scenarios to assess and then comparing them along the right dimensions. The OECD is typical in writing RIA guidance that sets out the optimal RIA approach: RIA 'is based on determining the underlying regulatory objectives sought and identifying all the policy interventions that are capable of achieving them.'

> Organisation for Economic Co-operation and Development (OECD 2008) *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)* Version 1.0 October 2008.

This is intended to be the most innovative part of the RIA, because it encourages the regulator to consider non-traditional policy instruments that might be unfamiliar. The US RIA guidance is specific that innovative approaches should be considered: 'You should describe the alternatives available to you and the reasons for choosing one alternative over another…alternatives that rely on incentives and offer increased flexibility are often more cost-effective than more prescriptive approaches. For instance, user fees and information dissemination may be good alternatives to direct command-and-control regulation.'[13]

Yet this part of the RIA has been shown to be highly vulnerable to selection bias. Regulators do not usually assess alternatives, such as non-regulatory approaches, which they do not favour for reasons other than analysis. Political instructions sometimes narrow alternatives at a very early stage, and civil

12 Scott Jacobs has argued that the classical RIA method is poorly defined, unduly academic for many countries, and has not yet evolved into the practical approach needed for day-to-day implementation in real-life policy scenarios characterised by low skills, inadequate time and poor access to data. See: Jacobs, S (2016), 'RIA: Towards a Simpler and Practical Approach', Chapter 6 in CA Dunlop and CM Radaelli (eds.), *Edward Edgar Handbook of Regulatory Impact Assessment*.

13 US Government, Office of Management and Budget (2003), 'Circular A-4', 17 September.

servants run a risk in including options not chosen by the minister. Assessing a wide range of options also runs against the risk-averse culture of government bureaucracy. Unfamiliar alternatives are almost never included because the risk of failure seems high, continuing the paralysing cycle in which regulators choose alternatives based on what they have done before, rather than on what might work better.

Choosing the method in the RIA: 'Feasible alternatives' must be assessed through the filter of an analytic method to inform decision-makers about the effectiveness and efficiency of different options and enable the most effective and efficient options to be systematically chosen.'[14] While the original concepts of RIA are based on cost–benefit analysis, more than 20 analytical methods are currently used in RIAs to rank options from better to worse. Jacobs has identified five categories of analytical methods used in RIA programmes.[15]

1. Forms of benefit–cost analysis, integrated impact analysis (IIA) and sustainability impact analysis (SIA) to integrate issues into broad analytical frameworks that can demonstrate net effects and trade-offs among multiple policy objectives.
2. Forms of cost-effectiveness analysis based on comparison of alternatives to find lowest-cost solutions to produce specific outcomes.
3. A range of partial analyses such as small and medium-sized enterprise (SME) tests, administrative burden estimates, business impact tests, gender tests, and other analyses of effects on specified groups and stemming from certain kinds of regulatory costs.
4. Risk assessment, aimed at characterising the probability of outcomes as a result of specified inputs.
5. 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.

Often, the rationale for the methods used in an RIA is not clearly presented, while RIA guides provide wide discretion to the analyst without much actual guidance – resulting in confusion on the ground. Instead of focusing on methods, RIA guides ask analysts to include a range of impacts, which, if examined closely, actually require different methods that are not themselves explained. For example, partial RIA tests, such as effects on small businesses or on particular groups such as 'poverty' or 'gender' impacts, require distributional analysis, while general 'economic' and 'social' impacts require benefit–cost tests, and efficiency or lowest-cost tests require cost-effectiveness analysis. Some countries even require analyses (trade or job or gender impacts) without any clear method at all.

Even if the method or methods to be used to answer the key questions are clear, the conclusions of these various methods might conflict (for example, the option with the highest net benefit might also be the option with highest cost to SMEs) and conflicts are rarely dealt with explicitly.

As a result, RIAs in many countries tend to be a selection of information (often the information most easily obtained) presented without clear methods. These RIAs take on the form of a kind of a qualitative or legal argument or even a persuasive essay in which the reader is coached to arrive at conclusions with little understanding of real impacts or choices.

And the more data and quantification included in the RIA method, the more expensive and time-consuming is data collection. In fact, unavailability of data is the key constraint on many RIA programmes. Every RIA programme must have a data collection strategy, but data doesn't always mean quantitative data. Information used in RIAs comes in a wide variety of qualitative and quantitative forms and can be combined using simple multi-criteria analysis or ranking methodologies.

These are not just 'teething' problems. Even the country with the longest and most intensive use of RIA is plagued by these kinds of analytical issues.

What this experience demonstrates is that even the part of the RIA that seems to be most transferable – the analytical method – must be customised and adapted to the particular needs and abilities of the country that is adopting RIA. The essential RIA problem-solving logic is applicable to a very wide range of policy issues and can be maintained without undue emphasis on quantification, analytical precision, and expensive and time-consuming data collection. That is the challenge facing the designers of new RIA programmes.

14 OECD (2011), *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)*, Paris, 3.

15 Jacobs S (2006) *Current Trends in Regulatory Impact Analysis: The Challenges of Mainstreaming RIA into Policy-making*, Jacobs and Associates Reports, at "http://www.regulatoryreform.com".

Table 4.4. Designing the RIA method

#	Best practice	Common failure	Ways to reduce risks of failure
24	Policy quality standards that can be determined by the RIA should be defined. No regulator can produce higher quality policy design if 'quality' is not clearly defined. Once the quality standards are defined, the RIA becomes the compliance assessment check on whether a proposed policy meets those standards.	If there is a lack of clear quality standards to support decisions, the RIA will have little value. Without clear standards, the purpose of the analysis in judging policy proposals is not sufficiently clear, and the content of the RIA is not aimed at collecting the right information on the right issues.	The content of RIA should be based on quality principles that are clear and well understood. What does regulatory quality mean and how does the RIA measure it? Governments have adopted a wide variety of regulatory quality standards that are tested by RIA, including lowest cost to achieve the outcomes, documented benefits that justify the costs, lowest costs for SMEs, benefit–cost tests and highest net benefit. Examples of quality standards include: • **Canada**: 'The results of an instrument choice exercise should be included as part of the Regulatory Impact Analysis Statement to demonstrate through evidence and analysis that a regulation is the best tool to achieve the desired public policy objectives. The instrument choice exercise should also begin to examine the costs and benefits of regulatory options to inform this decision. Departments and agencies should seek to design outcome, or performance-based, regulations when appropriate, with a view to minimising the amount of regulatory burden imposed on businesses and Canadians.'[a] Canada also requires a small business test and a gender impact test, among other impacts, in the RIA. • **New Zealand**: '...a regulatory system should deliver, over time, a stream of benefits or positive outcomes in excess of its costs or negative outcomes. We should not introduce a new regulatory system or system component unless we are satisfied it will deliver net benefits for New Zealanders. Similarly, we should seek to remove or redesign an existing regulatory system or system component if it is no longer delivering obvious net benefits.'[b]
25	A standardised RIA template should be created.	Lack of clarity on the organisation and content of the RIA document leads to incomplete and inconsistent analysis.	The standard RIA template should be defined in the RIA handbook, and every RIA should follow the standard template to ensure that no part of the RIA logic and process has been skipped.

(*Continued*)

Table 4.4. Designing the RIA method

#	Best practice	Common failure	Ways to reduce risks of failure
26	There should be a clear RIA handbook and guides for a standardised RIA report.	Countries that do not clearly communicate the standard RIA process will fail to produce consistent RIA. Instead, RIA often becomes a legalistic and textual description of why the ministry is correct.	Every mature RIA system has at least one and usually several guides or handbooks on how to carry out RIA, consultation and navigate the administrative RIA process.
27	The proportionality principle: thresholds should be set for the application of RIA to concentrate RIA efforts on the more expensive regulations.	Countries that carry out the same level of RIA for every regulation waste resources on trivial matters, while neglecting the more extensive analysis that should be done on critical issues.	The most successful RIA programmes are those that target scarce RIA resources to where they can do the most good. This is accomplished through clearer application and elaboration of the principles of 'proportionality' and 'significance': • The proportionality principle can be applied in two ways: 1) either all policy changes require some level of RIA, even a very simple RIA, but the level of RIA increases as benefits or costs increase; or 2) RIA is applied only to policy changes that trigger a threshold of cost or impact. • The 10% principle should be considered: typically, 10% of regulatory changes account for 80% of costs and benefits. • In either case, regulators should conduct an early assessment, known as a 'triage', of a regulatory proposal to determine its expected impact level and the appropriate mix of analytical requirements. Canada's general policy of 'proportionality' in RIA, in place since 1995, contains clear monetary triggers and tiered standards of analysis.

(*Continued*)

Table 4.4. Designing the RIA method

#	Best practice	Common failure	Ways to reduce risks of failure
28	The methodology should be customised to the skill sets and data constraints of the country.	Some countries simply adopt benefit–cost analysis or even RIA handbooks from other countries that are unsuited to their skill levels and data constraints.	The RIA methodology should be highly customised to the phase of the roll-out programme. The analytical content should be compatible with the skill levels existing in the ministries and with the data constraints that they face in doing the analysis. • Lowest-risk RIA systems start by focusing on selected quantification of direct cost impacts using data that are fairly easily available, and ranking of other impacts using stakeholder input and available quantitative and qualitative information. This approach allows ranking of options using lower-cost data inputs. • Overly quantified RIA methods are at high risk of failure, and hence the quantitative elements of the RIA method should be assessed in each country against skill levels and data availability. • No method should be adopted that requires skill levels and data that are beyond the capacity of the regulators.
29	RIA logic requires countries to put more emphasis on problem definition and problem solving rather than quantitative data.	Some countries put a great deal of effort into collecting and quantifying data, but do not actually define the problem well enough to determine if the data are relevant to the right solution.	A pre-RIA approach should be used to ensure good problem definition. A good RIA not only calculates monetary costs and benefits, but identifies, verifies and explains the source of the problem and demonstrates with evidence why the proposed solution is the most effective means of solving that problem.

[a] Government of Canada, 'The regulatory life cycle approach', https://www.canada.ca/en/government/system/laws/developing-improving-federal-regulations/requirements-developing-managing-reviewing-regulations/guidelines-tools/cabinet-directive-regulation.html#toc4

[b] The Treasury, New Zealand Government (2017), *Government Expectations for Good Regulatory Practice*, https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf

5. Sequencing

Is there a proper sequence and speed for rolling out a new RIA programme at the national level? Is there a single pathway that reduces risk of failure?

As with all governance reforms, there is no rigid recipe for reform sequencing when rolling out RIA. Every country starts from a different position with different levels of political commitment, different levels of resources, different states of readiness in the public sector and different relationships with civil society. All of these affect the speed and sequencing of RIA roll-out. As stated repeatedly, this means that the specific RIA steps and their speed must be customised.

While there is no single step-by-step approach, general principles should be followed in determining the country-specific sequencing and speed. Failure to follow these principles has caused practical problems and conflicts in RIA reforms in many countries. The four principles recommended are:

1. Plan
2. Communicate and prepare
3. Assess
4. Scale-up

As noted above, the biggest mistake in designing the roll-out of RIA is lack of planning. The recommendation in this *Handbook* is that a multi-year (three- to five-year), phased programme should be prepared in advance that lays out the implementation process and timing for each of the major RIA components of institutions, processes and methods. This is the gradual approach, not the Big Bang approach.

It is important to note that RIA programmes are not undertaken from a zero base, but must be co-ordinated with and integrated into ongoing reforms such as reforms to increase public consultation, interministerial co-ordination or other evidence-based reforms. This is another reason why customisation is so important to the effectiveness and efficiency of the RIA programme.

It is also important to note that the speed of adjustment of the public sector to any reform rests on the clarity and incentives for implementation of that reform. Directives and handbooks laying out exactly what is required are essential. One of the reasons communication and top-down direction are emphasised so much in the preceding sections of this *Handbook* is that civil servants cannot implement if they don't understand what's required, how it fits within their day-to-day responsibilities, and the consequences if they do not comply.

The second most common mistake is assuming that RIA and quality control are free. Higher quality actually costs more (average costs of quality control in the private sector are 25% of revenues). Human and budget resources should be estimated for each phase. This is essential because speed (such as the number of RIAs to be prepared each year by each institution) is partly determined by staffing and budget resources. Perhaps a good place to start is to determine how much human and extra financial resources the government wishes to invest in RIA per year for the first five years (what is the worth of higher policy quality?), and then design a plan and sequence within that budget constraint.

Of course, no constraint is fixed. As RIA develops or as priorities change, governments may be willing to spend more. The speed is variable, and that is why the lowest-risk system design is up-scalable and can be ramped up over time as constraints are overcome, such as lack of analytical skills or budget resources for staff. Annual assessments should be built-in, so that the RIA programme can be continually adjusted to match constraints.

Before advancing to implementation of the RIA programme, it is important to establish an adequate plan for: institutions, processes and methods; adequate resources; communication with civil servants; and capacity building on which to anchor actual production of RIAs. In the planning process, governments should start with establishing core RIA functions. These could include:

1. mapping and ordering the policy development process and the range of policy instruments used;
2. mapping RIA into the process and instruments, including the public consultation process, ensuring that the RIA logic (particularly problem definition) begins at the earliest stages of policy development and never after drafting begins;

3. establishing the scope of RIA, starting with a few RIAs and expanding scope over the roll-out period;
4. assessing skill capacities, determining gaps in skills, and laying out an expanding capacity-building plan commensurate with the expanding scope of the RIA programme;
5. developing a simple methodology, starting with qualitative ranking questions and limited direct cost assessment, such as the Standard Cost Model, and then adding more impacts, quantification and analytical depth as skills develop;
6. using existing processes of policy review at the centre of government and then establishing RIA-specific quality control as the programme develops;
7. communicating with civil servants clearly; and
8. ensuring a maximum level of transparency from the beginning and if that is not possible, establishing a pathway for transparency, including early consultation.

As the RIA programme develops, governments will move to more sophisticated reforms, such as expanding the scope to a wider range of policy instruments and increasing the analytical depth, range of impacts included and quantification of impacts.

As the plan unrolls over time, an assessment and adjustment of the initial RIA roll-out plan is necessary and should occur annually. The assessment process should obviously focus on the quality of the outputs, such as the quality of the RIA documents, but more importantly on the impact of RIA on the quality of outcomes – such as the quality of legislation and regulation itself, and the transparency and civil service participation in the process. There are plenty of examples of countries where adequate RIAs are prepared, but they are not used by ministers or councils of ministers to make decisions. In these cases, the RIA becomes a technical and useless document rather than a live and relevant policy input.

Ongoing assessment by civil society is also important, because civil society expects the RIA to contribute to a higher quality of both policy processes and policy outcomes. Civil society, such as business federations or other civil society organisations, should be consulted –perhaps through an RIA advisory board on the adjustment and continual improvement of the RIA programme.

Finally, ongoing adjustment and improvement of the RIA process requires accountability for performance. Good RIA programmes produce annual reports by independent bodies of the quality of the RIA process and outcomes, together with recommendations for improvement. These performance reviews, based on an evolving set of performance indicators, are most effective when they are tied into the KPIs and performance evaluations of the institutions and key officials responsible for the quality of policy.

6. Conclusions

The point should be clear that the designs of RIA programmes that are lowest risk are those that are highly customised to the conditions in the country itself. The factors on which customisation should rest are:

1. the level of support of the country's political officials and a public commitment to investing in policy quality;
2. the orderliness and predictability of the existing policy process;
3. clarity in a definition of policy quality that meets the needs of the country over the next 10 to 15 years;
4. institutional capacities at the centre of government for adopting new standards of quality;
5. the readiness of the civil service in terms of skills and cultural habits to adopt new forms of quality control;
6. the preferred speed of implementation, given the priorities of the government and the resources available;
7. the readiness of civil society to use new forms of consultation to participate in policy processes and the willingness of this government to be more transparent at earlier stages of policy-making; and
8. accessibility to data and the means of collecting data.

Given the constraints facing any government, a workable RIA system can be designed and implemented. Risk factors can be managed, although not eliminated. The key to success is flexibility, customisation, planning, and rapid adaptation and improvement as the RIA system develops over time, and as new challenges emerge.

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