



Guidelines for the implementation of
**REGULATORY IMPACT
ASSESSMENTS**
in the Western Cape Government



Western Cape
Government

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PREFACE

Regulatory Impact Assessment (RIA) is widely recognised and practised internationally as an effective evidence-based tool in the development of regulatory and policy proposal, to test their practicality and feasibility and to promote better regulation and governance. The benefits of an effective RIA system include an improved understanding of the impact of government policies, law and regulations, and the ability to look objectively at different interests and approaches to regulatory problems. Effective use of RIA provides for better stakeholder consultation, transparency and improved accountability in the management of public resources.

In May 2016 Cabinet resolved that the Western Cape Government will mainstream RIA into the legislative and policy making process, and that a RIA will have to be conducted in respect of all significant new legislation and policies to be introduced in the Western Cape.

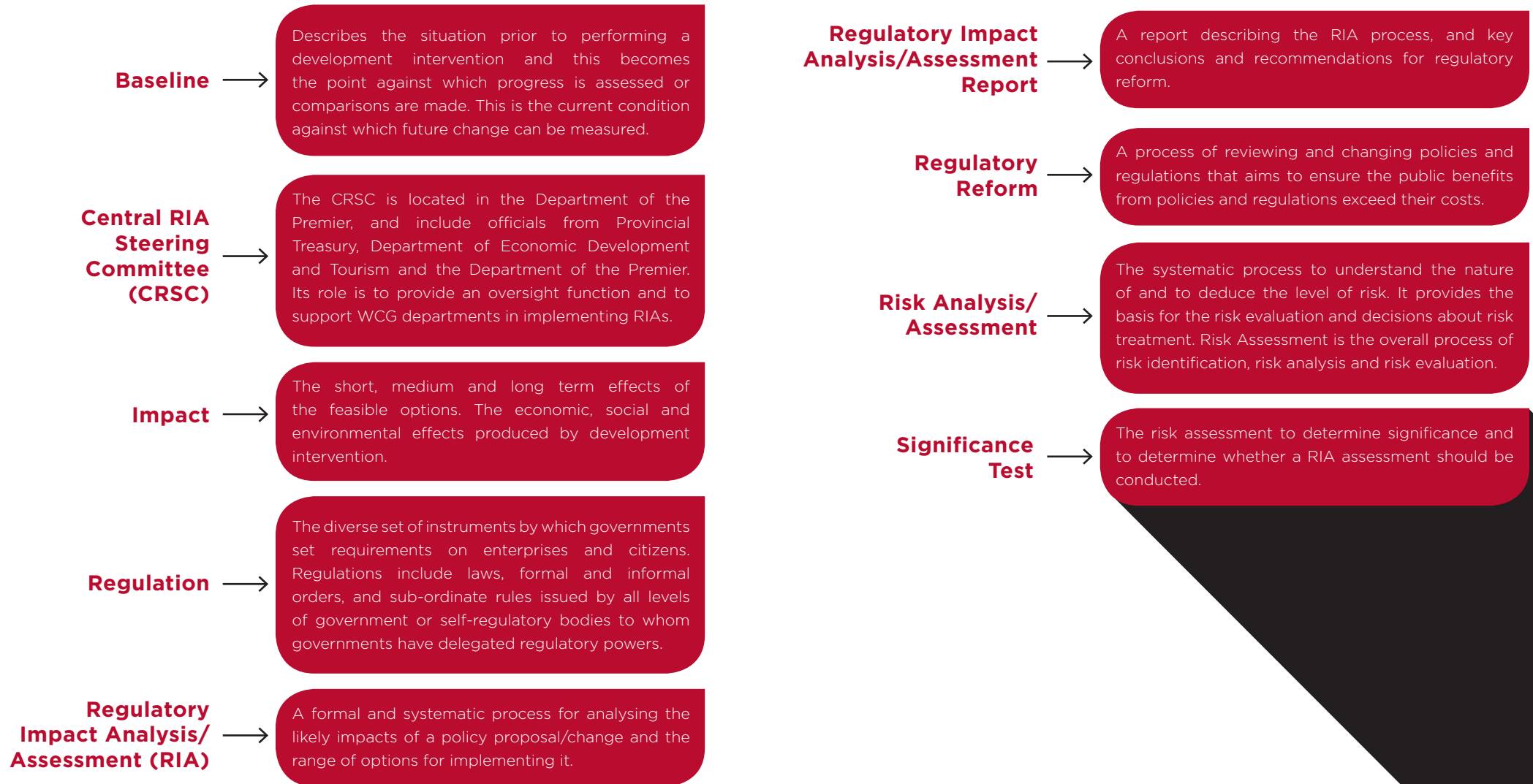
This document provides a guide on how to conduct a RIA and is divided into three key sections:

- Understanding RIA;
- RIA system in Government; and
- Key steps in the RIA process.

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Definitions



SECTION 1:

Understanding Regulatory Impact Assessment



1.1. What is a RIA?

A Regulatory Impact Assessment (RIA) is a tool to test the practicality and feasibility of regulatory proposals, the risks to be addressed by the regulation and the options for delivering the objectives. It can also be applied to existing laws and regulations to assess their economic, social and environmental impacts, costs and benefits. RIA focuses attention on the consequences of specific regulatory proposals.

RIA is a key instrument for better regulation and service delivery, to achieve targeted policy and regulatory objectives more efficiently and more cost effectively. It can be used to assess:

- All potential impacts, social, environmental, financial and economic.
- All regulations: formal legislation (laws, regulations, decrees, and master-plans) and quasi regulations (e.g. guidance or codes of practice and public awareness campaigns).
- Distribution of impacts to consumers, business, employees, rural, urban, or other groups.
- It is essential to note that a RIA is not a substitute for decision making but is best used as a guiding tool to improve the quality of political and administrative decisions. It serves the values ascribed to the policy making process of openness, public involvement and accountability. Where legislation has already been committed to by government, the outcome of a judicial decision, or an international agreement, the RIA process should still be followed.
- RIA requires a systematic, common-sense approach in evaluating the feasibility of government interventions. Applied effectively, it provides a valuable means of supporting priority policy objectives such as economic growth, job creation and poverty reduction, by requiring policy makers and regulators to look broadly at the potential impacts in each of these areas, and find the most efficient way to maximise benefits while minimising costs to government, business and communities.

1.2. What is the rationale for RIA?

The basic rationale for a RIA is to ensure that all regulatory proposals serve the policy objectives of government as effectively and efficiently as possible. As a methodology for assessing the likely consequences of proposed regulation and the actual consequences of existing regulations, it assists policy-makers and decision-makers in the design, implementation and monitoring of improvements for regulatory systems.

The application of a RIA improves accountability and transparency in policy making. It makes transparent the expected costs and benefits of options for different stakeholders and the implications for compliance as well as the cost of enforcement for government.

- The RIA process helps to:
 - think through the full impact of proposals;
 - identify alternative options for achieving the desired policy change;
 - assess options (regulatory and non-regulatory);
 - ensure that consultation is meaningful and reaches the wildest possible range of stakeholders;
 - determine whether the benefits justify the costs;
 - determine whether particular sectors are disproportionately affected; and
 - determine whether the proposed measure will address the objectives of government.

1.3. What are the objectives of RIA?

- The objectives of RIA include the following:
 - Assess the significant impacts, both positive and negative, of a regulatory measure;
 - Systematically examine the impacts arising or likely to arise from government regulations and communicate this information to decision makers;
 - Ensure that all stakeholders are given a platform to provide their inputs to be considered in the policymaking process;
 - Encourage stakeholder consultation in identification and measurement, and quantification of benefits and costs of the proposed policy/legislation;
 - Ensure that all the risks associated with the regulation are properly managed in accordance to the departmental risk appetite;
 - Assess regulations on a case-by-case basis to see whether they contribute to government's **socio-economic objective**;
 - Encourage good governance in the regulation making-process;
 - Ensure that the adopted course of regulation is proportionate to the identification problem;
 - Provide a comprehensive picture of the socio-economic impact of the legislation.

Thus a RIA makes transparent the benefits of different regulatory options for various stakeholders, the implications for compliance and government's cost enforcement.

1.4. Stages of Analysis in RIA application

A RIA should be started early in the policy making process. It is essential to note that RIA is a structured process; it is not conducted as a once-off exercise at a static point. It is an ongoing assessment that happens throughout, and informs the policy and regulatory making process. A RIA is typically prepared in different stages and pursued by the Western Cape Government in a three-phased approach:

- Significance Test;
- Initial RIA; and
- Full RIA.

1.4.1 Significance test

Prior to commencing with an initial RIA, the Significance Test template (Annexure A) must be completed and submitted to the Central RIA Steering Committee (CRSC) for consideration and comment. The purpose of this test is to determine whether a RIA is in fact necessary and if it will assist a department to determine the significance of the impact.

The significance test performs a risk assessment to determine the significance of the proposal.

If the outcome of the significance test concludes that the proposal is significant then an initial RIA must follow.

1.4.2 Initial RIA

An initial RIA is a high level overview of the problem faced by the state. It is conducted when a policy objective is first identified to explore possible mechanisms to achieve the objective. Its main role is to facilitate the decision, whether or not to regulate/develop a policy. It provides a statement of the policy/legislative objective, formulates the problem facing government and specifies a range of options for consideration.

Even at its early stage, the initial RIA should involve some level of consultation with potential stakeholders and affected groups, including other government departments, in order to assess and further develop the assessment of the pros and cons associated with each option. In general, the wider the consultation takes place, the more buy-in there is likely to be from those affected by regulation and a lower likelihood of unforeseen impacts of regulatory proposals.

The RIA report also provides a brief analysis of costs, benefits and risks associated with each option, and should recommend a preferred option, with clear justification.

The initial RIA must be submitted to the CRSC for consideration and comment.

1.4.3 Full RIA

Once a preferred option has been identified, and a Bill or regulatory/policy proposal has been prepared, a full RIA should be compiled. The full RIA would build on the initial RIA, and will include a more detailed assessment of the anticipated risks, implementation and compliance costs, benefits, and potential broader economic and societal impacts, and identifying mitigating strategies where necessary.

The full RIA should also reflect the findings from the consultation process. A summary of the views expressed through the consultation process should be provided as part of the full RIA. The RIA should also contain a response to the views expressed. Where the final regulatory/policy proposals do not take on board points/issues raised during the consultation process, this should be explained.

The full RIA also sets out the implementation plan, enforcement methods and sanctions to be used, as well as the monitoring and evaluating system to be applied for the recommended option.

If significant changes are made to a draft Bill or regulatory/policy proposal during the legislative/policy development process, as a result of input from Provincial Cabinet and other stakeholders, the RIA report should be revised to include an assessment of the changes.

It should be noted that when conducting a RIA, the level of details included in the RIA should be proportional to the scale and impact of the proposed policy or regulation. For instance, if the proposal is likely to affect few or many groups of firms or individuals, but only to a small degree and/or benefits are likely to be small, then the RIA should be quite short. Where the impact will be substantial, however, more data and depth of analysis will be required.

The full RIA must also be submitted to the CRSC for consideration and comment.

1.5. What questions should be addressed in a RIA?

- ✓ **Nature of the problem.** What is the problem that needs addressing?
- ✓ **Is regulation actually needed (what will happen if there are no regulations)?**
- ✓ **Are the goals of the proposal clear and reasonable?**
- ✓ **Alternative solutions.** What are the alternative approaches to dealing with the problem, including non-regulatory action?
- ✓ **Benefits of regulating.** What are the likely benefits of the proposed options? What groups will incur these benefits?
- ✓ **Cost of regulating.** What are the likely costs of proposed options? What groups will incur these costs?
- ✓ **Public consultation.** What are the views of the public and key stakeholders on the issue and proposed options?
- ✓ **Support for regulation.** What support is there amongst key stakeholder groups for the proposed options?

1.6. Who should prepare RIA?

All government departments and agencies where they exercise statutory powers and make rules with a general effect on others are required by provincial Ministers to produce a RIA. More specifically, departments are responsible for the following:

- Ensuring that a RIA is built into the department's policy-making process, at the earliest stage in the design of new regulations and proposed regulatory changes;
- Planning, execution and analysis: Draft preliminary schedule and outline plan of the RIA process and conducting the RIA;
- Determining strategies for collecting data at a minimum cost and within the required time limits.
- Reporting to and liaising with the CRSC and the relevant Provincial Strategic Goal (PSG) Steering Committee(s).

1.7. How to ensure RIA quality?

Each department will formalise its internal sign-off structures for implementing the RIA process. The responsible Head of Departments and Provincial Ministers in line departments must sign-off the quality of RIAs before they are submitted to the Provincial Cabinet.

A Central RIA Steering Committee (CRSC) has been established and will be fully involved in all phases of the RIA work. The CRSC will assist the lead department to monitor the quality of the RIA report. Scientific and technical expertise should also be used when required. However, the lead department remains responsible for the content and quality of the RIA report.

The CRSC will prepare and issue a certificate of recommendation on the Significance Test, Initial RIA and Final RIA to the department concerned that will accompany the department's submissions to Cabinet.



SECTION 2:

RIA in the Western Cape



2.1. Background

As the WCG moves towards implementing RIA, we need to develop a RIA-orientated regulatory 'culture' in terms of what government, business and civil society expect - and insist upon - open and evidence-based consultation from the early stages of regulatory/policy decision making, well before specific regulatory/policy proposals are chosen, and from there onwards at points along the line.

RIA must be championed across government in order to embed it as a normal feature of regulatory/policy making. RIA skills will have to be developed within government, including skills in quantitative and qualitative impact analysis. It must be acknowledged that a RIA can be seen as a threat to existing practices - and it will be crucial to demonstrate its very real value. The RIA template must be used in an honest, comprehensive and context sensitive way. RIAs must not be reduced to a narrowly focused and unimaginative 'box-ticking' exercise.

RIAs can play a major role right across the legislative process from the initial stages of policy development to the drafting of Bills; and in the passage of legislation through Parliament. It will be a major resource for Parliament's oversight function and legislators' ability to scrutinise Bills on the basis of more comprehensive information.

Preparation of a RIA does not mean that political power is handed over to technocrats. It is not a substitute for decision-making in government. 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 its quality. Applied effectively, a RIA is an important device with which to further chosen policy objectives including economic growth, job creation, transformation and improving the Western Cape's investment climate.

2.2. Application of RIA and its threshold criteria

2.2.1 When should we do a RIA?

All government departments are expected to produce a RIA as a structured way to inform policy-making, but a RIA must be prepared for all proposals (legislative and non-legislative), which are likely to have direct or indirect impact (whether benefit or cost) on

businesses, citizens and jobs. This includes proposals, which reduce costs on businesses and others, as well as those that increase them. A RIA will therefore apply to any Bills, significant regulations, policy proposals and the intention to revise any of the existing legislation or regulations and policies.

2.2.2 Threshold Criteria: Significance Test

Prior to conducting an initial RIA WCG departments/entities are expected to conduct a Significance Test (Annexure A) to determine whether an initial RIA is required.

2.2.3 Initial RIA

If the outcome of the Significance Test confirms the significance of the proposal, an initial RIA must be conducted, and if an initial RIA suggests the need for a further RIA, a full RIA should be conducted.

2.2.4 Full RIA

The full RIA applies to policy and regulatory proposals that are considered significant in terms of anticipated implementation costs to government, likely compliance costs to business, the scale of impact to society and jobs, the environment, and the number of people affected, as determined by the Significance Test.

If the proposal is likely to have a significant impact, not by itself but by virtue of the subordinate legislation to be made under it, a full RIA should be conducted in respect of each piece of subordinate legislation likely to have significant impact. A guide with questions to determine significance is provided as Annexure A.

The Significance Test, initial RIA and the full RIA must be submitted to the CRSC for input and recommendation prior to it being submitted to the relevant Provincial Ministers, or Provincial Cabinet.

2.2.5 Exemptions from RIA

The following minor regulatory changes will not require a RIA:

- Automatic increase in statutory fees by a predetermined formula such as the rate of inflation;
- Regulations giving effect to budget decisions and similar proposals; and
- Intention to repeal redundant regulatory and legislative provisions that have no or minor impact on business, government and individuals.

2.3. The RIA Process:

The RIA process should be an integral part of policy/legislation formulation to help improve the quality of the policy/legislation making process. The process should start as soon as possible in discussion on proposed changes, and be developed as the proposal develops. An initial RIA should be prepared as soon possible to identify the range of options available to be included in the report. The CRSC should be informed as soon as possible of the intended RIA. The initial RIA must be signed off by the relevant Head of Department and Provincial Minister before submission to Cabinet.

The initial RIA Report must be attached to the Cabinet Submission seeking approval to draft legislation. The Cabinet Submission must indicate how departments have utilised the information provided by the RIA in making recommendations to the Provincial Cabinet. The summary of the main findings of the RIA and recommendations should be provided.

The CRSC will prepare its recommendation on the Significance Test, Initial RIA and Final RIA by way of a RIA Certificate, which will accompany the submissions to Cabinet.

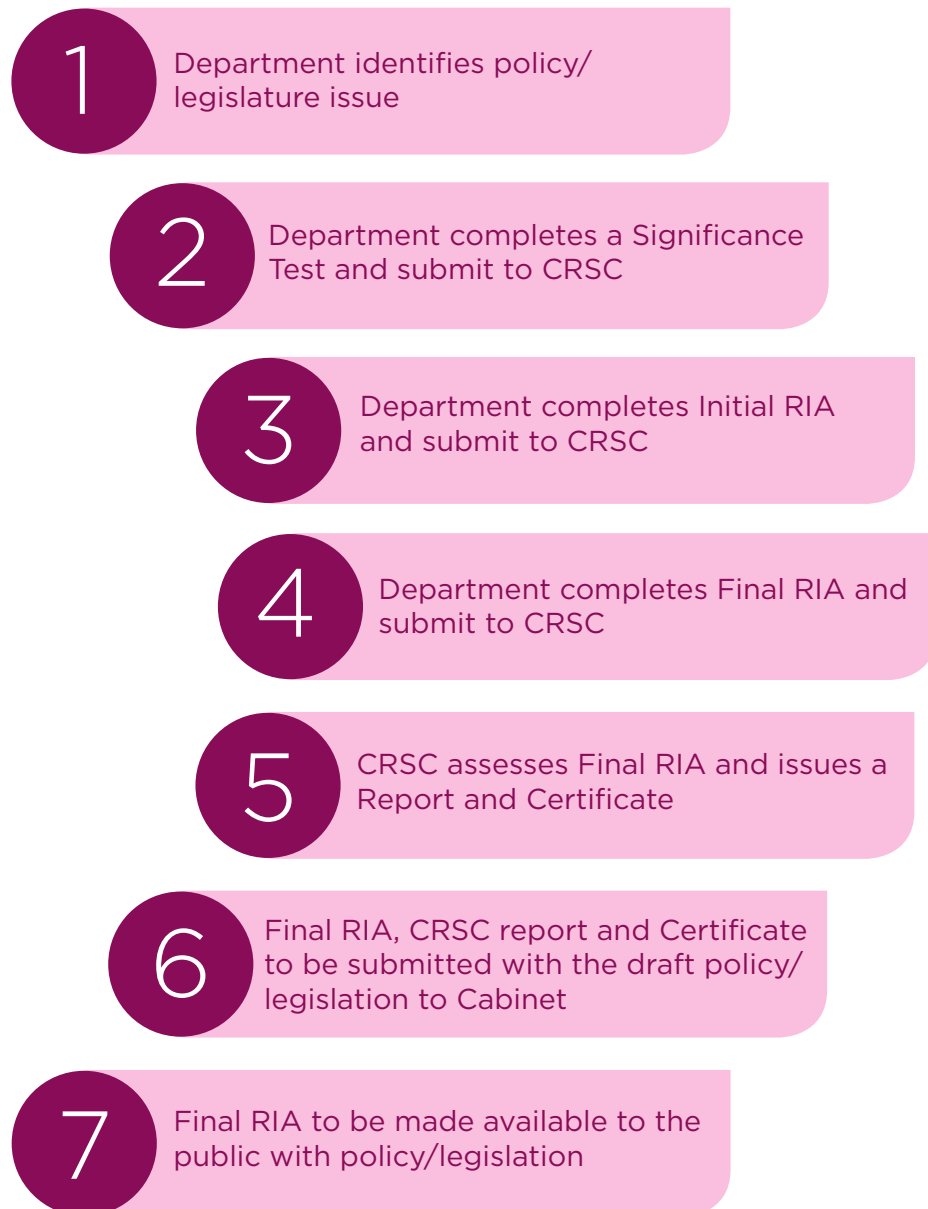
Similarly, where a RIA has been conducted in respect of subordinate legislation (regulations), the report must be attached to the Memorandum to the relevant Ministers seeking approval for the publication of draft regulations for comment, or for the Ministers to make the regulations.

Once the text of the draft Bill has been approved by the Provincial Cabinet, the RIA must then be made available (e.g. on the website) with the draft Bill for public comment. An updated RIA incorporating changes and comment from Cabinet and various stakeholders must accompany the draft Bill to the Standing Committee for consideration when it is introduced in the Provincial Parliament.

The RIA report(s) must be accessible and made available to the public and stakeholders by the department by, for example, creating a link thereto on departmental website when the relevant draft Bill is published for comment. The information contained in the RIA should be suitable for public consumption in line with the provisions of the Promotion of Access to information Act, 2000 (taking into consideration any future amendments to the Act). Where a RIA cannot be made available due to the secret classification of information, reasons have to be provided.

The RIA process is summarised overleaf:

Summary of the RIA Process



SECTION 3:

Key Steps in the RIA Process



3.1. Introduction

Government generally adopts regulations to solve or ameliorate a problem. The problem may result from problems with existing policies or regulations, or it may result from market failures. There are often many ways to address each problem. The challenge for the policy or regulatory analyst is to identify efficient solutions that are consistent with broad government development objectives.

The aim of all government policies and regulations should be to achieve some clearly targeted objectives in order to solve a problem. RIA is a tool to evaluate options for achieving this objective and to discover what other effects policies and regulation may have. The policy or regulatory analyst (or analysts) needs to ask questions about what government is trying to do, the probability of success, and other impacts on society and the economy.

- The analyst needs to:
 - Understand the problems that need to be addressed;
 - Be clear about the objective to be achieved via regulation;
 - Look at all options to identify the best ways to achieve this objective; and
 - Ensure that benefits of the regulation exceed the costs (taking into account both direct and indirect impacts).

3.2. Key steps in the RIA process

The five steps in the RIA process are discussed in detail overleaf.



STEP 1: Identifying the problem and initial assessment

1) Understanding the Problem

To begin an initial assessment, start by asking some fundamental questions about the problem and factors contributing to the problem; questions like:

- ✔ **What is the problem?** Clearly identify and define the problem. While obvious, too many regulations/policies are drafted without a clear statement of the problem and the regulatory objective. This can contribute to over-regulation and ambiguity.
- ✔ **What groups are affected by the problem and how?** Identify what interest groups are affected by the problem, and the likely measures to address the problem. Describe how these groups are affected, and clearly identify any groups of winners and losers from current arrangements.
- ✔ **What are the key concerns of the public and key stakeholder groups?** Consult with key stakeholder groups to clearly identify their concerns and/or perspective. Informal consultations (e.g. with business associations) may be adequate at this early stage. Consultations at this early stage are very important to ensure that the correct problem is being addressed. Early consultation can help in obtaining an informed view of the risks, the available options and provide a broad indication of the likely costs and benefits involved. It is not a substitute for wider consultation later in the policy making process, but it may help in planning to make that consultation more effective.
- ✔ **What led to the problem?** What events or behaviour contribute/d to the problem? Understand the basis for the problem. Efficient resolution of a problem requires an understanding of how the problem arose. Is it a long-standing problem? Does the problem arise from other regulatory changes? Or does the problem arise from changes in the external environment (e.g. introduction of new trade standards by another country).
- ✔ **What motivates key players contributing to the problem?** Does the problem result from ignorance, or because it is in their interests? Understand the motivations of stakeholders involved. If the problem arises from ignorance, then a public awareness initiative may be appropriate. But if the problem is with existing regulations/policies, consideration may be needed to address current regulations/policies. Consultations can be important in assessing motivations.
- ✔ **What are other key characteristics contributing to the problem?** Are there any legal limits on what can be done to resolve the problem? What are the underlying causes and nature of the problem? Does it result from service delivery/market failure? If so, is it the type of service delivery/market failure that can be addressed without recourse to government regulation?

✔ **Is there an existing body of law that addresses the problem?** As a general rule, it is better to use society/economy wide principles to resolve a problem, rather than sector/industry specific regulation.

Advice should be sought from specialists (practitioners, social scientists, economists, lawyers, industry experts) as early as possible in the RIA process. Research may need to be commissioned to help understand the problem, to identify options for addressing the problem, and to assess the impacts of alternatives.

2) Specifying the objectives

The objectives of regulations, and non-regulatory alternatives, are what the Government aims to achieve to address the problem. The objectives are the goals, outcomes, standards or targets to be achieved to correct the problem. These should be clearly specified with a clear link to the problem. The success of a regulation needs to be monitored and evaluated against the progress in achieving these objectives.

The policy/regulatory objective relates directly to the policy/regulatory approach to overcoming the problem. The objective should be more specific than the problem definition and should be developed in consultation with stakeholders, the regulator, and regulatory and industry experts.

Some stakeholders may have objectives that differ from provincial interest objectives. Such objectives should be noted and discussed (reflecting on the incentives facing different groups) in the RIA.

In attempting to define a provincial interest objective to resolve a problem may sometimes lead to the question whether government should intervene, or determining whether stakeholders may have raised an issue to protect their vested interests.

There is a link between assessing the risk and the description of the proposal's objectives. The objectives should describe what the policy or regulatory approach is intended to achieve, and what effects it will have and on whom. The Risk Assessment section should therefore explain, and where possible quantify, the problem or the risk that the policy or regulatory approach is trying to address, e.g. scale of car theft and the associated risks to insurers, the policy etc. Identifying the problem in this way makes it easier to assess the extent of the benefits arising from the proposal.

3) Consider Alternative Options

A list of alternative actions that could be taken to address the problem should be developed. This list may include "doing nothing" and non-regulatory/policy alternatives. Typically, these alternative options will achieve somewhat different targets at different costs. Wider benefits may be greater by solving part of a problem at a low cost, than solving the whole problem at a greater cost.

The first step in defining options is to clearly identify and understand the nature of the problem. In addition to "doing nothing", options that require direct and/or indirect

government interventions should be considered. Examples of direct government intervention include directly providing (or paying the private/non-governmental sector to provide) a public good or service, and directly restricting some activities. Provisions of education, health and sanitation services are examples of direct intervention.

Indirect government intervention typically aims to correct market failure by facilitating an enabling environment that promotes competitive markets.

• Types of indirect government intervention include:

- Pure market approaches. Attempt to better define and/or enforce markets to correct market failures.
- Economic approaches. Use economic instruments to provide more accurate market signals about costs and benefits. Taxes, fees and charges, and tradable permits are possible examples.
- Regulatory approaches. These “control” instruments need to be used with care, because they can have significant economic costs.

It is important to remember that regulatory/policy intervention may not be necessary.

• Alternatives to consider in addressing the problem include:

- Self-regulation;
- Co-regulation;
- Information and education campaigns;
- Service charters;
- Codes of practice; and
- Other mechanisms (e.g. accreditation systems,).

4) Choosing between options

Some options may be excluded at an early stage because: (i) they are not feasible; (ii) costs and/or risks are too high, and/or (iii) benefits are too limited. However, even if one particular option is an obvious front-runner, it is essential to list and explain how each of the options will achieve or contribute to the policy or regulatory proposal. Consultation at the early stage can also often bring new evidence from stakeholders that would not otherwise have been considered.

Consideration of the proposals should be done in accordance with the fit with existing requirements and obligations on those who might be affected. Consultation with other colleagues in other departments ensure that all related requirements and other proposals that may be in the pipeline have been taken into account when selecting the preferred option.

The RIA report should note all options considered, and include a brief discussion of why options were excluded.

5) The Consultation Plan

The consultation plan should identify the experts, stakeholders, businesses and community groups to be consulted during the RIA process. There may be a need to consult separately with key sub-groups (e.g. household, small, medium and large businesses, and/or importers, exporters and/or firms supplying the local market) depending on the nature of the change under review.

A consultation plan needs to reflect both information needs, and the need to build public support for change, and will differ greatly for each RIA. The consultation plan should retain flexibility, to respond to new information needs, new findings, or changing public concerns.

The initial RIA report provides details on:

- The problem being addressed and how the problem arose.
- Market or regulatory failures the proposal aims to address groups affected by the issue, including business sectors and groups that may be especially affected. Include quantitative data and practical examples where possible.
- What high level policy objectives will be achieved by the proposal?
- Any existing studies, policies, regulations or arrangements related to the problem. Describe existing institutional responsibilities.
- Regulatory and non-regulatory options to address the problem, including ‘doing nothing’.
- The costs, benefits and distributional impacts of each option, including an assessment of impacts on markets and competition.
- Risks and any potential unintended consequences.
- Possible implementation, compliance and monitoring options.
- Additional information needs, and safety to collect information.
- A consultation plan and/or summary of the stakeholders consulted.



STEP 2: Stakeholders Consultation and Data Collection

1) Introduction

Stakeholder consultations are a key element of the RIA and should be an ongoing process. Key aims of this stage in the RIA process include:

- The collection of information to improve the cost benefit analysis;
- Build a constituency to support the approval and implementation of a regulation; and
- Increase the accountability of government, by improving transparency in government policy making. (Consultation helps because of public disclosure of government plans for reform)

2) The Consultation Process

The RIA reports consultative process works both ways. The initial RIA report provides a structure for consultations; while the consultation process helps provide information needed to develop a credible full RIA report. The process helps ensure that interest groups are aware of all the policy options considered, and the costs and benefits of each option. More generally, consultations provide stakeholders with an opportunity to contribute towards policy development, and can thus help in achieving greater public support for regulatory reforms. In other words, consultation, information collection and constituency building are closely related. Stakeholders, officials, experts and the general public are more likely to support reforms when they feel their views have been taken into account.

Effective consultations need careful planning, and should consider the need to:

- Publish documentation on the web or other suitable methods.
- Organise consultation in a number of different locations to ensure consultations with a wide range of interests. (They may be organised as small and informal meetings, or as formal public hearings, depending on the circumstances and including levels of public interest in the issue.)
- Invite stakeholders to prepare written submissions on consultation papers (including initial RIA reports, and draft regulation).
- Allow stakeholders adequate time (at least two months) to prepare written submissions.

- Publish a summary of submissions, with a clear explanation of how key concerns were addressed. Changes to proposals resulting from the consultation process should be summarised in the full RIA report.
- Where appropriate, especially for significant policy and regulatory proposals, ensure that a reference group is set up to provide advice throughout the RIA process.

3) Describe the Consultative Process Followed in the RIA Report

- The full RIA should include details of those to be consulted, outlining the key views expressed and major areas of agreement, as well as areas of difference.
- The full RIA should also include information on consultations undertaken with other official groups/agencies. Where this may have been limited, the RIA report should state more detailed consultation was not undertaken and the reasons for not doing so. The RIA report should briefly note the key ways in which the consultation process influenced the final outcome of the findings and recommendations.





STEP 3: Data Collection, Analysts and Discussion of Findings

1) Introduction

This is the main analytical step of the RIA. Potential benefits, costs and distributional impacts of each option – including the ‘doing nothing’ option should be analysed. An assessment of the benefits and costs of a proposal is thus the central analytical component of the RIA. It is the anticipated stream of benefits that flow from regulation or other policy measures that may justify the costs that are imposed on business or other sectors of the economy and society. Therefore the purpose of the analysis of benefits and costs is to determine whether these costs are proportionate to the expected benefits.

The depth of analysis should be sufficiently rigorous to inform decision makers, but also both (i) proportionate to the potential impact of the reform, and (ii) appropriate to the expertise, resources and information available to the department or agency responsible for conducting the RIA. Pragmatic professional judgment is needed to match available resources to be put into RIA against the potential net benefit or cost of the regulatory change.

Where feasible, the major costs and benefits of the proposal should be quantified. The assessment should include full economic costs and benefits, including social, environmental, and health and safety costs and benefits. Compliance levels also need to be assessed in order to assess likely benefits.

2) RIA Appraisal Methodologies

The following provides an overview of some of the key methodologies applied to conduct the impact appraisal component for a full RIA.

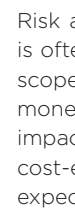
RIA Impact Appraisal Methodologies

Impact appraisal involves a systematic examination of all costs and benefits of alternative options to achieving an objective. A number of different approaches can be adopted depending on the nature of the problem. The major advantages and disadvantages types of three approaches are discussed below.



a) Risk analysis

Risk analysis is used to help address the initial key question of whether or not to regulate. Risk analysis involves: an appraisal of the level of risk associated with the problem; the reduction in risk likely to result from each option; and consideration of whether the proposed measures are the most effective available to deal with the risk. Risk assessment is generally used together with other quantitative approaches.



b) Cost-benefit analysis

The cost benefit analysis approach involves quantifying major costs and benefits in monetary values. This allows the outcomes of a range of options to be readily compared in terms of their net social gains (or losses), thus facilitating evaluation and decision-making. When feasible, cost benefit analysis should generally be used in preference to cost-effectiveness analysis.

A problem with cost-benefit analysis is the difficulties that arise when trying to evaluate costs and benefits when there are no market prices (e.g., what is the market value of saving a human life). Cost-benefit analysis should often be used in conjunction with other considerations, including the distribution of benefits and costs, as impacts that cannot be valued in monetary terms.



c) Cost-effectiveness analysis

Cost-effectiveness analysis differs from cost-benefit analysis in that benefits are expressed, not in money units, but in physical units. It compares the costs of different options with similar outcomes. This approach is useful when it is not possible to estimate the monetary value of major reform benefit.

Cost-effectiveness analysis is particularly useful in areas (such as health, accident safety, environmental protection and education) where it is often easier to specify benefits than it is to value them. For example, it is easier to identify the number of lives that a proposed measure may save than to value those lives.

There are several limitations in using cost-effective analysis. Firstly, it involves focusing on a single type of benefit, and the exclusion of others. Thus, the chosen benefit must be the clearly dominant benefit, and be closely related to the overall policy objective. Secondly, unlike cost-benefit analysis, cost-effectiveness analysis provides no guidance as to whether there are net gains to society from implementing a regulatory proposal.



d) Soft benefit-cost analysis and integrated analysis

This is an integrated analytical framework to assess the various impacts of a regulation or policy proposal. It provides the analysis in which quantitative and qualitative metrics for economic, social, and environmental impacts are combined and presented systematically.

Since RIA provides the framework through which trade-offs are identified and benefits are maximised across a range of policy objectives, these methods provide the most rigorous, transparent, and consistent information for public policy decisions

3) Determining Data and Information Needs

The data and information needs will be determined by the nature of the problem; the approach taken to assess regulatory impacts; the resources available for the assessment; and some of the value information arriving at the right decision. If the initial analysis identifies an option with positive net social benefits clearly greater than other options, there may be little value in spending more resources to provide a marginally, more exact measurer of net benefits.

When attempting to assess impacts on firms, the most cost-effective approach may be to prepare case studies on several representative firms (e.g. a small, medium and large firm) and extrapolate costs and benefits from this analysis. In other cases, it may make sense to undertake a formal survey of a large number of firms. This is a decision that needs to be made by the analysts.

Most major information needs should be clearly identified at this stage. The consultation stage provides the best (and often only) opportunity for substantive primary data and information collection.



STEP 4: Preparing the Full RIA Report

1) Introduction

The main activity at this stage is to prepare a full RIA report. This section outlines the structure of the full RIA report and the key issue that should be addressed in each section of the RIA report. The RIA Template is provided as **Annexure C**.

The sections of the full RIA report are as follows:

SECTION 1: BACKGROUND AND EXECUTIVE SUMMARY

This section provides the background and executive summary of the RIA. This provides the purpose and nature of proposed regulatory change. An executive summary provides a brief, but precise summary of the entire document.

SECTION 2: PROBLEM DEFINITION

This provides the statement of the problem: What is the problem being addressed? How did the problem arise? Identify any groups that are particularly affected by the problem. Include quantitative data and practical examples of the issue where possible. Why is regulatory action being considered?

Review any prior actions. Describe and briefly summarise the existing studies, policies, regulations or arrangements for addressing the problem. Describe existing institutional responsibilities for addressing the problem.

Economic, Social, and/or Environmental Rationale for Intervention: What market failure does the regulation aim to address? Economic rationale for intervention is unlikely without evidence of market failure. What may happen if the problem is not addressed? Is the failure / problem expected to continue at the same rate or get worse?

Objective of regulatory action: The regulatory objective should be stated in relation to the problem, with a time frame for achieving then objective. Regulatory objectives are the goals, outcomes, standards or targets which the regulation aims to attain to address the problem.

The objective for a regulation should be stated as clearly as possible to define the expected outcomes of the regulation.

Statement of the proposed regulation and alternatives: Describe the proposed regulation and other options in sufficient detail to allow comparative assessment and evaluation in the rest of the RIA. One of the options should be to “do nothing”.

SECTION 3: POLICY OPTIONS

This section provides review options for resolving the problem and risk assessment.



a) List a range of options:

- Include a range of options (preferably at least three) in the full RIA
- Include the “doing nothing” option to provide a benchmark for comparing other options. This will help clarify the impact of not acting.
- Consider alternatives to regulation
- Include a more detailed consideration of a range of options in the initial RIA. As a minimum carry forward the “do nothing” option and at least one other option. Where feasible, include an alternative to regulation.
- Explain why options are removed, especially in the case where options are not carried forward from the initial to the full RIA.



b) The risk assessment briefly assesses the risk of each option as follows:

- Briefly note and describe any risks of each option. The risk analysis should include an analysis of possible unintended consequences.
- What are the consequences of risks? Is realisation of policy objectives at risk?
- Note any implementation risk (for each option), drawing where possible on experiences from similar policy initiatives.
- Discuss ways in which risks could be reduced.

SECTION 4: ANALYSIS OF IMPACTS

This section analyses the likely economic, social and environmental impacts – both intended and unintended for each short-listed options, as well as trade-offs and synergies. This is the main analytical section of the full RIA report. It has three main sub-sections:

- Identification of economic, social and environmental impacts
- Qualitative assessment of the more significant impacts
- In depth qualitative and quantitative analysis of the most significant impacts



I) Identify economic, social and environmental impacts of a policy or regulatory proposal. Why they occur and who is affected?

This section entails the identification of impacts that are likely to occur as a consequence of implementing the policy or regulatory proposal. Some of those will be intentional and are indeed the objective. However, it is also necessary to try to identify possible unintended impact and the impact of how different options might interact.

It is important to try and identify who is affected by the impacts and when. The analysis should describe the key groups in society affected by the proposed changes. Informal consultations at the early stage of the RIA process can help identify those groups likely to be affected (positively and negatively). As part of this process it is important to think of the impact of proposed changes on:

- Business - Consider the impact on different firm sizes, rural and urban firms, and on specific industries as appropriate;
- Consumers and the broader community;
- Non-government organisations, business and community associations;
- Different social and ethnic groups - including ethnicity, gender, age, health and income. (The proposals may also have different effects on disabled people, those living in different regions or in rural communities); and
- Government departments, the budget, and public bodies responsible for implementing and enforcing changes.



II) Identifying the more important impacts

The impacts assessments in this section of the RIA are generally qualitative and include:

- Identify the areas in which the proposed action is intended to produce benefits, as well as the areas where this may lead to direct costs or unintended impacts.
- Assign likelihoods (e.g. low, medium or high probability) that the impact will occur (or conversely the risk that the impact will not occur). This can be done by setting out the assumptions about factors that may influence the probability that impact will occur but which is outside the control of those managing the intervention.
- Assess and estimate the magnitude of each impact (providing reasonable ranges). This can be done by considering the influence of the intervention on the behaviour of the affected parties and in relation to the socio-economic and environmental context in which the intervention takes place.

When identifying impacts, the following should be kept in mind:

- Consider both short-term and long-term impacts. It is often easier to identify short-term effects, but this does not mean that they are more important.
- Do not overlook impacts that cannot readily be expressed in quantitative or monetary terms.
- Remember that different factors which influence impacts also interact with one another.
- Take account of how the impacts of the proposal may be affected by the implementation of other proposals.



III) In-depth analysis of the most significant impacts

Building on the structured, qualitative analysis (provided in (ii) above), further in-depth analysis should be undertaken to produce a quantitative/monetary estimate of expected benefits and cost. This can take a number of forms:

- In-depth analysis of expected impacts over time which typically requires a case study/scenario approach. This type of analysis can be used in conjunction with a quantitative impact analysis.
- Quantitative estimation of impacts: the impacts are estimated using quantitative techniques, varying from statistical inference on the basis of similar impacts to full-fledged quantitative modelling. Essentially, the aim is to understand the extent of the impacts of the policy options and to estimate the costs and benefits in monetary form when this is feasible. If quantification or monetary value is not feasible, explain why.

SECTION 5: COMPARING OPTIONS

Use the following criteria for the comparison of options, and explain how they have been applied:

- Indicate how positive/negative impacts have been weighed for each short-listed option. If possible, rank the options in terms of the various evaluation criteria, e.g. in terms of effectiveness of the option in relation to the objective; efficiency of the option in achieving the objectives; and coherence of the option with overarching government objectives, strategies and priorities.
- Compare the options in terms of the baseline scenario. If possible and appropriate, set out a preferred option.
- Present a summary overview of all positive and negative economic, social and environmental impacts that have been analysed in detail.

SECTION 6: IMPLEMENTATION

Outline the key steps needed to implement the policy, and provide details of responsibilities for implementation:

- Describe responsibilities for implementation, review and decision making. Specify indicators for successful implementation
- Set target dates for key decision points and milestones.
- Describe the key stakeholders involved in implementation.
- Provide a communication strategy aimed at informing those affected by the policy change (including those responsible for implementation).

SECTION 7: MONITORING AND EVALUATION

An effective monitoring and reporting system needs to be outlined that includes:

- Proposed mechanisms for monitoring implementation to measure compliance and progress in meeting policy objectives.
- Ensure that monitoring indicators are specific, measurable, achievable, relevant and time-bound. (SMART)
- Include feedback mechanisms to identify any complaints about implementation.
- Specify responsibilities for, and frequency of, monitoring and reporting.

This section also includes the description of the consultation process; enforcement and sanctions as follows:

a) Description of the Consultation Process

Describe the consultation process. Formal and/or informal consultation provides valuable information about policy proposals, including alternative options, potential costs and benefits and possible risks. Providing a clear description of strong consultation processes can help build confidence in the findings presented in the RIA report.

b) Enforcement and Sanctions

Enforcement measures should be proportionate to the seriousness of the issue being addressed and the probability of non-compliance. Preference should be given to non-criminal sanctions. The RIA report should discuss key enforcement issues, including:

- The expected costs and impacts of different enforcement options.
- A summary of consultations with enforcement bodies and other stakeholders on enforcement issues.
- Describe implementation and any coordination arrangements aimed at facilitating enforcement.
- A review of options for sanctions to facilitate enforcement.
- Identify fair, speedy, independent and inexpensive appeals processes for resolving disputes.

It is important to remember that if sanctions are needed for non-compliance, the choice should be to follow a fair and effective approach, which is proportionate to the non-compliance. Consideration should be given first to administrative methods of preventative control. Examples include licensing, registration and enforcement approaches, including improvement notices, suspension notices and prohibition notices. In so doing however, it is important to bear in mind the cost of administrative methods and the aim to minimise any bureaucracy that may arise from the sanction.

SECTION 8: SUMMARY AND RECOMMENDATIONS

Provide a brief summary in the final RIA of the evidence and analysis presented in the RIA; and state clearly the recommended option, and explain why, based on the evidence and analysis in the RIA. Briefly note why other options were not chosen.



STEP 5: RIA Approval

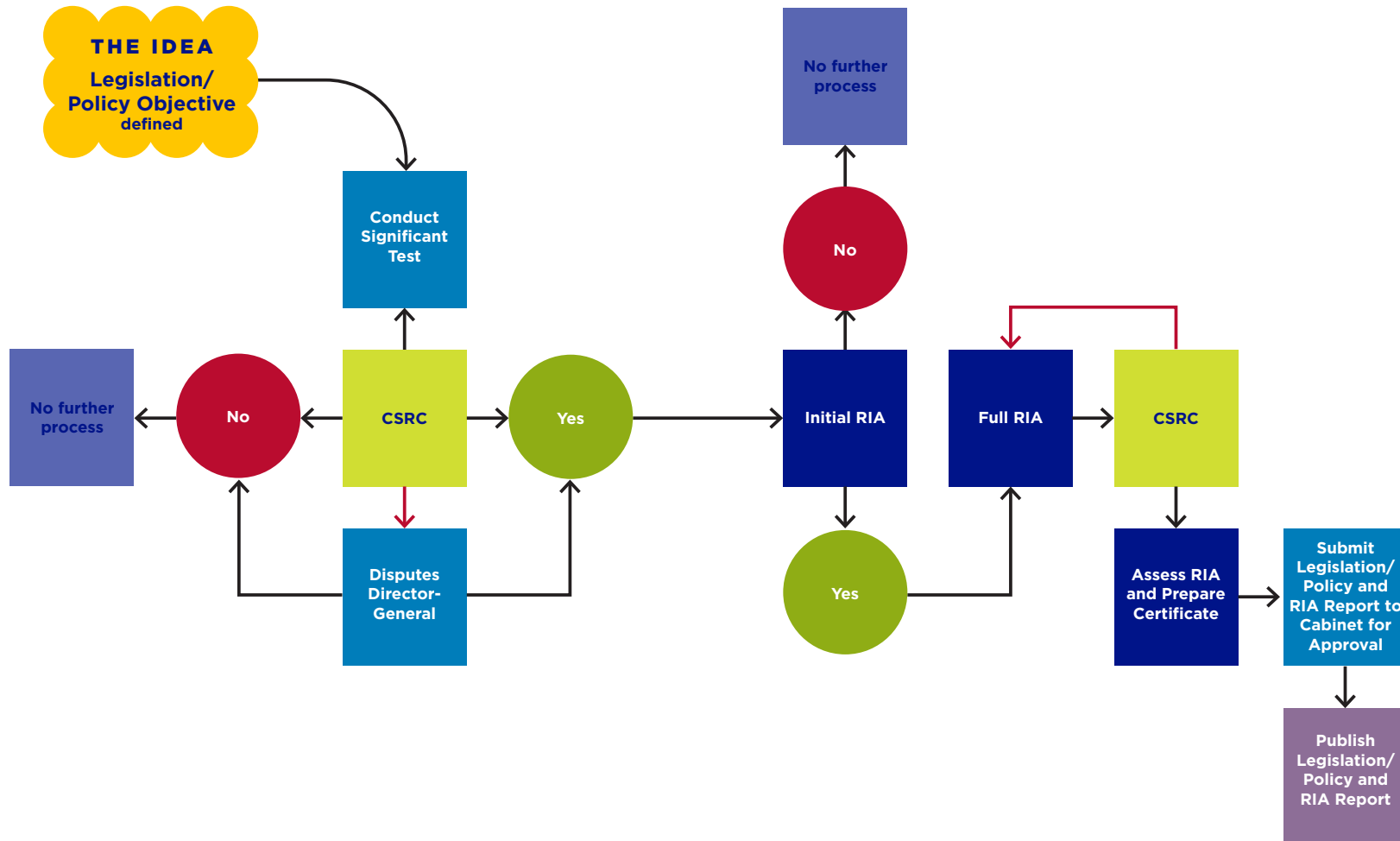
The credibility of the RIA process will be enhanced if the relevant Head of Department and Minister (or head of other relevant government agency) that prepares a RIA, signs-off on the RIA report and takes responsibility for its contents. Once official approval is taken, the RIA report should be made publicly available, preferably on the relevant Department's website, after completion of the study.



STEP 6: RIA Certificate

Once the RIA is completed the CRSC will prepare a RIA Certificate on its assessments and findings of the RIA content and process. The Certificate will be presented to the Department concerned for comment and response, before the final Certificate is submitted to Cabinet, together with the final RIA report.

In summary, the RIA process is schematically represented in the diagram below:



ANNEXURE A:

Significance Test

The Chairperson

Central RIA Steering Committee (CRSC)
Department of the Premier

DEPARTMENT:.....

NAME OF PROJECT MANAGER:.....

EMAIL ADDRESS:.....

CONTACT NUMBER:

TITLE OF PROJECT:.....

1. EXECUTIVE SUMMARY

(This section should be filled after Section 2, 3 and the Significance Test /questionnaire is completed)

- This section should outline a concise description of the background to the problem, how it has come about and what the objectives are to be achieved. The section should also be clear about describing/identifying the problem and should motivate the proposed recommendation(s) to solving the problem, highlight the key elements identified in the Significance Test. This section should further highlight how the objective and problem relates to the Provincial Strategic Goals.

2. PROBLEM DEFINITION

What is the purpose and nature of the proposed policy/regulatory change?

- Outline what the issues and problem/s are that may require action. (Please note this is about identifying the problem and not the proposed solution.)
- Give a brief description of the identified underlying drivers to the problem. (Present the evidence that suggests there is a need for intervention, use reputable sources, Government or non-Government.)
- Provide details as to who is affected by this problem, in what ways are they affected and to what extent are they affected. (An overview of the population dynamics to the problem, quantifiable numbers to how many citizens or affected groups are affected by the problem.) Should outline the size and scope of the problem.

What is the objective of the proposed policy or regulatory intervention?

- State clearly what the proposal (policy or regulatory) intends to do. What are the general objectives and what are the intended outcomes to achieve the proposed objective?
- Outline how the objective of the proposed action fits with the Provincial Strategic Goals or other Provincial objectives e.g. "Game Changers".

3. RISK ASSESSMENT TO DETERMINE SIGNIFICANCE

SIGNIFICANCE QUESTION	RISK ASSUMPTION High (H) Medium (M) Low (L)	REASON FOR RATING
1) Will the proposed intervention impose a cost to Government?		
2) Will the proposed intervention impose compliance costs and further regulatory burdens on business or citizens?		
3) What is the risk of the proposed intervention on investment and business establishment or business expansion?		
4) What is the risk to job creation, destruction or livelihoods?		
5) What is the risk of the intervention resulting in negative changes to behaviour?		
6) What is the risk to social entrepreneurship (e.g. NPOs, NGOs)?		

7) Will the intervention pose a risk to vulnerable groups?		
8) What is the likelihood of the intervention having a disproportional impact on a particular sector or group?		
9) What is the likelihood the intervention will have negative effects on the environment?		

4. SUMMARY AND RECOMMENDATION

Provide a brief summary and recommendation

- Outline a short description of the evidence gathered thus far to present a case for the proposed intervention (Policy/Regulatory) and present the preferred choice or choices of action for CRSC review in order to determine the significance (as below)

RESPONSIBLE MANAGER

Date:

I have read the Significance Test Report

- I am satisfied
- not satisfied with the quality of the report

- I support
- do not support the recommendations in paragraph 4.

Comment:

.....

HEAD OF DEPARTMENT
Department:
Date:

The recommendation in paragraph 4 of the Significance Test Report is

- supported
- not supported.

Comment:

.....

PROVINCIAL MINISTER
Department:
Date:

- The CRSC agrees with
- does not agree with the recommendations in paragraph 4 of the Significance Test Report.

.....

CHAIRPERSON
Central RIA Steering Committee
Date:



ANNEXURE B:

Summary of RIA Analytical Areas

Formulation of problem: The first step in performing a RIA is to clearly formulate the problem that the proposal is intended to address, quantifying the scale of the problem where possible. It is essential to give a brief description of the nature of the problem and communicate whether the problem is a once-off or recurrent problem. This should be accompanied by evidence of the claims such as analysis of the current experiences etc.

Statement of policy objective: The next step is to state the policy objective that the regulatory proposal seeks to promote.

Statement on existing regulation: It is crucial to mention the existing regulatory measures that have been implemented to resolve the problem if there are any. If the proposed regulation is a second attempt, the department should also include the probable causes of the re-emergence of the problem in spite of the existing legislation.

Delineation: The stakeholders should be identified through defined mechanism(s) in line with the RIA Guidelines.

Consultation: Consultation is a central component of RIA and must be conducted at each stage. Systematic stakeholder consultation procedures with affected interest groups – ranging from informal discussion to formal procedures – are needed to ensure the widest possible input into regulatory decision-making. Interest groups should be consulted widely and in a timely fashion. It is also important to make active and innovative attempts to look beyond organised interests to find ways to elicit the views of marginalised groups.

Identification of options: It should not be presumed, particularly in the initial RIA stages, that regulation or a specific regulatory solution is the only option to address the problem. A wide range of options should be identified early on, including alternatives to regulation as well as the 'do nothing' option.

Risk assessment: In the process of adopting a regulation, a risk assessment must be conducted on the identified problem to establish what could be the case if nothing and/or different approach is adopted to correct the problem. However, this shall not be limited to the risk(s) presented by the identified problem, but also the possible risk(s) that that the proposed solution can have on the system.

Evaluation of options: Each option identified should be evaluated against a set of criteria. The proportionality principle should apply and the RIA should only address issues and questions that are relevant and feasible within the resource and data constraints, and that are appropriate to the stage of the RIA.

Measuring impact: Impact on various aspects, such as economic growth, business, competition, poverty, employment, income, health and environment should be considered.

Measuring costs: The anticipated costs of the proposed regulation should be reflected as direct (resulting from compliance endeavours associated with the defined policy/legislation) and indirect costs (resulting from compliance endeavours through third parties). It should be noted that 'costs' is not only limited to the Rand Value, but anything that might be a burden to implementation i.e. from decline in the economic growth to deterioration of social equality.

Recommendation: The recommendation section is to be completed only once all the options have been analysed and evaluated against one another and the last version of the RIA is sent to Cabinet.

Summary of evaluation of options: The evaluation of the proposed options should be made using a broad cost-benefit assessment. In those cases where financial and economic costs and benefits can be stated in monetary terms, with a relatively high degree of certainty, then these can be compared using traditional cost-benefit approaches. In many cases, costs and benefits will have been analysed and expressed in other units (such as impacts on health indicators) or simply in qualitative terms. In these cases there are multi-criteria decision-making approaches available that assist in formalising decision-making using a range of criteria.

Implementation plan: At the final RIA stage, an implementation plan should be presented that outlines how the new measure will be implemented, taking into account the lessons learned during the RIA process.

Compliance Costs: The RIA report should contain the compliance costs, regularity enforcement mode and the breakdown of the costs directly and indirectly connected to the adoption of the stipulated course of policy/ legislation.

Communication strategy: A strategy for communicating the new regulation or other measure must be provided. The communication strategy should make provision for interactive engagement between the national departments, provincial governments and external stakeholders.

Monitoring and evaluation: A monitoring and evaluation plan is required at the final RIA stage, once a preferred option has been chosen.

ANNEXURE C:

Regulatory Impact Assessment Report Format and Template

The following provides a standard format that should be followed when preparing any stage of RIA. However, the level of detail increases for the full RIAs.

- To ensure consistency across government, the following format should be used for the RIA report. Reference should be made in the various sections to the underlying material on which the conclusions have been drawn (e.g. external studies, reports, statistical data, expert advice, stakeholder input, etc.) Whenever possible, direct internet links should be provided.
- The RIA report should be written in non-technical language and should not exceed 30 pages (excluding the executive summary, tables, diagrams and annexure). If the report covers several initiatives, you may need to go beyond 30 pages. This should be discussed at an early stage with the relevant officials/RIA unit. Supporting documents, such as results of studies, expert reports or summaries of stakeholder views, should be presented in annexure.
- The report must be a self-standing document which presents the analysis and all the relevant results of the RIA work, including summaries of information that are presented in annexure.
- The report should be written in a clear and simple language. A non-specialist reader should be able to follow the reasoning and understand the impacts of each of the options. To enhance the clarity and readability of the report, tables and diagrams should be used to summarise key points.
- An executive summary of no longer than 10 pages should be provided.
- Should have a standard front page, with the title of the Report, Year, and Department Responsible. This should be followed by a Table of Contents.

RIA REPORT TEMPLATE

TITLE OF PROPOSAL

Title in full

SECTION 1: BACKGROUND AND EXECUTIVE SUMMARY

Executive summary of the RIA should be a detailed summary of the whole RIA report.

SECTION 2: PROBLEM DEFINITION

Purpose and nature of the proposed policy/regulatory change

- What are the issues or problems that may require action?
- What are the underlying drivers of the problem?
- Who is affected, in what ways, and to what extent? The objective
- State clearly what the proposal or proposed regulation intends to do. What are the general policy objectives?
- What are the more specific operational objectives?

SECTION 3: POLICY OPTIONS

Option 1: Do nothing

Option 2:

Option 3: ...

What are the possible options from meeting the objective and tackling the problem?

NB: The 'no-action/do nothing option' should always be considered and it is highly recommended to include a non-regulatory option. Highlight potential risks associated with the options, describing the likelihood of them occurring and their effect if they were to occur.

RISK ASSESSMENT

What risk is the regulation addressing? Can it be quantified, e.g. how many people are affected, and how?

SECTION 4: ANALYSIS OF IMPACTS

What are the likely economic, social and environmental impacts of each of the short-listed options? Specify which impacts are likely to change overtime and how. If relevant specify which social groups, economic sectors or particular regions are affected.

BENEFITS

Option 1:

Option 2:

Option 3: ...

Highlight the likely benefits of the options evaluated. Focus on issues most closely related to government objectives.

COSTS

Implementation costs

Option 1:

Option 2:

Option 3: ...

The direct costs to government

COMPLIANCE COSTS

The costs of compliance by those affected.

Indirect costs that may occur due to the new measure.

SUMMARY OF COSTS AND BENEFIT

Present a summary of costs and benefits to facilitate easy comparisons of costs and benefits of all feasible options.

SECTION 5: COMPARING OF OPTIONS

Indicate how positive/negative impacts have been weighed for each short-listed option. If possible, rank the options in terms of the various evaluation criteria.

If possible and appropriate, set out a preferred option.

How will the proposal be enforced?

SECTION 6: IMPLEMENTATION

Outline the key steps needed to implement the policy, and provide details of responsibilities for implementation.

ENFORCEMENT AND SANCTIONS

Enforcement measures should be proportionate to the seriousness of the issue being addressed and the probability of non-compliance. Preference should be given to non-criminal sanctions

SECTION 7: MONITORING AND EVALUATION

How is the effectiveness of the legislation going to be measured and when?

What is the broad outline of possible monitoring and evaluation arrangements?

CONSULTATION

- **Within government**
 - List those departments and agencies consulted
 - Key issues that arose during the consultation
- **Public consultation**
 - Describe consultation process and list stakeholders
 - Key issues that arose during the consultation

SECTION 8: RECOMMENDATIONS

Provide an explanation of the recommended options.

Briefly note why other options were not chosen.

DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

Date

Name, title, department

CONTACT

Western Cape Government

Department of the Premier

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