SELECT COMMITTEE ON PERSONAL CHOICE AND COMMUNITY SAFETY

INQUIRY ON PERSONAL CHOICE AND COMMUNITY SAFETY

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 20 AUGUST 2019

Members

Hon Aaron Stonehouse (Chairman)
Hon Dr Sally Talbot (Deputy Chair)
Hon Dr Steve Thomas
Hon Pierre Yang
Hon Rick Mazza

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Hearing commenced at 9.49 am

Mr ALISTAIR JONES
Executive Director, Economic, Department of Treasury, sworn and examined:

Mr ANDREW DOLLING
Director, Economic Policy, Department of Treasury, sworn and examined:

The CHAIRMAN: On behalf of the committee, I would like to welcome you to the hearing. I require you to take either the oath or affirmation.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The WITNESSES: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, please be aware of the microphones, try to speak into them and ensure that you do not cover them with papers or make noise near them, and please try to speak in turn.

I remind you that your transcript will be made public. If for some reason you wish to make a confidential statement during today's proceedings, such as discussing something that may be subject to cabinet-in-confidence, you should request that the evidence be taken in private session. If the committee grants your request, any public or media in attendance will be excluded from the hearing. Until such time as the transcript of your public evidence is finalised it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement to the committee?

Mr JONES: Yes, I would, Chair. I would like to just outline basically Andrew and my involvement with the regulatory impact assessment process. I was assistant director of regulatory reform from the end of 2008 until early 2010. I was actually involved in the setting up of the regulatory impact assessment process. I was then the director of economic reform from 2010 until June 2012, when I moved into an executive director role at Treasury in the budgeting area. Andrew took over as the next formal permanent director of economic reform, and the unit moved to the Department of Finance for a period of time, and then it came back to Treasury in 2017 under the machinery-of-government changes. I was originally involved in the setting up of the process and its early years, and Andrew has overseen it for—how long now?

Mr DOLLING: Approximately five years.

Mr JONES: We have been there since the beginning of it, so hopefully we will be able to give you some information on how it operates. In terms of an opening statement, the regulatory impact assessment program commenced on 1 December 2009. Basically, it is designed to improve the quality of regulation by ensuring that decision-makers are fully informed when making regulatory instruments. The program seeks to ensure that rigorous analysis of regulatory proposals is

undertaken and the use of effective and appropriate consultation and transparency in the regulation-making process.

The RIA process applies to proposals that may result in new or amending regulation, all forms of primary legislation, subordinate legislation that goes to cabinet or Executive Council and quasi-regulations that go to cabinet. There are some minor or standard amendments that are exempted from the RIA process, such as regulatory proposals that are machinery of government or administrative in nature, relate to the management of the public sector or relate to policy powers or the administration of justice, such as rules of court. In addition, a Treasurer's exemption can be sought by ministers in cases of election commitments or when an emergency response is required.

The RIA involves three steps. The first is to check whether the proposal is subject to an exclusion. If the proposal is not subject to an exclusion, a preliminary impact assessment is required to determine the significance of the proposal. If the proposal has a significant negative impact on business, consumers or the economy, then the proposal is required to go through the regulatory impact statement process, which consists of more intensive public consultation through a consultation RIS and then a decision RIS. The Treasurer has the power to provide an exemption from RIA in exceptional circumstances. If a Treasurer's exemption is granted, the agency is required to complete a post-implementation review within two years of implementation. Between 2010 and 2015 some refinements were made to the process, including the introduction of exclusions and the simplification of the assessment tools such as the PIA template.

In 2017 a comprehensive review of the RIA program commenced. A number of proposals were developed that focused on improving the scope of RIA, improving transparency of decision-making and providing better support to agencies. The Better Regulation Unit has published guidance materials around key concepts of RIA, including determining significance and assessing risk. Guidance is also supported by training in order to ensure that policy staff not only understand what is expected of them, but also can articulate this to senior executives within their organisations.

Since its introduction, the culture of regulation-making in Western Australia has improved significantly, with agencies demonstrating an increasing genuine effort to apply the rigours of best practice regulatory principles to the development of regulatory proposals. The program continues to focus on encouraging and supporting better regulatory outcomes, focusing not just on the design of good regulation, but also recognising the importance of ongoing management and evaluation, which is extremely important. Treasury is currently reviewing the program, with a view to streamlining some elements and focusing more strongly on regulatory outcomes and the provision of early advice to agencies.

The CHAIRMAN: Thank you very much. The committee has prepared a few questions around the RIA process; I will just run through those and we will see where we go from there. Can you give the committee an overview of the genesis of the RIA process and the Better Regulation Unit?

Mr JONES: Certainly. Back in 2007–2008 we were seeing a lot of regulations going through the cabinet process that had no regard to the impact on business or even the community. We had looked around the world—the UK was probably a prime example of where they had successfully introduced a RIA process. Other Australian jurisdictions around that time also introduced a RIA process. So there was a government decision under the Carpenter and Gallop Labor governments to bring in a RIA a process under Treasurer Ripper. That work took about 18 months to set up and get the process up and running. Then that came live, as I said earlier in my statement, in early 2010.

Hon Dr SALLY TALBOT: Mr Jones, you said that often those regulations had an adverse impact on the community and the businesses affected. What were the parameters that were being observed, what were the benefits, and who did the benefits accrue to?

Mr JONES: The issue that we had before is that there was no analysis being done on the benefits. What you found was departments were essentially either reviewing their own act, and what we found in most cases was they were recommending the status quo or they were bringing in new layers of regulation. Treasury, in particular, were finding that in the larger regulatory agencies they were incentivised to actually increase regulation because it translated into extra FTE and extra funding. We had a bit of a circle where regulators were incentivised to come up with new areas of regulation, because then they employed people to administer that regulation and in a lot of cases set up compliance units. RIA was to put some discipline into it. What we found before RIA was it was basically too late, often government or a minister had made a decision and they would go to cabinet with a complete proposal, and Treasury and others would be then questioning why they were doing it and what the impact would be on business. What we found in a lot of cases is that there had been no analysis of that at all; they had literally taken a very legalistic and regulatory-focused view of the regulation rather than actually looking at the impact on whether it added compliance costs to business or whether it required consumers to do something that they were not doing before. Really, what we brought the process in for was to put in some transparency and rigour, so when they were going to cabinet, cabinet has its eyes wide open in terms of what the impacts were.

The CHAIRMAN: You mentioned that it is due for another review. When is that review scheduled to conclude?

[10.00 am]

Mr JONES: Internally we are in the process of finalising that review. We are actually consulting with regulatory champions within government. What we have found is the current RIA process was set up in an environment where there had been no oversight of regulatory proposals. It is now 10 years down the track and we can actually see clear improvements in regulatory behaviour. What we have found with the RIA process for the issues that are of low value and low significance, we have a PIA process. We have found that that is now becoming a burdensome process and it is not actually delivering value. So we looking at means of focusing our efforts on more substantial regulatory issues now, knowing that most of the major departments have got a good regulatory culture, they do know what is significant and they do know what the process is in terms of RISs and decision RISs.

The other thing that we are looking at doing, too, is then focusing our efforts into getting Treasury's better regulation unit involved at the early stage of policymaking and decision-making. It would be fair to say that when RIA started, probably 95 per cent of all proposals that went to government had no oversight of the regulatory impacts until it actually went to cabinet. What we have seen over the years is that that has improved significantly. Now it is under half. We are engaged by departments earlier on, which assists them in designing better regulation. What we want to do now that the RIA process is mature and that government agencies are mature in their regulation-making is to focus it to get more value. We will be changing the way that our team operates. Rather than being more of a gatekeeper, we will actually be an adviser there. One of the things we are looking at doing is getting agencies to take responsibility for signing off that their proposals have met regulatory best practice to give them ownership of them. At the moment, they tend to hide behind the fact that we have actually assessed the process. That is the direction that we are looking at going in.

The CHAIRMAN: You gave us a bit of an overall view of the basic steps involved—the consultation RIS, decision RIS. Can you break down what goes into a PIA, a consultation RIS and a decision RIS?

Mr DOLLING: If we take our preliminary impact assessment as the first part of that stage, the sorts of things we are interested in there is particularly a good articulation of what the problem is: what is it that government is trying to resolve, assist with? We are trying to get as much as we can in

terms of understanding that—the nature of it and the magnitude. We also want to link to that to understand clearly what government's objective is in relation to that problem—what it sees its level of ambition is and what it wants to do. Then, we would like to see some—we encourage agencies to be thinking early around the options. As Alistair mentioned earlier, sometimes decisions were in the past made very quickly based on a single track—one option and they were just going to implement it. One of the things that we want to do is think harder about the implications of stuff. The first thing you want to do is work out what options you have because different options will have different implications. So we are looking for that.

We then will certainly move into a preliminary cost–benefit—advantage and disadvantage. Often that is not quantified at the earlier stages, where that is available. Of course, it is encouraged. Then we try to work out what those pros and cons are, whether they are social impacts, economic impacts, environmental impacts. We ask some basic questions about whether there is any red-tape reduction as part of this. We ask some questions on, in other words, some process improvements that are associated. That is a trigger to encourage some improvements of that type. We also have questions about how might this be implemented et cetera.

From that, we then try to assist agencies to work out whether the impacts are significant. If they are significant and those impacts are significant on the economy or consumers, then the second stage kicks in and a consultation RIS is then required. That consultation RIS essentially goes through the similar sorts of steps of problem, objective, alternatives, cost–benefits, but it has a few extra bits in it around consultation. Indeed, of course, in the case of the consultation RIS, the focus is on consultation. The additional part there is that the document is for external purposes. It would have questions to elicit information: Would you be benefited by this regulation? What costs might you see would it impose on your business? We would need that. Obviously, there would be the appropriate level of background material that would be in that type of document rather than if it were an internal preliminary impact assessment, which is not a public document.

Once that is done, an agency would receive submissions, comments and would maybe hold workshops, meetings et cetera. Various forms of consultation can be undertaken. A decision RIS is then made when all of that comes together, the analysis is conducted and preferred options are then made and a decision RIS is prepared, which really just combines the evidence of the consultation. Again, similarly it still outlines the objectives, the alternatives that the agency has considered, why they are preferring this preferred option and what the implementation issues are et cetera. That then goes to the decision-maker, being ministers and then cabinet, often. If it is a positive decision, then that decision RIS would then be made public.

The CHAIRMAN: Is there an obligation on agencies to make their decision RIS public or is that merely encouraged?

Mr JONES: It is encouraged. The majority of them are made public relatively quickly. It is regulatory best practice to get them out there as soon as possible. Sometimes if the issues are contentious, government may decide that it either does not or delays the release of a decision RIS, but that is usually the call of the minister in the portfolio.

The CHAIRMAN: I ask because I have had a hard time finding decision RISs published online through agencies websites. Would it be Treasury's view that it is best practice to make them publicly available, though?

Mr JONES: Yes, that is in our guidance material. We provide links to decision RISs on our website. Again, I cannot really comment on each agency and how easy it is to find.

Mr DOLLING: Correct. We definitely encourage it. We then include it on the Treasury website. But I am sure there will be ones that are not there that probably should be there. Can I just say that is sometimes the case for the minister to choose that or sometimes they are delayed. There is quite often a delay. No doubt, there could be improvements to the way website search functions work as well. They can be tricky, too.

The CHAIRMAN: How long does that process last, from start to finish, typically, from the preliminary stage right up until the decision RIS?

Mr DOLLING: It varies enormously. It varies depending on the size and scale of the issue. Obviously, if it is for a larger issue, then it is going to require all those, dare I say, steps. How contentious it is—because therefore greater consultation may be needed; two or three rounds of consultation may be needed. Sometimes the regulatory changes are not just to one or two key pieces of regulation or regulations, but rather a whole act, and therefore you need to break down the consultation. A preliminary assessment could be done in a matter of a couple of months if the issue were small and the agency was ready and willing and resourced to do that. It can take a lot longer, again, depending on whether it is a more complex issue, the information is more difficult to get, because sometimes there is data difficulties. Some proposals actually require primary research and additional cost–benefit analysis or even modelling. If that is the case, then, obviously, it will take even longer. You could have a PIA which is two or three months, a CRIS which is three or four months and a RIS which is another 12 months—terrific. But you could easily see that being twice that long sometimes. Obviously, you understand some legislative proposals do indeed take several years to go from the beginning of an idea to the final drafting of legislation. What we try to do is to encourage it to be as rapid as it needs to be, but, ultimately, that pathway is determined by agencies and ministers in terms of time frames.

The CHAIRMAN: You mentioned that some proposals may be exempted through the Treasurer or through election commitments—things of that nature—or emergencies. How often is a Treasurer's exemption granted?

Mr JONES: Pretty rarely.

Mr DOLLING: Fairly rarely. We would normally get one or two a year, sort of numbers. There are the odd ones, but not a lot. Sometimes an agency might come to us saying, "We think we might get a Treasurer's exemption." Then we provide advice around it and we say, "Actually, you know what, you can still meet your time lines and therefore we can still work with you around doing the regulatory impact assessment"—often a preliminary one—"such that there is not a need for a Treasurer's exemption."

The CHAIRMAN: In what circumstances might the Treasurer grant an exemption?

Mr DOLLING: One is if it is seen as an emergency, such that the regulation is really needed in the public interest. The other ones are around election commitments where a mandate has already been established.

[10.10 am]

The CHAIRMAN: So it is not that it may be an emergency, election commitment or Treasurer's exemption; it is a Treasurer's exemption based on those.

Mr DOLLING: Based on those, to clarify. That is correct. I should also say, and I think this is important, that there is a post-implementation review required as part of that. If the Treasurer does accept the exemption and says yes, there is then a requirement after two to three years to undertake a post-implementation review. The objective of that, obviously, is to check to see whether that emergency

response is working and is operating, and to consult with agencies so that if it was not quite the right response, adaptive management can come in and we can adjust.

The CHAIRMAN: What are the guidelines around that post-implementation review?

Mr DOLLING: Basically, they are the same as a CRIS, so they fall back into the normal parts of the RIA program. We would be looking for information around problem objectives and that. Obviously, we would be looking at how things have been performed so we would be asking questions about has there been any change in the outcomes or the indicators of performance that the agency would have in mind.

Hon Dr SALLY TALBOT: That collection of data about outcomes is quite a contested area, I think, in public policy. Do you teach agencies how to do it?

Mr JONES: Yes.

Hon Dr SALLY TALBOT: I know you could probably speak for three days about it, but can you just give us the five-minute version?

Mr JONES: We offer a wide range of training. As I said before, probably the fact that we have been doing it for 10 years—the key people in agencies do not tend to change. I have spent the last seven years in charge of our budgeting area and I came back and, to be honest, the people who were there when I worked in the space previously are still there, so you have quite a lot of expertise in the sector. I have got some stats. For 2017–18, essentially we did agency training, but the area that they asked us to look at was impact analysis. That is usually the biggest one. You often have a lot of policy areas where people do not have that cost–benefit analysis skill and we often run training on that. Policy development steps is another training request that we do. We deliver tailored training to agencies and also how to consult, which, again, we used to do a lot of in the early years of the process. One that we do get a fair bit of is implementation and evaluation. Treasury actually has a program evaluation area. Andrew's area works closely with them. Basically, now, any proposal that goes to government that is significant usually has an evaluation requirement. That is across different types of policy.

Another one that we have been doing a lot of work on recently, and you have probably seen them released, is mapping of regulatory processes. Under the previous government, that regulatory-mapping exercise was an area of focus. That was one where we went and trained people in the sector. The other one, which is probably one of the most important ones, is in problem definition—whether we actually need regulation in an area and what the problem is—because often you find in regulatory agencies the default position is to regulate. Now, you do not need to regulate in every situation. If you are going to regulate, it needs to actually have a reason for it and it needs to be based on risk rather than regulation for regulation's sake.

We have a network of regulatory champions. They are people within agencies who meet probably once every couple of months. That is a learning forum, which has been going now for a decade. I think in 2017–18 we delivered three specific training sessions to agencies, whereas now it is basically on request rather than us running regular programs through the year.

Hon Dr SALLY TALBOT: How can you do your own evaluation of the kinds of processes that departments are running? You presume you do not have the resources to do your own research. What are your parameters for gauging how well people are engaging with, for example, assessing the evidence, looking at results again so you have evidence-based practice?

Mr JONES: Some of the members of this team were there from the inception, so they are actually quite experienced. What we have been trying to do a lot more of is the early engagement with agencies. We started taking stats in 2017–18 for that. To be honest, when you have your initial

meeting with the agency, you can tell pretty quickly whether they have actually put any thought into the process and whether they have actually done —

Hon Dr SALLY TALBOT: Is there a Treasury term for "bullshit detector"?

Mr JONES: I would not use those words in a parliamentary committee, member, but you are on the right path there. The quality of the PIA—that is your first test. You look at it and you can tell pretty quickly whether they are just doing it to tick a box or not. To be honest, the more involved CRISs and stuff, there is a capability in the agency that has grown over time. The first few years we had the program running, the quality of them was really poor, and we spent a lot of time working with the agencies to bring them up to a good standard.

The last three or four that I have had a look at, the agencies are getting pretty good at doing them so they are useful tools. We certainly assist in that process and sometimes to the shivering of the agencies. I mean, we will review their draft CRISs and DRISs and provide detailed comments and interactions with them, which in some cases does not make us particularly popular but in the interests of good regulatory practice, we certainly push that quite hard.

Mr DOLLING: Perhaps the extra point I might add too is that we always try to encourage in the context of best regulatory/legislative practice that legislation is reviewed or regulations are reviewed every, say, five years—it can be on a slightly different time frame, of course—and the objective there is that we come back and work out whether the regulation has been performing. We also have as part of the RIS process a consultation and section around implementation and evaluation. The objective of that is, of course, to start to identify what your key performance indicators might be or what you are looking for, which is, I guess, a performance measure linked to your objective. That is certainly something that has been hard to improve. Over time that has been improving and definitely we have seen some improvements in that, but it has been hard for some agencies to undertake that work and obviously identifying outcomes and actually measuring them, dare I say on the street, is difficult—it is not easy—so I think we are on that journey. But it is has definitely improved. Reviews are happening more frequently, which is encouraging. Linked to the point Alistair made before about our refreshment and change to our regulatory impact assessment program, where we are particularly going there is focusing more on the regulatory outcomes and working with and providing advice around that so that we can leave that sort of early bit about the steps and the process and provide a bit more advice around the more complex aspects, which certainly include that idea of evaluation and regulatory outcome measurement and understanding.

The CHAIRMAN: Just to summarise one thing you mentioned there, so part of the BRU's role is ensuring agencies have outcomes measured against a clear policy objective—that the outcome measurements are consistent at least with the original stated policy objective.

Mr DOLLING: Yes, that is what we are trying to achieve.

The CHAIRMAN: How do you ensure compliance with your guidelines? How do you deal with agencies that skirt or avoid their obligations?

Mr JONES: What we find, and over the years we have come under pressure, but the cabinet guidelines are that they basically have to have a sign-off—either an exclusion or a PIA sign-off. We provide in the cabinet submissions a regulatory summary with Treasury's views on whether they have achieved that or not so cabinet gets to make its decision with its eyes open. If you have not done the work, you do not even get a guernsey at cabinet, and that has been pretty strictly enforced. Over a number of different types of governments, there have been occasions when ministers have tried to push stuff but usually the cabinet services people, if it has not got the RGU number and the

sign-off letter or it does not have the correct section in the cabinet submission, they reject the cabinet submission so it is not considered by cabinet.

The CHAIRMAN: The decision RIAs are encouraged to be made public; it seems they are not always released or they may be delayed in some cases. The preliminary impact assessments and the steps taken at that stage are all, I presume, kept private before they are sent to cabinet. What would your view be about bringing greater transparency to that process and having some of those, perhaps like the PIA, made publicly available, published on an agency's website, for instance?

Mr JONES: I think that is a policy decision for government. To be honest, if you look at the PIA form, I do not think it is going to show anything too secret or stuff that people should not see. We are looking at actually removing it basically because what we are finding it is just catching low-level stuff that, really, we should not even be running through the process, but we had to put it there 10 years ago as a discipline otherwise everybody was claiming that their regulatory proposals were not significant and were trying to go straight to cabinet. I will give you some stats from 2017–18; we have not finalised our 2018–19. There were 65 preliminary impact assessments assessed. They were ones that were required to undergo a PIA. We had 101 RIA exclusions granted. There were nine regulatory impact assessment statements assessed with potential significant adverse impacts on the community, business or economy, and there are 110 cabinet submissions assessed against RIA compliance. That gives you a little bit of an idea of the sort of annual quantum that we have in an average year.

[10.20 am]

Mr DOLLING: I might add to that, if I can, member. Obviously, Alistair just made some good points there. In terms of thinking about removing the requirement, we will be seeking to encourage agencies to still undertake a lower-case preliminary impact assessment, so we still want people to do early assessment and early thinking. Indeed, we have been drafting and consulting with agencies about some regulatory principles that will help and will be then, if agreed by government, essentially encouraged to comply with, adopt, and those regulatory principles—things such as proportionality, to give you an example, so regulation should be proportionate to the problem that it is trying to address—would then be guiding principles for all regulation, whether they are big, small or little and affecting business, social or environment. We will have those to guide that early thinking. Indeed, we would want that. It is not a matter of saying that we do not think early thinking is important—in fact, the opposite—but we think we have to a point where the sector is largely, not entirely, adopting that anyway and we would rather have the principles to help people, guide them, in that early thinking, along with us focusing on training and guidance rather than, dare I say, the forms.

The CHAIRMAN: Right; so moving, I suppose, from that gatekeeping role into more of a guiding —

Mr DOLLING: Correct.

Mr JONES: Personal responsibility or agency responsibility role.

The CHAIRMAN: The idea of regulatory principles interests me. What would go into those? You mentioned proportionality, presumably some cost–benefit analysis and trying to identify if the problem exists in the first place. What else might it include?

Mr DOLLING: Exactly right; and then you can go and say that the option is the best available option after considering regulatory and non-regulatory options, that could be a principle; that the problem is well-defined and evidence based. Another one is about risk assessment, so you would say that the regulation is risk based and outcome focused is probably another principle. It is in our principle that we are discussing in draft form. So we try to lift it to the real purpose in getting those sorts of principles that I mentioned.

The other thing, too, that is important for us though is to think about how regulation is administered and enforced, which is a newer space. The focus of the program to date has been on the design—so what is the regulation that then finds its way into either a statute or into regulations underneath a statute? We want to think harder about the administration and how it is being implemented and is it performing? We are trying to work out—this is a new area—some principles to guide agencies around that, such as: Are you going digital? Are there some digital ways of complying? Are the administrative compliance requirements proportionate to the issue at hand? Have governments considered businesses' normal operating and reporting requirements so that they can fit in as best as possible? For example, if a business is reporting annually, it might be sensible to require your regulatory reports at the same time to minimise a separate re-run—practical points like that. That is obviously coming up a lot in what we might refer to as our traditional red-tape reduction work, so the more we can think in advance about how our regulation is administered as well initially designed in terms of the statute book, then we can hopefully get better outcomes and, as I said before, outcomes is going to be increasingly the focus of what ultimately we want to try to achieve.

Mr JONES: It has been our experience over the years that it is often departmental policies and procedures that form the majority of the regulatory burden. Often the legislation or the subsidiary legislation grants a power and it is how government actually administers it that can often put an onerous burden on business.

The CHAIRMAN: You mentioned earlier that the current RIS or RIA process applies to primary and secondary legislation, but it sounds like it might exclude certain regulatory bureaucratic processes within an agency policy, things like that, that may have an impact on the public. Is that the case?

Mr JONES: It depends what type. If they have to go to Exco, and some of them do, then it is covered by it. Part of the work Streamline WA is doing, the first areas they are looking at is actually departmental policies and procedures because that is one that you can change very quickly. It would be fair to say we do not have a lot of oversight down the track once it has gone through the cabinet process of how that is being administered. One of the important things about introducing a set of regulatory principles is that you can then hold the department to those principles in relation to those policies and procedures, which is not being done at the moment, and that is one of the attractions for us. I think New South Wales has introduced recently regulatory principles. We will be looking very closely at how that is operating over there.

The CHAIRMAN: Do you know how long New South Wales' regulatory principles have been in?

Mr DOLLING: They are new. Some of the new ones are still coming online so they have not been implemented. But there certainly is, because we have conversations with our cross-jurisdictional friends and also friends in New Zealand, and there are some very interesting things going on in New Zealand and they have been implementing regulatory principles. They refer to them as expectations, a very similar type of idea, and also capturing that, you might call it a 360 or a whole-of-life cycle perspective, which means there is the creation of the regulation, the administration and then the review as well to come back again.

The CHAIRMAN: When we deal with things like regulatory principles, they remind me of things like fundamental legislative principles, which is something that is adopted by some of the standing committees here in Western Australia by convention, if not by statute or standing order. They are used by Queensland's Scrutiny of Legislation Committee as well. I believe some of the regulatory principles in New Zealand capture elements of these fundamental legislative principles. They deal less perhaps with the economic impact of regulation and move into the territory of rights, freedoms, justice and things like that, which may perhaps be outside the scope of Treasury to an extent. But I wonder whether regulatory principles adopted by the Treasury department would include anything

along those lines—retrospective obligations, retrospective removal of rights and things along those lines, or do you feel that is outside the scope of Treasury?

Mr JONES: I guess probably the first point to make is if we were to implement regulatory principles across government, they would be taken to cabinet for approval, and that is our intention later this year. In terms of broadening the scope to that, it is certainly not an area we have had a lot of focus on, I will be honest with you. That is probably more of a policy decision of government whether they want to extend regulatory principles to include personal freedom or rights.

Mr DOLLING: It is a very good point, right? We probably were thinking more of it as a general high-level one that might refer to it, consistent with existing regulatory and other obligations and the rest of it, which is similar but different. It does not go as far as what you have said there, but would pick up on not only just to achieve consistency itself but just to reflect if there was, there is the human rights acts, and all those other sorts of obligations that we have in other acts would need to be reflected—the discrimination act would need to be reflected—so we would have a general clause. That is where we have probably gone to to date, but your broader point of having something additional is certainly worth considering.

Hon Dr SALLY TALBOT: We have made all submissions to this select committee public. I do not know whether you have had a chance to look at them, but the two big topics, as you can see from the submissions, are mandatory bike helmets and e-cigarettes. Recognising that, for instance something like MHL came into effect a long time before your unit did, do you look back at some of those decisions and think that—that is probably a bit of a leading question. If mandatory bike helmets were introduced today, would your unit have a role to play in that regulation?

Mr JONES: To be honest, I am still scarred by the Stackhat my parents bought me when Brian Burke brought the mandatory helmets in in the 1980s and having to wear it to school, my parents—I was an early adopter of bike helmets much to my embarrassment!

Hon Dr SALLY TALBOT: Your parents were the early adopters!

Mr JONES: That is right. I used to take it off when I went around the corner on the way to school. They are issues that we look at. Probably one that we did look at recently was the puppy farming policy that the government took and, really, our involvement in that was how they implemented it because it was an election commitment. By going through the RIA process, they basically changed the way they were going to originally do it, and did it. That is probably a good example of a similar one. I suspect something as wide-reaching as requiring everybody to do something would be covered by it, because if everyone has to buy a $50 bike helmet, there is a pretty significant cost to the community—that is, everybody who is a cyclist has to wear it. In terms of that example, that would probably fall under it.

The CHAIRMAN: If we use that example of bike helmets again, I suppose, if you subjected a decision such as that to the rigours of a RIA process, obviously there are certain benefits to reduce head injuries, there are certain costs around the cost of people having to buy helmets, perhaps there is a reduction in bike riding as a result, and you weigh these in your cost–benefit analysis. One of the costs might be seen as an imposition on the public and a reduction of their individual freedom, and that is obviously, in economic terms, almost impossible to quantify. Do you think there is a place for those kinds of, I suppose, fuzzier concepts in a cost–benefit analysis?

[10.30 am]

Mr JONES: You do look at those but, again, as you said, it is very difficult to quantify. Often, it is the policy-making and the decision-making.

The CHAIRMAN: It is a value judgement, is it not?

Mr JONES: Yes. They basically have to make a value judgement whether that erosion of that right, to use your words, has got an impact on people's lives. It is a very difficult one for us to measure.

Mr DOLLING: It is very difficult. Probably the RIA process and similar types of cost–benefit thinking would probably have its greatest benefit in the transparency and the consultation that would be associated with a regulatory impact assessment and the capturing of those preferences, views and values and why people are saying something so that the decision-maker has those more readily at hand. They would not probably have as much analysis as you were alluding to in terms of the actual numbers—it is not like that—but certainly in terms of the values that are behind it, the views expressed, were they consulted, and maybe alternatives might come out from that as well. Maybe it is just children that have helmets because, on balance, that is where the greatest benefits are and that sort of thing. I am not saying that is what we should do but that is the type of example you could come to through thinking a bit harder about it.

The CHAIRMAN: When we look at the current RIA process with the preliminary impact assessment and what you are currently developing in the regulatory principles, it seems like it goes a long way towards encouraging agencies to think before acting and to consider the impact of their decisions and to, I suppose, identify if the problem exists in the first place and what the appropriate response is, if any. You just mentioned another measure, I suppose, in encouraging agencies to act responsibly and regulate responsibly—that is, transparency. Do you think there is a benefit perhaps in putting in some kind of mandatory obligation for agencies to publish their consultation RIAs or decision RIAs rather than the current at-their-own-discretion policy that is in play at the moment?

Mr JONES: It is hard a question. We would expect them to put them up, but, again, it is a decision for government whether they want to mandate it.

The CHAIRMAN: Let me phrase it this way: what would be the benefits of having a mandatory obligation for agencies to publish their RIS?

Mr JONES: You are going to see the RIS probably earlier and see all of them.

The CHAIRMAN: The effects of having regulatory impact statements and consultation regulatory impact statements public, what effect might that have on the behaviour of agencies?

Mr JONES: Look, to be honest, it is often not the agencies that do not want to put RISs up on websites; it is usually the political lair that do that. It is a bit hard for me as a public servant to make a value call on that. Alternatively, if a government of either political persuasion wanted to do it, they could easily mandate that they are made public. One of the issues you often find with a decision RIS, too, sometimes it informs you not to do something. Obviously, often what they do then is make the decision not to do it and do not put the DRIS up on the website. Again, it is a call of whether that has actually served its purpose; it was transparent in government decision-making and did it, but again it is up to government. It may have had a policy that they run for a RIS process and it has shown it has not worked. Again, you are asking a government of either political persuasion to basically say, "Hey, we got it wrong", and put it up. Often they will say, "We're not doing it", and that is probably to the extent that they go to admit that that policy, in its form that they presented it, was not a good idea. Often that is where you find that there is a reluctance to put a RIS up.

Hon Dr SALLY TALBOT: And in that regard it could be counterproductive to have a mandated publication.

Mr JONES: Yes. Under Treasurer Ripper—I mean, the previous Barnett government did not want to do mandatory RIS. Government, I guess, wants to have a little bit of flexibility in terms of what it puts out.

Hon Dr SALLY TALBOT: But you would also get agencies only writing regulatory impact statements for publication, which would change the nature of the document. That was a comment rather than a question.

Mr JONES: You want your DRIS to be frank and fearless and sometimes if they know it is going to be mandatorily put up, we would probably spend a lot more time arguing with them over what should be in and what should not.

The CHAIRMAN: Hon Dr Steve Thomas has missed a little bit of the start. Do you have any questions around this process?

Hon Dr STEVE THOMAS: No, I will catch up.

Hon Dr SALLY TALBOT: One very quick question, I think you have covered this, but is the old triple bottom line old-fashioned?

Mr JONES: It is interesting, member, I mean we had the triple bottom line in the late 1990s, early noughties, then "sustainability" was the next buzzword. They have kind of dropped off. The actual underlying kind of thing that those terms are used for are still looked at.

Hon Dr SALLY TALBOT: Is there a name for it now?

Mr DOLLING: No, sometimes it is cycle terminology being used in an environmental-cycle context, whole of cycle et cetera, but there has not been one that is quite as well-defined as the triple bottom line, which was getting a lot of traction and many companies in businesses even adopted it, particularly in Europe. There is not an equivalent, really. I guess some try to do the triple bottom line by reporting in the context of sustainability, so there is that action, but it has not got the same level of impetus it did.

Hon Dr SALLY TALBOT: The word "environment" is quite noticeably missing from the RIS form, is it not?

Mr DOLLING: Yes.

The CHAIRMAN: If there are no other questions, I think we can call it there.

Thank you for attending today. We can end the broadcast there. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. Errors of fact or substance must be corrected in a formal letter to the committee. If you would like to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thank you.

Hearing concluded at 10.38 am

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