

# CORRECTED VERSION

## STANDING COMMITTEE ON ENVIRONMENT AND PLANNING

### LEGISLATION SUB-COMMITTEE

#### Inquiry into the regulatory impact statement process

Canberra—20 June 2013

#### Members

Mr R. Dalla-Riva  
Mr A. Elsbury

Ms S. Pennicuik  
Mr J. Scheffer

Chair: Mr R. Dalla-Riva

#### Staff

Secretary: Mr K. Delaney

#### Witness

Mr J. McNamara, executive director,  
Mr D. Porter, deputy executive director, and  
Mr A. Chippindale, director, policy unit, Office of Best Practice Regulation.

**The CHAIR**—I declare open the Victorian parliament's Legislative Council Environment and Planning Legislation Committee public hearing. Today's hearing is in relation to the inquiry into the regulatory impact statement process. I welcome Mr Jason McNamara and Mr Darrell Porter from the OBPR.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Victorian Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders, the Victorian Parliamentary Committees Act 2003 and the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation of Australian states and territories; therefore, you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege. All evidence is being recorded. You will be provided with a proof version of the transcript in the next week or so.

We have allowed 45 minutes for this session. To ensure there is sufficient time for questions, the committee asks that any opening comments be kept to about five to 10 minutes. I ask that you begin by introducing yourself and just providing a business mailing address so that we can send you a copy of the transcript. Good morning and welcome.

**Mr McNAMARA**—Thanks. Jason McNamara, executive director of the Office of Best Practice Regulation. We have an opening statement and we propose that we just table that rather than read that out. Would that be acceptable to the committee?

**The CHAIR**—Yes. How long is the statement?

**Mr McNAMARA**—It is 10 minutes worth if we are going to read it. Essentially it just gives a brief overview of the Australian government RIA system and the COAG RIA system.

**The CHAIR**—All right. Just give mailing addresses.

**Mr PORTER**—John Gorton Building, King Edward Terrace, Parkes ACT 2600.

**The CHAIR**—Thank you.

**Ms PENNICUIK**—I think it would be good if you had some small opening statement.

**The CHAIR**—Is there anything in particular from here that you would like to just highlight?

**Ms PENNICUIK**—To help us.

**Mr McNAMARA**—I could say, to start with, that the Australian government system and the COAG system are quite similar in many respects and I suppose the key similarity is in what requires a regulation impact statement. They both have a very similar test. It is a minor, machinery test where, if there is a regulatory change—and 'regulation' is defined in the broad; it is not 'regulation' as in there is a legislative instrument; it is regulation in the more policy sense of the word—if there is a policy change that involves business and not-for-profits and it is expected to have a significant impact or a more than minor or machinery impact, you have to do a regulation impact statement.

Both systems have a very similar threshold in terms of whether you are in the system or outside the system and, even within the system, essentially the seven elements of a RIS are the same under both systems, so what you have to do is quite similar. They are all based on public consultation as a key process in the system, and that is pretty important, and our role as the Office of Best Practice Regulation is the same. We are essentially QA'ing the analysis that is in those documents to ensure they are of an appropriate standard. The standard required of both of them is very similar and, in terms of how we apply that, I suppose the key thing there is that we do try and do it relative to the importance and the magnitude of the issue, so we rate things from A to D, A being very large, across-economy type issues, and D being very particular sorts of sectors. A change in the mushroom levy or the ginger levy, something that the industry actually wants and that is quite self-contained, would be at D level. A level is something more like the carbon emissions trading scheme, something that goes across the economy. We try and make sure that the system is evenly applied.

Probably the other key similarity between the two systems is the transparency required at the end of the day. Under both systems, once a RIS has been approved and a policy announcement has been made relating to that RIS, the RIS is published straightaway, so it is published on announcement, not on when the legislative instrument is made. The time between policy announcement and when something enters parliament can be a significant period of time. In our RIS process—both the Commonwealth and the COAG process—the RIS is published at public announcement. That is all at a central place on our website. We also run a Twitter account where we announce that we have put the post up, so there is a fair degree of transparency.

The only exceptions to publication are quite minor. They relate to national security or commercial-in-confidence material and it is a bit like how an FOI system works. You take out sentences or paragraphs. You do not exclude the whole RIS because it has got national security or commercial-in-confidence material. We very rarely have any changes between what we approve and what is actually published, so transparency is probably a key aspect.

We also run a blog facility on our website for when the RIS goes up there, and which RIS gets a lot of blog posts does not necessarily follow any rhyme or reason. I think our most blogged-on RIS is our marriage celebrants RIS, which is relatively minor in the scheme of things but was very important in the sector and the sector decided that they were going to engage through that medium and did quite a lot. How we run things has been quite important. In trying to keep the quality of both sets of documents up, it is really important to have that transparency angle on them.

**The CHAIR**—Thank you. I appreciate there is a lot more detail than that.

**Mr McNAMARA**—Yes.

**The CHAIR**—In terms of the adequacy, as an agency or an organisation within the Department of Finance and Deregulation, I note you have separate independence.

**Mr McNAMARA**—Yes.

**The CHAIR**—How do you find that works? It has its own independence, yet it still falls within sort of a quasi-government framework. How do you find that that fits within your operations and dealing with RISs and just providing, in quotation marks, 'independent advice'?

**Mr McNAMARA**—Our independence comes in a more administrative sense, so it comes from the minister, and the minister has made statements to the Senate that we make our decisions independent of her, her office and of the executive of our department, so that is where our power for independence comes from. In terms of the operation of the system, I think the key thing is being within the Finance and Deregulation portfolio. We get a lot more vision over what is going on, including the cabinet policy process.

Mr Porter can talk a bit more about this because he has been in the OBPR longer, but obviously we used to be within the Productivity Commission, which is essentially the same model there, and I think one of the difficulties was that we were not within the scheme of policy-making. We were not part of the process, and that was an issue.

**Mr PORTER**—I think it was more about embedding the RIS process into how the policy development was going to be undertaken, so having us more into the centre of government was a positive move. In the Productivity Commission it was very much on the outer, I guess, as a statutory organisation that only looked at terms of reference for particular reviews and other research; it was not in the mix of policy development. That was the reason that it was moved over to the Department of Finance and Deregulation and at the time I think Minister Tanner was very keen about having that move and making it more centre in government.

**The CHAIR**—So in terms of policy, I would draw the link that Mr Adrian Chippindale, director of policy unit, Office of Best Practice Regulation, has arrived. Welcome. I will provide you with my opening statement for you to read so you understand what may be said.

In terms of assessing the RIS, I am still trying to work out where you sit, because the VCEC sit to provide advice to the department and you do that as well. You provide advice to the departments as they do the RIS.

**Mr McNAMARA**—Yes.

**The CHAIR**—Are you part of that advice in terms of the determination of whether it becomes a RIS or is it after it has been decided that the regulation will be part of a RIS process?

**Mr McNAMARA**—No, we make the decision. That is part of our independence. We make a decision on what requires a RIS under both systems.

**Ms PENNICUIK**—It is not the department?

**Mr McNAMARA**—It is not the department's role. It is our role to decide what is minor and machinery and what is significant and therefore needs a RIS. We would do that at the start and then we have the role of working with the department to help them prepare the RIS and we do that in various forms, depending on the nature of the assistance required, and then we assess the RIS at the end of the day.

**The CHAIR**—A couple of questions come to mind from our evidence. The independence of providing the initial advice and then assessing independently again the RIS: how do you determine that? What are the processes that you have internally to ensure there is that transparency between the assessment stage and then the independent assessment end-process stage?

**Mr McNAMARA**—The document is still the department's document and they are still formally submitting it to us, or the ministerial council is still formally submitting it to us. I suppose we see more importance in actually getting a good document in front of decision makers at the end of the day. I think that is quite important. We are not involved in that decision-making process, we are just involved in advising whoever the decision makers are on whether the RIS that is in front of them has met the requirements of either the handbook, in terms of the Australian government handbook, or the COAG guidelines.

**The CHAIR**—We got advice and evidence that a lot of the departments within the government may do a RIS only once in a lifetime or hardly ever have that experience. You are nodding, so I gather you would have the same experience?

**Mr McNAMARA**—Yes.

**The CHAIR**—Are you finding that there needs to be a more centralised department to deal with the RIS processes, on which you would then still provide the advice—

**Mr McNAMARA**—Yes.

**The CHAIR**—or are you finding that you are having to provide advice to the different departments or that individual within a department who may only ever come across a RIS once in a lifetime? What are you finding within your processes and what do you think is best practice?

**Mr McNAMARA**—As I said before, I think what works is a range of things. What we have found is that having a one-size-fits-all approach to how to prepare and undertake a RIS is not the way forward. What we have tried to do, essentially, is to change our processes to be a bit more flexible, depending on what the agency requires, and one of the things that we have done is introduce something we have called an outposting model.

**Ms PENNICUIK**—Which the Productivity Commission got stuck into you for.

**Mr McNAMARA**—Yes.

**Mr ELSBURY**—Thanks for raising that, Sue!

**Ms PENNICUIK**—You asked it, so you raised it!

**Mr McNAMARA**—The outposting model is where we agree to supply an officer or officers to the ministerial council or to the agency on a cost recovery basis and they work with the agency, essentially embedded in the agency, to get the document to the required standard, or just work with the agency on the requirements.

Another thing we do at the moment, which is relatively new, is write a letter at the start of the RIS process. After we have written an email back to an agency to say, 'You've given us information. Yes, you do need to do a RIS,' generally now, where time allows, we will write a letter back to whoever is quite senior in the organisation—the Australian government says that will be at the deputy secretary level because that is the level that has to sign off the RIS—and we will say what we think should be in the RIS. We will tell them we think it is somewhere between A and D. We will say, 'It's an A RIS,' or, 'It's a C RIS.' We will give them some advice on other RISs that are very similar that they should follow and then we will go through each element of a RIS and give them some guidance on what we think in this case they should do in terms of quantification and the nature of the problem et cetera.

That is all based on preliminary discussion and that tries to shortcut any issues agencies might have at the end of the process. One of things we try and avoid is getting to the end of the process, quite close to a decision point, and then giving us a document that is completely inadequate because they did not understand what was required, so we spend a lot more time up-front. We try and meet with people up-front. We run training sessions. We will run one-on-one with the teams doing it. We will look at draft outlines.

It depends on the agency. A lot of our outpostings are to do with large projects that are difficult. There are the agencies who are looking to buy in some expertise, to contract that expertise in to help them, but we have used the outposting to try and embed some better culture in agencies that do a lot of RISs. The senior people come on board and say, 'We want to get better at this. We're doing a lot of RISs but we need someone sitting with our team to really help them and help them change the culture,' and so we have done that on some agencies as well. There is a broad spectrum. We do not find that it is that easy, and there are quite a number of agencies who only do RISs once in a blue moon, but our top 10 clients do RISs quite often during the year and we have a wide variety in terms of the quality of those.

Something that we have talked about previously is that within the Public Service the ability, essentially, to do the policy analysis can be an issue, and it is not just technical. Cost-benefit analysis is a dying skill to some degree; it is not as widespread as it used to be. OBPR is probably the centre for excellence for cost-benefit analysis in the Commonwealth government. We have most of the cost-benefit experts, so that is something that is useful, and it is another role that we are trying to undertake. We are trying to train people up to try and improve their skill set as well.

**Mr PORTER**—I think it does come back to what the role is of the RIA administration unit. For the Australian government and for COAG, where our role is seen to be as a helpful adviser, to provide advice and to actually go out and help them with their regulation impact statement, it is more of a coaching role rather than the policeman role of, 'You have got to do a RIS. Go away and do it,' and you leave it up to the agency to try to struggle or to get consultants, those sorts of things. Under the Australian government process, we are trying to embed best practice regulation processes within departments and agencies rather than having one-off things where they have a consultant or they bring in a particular person to do the RIS and then it is over and done with and that knowledge and experience has gone from the department or agency.

Jason was talking about our education role. Each month we provide RIA training in our finance department, so there could be a few people from Family and Community Services or the environment department who are not aware of cost-benefit analysis or how you would analyse impacts on businesses and they can come to the OBPR and have that training. Every quarter we provide cost-benefit analysis training in-house to those departments and agencies as well. There is a whole suite of sessions that we run. We will go to the department and agency if there is a threshold of 15 to 20 people in a session and we can then provide this sort of training to them. It is ongoing, particularly where agencies do not have economic skills, and also where there are issues of churning of staff. It is an ongoing education campaign that we have to run. Again, it comes back to

this coaching process and trying to be involved and embedding that into departments and agencies.

**Mr SCHEFFER**—You mentioned cost-benefit analysis. Have you undertaken a cost-benefit analysis of the RIS process overall?

**Mr McNAMARA**—No.

**Mr SCHEFFER**—Is that something worth doing?

**Mr McNAMARA**—I would not have thought so.

**Mr SCHEFFER**—Why not?

**Mr McNAMARA**—It would be very difficult to quantify the quality of decision-making and how that would be changed in the abstract of not having a RIS. That is essentially what you are testing. Decision makers do not have to follow the RIS, so if the RIS says, 'You should do option 1,' they do not have to decide to do that. There might be a range of factors why they choose to do something different. Is the RIS influential? That is probably what you are trying to measure and I do not know if a cost-benefit analysis would tell you whether the RIS was influential. It is really a survey of decision makers. Did they read it and did they find it a useful document? Did it at least influence them? I do not think it necessarily has to change their mind; it just has to influence them as a good information piece that was in front of them.

**The CHAIR**—A lot of the evidence that we have picked up is the amount of detail in the RISs. They have become longer, more technical, more detailed. For example, the guidelines are now 90 pages of advice, and there were originally 20 when they were first established, and there are 115 pages—is that right?—of appendices. Are you finding the level of complexity in the RIS process such that stakeholders now do not understand it? It has become so complex that they are sort of excluded out of the process? It has become almost like an internal departmental process just for ticking the box, and by the way the stakeholders just happen to be somewhere amongst that mix?

**Mr McNAMARA**—I do not think we find that, because one of the key things we look to do in trying to make the RIS adequate is to have accessibility for both decision makers and stakeholders. One of the key things we emphasise to people, especially more technical regulators, is that they need to write in such a way that the ordinary person in the street can actually read this document and understand it. If we cannot understand—and generally sometimes you cannot—then we will often send it back and say, 'Yes, okay, technically you've explained this concept well, but you haven't explained it to a wider audience.' That meets some resistance. There are a number of regulatory agencies who say, 'Our board' or 'Our committee will understand this. They're technical experts,' and we say, 'That's fine, but the RIS guidelines of both COAG and the Australian government require you to produce something that is quite accessible to the wider public.'

**The CHAIR**—How detailed are the RIS guidelines that you mention compared to the Victorian guidelines?

**Mr McNAMARA**—Our guidelines are reasonably significant, but they are broadly broken into the rules of the system and then how to do a RIS. They are broken into those two elements and so the complexity in the system is probably to do with the rules more than the RIS system itself. The RIS system is a cost-benefit analysis covering off on the seven elements of a RIS. We spent a bit of time in our guidelines trying to explain concepts and help people. It is not really about the scope of what they have to do. The scope of what they have to do really has not changed in quite a long period of time. The basis of how you do a RIS has not really changed.

**The CHAIR**—So why is it that in Victoria it has become more complex? We have heard evidence that departments are struggling to understand it. They are outsourcing. Ninety per cent of our RISs are now done by consultants. Consultants are saying that they are having to do a lot of work because of that lack of understanding, so it seems that there might be some internal breakdown occurring in Victoria and I am just trying to work out why is it that your system is, from the evidence you are giving, providing a bit more stability than ours? What do you paint as the key factors?

**Mr McNAMARA**—We do not have a high use of consultants in our RISs. I think last time we looked, it was more like 20 to 30 per cent done by consultants primarily, and most of those would be in the COAG space where there is a secretariat. There might not be much of a secretariat to a ministerial council, but they have a budget, if you like, and so they have to use consultants; they literally do not have the public servants.

We discourage the use of consultants other than for the technical aspects of a RIS. One of the things we will make quite clear to agencies, including up-front in our letters, is that the RIS is their document and it is not something they can outsource, so we do not deal directly with consultants when we are dealing with a RIS. Even if it has been prepared by a consultant, we will always go through it with the department and not with the consultant. Even in those technical cases where a consultant may be needed to do a technical cost-benefit analysis, for instance, we always advise the department, 'Get the consultant to do the technical cost-benefit analysis but you write the rest of it. You should be able to write the policy parts of it. You should be able to write the problems section. You should be able to write what the stakeholders want.'

**Mr PORTER**—Particularly at the consultation stage as well.

**Mr McNAMARA**—Yes. 'You shouldn't be contracting that out.' Sometimes we have technical analysis in the energy field—some electrical engineers will get involved—so technical analysis fine, but we want people to be responsible for the document. We find that if you are using a consultant too much, it is probably because you are not responsible for it as an agency and are actually pushing it to somebody else. That is why we discourage that. We want ownership by the agency.

**Mr PORTER**—Another issue is that we deal with a huge range of different proposals and they can go from highly significant, the A, down to the D, so we would look at our assessment process commensurate with the impacts, to have that analysis commensurate or proportionate to what those impacts are going to be. As I said, we have got primary legislation right down to quasi regulation. I think in Victoria it is on instruments that they would be looking at, so it might be just focusing on that, whereas we have had to deal with the level of analysis being commensurate with those impacts and making judgement calls around that issue as well.

**The CHAIR**—Can I ask, Mr Chippindale: you have read the preamble, I gather?

**Mr CHIPPINDALE**—Yes, I have.

**The CHAIR**—Thank you. Can I ask a question in terms of the policy unit because there is a lot of intertwining between the RIS process and policy development. How do you find departments who are developing policy confronted with political overtones that may be applied to policy that is sensitive and then having to undertake a RIS process that might expose the policy? Do you get those questions asked by departments and how do you deal with those?

**Mr CHIPPINDALE**—One of the tensions with the RIS process is that it is a public document. It is a transparent process, and examining different options does involve putting out there for public consumption options that may be more desirable or less desirable but may not be politically as comfortable, so there is a tension there for agencies to try and explain their policies and their options in that context when it might not be the sort of information that is wanted to be made public. Yes, there is a tension in the RIS process because of that.

**The CHAIR**—Are there guidelines or is there advice somewhere that gives you guidance as to how you deal with those? It is very difficult, I understand, but is there something within your guidelines or your practice that allows you to deal with those circumstances?

**Mr McNAMARA**—Yes. Within the Australian government guidelines there is an ability for ministers to limit options in a RIS if they want to. That has to be a cabinet decision, a collective decision; it is not an individual minister's decision. On election commitments under the Australian government system, you do not have to look at alternative options to the election commitment if you are just delivering on that

particular commitment. To require people to look at alternative options tends to be where the most tension comes. I always think that the RIS system at both levels is really testing whether good ideas make good policy and one of the inherent tensions in the system is that sometimes it will transparently demonstrate that a good idea is not good policy. That can be a tension, but I think part of the process then is to brief decision makers of whatever form, 'We have looked at this. Good idea. It doesn't stand up to scrutiny. Costs do outweigh benefits. Stakeholders through consultation are telling us these are the implementation issues. There needs to be a change.'

**The CHAIR**—And that is at the policy development stage within the departments. Is that what you are suggesting?

**Mr McNAMARA**—Yes. That is when it works best: when the policy is contestable and is open. If the RIS process is an ex post justification for a decision already made, it does not work very well, but when the policy is genuinely contestable, it works very well; so that is the nature of it. Different policies will follow different paths and that is what is hard.

**Ms PENNICUIK**—We have heard more Victorian based evidence from other hearings about the decision-making as to when a RIS is required, and you went very helpfully through the A to D and told us that it is actually your job to make that decision. What we are hearing in Victoria is that it is really the job of the department to make the decision and I am inferring that some of them struggle with whether the RIA process is needed or not needed and for what reason, and we have not really got the full answer to that. VCEC does not make that decision, the departments make the decision, but it also gets involved in a similar way to you with assisting and then with overseeing and saying—I know from your submission to the PC—whether the RIS is compliant or not.

**Mr McNAMARA**—Yes.

**Ms PENNICUIK**—Picking up again from your outposting that you were describing, I was asking the Productivity Commission about an oversight body getting involved in the process—and you have gone to some of this and said that you are not that involved—and then at the end being the body that also says it is compliant or not compliant, the tension there and that there may be conflict there.

**Mr McNAMARA**—Yes.

**Ms PENNICUIK**—Maybe that is partly overcome by having the outposted person, but still the person is your person at the end of the day.

**Mr McNAMARA**—Yes.

**Ms PENNICUIK**—I am just wondering about that and whether you think it is a better idea to have an agency such as you or the VCEC make that decision, or is it better for the departments to make it, to have the skills to do that, which you also have gone to a bit in your discussion, too, in saying that you are trying to build up skills?

**Mr McNAMARA**—Yes. In terms of the decision to do a RIS, the Australian government system, prior to 2010 we had a period where agencies would self-assess whether they needed to do a RIS. That did not work so well because agencies would make genuine mistakes and then we would come in 12 months, 18 months later when they had finally introduced legislation and say, 'Well, that should have had a RIS.' We would find people noncompliant for their self-assessed decision down the track, so we found that did not work so well.

**Mr PORTER**—In fact, it created animosity between agencies and the OBPR.

**Mr McNAMARA**—Yes. We think that system works better where we are making that decision. As I said, I think the ultimate aim of a RIS should be to put a good-quality information piece in front of the decision maker. I think that has got to be the goal. In terms of worrying about the independence, we do not have the same person assess a RIS who is outposted, but at the end of the day all our RISs are published, and I

have not seen any criticism really that we are passing inadequate RISs, but that is essentially the accountability mechanism. If we pass a RIS that is inadequate, it is published. Stakeholders are quite liable to say, 'That document is inaccurate,' or, 'That document is not following your guidelines.' That is the test in the system. That is the tension in the system.

It is something we are conscious of, but internally in the OBPR we work very hard on being consistent in our application of the guidelines. We work very hard with staff to ensure that each of them is applying the guidelines in the same way and I am pretty happy that that is what we do now and that we are very consistent.

We have a reasonable hierarchy. We do not have many people, but either Mr Porter or I would clear all comments that go to agencies about RISs and one of us would clear all RISs, so we do not have 20 different people clearing a RIS; we have essentially two people clearing a RIS. We are pretty happy that we are consistent and with the standard, but the test is the fact that there are hundreds of RISs published on our website which people can read, and if we are not doing the right thing they can definitely point that out.

**Mr PORTER**—And when we set up outposts, there is a memorandum of understanding with that agency for that particular outpost of the RIS and in that we have the information that that will be assessed by Mr McNamara or me and that it may not be adequate just because they have an outposted officer. We make that absolutely explicit from the very front so that they do not think they are buying adequacy or a sort of tick-off from the regulation impact statement, and it also has other information that protects our officers, to make sure that they feel comfortable about going outside to another organisation as well.

**Mr McNAMARA**—The one thing I would add to that is that we tend to find that the outposted officers really help us understand why the agency is not doing what we need and that is one of the key things that we have found really useful. We talk a different language. OBPR is predominantly economists—not totally. We have a range of skills, but predominantly we are economists who are central agency policy people and when we deal with a range of policy officers out there, including across the states and the Commonwealth, we can be talking different languages, and probably the hardest tension we get in the system is when we ask for a change in a RIS and it comes back and we say, 'Oh, this doesn't address our issue at all,' and the agency has made a genuine attempt to address our issues. They are not being difficult. They have actually put a lot of effort in, but they have not done it. That can be a 'ships passing in the night' type of situation and it creates a lot of tension. We find that the outposting officer really gives us an understanding of why the agency is not quite meeting what is needed and they are probably better at communicating what we need, so it can be quite useful in that sense.

**Ms PENNICUIK**—Since 2010 when you took over the role of the A to D assessment and whether one is required or not, you have not had the problem of something going through that has not had a RIS which should have had a RIS? That problem has been overcome?

**Mr McNAMARA**—Predominantly, yes. I think the number of things that are noncompliant—we are reading it in the newspaper and we say, 'Well, hang on, that should have had a RIS'—is quite small. Yes, it is virtually non-existent.

**Ms PENNICUIK**—I am just interested in that model because it is different from what we have in Victoria and I think it is a bit of a case of the unknown—unknown as to how many should have gone through in Victoria that do not. Perhaps the other thing you could briefly comment on is: if you are making that independent decision, you could be less liable to pressure from the minister as a department, in your department; less liable to say, 'Oh, the minister probably won't want us to do that, so we won't do it'?

**Mr McNAMARA**—Yes. Obviously our independence is the reason that we get that role. That is a key advantage and I think from our minister's point of view it is important that business has that assurance that the government has committed to these systems. It is the same with the COAG system: 'Yes, COAG has committed to the system, and someone independent is essentially ensuring those systems are undertaken.'

**The CHAIR**—I have a couple of questions just to get some clarification. The OBPR handbook advice requires the use of an annual real discount rate of seven per cent. VCEC requires a rate of 3.5 per cent. Has there been any debate about that rate?

**Mr McNAMARA**—There is some debate. Since I took on this role in 2009, I have been quite clear that I want seven per cent or eight per cent. We had Mark Harrison do a technical study on the appropriate discount rate, and that is a published paper by the Productivity Commission on recommending seven or eight per cent, but one of the things I did was to make sure that we just did not enter into a debate on the discount rate.

I think it is fair to say that our view of the world is that there is no right answer for a discount rate and it could vary, but what I was finding when I entered this job was that we spent an enormous amount of time debating with agencies what the appropriate discount rate was, and that was completely unproductive. So what we do is to say, 'You must do seven per cent as your central case'—or eight—'and then you do sensitivity analysis of, say, three to 11.' That allows a range and it allows you to say, 'Well, in this case we think three is going to be more appropriate because of all these factors,' but I think it is completely academic.

Given the error margin in cost-benefit analysis, we found it quite unproductive to say in each cost-benefit analysis we will change the discount rate. One of the tensions we found was that people were changing the discount rate to try and get their cost-benefit analysis up, if you like—to get a bigger number in their particular case—and that just was not productive. So we have been quite clear, and it does work. We rarely find a situation where a different discount rate would have made a difference overall, and it is important to note that when recommending something in a RIS you should not just go off whatever the NPV in a cost-benefit analysis tells you. As I said, given the error factor in any NPV, you do not want to just blithely say, 'Well, 145 is bigger than 142, therefore recommend option 1.' We do not recommend taking that approach at all.

**Mr PORTER**—The whole story with the regulation impact statements is all the different elements, particularly the problems—looking at various options; light-handed regulation as well—rather than just focusing on what the discount rate might be. A sensitivity analysis on those major parameters within that cost-benefit analysis is an important matter, but I think the OECD also highlights that telling that policy development story is particularly important, rather than focusing on just pure quantification.

**The CHAIR**—You have outlined two-stage RIS processes in your submission, but is there any view otherwise? We do not have it in Victoria. We are looking at it.

**Mr McNAMARA**—We obviously have it in the COAG space and we are about to have it in the Commonwealth space. The purpose of a two-stage RIS process is essentially to get better consultation, so I think you can have a successful RIS process without it being two-stage, but it is probably more of a discipline to ensure better consultation with stakeholders and making sure that you get their input. The tension in a two-stage process is the consultation. Some policies give themselves to consultation and some policies do not give themselves well to public consultation and that is the tension that we find in that system.

**The CHAIR**—Are you saying that the two-stage process may not be necessary if there are other processes in place like you have established that could perhaps allay those concerns?

**Mr McNAMARA**—I do not think it is a 'necessary'. It is an assistance to try and get better consultation. I think in the Australian government sense, one of the drivers of the move to a two-stage RIS process is to give business more confidence that appropriate consultation is going to be undertaken, so it is not to say that it was not happening sufficiently but it gives stakeholders a bit more confidence, I think.

**Ms PENNICUIK**—Particularly the community stakeholders.

**Mr McNAMARA**—Yes.

**Ms PENNICUIK**—Community stakeholders often get left out.

**The CHAIR**—Thank you. This brings our time to a close. I would like to thank you for your time and for making yourselves available today. As previously advised, in the next week or so you will be receiving transcript of the evidence that you have given. You will have a specified time in which to make any

corrections to typographical errors and return it, after which, and with the agreement of this committee, the evidence will be uploaded to our website. Again, gentlemen, thank you very much and good morning.

**Witnesses withdrew.**

**Committee adjourned.**