



Australian Government

Department of the Prime Minister and Cabinet

Australian Government Guide to Policy Impact Analysis

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OIA

The Office of
Impact Analysis



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About this Guide

The Australian Government Guide to Policy Impact Analysis is intended to inform Australian Public Service policy making — ensuring that advice to government is accompanied by robust analysis, data and an accurate overview of the effects of proposed policies on our community.

It assists in identifying the costs and benefits of policy changes and the cohorts where they would be realised. The Guide encourages policy makers to think about potential impacts early in the policy process. The principles in this Guide are supplemented by guidance notes available on the Department of the Prime Minister and Cabinet website <https://OIA.pmc.gov.au/>. The website also contains an extensive library of past analyses and material outlining analyses assessed as exemplary, which can be used by policy makers as a foundation for Impact Analysis.

Foreword



The Hon Patrick Gorman MP

Assistant Minister
to the Prime Minister

March 2023

I am proud to be the Minister responsible for ensuring that advice to the Government is accompanied by the best available analysis.

This Guide has been prepared to help government agencies ensure that advice is accompanied by the information that will help government choose the best path forward.

In 2022, the Australian Government renewed its commitment to increased transparency and improved decision making. As a part of this we have changed the name of the Office of Best Practice Regulation to the Office of Impact Analysis. We are placing emphasis on the importance of informed decision making processes and the value the Government places on analytical insights into the policy options put before us.

Impact Analysis is required for all policy proposals of government that would be expected to drive a change in behaviour such as changes to rights, powers, obligations or responsibilities where those changes would have major impacts on our community.

Good Policy Impact Analysis can unpick the complexity in policy problems and help agencies ensure they have been explored from all angles. Impact Analysis provides decision makers with information about how people, community organisations and businesses may be affected and how the costs and benefits fall across these groups. Finally, every Policy Impact Analysis must be able to demonstrate that the decision being asked of government will deliver an overall benefit to our community.

I encourage all advisers to government to work through the Guide as policy is developed. Starting early is the key to providing government with robust, well considered, and evidence-based advice.

Principles for Australian Government policy makers

1. Policy makers should **clearly demonstrate a public policy problem necessitating Australian Government intervention**, and should examine a range of genuine and viable options, including non-regulatory options, to address the problem.
2. **Each proposal must include a clear set of objectives**. These are used to select the best option and to shape evaluation.
3. **Regulation should not be the default option**: the policy option offering the greatest net benefit for Australia — regulatory or non-regulatory — should always be the recommended option.
4. Policy makers should **consult in a genuine and timely way with affected businesses, community organisations and individuals**, as well as other stakeholders, to ensure proposed changes deliver the best possible outcomes for Australia.
5. **The information upon which policy makers base their decisions must be published at the earliest opportunity**.
6. The most **significant policy proposals must undergo a post-implementation review**, reflecting on the extent to which the stated objectives have been achieved, to ensure settings remain focused on delivering the best possible outcomes for Australia.

Supporting informed decisions

The Government is dedicated to evidence based policy development and decision making processes. A balanced assessment of the available options, and their likely effects on Australia, is critical to support government deliberative processes.

In addition, the Australian community has a right to accurate, timely, accessible information about government decisions.

As a result, every policy proposal – regardless of whether impacts are positive or negative – must be subject to an appropriate degree of Australian Government Policy Impact Analysis.

Impact Analysis is a factual assessment of a given issue; it is not a document designed to critique or praise a particular policy. Precise and direct language is important. Include only what is relevant, making sure the depth of your analysis is commensurate with the importance of the issue you are analysing.

Every policy option must be carefully assessed, its likely impact costed and a range of viable alternatives considered in a transparent and accountable way against the existing arrangements.

Robust evidence is critical to the Impact Analysis process. Relevant data that is available (as well as relevant data that is not available) must be identified. Where relevant data is not available, explanatory information must be provided. As robust data underpins evaluation, the evaluative process in the final report must set out a plan to close any data gaps that remain in the post-implementation phase.

Policy development is inherently complex and uncertain. The Impact Analysis should be clear about instances where there are information gaps or where the effects of a policy cannot be fully understood until it is in place and operational – in these situations a post-implementation review or additional evaluative work may be necessary to demonstrate the objectives and anticipated benefits have been realised.

The Impact Analysis should be easy to navigate, with sections clearly marked and a logical flow. Keep in mind your Impact Analysis will ultimately be read by decision makers, stakeholders, the media and general public.

It is the Government's expectation that you will aim for the best possible quality of Impact Analysis to underpin your major proposals and program changes.



When is Impact Analysis required?

For the purposes of this Guide, a proposal that must be accompanied by Impact Analysis is:

Any policy proposal or action of government, with an expectation of compliance, that would result in a more than minor change in behaviour or impact for people, businesses or community organisations.

Governments and public servants make decisions every day and as a consequence can impose significant burdens on people, businesses, and community organisations.

Decisions with regulatory aspects can ensure the community has critical protections or can guide behaviour towards achieving particular objectives. These decisions involve trade-offs. The public service has an obligation to ensure that the most significant decisions are supported by robust evidence and analysis covering the available options and how they could reasonably be expected to play out in the community.

The seven Impact Analysis questions

-  **1** What is the problem you are trying to solve and what data is available?
-  **2** What are the objectives, why is government intervention needed to achieve them, and how will success be measured?
-  **3** What policy options are you considering?
-  **4** What is the likely net benefit of each option?
-  **5** Who did you consult and how did you incorporate their feedback?
-  **6** What is the best option from those you have considered and how will it be implemented?
-  **7** How you will evaluate your chosen option against the success metrics?

Overview of the seven Impact Analysis questions

The Impact Analysis questions are critical because they help policy makers focus on the potential impact of major decisions; in other words, the total effect of the proposal (positive or negative) on the community.

The questions are a useful discipline for any policy process. They can help structure your ideas, test your assumptions and encourage you to think beyond a regulation-based solution as the default.

Impact Analysis is published when government announces associated policies. The evidence and data presented to support decision makers will be on the public record. Think carefully about each one in turn.

1. What is the problem you are trying to solve and what data is available?

The Impact Analysis framework requires you to explain the problem – and the data and evidence needed to describe and solve it – simply and clearly. A crisply defined problem offers better scope to target approaches that will actually solve it. An upfront discussion about available data and any gaps will ensure the evidentiary base is sufficient to support a decision.

2. What are the objectives, why is government intervention needed to achieve them, and how will success be measured?

Each Impact Analysis must be clear about the objectives that will be achieved in solving the problem and the metrics for success. This will form the basis for selecting the best option and for future evaluation. The analysis must demonstrate the issue is a genuine priority, the government's job, serious enough to justify government intervention, and that intervention would likely be successful in addressing the problem.

3. What policy options are you considering?

Impact Analysis is an opportunity to demonstrate you've thought through all of the viable options, including the option of not intervening. Until you've analysed the problem from every angle, you may be overlooking a viable, low-impact alternative.



4. What is the likely net benefit of each option?

Policy interventions have both costs and benefits. Impact Analysis obliges you to assess the benefit of the proposed intervention against the costs imposed. If the costs outweigh the benefit, you should look for alternatives or reconsider the need to intervene at all.

5. Who did you consult and how did you incorporate their feedback?

Transparency and accountability are not optional. Impact Analysis encourages you to walk in the shoes of the people, businesses and community groups affected by your policy proposal. Consultation must be focused on the costs and benefits of each option, not on whether certain stakeholders prefer a particular pathway.

6. What is the best option from those you have considered and how will it be implemented?

Recommending a preferred option requires trade-offs. The Impact Analysis must discuss the degree to which each option would achieve the stated objectives, and the anticipated net benefit for each. The recommended option should always be the option with the greatest net benefit to Australia. The Impact Analysis will help make clear whether your decision making processes are robust enough to cope with scrutiny. The Impact Analysis must set out which option has been recommended, the key information and arguments that were relied upon and how the option will be successfully implemented.

7. How will you evaluate your chosen option against the success metrics?

Too often this question is left until the last minute. The Impact Analysis process ensures you give adequate and timely consideration to the real-world problems of making your policy work—and makes sure you will test its effectiveness and ongoing relevance.

Impact Analysis – First steps

Early engagement with the Office of Impact Analysis (OIA) is key to a smooth process that equips decision makers with the best possible information and analysis. OIA is available to discuss the early scoping stages of your proposal, and to assist in shaping a general overview. Once you have a general sense of the first four questions you should provide a written summary to the Office of Impact Analysis for an initial assessment. We will then indicate how the Impact Analysis framework applies to your proposal and, where relevant, the level of analysis required to satisfy the requirements.

The formal Impact Analysis process is an extension of the work already undertaken by your agency in preparing policy advice for government. Although OIA may not require the preparation of formal Impact Analysis materials, every policy decision of government must be accompanied by an appropriate level of Impact Analysis.

Of course, the advice on whether Impact Analysis is required may be revised in light of additional or updated information – such as from stakeholders – indicating the total impact is likely to be more or less significant than initially envisaged.

At the commencement of work, the OIA offers training and workshops to policy teams to assist in shaping your approach and ensuring the requirements are met in a way that best supports decision makers. The objective is always to ensure we weigh up the available options and recommend the one that has the greatest benefits for Australia.

External consultants may be necessary to prepare complex cost-benefit analysis but agencies should have internal capability and capacity to conduct robust evidence based policy development exercises. This includes drafting Impact Analysis documents for assessment and publication.



Answering the Impact Analysis questions

Question 1

What is the problem you are trying to solve and what data is available?

In this introductory section you must:

- Clearly identify and define the problem you are trying to solve.
- Demonstrate why it is a problem: are there risks or other dangers to be mitigated?
- Offer evidence about the magnitude of the problem and the costs of not doing anything.
- Describe the people, businesses or community organisations affected by the problem.
- Identify if there is any existing legislation that has sought to address the problem and explain how it is being enforced at present.
- Explain which, if any, current government measures have sought to address the problem.
- Establish why those measures are not working.
- Identify the available data and set out a plan to close any gaps that need to be addressed as part of the Impact Analysis process.

Defining the problem is the best place to start

If you can define the problem satisfactorily, the rest of your analysis will follow logically. If the problem is poorly defined, the resulting action will be less likely to be successful.

Identify who is affected by the problem at present, the nature of the impact they experience and quantify the costs of the current situation as far as reasonably practicable. Consider inter-related policy settings imposed across government – how might these impact the problem and be impacted by your proposals?

When you begin your analysis, think about the broad nature of the problem you face. There are a relatively small number of situations that justify direct government intervention in the form of regulation. Your policy analysis is most likely to begin from one of the following starting points.

Market failure

Are you addressing an imbalance of market power generating inefficient outcomes? Are you trying to improve the availability or quality of market information, goods or services? Is there undesirable or avoidable market instability or inequality? How serious is it? Can you be sure the market is unlikely to come up with a solution by itself?

Regulatory failure

Has a previous attempt to regulate failed? Have old regulations failed to keep up with new circumstances? Is there a legitimate public outcry about an issue of public importance?

Unacceptable hazard or risk

Is there a new or emerging safety or environmental problem? Are people exposed to risks they are ill-equipped to deal with? Are you trying to manage a public health issue that has escalated beyond expectations or is a major public concern?

Keeping risk in perspective

Be careful not to be distracted by the symptoms of a problem or media interpretations of it. Identify the underlying cause of the problem, its seriousness and your capacity to deal with it. For example, if faced with a rising incidence of food poisoning in the community, a regulator's first obligation would be to gather facts, assess the cause, potential for harm and the scale of the problem and then consider the policy options.

If the probable cause of a food poisoning outbreak is poor food handling techniques in restaurants and cafes, is this a one-off example, or is the problem widespread and likely to lead to more serious outbreaks? Is there a case for government intervention?

Remember: regulation cannot eliminate risk entirely; sometimes it just shifts risk. Our role as policy makers is to provide advice to government about acceptable levels of risk—taking into account the possible consequences—and how much it will cost the community to reduce or eliminate that risk.

Risk: likelihood versus consequences

Consider the **likelihood** of risk as well as the **consequences** of the risk. Media or lobby groups often focus on controversial or emotive aspects of potential policy decisions, but is the cost of intervention in proportion to the real-world risk? Can risk be eliminated entirely? Who should bear the cost? How much risk is acceptable under the circumstances?

As policy makers, the total effect of our recommendations is the most important consideration. We must balance the desired outcomes of intervention against the burden imposed on

potentially large numbers of people, businesses, and community organisations to achieve that outcome.

Remember that intervention is not risk free. How confident are you that your proposed solution will work?

What are the genuine consequences of no action?

Analyse how the problem has been dealt with in the past or is currently regulated by Commonwealth, state, territory or local government regulations or by governments overseas. Are there deficiencies in existing approaches?

Why do current arrangements not properly address the identified problem? Is it a problem of design or implementation, or both? How can you be sure your policy options will succeed where others have failed?

Evidence is the key to your analysis

What do you already know about the problem? If there is existing data about the people affected by the problem, or the extent to which they are affected? How robust are the datasets relied on by your analysis? It is reasonable to have a higher degree of confidence in well maintained and regularly updated information, but the Impact Analysis should acknowledge where there are gaps or the confidence levels are lower.

The information available or required to describe the problem may be different to the information required to solve it or to evaluate your success. Does government hold an authoritative dataset on this problem? If not, can it be readily obtained, or is additional work required? In this section you must talk about the information that you hold, how you have assessed the quality of that data against a framework (i.e. 'fitness for purpose'), any gaps, and how you plan to close any information gaps through the implementation phase if they cannot be closed during the policy development phase.

Policy analysis should be one of the key drivers of the Government's data collection and management efforts.



Question 2

What are the objectives, why is government intervention needed to achieve them, and how will success be measured?

In this section of the Impact Analysis, you must:

- Set out why there is a legitimate reason for government to intervene, including demonstrating that government has the capacity to intervene successfully.
- Clearly identify what objectives, outcomes, goals or targets you are aiming for.
 - These must be specific enough to be weighed up against each other and the costs of each option.
- Identify the constraints or barriers to achieving your goal.
- Outline what factors will make this policy change a success and include measurable targets.
- Identify alternatives to government action—or explain why there are no alternatives.

Not every problem can be solved by government

Is there a case for government intervention? Is the problem too small to justify action? Is the cost of intervention greater than the potential gain? What is the likelihood of intervention having the intended outcome? Should the Government step back and let the market deal with the problem?

Impact Analysis needs to demonstrate there is a genuine need for government to take responsibility for the problem. Have governments—Commonwealth, state or local—attempted to fix this problem before? What success did they have? What was learnt from the experience?

Not taking action can be just as valid a policy solution as any other, and a rigorous cost-benefit analysis should always include 'business as usual' as a benchmark.

Is there an inefficient allocation of resources? Are there equity issues?

When markets are functioning well, they tend to allocate resources to the most valuable uses. When this doesn't happen, for example, in the provision of policy outcomes like justice or services for low income earners or in rural or remote areas—there can be good arguments for government intervention, to improve efficiency or equity or both.

Market failure alone is not an argument for government intervention, particularly if the failure does not have a material impact on the functioning of the wider market. But where market distortions lead to inefficient or inequitable outcomes, the cost of intervention may be justified.

Are you addressing a monopoly or abuse of market power?

Intervention may be justified where uncompetitive market structures or anti-competitive conduct lead to inefficient outcomes in the economy. This may occur when there is a monopoly, or a small number of sellers can limit supply in the absence of substitutes or maintain prices higher than would occur in a competitive market.

A range of regulatory interventions is available to government to restore a competitive market or manage a continuing monopoly situation. Monopoly issues can be emotive with a variety of competing interests to balance. Ensure you carefully verify claims made by affected parties on both sides of the debate.

Policy makers should be aware of existing legislation or mechanisms to deal with perceived or actual market failures, monopolies and abuse of market power. The *Competition and Consumer Act 2010* provides a range of powers that may well address the problem and make further regulation unnecessary or counterproductive.

Policy makers should look to existing approaches and their actual or potential application before proposing new regulation.

Do we need to correct information asymmetry?

Markets may not allocate resources efficiently if one party in a transaction has significantly more information than another. Sellers and buyers may have an incentive to conceal information in order to obtain a more favourable price or conditions in a transaction, or to dishonestly gain an advantage. Intervention may be an option to impose the obligation to disclose or certify relevant information.

On the other hand, the internet has the potential to reduce information asymmetry in many transactions and policy makers should consider this in their analysis. Remember that imposing disclosure obligations on a large number of business or community organisations can impose significant burden—make sure the problem you are trying to fix is large enough to justify the cost of compliance.

Do we need to overcome an externality?

An externality occurs when the production or consumption of a firm or a person generates costs and benefits that fall on third parties, and those parties have no control of the creation of those costs and benefits. An externality can be positive or negative. For example, a factory polluting a river, making the water unusable for businesses downstream, or a nightclub opening in a quiet residential area would both generate negative externalities. A positive externality could occur from flu vaccinations, which reduce the chances of others contracting the flu even though they didn't have the injection.

Many activities generate externalities—positive and negative—though the existence of an externality does not on its own justify government intervention. The determining factors include the size and nature of the externality and the likelihood that intervention will generate a more efficient or socially desirable outcome.

Is the market unable to deliver a much-needed public good?

Some goods and services are unlikely to be provided efficiently by the market. Intervention may be required where a good or service for which there is a clear need is not being provided. There are two types of public good in this category:

- Non-rivalrous goods and services such as national defence, diplomatic treaties or lighthouses. One person's use of these things does not stop others from consuming them. Goods and services such as these are rarely if ever delivered by markets.
- Non-excludable public goods, such as fish in the ocean, or trees on public land, are difficult for private sellers to prevent non-paying customers from consuming. Governments typically regulate access to these goods to create a functional market.

Is the market behaving irrationally?

Experience with behavioural insights tells us that people do not always make rational, considered decisions even in an otherwise efficiently functioning market. For example, even in the presence of penalties or other disincentives, people still pay their taxes late (or not at all), drink and drive, waste water or engage in unsafe work habits. Government may have a role in curbing irrational or socially undesirable behaviour, but regulators should not always assume regulation alone will achieve the desired objective.

Ask yourself: what is the appropriate level of personal responsibility?

Question 3

What policy options are you considering?

In this section of the Impact Analysis, you must:

- Identify a range of genuine and viable alternative policy options.
- Demonstrate each of your live options can achieve your stated policy objectives.
- Give the decision maker confidence you have identified all of the available options open to you or any other portfolio of government.
- Identify the context for the options considered (for example, the policy may be an election commitment).

Start with clear, well differentiated policy options

Every good Impact Analysis will canvass a range of viable options. The number of options you include in your analysis should be commensurate with the magnitude of the policy problem being considered, but three is the minimum requirement. In most cases, your options must include a status quo or “take no further action” option and at least two others. In rare circumstances, OIA may agree to the consideration of the status quo and one option when there are no viable additional options.

While every option considered should be practical and implementable, options should not be discounted just because they haven’t been considered before or there are risks associated with them.

At least one option other than the status quo must always be non-regulatory – would an advertising campaign achieve many of the same outcomes, or can changes to expenditure influence behaviour? Remember that a rigorous cost-benefit analysis must always pose the status quo as the benchmark policy option.

Non-viable options should only be incorporated into your Impact Analysis if they have been canvassed publicly.

Give careful thought to reassuring the decision maker that you haven’t missed a viable policy option during your analysis. A thorough and broad-based consultation process inviting affected groups to discuss the issues can often settle that question (see Question 5 for more information).

Above all, keep in mind, presenting one option as a *fait accompli* is not acceptable. There must always be analysis of the no regulation or status quo option as a benchmark, unless your proposed policy approach is an election commitment. When this is the case, the Government

has already committed itself to one policy approach in a public and accountable way and no alternative options need be considered.

Cabinet can also determine there is no need for options in the case of a policy matter where there are special political, economic, military or other considerations.

Impact Analysis can discount or not include options, but if these are obvious options, there needs to be a clear explanation of why they are not included, supported by evidence.

Does one size fit all?

Sometimes a mix of options should be considered. Different groups—especially small businesses—experience regulation differently while others present less compliance risk. Have you considered whether a mix of policy options would be more effective and efficient? For example, small businesses are disproportionately affected by many regulatory burdens because the extra workload of new obligations tends to be spread among fewer people. If a group is less likely to present a risk or the risk is smaller, you should consider whether they should be exempt from the new regulation, or be subject to a simpler, lighter touch approach.

The non-regulatory option

When analysing the non-regulatory option, ask yourself: “What would happen if we didn’t introduce any new form of regulation?”

There may be good reasons for regulating, but these must be weighed against what could be achieved through other approaches.

Don’t treat this option lightly or consider it a token gesture. It is mandatory to give it serious consideration to broaden your thinking on the policy options available to you.

Better enforcement of existing legislation

Sometimes better staff training, enforcement or a different management focus to address cultural, behavioural or systems issues can be an effective means of achieving your outcome. Always assess the potential for improving policy outcomes with better enforcement of the rules already in place.

Remember too, that people can have poor awareness of their obligations. Better targeted education can be a useful tool in achieving your objectives. If there is existing legislation, your Impact Analysis must include a description of how it is being enforced and outline why a refined approach to enforcement would not achieve the objectives.

Prescriptive regulation

Prescriptive regulation of obligations is a common form of regulation. It is often used as a regulatory tool where there is a high perceived risk or fundamental public interest and achieving compliance is seen as critically important.

Principles based regulation

As a policy adviser, you can recommend less prescriptive approaches and give discretion to regulated parties on how they can act. Principles-based regulation allows maximum flexibility among affected groups as to how they achieve compliance. For example, where there are multiple ways to achieve the outcomes, principles based regulation may be appropriate to encourage innovation and provide options and opportunities to regulated parties.

Other approaches

A range of approaches other than legislating responsibilities are available and should be explored. Implementation arrangements for these approaches must be designed to ensure those affected understand their legal rights and obligations otherwise the approach may not be effective.

Quasi-regulation

This approach covers a wide range of rules or arrangements that are not part of explicit government regulation, but nevertheless seek to influence the behaviour of people, businesses, or community organisations. Examples include industry codes of practice developed with government involvement, guidance notes, industry-government agreements and accreditation schemes.

Co-regulation

This describes a solution where industry develops and administers its own arrangement and government provides the underpinning legislation to enforce it. Such legislation can set out mandatory standards, but may provide for enforcement through a code overseen by industry.

Self-regulation

This consists of industry-written rules and codes of conduct enforced by the industry itself. Where industry participants understand and appreciate the need for self-regulation and there is a low risk to the community in the event of non-compliance, this can be a good option.

Any costs resulting from self-regulation are usually minimal and often administered sympathetically by industry. Self-regulation is a good option where the consequences of market failure are low and the market is likely to move towards an optimal outcome by itself.

Self-regulation is not a viable option if an industry has no incentive to comply with its own rules. In some cases, self-regulation may create public concern, where, for example, perceived conflicts of interest could threaten safety, such as in food-handling, healthcare or aviation. Self-regulation should be approached carefully where previous attempts to achieve compliance or penalise non-compliance have failed.

Alternative approaches

With each of these regulatory options, there may be alternative approaches available to address the problem. These can include:

- No specific action—that is, relying on the market in conjunction with existing general liability laws (e.g. negligence or breach of contract) and insurance laws.
- Information and education campaigns, including product labelling or media campaigns.
- Market-based approaches including taxes, subsidies, tradeable permits, performance bonds and tradeable property rights.
- Pre-market assessment schemes, such as listing, certification and licensing.
- Post-market exclusions like bans, recalls, licence revocation or negative licensing.
- Service charters.
- Standards, which may be voluntary, compulsory or performance-based.
- Other mechanisms like public information registers, mandatory audits and Quality Assurance schemes.

Impact Analysis requirements apply to the development of standards used for regulatory purposes, even if they have been developed by Standards Australia or other third parties.

If any of the options involve establishing or amending standards in areas where international standards already apply, you should document whether (and why) the standards being proposed differ from the international standard.

Agencies should also consider opportunities for trans-Tasman regulatory alignment as an option for lowering costs or delivering benefits to Australian and New Zealand businesses.

Applying behavioural insights to policy design

Behavioural insights can be used as a tool to support the development, evaluation and iteration of policy options. As a starting point, it's important to understand the drivers of the behaviour you hope to change, particularly when the regulation is aimed at people. This will help you identify appropriate policy options.

In some circumstances, behavioural insights can offer an alternative to regulation. ‘Nudges’ can cause people to voluntarily change their behaviour in response to small changes in their environment. You could consider whether a nudge (such as a timely reminder or a default setting) could achieve your desired outcome without imposing new mandated requirements.

If you do select regulation as the most appropriate tool, behavioural insights can help you design more effective regulation by making it easier for people to comply. The OECD outlines three behavioural insights principles which have been used to support regulatory design:

- Simplify the actions and information to support your audience with compliance;
- Utilise default options to support decision-making; and
- Incorporate visually engaging messaging to highlight appropriate behaviours.

Many government agencies have established behavioural insights teams to support policy makers with the application of behavioural insights. Contact your respective behavioural insights team for more information and support. You can also visit <https://behaviouraleconomics.pmc.gov.au/>.

Question 4

What is the likely net benefit of each option?

The analysis you prepare in this section is the key to demonstrating how each option is likely to play out in the Australian community. A net benefit figure for each option will tell the decision maker whether the Australian community is likely to be better off after the policy decision.

In this section of the Impact Analysis you must:

- Provide a clear estimate of the net benefit of each option. Where a monetised net benefit has not been established, provide a detailed explanation of the steps taken to try to establish a net benefit figure and the reasons why this has not been possible.
- Identify who is likely to be affected by each option and assess, where significant, the economic, competition, social, environmental or other costs and benefits as well as how those costs and benefits are likely to be distributed.
- Describe the method you will use to conduct your analysis.
- Analyse qualitative impacts as well as quantitative impacts.
- Provide information on applicable international standards and whether the policy proposal differs from or adopts those standards.

Who is affected and what are the costs and benefits?

Measuring the net benefit of each policy option requires all of the costs and benefits to be taken into account.

There are a range of methods to establish net benefit. Whatever method is used, the analysis will reveal the best option through the application of a decision rule – this is a short statement that explains how the analysis will be conducted and how it will be used to select the best option.

- The decision rule should be established in this question and applied in Question 6.
- The default decision rule is that the option highest net benefit is ‘best’.
- The default method is cost benefit analysis.

At a minimum, your Impact Analysis must attempt to quantify all highly significant costs and benefits. All assessments of costs and benefits, whether quantitative or qualitative, should be based on evidence, with data sources and assumptions clearly identified.

Your analysis should consider things like:

- **Changes to primary economic indicators.** Regulation can affect employment levels, wages, consumer sentiment, market competition, trade and economic growth.
- **Public health and safety effects.** Improvements in health and safety, such as policies aimed at reducing workplace injuries, may have costs in the short term, but provide benefits over the longer term.
- **Environment.** Environmental degradation and pollution levels can be affected by policies. These may be affected positively or negatively even by policies not specifically targeting environment outcomes.
- **Offering better protections.** Regulation is often undertaken with a view to offering better protections or rights to the community or a vulnerable cohort.
- **Changed costs for goods and services.** Regulation can increase or decrease prices through a range of effects, such as through stipulations on product design, marketing or distribution.
- **Market intervention.** Restrictions on competition, market entry or access can have implications for supply and demand with detrimental impact on prices, choice, quality and availability.
- **Changed compliance effort.** The behaviour of regulators, whether in day-to-day dealings with the public or the design and delivery of services, can impose a range of costs on people who deal with government options may increase or decrease this compliance effort.
- **Changed costs of doing business.** The cost to business of changed market parameters such as prevention of predatory behaviour, entry rules, banning of products, competition arrangements, capital requirements or sources of supply.
- **Record keeping or reporting requirements.** The administrative cost of complying with or reporting on aspects of business such as a grant, training package or in many cases, simply supplying statistics to government agencies.
- **Regulatory stipulations.** The cost to business of changes in the design, production, distribution, pricing or marketing of a product or service as a result of government rule-making.
- **Consequences of policy change.** Regulation in sectors where not-for-profit organisations deliver services, for example, welfare, can have far-reaching implications for an organisation's effectiveness.
- **Grant and other funding conditions.** Paperwork and other activity associated with applying for, administering and reporting on the use of grants.
- **Administration of regulation.** The cost to government of developing, administering and enforcing regulation. These costs are important to quantify because ultimately they are funded through taxation measures. Policy design should seek to allocate costs directly to the beneficiaries of policy proposals rather than spreading costs across parts of the community that do not receive the benefits.

What are the costs of regulation?

New regulations often have costs, either monetary or behavioural, through changes to rights, powers or obligations. These costs can generally be expressed in monetary terms, and it is the policy adviser's job to provide the decision maker with a fair and balanced assessment of these costs.

The process of estimating the costs of regulation requires analysis of each of the following questions.

Business costs

- What kind of businesses are impacted? How many are there?
- What products or services do they deliver? What industries are they in?
- How many people do they employ and how long have they been in business? Where are they based?
- How likely is it that any new costs will be passed on to consumers? You should show both the direct cost to business and the anticipated extent to which this is likely to be alleviated by being passed on to consumers.
- How well prepared are the business owners or managers to cope with new requirements? Are they represented by an industry association?
- Do any options require changes in production, transportation or marketing procedures?
- Are there regulatory compliance burdens imposed on businesses? For example, administrative costs associated with complying and/or reporting on regulatory requirements, or costs associated with delivering the regulated outcome being sought.
- Are there special burdens on small business arising from the fact they often lack the required specialist legal, accounting or HR skills? Does the proposal disproportionately affect small business? Does the analysis adequately take into account the different impacts on small businesses of different sizes, types and locations?

Community organisation impacts

- What sectors do they operate in? Are they large or small?
- What kinds of activities do they undertake? Do they deliver services on behalf of government?
- Are they represented by a peak body?

Individual impacts

- Who are the people or households affected? How many are there?
- Why are they affected? Will the burden fall on those who can least afford it?
- What type of households do they live in? Where do they live and work?
- How old are they? Are there cultural issues you need to take into consideration?
- What understanding do they have of the policy issue you are dealing with?
- Are they organised into any representative entity?

Societal/Environment impacts

- Does the proposal shift costs from one cohort to another?
- Are employment levels affected – will levels be reduced?
- Does the proposal reduce economic growth? How?
- How is the health and safety of individuals or communities impacted?
- What environmental assets are affected? Is there any degradation or pollution likely as a result?

Impacts on government

- What is the cost to all levels of government of developing and implementing the regulation?
 - Will these costs be recovered directly from regulated parties or will they be borne by the entire community?
- Are education campaigns necessary to provide information to affected stakeholders?
- How will information be collected and collated?
- Will the regulation require enforcement? Who will do this? Will inspections be required?
- Does eliminating regulation at one level of government shift costs or risks to other levels of government or the community?

Estimating compliance costs

Regulatory compliance burdens are a small subset of the broader costs in an impact assessment, but should be factored in to your Impact Analysis.

Ensure your data sources and calculation methods are transparent, that any gaps or limitations in the data are discussed and your assumptions are disclosed in every case.

Regulatory obligations to transfer money to government—such as taxes and levies—should not be included in your estimate of regulatory burden (though these should be part of the broader Impact Analysis).

Here are some questions to consider as you seek to estimate regulatory burden:

- Have you checked your costings with industry associations or peak bodies to see if they support your estimates?
- Do you have examples of costs of previous, similar regulation? Are there any academic papers, consultant studies or audits to provide further support for your costings?
- What are the drivers of cost? Are there ways of designing or implementing the policy to minimise the impact on those drivers?
- Are there any other hard-to-quantify costs the decision maker should be taking into account? For example, regulation can be used to allocate risk to those in society best placed to manage it. Regulation can be used to clarify rights and responsibilities.

Concepts of fairness and equality can be difficult to evaluate in dollar terms, but if they are significant, you should find a place in your overall analysis to assess their contribution to net benefit.

- Will there be indirect effects? If you impose obligations on one group, will they simply pass those costs on to others or impose their obligations on customers or suppliers? If so, how will these indirect impacts alter the net benefit?

The **Regulatory Burden Measurement framework guidance note** can provide additional assistance and advice on quantifying regulatory compliance burden.

What are the benefits of regulating?

The point of imposing regulatory costs is to achieve some form of desirable policy outcome. It's critical you estimate these beneficial outcomes as part of your analysis. Regulatory benefits can often be harder to measure, but it's critical you have a workable and valid estimate to support your analysis. For example, your policy proposal might involve a road safety initiative where the benefit is the avoidance of lives lost: hard to estimate, but important nonetheless. Examples of other potential benefits are too numerous to list here, but in assessing the positive impacts of various policy options, consider questions like these:

- Does your proposed policy result in a better or wider range of government services, even though they might come at a greater cost?
- Will your proposed policy result in improved competition, lower prices, availability of better products, improved productivity or the creation of new jobs?
- Does the resultant reduction in risk or improvement in safety of your regulation have an economic benefit that will be felt in the community? Is the benefit likely to be immediate or will it only emerge over the long term? Have these benefits been modelled and have the models been independently reviewed or tested?
- Who do the regulations benefit? Are the benefits real, tangible and meaningful or are they unimportant to the affected groups?
- Are there windfall gains to any group that you need to note in the analysis? Are the identified benefits distributed fairly or are there equity issues to be considered?
- Do the proposed options represent such a significant saving to government that business and the community will regard the costs as worth bearing?
- Do the proposed options reduce the regulatory compliance burden? By how much?

What is the *net* impact?

At its core, the Impact Analysis process challenges you to answer two important questions:

- Is it better to do something rather than nothing? Will a policy intervention improve the situation significantly or will the cost of intervening outweigh the advantages?

- Is the recommended policy option better than the other ones proposed? Provided you have identified all the available and viable options, will this one deliver the best net outcome?

Comparing the costs and benefits of each proposed option requires rigorous and logical analysis in support of your conclusion. Assess the net benefit—overall benefit minus costs—to the current status quo. Ensure the effort and expense required is commensurate or proportionate to the problem you are trying to solve.

Keep in mind, many studies have shown the capacity of humans to habitually over-estimate potential benefits and under-estimate potential costs.

Distributional effects

The distributional effects of each option are also important in determining the overall outcomes for the community. Distributional analysis is necessary when a policy proposal is likely to have a significant impact on different groups or when the proposed policy has an explicitly redistributive objective.

Your analysis should include all the information available to ensure that decision-makers are aware both of the identity of the groups likely to gain and to lose as a result of government action, and of the nature and size of the gains and losses.

The types of distributional effects you should consider in your analysis include gender, age, indigeneity, disability, and regional. The extent of analysis should be commensurate with the significance of the distributional impacts and relevance of those to the decision maker.

For more information on assessing distributional effects, see the **Distributional Analysis guidance note**.

Are there any competition considerations?

If your proposal is likely to restrict competition, your Impact Analysis must demonstrate benefits that outweigh the costs and that no alternative means of achieving the same objective is available. This is required to meet the Commonwealth's commitments under the intergovernmental Competition Principles Agreement, designed to promote competition and established by COAG in 1995.

Incumbent businesses and entry of new business

Will your proposed regulation affect existing firms differently, altering competitive relations between them in a way that would reduce the intensity of competition in the market as a whole?

Will it restrict entry for certain new businesses? What is the likely degree of this restriction and is it likely to significantly reduce competitive pressures in the longer term?

Would your proposed regulation result in changes to:

- the ability of businesses to provide a good or service?
- requirements for a licence or permit as a condition of operation?
- the ability of some types of firms to participate in government procurement?
- costs of entry to, or exit from, an industry?
- geographic barriers for businesses?

Prices and production

Will the regulation raise prices by imposing new costs on producers? Will it facilitate information exchange among producers, raising the prospect of collusion?

Would your proposed regulation:

- control or substantially influence the price at which a good or service is sold?
- alter the ability of businesses to advertise or market their products?
- set significantly different standards for product/service quality?
- significantly alter the competitiveness of some industry sectors?

The quality and variety of goods and services

Does the regulation include minimum standards that will reduce the range of price–quality combinations available in the market? Is it likely to reduce product variety by restricting the entry of new firms?

Will it place limits on:

- the ability of consumers to decide from whom they can purchase goods or services?
- the mobility of customers to move between suppliers of goods or services by imposing high ‘switching’ costs?
- information available to consumers that decreases their ability to choose effectively between competing businesses?

What if the issue is market-sensitive?

As you consider some of the questions about costs and benefits, you may encounter sensitive issues that may limit your capacity to consult openly with affected groups. In most cases, transparency and openness is paramount, however some policy questions require sensitivity. Think carefully about how and when consultation takes place and how much information you can share—and with whom.

Question 5

Who did you consult and how did you incorporate their feedback?

In this section of the Impact Analysis, you must:

- Explain the purpose and objectives of consultation.
- (For early assessment) — outline the plan for conducting consultation.
- (For final assessment) — outline the principal views of stakeholders.
- Summarise the areas of agreement as well as areas of difference.
- Describe how the preferred option has been modified to take account of stakeholder views, or why dissenting views have not been adopted.

In the event your policy proposal is market sensitive, or if you believe open public consultation may compromise your policy analysis, you should discuss your consultation options with OIA at the earliest opportunity.

Proper consultation delivers better outcomes

There are many reasons why you should consult in advance of a policy decision. Common courtesy is one; as is being confident you haven't missed something important in your analysis. But there are other reasons why consultation can make an important contribution to the success of policy proposal.

Confirming the accuracy of the data on which analysis is based

Impact Analysis must be open and transparent about the sources of information and the assumptions made. Consulting affected groups lets you check that your conclusions are based on a solid foundation and provides an opportunity for stakeholders to provide additional data or evidence to support deliberative processes. Consultation also provides useful input on the real costs and benefits of policy proposals to test the accuracy of your own estimates.

Making sure every practical and viable policy alternative has been considered

Decision makers can choose between policy options more confidently if they know every viable policy option has been considered. Whether through local knowledge, deep or specialised experience, sometimes the people closest to the problem can suggest useful ways to solve it.

Demonstrating you have listened and considered diverse stakeholder views

People need to know that the evidence they have presented on matters that affect them has been considered. It may not be possible to accommodate the views that emerge from consultation, but your policy decision may gain greater acceptance if you demonstrate your decision was based on an understanding of the full spectrum of evidence and that the decision maker had available to them a faithful reflection of the full range of stakeholder views.

Ensuring there are no implementation barriers or unintended consequences and shaping evaluation

If you have useful insights into how people are likely to react to your proposal, you may be able to tailor an implementation or evaluation strategy to incorporate their circumstances or better reflect the real-world effects of the decision taken.

The experience of business people or community group leaders can be invaluable in understanding how a market or a community sector **really** works. If your policy analysis does not include a discussion about how the market might behave in the real world, stakeholders may be able to provide assistance in this regard. This could smooth implementation and help avoid serious negative consequences.

Use the right consultation tool for the job

Transparency can encourage genuine dialogue and build trust in the policy process, but in order for your consultation to be credible and effective, you need to engage with stakeholders in a way that is relevant and convenient for them. You also need to give stakeholders time to consider the information you give them and time to respond.

Social media can be a good way of generating discussion and feedback, but it isn't the only way and it may not be appropriate for certain groups. Tailor your consultation process to the needs and characteristics of your audience and ensure the resources devoted to it are commensurate with the significance of the issues. The people you consult may have families, businesses and other calls on their time. Make sure your consultation schedule is respectful of their constraints.

Four options for consulting stakeholders

A thorough consultation plan should be developed in the early stages of the Impact Analysis process. Policy makers should already have well established lines of communication with stakeholders as part of their daily work. Consultation should be a natural extension of those relationships, although it's normal for some policy matters to be highly contested, controversial or market sensitive.



Whilst open and comprehensive consultation should be your aspiration, in certain circumstances being too consultative can compromise your policy goals. Judgement may be required to strike the right balance between being consultative and being decisive. This is why there are four consultation options available to policy makers.

Full public consultation

This is the default form of consultation. Although it can take many forms, public consultation brings the benefit of encouraging openness and trust in a decision making process.

Targeted consultation

When your stakeholder group is in a small geographic area or other well defined category, targeted consultation may be the most cost effective way of achieving your objectives. If consultation identifies a policy option you had not previously considered, you may need to revisit your analysis.

Confidential consultation

Sensitive issues may require discreet handling of the process of consultation. This may be because of the sensitivity of the issues, market considerations, or to avoid triggering needless concerns, confusion or other unintended consequences.

Post-decision consultation

The final option available to you is to not consult upfront, but instead to ensure your analysis is as robust as possible, proceed to a decision and then discuss the implementation and evaluation of the decision with affected stakeholders. This may be because of the market sensitivity or controversial nature of the issue. This approach to consultation is not without its risks and should be weighed carefully.

	When is it appropriate?	What forms can it take?
Full Public Consultation	<ul style="list-style-type: none"> • This is the default approach • When transparency and public accountability of decision making is the most important priority. • When the integrity of the decision process will not be compromised by early public scrutiny. 	<ul style="list-style-type: none"> • Public meetings and briefings. • Calls for submissions. • Industry or sectoral meetings and briefings. • Direct communications to affected entities. • Media and advertising. • Large scale social media activities. • If consultation identifies a policy option not previously considered, revisit analysis.
Targeted Consultation	<ul style="list-style-type: none"> • When an affected group of stakeholders is in a small or well defined geographic area or business sector. • When consultation should be contained so that effort is not wasted involving unaffected parties. 	<ul style="list-style-type: none"> • Face-to-face meetings, or telephone surveys of affected people. • Other direct communications to affected entities. • Small scale social media activities. • Direct public engagement of peak bodies or other representative groups. • If consultation identifies a policy option not previously considered, revisit analysis.
Confidential Consultation	<ul style="list-style-type: none"> • When the sensitivity of the issues requires that you gauge public sentiment or inform affected entities discreetly without needlessly triggering widespread concern, anger or confusion among affected households or businesses. 	<ul style="list-style-type: none"> • Narrow or in-camera consultation of select groups of opinion leaders or peak bodies. • Quantitative research into the general views and likely responses of affected entities or areas in which two-way dialogue is not sought. • Alternative forms of consultation must be followed by broader post-announcement consultation on transition or implementation issues. • If consultation identifies a policy option not previously considered, revisit analysis.
Post-decision Consultation	<ul style="list-style-type: none"> • When the decision is highly market sensitive and some could gain unfair advantage from being consulted. • When an issue has already attracted significant and prolonged public debate and consultation serves no useful policy purpose. • When open public consultation could compromise the confidentiality of cabinet deliberations or good decision making. 	<ul style="list-style-type: none"> • OIA approval must be obtained before this consultation option can be exercised. • Consultation can take any of the above forms, but takes place after the decision maker has made the decision. • Consultation seeks detailed dialogue with entities on transition and implementation issues rather than on the policy decision itself. • If consultation results in material changes to the policy proposal, the proposal should be returned to the decision maker for further consideration.

As a rule, the best consultation processes are:

Continuous

Relationships with stakeholders should already exist but you may need to seek out a broader range of views to discuss your policy proposal when developing your Impact Analysis. Build consultative relationships whenever the opportunity presents itself, not merely when you need them. Be mindful of when Impact Analysis documents are publicly released and proactively advise stakeholders.

Broad-based

Consultation should capture the diversity of stakeholders affected by the proposed changes. This includes diverse business interests as well as segments of the wider population. State, territory and local governments are also stakeholders in some cases, as are many government agencies. Always consult with other regulators who have similar policy responsibilities to yours across the same jurisdiction. This will identify any overlapping regulatory functions and give you an opportunity to streamline or avoid creating duplicative arrangements.

Accessible

Channels for consultation should be relevant to the groups you are consulting. You should consider strategies to assist stakeholders who might be significantly impacted by your policy but do not have the resources and/or the ability to prepare a submission or response. Agencies should be able to respond promptly to queries from stakeholders. This could be facilitated by the use of social media, inbound calling numbers or face-to-face meetings.

Not burdensome

Many people you wish to consult have jobs or businesses, or family commitments. Don't make unreasonable demands of people you wish to consult or assume they have large amounts of time to devote to your consultation. If your stakeholder group is the subject of frequent consultation, try consulting jointly with other agencies to minimise the burden.

Transparent

Agencies should explain the objectives of the consultation process and the context in which consultation is taking place—be careful to explain when and how the final decision will be made and what is and is not on the table. Feedback should be welcomed and responded to, even if it is not adopted. Dissenting views need not be accommodated, as long as they are dealt with respectfully.

Subject to evaluation and review

Agencies should evaluate consultation processes to ensure ongoing relevance and effectiveness.

Not rushed

When you provide detailed information as part of a consultation, people need time to understand it, consider it and respond. Give people as much time as is reasonable to absorb the information you provide and gain a proper understanding of the issues so they can offer a considered view. Depending on the complexity of your proposal, this could be as much as 60 days but should not be less than 30. When consulting large organisations you must consider whether their response might require more time to allow it to progress through the company board or other management framework where the topic is particularly large or sensitive.

A means rather than an end

Consistent consultation processes show you are an experienced and professional public servant. But don't be a slave to process if there is a simpler way to consult in the circumstances.

Use consultation as a way to improve decisions, not as a substitute for making decisions. It is not uncommon for legislation to set out an agency's obligations to consult stakeholders in the course of introducing new policies or effecting change. Where this legislated obligation exists and all relevant requirements for consultation are met, then there is no need for further consultation as part of an Impact Analysis.

If you're unsure about your consultation options, speak to OIA as early as possible.



Question 6

What is the best option from those you have considered and how will it be implemented?

In this section of the Impact Analysis, you must:

- Indicate which of the identified options you are recommending.
- Explain the decision making process and clearly outline any:
 - caveats or qualifications
 - assumptions
 - unresolved issues
 - weightings applied to evidence or arguments.
- Build on the discussion about data earlier in the Impact Analysis and set out a plan to close any gaps during implementation to support successful evaluation.
- Explain the extent to which each option achieves the objectives set out at question 2 and the balancing of costs and benefits against these objectives.
- Explain how the Government will implement the recommended option, including a detailed implementation plan for complex proposals. This section must:
 - Discuss any implementation challenges you may face in this policy proposal.
 - Assess the implementation risks: their likelihood, consequences and management.
 - Outline transitional arrangements in moving from one policy to another.

Which is the best option?

Your Impact Analysis must identify a recommended option from among those presented and analysed.

- Which option is more effective? Appropriate? Efficient? Which is the least costly? Which one has the greatest net benefit for Australia?
- All other things being equal, the policy option offering the greatest net benefit should always be the recommended option.
- Judgement is required. It's rare for all other things to be equal. But you must be able to support your conclusions with clear thinking, logical argument and robust data.

Take into account the costs and benefits. The option with the highest net benefit should always be your recommended option. Sometimes there will be costs or benefits that cannot be monetised – in these cases the net benefit figure may not tell the full story. In every case the reasons for your recommendation must be transparent and defensible.

Any areas of uncertainty must be weighed openly and honestly. Any assumptions you have made must be disclosed, discussed and assessed for their impact on the final decision.

This section must also cover how consultation was taken into consideration and how it shaped the recommended option. Were your assumptions validated? Are your estimates of the total effect of the proposal reasonable? Did stakeholders suggest any alternative policy approaches that you hadn't thought of? Were you able to find acceptable solutions to any of the problems identified? Is your recommended option generally workable, or are there going to be problems implementing it?

Caveats relating to methodology, estimates, limitations of your analytical techniques or issues of data quality must be disclosed and any potential for them to have affected your conclusions must be acknowledged and assessed.

You should be clear about how the impact of your recommended option will be distributed across the community. Where will the burden fall? Is there anything you can do to mitigate the burden?

You should also consider how best to convey this information to decision makers.

The form of language in any policy recommendations must reflect these underlying uncertainties, not by hedging your bets or failing to choose an option, but by making a confident recommendation explicitly taking any uncertainties or ambiguities into account.

Good decision making relies on honest and thorough analysis.

Writing an implementation plan

It's essential to have a clear implementation plan for delivering your proposed policy option.

An implementation plan creates a shared understanding among those who will bring your project to life and ensure its success.

There should be a clear line of sight from the Government's objectives to the expected outcomes and benefits.

You should identify implementation challenges, timeframes and project phases. This is even more important when a project intersects with other regulations, policies or projects.

Identify resourcing and governance arrangements so everyone knows which decisions can be made by whom.

Include a clear plan for bringing stakeholders along with you. Risks must be clearly identified, their likelihood assessed and consequences considered.

Use this checklist to ensure your Impact Analysis is an example of good practice in implementation and evaluation.

Who will implement the chosen solution?

- Are the roles and responsibilities of each person, group or agency involved clearly defined and documented?
- Is there a shared understanding of who is responsible for each aspect of delivery?
- Have you adequately considered governance?
- Are there reporting and review arrangements in place?
- Are you keeping it simple? Don't allow project management processes to become an end in themselves.

Do you have the right amount and type of resources to implement your policy?

- Look at people, financial and delivery resources across the life of the implementation, not just whether you have enough to implement the first stage of your policy.
- Have you weighed up the costs of using different delivery mechanisms? Make an informed choice on what resources will be required to deliver your desired outcome.
- Have you designed implementation to ensure enough benchmark data is collected to assess whether your policy has had the desired effect over time?

Does your implementation plan include adequate risk management arrangements?

- The aim is not to eliminate risk but to identify, assess and manage risk. Be proactive in avoiding known risks and vigilant in identifying new ones.
- Develop and maintain your risk management strategy in conjunction with stakeholders.
- Are you able to manage problems proactively and escalate issues, risks and disputes to the right person or body quickly?

How will you ensure your stakeholders are adequately involved or informed about progress?

- Do you have the right number and type of stakeholders? Is the stakeholder cohort representative of the people, businesses and community organisations affected by the proposal?
- How are you keeping them informed of progress?
- Are you listening to stakeholders as well as talking to them? Ask them for ideas on implementation or risk issues; they may have a helpful view you had not previously considered.

Question 7

How will you evaluate your chosen option against the success metrics?

In this section of the Impact Analysis you must:

- Describe how the performance of your policy will be monitored and evaluated against the objectives and success metrics set out at question 2, during and after implementation.

Writing an evaluation plan

It's essential to have a plan for how you will monitor and evaluate your proposed policy option.

Plan from the start what will be measured, how it will be measured and by whom, and why and who you will report this to. This includes identifying potential data sources, and determining whether a data sharing agreement, ethics approval or a privacy impact assessment would be required.

Evaluations can attempt to address many questions but key issues include: how well the policy was implemented, whether the policy was effective and efficient in achieving its intended outcomes, and whether the policy had differential impacts for different groups.

Good evaluation questions include: How has the policy made things better for people in Australia? How well was the policy implemented? Was the policy effective in achieving its intended outcomes? Was the policy efficient (that is, did it achieve its outcomes at least cost)? Did the policy have different — or possibly harmful — effects on different cohorts? Has there recently been an accumulation of burden on any one cohort culminating with the policy being evaluated?

Even the best proposals should be periodically reviewed to determine if intervention is still needed or could be improved. Changes in technology, demography, consumer preferences or the introduction of other regulations can affect the relevance or effectiveness of any set of rules.

Consider the effects of cumulative burden. In isolation, regulation may address the current problem, but where it represents an accumulation of burden on a particular industry/sector, it may not be effective in driving the behaviour expected by the community or may render prior intervention obsolete or unnecessarily burdensome.

Keep your vision fixed on the original objectives of the policy and perform regular reviews to test if the policy continues to meet those objectives.

Evaluation should not passively consider the performance of the policy, but actively monitor and question the ongoing need for the policy. Ask yourself if the policy continues to perform a useful purpose. Is it still required or can it be done away with?

If you need help with these aspects of your Impact Analysis, contact the Office of Impact Analysis.

Submitting your Impact Analysis for assessment

As you work through the Impact Analysis, OIA is available for informal advice at any time.

You can submit your Impact Analysis for **formal** assessment by OIA at two different stages during its development.

These are the **Early Assessment** and **Final Assessment** stages.

Early Assessment

Submitting Impact Analysis to OIA for an Early Assessment provides you with an opportunity to test the analysis, ensuring decision makers are provided with an appropriate level of information at that stage of the policy development process. Where appropriate, publishing an Impact Analysis for consultation that has been subject to an Early Assessment also helps to maximise the opportunity for stakeholders to comment on the options and influence their final shape as the analysis is finalised.

An Early Assessment is undertaken once you have completed the first four questions (including quantification of regulatory compliance costs) and planned your consultation process. When you submit your Impact Analysis for Early Assessment, it must be signed off by a deputy secretary, secretary or chief executive.

The decision maker must not have finalised any decisions about the preferred option at this point.

OIA will assess your partly–complete Impact Analysis with two important criteria in mind:

- Is the information proportionate to the stage of the process, the problem being addressed and the options presented?
- Do you have an appropriate plan for consulting those affected by your proposal?

If the Early Assessment finds your analysis insufficient or your consultation plan unsatisfactory, OIA will advise on the areas that need to be addressed, otherwise this could attract a detrimental assessment of your Impact Analysis by the OIA at the Final Assessment stage.

OIA may also comment on whether you have considered all of the policy options available to you.

It pays to remain in touch with OIA throughout the development of your Impact Analysis to avoid it being assessed as insufficient: remember once an Impact Analysis is formally lodged with OIA, the Final Assessment will be published on OIA's website alongside your Impact Analysis following announcement of a decision.

Final Assessment

The Final Assessment can only be done when all seven Impact Analysis questions have been answered in full.

OIA will assess your Impact Analysis against the question: *Does the analysis support an informed policy decision?*

The Final Assessment is a two pass process.

In the **first pass**, OIA comments on whether the Impact Analysis is consistent with the Government's requirements and adequately addresses all seven Impact Analysis questions.

OIA will comment on whether the options considered reflect the full suite of policy options available to you, including those suggested by stakeholders, and may comment on whether your Impact Analysis accurately reflects stakeholder feedback on your policy analysis.

The OIA will provide formal written comments within five working days if improvements are required to the Impact Analysis. There is no limit on the amount of time you can take between the first pass and second pass. You can draw on OIA's advice at this time to improve your Impact Analysis in any way. First pass versions and comments are not published.

In the **second pass**, OIA assesses the Impact Analysis and will respond in writing within five working days. Your assessed Impact Analysis must conform to all applicable processes and have all necessary inclusions, such as an appropriate consultation approach and a minimum of three policy options, one of which must be a non-regulatory option.

Your Impact Analysis must not contain obvious errors; must have an appropriate level of detail; and the depth of analysis must be in keeping with the size of the problem and potential impacts.

Portfolios must ensure each Impact Analysis gives genuine consideration to options put forward by stakeholders through the consultation process. Your analysis must treat these options as serious policy alternatives and ensure they are assessed equally against your original policy options. If stakeholder proposals are not adopted, your analysis must offer a thorough and transparent rationale.

OIA can assess your Impact Analysis as insufficient if your analysis is poor or your process in developing the Impact Analysis is poor (for example, consultation was inadequate for the significance of the proposal).

OIA will comment on the quality of the Impact Analysis, including whether an appropriate range of options has been explored, in the published second pass letter.

Once OIA assesses your Impact Analysis, you can proceed to the decision maker for a final decision regardless of the outcome of the assessment, but be aware: OIA will publish your Impact Analysis and its assessment on the OIA website. An insufficient Impact Analysis is likely to attract unfavourable scrutiny.

For both passes, your Impact Analysis must be certified by your Secretary, Deputy Secretary, or Chief Executive prior to lodgement with OIA. The certification letter received with your Impact Analysis on the second pass will be published on the Department of the Prime Minister and Cabinet website when the Impact Analysis is published. Certification letter templates are available from OIA.

If you have any concerns about OIA's assessment of your Impact Analysis, you are always welcome to discuss your concerns with the Executive Director of the OIA.

Assessment tiers

Impact Analysis is assessed against four tiers: insufficient, adequate, good practice and exemplary practice.

The tiers are designed to encourage you to produce Impact Analysis that is above merely sufficient. You should aspire to a level of analysis whereby decision makers can be confident a potential policy response has been thoroughly examined and is clearly and genuinely the best possible response to an identified policy problem.

In assessing your Impact Analysis, the OIA separately assesses the quality of analysis and the quality of the process undertaken.

Assessment tiers

Exemplary practice

Exemplary practice Impact Analysis **contains exceptionally high quality analysis for each of the seven questions**, and the process followed in developing the proposal was exceptional. Policy makers should aim to produce exemplary practice Impact Analyses.

Good practice

Impact Analysis assessed as good practice **contains an overall good quality analysis addressing the seven questions and following an appropriate policy development process** commensurate with the significance of the problem and magnitude of the proposed intervention.

A good practice Impact Analysis may contain a small number of elements where the quality of analysis or the process followed were not of exceptional quality and could have been improved.

Adequate

Adequate means the **Impact Analysis is sufficient for a decision**, but contains a number of shortcomings and/or the policy development process used to underpin the analysis was lacking in some elements, such as not conducting a reasonable level of consultation.

Insufficient

Impact Analysis assessed as insufficient means the **process and analysis is of poor quality and should not be used as a basis for decision-making**. An insufficient Impact Analysis triggers a requirement for a post-implementation review to be completed within two years of implementation.

Special cases

Prime Minister's exemptions

Only the Prime Minister can exempt a government entity from the need to complete Impact Analysis, and only then in very limited circumstances, namely:

- When there are truly urgent and unforeseen events requiring a decision before an adequate impact analysis can be undertaken.
- Where there is a matter of Budget or other sensitivity and the development of a Impact Analysis could compromise confidentiality and cause unintended market effects or lead to speculative behaviour which would not be in the national interest.

If the Prime Minister grants an exemption, the agency will not be deemed as not having met the Impact Analysis requirements. When the decision is publicly announced, it will be recorded that the Impact Analysis was subject to a Prime Minister's exemption and the reason noted on the Department of the Prime Minister and Cabinet's website (<https://oia.pmc.gov.au/>).

If a decision to regulate results in legislation, the fact that an exemption was granted by the Prime Minister needs to be noted in the explanatory material.

If time permits, analysis may be required to be undertaken before the decision is implemented to establish a baseline for ex post evaluation of the decision. This analysis will be provided to the OIA, but will not be publicly released.

A Post-Implementation Review must be completed within two years of the decision for all matters covered by a Prime Minister's exemption, or at another period agreed by the Prime Minister in circumstances where an alternative timing would be more appropriate.

Impact Analysis Equivalent

With the prior agreement of OIA, your deputy secretary, secretary or chief executive may certify a review or other similar analysis has been prepared through a process equivalent to that required in this Guide and has addressed all seven Impact Analysis questions.

Where this approach is taken, OIA may agree that additional impact analysis is not required. However, OIA may not agree to an Impact Analysis Equivalent where the scope or depth of analysis does not adequately address the seven Impact Analysis questions.

OIA does not formally assess the quality of analysis contained in the document against the assessment criteria but it does assess the relevance of the analysis to the policy proposal at hand. *If the proposal is not sufficiently relevant or lacks depth of analysis, then additional impact analysis will be required.*

The certification letter explaining how the Impact Analysis Equivalent document meets the requirements will be published alongside the document at the time when the decision is announced. In addition, the OIA can also make general comments on the quality of the equivalent analysis at the publication stage.

The onus is on you to engage with the OIA as early as possible to test whether an Impact Analysis equivalent document will be accepted. Agencies are encouraged to consult OIA early when preparing review terms of reference to ensure that each of the seven Impact Analysis questions will be addressed.

Election commitments

Impact Analysis covering matters which were the subject of an election commitment will not be required to consider a range of policy options. Only the specific election commitment need be the subject of analysis and in this situation, the focus should be on the commitment (with reference to the status quo) and the manner in which the commitment should be implemented.

Responses to reviews and inquiries

Impact Analysis is required for responses to reviews and inquiries – where a government response is agreeing to future work or where the total effects of the response are not yet known, the Impact Analysis may be presented alongside the proposed response in draft form. The Impact Analysis must be finalised for each captured element no later than the final decision point.

Carve-outs

A carve-out is a standing agreement between the OIA and a department, removing the need for a preliminary assessment to be sent to the OIA for certain types of regulatory change. A carve-out can be used when anticipated regulatory changes are minor and likely to occur on a regular basis.

Matters subject to a carve-out must be minor or machinery in nature. Carve-outs cannot be applied to proposals where Cabinet is the decision maker.

Revenue raising and protection measures

An Impact Analysis dealing with revenue raising or revenue protection measures need only address the best means of implementing the proposed measure. This is because a full cost benefit analysis for revenue measures is not possible without also considering how the revenue will be spent. Therefore, any Impact Analysis in this category does not need to address the

first two questions unless any revenue impacts are supplementary to a non-revenue policy objective. Further, the third and fourth questions can be confined to options for implementing the decision, since it is not relevant to consider a 'status quo' option or the option of raising revenue through an alternative means.

Impact Analysis dealing with a measure to protect the integrity of an expenditure programme does not need to consider how it is funded or how any savings might be used.

The most commonly asked questions

Who prepares an Impact Analysis?

Policy makers. Every Australian Government policy maker should be familiar with the Impact Analysis process, because at some point in your career you will most likely need to write one. More broadly, the questions can be used as a tool for analysing any range of policy problems.

Is the process mandatory for every government agency?

Yes. You must consult the OIA regarding Impact Analysis requirements for every type of policy decision if your organisation is a:

- government department
- statutory authority
- board (even if it has statutory independence)
- public entity operating under the *Public Governance, Performance and Accountability Act 2013*.

Impact Analysis is also required over and above a government agency's own regulatory impact assessment process, if it has one.

Is an Impact Analysis mandatory?

All Cabinet submissions must meet the Australian Government Impact Analysis requirements.

Even if you think there will be no regulatory impact on people, businesses, or community organisations, Impact Analysis is mandatory for anything going before Cabinet. The Cabinet needs to be informed of the impact of any decision it is being asked to make.

If a decision is not going to Cabinet, Impact Analysis is still required where the policy proposal is likely to have a more than minor impact on people, businesses or community organisations. This includes new regulations, amendments to existing regulations and, in some cases, sunsetted regulations being remade. It also includes decisions of regulators that already have existing legislative or regulatory authority.

Even in situations where Impact Analysis may not be required, it is good practice where an agency or regulator is responsible for issuing rules or guidance material for people, businesses, or community organisations.

When is the best time to commence Impact Analysis?

The earlier the better. Don't wait until your submission is due to go to Cabinet or your senior executive before you start writing. Leaving it until last is not only bad process, it may result in bad policy outcomes or leave you open to unfavourable public scrutiny.

Can I be exempted from preparing Impact Analysis?

Generally not. Only the Prime Minister can grant an exemption from the Impact Analysis requirements and then only in exceptional circumstances. To seek an exemption from the Impact Analysis process, your Minister must write to the Prime Minister at the earliest stage in the policy-making process.

Do I need to undertake Impact Analysis if I'm removing regulation?

In most cases, yes. It is the size of the impact, not whether it is positive or negative that triggers an Impact Analysis. Impact Analysis is critical to ensure you consider the costs and benefits of implementing the proposed change. Even though you may be reducing regulation, you might thereby be creating significant impacts, reducing protections, or introducing unintentional outcomes which may pose unacceptable risks, costs or transitional burdens. Impact Analysis is not just about understanding the costs — it is also focused on understanding how decisions of government can improve outcomes for people, businesses, and community organisations.

Are there examples of Impact Analyses that I can refer to?

Drafters of Impact Analysis often approach the Office of Impact Analysis seeking advice and guidance on earlier approaches that have worked for agencies in similar situations. The extensive library of Impact Analyses on a wide range of topics provides you a foundation for your work.

You can also refer to the **Exemplary Analysis and Case Studies guidance note** which can be used as a reference point when seeking examples on specific aspects of the Impact Analysis framework.

The Office of Impact Analysis publishes all Impact Analyses, along with a range of guidance notes on the Department of the Prime Minister and Cabinet's website <https://oia.pmc.gov.au/>.

What's the role of OIA?

The Office of Impact Analysis (OIA) has the role of ensuring the APS complies with government Impact Analysis requirements.

You're welcome to discuss any Impact Analysis question with OIA. OIA can also help with:

- scoping the problem;
- assessing the adequacy of analysis;
- estimating impacts and undertaking cost–benefit analysis;
- strengthening your analysis of potential policy options and identifying any gaps;
- recognising impacts arising outside your portfolio and identifying relevant contacts in other portfolios;
- best practice consultation methods;
- training and guidance on the Impact Analysis process;
- regulatory proposals for COAG or national standard-setting bodies.

OIA maintains a public website (<https://oia.pmc.gov.au/>) to report on compliance across all agencies, Impact Analysis activity and Post-implementation Reviews. The Office is located in the Department of the Prime Minister and Cabinet and maintains day-to-day independence from government in its decision making on the Impact Analysis system.

OIA can be contacted on **(02) 6271 6270** or helpdesk-OIA@pmc.gov.au.

Can I use external consultants to write my Impact Analysis?

The skills to undertake Impact Analysis are fundamental to the discipline of policy making. Engaging external consultants to do the work for you will not build the appropriate in-house skills within your agency.

External consultants can be used to help you write your Impact Analysis where your agency does not have the capability to undertake the work directly – for example it may be appropriate to engage specialists to prepare complex economic modelling.

If engaging a consultant, you must do so under your agency's normal procurement rules and you must ensure this process does not slow down the Impact Analysis. OIA can help with specifications for engaging consultants where specialist advice is needed.

Consultants are often best placed to help with technical aspects of your Impact Analysis, such as costings and cost–benefit analysis. When engaging a consultant, your agency is responsible for ensuring the final Impact Analysis addresses all seven questions adequately, that costings are accurate and the recommended stakeholder consultation is appropriate.

OIA will not deal directly with consultants, nor manage consultants on your behalf, nor will it provide feedback, comments or assessments directly to consultants. Impact Analysis always remains the responsibility of the agency.

Glossary of terms

Administrative costs

Costs incurred in complying with a regulation that relate to record keeping, reporting or other administrative processes or systems.

Business

Any organisation engaged in commercial, industrial or professional activities operating under Australian law for the purpose of making a profit.

Burden

The cumulative effect of government regulation on people, businesses or community organisations.

Business-as-usual costs

Costs incurred as part of normal business practices that would be undertaken regardless of regulatory change.

Carve-out

A standing agreement removing the need for assessment of minor or machinery changes that occur on a regular basis.

Community organisation

Any organisation engaged in charitable or other community-based activity operating under Australian law and not established for the purpose of making a profit.

Consultation

The practice of advising stakeholders of an intention to regulate which involves information sharing, dialogue and genuine consideration of feedback received.

Decision maker

The authorised person or entity responsible for a decision in relation to a regulatory proposal. This can include deputy secretaries, secretaries, other delegated officials, chief executives, boards, ministers, the Prime Minister or the Cabinet.

Delay costs

The expenses and loss of income incurred through a lost opportunity caused by an application or approval delay.

Disallowable instruments

Any regulation which, having been tabled in Parliament, is open to disallowance for a set period, usually fifteen sitting days from the date of tabling. All new legislative instruments are subject to disallowance unless they have been granted an exemption.

Financial costs

The fees and charges attached to a regulation that are payable to government.

Grandfathering

The practice of exempting a pre-existing entity or activity from a new regulation.

Impact Analysis

The process of examining the likely impacts of regulatory proposals and the range of alternative options. Also the formal document Commonwealth agencies must produce as part of the policy making process when a decision is likely to have a regulatory impact on people, businesses or community organisations.

Individual

Any person subject to Australian law who interacts with government or is impacted by regulation, and whose activities have an impact in Australia.

Indirect costs

Costs arising as a downstream consequence of regulatory changes. This includes changes to market structure and competition impacts.

Machinery change

Changes in regulation required as a result of a substantive regulatory decision – for example indexation changes to pension rates.

Minor change

Changes that do not substantially alter the existing regulatory arrangements.

Non-compliance costs

Costs associated with a failure by a business, community organisation or individual to comply with regulation. Examples include fines and court fees.

Non-regulatory option

A policy option which aims to achieve its policy objective without using any form of regulation, as distinct from the status quo option.

Office of Impact Analysis (OIA)

The Branch within the Department of the Prime Minister and Cabinet responsible for providing advice to Portfolios on whether Impact Analysis is required, assessing the adequacy of Impact Analyses, and for providing support and training across the Australian Public Service to support increased policy analysis capability and improved advice to the Australian Government.

Opportunity cost

A benefit foregone by having to comply with a regulation.

Post-implementation Review (PIR)

A review conducted after a regulatory policy decision is implemented, normally to test whether the regulation is performing as intended, is still relevant and needed.

Principles based regulation

Regulation that provides greater discretion to regulated parties in how they can act to meet the stated objectives.

Quasi-regulation

Any rule or requirement that is not established by a legislative process, but which can influence the behaviour of people, businesses, or community organisations. Examples include industry codes of practice, guidance notes, industry–government agreements (co-regulation) and accreditation schemes.

Red tape

The term in general use for a process or other requirement of government perceived to impose an unreasonable burden on people, business, or community organisations.

Red tape costs are usually a small subset of the broader costs of a proposal.

Self-regulation

Rules and codes of conduct set up to regulate the behaviour of business or community organisations that are put in place and enforced by the industry or sector itself.

Status quo option

A policy option in which all current policy settings remain as they are. Impact Analysis must analyse the status quo as a benchmark against which other options can be assessed.

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oia.pmc.gov.au