
REGULATORY IMPACT ANALYSIS GUIDE FOR
MINISTERS' MEETINGS AND
NATIONAL STANDARD SETTING BODIES

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Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies

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ABOUT THIS GUIDE

Ministers' meetings and other inter-governmental bodies facilitate cooperation, consultation and decision-making between the Australian Government and state and territory and local governments in specific policy areas. These cross-jurisdictional bodies initiate, develop and monitor policy reform jointly in their areas of responsibility, and take action in the resolution of issues arising between governments. Decisions of these bodies are commonly given effect through laws and regulations, and ensuring their decisions are informed by evidence-based analysis undertaken in accordance with consistent and transparent principles is important.

This Guide is a minor update to the May 2021 *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies*, which itself draw authority from previous Council of Australian Governments (COAG) and more recently National Cabinet decisions relating to the operation and application of regulatory impact analysis (RIA) to regulatory decisions taken by intergovernmental decision-making bodies.

In prescribing the RIA requirements for decision-making bodies, this Guide outlines:

- principles for best practice regulation;
- guidance for undertaking RIA; and
- steps for policy officers to take in preparing a Regulation Impact Statement (RIS).

State and territory governments have also produced guidance material on best practice regulation to assist decision-makers to undertake RIA and make sound regulatory decisions. However, to avoid doubt, in the case of the National Cabinet, Council on Federal Financial Relations, National Cabinet Reform Committees, Ministers' Meetings, and National Standard Setting Bodies, this Guide should act as the primary source of direction on RIA.

APPLICATION

For the purpose of this Guide, 'regulation' refers to any rule endorsed by government where there is an expectation of compliance. This includes the broad range of instruments which impose mandatory requirements or otherwise impact upon the behaviour required of businesses, the community or individuals.

The requirements outlined in this Guide apply to substantive policy decisions taken by Ministers' Meetings and National Standard Setting Bodies (collectively referred to as 'decision-making bodies'), including (but not limited to) the National Cabinet, Council on Federal Financial Relations and National Cabinet Reform Committees. The requirements apply where the relevant decision-maker requests the OIA's support and independent assessment of a RIS prepared by their officials.

THE IMPORTANT ROLE OF REGULATORY IMPACT ANALYSIS

Why RIA matters

Regulation is an essential part of running a well-functioning economy and society, but must be carefully designed so as not to have unintended or distortionary effects, such as imposing unnecessarily onerous costs on those affected by the regulations or restricting competition. Assessing the impact of regulation, including analysing the costs and benefits, is therefore important to ensure that it delivers the intended objective without unduly causing adverse effects.

Put simply, a major decision should be supported by a RIS.

RIA is important because it helps policy makers focus on the potential impact of major decisions: In other words, the nature and extent of the impact on the community (including businesses, community organisations and individuals).

RIA is a useful discipline in everyday policy work. The seven RIS questions can help to structure ideas, test assumptions and encourage consideration of options beyond a default regulation-based solution.

Who is the RIS for?

Two groups of people rely on the accuracy and rigour of a RIS.

The first are the decision-makers, for whom a balanced assessment of the options and clarity on their ability to solve the problem are critical. The second are stakeholders, who have a right to accurate and accessible information about government decisions affecting them.

The RIS needs to be a factual and analytical assessment of the likely impacts. It should be precise and economical in its language, and include only what is relevant. It should avoid unnecessary jargon and needlessly complex language. It should be measured and prudent in its arguments and assertions. The RIS must not pass off opinion as fact; so check the accuracy of every claim and where the facts may be inconclusive, say so.

Make the RIS easy to navigate by ensuring sections are clearly marked and there is a logical flow. Keep in mind, the RIS will ultimately be read by decision-makers, stakeholders, the general public and potentially the media.

PRINCIPLES FOR POLICY MAKERS

All governments will ensure that regulatory decisions will be consistent with the following principles:

1. Policy makers should clearly demonstrate a public policy problem necessitating government intervention, and should examine a range of genuine and viable options, including non-regulatory options, to address the problem.
2. Regulation should not be the default option: the policy option offering the greatest net benefit — regulatory or non-regulatory — should be the recommended option.
3. Every major decision to regulate should be the subject of a Regulation Impact Statement.
4. Policy makers should consult in a genuine and timely way with affected businesses, community organisations and individuals, as well as other policy makers to avoid creating cumulative or overlapping regulatory burdens.
5. The information upon which policy makers base their decisions must be published at the earliest opportunity.
6. All regulation should be periodically reviewed to test its continuing relevance.

THE ROLE OF THE OFFICE OF IMPACT ANALYSIS

The Australian Government Office of Impact Analysis (OIA) administers the RIA framework for the Australian Government and intergovernmental decision-making bodies. Where requested by decision-makers, it assesses the quality of analysis in RISs, conducts training and provides guidance to assist policy officers in preparing RISs. Procedural requirements for the preparation of a RIS are outlined in this Guide.

The OIA is located in the Department of the Prime Minister and Cabinet and maintains day-to-day independence from governments in its operational decision-making on application of the RIA system.

The OIA does not have any power over decisions made by decision-making bodies and its role is advisory. The National Cabinet has agreed the OIA is to provide independent advice on the adequacy of a RIS prepared for both public consultation and decision by decision-making bodies when requested. In fulfilling this role the OIA does not support any particular regulatory approach or jurisdiction.

The OIA is available to discuss any questions you may have on RIA and the preparation of RISs, and can be contacted on (02) 6271 6270 or helpdesk-OIA@pmc.gov.au.

Guidance on the preparation of RISs is available on the Department of the Prime Minister and Cabinet website at: <https://oia.pmc.gov.au>. The OIA maintains a series of Australian Government guidance notes on RIA-related topics that may be useful when developing RISs for decision-making bodies. Topics covered include best practice consultation; competition impacts; risk analysis; and cost benefit analysis.

OIA also maintains a public website where each RIS finalised under this Guide is publicly released (<https://oia.pmc.gov.au>).

THE REGULATORY IMPACT ANALYSIS PROCESS

The RIS as a two-stage process

If regulatory options are being considered as described at page 3, decision-making bodies must subject these options to the RIA process through a two-stage process comprising preparation of:

- a draft RIS for consultation ('consultation RIS'); and
- a final RIS to inform the decision-making body ('decision RIS').

The purpose of a consultation RIS is to canvass the options under consideration, in order to elicit information from stakeholders to help analysis of the relative costs and benefits of those options. The purpose of a decision RIS is to inform the deliberations of the decision-making body, having drawn conclusions on whether regulation is necessary, and if so, on what the most efficient and effective regulatory approach might be, taking into account the outcomes of the consultation process.

Where a RIS is commissioned by the decision maker, the default requirement is that both a consultation RIS and decision RIS must be prepared. However, a consultation RIS may not be required in circumstances where the function of the consultation RIS has been achieved by an appropriate alternative mechanism. These circumstances may include:

- statutory consultation has occurred in accordance with the requirements inherent in the legislation or regulatory scheme to which the proposal relates; or
- ongoing consultation has been undertaken over a prolonged period and the responsible agency is able to demonstrate that the policy options under consideration have been tested with relevant stakeholders, representative stakeholder views are known, and sufficient evidence has been elicited to meaningfully inform the analysis in the decision RIS.

The following steps for preparing a RIS are provided to assist decision-making bodies (including their secretariats or advisory committees) in determining appropriate courses of action and maximising the effectiveness and efficiency of new regulation taking into account the principles outlined above.

Steps for Policy Officers undertaking RIA

Step one:

Once a RIS has been commissioned by the relevant-decision maker, officials should make contact with the OIA to request the OIA's support and independent assessment of a RIS. The OIA will engage with and support the policy officers to complete the process.

Step two:

Draft the consultation RIS and submit the RIS to the OIA for assessment. The RIS needs to be assessed as adequate for consultation purposes before it is made available for public comment. The OIA will provide its assessment within two weeks of receipt of the draft consultation RIS.

Where a trans-Tasman issue or agreement is involved, the agency or secretariat developing the RIS is responsible for consulting the New Zealand Government and reflecting its views in the RIS. In such cases, when the RIS is received for assessment, the OIA will also refer the RIS to the relevant New Zealand central agency for comment.

The consultation RIS approved by OIA should be publicly released by the relevant drafters as part of the mandatory community consultation process, unless the OIA has agreed that the function of the consultation RIS has been achieved by an appropriate alternative mechanism as described above.

It is expected that the level of analysis in a consultation RIS would be lower than the level on analysis in the decision RIS. This is because the problem, options and impacts of options are under development and sometimes unclear. The consultation process is designed to allow stakeholders and other interested parties to help identify such elements and particularly the likely impacts of alternative courses of action.

Step three:

Consult with affected stakeholders in accordance with an appropriate consultation plan. The consultation approach should be informed by the OIA's Best Practice Consultation guidance note available at: <https://oia.pmc.gov.au>.

Step four:

The RIS should be developed further following its public release, taking into account outcomes from the consultation process and incorporating a list of stakeholders consulted and a summary of their views.

As a general rule, the level of analysis included in the decision RIS provided should be higher than that included in the consultation RIS. All seven RIS questions need to be comprehensively addressed in the decision RIS.

Step five:

The decision RIS is to be submitted to the OIA for assessment, and should be assessed as adequate prior to the RIS being used to inform the major policy decision taken by the decision-making body.

The OIA will provide its assessment within two weeks of receipt of the RIS. The assessment will focus on whether the RIS meets the requirements set out in this document, including:

- the appropriateness of the type of analysis, and the extent to which the depth of analysis is commensurate with the potential impacts of the proposal;

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- the rigour and transparency justifying any recommendation made in the RIS; and

Step six:

Following a decision to proceed with a regulatory course of action, the decision-making body secretariat should advise the OIA of the decision.

After the decision has been publicly announced, the OIA will publish the RIS on its website.

What needs to be included in a RIS?

The basic feature of a RIS is the systematic examination of the costs and benefits of options for achieving an agreed policy objective or solution to an identified policy problem.

As explained in the next section, the RIS must answer seven key questions. The detail and depth of analysis in a RIS should be commensurate with the magnitude of the problem and with the size of the potential impacts of the proposal.

There is no one-size-fits-all template for a RIS prepared in accordance with the requirements of this Guide. The requirement is that the RIS answers the RIS questions as appropriate for both the consultation and decision stages, to ultimately provide decision-makers with robust evidence-based analysis of the likely impacts. This provides some degree of flexibility in how the RIS is formatted. For example, it may be useful to include an introductory or background section to outline the purpose of the RIS and provide brief context on the existing operating environment, market or regulatory system, prior to responding to the seven RIS questions.

THE SEVEN RIS QUESTIONS

1. What is the problem?
2. Why is government action needed?
3. What policy options are to be considered?
4. What is the likely net benefit of each option?
5. Who was consulted and how was their feedback incorporated?
6. What is the best option from those considered and how will it be implemented?
7. How will the chosen option be evaluated?

RIS Question 1: What is the policy problem?

The introductory section of the RIS must:

- Clearly identify and define the problem.
- Demonstrate why it is a problem: including whether there are risks or other dangers to be mitigated?
- Offer evidence about the magnitude of the problem and the costs of not doing anything.
- Describe the businesses, community organisations or individuals affected by the problem.
- Identify if there is any existing legislation which is not being enforced.
- Explain which, if any, current government measures have sought to address this problem.
- Establish why those measures are not working.

Defining the problem

Identify who is likely to be affected, what is the nature of the impact they will experience and how they will respond to the proposals. Consider inter-related policy settings imposed by other portfolios – how might these impact the problem and be impacted by the proposal.

There are a relatively small number of situations that justify direct government intervention in the form of regulation. Policy analysis is most likely to begin from one of the following starting points.

Market failure

Is there a need to address an imbalance of market power generating inefficient outcomes? Is there a need 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? Is the market 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? Is there a need 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 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. The role of policy makers is to provide advice to governments 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 regulating 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?

Good policy must balance the desired outcomes of regulation against the burden imposed on potentially large numbers of businesses, community organisations and individuals to achieve that outcome.

Regulatory action is not risk free. Explore whether the 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 does current regulation not properly address the identified problem? Is it a problem of design or implementation, or both? How likely will policy options succeed where others have failed?

RIS Question 2: Why is government action needed?

This section of the RIS must:

- Clearly identify why there is a legitimate reason for government to intervene.
- Demonstrate that government has the capacity to intervene successfully.
- Identify alternatives to government action.
- Clearly identify what objectives, outcomes, goals or targets that the policy is aiming for.
- Identify the constraints or barriers to achieving the stated goal.
- Ensure objectives are:
 - specific
 - measurable
 - accountable
 - realistic
 - timely.

Not every problem can be solved by government

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

Assess whether 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?

Doing nothing can be just as valid a policy solution as any other, and a rigorous cost-benefit analysis should always include this option 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 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.

Addressing monopoly or abuse of market power?

Regulation 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. Carefully verify claims made by affected parties on both sides of the debate.

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

Consider existing regulations and their actual or potential application before proposing new regulation.

Correcting 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. Regulatory 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. Imposing disclosure obligations on a large number of business or community organisations can impose significant red tape burdens—the problem being fixed should be large enough to justify the cost of compliance.

Overcoming 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 regulation 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. Regulatory 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 usage 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.

Before ascribing a role for government, consider the role of personal responsibility.

RIS Question 3: What policy options are to be considered?

This section of the RIS must:

- Identify a range of genuine and viable alternative policy options.
- Ensure any live options can achieve the stated policy objectives.
- Give the decision-maker confidence that all of the available options have been identified.

Present clear, well differentiated policy options

Every good RIS will canvass a range of viable options, ranging from non-regulatory to explicit government regulation. The number of options included in the analysis should be commensurate with the magnitude of the policy problem being considered, but three is the minimum requirement.

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.

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 the RIS if they have been canvassed publicly.

It is important to reassure the decision-maker that viable policy options have not been missed. A thorough and broad-based consultation process inviting affected groups to discuss the issues can often identify other options (see RIS Question 5 for more information).

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

Which is the best option?

Determine which option is most effective, appropriate and/or efficient.

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 the arguments must be able to support the conclusions with clear thinking, logical argument and thoroughly checked facts. If the option offering the highest net benefit is not the recommended option, the reasons for this must be transparent and defensible.

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. Consider 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, consider whether they should be exempt from the new regulation, or be subject to a simpler, lighter touch approach.

Better enforcement of existing regulation

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

Consider that people can have poor awareness of their obligations. Better targeted education can be a useful tool in achieving the stated objectives.

Light-touch regulation

Light touch regulation can be chosen that is less prescriptive 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 a market operates inefficiently, light touch regulation might lay down rules for the participants on how to agree on prices. More heavy-handed regulation might involve government determining the price itself.

It is often possible to achieve regulatory ends by non-legislative means, such as binding or non-binding guidelines on market participants. Light touch regulation must be implemented to ensure those affected understand their legal rights and obligations otherwise the regulation may not be effective.

Self-regulation

Self-regulation may consist of industry-written rules and codes of conduct enforced by the industry itself. Where industry participants understand and appreciate the need for self-regulation, this can be a good option.

Any red tape resulting from self-regulation is usually minimal and often administered sympathetically by the 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.

Quasi-regulation

Quasi-regulation may cover a wide range of rules or arrangements that are not part of explicit government regulation, but nevertheless seek to influence the behaviour of businesses, community organisations and individuals. Examples include industry codes of practice developed in response to government's public contemplation of regulatory action in the event industry action was not taken.

Co-regulation

Co-regulation 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 the industry.

Explicit government regulation

So called black-letter law, explicit government regulation comprises primary and subordinate legislation and is probably the most common form of regulation. It is usually used as a regulatory tool where there is a high perceived risk or public interest and achieving compliance is seen as critically important.

Where this form of regulation is advocated, ensure it is drafted in plain language.

Alternative instruments

With each of the regulatory options, there may be alternative instruments available to address the problem or issue set out in a RIS. Alternative instruments 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 instruments 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.

RIS 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, the RIS should document whether (and why) the standards being proposed differ from the international standard.

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

RIS Question 4: What is the likely net benefit of each option?

This section of the RIS must:

- Identify who is likely to be affected by each regulatory 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.
- Where relevant, quantify both the benefits and costs (including regulatory costs) of the policy proposal and alternative options on businesses, community organisations, individuals, the broader community, the environment and government to a level of detail commensurate with its impact.
- 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 is the impact?

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

Business impacts can include:

- Market intervention. The cost to business of changed market parameters such as entry rules, banning of products, competition arrangements, capital requirements or sources of supply.
- Paperwork 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.

Community organisations can be impacted by:

- 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.

Individuals and households experience impacts directly and indirectly, for example:

- Higher input costs for goods and services. Regulation can increase 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.
- Increased 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.

Community and environmental impacts can include:

- Economic effects. 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 or pollution levels can be affected by policies. These may be affected positively or negatively even by policies not specifically targeting environment outcomes.

Impacts on government include:

- Administration of regulation. This can include the cost to government of developing, administering and enforcing regulation, or even the cost of taking no action.

What are the costs of regulation?

New regulations often have costs: that is, something that makes individuals, businesses or the community worse off. These costs can generally be expressed in monetary terms, and it is the policy maker's job to provide the decision-maker with a fair and balanced assessment of these costs.

In estimating compliance costs on business, the Australian Government's Regulatory Burden Measurement framework available at: <https://pmc.gov.au/regulation> is one tool to help quantify changes in the regulatory compliance burden.

In estimating the costs of regulation, consideration should be given to the following questions.

Business impacts

- What kind of businesses are we talking about? 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 any new costs will be passed on to consumers? Show both the direct cost to business and the anticipated amount to which this is likely to be alleviated by being passed on to consumers.
- How well prepared are the business owners to cope with new regulatory 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 a costs associated with delivering the regulated outcome being sought.
- Are there cost recovery charges imposed by government on businesses (or community organisations or individuals)? What is the value of these charges?
- Are there special burdens on small business arising from the fact they often lack the required specialist legal, accounting or Human Resources skills in-house? 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?

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- What type of households do they live in? Where do they live and work?
 - How old are they? Are there cultural issues that need to be taken into consideration?
 - What understanding do they have of the policy issue?
 - Are they organised into any representative entity?

Community/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 the regulation?
- 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 taking no action or eliminating regulation at one level of government, shift costs or risks to other levels of government or the community?

What are the benefits of regulating?

The point of imposing regulatory costs is to achieve some form of desirable policy outcome. It's critical to estimate these beneficial outcomes as part of the analysis. Regulatory benefits can often be harder to measure, but it's critical to have a workable and valid estimate to support the analysis. For example, the policy proposal might involve a road safety initiative where the benefit is the avoidance of lives lost. This is difficult to estimate, but important nonetheless. The Australian Government's regulation guidance note – value of statistical life could be used for this estimate – see <https://www.pmc.gov.au/regulation>.

Examples of other potential benefits are too numerous to list here, but in assessing the positive impacts of various policy options, consider questions such as:

- Does the proposed policy result in a better or wider range of government services, even though they might come at a greater cost?
- Will the 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 the 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 need to be noted in the analysis? Are the identified benefits distributed fairly or are there equity issues to be considered?

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- 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 RIS process poses 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 all the available and viable options have been identified, 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 the RIS conclusion. Assess the net benefit—overall benefit minus costs—to the current status quo. Ensure the effort and expense required is not incommensurate or disproportionate to the problem that it is trying to solve. Many studies have shown the capacity of humans to habitually over-estimate potential benefits and under-estimate potential costs.

Distributional analysis

Distributional analysis is necessary when a policy proposal has a significant impact on different groups across society, or when a proposed policy has an explicitly redistributive objective.

Distributional analysis should supplement the overall assessment of the costs and benefits of each option, breaking down costs and benefits so decision-makers have information about the groups in society likely to gain and to lose as result of each option, as well as the nature and size of those gains and losses.

Distributional analysis could see costs and benefits further disaggregated by their impacts on people of different genders, age, Indigeneity, disability, or location. Distributional analysis won't be required in every RIS, but where required should be done to a standard commensurate with the significance of those impacts and relevance of those to the decision-maker.

Status of Distributional Analysis

The distributional implications of a policy can be obscured by the aggregating character of the cost-benefit process. Distributional analysis should include all the information available to ensure decision-makers are aware both of the identity of the groups likely to gain and to lose resulting from a decision, and of the nature and size of the gains and losses. This information should be carefully presented, most usefully in the form of a distributional incidence chart or matrix.

The RIS should take a 'utilitarian' approach to costs and benefits as a standard approach. Judgements about the relative value of costs and benefits on different cohorts in the community are appropriately made at the political level. To avoid subjective bias, analysis should refrain from attaching distributional weights to different costs and benefits.

An exception to this principle might apply where an *unambiguous* direction has been given by government to assess costs and benefits on different cohorts of the community differently. Any application of distributional weights for this purpose should be detailed in the RIS, along with their rationale and methodological approach. The presence of other government policies aimed at particular cohorts does not meet this exemption standard.

Are there any competition considerations?

If the proposal is likely to restrict competition, the RIS 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 state and Commonwealth 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 the 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 the 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 the 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?

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- 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?

Some of the questions about costs and benefits may raise sensitive issues that may limit the capacity to consult openly with affected groups. In most cases, transparency and openness is paramount, however some policy questions require sensitivity. Sensitivity may affect how and when consultation takes place and how much information can be shared—and with whom.

RIS Question 5: Who was consulted and how was their feedback incorporated?

This section of the RIS must:

- Explain the purpose and objectives of consultation.
- In the consultation RIS - outline the plan for conducting consultation.
- Where consultation has occurred:
 - Outline the principal views of stakeholders.
 - Summarise the areas of agreement as well as areas of difference.
 - Describe how the proposal has been modified to take account of stakeholder views, or why dissenting views have not been adopted.

Proper consultation delivers better outcomes

There are many reasons why consultation should occur in advance of a policy decision. Common courtesy is one; as well as being confident that something important has not been missed in the analysis. But there are other reasons why consultation can make an important contribution to the success of the policy proposal.

Understanding the attitudes and likely reactions of the people affected

It may provide useful insights into how people are likely to react to the proposal, and enable the tailoring of an implementation or evaluation strategy to address concerns or suggestions.

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.

Confirming the accuracy of the data on which the analysis was based

It pays to disclose the sources of information and the assumptions made. Consulting affected groups provides the check that the conclusions of the RIS are based on a solid foundation. Consultation also provides useful input on the real costs and benefits of policy proposals to test the accuracy of the estimates contained in the RIS.

Ensuring there are no implementation barriers or unintended consequences

The experience of business people or community group leaders can be invaluable in understanding how a market or a community sector really works. If the policy analysis has not considered how the market might behave in the real world, talk to people with hard-won experience. It may be a way to avoid serious negative consequences.

Affected groups will feel that their views have been considered and heard

Consultation is not just being polite or courteous. People need to know that their opinions count on matters that affect them. It may not even be possible to accommodate the views that emerge from consultation, but the policy decision may gain greater acceptance if demonstrated that the decision was

based on an understanding of the full spectrum of community views and that the decision-maker had available to them a faithful reflection of the full range of stakeholder views.

Use the right consultation tool for the job

Transparency can encourage genuine dialogue and build trust in the policy process, but in order for consultation to be credible and effective, it should engage with stakeholders in a way that is relevant and convenient for them. Give stakeholders time to consider the information 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 the consultation process to the needs and characteristics of the audience and ensure the resources devoted to it are commensurate with the significance of the issues. And remember: the people consulted may have families, businesses and other calls on their time. Make sure the consultation schedule is respectful of their constraints.

Options for consulting stakeholders

The consultation plan should not appear to arise as an afterthought. Professional policy makers should already have well established lines of communication with stakeholders as part of their daily work. Policy 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 the aspiration, in certain circumstances being too consultative can compromise policy goals. Judgement may be required to strike the right balance between being consultative and being decisive. ***As a rule, the best consultation processes are:***

- **Continuous.** Relationships with stakeholders should already exist. If the process involves seeking out people to discuss the policy proposal when developing the RIS, then the point has been missed. Consultative relationships should be built whenever the opportunity presents itself, not merely when needed. Be mindful of when RIS documents are publicly released and proactively advise consultation groups as a courtesy.
- **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 across the same jurisdiction. This will identify any overlapping regulatory functions and give an opportunity to streamline or avoid creating a cumulative regulatory burden.
- **Accessible.** Channels for consultation should be relevant to the groups being consulted. Consider strategies to assist stakeholders who might be significantly impacted by the 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.** Remember: many people have full time jobs or business commitments, especially small business proprietors. Don't make unreasonable demands of people or assume they have unlimited amounts of time to devote to the consultation process. If the stakeholder group is the subject of frequent consultation efforts, try consulting jointly with other agencies to minimise the burden on stakeholders.
- **Transparent.** The objectives of the consultation process and the context in which consultation is taking place should be clearly explained, including when and how the final decision will be made.

Feedback should be welcomed and responded to, even if it is not adopted. Dissenting views need not be accommodated, but should be dealt with respectfully.

- **Consistent and flexible.** Consistent consultation processes demonstrate experience and professionalism. But always seek simpler ways to consult in the circumstances.
- **Subject to evaluation and review.** Evaluate consultation processes to ensure ongoing relevance and effectiveness.
- **Not rushed.** When providing 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 and gain a proper understanding of the issues so they can offer a considered view.
- **A means rather than an end.** 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 a RIS process.

OIA guidance on best practice consultation is available at: <https://www.pmc.gov.au/regulation>.

RIS Question 6: What is the best option from those considered and how will it be implemented?

In this section of the RIS must:

- Describe what was learned from consultation.
- Indicate which of the identified options are being recommended.
- Explain the decision-making process and clearly outline any:
 - caveats or qualifications
 - assumptions
 - unresolved issues
- Discuss any implementation challenges in this policy proposal.
- Assess the implementation risks: their likelihood, consequences and management.
- Outline transitional arrangements in moving from one policy to another.

The RIS must recommend a preferred option from among those presented and analysed.

Take into account the costs and benefits. In most cases, the option with the highest net benefit will be the recommended option, though in every case the reasons for recommending an option must be transparent and defensible.

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

This section must also cover what was learned by consulting stakeholders. Were the assumptions validated? Did the estimates of potential regulatory costs appear valid? Did stakeholders suggest any alternative policy approaches that weren't thought of? Were there acceptable alternative solutions to any of the problems identified? Is the preferred option generally supported, or are there going to be problems implementing it?

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

The RIS should be clear about how the impact of the preferred option will be distributed across the community. Who will bear the burden of new regulations? Is there anything that can be done to mitigate the burden?

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 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 is essential to have a clear implementation plan for delivering the proposed policy option.

An implementation plan creates a shared understanding among those who will ensure success of the policy program.

There should be a clear line of sight from the decision-making body's objectives to the expected outcomes and benefits.

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 the policy process. Risks must be clearly identified, their likelihood assessed and consequences considered.

RIS Question 7: How will the chosen option be evaluated?

This section of the RIS must:

- Describe how the performance of the policy will be monitored and evaluated against its objectives, during and after implementation.

Writing an evaluation plan

It is essential to have a plan for how the policy option will be monitored and evaluated.

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.

Even the best regulation should be periodically reviewed to determine if it 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 over a short period of time, it may render prior regulatory intervention obsolete or unnecessarily burdensome.

Ensure the original objectives of the policy are maintained and perform regular reviews to test if the policy continues to meet those objectives.

FREQUENTLY ASKED QUESTIONS

At what point is a RIS required?

Consistent with the two-stage process described at page 7, a draft RIS is required for the consultation stage of policy development ('consultation RIS') and the RIS should be finalised ('decision RIS') to inform the substantive final decision of the decision-making body.¹

The RIS should be assessed by the OIA as suitable for consultation at the consultation stage, and adequate prior to informing the decision-making body at the decision stage.

For multi-staged decision-making processes, where a RIS is prepared in accordance with this Guide, a RIS will not generally be required for follow-up or subsequent regulation which implements the original decision, unless significant additional regulation is contemplated.

Can I use a consultant to prepare the RIS?

External consultants may be used to help develop a RIS.

If engaging a consultant, you must do so under your government's normal procurement rules and you must ensure this process does not slow down the RIS.

Consultants are often best placed to help with technical aspects of your RIS, such as costings and cost-benefit analysis, rather than the whole RIS. Even when a consultant has been engaged to help develop the analysis in the RIS, the decision-making body is responsible for ensuring the RIS addresses all seven questions adequately, that costings are accurate, and the stakeholder consultation is appropriate.

The OIA will not deal directly with consultants, nor manage consultants on your behalf, nor will it provide feedback, comments or assessments directly to consultants. A RIS always remains the responsibility of the relevant agency or decision-making body secretariat.

¹ A consultation RIS is required unless certain criteria are met, as prescribed at page 7.

REQUESTING A REVIEW OF A RIS

If, prior to the introduction of a regulation, there is some dissatisfaction with the process or adequacy of the analysis by which conclusions were reached, two or more jurisdictions may request an independent review of the proposed regulation. The decision-making body could then defer its consideration of the regulation and commission a review.

The process of independent review would be triggered if two Heads of Government write to the Chair of the decision-making body requesting an independent review of the assessment process. Upon completion, the review body will report back to the relevant Ministerial Council.

The decision-making body is to nominate an independent body to conduct the review (the review body). This might include a regulatory review body in any jurisdiction, an appropriate specialist body or a consultant. Jurisdictions that request the review will meet the review's cost and agree to make resources available for the conduct of the review if the decision-making body decides to use state or territory government regulatory review units to conduct the review.

The review body's task is to reassess the RIS and report on whether it can be demonstrated that the assessment process has been carried out according with the Guidelines in this document. It is not intended that the independent review should necessarily repeat the quantitative analysis. The review body may also comment on any aspect of the proposed regulation and will have access to public submissions made in the course of the assessment process.

The report of the review body would become a public document and would be considered by the decision-making body in its discussion of the adoption of the proposed regulatory measures. Once the report has been considered, the decision-making body's consideration of whether or not the regulation should be adopted by member governments can proceed.

The initial RIA and any review of that assessment are designed to provide the best possible information for the decision-making body. The impact assessment will not bind them or the participating governments since many decision-making bodies are not formally established and do not have formal and binding voting arrangements. Their purpose is to develop a consensus in relation to the matters which they consider.

If, upon the advice of the review body, a state or Commonwealth regulatory review body, or other advice, the impact assessment is found to have been faulty, the decision-making body retains discretion in its use of the impact assessment to inform its decision-making.

If a decision-making body fails to act on the recommendations of the review, the matter may be further examined by First Ministers.