



What to include in the Impact Analysis Preliminary Assessment Form

July 2023

Overview

Description of the problem

Describe the problem that the proposed regulation is intended to solve:

- Do not confuse the problem with a 'symptom' of the problem. Identify the underlying cause of the problem. Is the problem the consequence or the cause?
- What is the nature of the problem? What loss, harm or other adverse consequences are being experienced, and by whom?
- How significant is the problem? What is its magnitude? If your proposal is intended to mitigate risk of an adverse event, what is the likelihood of that event occurring? What evidence do you have to support that assessment?
- How is the problem currently regulated by Australian Government, state, territory or local government regulations, or by governments overseas? Are there deficiencies in the existing regulatory system?
- Is there a case for government intervention or is the problem of purely private interest?
- Why does current regulation not properly address the problem?
- If the problem relates to existing legislation or regulation, is it caused by faulty design, implementation, or both?
- What are the consequences of not taking any action?
- Could relying on the market in conjunction with the general application of existing laws and regulations solve the problem? If not, why not?
- Will the problem self-correct within a reasonable timeframe?

Outline of the policy objectives

Clearly identify why there is a legitimate reason for the Government to intervene. Demonstrate that the Government has the capacity to intervene successfully, and identify alternatives to government action. List objectives, outcomes, goals or targets that are sought in relation to the problem, and constraints or barriers to achieving them.

A common error is to confuse the desired final outcome of a proposal with the outputs, or means of obtaining it. The aim is not to pre-justify a preferred solution, but to specify the objective broadly enough so that all relevant alternative solutions can be considered.

Outline of the options

Outline a range of genuine and viable alternative policy options available to address the problem and achieve the policy objectives. Identify a minimum of three options¹, of which at least one option must always be non-regulatory.

Other elements of your proposal

Include any additional information that is relevant to the proposal. For example: have there been recent proposed regulations similar or related to this proposal, or is it a new regulation, an amendment to an existing regulation, or a replacement for sunset regulation.

State whether any consultation has already been undertaken, and what consultation is proposed.

¹ In certain circumstances, fewer than three options can be considered in Impact Analysis. See the [Impact Analysis Policy Options](#) guidance note for more information.

Likely impact on people, businesses, and community organisations

Impacts may include:

- changes to the number or type of products that businesses can offer, such as:
 - banning products or industry practices
 - changing the way products can be offered
- Impacts on individual's social and economic outcomes, such as:
 - Increasing or decreasing the income or social welfare payment an individual receives
 - Improving or limiting employment opportunities
 - Changing access to goods and services
 - Changing licencing or training requirements for employees in particular industries
- impacts on consumer demand for certain products, such as:
 - changing prices through the regulation's requirements
 - changing the information available to consumers
 - placing restrictions on advertising
- impacts on individual's health and wellbeing, such as:
 - Banning products or services with adverse health outcomes
 - Incentivising healthy lifestyle changes
 - Improving or limiting people's access to health services or products
- impacts on the ability of businesses to compete in the market or on their incentives to compete, such as:
 - creating a self-regulatory or co-regulatory regime
 - changing the requirements for a licence, permit or other authorisation
 - influencing the price or quantity of goods that are sold
 - setting standards for product or service quality
 - changing the prices or types of inputs available to businesses
 - creating subsidies or cross-subsidies for businesses and/or industries

- Impacts on community organisations
 - Changes to a grants process
 - Setting requirements for community organisation service delivery
 - Changing requirements for community organisations to keep records or provide documents
- Impacts on the environment
 - Changes that may reduce or increase pollution and/or carbon emissions
 - Increasing or limiting economic development affecting threatened species or World Heritage sites
- Impacts on Indigenous Australians
 - Measures to close the gap between Indigenous and non-Indigenous Australians
- Changes to criminal and civil laws, such as:
 - Creation of new criminal or civil offences
 - Amending elements of existing offences
 - Changing the applicability of criminal or civil offenses

Regulatory costs are a subset of broader impacts, and include:

- compliance costs:
 - administrative costs
 - costs incurred by regulated entities mainly to demonstrate compliance with the regulation (usually record keeping and reporting costs)
 - costs incurred through complying with government taxes, fees, charges and levies, beyond the amount paid (for example, the time taken to pay a licence fee).
 - substantive compliance costs
 - costs that lead directly to the regulated outcomes being sought (usually purchase and maintenance costs for plant and equipment to meet regulatory requirements, fees paid to training providers, costs of providing information to third parties, and costs of operation—for example, energy costs).
- delay costs:
 - expenses and loss of income incurred by a regulated entity through one or both of:

- an application delay—the time taken to complete an administrative application requirement that prevents the party from beginning its intended operations
- an approval delay—the time taken by the regulator to communicate a decision on the administrative application that prevents the party from beginning its intended operations (this includes the time taken to assess and consider an application).

Small Business Impacts

Small businesses make up over 98% of businesses in Australia and often operate in a fundamentally different way to large or medium businesses. When a policy proposal is judged to have an impact on small businesses, this should be described in the preliminary assessment. The Small Business Guidance Note will assist with the identification and understanding of impacts affecting small businesses: <https://www.pmc.gov.au/resource-centre/regulation/small-business-guidance-note>.

The Office of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) was established under the *Australian Small Business and Family Enterprise Ombudsman Act 2015* to undertake advocacy and assistance functions. This includes the review of proposals in relation to relevant legislation to ensure that policies and regulation do not have unintended consequences that adversely impact the small business sector.

The ASBFEO's office should be contacted to help determine whether there are likely to be impacts on small businesses and whether they should have different obligations from larger businesses in relation to the operation of the possible regulation. The ASBFEO's office can provide assistance with effective consultation with the small business sector and key stakeholders.

The ASBFEO's office can be contacted on 1300 650 460 or advocacy@asbfeo.gov.au.

International Trade and Investment Law Impacts

Reducing the risk of implementing measures inconsistent with international trade and investment law requires that government agencies:

- develop a basic understanding of Australia's trade and investment law obligations; and
- seek advice as early as possible in the policy cycle.

Australia's international trade and investment law obligations are contained in the multilateral World Trade Organization (WTO) Agreements, Australia's bilateral and plurilateral Free Trade Agreements, and Australia's bilateral investment Agreements. Our obligations exist in relation to trade in goods, services, investment and intellectual property. These obligations may include requirements to notify new measures and provide sufficient opportunity for international parties to comment on measures.

Ensuring consistency with Australia's trade and investment law obligations is an important consideration when developing policy proposals in order to mitigate the risk of a dispute being brought against Australia for allegedly breaching these obligations. In this context, it is worth noting that the cost of defending Investor-State Dispute Settlement (ISDS) proceedings is generally borne by the agency with the relevant policy interest at stake.

The Trade and Investment Law Branch at the Department of Foreign Affairs & Trade (trade.law@dfat.gov.au) or the Office of International Law within the Attorney-General's Department (oil.coordinator@ag.gov.au) can help you understand how your proposed policy may interact with Australia's trade and investment law obligations.

Timing

Outline key dates and give an indicative timeline.

More information on the Impact Analysis process

More information on the Impact Analysis process is in the [*Australian Government Guide to Policy Impact Analysis*](#).