



Guidance Note – Consultation and the RIS Process

July 2013

Best practice consultation and the RIS process

Any policy development process, including proposed new regulation or changes to regulation, will involve consultation with relevant stakeholders, including the main parties affected by the proposal: business, the not-for-profit sector, the community, regulators and other government agencies. Consultation helps to ensure that the full range of impacts is taken into account when assessing how best to solve a problem and the transparency it fosters helps to build trust in the policy process.

A details-stage Regulation Impact Statement (RIS) is required to demonstrate that consultation commensurate with the magnitude of the problem and the size of the potential impact of the proposal has been undertaken. This guidance note provides additional detail on the application of the whole-of-government consultation principles outlined in Chapter 7 of the Best Practice Regulation Handbook, and highlights the importance of developing a consultation strategy for regulatory proposals.

Agencies should be cognisant of the effort required from businesses and individuals to participate in consultation mechanisms. Agencies should take advantage of the synergies involved in joint consultation with other agencies to minimise the burdens associated with consultation mechanisms. Australian Government agencies should also engage with agencies at other levels of government to benefit from shared experiences.

Online technology can increase engagement by citizens and public servants, and enhance collaboration in policy making. This will help government processes become more consultative, participatory and transparent. For example, subject to security and privacy requirements, submissions to public inquiries funded by the Australian Government can be posted online in a form that makes them easy to search, comment on and reuse.

The Australian Government has developed the Business Consultation website, www.consultation.business.gov.au, which facilitates the posting of consultation information by Australian Government agencies and feedback from stakeholders.

Information is available on the Australian Government's Web Guide (Web 2.0) outlining the various tools available for low cost and wide-scale online consultation. Web 2.0 as a channel for government to consult on policy development presents an opportunity where consultations can be supplemented (although not replaced) by online engagement and participation.

Application of consultation principles

Continuity

Meaningful consultation with key stakeholders should be continuous and should start as early as possible. Consultation should continue through all stages of the regulatory cycle, including when detailed design features are being finalised. This will assist in identifying and understanding potential problems and in designing and implementing better regulation. For example, while consultation is required after the release of an options-stage RIS, consultation prior to that stage may help define the problem, objectives and options, thereby improving the quality of the options-stage RIS.

Agencies that have responsibility for providing policy advice to government should consult with the relevant regulators to ensure that regulations can be administered in a manner that is consistent with the intent of the government. Regulators should consult with key stakeholders to understand the potential impacts of regulation on their operations.

Targeting

Agencies must consider the scope of the proposed regulatory changes and consult widely to ensure consultation captures the diversity of stakeholders affected by the proposed changes.

Relevant individuals and groups may include:

- the general public
- businesses, consumers, unions, environmental groups and other interest groups that will be affected
- state, territory and local governments, and
- Australian Government departments, agencies, statutory authorities or boards.

It may be appropriate to distinguish between stakeholders within these main groups where the impacts of options are likely to differ. For example, the views of businesses may vary depending on their size, nature of operations or location.

For consultation with business stakeholders, industry associations and small business groups may be a good starting point. However, these may not represent all stakeholders in a particular sector. Furthermore, large industry associations with a diverse membership may not have a consistent view on all aspects of a regulatory proposal. Consideration should be given to how best to engage individual stakeholders in the consultation process.

For community stakeholders, such as consumers, environmental groups and other interest groups, peak bodies may also be a starting point. However, these bodies may not represent all relevant stakeholders and individual stakeholders should be included in the consultation process where appropriate. Online consultations can assist engagement with the community through the use of social media tools such as social networking sites or blogs.

Relevant state, territory and local governments, and Australian Government agencies, should be consulted to ensure that regulatory policies across jurisdictions are consistent and complementary. In order to produce efficient regulation, it is necessary to avoid or minimise duplicating legislative requirements across agencies and government at all levels. This is

particularly important where the regulatory processes arise from negotiations between different levels of government and/or involve overlapping responsibilities.

Timeliness

It is important that consultations are conducted early in the process when the policy objectives and different approaches to an issue are still under consideration – the use of Annual Regulatory Plans is one way agencies can alert stakeholders to potential regulation.

Timeframes for consultation should be realistic to allow stakeholders sufficient time to provide a considered response. Holiday periods and the end of the financial year should be avoided, particularly where stakeholders are small businesses. The amount of time required will depend on the specifics of the proposal (for example, the diversity of interested parties or the complexity of the issue). However, where it is necessary to consider a proposal promptly, some limitations on periods and timing of consultation may be unavoidable.

Accessibility

Consultation should ensure that stakeholders can readily contribute to policy development.

Agencies should inform stakeholders of proposed consultation via the most appropriate means; for example, press releases and advertisements in the media, including newsletters of industry or community associations, and the business consultation website (www.consultation.business.gov.au). The business consultation website will automatically notify businesses and government agencies of consultation processes in areas where they have registered an interest. The website and the Annual Regulatory Plan initiative are therefore cost-effective ways of alerting stakeholders to potential regulation.

Information provided to stakeholders should be easy to comprehend – it should be in an easily understandable format, use plain language and clarify the key issues, particularly where the proposed regulation addresses complex subject matter. Written consultation documents should include summaries to allow those consulted to quickly assess whether the material is relevant to them and whether they need to read further. Even a relatively simple step like publishing relevant information or issues papers on the website of the agency sponsoring the proposal will make the process more accessible.

A range of strategies should be considered to assist relevant stakeholders who are expected to be significantly impacted, but who do not have the resources or capability to participate in the consultation process.

Consultation can take a variety of forms other than written consultation; for example, stakeholder or public meetings, working groups, focus groups, surveys or web forums such as blogs or wikis. The appropriateness of each approach will depend on the issues under consideration, the nature of the groups being consulted and the time available.

Transparency

Involving stakeholders from the earliest possible stage in the policy development process will promote transparent and comprehensive participation.

The objectives of the consultation process should be clear. To avoid creating unrealistic expectations, any aspects of the proposal that have already been finalised and will not be subject to change should be clearly stated. For example, if a decision to regulate has been made already,

stakeholders should be made aware that their views are sought primarily on regulatory design and implementation, not on the merits of the policy itself.

Being clear about the areas of policy on which views are sought will also increase the usefulness of responses. For example, explicitly stating any assumptions made about those likely to be affected by the proposed action or identifying particular areas where input would be valuable will encourage respondents to address these issues.

Stakeholders should also be made aware that policy development is guided by a regulation policy framework (including this handbook and other materials) and that consultations with stakeholders will take place within this framework. Agencies should provide for those stakeholders who want their contributions to remain confidential.

Ordinarily, consultation will follow the release of an options-stage RIS. However, information or issues papers – such as draft assessments of business compliance costs or draft RISs, green papers (policy options papers) or draft legislation – as well as submissions to government inquiries should, wherever possible and appropriate, also be made available to stakeholders to enable them to make informed comments on proposals and proposed legislation. Ideally, relevant documentation should be posted online to enhance accessibility and opportunities for reuse. (Exposure drafts are discussed below.)

Agencies should also show stakeholders how they have taken consultation responses into consideration. The RIS is a good means of providing this information.

Consistency and flexibility

Consistent consultation procedures can make it easier for stakeholders to participate. Consistent processes can also permit better coordination of regulatory quality initiatives across a wide range of policy areas. In instances where ministers have made a commitment to a particular course of action, consultation can improve the design of the proposal and help ensure that it minimises the compliance burden on business and costs to the community.

Public consultation for some proposals may be inappropriate (for example, where there is a need for Cabinet confidentiality, such as for national security or commercial-in-confidence matters). In some of these instances, an alternative may be for agencies to consult with stakeholders in confidence. However, in other instances it may not be possible to consult even on a restricted basis (for example, for new initiatives to deal with tax avoidance) although it may still be possible to undertake restricted ‘early options’ consultation with specialists outside government.

The OBPR can provide advice about the level of consultation appropriate to particular circumstances. It is important to consult the office early in the policy development process so that sufficient time is available for the appropriate consultation process to be put in place.

Evaluation and review

Policy agencies should evaluate consultation processes and continue to examine ways of making them more effective. For example, better use of information technology can improve the cost-effectiveness and timeliness of consultation processes.

Evaluation of the effectiveness of consultation processes may include examining the number and types of responses; whether some methods of consultation were more successful than others;

and how consultation responses clarified the options and affected the final decision. Agencies are strongly encouraged to publish consultation protocols on their websites.

Consultation strategy

Good planning is essential to successful consultation. A consultation plan should ideally cover the whole policy making process and identify the objective of consultations, relevant target groups, appropriate forms of consultation and consultation times. However, consistent with the Government's requirements for regulatory impact analysis, consultation should remain proportionate to the potential impacts of the proposal. While the quantity of consultation is important, the emphasis should be on achieving high-quality consultation.

Publishing a consultation plan, provides information to stakeholders about future consultation opportunities. This improves the transparency of the policy development process and gives stakeholders early warning so they can contribute more effectively to the development of the policy. Consultation plans can be published in your agency's Annual Regulatory Plan.

Consultation plans should cover the following points.

What is the objective of each consultation round?

Depending on the significance of the proposal and the consultation objectives, multiple rounds of consultation may be appropriate. In developing a consultation plan, the objectives (what is the desired outcome?) of each round of consultation should be clearly identified. For example, is the aim to gather new ideas (brainstorming), collect evidence and factual data, validate assumptions or clarify the possible impacts of a proposal on the wider community?

Depending on the objectives, consultation can be undertaken on different elements of the impact assessment, such as the nature of the perceived problem, the government's objectives, the options to address the perceived problem, a comparison of the impacts of the policy options, or on the entire proposal.

Identifying the objectives of consultation will help determine who should be consulted, how and when.

Who will be consulted at each round?

Agencies should ensure that the diversity of stakeholders affected by the proposal are consulted. It is also important to proactively identify relevant interested parties and those the proposal will be likely to affect. Consultation is also an opportunity to seek input and involvement from those who can make a meaningful contribution to the decision making process. Business and community organisations and consultative bodies may be able to help in identifying target groups and those with technical knowledge or subject matter expertise.

In what form will consultation occur at each round?

Consultation can take a variety of forms. The choice of the form of consultation will largely depend on the issues under consideration, who needs to be consulted, and the available time and resources. Increasingly, stakeholder groups are looking to participate through electronic means, such as email or web-based forums.

While written consultation is a common form of consultation, informal consultation with stakeholders potentially affected by the proposal should be conducted before any written consultation period. This should result in a more informed consultation exercise and ensure that stakeholders are engaged early and have a better understanding of the proposal.

Information, issues or green papers may help to engage stakeholders early in the consultation process, while the options-stage RIS may focus stakeholder attention on the objective of later consultation rounds.

Ongoing consultation during policy development can be assisted by establishing web-based forums such as blogs or wikis. Depending on the nature of the information sought, such a forum could be openly available to the general public, or 'closed' to only include people meeting pre-determined requirements.

Online consultation reinforces and complements traditional consultation methods and provides more ways for agencies to seek feedback from and engage with the public. It may be used as part of formal submissions or policy development processes, or integrated into business-as-usual activities as another way of gathering feedback and engaging with the public online.

Online consultations can cover a broad range of activities, such as the submissions process of a formal inquiry or an agency seeking input as it develops policy. In its simplest and least interactive form, an online consultation can take the form of a website offering a discussion paper and requesting public submissions through email, online forms, or other means.

Online consultations can also provide greater interactivity and engagement with the public by using social media tools such as social networking sites, or agency-run tools such as blogs. There may also be benefits of using and coordinating multiple social media channels as part of an online consultation, for example by establishing a blog as well as a presence on a social networking site.

The development and uptake of Web 2.0 tools by Australians allows public servants an opportunity to increase transparency and accountability in consultation and decision making. The Australian Government can now use this opportunity to engage in conversations with a wider number of citizens and businesses than ever before.

Social media is defined by a number of tools. The uses of these tools are:

Blogs: can be used to tell the public or stakeholder groups about agency activities and gives readers the opportunity to provide comments

Wikis: examples include Wikipedia and govdex, the Australian Government collaborative workspace. They are best for collaborative document authoring

Discussion forums: a forum may be appropriate when more in-depth consultation is required

Microblogs: the most well-known example is Twitter; best for short public announcements and drawing attention to new information on agency websites

Social Networking sites: Facebook is probably the most well-known. These sites may be useful in raising public awareness of government services or initiatives and engaging with relevant pre-existing online communities.

More information on the use of online consultation can be found at <http://webguide.gov.au/web-2-0/online-consultation/>.

When will each round of consultation commence?

The timing of consultations should be determined on a case-by-case basis, but should start as early as possible in order to maximise its impact on policy development.

Consultation should also be seen as a recurring need in the policy development, rather than as a one-off event.

Generally, consultation would commence following the release of the options-stage RIS. However, for a significant proposal an initial consultation could be held to ascertain stakeholder perceptions about the nature of the problem, the government's objectives and a possible range of options. However, consultation should be balanced in order to avoid 'consultation fatigue'.

Where a green paper is required, it should be released relatively early in the policy development process before a preferred option is 'locked in'. An exposure draft of the regulation should be released closer to finalisation, but still allow time for stakeholders to provide feedback about the 'details' and for their views to be addressed.

How long will the round last?

A common complaint from business is the lack of time to provide feedback when asked for it. Involving stakeholders, such as standing consultative bodies, in determining timelines can be an important part of building and securing a positive relationship. While longer periods of consultation might seem more appealing for stakeholders, the Government's aim is effective consultation and 'real listening'. Agencies should provide realistic timeframes for participants to contribute. Where small businesses are potentially affected, they should be given sufficient time to consider the issue and respond, including allowing time for representative bodies to contact their members.

The length of consultation rounds depends on the nature and impact of the proposal, the objective of each round, the number of rounds, the form of consultation and who is being consulted. For example, where stakeholders are being asked to consider the whole proposal and there has been little previous consultation, a longer round is appropriate.

There is a broad range in the length of consultation rounds across agencies. However as a guide, six to 12 weeks seems appropriate for effective consultation depending on the significance of the proposals.

Meaningful consultation with stakeholders throughout the policy development process should be documented in the details-stage RIS as a consultation statement. This statement should demonstrate to the decision maker that sound consultation practices were followed and, when the RIS is made public, show the government's commitment to its best practice consultation principles.

Exposure drafts

Consulting on and analysing the implementation options is an important part of policy development. Prior to finalisation, the details of complex regulations should be tested with relevant businesses. This allows for the detail to be tested. Releasing exposure drafts of complex regulations for significant matters is one approach agencies can use to allow businesses and other stakeholders to provide more detailed comments and advice on how a regulation will work in practice.

Releasing exposure drafts provides the opportunity to test that stakeholders clearly understand how the law will apply to them, and their legal rights and obligations. Stakeholders may also be able to identify how aspects of the proposed laws can be simplified.