



Australian Government

A large, light grey silhouette of a pair of scissors is positioned diagonally across the cover, with its blades pointing towards the top left and its handles towards the bottom right. The scissors are positioned as if they are cutting through a horizontal red band.

# The Australian Government Guide to Regulation

[www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au)

# The Australian Government Guide to Regulation

[www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au)

## ABOUT THIS GUIDE

*The Australian Government Guide to Regulation* is intended to be read by every member of the Australian Public Service involved in policy making—from the most junior member of the policy team to the departmental secretary.

It provides the context for regulation and encourages policy makers to think about regulatory impact early in the policy process. The principles in this Guide will be supplemented by regular Guidance Notes from the Department of the Prime Minister and Cabinet, available at [www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au).

ISBN 978-1-922098-34-4 (Hardcopy)

ISBN 978-1-922098-35-1 (PDF)

ISBN 978-1-922098-36-8 (RTF)

© Commonwealth of Australia, Department of the Prime Minister and Cabinet, 2014.

Unless otherwise noted, copyright and any other intellectual property rights (if any) in this publication are owned by the Commonwealth of Australia.



With the exception of the Coat of Arms, this publication is licensed under a Creative Commons Attribution 3.0 Australia Licence, a standard form license agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.



This Guide has been written to help policy makers see regulation in a new light.

The Government's rigorous approach to policy making seeks to ensure that regulation is never adopted as the default solution, but rather introduced as a means of last resort.

Regulation can have benefits, but businesses, community organisations and families pay the price of poor regulation.

Regulation can't eliminate every risk, nor should it. We therefore seek better regulation, not more regulation.

Policy makers must seek practical solutions, balancing risk with the need for regulatory frameworks that support a stronger, more productive and diverse economy where innovation, investment and jobs are created.

With this new approach stakeholders can look forward to a future with substantially less red tape and Australia's economy continuing to grow and prosper.

A handwritten signature in black ink that reads "Joshua Frydenberg". The signature is written in a cursive, flowing style.

**The Honourable Josh Frydenberg MP**  
Parliamentary Secretary  
to the Prime Minister

March 2014

# CONTENTS

Ten principles for Australian Government policy makers	2
What do we mean by <i>regulation</i> ?	3
Read this before you write your next policy document	4
The seven RIS questions	5
Why are these questions so important?	6
The most commonly asked questions	8
Getting started	11
The RIS categories at a glance	12
Remember who your RIS is for	14
Answering the RIS questions	15
RIS Question 1	17
What is the policy problem you are trying to solve?	
RIS Question 2	21
Why is government action needed?	
RIS Question 3	25
What policy options are you considering?	
RIS Question 4	31
What is the likely net benefit of each option?	
RIS Question 5	39
Who will you consult and how will you consult them?	
RIS Question 6	47
What is the best option from those you have considered?	
RIS Question 7	49
How will you implement and evaluate your chosen option?	
Submitting your RIS for assessment	53
Special cases	56
Glossary of terms	59

# TEN PRINCIPLES FOR AUSTRALIAN GOVERNMENT POLICY MAKERS

---

- 1.** Regulation should not be the default option for policy makers: the policy option offering the greatest net benefit should always be the recommended option.
  - 2.** Regulation should be imposed only when it can be shown to offer an overall net benefit.
  - 3.** The cost burden of new regulation must be fully offset by reductions in existing regulatory burden.
  - 4.** Every substantive regulatory policy change must be the subject of a Regulation Impact Statement.
  - 5.** Policy makers should consult in a genuine and timely way with affected businesses, community organisations and individuals.
  - 6.** Policy makers must consult with each other to avoid creating cumulative or overlapping regulatory burdens.
  - 7.** The information upon which policy makers base their decisions must be published at the earliest opportunity.
  - 8.** Regulators must implement regulation with common sense, empathy and respect.
  - 9.** All regulation must be periodically reviewed to test its continuing relevance.
  - 10.** Policy makers must work closely with their portfolio Deregulation Units throughout the policy making process.
-

# WHAT DO WE MEAN BY REGULATION?

Regulation may be defined as “*Any rule endorsed by government where there is an expectation of compliance*”.

Rules can take many forms, not all of them the ‘black-letter’ kind. Governments and public servants make rules every day and as a consequence impose sometimes unwelcome burdens on businesses, community organisations and individuals.

For example, when you design a form for customers to fill in, are you asking for information you already possess? When you set up a telephone call centre, do you really need such a long menu of service options? When you ask a grant recipient to acquit their funding, what do you actually do with the information you obtain? Do the benefits of having that information outweigh the cost of making the organisation provide it?

This Guide invites you to take a more critical look at regulation in all its many forms.

# READ THIS BEFORE YOU WRITE YOUR NEXT POLICY DOCUMENT

The Government has a clear approach to regulation: we will reduce the regulatory burden for individuals, businesses and community organisations.

From now on, cutting existing red tape and limiting the flow of new regulation is a high priority.

Every policy option must be carefully assessed, its likely impact costed and a range of viable alternatives considered in a transparent and accountable way against the default position of no new regulation.

As a result, every policy proposal designed to introduce or abolish regulation must now be accompanied by an Australian Government Regulation Impact Statement, or RIS.

What's more, your RIS must have been developed early in the policy making process.

The RIS is a tool designed to encourage rigour, innovation and better policy outcomes from the beginning.

In the past, a RIS might have been something you put together at the end of a policy process, just before your proposal went to Cabinet or another decision maker.

Now, the following RIS questions must be the starting point of your policy journey—and this Guide your companion.

## THE SEVEN RIS QUESTIONS

---

- 1.** What is the problem you are trying to solve?
  - 2.** Why is government action needed?
  - 3.** What policy options are you considering?
  - 4.** What is the likely net benefit of each option?
  - 5.** Who will you consult about these options and how will you consult them?
  - 6.** What is the best option from those you have considered?
  - 7.** How will you implement and evaluate your chosen option?
-

# WHY ARE THESE QUESTIONS SO IMPORTANT?

Put simply, a decision can't be—or shouldn't be—made without a RIS.

The RIS questions are critical because they help policy makers focus on the regulatory impact of major decisions. In other words, the burden we impose on the community.

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

They are all the more important when you bear in mind a RIS is, in most cases, a public document: your answers will be on the public record. Think carefully about each one in turn.

## 1. What is the problem you are trying to solve?

The RIS requires you to explain the problem—and your objective—simply and clearly. A crisply defined problem offers scope for innovative, non-regulatory thinking.

## 2. Why is government action needed?

Ask yourself: is it a genuine priority? Is it government's job? Is the problem serious enough to justify government intervention? Will intervention work?

## 3. What policy options are you considering?

A RIS will reveal whether you've thought through all of the viable options, including the option of not regulating. Until you've analysed the problem from every angle, you may be overlooking a viable, low-impact alternative.

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

Policy interventions often come at a cost. The RIS obliges you to assess the benefit of your proposed intervention against the burden you impose. If that burden is greater than the benefit, you should look for alternatives or reconsider the need to intervene at all.

5. Who will you consult about these options and how will you consult them?

Transparency and accountability are not optional. The RIS encourages you to walk in the shoes of the people, business decision makers and community groups affected by your policy proposal.

6. What is the best option from those you have considered?

The RIS will help make clear whether your decision making processes are robust enough to cope with scrutiny. The public don't just need to know what you've decided; they want to know why and on what information and arguments your decision was based.

7. How will you implement and evaluate your chosen option?

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

# THE MOST COMMONLY ASKED QUESTIONS

## Who writes a RIS?

Policy makers. Every Australian Government policy maker should be familiar with the RIS process, because at some point in your career you will need to write one. Even if you're not the principal policy officer, you should use the RIS questions as a tool for analysing policy problems.

## Is the RIS process mandatory for every government agency?

Yes. For every type of policy decision you must produce a RIS if your organisation is a:

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

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

## Is a RIS mandatory?

Yes. A RIS is mandatory for *all* Cabinet submissions.

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

If a decision is not going to Cabinet, a RIS is still required where the policy proposal is likely to have a measurable impact on business, community organisations or individuals. This includes new regulations, amendments to existing regulations and, in some cases, sunsetted regulations being remade.

Even in situations where a RIS may not be required, a RIS is good practice where an agency or regulator is responsible for issuing rules or guidance material for businesses, community organisations or individuals.

## When is the best time to write a RIS?

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

## Can I be exempted from doing a RIS?

Generally not. The only exemption is for minor matters not being considered by Cabinet where the proposed change is likely to have an insignificant impact.

Failing that, only the Prime Minister can grant an exemption from the RIS and then only in exceptional circumstances. To seek an exemption from the RIS process, your Minister must write to the Prime Minister at the earliest possible stage in the policy-making process.

## Do I need a RIS if I'm removing regulation?

In most cases, yes. Even though you may be lowering a regulatory burden, you might be creating new or transitional burdens by changing administrative arrangements. A RIS is critical to ensure you consider the costs and benefits of implementing the proposed change—and every completed RIS helps track and report against the Government's red tape reduction target.

## Who can help me with my RIS?

Your portfolio's Deregulation Unit. Every portfolio has a Deregulation Unit headed by a senior executive officer. Their job is to ensure your RIS complies with all government requirements, help you develop regulatory impact costings and assist in identifying viable alternative policy options. They are your first port of call for help with navigating the RIS process.

Your Deregulation Unit is responsible for ensuring RIS requirements are met for all decisions. They also have responsibility for reporting to the Government on performance against red tape reduction targets and regulatory offsets.

## What's the role of OBPR?

The Office of Best Practice Regulation (OBPR) has the role of ensuring your RIS complies with government requirements.

You're welcome to discuss any RIS question with OBPR. OBPR can also help with:

- › assessing the adequacy of analysis;
- › estimating regulatory impact costs and undertake cost–benefit analysis;
- › technical advice on regulatory cost measurement;
- › identifying gaps in your analysis of potential policy options;
- › best practice consultation methods;
- › training and guidance on the RIS process;
- › regulatory proposals for COAG or national standard-setting bodies.

OBPR maintains a public website to report on portfolio RIS compliance, RIS activity and Post Implementation Reviews. The Division is located in the Department of the Prime Minister and Cabinet and maintains day-to-day independence from government in its decision making on the RIS system.

## Can I use external consultants to write my RIS?

Yes. External consultants can be used to help you write your RIS.

Keep in mind the skills to prepare a RIS are fundamental to the discipline of policy making: engaging external consultants to do the work for you will not build the appropriate in-house skills within your agency.

If engaging a consultant, you must do so under your agency's normal procurement rules and you must ensure this process does not slow down the RIS. OBPR can help with tender specifications for engaging consultants.

Consultants are often best placed to help with technical aspects of your RIS, such as costings, rather than the whole RIS. When engaging a consultant, your agency is responsible for ensuring the RIS addresses all seven questions adequately, that costings are accurate and the recommended stakeholder consultation is appropriate.

OBPR 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 agency.

# GETTING STARTED

The best place to start is with the seven RIS questions.

Sketch out your answers to each question. Look for gaps in your arguments. Think carefully about what a decision maker needs to know to make an informed decision.

Have you defined the problem clearly?

Have you identified all of the viable policy options?

Is there a reliable way to measure regulatory impact?

Is your policy objective sufficiently clear?

Who are you going to consult and how?

When you have a rudimentary set of answers to the seven RIS questions, give a written summary to OBPR. This is known as the Preliminary Assessment. So long as you have provided enough information to help OBPR understand the nature of the policy issues you are dealing with, you will receive a response within 5 working days confirming whether or not a RIS is required and if so what type.

There are three types of RIS: **Long Form**, **Standard Form** and **Short Form**.

Which RIS is the most appropriate for the task is up to you in conjunction with OBPR. The table on the following pages explains the differences. You must undertake a regulatory costing (including offsets) regardless of which type of RIS you opt for.

# THE RIS CATEGORIES AT A GLANCE

WHEN IS IT USED?	
<b>LONG FORM</b>	<ul style="list-style-type: none"> <li>› The policy proposal has substantial or widespread impact on the economy.</li> <li>› The proposed changes affect a large number of businesses, community organisations or individuals.</li> <li>› The administrative and compliance costs are high or onerous.</li> <li>› There may be determined opposition among stakeholders or the public.</li> <li>› The issue is sensitive, contested and may attract media attention.</li> </ul>
<b>STANDARD FORM</b>	<ul style="list-style-type: none"> <li>› The policy proposal has measurable but contained impact on the economy.</li> <li>› The proposed changes affect a relatively small number of businesses, community organisations and individuals.</li> <li>› The administrative and compliance costs are measurable but not onerous.</li> <li>› There is unlikely to be vigorous opposition among stakeholders or the public.</li> <li>› The issue is uncontroversial and unlikely to attract media attention.</li> </ul>
<b>SHORT FORM</b>	<ul style="list-style-type: none"> <li>› The policy issues are simple, clear cut or policy alternatives limited.</li> <li>› The policy is a matter of national security, public safety, natural disaster or pressing event.</li> <li>› The regulatory impact of the policy is of lower priority than some other factor.</li> <li>› A RIS has recently been completed and only minor modifications have been made to the original policy options under consideration.</li> <li>› The proposal is non-regulatory, minor or machinery in nature.</li> </ul> <p><i>The Short Form RIS option is only available for matters to be considered by Cabinet.</i></p>

## WHAT MUST IT CONTAIN?

- › Answers to all seven RIS questions.
- › Analysis of genuine and practical policy options.
- › Analysis of the likely regulatory impact.
- › Evidence of appropriate public consultation.
- › A formal cost–benefit analysis.
- › A detailed presentation of regulatory costings and offsets.

- › Answers to all seven RIS questions.
- › Analysis of genuine and practical policy options.
- › Analysis of the likely regulatory impact.
- › Evidence of appropriate public consultation.
- › A detailed presentation of regulatory costings and offsets.

- › A summary of the proposed policy and any options considered.
- › An overview of likely impacts.
- › An outline of regulatory costs and cost offsets.

## REMEMBER WHO YOUR RIS IS FOR

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

The first are the decision makers, for whom a balanced assessment of the options is critical.

The second are your stakeholders, who have a right to accurate, timely, accessible information about government decisions affecting them.

Avoid jargon, acronyms, needlessly complex language and waffle.

The RIS is a summary document. Be precise and economical in your language. Include only what is relevant, making sure the depth of your analysis is commensurate with the importance of the issue you are analysing.

Be measured and prudent in your arguments and assertions.

Do not pass off opinion as fact; check the accuracy of every claim and where the facts may be inconclusive, say so.

Make your document easy to navigate by ensuring sections are clearly marked and there is a logical flow to your writing.

Keep in mind your RIS will ultimately be read by decision makers, stakeholders, the media and general public.

# ANSWERING THE RIS QUESTIONS



## RIS QUESTION 1

# WHAT IS THE POLICY PROBLEM YOU ARE TRYING TO SOLVE?

In this introductory section of the RIS, you must:

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

## Defining the problem is the best place to start

If you can define the problem satisfactorily, the rest of your analysis will follow logically. If your problem is poorly defined, the resulting process will be confusing and difficult to resolve.

Identify who is likely to be affected, what is the nature of the impact they will experience and how will they respond to your proposals.

Think carefully about when and how to consult with affected stakeholders. Should they be part of the process of developing the policy itself? Do you have a consultation strategy with clear objectives?

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

### Market failure

Are you addressing an imbalance of market power generating inefficient outcomes? Are you trying to improve the availability or quality of market information, goods or services to a group of community organisations or individuals who cannot access them now? Has an issue arisen over the need to clarify property rights? Is there undesirable or avoidable market instability or inequality? How serious is it? Can you be sure the market is unlikely to come up with a solution by itself?

### Regulatory failure

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

### Unacceptable hazard or risk

Is there a new or emerging safety or environmental problem? Are people exposed to risks they are ill-equipped to deal with? Are you trying to manage a public health issue that has suddenly taken on a life of its own?

## Keeping risk in perspective

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

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

Remember: regulation cannot eliminate risk entirely; sometimes it just shifts risk. Our role as policy makers is to provide advice to 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. It's natural for media or lobby groups to 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 pay? How much risk is acceptable under the circumstances?

As policy makers, we 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.

Remember that regulatory action is not risk free; how confident are you that your proposed solution will work?

What are the genuine consequences of no action?

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

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



## RIS QUESTION 2

# WHY IS GOVERNMENT ACTION NEEDED?

In this section of the RIS, you 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 you are aiming for.
- › Identify the constraints or barriers to achieving your goal.
- › Ensure your 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 your intervention having the intended outcome? Should the regulator step back and let the market deal with the problem?

Satisfy yourself 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?

There is a generally agreed set of rationales for government intervention. Which one of these best describes your policy problem?

## **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 in the event of a market distortion leading to inefficient or inequitable outcomes, the cost of intervention may be justified. Your arguments to support market intervention should rely on authoritative data, both qualitative and quantitative.

## **Are you addressing a 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. Ensure you 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. The *Competition and Consumer Act 2010* provides a range of powers that may well address the problem and make further regulation unnecessary or counterproductive.

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

## **Do we need to correct information asymmetry?**

Markets may not allocate resources efficiently if one party in a transaction has significantly more information than another. Sellers and buyers may have an incentive to conceal information in order to obtain a more favourable price or conditions in a transaction, or to dishonestly gain an advantage. 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. Remember that imposing disclosure obligations on a large number of business or community organisations can impose significant red tape burdens—make sure the problem you are trying to fix is large enough to justify the cost of compliance.

## **Do we need to overcome an externality?**

An externality is generated when the economic activity of one organisation generates a positive or negative impact for another without there being a market price associated with the impact. For example, a factory might be polluting a river, making the water unusable for businesses downstream. Another might be a flu vaccination, which reduces 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?

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

Ask yourself: what is the role of personal responsibility?

## Is regulation the best solution?

When government intervention may be warranted, policy makers must ensure they consider the complete range of policy levers available to them. 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. You may wish to consider a policy solution based on the techniques of behavioural economics as an alternative to more traditional economic levers of subsidy or taxation.

## RIS QUESTION 3

# WHAT POLICY OPTIONS ARE YOU CONSIDERING?

In this section of the RIS, you must:

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

## Start with clear, well differentiated policy options

Every good RIS will canvass a range of viable options. The number of options you include in your analysis should be commensurate with the magnitude of the policy problem being considered, but three is a good minimum rule of thumb.

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

At least one option must always be non-regulatory. Remember that a rigorous cost-benefit analysis must always pose the status quo as the benchmark policy option.

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

Give careful thought to reassuring the decision maker that you haven't missed a viable policy option during your analysis. A thorough and broad-based consultation process inviting affected groups to discuss the issues can often settle that question.

Above all, keep in mind, presenting one *fait accomplis* option is not acceptable. There must always be analysis of the no regulation or status quo option as a benchmark, unless your proposed policy approach is an election commitment. When this is the case, the Government has already committed itself to one policy approach in a public and accountable way and no alternative options need therefore be considered.

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

## Which is the best option?

Which option is more effective? Appropriate? Efficient? Which is the least costly? Which one has the lowest regulatory impact?

All other things being equal, the policy option offering the greatest net benefit should always be the recommended option.

Judgement is required. It's rare for all other things to be equal. But you must be able to support your conclusions with clear thinking, logical argument and thoroughly checked facts.

## **Does one size fit all?**

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

## **Have you discussed the options with your Deregulation Unit?**

Your portfolio has a dedicated team who can help. Work closely with them on every RIS.

## **The most important policy option: the no-regulation option**

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

There may be good reasons for regulating, but these must be weighed against not regulating. One benefit of not regulating is, of course, you won’t need to find regulatory offsets, but there are usually others too.

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

## **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 your outcome. Always assess the potential for improving policy outcomes with better enforcement of the rules already in place.

Remember too, that people can have poor awareness of their obligations. Better targeted education can be a useful tool in achieving your objectives.

## Light touch regulation

As a policy maker, you can choose to be 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

This consists of industry-written rules and codes of conduct enforced by the industry itself. Where industry participants understand and appreciate the need for self-regulation, 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

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

## Co-regulation

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

## Explicit government regulation

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

Where you rely on this form of regulation, ensure it is drafted in plain language and applicable requirements on sunseting are observed.

## Alternative instruments

With each of these 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, you should document whether (and why) the standards being proposed differ from the international standard.

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

Further guidance material can be found at  
[www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au)



## RIS QUESTION 4

# WHAT IS THE LIKELY NET BENEFIT OF EACH OPTION?



In this section of the RIS you must:

- › Identify who is likely to be affected by each regulatory option and assess the economic, social and environmental costs and benefits as well as how those costs and benefits are likely to be distributed.
- › Quantify the benefits and costs of your policy proposal on businesses, community organisations and individuals to a level of detail commensurate with the impact of the policy proposal.
- › Identify and assess the cost of offsetting deregulatory measures.
- › Assess the costs and benefits of all proposed options.
- › 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 a policy option requires all of the costs and benefits to be taken into account. The benefits will usually accrue via achievement of the desired policy objective. The costs are those counted using the Regulatory Burden Measurement framework.

**Businesses** are frequently impacted by regulation, and the impacts can include:

- › **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.
- › **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.

**Community organisations** can be subject to over-regulation. Governments are a significant source of funding and control over their activities, and burdens can flow from:

- › **Grant and other funding conditions.** Paperwork and other activity associated with applying for, administering and reporting on the use of grants.
- › **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.

**Individuals and households** experience the impacts of red tape directly and indirectly, for example:

- › **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.
- › **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.

## What are the regulatory costs?

New regulations have a cost in—among other things—lost time, compliance burdens, inconvenience, delay, foregone opportunity or threats to competitiveness. All of these costs can be expressed in dollars. The policy maker’s job is to provide the decision maker with a fair and balanced assessment of these costs.

The process of costing requires analysis of each of the following questions.

### Business impacts

- › What kind of businesses are we talking about? How many are there? What industries are they in? Where are they based?
- › How many people do they employ and how long have they been in business? What products or services do they deliver?
- › Are they represented by an industry association? How likely is it any new costs will simply be passed on to consumers?
- › How well prepared are the business owners to cope with new regulatory requirements?
- › Give **small business** special consideration. Are there special burdens on small business arising from the fact they often lack the required specialist legal, accounting or HR skills in-house? Are the regulatory costs disproportionately burdensome on small business? Does the analysis adequately take into account the different impacts on small businesses of different sizes, types and locations?

### Community organisation impacts

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

### Individual impacts

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

## Estimating regulatory burden

Regulatory compliance burdens should be calculated using the Regulatory Burden measurement tool available at [www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au) or using an equivalent method agreed by OBPR. Remember, your analysis of net benefit should go beyond compliance burdens and take account of other regulatory costs such as opportunity costs, indirect costs (and benefits) and the costs (or savings) to government of administering new (or eliminating old) regulation.

As you work through your cost estimates, keep these points in mind:

- › Ensure your data sources and calculation methods are transparent, that any gaps or limitations in the data are discussed and your assumptions are disclosed in every case.
- › Regulatory obligations to transfer money to government—such as taxes and levies—should not be included in your estimate of regulatory burden.
- › When estimating costs for business, make sure you consider the likelihood of those costs being passed on to consumers. If regulatory burden is able to be passed on through price increases, avoid over estimating costs by only counting the final net burden.

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

- › Have you checked your costings with industry associations or peak bodies to see if they support your estimates?
- › Do you have examples of costs of previous, similar regulation? Are there any academic, consultant studies or audits to provide further support for your costings?
- › What are the drivers of cost? Are there ways of designing or implementing the policy to minimise the impact on those drivers?
- › Are there any other hard-to-quantify costs the decision maker should be taking into account? For example, regulation can be used to allocate risk to those in society best placed to manage it. Regulation can be used to clarify rights and responsibilities. Concepts of fairness and equality can be difficult to evaluate in dollar terms, but if they are significant, you should find a place in your overall analysis to assess their contribution to net benefit.
- › Will there be indirect effects? If you impose obligations on one group, will they simply pass those costs on to others or impose their obligations on customers or suppliers? If so, how will these indirect impacts alter the net benefit?

## What are the benefits of regulating?

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

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

## What is the *net* impact?

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

- › Is it better to do something rather than nothing? Will a policy intervention improve the situation significantly or will the cost of intervening outweigh the advantages?
- › Is the recommended policy option better than the other ones proposed? Provided you have identified all the available and viable options, will this one deliver the best net outcome?

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

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

## Are there any competition considerations?

If your proposal is likely to restrict competition, your 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 Commonwealth's commitments under the intergovernmental Competition Principles Agreement, designed to promote competition and established by COAG in 1995.

### Incumbent businesses and entry of new business

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

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

Would your proposed regulation result in changes to:

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

### Prices and production

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

Would your proposed regulation:

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

## The quality and variety of goods and services

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

Will it place limits on:

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

## Have you identified offsets?

Offsets must be provided in the event there is a regulatory burden cost to your proposed policy. They must also be costed using the Regulatory Burden Measurement tool.

In some instances, an offset will itself require a RIS to ensure the identified costs are valid. While it seems counter-intuitive, a reduction in regulation can impose its own transitional burdens in the form of changes to IT systems, payroll or administration.

Have your offsets been costed thoroughly and with as much care as your proposed regulatory impact costings?

Offsets may be from any area of your portfolio, though ideally they should assist those directly affected by any new regulation you introduce. They should be achievable and coincide as much as possible with your new regulation. Remember to identify where the new burden and offset impacts will overlap.

## What if the issue is market-sensitive?

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

Further guidance material on cost-benefit analysis can be found at [www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au)



## RIS QUESTION 5

# WHO WILL YOU CONSULT AND HOW WILL YOU CONSULT THEM?

In this section of the RIS, you must:

- › Explain the purpose and objectives of consultation.
- › Outline a plan for conducting consultation.
- › Explain who should be consulted—and who does *not* need to be consulted.
- › Outline a strategy for the most efficient and meaningful consultation.
- › Summarise the major topics to be covered and what issues might be raised.

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

## Proper consultation delivers better outcomes

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

### Understanding the attitudes and likely reactions of the people affected

If you have useful insights into how people are likely to react to your proposal, you may be able to tailor an implementation or evaluation strategy to address their 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 your analysis was based

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

### 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 your 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 you have listened and considered their views

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 your policy decision may gain greater acceptance if you demonstrate your decision was based on an understanding of the full spectrum of community 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 your consultation to be credible and effective, you need to engage with stakeholders in a way that is relevant and convenient for them. You also need to give stakeholders time to consider the information you give them and time to respond.

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

## Four options for consulting stakeholders

Make sure your consultation plan isn't 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 your aspiration, in certain circumstances being too consultative can compromise your policy goals. Judgement may be required to strike the right balance between being consultative and being decisive. This is why there are four consultation options available to policy makers.

### Full public consultation

You should treat this as the default form of consultation. Although it can take many forms, full consultation brings the benefit of encouraging openness and trust in a decision making process.

### Targeted consultation

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

### Confidential consultation

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

### Post-decision consultation

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

## WHEN IS IT APPROPRIATE?

### FULL PUBLIC CONSULTATION

- › **This is the default approach**
- › When transparency and public accountability of decision making is the most important priority.
- › When the integrity of the decision process will not be compromised by early public scrutiny.

### TARGETED CONSULTATION

- › When an affected group of stakeholders is in a small or well defined geographic area or business sector.
- › When consultation should be contained so that effort is not wasted involving unaffected parties.

### CONFIDENTIAL CONSULTATION

- › When the sensitivity of the issues requires that you gauge public sentiment or inform affected entities discreetly without needlessly triggering widespread concern, anger or confusion among affected households or businesses.

### POST-DECISION CONSULTATION

- › When the decision is highly market sensitive and some could gain unfair advantage from being consulted.
- › When public debate is strongly polarised and consultation is likely to generate conflict or compromise good decision making.
- › When an issue has already attracted significant and prolonged public debate and consultation serves no useful policy purpose.
- › When open public consultation could compromise the confidentiality of cabinet deliberations.

## WHAT FORMS CAN IT TAKE?

- › Public meetings and briefings.
  - › Calls for submission.
  - › Industry or sectoral meetings and briefings.
  - › Direct communications to affected entities.
  - › Media and advertising.
  - › Large scale social media activities.
  - › If consultation identifies a policy option not previously considered, revisit analysis.
- 
- › Face-to-face meetings, telephone calls or doorknocking of affected people.
  - › Other direct communications to affected entities.
  - › Small scale social media activities.
  - › Direct public engagement of peak bodies or other representative groups.
  - › If consultation identifies a policy option not previously considered, revisit analysis.
- 
- › Narrow or in-camera consultation of select groups of opinion leaders or peak bodies.
  - › Quantitative research into the general views and likely responses of affected entities or areas in which two-way dialogue is not sought.
  - › Alternative forms of consultation must be followed by broader post-announcement consultation on transition or implementation issues.
  - › If consultation identifies a policy option not previously considered, revisit analysis.
- 
- › OBPR approval must be obtained before this consultation option can be exercised.
  - › Consultation can take any of the above forms, but takes place *after* the decision maker has made the decision.
  - › Consultation seeks detailed dialogue with entities on transition and implementation issues rather than on the policy decision itself.
  - › If consultation results in material changes to the policy proposal, the proposal should be returned to the decision maker for further consideration.

## As a rule, the best consultation processes are:

### Continuous

Relationships with stakeholders should already exist. If you are seeking out people to discuss your policy proposal when developing your RIS, you're missing the point. Build consultative relationships whenever the opportunity presents itself, not merely when you need them. 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 to yours across the same jurisdiction. This will identify any overlapping regulatory functions and give you an opportunity to streamline or avoid creating a cumulative regulatory burden.

### Accessible

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

### Not burdensome

Remember: many people you wish to consult have full time jobs or business commitments, especially small business proprietors. Don't make unreasonable demands of people you wish to consult or assume they have unlimited amounts of time to devote to your consultation process. If your stakeholder group is the subject of frequent consultation efforts, try consulting jointly with other agencies to minimise the burden on stakeholders.

### Transparent

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

### Consistent and flexible

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

### Subject to evaluation and review

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

### Not rushed

When you provide detailed information as part of a consultation, people need time to understand it, consider it and respond. Give people as much time as is reasonable to absorb the information you provide and gain a proper understanding of the issues so they can offer a considered view. Depending on the complexity of your proposal, this could be as much as 60 days but should not be less than 30. Even then, this is likely to be less time than you had to develop the policy. Rushing the process is unlikely to win the trust or respect of stakeholders.

### A means rather than an end

Use consultation as a way to improve decisions, not as a substitute for making decisions. **One more thing:** 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.

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



## RIS QUESTION 6

# WHAT IS THE BEST OPTION FROM THOSE YOU HAVE CONSIDERED?

In this section of the RIS, you must:

- › Describe what you learned from consultation.
- › Indicate which of the identified options you are leaning towards.
- › Explain the decision making process and clearly outline any:
  - › caveats or qualifications
  - › assumptions
  - › unresolved issues
  - › weightings applied to evidence or arguments.

## If you put in the effort up front, this part should be easy

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

Take into account the costs and benefits. The option with the highest net benefit should be your recommended option, though in every case the reasons for your choice must be transparent and defensible.

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

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

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

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

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

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

Good decision making relies on honest and thorough analysis.

## RIS QUESTION 7

# HOW WILL YOU IMPLEMENT AND EVALUATE YOUR CHOSEN OPTION?

In this section of the RIS, you must:

- › Discuss any implementation challenges you may face in this policy proposal.
- › Assess the implementation risks: their likelihood, consequences and management.
- › Outline transitional arrangements in moving from one policy to another.
- › Describe how the performance of your policy will be evaluated against its objectives, during and after implementation.

## Writing an implementation and evaluation plan

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

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

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

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

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

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

Make sure your plan reflects the importance of evaluation: not just to assess how well you implemented the policy, but whether the policy remains relevant and needed.

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.

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

If you need help with this aspect of your RIS, contact your portfolio Deregulation Unit, OBPR, or if you'd like more specialised assistance with implementation and evaluation, contact the PM&C Cabinet Implementation Unit at [implementation@pmc.gov.au](mailto:implementation@pmc.gov.au).

Specialised implementation advice is also available under your own roof. At least one deputy secretary in every department is a member of the APS Policy Implementation Network (APSPIN) whose job is to lead their department's implementation capability. Direct assistance and advice is available from this resource.

Use this checklist to ensure your RIS is an example of good implementation practice.

### Have you put your intended policy outcome into words?

- › What does success look like and how will you get there?
- › What are the measures your performance will be judged by?
- › Have you collected enough benchmark data to assess whether your policy has had the desired effect over time?

### Who are the decision makers and how are they accountable?

- › Have you adequately considered governance?
- › Are the roles and responsibilities of each person, group or agency involved clearly defined and documented?
- › Is there a shared understanding of who is responsible for each decision?
- › Are there reporting and review arrangements in place?
- › Are you keeping it simple? Don't allow project management processes to become an end in themselves.
- › Are you able to manage problems proactively and escalate issues, risks and disputes to the right person or body quickly?

### Are your stakeholders adequately involved or informed about progress?

- › Do you have the right number and type of stakeholders? Not too many, just enough to provide useful feedback and keep you on your toes?
- › How are you keeping them informed of progress?
- › Are you listening to stakeholders as well as talking to them? Ask them for ideas on implementation or risk issues; if they are the right kind of stakeholder, they will have a helpful view you might not have previously considered.

### Are you on the lookout for risks and threats to success?

- › Remember: the aim is not to eliminate risk but to identify, assess and manage risk. Be proactive in avoiding known risks and vigilant in identifying new ones.
- › Develop and maintain your risk management strategy in conjunction with stakeholders.

## How will you evaluate your policy during and after implementation?

- › Plan from the start what will be measured, how it will be measured, why and who you will report this to.
- › Good evaluation questions include: Are we doing the right thing? Are we doing it the right way? Are there better ways to get the same result?
- › Evaluation should not passively consider the performance of the policy, but actively question the ongoing need for the policy. Ask yourself if the policy continues to perform a useful purpose. Is it still required or can it be done away with?

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

- › Look at people, financial and delivery resources across the life of the implementation, not just whether you have enough to implement the first stage of your policy.
- › Have you weighed up the costs of using different delivery mechanisms? Make an informed choice on what resources will be required to deliver your desired outcome.

Further guidance material on implementation can be found at [www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au)

# SUBMITTING YOUR RIS FOR ASSESSMENT

As you work through the RIS questions, work closely with your portfolio Deregulation Unit. You can also seek the informal guidance of OBPR at any time.

You can submit your RIS for *formal* assessment by OBPR at two different points during its development.

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

## Early Assessment

An Early Assessment is undertaken once you have completed the first four questions and planned your consultation process. When you submit your RIS for Early Assessment, it must be signed off by a deputy secretary, secretary or chief executive.

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

OBPR will comment on your partly–complete RIS with two important criteria in mind:

- › Have you accurately costed the regulatory burden of your policy options and offsets?
- › Do you have an appropriate plan for consulting those affected by your policy?

If the Early Assessment finds your costings inadequate or your consultation plan unsatisfactory, OBPR will advise on the areas that need to be addressed, otherwise your RIS could be found to be non-compliant at the Final Assessment stage.

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

It pays to remain in touch with OBPR throughout the development of your RIS to avoid non-compliance: remember once a RIS is formally lodged with OBPR, the Final Assessment (whether compliant or non-compliant) will be published on OBPR's website.

## Final Assessment

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

In addition to checking your costings and consultation process, OBPR will assess your RIS against the question: *Does the analysis support an informed policy decision?*

The Final Assessment is a two pass process.

In the **first pass**, OBPR comments on whether the RIS is consistent with the Government's requirements and adequately addresses all seven RIS elements, including the quantification of regulatory costs and associated red tape reduction offsets.

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

The OBPR will provide formal written comments within 5 working days if improvements are required to the RIS and there is no limit on the amount of time you can take between the first pass and second pass. You can draw on OBPR's advice at this time to improve your RIS in any way. First pass comments are not published.

In the **second pass**, OBPR assesses the RIS for consistency and adequacy and will respond in writing within 5 working days. A RIS assessed as consistent will conform to all applicable processes and have all necessary inclusions, such as an appropriate consultation approach and a minimum of three policy options, one of which must be a non-regulatory option.

To be assessed as compliant with requirements, your RIS must not contain obvious errors; must have an appropriate level of detail; and the depth of analysis must be in keeping with the size of the problem and potential regulatory impact. The quantification of regulatory benefits, costs and offsets must also be assessed as accurate.

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

OBPR can find your RIS non-compliant with RIS requirements if any of your analysis is unsatisfactory, your costings inaccurate or your consultation process inadequate.

Once OBPR assesses your RIS as compliant, you can proceed to the decision maker for a final decision. You can also proceed to the decision maker if your RIS is found non-compliant, but be aware: OBPR will publish your RIS and its assessment on the OBPR website (and you will be obliged to also publish it on yours). A non-compliant RIS is likely to attract unfavourable scrutiny.

For both of the two passes, your RIS must be certified by your deputy secretary, secretary or chief executive prior to lodgement with OBPR. The certification letter received with your RIS on the second pass will be published on the OBPR website when the RIS is published. Certification letter templates are available from OBPR.

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

It is good practice to ensure policy makers and Deregulation Unit staff remain in close contact through the early stages of the implementation of your policy. This ensures your regulatory burden estimates can be validated and reported on properly. It also ensures offsets are pursued as promised. Separate guidance material is available from [www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au) to explain the assessment process in more detail.

## SPECIAL CASES

### Prime Minister's exemptions

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

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

If the Prime Minister grants an exemption, the agency will not be deemed as non-compliant with the RIS requirements. When the decision is publicly announced, it should be recorded that the RIS was subject to a Prime Minister's exemption and the reason noted on the OBPR website.

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

Where a Prime Minister's exemption is granted, agencies are still required to quantify the cost of the regulation and identify offsets and provide those costings to OBPR within three months of the decision. Once costings are agreed they should be sent to the relevant portfolio Minister and the Prime Minister. The OBPR will also publish the costing information on the OBPR's website together with the fact that a Prime Minister's exemption was granted.

A Post Implementation Review should be completed within two years of the decision for all matters covered by a Prime Minister's exemption.

### Costing extension

Where a policy proposal is not expected to go to Cabinet, the Prime Minister may grant in writing an extension of time for completing the quantification of regulatory costs and identified offsets for the applicable RIS. An extension may be granted if the RIS is complete apart from the costings and the agency requires additional time to complete the costings. A minister wishing to obtain an extension should write a letter to the Prime Minister explaining why an extension is required for completing the quantification of regulatory costs.

When the policy decision is announced, the RIS will be published on the OBPR website noting that the RIS is not yet compliant as the costs will need to be agreed at a later date. When the costs are agreed, the OBPR will publish the costs on the OBPR website noting that the RIS is compliant.

A costing extension may also be granted via the same process if a matter is going to Cabinet, even if it is purely deregulatory.

## **Independent reviews**

A RIS is not required for a regulatory proposal where an independent review or other similar mechanism has undertaken a process and analysis equivalent to a RIS. Your deputy secretary, secretary or chief executive must certify the review has followed a similar process to that required for a RIS and has adequately addressed all seven RIS questions.

All regulatory costs and offsets must still be agreed by OBPR in the normal way even though OBPR does not assess the independent review itself.

Agencies are encouraged to consult OBPR when preparing review terms of reference to ensure that each of the seven RIS elements, including quantification of regulatory costs and identified offsets will be addressed.

## **Election commitments**

A RIS covering matters which were the subject of an election commitment will not be required to consider a range of policy options. Only the specific election commitment need be the subject of regulatory impact assessment and in this situation, the focus should be on the commitment and the manner in which the commitment should be implemented.

## Carve-outs

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

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

## Cabinet Secretary's exemptions

The Cabinet Secretary can, in some circumstances, agree to allow a matter to go before Cabinet where the RIS outlines regulatory costs but not offsets. Where this happens, the relevant agency will have one month to identify offsets and provide details to OBPR for assessment. OBPR will follow up your agency to ensure finalisation of offsets within the one month time limit.

## Revenue raising and protection measures

A RIS dealing with revenue raising or revenue protection measures need only address the best means of implementing the proposed measure. This is because a full cost benefit analysis for revenue measures is not possible without also considering how the revenue will be spent. Therefore, any RIS in this category does not need to address the first two RIS Questions unless any revenue impacts are supplementary to a non-revenue policy objective. Further, the third and fourth RIS Questions can be confined to options for implementing the decision, since it is not relevant to consider a 'do nothing' option or the option of raising revenue through an alternative means.

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

# GLOSSARY OF TERMS

## Administrative costs

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

## Business

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

## Burden

The cumulative effect of government regulation on business, community organisations or individuals.

## Business-as-usual costs

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

## Carve-out

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

## Community organisation

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

## Compliance costs

The direct costs incurred by a regulated entity to comply with regulation. Compliance costs can be further categorised into *administrative*, *substantive*, or *financial* compliance costs.

## Consultation

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

## Decision maker

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

## Delay costs

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

## Disallowable instruments

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

## Financial costs

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

## Grandfathering

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

## Impact

A positive or negative effect caused by regulation.

## Individual

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

## Indirect costs

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

## Light touch regulation

Regulation that provides greater discretion to regulated parties in how they can act.

## Machinery change

Consequential changes in regulation required as a result of a substantive regulatory decision.

## Minor change

Changes that do not substantially alter the existing regulatory arrangements.

## Non-compliant

Failure to produce an adequate RIS as assessed by the OBPR.

## Non-compliance costs

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

## No regulation option

A policy option which aims to achieve its policy objective without using any form of regulation, as distinct from the Status quo option. A RIS must analyse the net benefit of either or both the No regulation and Status quo options as a benchmark against which other options can be assessed.

## Normally efficient business

A regulated entity that handles its regulatory tasks no better nor worse than another.

## Office of Best Practice Regulation (OBPR)

The Division within the Department of the Prime Minister and Cabinet responsible for providing advice to Portfolios on whether a RIS is required, assessing estimates of regulatory costs and offsets, and vetting the adequacy of RIS drafts.

## Office of Deregulation

The Division within the Department of the Prime Minister and Cabinet responsible for providing advice to the Prime Minister on deregulation policy.

## Offset

A reduction in existing regulatory burden to ensure the regulatory cost of new regulation is negated.

## Opportunity cost

A benefit foregone by having to comply with a regulation.

## Post Implementation Review (PIR)

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

## Quasi-regulation

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

## Red Tape/Green Tape

The term in general usage for a process or other requirement of government perceived to impose an unwelcome burden on business, community organisations or individuals. *Green Tape* refers specifically to processes or requirements associated with environmental or heritage protection.

## Regulator behaviour

Any aspect of the way regulation is applied or administered which has the effect of altering its impact, positively or negatively.

## Regulation

Any rule endorsed by government where there is an expectation of compliance. This includes legislation, regulations, quasi-regulations and any other aspect of regulator behaviour which can influence or compel specific behaviour by business, community organisations or individuals. This includes red tape burden imposed by the Commonwealth's procurement, grants and cost recovery frameworks.

## Regulation Impact Statement (RIS)

A statement Commonwealth agencies must produce as part of the policy making process when a decision is likely to have a regulatory impact on business, community organisations or individuals.

## Regulatory impact analysis (RIA)

The process of examining the likely impacts of regulatory proposals and the range of alternative options.

## Self-regulation

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

## Status quo option

A policy option in which all current policy settings remain as they are as the alternative to regulating; as distinct from the No regulation option. A RIS must analyse the net benefit of either or both the No regulation and Status quo options as a benchmark against which other options can be assessed.

### Substantive costs

Any costs (not including financial or administrative) arising as a consequence of new regulation. They may take many forms, including the need for new plant or equipment, building modifications or training courses.

### Sunsetting

The practice of specifying a date at which a given regulation will cease to have effect.

