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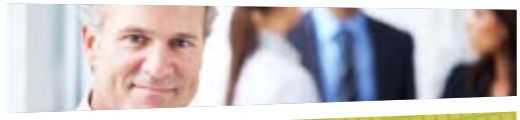

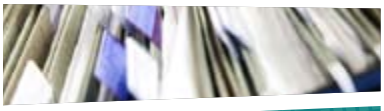


BEST PRACTICE REGULATION HANDBOOK

JULY 2013

Australian Government

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ISBN: 978-1-922096-25-8 (print)
ISBN: 978-1-922096-26-5 (online)

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Foreword

The Australian Government is committed to ongoing regulatory reform which supports increased productivity and international competitiveness.

The Regulatory Impact Analysis (RIA) framework ensures Australian Government regulation is both efficient and effective through rigorous analysis and consultation.

This framework is internationally recognised, and has been strongly commended by the Organisation for Economic Co-operation and Development.

To ensure the Australian Government's RIA framework remains world class, a two-stage process has been introduced.

The changes represent a more sophisticated approach to improving regulation and are intended to achieve better regulation by promoting sound analysis, effective consultation, informed decision-making and transparency.

The improved RIA framework enables more accurate analysis and assessments of the impacts of the proposed regulation on business, the not-for-profit sector and the broader community, and provides earlier opportunities for more substantive stakeholder consultation.

These changes are reflected in this revised edition of the *Best Practice Regulation Handbook*.

Senator The Hon Penny Wong

Minister for Finance
and Deregulation

The Hon David Bradbury MP

Minister Assisting for Deregulation

Chapter 1

PRODUCTIVITY, EVIDENCE-BASED POLICY AND REGULATION

1. Productivity, evidence-based policy and regulation

1.1 Productivity growth has the potential to generate higher incomes for Australians and is therefore an important consideration for decision-makers. Productivity is the only driver of income growth that is unlimited, as opposed to resource exploitation or increases in population and labour force participation, each of which faces natural limits. The continuing need to stimulate productivity therefore rightly remains at the forefront of government policy.

1.2 Almost all regulations can have an impact on productivity, either through the incentives that they provide to businesses to change operating and investment decisions, or more directly through their impacts on compliance costs.

1.3 Regulation plays a key role in modern, well functioning economies, and is a necessary means by which governments can achieve important and beneficial economic, social and environmental objectives. For example, some level of regulation is necessary to protect public health and safety, and facilitate everyday economic transactions. The downside is that poor regulation can cause frustration and unintended consequences, or simply add red tape that contributes nothing useful to the economy.

1.4 In order to reap the benefits and respond to the challenges of ongoing globalisation, the Australian economy needs to remain as efficient, flexible and responsive as possible.

1.5 Good policy-making processes can ensure that public policy achieves a desired objective in a cost-effective manner. By providing an evidence base for regulatory decision-making, the best practice regulation process seeks to deliver regulation where it provides greatest benefit to the community.

Informed decision-making

1.6 Where the proposed solutions to a policy problem involve possible regulation, regulatory impact analysis (RIA) determines whether the problem can be adequately addressed through non-regulatory arrangements. RIA also examines whether a regulatory solution is in the public interest.

1.7 The RIA framework encourages an evidence-based approach to policy development, which helps ensure that a number of options for addressing the problem have been analysed.

1.8 The information on which regulatory decisions are based should, in turn, be made public for reasons of transparency, to ensure that stakeholders and the public are aware of what decision has been taken and why.

1.9 The decision to regulate is often one of a number of different policy approaches considered by a government in response to a particular issue. Hence, the decision whether or not to regulate is a policy decision. For this reason, the preparation of an adequate regulation impact statement (RIS) is an integral part of regulatory policy development.

Best practice regulation-making

1.10 While regulations are necessary for the proper functioning of society and the economy, the challenge for government is to deliver regulation that is:

a. effective in addressing an identified problem

b. efficient in maximising the benefits to the community, taking account of the costs.

1.11 Government intervention should lead to an overall improvement in community welfare.

1.12 Determining whether regulation meets the goals of effectiveness and efficiency requires a structured approach to policy development that systematically evaluates costs and benefits.

1.13 The Australian Government's RIA requirements are intended to achieve better regulation by supporting:

a. *sound analysis*. The case for acting in response to a perceived problem, including addressing the question of whether regulatory action is required, needs to be demonstrated. The analysis should outline the desired objective of the response, a range of alternative options to achieve this objective, and an assessment of the impact of each option; and it should be informed by effective consultation.

b. *informed decision-making.* To help decision-makers understand the implications of options for achieving the government's objectives, they should be informed about the likely impacts of their decision, at the time they are making that decision.

c. *transparency*. The information available to government when it makes regulatory decisions should be publicly available.

1.14 The centrepiece of the Australian Government's best practice regulation process is a regulation impact statement, which contains seven elements setting out:

a. the problem or issues that give rise to the need for action

b. the desired objectives

c. a range of options that may achieve the desired objectives (at a minimum a regulatory option, a non-regulatory or light-handed regulatory option, or a do-nothing option)

d. an assessment of the impact (costs, benefits and, where relevant, levels of risk) of a range of feasible options for consumers, business, government and the community

e. consultation

f. a recommended option

g. a strategy to implement and review the preferred option.

1.15 The Australian Government has adopted a two-stage process for developing regulation impact statements. This process is intended to facilitate accurate and meaningful assessment of the impact of options on business and other stakeholders. The process is designed to provide sufficient information for a decision on whether to change or introduce regulation.

1.16 A RIS is intended as an aid for the decision-maker. Ultimately, the decision-maker determines whether to accept the recommendations contained in the RIS.

OECD guidelines and principles

1.17 On 22 March 2012, the Organisation for Economic Co-operation and Development (OECD) adopted a set of international guidelines and principles to be implemented by OECD member countries on regulatory quality and performance (OECD 2012).

1.18 In relation to regulatory impact assessment, the OECD recommends that member countries:

a. integrate regulatory impact assessment into the early stages of the policy process for the formulation of new regulatory proposals

b. clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals

c. consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.

1.19 The OECD reviewed Australia's regulatory performance in 2009 and found the Australian Government's RIA system to be among the most rigorous and comprehensive in the OECD. Further, the OECD considered that Australia represents in many ways a role model for OECD countries in its proactive approach to regulatory reform.

Recent reviews

1.20 Regular reviews of the RIA system can be drivers of continuous improvement. In 2012, two reviews considered the effectiveness of the Australian Government RIA system. The first review, the Independent Review of the Australian Government's Regulatory Impact Analysis Process, was conducted by Mr Robert Milliner and Mr David Borthwick AO PSM (Borthwick & Milliner 2012) and assessed the effectiveness of the Australian Government's RIA requirements.

1.21 Also in 2012, the Productivity Commission undertook research to benchmark the efficiency and quality of the Commonwealth, state and territory, and Council of Australian Governments (COAG) RIA processes. The commission released its report on 13 December 2012.

1.22 The Australian Government responded to the independent review on 5 December 2012, and the revised RIA system outlined in that response forms the basis for this handbook. In turn, the government will review this revised RIA system after two years.

Chapter 2

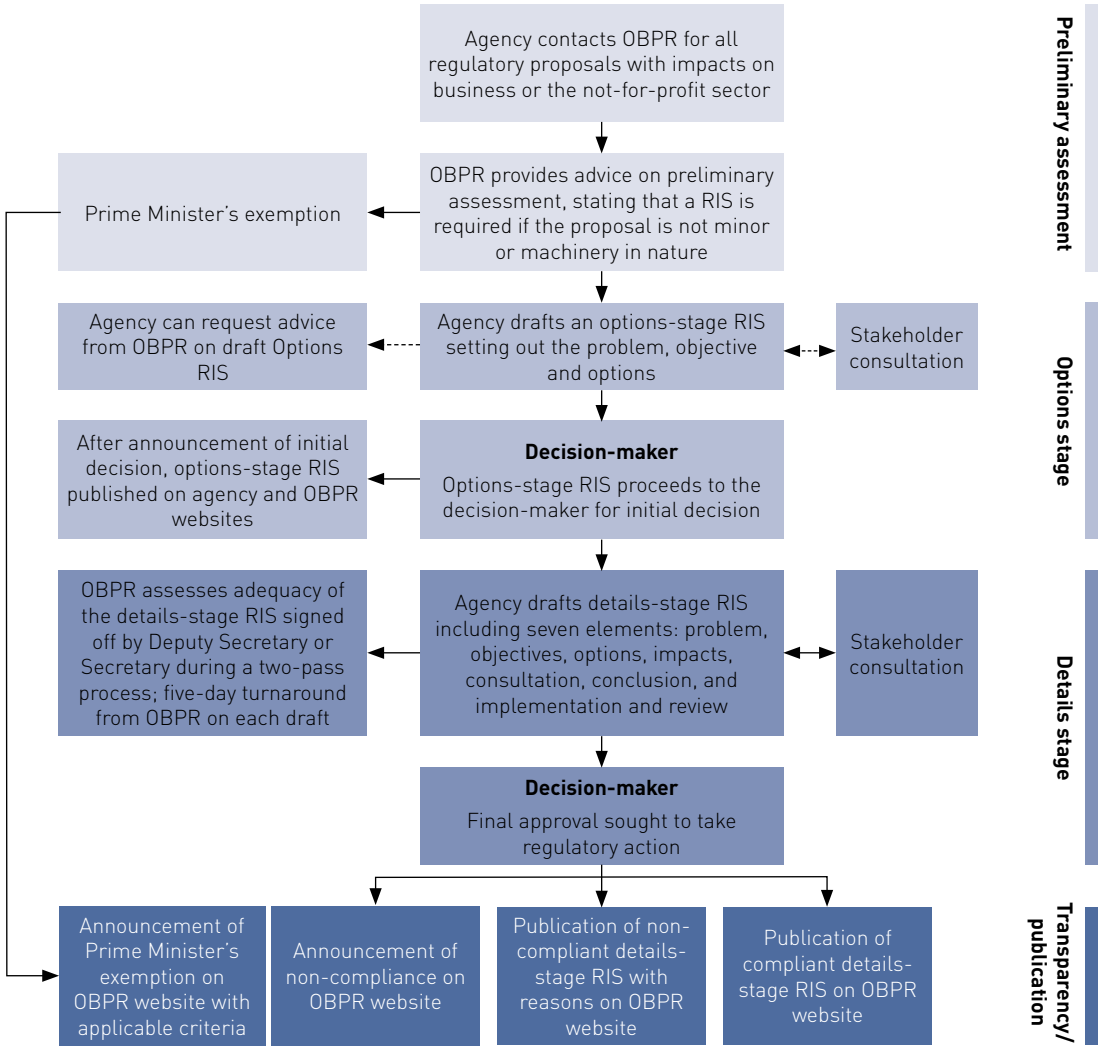
THE GOVERNMENT'S REGULATORY IMPACT ANALYSIS REQUIREMENTS

2. The government's regulatory impact analysis requirements

The RIS process—shown in Figure 2.1—outlines the typical steps in developing a proposal with regulatory impacts. The broad stages in the RIS process are:

- *notifying* the Office of Best Practice Regulation (OBPR) of the proposed regulation
- *preparing* an options-stage RIS to inform decision-making and for consultation
- *preparing* a details-stage RIS to inform decision-making and support sound analysis
- *publishing* the details-stage RIS to support transparency.

Figure 2.1: The two-stage RIS process



2.1 This chapter gives an overview of the government's regulatory impact analysis requirements. Chapters 3 to 7 provide more detail on each step in the RIS process, while Appendix C provides information on exemptions from the RIS process.

2.2 This handbook is designed so that readers can target the specific chapter of interest to them, and is not intended to be read from cover to cover. The handbook should also be read in conjunction with the relevant guidance notes outlined in Appendix A.

2.3 Preparing a RIS is normally split into two stages: an 'options' stage and a 'details' stage. A RIS is prepared at each stage.

Options-stage RIS

An options-stage RIS is a document prepared to inform the initial decision to regulate, and it also supports the consultation process. It outlines three elements: the policy problem, the policy objective, and the options for reaching the objective.

The OBPR—at an agency's request—may provide comment on a draft options-stage RIS, but it does not assess the document against any adequacy criteria. Instead, the decision-maker approves the RIS for release at the options stage, and it is published on the OBPR website.

Details-stage RIS

Following consultation, a details-stage RIS is prepared containing seven elements—the three elements set out in the options-stage RIS (problem, objective and options), as well as impact analysis, consultation, conclusion and implementation/review. The details-stage RIS presents to the decision-maker a comprehensive analysis of the options chosen for testing.

The OBPR assesses the details-stage RIS in terms of consistency with the guidelines in this handbook and adequately addressing all seven RIS elements and, following the announcement of a decision, publishes it on the OBPR website.

Role of the Office of Best Practice Regulation

2.4 The OBPR administers the government's regulatory impact analysis requirements. The OBPR has a number of roles (Box 2.1), including: assisting agencies in preparing regulation impact statements through training and guidance; monitoring and reporting on the government's regulatory impact analysis requirements; and administering the Council of Australian Governments (COAG) guidelines for regulation-making by national bodies.

2.5 In the shaded sections of this chapter, you will find guidance about working with the OBPR at each step of the RIS process.

Box 2.1: Role of the Office of Best Practice Regulation

The OBPR plays a central role in helping Australian Government departments and agencies to meet the government's requirements for best practice regulatory impact analysis, and in monitoring and reporting on their performance.

The OBPR promotes the Australian Government's objective of effective and efficient legislation and regulations. Its functions include:

- advising agencies on whether a RIS is required
- examining details-stage regulation impact statements and providing comments to agencies
- examining details-stage regulation impact statements and advising decision-makers whether the statements are adequate in terms of the government's best practice requirements
- advising agencies on assessing business compliance costs and maintaining the Business Cost Calculator (Appendix B) as a regulation costing tool
- providing training and guidance on regulation impact statements
- promoting the whole-of-government consultation principles and providing clear guidance on best practice consultation with stakeholders to be undertaken as part of the policy development process
- providing technical assistance on cost–benefit analysis
- reporting annually on the government's requirements for regulation impact statements and consultation
- monitoring and reporting on regulatory reform developments domestically and internationally
- maintaining a website that details all regulation impact statements and post-implementation reviews
- providing advice to COAG councils and national standard-setting bodies on COAG guidelines (COAG 2007) that apply when such bodies make regulations.

When does a RIS need to be prepared?

2.6 A RIS is mandatory for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business or the not-for-profit sector. This includes amendments to existing regulation and the remaking of sunsetting regulation.[1] However, a RIS is not required if

[1]Self-assessment arrangements (outlined in Appendix C) apply to the remaking of sunsetting regulation.

the regulatory impact is of a minor or machinery nature (Box 2.3) and does not substantially alter existing arrangements.

2.7 Business or the not-for-profit sector includes any organisation that aims to make a profit and the activities and transactions of not-for-profit organisations.

2.8 The RIS requirements apply to changes in taxation that impact business or the not-for-profit sector, unless the proposal is primarily revenue in nature or is an integrity measure.

2.9 While the RIS requirements are not triggered by impacts on individuals (as the threshold test for a RIS focuses on the impact on business or the not-for-profit sector), the RIS itself considers the impact of regulatory proposals on all affected groups in the community.

Who do the RIS requirements apply to?

2.10 The RIS requirements apply to all Australian Government departments, agencies, statutory authorities and boards (referred to collectively as 'agencies') that review or make regulations that have an impact on business or the not-for-profit sector. This includes agencies or boards with administrative or statutory independence. The agency responsible for bringing the proposal to the decision-maker is also responsible for ensuring that the RIS requirements are met. The application of the RIS requirements does not vary by agency or decision-maker.

2.11 Many non-Cabinet decision-makers are required to operate in accordance with legislation specific to their agency when assessing regulatory proposals, and are subject to additional checks and balances such as consultation requirements and appeal provisions. In such cases, RIS requirements continue to apply. Agencies should take into account any statutory requirements in the preparation of a RIS, but they may also need to consider impacts beyond their immediate client group in determining the net community benefit arising from a regulatory proposal.

What is regulation?

2.12 Regulation is any rule endorsed by government where there is an expectation of compliance. It includes primary legislation and legislative instruments (both disallowable and non-disallowable[2]) and international treaties. It also comprises other compliance measures that do not form part

[2] A disallowable instrument must be tabled and is open to Parliamentary veto (disallowance) for a set period, usually fifteen sitting days. All new legislative instruments are subject to disallowance unless they have been granted an exemption.

of explicit government regulation, but nevertheless seek to influence the behaviour of business and the not-for-profit sector, for example quasi-regulation (Box 2.2).

2.13 Regulation can be made by an agency acting under a delegated authority provided through an Act of Parliament. Where the decision maker has discretion in how to address a problem, which is often the case with principles-based regulation, the resulting rule or guidance material may trigger the need for a RIS. This applies regardless of whether the delegated authority is provided for under a regulatory framework which was subject to a RIS.

2.14 Regulation does not include grant programs, government procurement of specific goods or services, or government agreements, unless these processes impose more general regulatory requirements on the organisations receiving funding or providing goods and/or services.

Box 2.2: What is quasi-regulation?

Quasi-regulation includes a wide range of rules or arrangements that are not part of explicit government regulation, but nevertheless seek to influence the behaviour of businesses, not-for-profit organisations and individuals (for example, industry codes of practice, guidance notes, industry–government agreements and accreditation schemes). Broadly, whenever the government acts with the intention that business or the not-for-profit sector is expected to comply with a proposed scheme, the government action may be quasi-regulatory.

What is an impact?

2.15 An impact is either a positive or negative effect, and covers items that can be readily quantified in monetary terms (for example, service charges, subsidies, compliance costs) as well as items that cannot be readily quantified in monetary terms (for example, restrictions on competition).

Box 2.3: What is a minor or machinery change?

'Minor' changes refer to those changes that do not substantially alter the existing regulatory arrangements for businesses or not-for-profit organisations, such as where businesses would initially incur a small one-off cost but no ongoing costs.

Examples of minor changes include allowing entities to lodge applications electronically, indexation arrangements, and setting opening and closing dates for fisheries.

'Machinery' changes refer to consequential changes in regulation that are required as a result of a substantive regulatory decision, and for which there is limited discretion available to the decision-maker.

Examples of machinery changes include legislative changes to correct errors, administrative changes such as name changes, changes to levy rates in line with movements in CPI, and updating thresholds.

COAG processes

2.16 COAG councils and national standard-setting bodies are required by COAG to conduct regulatory impact analysis for agreements or decisions of a regulatory nature. These requirements are set down in the COAG-endorsed *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (COAG 2007).

2.17 Officials engaged in developing proposals for these decision-making forums should refer to that publication and consult the OBPR early in the policy development process. This handbook does not apply to COAG processes.

Chapter 3

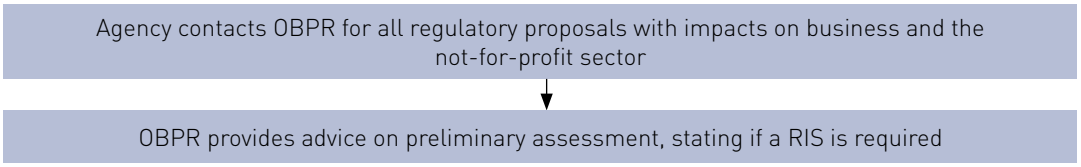
PRELIMINARY ASSESSMENTS

3. Preliminary assessments

Preliminary assessments are used to determine whether the likely impact of a regulatory proposal requires a RIS to be prepared.

- An agency is required to contact the OBPR to seek advice on whether a RIS is required for a regulatory proposal.
- Agencies are to provide details on the regulatory proposal.
- The OBPR will provide written advice to the agency on RIS requirements.

Figure 3.1: Preliminary assessment stage



3.1 A RIS is mandatory for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements. The agency responsible for bringing the proposal to the decision-maker is also responsible for ensuring the RIS requirements are met.

3.2 It is the agency's responsibility to contact the OBPR within a sufficient timeframe to prepare a RIS (if one is necessary) before a decision on whether or not to regulate is made by the government or its delegated officials. In practice, this usually means contacting the OBPR when the agency is aware that the government is considering a policy response that could involve the creation of new regulation, or changes to existing regulation. There is no provision for making an 'in principle' decision to regulate, subject to the preparation of a RIS.

Once you become aware that a regulatory proposal you are working on may require a RIS, you should contact the OBPR. Engaging early with the OBPR is important for the effectiveness of the RIS process—it ensures that you will have sufficient time to understand the process and prepare the RIS. The process includes drafting and releasing an options-stage RIS to facilitate consultation, and undertaking the additional work required to prepare an adequate details-stage RIS.

All agencies have a Best Practice Regulation Coordinator and you should make early contact with the relevant area in your agency when considering any new regulations. If you are unsure who your coordinator is, the OBPR can assist.

3.3 The trigger for preparing a RIS depends on the likely impact of the regulatory proposal. A RIS is required where there is an impact on business or the not-for-profit sector, other than those impacts that are minor or machinery in nature. Once contacted by the agency in relation to a regulatory proposal, the OBPR assesses whether a RIS is required and advises the agency. This step is called the 'preliminary assessment'.

3.4 In order to assess whether the proposal requires a RIS, the OBPR will require information in writing from the agency on the problem that is being addressed, what the proposed regulation entails and the likely impacts of the proposal. In general, the more the proposed regulation impacts on business operations, and the greater the number of businesses or not-for-profit organisations that will be affected, the more likely it is that a RIS will be required.

3.5 The OBPR officer conducting the preliminary assessment for you requires the following information:

- a description of the problem that is being addressed
- the objectives of the proposal
- an outline of the options available to address the problem
- whether the proposal is likely to impact business or not-for-profit organisations, either directly or indirectly
- the nature of the impacts—whether the proposal restricts the activities of certain businesses or whether it acts more indirectly
- the size of the likely impacts—how many businesses will be affected and whether there will be effects on the community more broadly
- recent proposals of a related nature—whether there has been an accumulation of proposals over a period of months that individually could be considered minor, but taken as a package could be considered significant.

To assist in providing this information, a preliminary assessment form is available from the OBPR website (it is not compulsory to use this form).

Once the OBPR officer has this information, he or she is able to make an assessment of whether the proposed regulation is likely to have an impact on business or the not-for-profit sector (and will require a RIS); or whether the impact is likely to be of a minor or machinery nature (and will not require a RIS).

The OBPR officer will base his or her assessment largely on the information you provide, so the more quickly you can provide accurate information, the faster you will receive the office's assessment. The OBPR aims to provide this assessment within five working days of receiving all the necessary information.

In many instances, the outcome of a preliminary assessment is that no RIS is required. However, if a details-stage RIS is not prepared when one was required, the OBPR will advise the agency of its non-compliance (which will be published on the OBPR website) and require that a post-implementation review be undertaken.

If you disagree with this assessment, you can provide further information to the OBPR officer and/or ask for a review of the assessment by the Executive Director or Deputy Executive Director of the OBPR.

3.6 Once the OBPR has conducted its preliminary assessment, the OBPR will write to the agency advising whether or not a RIS is required.

3.7 When the OBPR concludes that a RIS is required, it also considers how broadly the economy will be impacted by the proposal, and uses this information to assign each RIS to one of four categories, 'A' to 'D' (with 'A' representing the proposals with the largest likely impacts). This categorisation helps to determine the level of analysis that will be expected in a RIS. For example, regulation impact statements in Category A require an in-depth analysis with a formal cost–benefit analysis, whereas Category D regulation impact statements would involve a much briefer analysis of the impacts, possibly in qualitative terms. The agency will be advised of which category applies to its proposal. Further information on this categorisation is provided in Table 3.1.

Table 3.1: Characteristics of RIS categories

RIS category	RIS characteristics	Level of analysis required[3]
A	• Major impact on the economy • Change likely to impact across the entire economy or a significant proportion • New regulations will involve significant change and have high costs • The regulatory changes are a matter of debate and fundamental disagreement • The issues are highly sensitive and controversial	• In-depth analysis • Formal cost–benefit analysis • Evidence of extensive consultation
B	• A measurable impact on the economy • Change likely to impact across a number of sectors or a single sector in a very significant manner • New regulations will involve significant change and have high costs • The regulatory changes are a matter of debate and disagreement • The issues are highly sensitive	• In-depth impact analysis, including quantifying impacts
C	• Limited impact on the economy • Change likely to impact a single sector • New regulations will involve change and costs but these would not be considered significant in the sector they are to apply to • The regulatory changes are a matter of some disagreement but not fundamental disagreement • The issues are sensitive	• Quantification preferred
D	• Of relatively minor significance in the economy • Likely to impact a single sector • The regulatory change is well accepted, or even requested by key stakeholders • The issues have little sensitivity	• Quantification preferred but qualitative analysis only may be acceptable

[3]Where it is not possible to quantify impacts, qualitative analysis may be acceptable as long as you clearly set out the reasons why the impacts are not quantifiable.

3.8 Agencies are encouraged to meet with the OBPR early in the RIS process. Generally, the OBPR will look to follow up the meeting with a letter that will provide individual guidance for the agency on the RIS requirements for their specific proposal. The letter will highlight the sort of information and depth of analysis that the OBPR would expect to see in the RIS.

3.9 The letter will include an attachment summarising the minimum level of information that should be provided under each of the seven elements of the details-stage RIS for it to be assessed as adequate against the Australian Government's best practice regulation requirements.

3.10 This early guidance from the OBPR aims to ensure that an agency can complete an adequate RIS more effectively and efficiently. When the OBPR is able to provide detailed guidance up front, the agency will be aware early in the RIS process of the resources and effort required to prepare an adequate RIS.

The OBPR conducts training programs to help agencies prepare regulation impact statements, use the Business Cost Calculator to assess compliance costs, and fulfil other regulatory review and reform obligations. The OBPR also provides technical assistance and training to policy officers on cost–benefit analysis and risk analysis. Further information on regulatory impact analysis training is available on the OBPR website.

More broadly, the OBPR aims to help agencies comply with the regulatory impact analysis requirements by promoting awareness of the requirements, and by seeking to better understand the policy-making environment faced by individual agencies. Best Practice Regulation Coordinators located in each agency can assist by acting as a contact point for further information on the RIS process.

The OBPR can provide outposted officers (on a cost-offsetting basis) to assist agencies in preparing regulation impact statements, including an options-stage RIS and a post-implementation review (PIR). The role of the OBPR officer is to facilitate the development of a RIS or a PIR that can be signed off by the agency.

The level of assistance can vary in terms of the number of OBPR officers outposted, the type of service they provide, the length of time they spend in the agency, the requirements of the agency, the complexity of the proposal, and overall demands on the OBPR's resources.

Prime Minister's exemptions

3.11 Exemptions from the RIS requirements for exceptional circumstances can only be granted by the Prime Minister in writing. A Minister wishing to obtain an exemption should write a letter to the Prime Minister, copied to the Treasurer and the Minister for Finance and Deregulation, addressing the criteria under which an exemption is required. An exemption may be granted where:

a. truly urgent and unforeseen events arise, requiring a decision before an adequate RIS can be undertaken

b. there is a matter of Budget or other sensitivity and premature announcement (even of options) could cause unintended market effects or lead to speculative behaviour which would not be in the national interest.

3.12 In granting exemptions, the Prime Minister will identify which of the two exemption criteria has been used. The agency must provide a copy of the Prime Minister's letter to the OBPR.

3.13 Agencies must contact the OBPR prior to seeking an exemption to ascertain whether the proposal would require a RIS.

3.14 Appendix C provides further information on Prime Minister's exemptions.

Single-stage regulation impact statements

3.15 Agencies retain the option of preparing a full regulation impact statement in a single stage—that is, without preparing an options-stage RIS beforehand—for example, where a proposal is straightforward or for reasons of urgency. The agency should make it clear in the RIS that it has opted to prepare a single-stage RIS, and the reasons why.

3.16 A single-stage RIS is effectively a details-stage RIS without the preceding options-stage RIS. The contents and process for the single-stage RIS are the same as for the details-stage RIS.

3.17 Appendix C provides more information on single-stage regulation impact statements, and the process for finalising a single-stage RIS is the same as for a details-stage RIS and is outlined in Figure 5.1.

Independent reviews

3.18 A RIS will not be required for a regulatory proposal where an independent review or other mechanism has undertaken a process and analysis equivalent to a RIS.

3.19 This approach is intended to apply to those reviews that are informed by a thorough process of consultation and analysis, such as a green paper, a white paper or an official review.

3.20 The OBPR does not assess these independent reviews. Instead, the agency itself will be required to assess (at the secretary or deputy secretary level) whether the review has followed a similar process to that required for a details-stage RIS, and has adequately addressed all seven RIS elements. The final report of the independent review must be published, subject to the need to remove any national security or commercial-in-confidence material (see paragraph 6.7 for more information).

3.21 Agencies are encouraged to consult the OBPR when preparing review terms of reference to ensure that each of the seven RIS elements will be addressed. The OBPR may report the relevant agency as non-compliant if the agency incorrectly assesses the scope of the review and the subsequent regulatory decision.

3.22 Chapter 5 provides more information on preparing a details-stage RIS, Chapter 6 outlines publication requirements, and Appendix C gives further details on independent review processes and their interaction with the RIS process.

Chapter 4

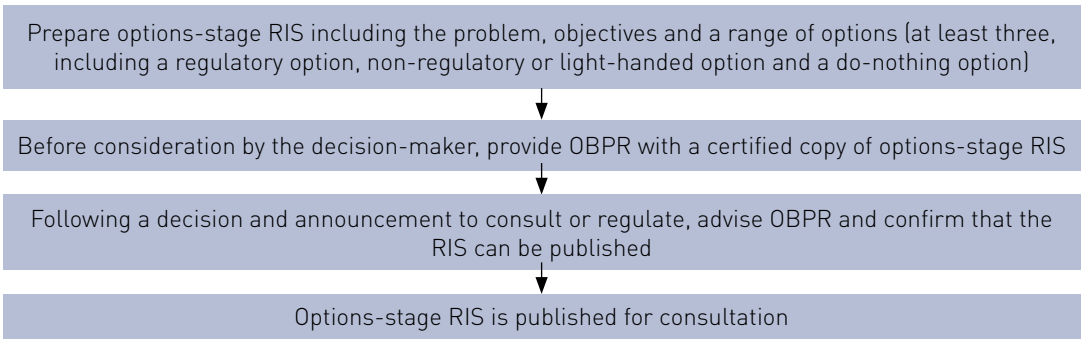
WHAT IS AN OPTIONS-STAGE RIS?

4. What is an options-stage RIS?

An options-stage RIS is prepared to assist and inform the consultation process. At a minimum, it covers the problem, objective and options elements of the RIS.

- Before an initial regulatory decision is made, agencies must prepare an options-stage RIS for the decision-maker.
- This options-stage RIS must include a minimum of three elements: the problem, objective and at least three options (including a regulatory option, a non-regulatory or light-handed regulatory option, and a do-nothing option).
- An options-stage RIS certified at the secretary or deputy secretary level must be provided to the OBPR before consideration by the decision-maker.
- The options-stage RIS must be published following the public announcement of the decision.

Figure 4.1: Options-stage RIS process



4.1 In the absence of exceptional circumstances as agreed by the Prime Minister, a regulatory proposal with likely impacts on business or the not-for-profit sector can only proceed to the Cabinet or other decision-makers when it is accompanied by a RIS. A RIS is not required if the proposal only involves changes of a minor or machinery nature.

4.2 On confirmation that a RIS is required for a regulatory proposal (through the preliminary assessment process), the agency is required to prepare an options-stage RIS setting out, at a minimum, the problem, objectives and a range of options.

4.3 The agency should examine a range of options for achieving the objectives. At a minimum, the agency must consider three options: a regulatory option, a non-regulatory or light-handed regulatory option, and a do-nothing option. The agency is responsible for the choice of options.

4.4 An options-stage RIS must be prepared prior to the initial decision to regulate. Examples of an initial decision can include:

a. an 'in principle' decision to regulate

b. where the government seeks to consult on a regulatory proposal

c. where the government announces regulation in a particular form (such as an intention to legislate), but wishes to consult on the detail of the final regulation.

4.5 The options-stage RIS ensures consultation at an early stage, enabling stakeholders to comment on the options and influence their final shape in the details-stage RIS. Consultation may result in change to the options under consideration.

4.6 While agencies are not required to consult stakeholders in preparing an options-stage RIS, consultation is strongly encouraged, particularly for regulatory proposals with more significant impacts. Prior consultation may help an agency to define the problem, objectives and options, thereby improving the quality of the options-stage RIS. Equally, agencies are encouraged, where appropriate, to include elements of the details-stage RIS, such as a preliminary impact analysis, at the options stage.

4.7 An agency is not required to seek an assessment from the OBPR of the options-stage RIS at any stage, including before the agency provides a completed version to the decision-maker.

4.8 While an agency is not required to seek the OBPR's assessment of the options-stage RIS, the OBPR is available to provide advice on a draft. OBPR officers can help apply the guidance contained in this handbook to the individual circumstances of each proposal.

4.9 Where an agency prepares another document, such as a consultation paper, which it considers fulfils the requirements for an options-stage RIS, the agency can state in that document that it has satisfied the options-stage RIS requirements. The agency should be aware, however, that the document will be referred to as an options-stage RIS on the OBPR website and in other OBPR documents. Again, the OBPR will not assess the adequacy of the consultation paper.

4.10 Before consideration by the decision-maker, the final version of the options-stage RIS is signed by the relevant departmental secretary or deputy secretary (or agency head/deputy head) and the agency will provide the OBPR with a copy of the options-stage RIS.

4.11 After an initial decision to regulate has been made and announced, the agency will advise the OBPR and provide confirmation that the RIS that is provided to the decision-maker can be published. The RIS must be published, at a minimum, on the OBPR website.

Proposals considered by the Cabinet

4.12 If a RIS is required, it must be attached in full to the Cabinet submission being circulated to agencies preparing coordination comments. The OBPR will provide coordination comments at the options stage. These comments will typically relate to whether the RIS requirements have been followed and the quality of the options-stage RIS.

4.13 Policy officers should consult the publication, *Drafter's Guide: Preparation of Cabinet Submissions and Memoranda*, for guidance on completing the regulatory impacts section in the submission or memorandum's summary.

4.14 The Cabinet Secretariat will not circulate final Cabinet submissions or memorandums, or other Cabinet papers, during Cabinet processes without a RIS unless the Prime Minister has deemed that exceptional circumstances apply.

Proposals requiring approval from the Prime Minister

4.15 Where approval is sought from the Prime Minister for an initial decision to regulate, a complete options-stage RIS must accompany the letter to the Prime Minister seeking approval.

Other proposals

4.16 Where regulatory action requiring a RIS does not need approval from the Cabinet or the Prime Minister, the options-stage RIS should be included in full in material presented to the decision-maker (Minister, board, committee or senior official).

4.17 Following the announcement of the decision to regulate, the agency will advise the OBPR and provide confirmation that the RIS can be published. The only changes that can be made to an options-stage RIS before publication are outlined in paragraph 6.7.

4.18 The OBPR will not assess the adequacy of the options-stage RIS. The agency itself will be required to assess the consistency of the options-stage RIS with the requirements in this handbook as part of preparing a details-stage RIS.

4.19 Detailed guidance on preparing the three elements within an options-stage RIS is provided in Chapter 7.

Chapter 5

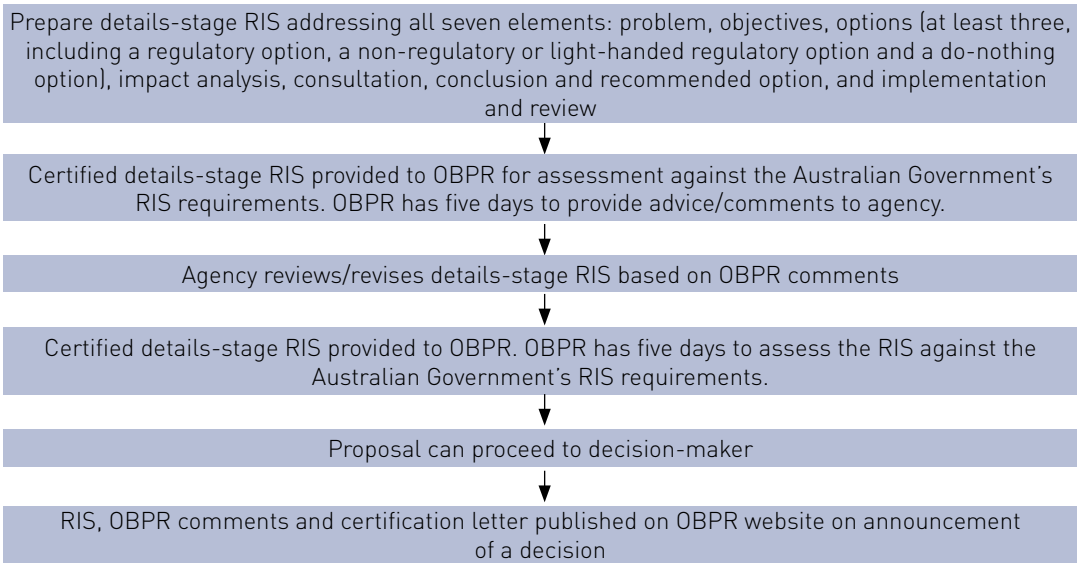
WHAT IS A DETAILS-STAGE RIS?

5. What is a details-stage RIS?

Following consultation, a details-stage RIS presents to the decision-maker a comprehensive analysis of the chosen options against all seven RIS elements.

- To support a decision on the detail of a proposed regulation, agencies are required to prepare a details-stage RIS addressing all seven elements of a RIS.
- A draft details-stage RIS, certified at the secretary or deputy secretary level, should be provided to the OBPR for assessment against the Australian Government's RIS requirements.
- After revising the details-stage RIS to address any comments provided by the OBPR, an agency submits a final details-stage RIS (again certified at the secretary or deputy secretary level) for final assessment to the OBPR.
- The details-stage RIS is then provided, along with the OBPR assessment of adequacy, to the decision-maker.

Figure 5.1: Details-stage RIS process



5.1 Following stakeholder consultation and assessment of the impacts of each option, the relevant agency is required to prepare a full RIS comprising all seven RIS elements for consideration by the decision-maker. This is called the details-stage RIS.

5.2 The agency is not required to reproduce exactly the problem, objectives and options initially canvassed in the options-stage RIS if the consultation process justifies changes. However, a regulatory option, a non regulatory or light-handed regulatory option, and a do-nothing option must still be identified at a minimum.

5.3 In drafting the details-stage RIS, the agency must specifically address whether an options-stage RIS was prepared consistent with the RIS requirements (one of the specific statements along with the completed checklist) included in paragraph 7.86 of this handbook must be included in the details-stage RIS. The OBPR will not assess the details-stage RIS as adequate unless the consultation section has this statement and checklist completed by the agency. See Box 5.1 for further information on assessment.

5.4 Before consideration by the decision-maker, the details-stage RIS must be assessed by the OBPR. The OBPR has no role at the details stage in prescribing particular options, other than ensuring that the minimum three generic options are in the RIS.

5.5 There are two opportunities for the OBPR to assess the details-stage RIS: once to comment ('first pass') and once to assess ('second pass'). The OBPR's turnaround time for each assessment is five business days.

Box 5.1: Assessment by the OBPR

The OBPR will assess a RIS for consistency and adequacy—consistency relates to following the prescribed process and adequacy relates to the quality of the analysis.

To be assessed as *consistent* with the RIS guidelines, an agency must twice provide its certified details-stage RIS (addressing all seven elements) to the OBPR for the two-pass assessment before the decision-maker considers the RIS, and the RIS must be published after the decision is announced.

To be assessed as *adequate*, a details-stage RIS must not contain obvious errors, must have a degree of detail and depth of analysis that is commensurate with the magnitude of the problem and the size of the potential impact of the proposal, and must specifically assess whether an options-stage RIS was prepared consistent with the RIS requirements.

5.6 When the agency forwards a draft details-stage RIS to the OBPR for either the comment or assessment phase, it must be certified by the relevant secretary or deputy secretary (or agency head/deputy head). The certification letter that is signed before the assessment phase will be published on the OBPR website when the RIS is published. Template certification letters are available from the OBPR website.

The certified details-stage RIS must be sent to the OBPR email address [helpdesk@obpr.gov.au]. The OBPR will provide an email receipt to the agency to indicate when each of the five-business-day turnaround periods begin.

5.7 In its first pass, the OBPR comments on whether the draft details-stage RIS is consistent with the government's requirements and adequately addresses all seven RIS elements. The OBPR will provide formal written advice to the agency on what is required to make the details-stage RIS consistent and adequate.

5.8 The agency has an opportunity to revise the details-stage RIS in response to the OBPR's assessment. There is no limit on the time an agency may take to revise a draft details-stage RIS following receipt of initial advice from the OBPR, and no restriction on the number of times an agency can discuss a RIS with the OBPR before submitting the details-stage RIS for final assessment.

If requested, the OBPR can offer drafting advice to officers preparing a RIS, but will only formally assess the consistency and adequacy of a details-stage RIS once it has been certified. Most regulation impact statements are likely to require additional work between the first and second pass. As such, this should be factored into schedules.

5.9 In its second pass, the OBPR conducts a final assessment of the details-stage RIS for consistency and adequacy against all seven RIS elements, after which the RIS can proceed to the decision-maker. The OBPR will rely heavily on the certification by the relevant secretary or deputy secretary (or agency head/deputy head) in determining the adequacy of the RIS, provided the certification letter directly addresses in detail the OBPR's written comments at the first pass.

5.10 If the OBPR assesses that the details-stage RIS is inconsistent with the RIS requirements or has not met the standards of adequacy, and is therefore non-compliant with RIS requirements, the agency can nevertheless choose to bring forward the proposal for decision by the decision-maker. The OBPR will provide the agency with written advice of its assessment, including the reasons why the RIS has been assessed as not adequate, if applicable.

5.11 If the proposal proceeds to the decision-maker after the second pass, the details-stage RIS and, if applicable, the OBPR's written advice setting out the reasons for the RIS being assessed as not consistent or not adequate, must be included in full with the documentation provided to the decision-maker. The details-stage RIS must also be provided to the OBPR for publication on the OBPR website.

5.12 Upon announcement of the decision, the details-stage RIS provided to the decision-maker will be published on the OBPR website, together with the certification letter from the agency and written advice from the OBPR setting out the status of the RIS.

5.13 Alternatively, agencies may choose to continue work on a details-stage RIS assessed as not having met the standards of consistency or adequacy, in consultation with the OBPR, so that it can be reassessed and reported as fully compliant. In this instance, however, the OBPR is not bound by designated time limits.

5.14 Chapter 7 provides detailed guidance on preparing a details-stage RIS.

Decision-making

5.15 In the absence of exceptional circumstances as agreed by the Prime Minister, a regulatory proposal with likely impacts on business or the not-for-profit sector can only proceed to the Cabinet or other decision-makers when it is accompanied by a RIS. A RIS is not required if the proposal only involves changes of a minor or machinery nature.

5.16 The OBPR does not have to assess a details-stage RIS as consistent and adequate before the RIS can proceed to the decision-maker. The decision-maker can make a decision based on a non-compliant RIS, so long as the RIS has been through the two-pass process and, if applicable, is accompanied by written advice from the OBPR setting out its status.

Proposals considered by the Cabinet

5.17 If a RIS is required, it must be attached in full to the Cabinet submission being circulated to agencies preparing coordination comments. The OBPR has an opportunity to provide coordination comments which, at the details stage, will generally cover the adequacy of the RIS and any particular issues with the analysis or other aspects of the document.

5.18 The OBPR will also provide coordination comments where an independent review takes the place of a RIS. Policy officers should consult the publication, *Drafter's Guide: Preparation of Cabinet Submissions and Memoranda*, for guidance on completing the regulatory impacts section in the submission or memorandum's summary.

5.19 The Cabinet Secretariat provides a gate-keeping role to ensure that regulatory proposals coming to the Cabinet are accompanied by a RIS or its equivalent. The Cabinet Secretariat will not circulate final Cabinet submissions or memorandums, or other Cabinet papers without a RIS or its equivalent, unless the Prime Minister has deemed that exceptional circumstances apply.

Multi-stage decision-making processes

5.20 Occasionally a policy-making process may include a number of distinct decision-making stages. For example, a proposal presented to a decision-maker for initial approval may return at a later stage for a further decision or a final decision on the detailed implementation. Similarly, where an exposure draft of legislation is required, in most cases a decision (informed by a details-stage RIS) on a regulatory option has already been made. Consequently, a multi-staged decision-making process might occur.

5.21 A RIS is required at each significant decision-making stage of the process. While the definition of 'significant' will vary from case to case, in general a decision-making stage is significant when that decision precludes one or more options from further consideration. For final decisions, a details-stage RIS is required; for all other decision points, an options-stage RIS is required. An agency can choose to prepare a details-stage RIS for decision points before the final decision stage.

5.22 Processes involving multi-stage decision-making processes are complex and agencies are advised to contact the OBPR as early in the process as possible to reach a common understanding of how the best practice regulation requirements will apply in each circumstance. Appendix C provides more information on how the RIS requirements apply to treaties.

Proposals requiring approval from the Prime Minister

5.23 Where approval for a regulatory proposal is sought from the Prime Minister, the details-stage RIS or equivalent (and, if applicable, the OBPR's written advice about its status) must accompany the letter to the Prime Minister seeking approval.

Other proposals

5.24 Where regulatory action requiring a RIS does not need approval from the Cabinet or the Prime Minister, the details-stage RIS (and, if applicable, the OBPR's advice about its status) should be included in material presented to the decision-maker (minister, board, committee or senior official).

Consequences of an inconsistent or inadequate details-stage RIS

5.25 If, in the absence of a details-stage RIS (or equivalent document) or a Prime Minister's exemption from the need to undertake a RIS, a final decision or announcement is made on a regulatory proposal that has more than a minor or machinery impact on business or the not-for-profit sector, the agency will be reported as non-compliant.

5.26 If a final decision or announcement is made based on a details-stage RIS that is inconsistent with this handbook or does not adequately address the seven RIS elements, the agency will be reported as non-compliant.

5.27 Non-compliance is reported on the OBPR website upon the public announcement of the decision. It is also reported annually in the *Best Practice Regulation Report*.

5.28 Non-compliance will also trigger a requirement to undertake a post-implementation review (PIR). A PIR must commence within one to two years of the regulation being implemented. Further details on conducting a PIR can be found in Appendix A.

Chapter 6

TRANSPARENCY

6. Transparency

The information on which the government bases its regulatory decisions should be publicly available.

- Both options-stage and details-stage regulation impact statements, and post-implementation reviews, must be published.
- Publication should, at a minimum, be on the OBPR website.
- Options-stage and details-stage regulation impact statements should be published as soon as possible after the public announcement of the regulatory decision.
- Post-implementation reviews should be published as soon as possible after they have been completed and provided to the Prime Minister and relevant Minister.
- To aid transparency, regulation impact statements and post-implementation reviews should be released in the form they were provided to decision-makers, with provision for commercial-in-confidence or national security material to be removed.

6.1 Transparency is one of the purposes of regulatory impact analysis. Publication of regulation impact statements and information about their adequacy is critical to fulfilling this purpose.

6.2 After a decision has been made and announced, the associated RIS must be published.

6.3 The OBPR maintains a website for this purpose. Both the options-stage RIS and the details-stage RIS (or their equivalents) are published, including any details-stage RIS assessed as non-compliant. The OBPR's assessment of the details-stage RIS and agency certification letters are also published on the website, as are post-implementation reviews and Prime Minister's exemptions, including the applicable criteria.

Although the OBPR does not assess the adequacy of an options-stage RIS, the office would report on its website (when the details-stage RIS is published) that an agency did not prepare an options-stage RIS consistent with the RIS requirements.

The OBPR would also report non-compliance with the details stage where a final decision to regulate is announced without a details-stage RIS.

6.4 Regulation impact statements, certification letters and the OBPR's assessments of those statements will be published on the website upon announcement of the regulatory decision, in consultation with the agency. Where a regulation is tabled in parliament, the details-stage RIS (or its equivalent) must be included in the explanatory memorandum (for primary legislation) or the explanatory statement (for legislative instruments). Regulation impact statements for treaties will be tabled along with the national interest analysis (see Appendix C for further information).

6.5 Post-implementation reviews certified by the relevant departmental secretary or deputy secretary (or agency head/deputy head) will be published on the website as soon as they have been assessed by the OBPR as compliant with best practice regulation requirements and provided to the relevant Minister and the Prime Minister.

6.6 Regulation impact statements and post-implementation reviews supplied to the OBPR for publication on the OBPR website must meet the Australian Government's Web Content Accessibility Guidelines. The OBPR recommends that agencies liaise with their web services team before drafting a RIS to ensure that these guidelines are met.

The Australian Government, together with state and territory governments, has endorsed the Web Content Accessibility Guidelines (WCAG) version 2.0 for all government websites. This means that all documents published online by Australian governments must conform to the standards specified in the WCAG.

For regulation impact statements and post-implementation reviews, certain formatting and style conventions must be observed, and any PDF documents must be published in at least one alternative format such as rich-text format or HTML. If your document contains charts and tables, you may have to undertake additional work and you should build that into your timeframes.

For more information, you can access the full guidelines at www.w3.org/TR/WCAG20, and visit the Australian Government's Web Guide at http://webguide.gov.au/accessibility-usability/accessibility.

In practice, publication on the OBPR website will generally occur as soon as possible after the decision is publicly announced (for example, by media release). To assist in this process, you should notify the OBPR when this occurs.

The OBPR will obtain your agency's approval before publishing the RIS. The published RIS should reflect, subject to the exceptions discussed below, the RIS provided to the decision-maker.

If the OBPR has formally assessed the RIS, the office will publish its assessment on its website. Where no RIS is prepared, or where the RIS is not formally assessed, or when the agency does not grant approval for publication, the OBPR will make this clear on its website.

6.7 There is scope for regulation impact statements to be modified after the decision-maker's consideration but before publication:

a. where a draft options-stage RIS or details-stage RIS refers to commercial-in-confidence or national security information

b. to correct minor errors such as spelling or grammar that do not substantially change the meaning or analysis contained in the RIS

c. to include additional relevant information that does not substantially alter the analysis in the RIS (for example, additional information about consultation processes, or extra details surrounding future reviews of the regulation)

d. to include analysis of the option adopted where that option was not considered in the original RIS.

6.8 Any changes of the kind outlined in paragraph 6.7 must be approved by the OBPR before publication.

6.9 Completed post-implementation reviews are published on the OBPR website. The OBPR will also report on compliance with the PIR requirements on the website, as well as in the *Best Practice Regulation Report*. Further information on post-implementation reviews can be found in the OBPR guidance note, *Post-implementation Reviews*, available at http://www.finance.gov.au/obpr/proposal/pir-guidance.html.

The OBPR publishes advice on compliance with the best practice regulation requirements on its website.

The OBPR monitors regulations tabled in parliament, news reports, media releases and other sources for indications that a regulatory decision has been made. Where the OBPR determines that a regulation may have been introduced or amended before the details-stage RIS was completed, it will contact the agency in the first instance to obtain additional information. After consultation with the agency, the OBPR will determine one of the following:

- the best practice regulation requirements have been met and no further action is required
- the process undertaken in preparing a details-stage RIS was in some way inconsistent with the best practice regulation requirements in this handbook—the reason for this determination will be published as part of the OBPR's compliance advice
- the requirement to prepare a RIS has not been met and the agency must undertake a PIR. In addition, the agency will be reported as non-compliant.

In the event that the OBPR confirms that a regulatory decision was made without the appropriate level of supporting analysis, the OBPR will report this on its website and in its annual *Best Practice Regulation Report.*

6.10 An agency may be non-compliant at the transparency stage if the details-stage RIS is not provided to the OBPR as soon as practicable after a decision is made. Non-compliance at the transparency stage is reported on the OBPR website and in the *Best Practice Regulation Report*, but it does not trigger a requirement to complete a PIR.

Chapter 7

PREPARING A REGULATION IMPACT STATEMENT

7. Preparing a regulation impact statement

7.1 This chapter provides general advice on the content of an options-stage RIS and a details-stage RIS. However, developing good-quality regulation is a complex undertaking, and the realities of policy development will often not conform to 'textbook' examples of policy analysis. OBPR officers are available to help apply the following guidance to individual circumstances.

A case study: ethanol (E85) automotive fuel

In this chapter, we use a case study example of policy development—based on the introduction of a fuel-quality standard for ethanol (E85) automotive fuel—to illustrate four elements of a regulation impact statement: the policy problem (page 52), the objectives (page 54), the options (page 58) and the impact analysis (page 66).

Getting started—the purpose and elements of a RIS

7.2 The purpose of a RIS is twofold: to give decision-makers a balanced assessment based on the best available information; and to inform interested stakeholders and the community about both the likely impact of the proposal and the information that was taken into account by the decision-maker. It is important that you draft the RIS with these audiences in mind—it should not use technical jargon or contain extraneous information, and it needs to provide a balanced assessment of the various options rather than advocate a preferred option.

7.3 There is no fixed length for a RIS—like all policy advice, the emphasis should be on quality rather than quantity. However, the level of detail included in a RIS needs to be commensurate with the complexity and significance of the problem being addressed. Chapter 3 provides more information on assessing the significance of the problem. While the RIS should be a stand-alone document, in some cases it may be useful to place technical or detailed background material on the sponsoring agency's website and cross-reference it in the RIS.

Tips for writing a RIS

Understand your audience. You need to get your message across to decision-makers, stakeholders and the wider public with clear and concise language. Avoid using technical jargon and acronyms without first defining them.

Consider the final length of the RIS. A RIS is a summary document, so avoid giving a blow-by-blow account. Be concise and think about the best way to communicate complex problems simply.

Consider the structure of your document. For lengthy documents, it's useful to include an executive summary and key points and to place technical detail in appendixes.

Don't overstate or overclaim. Don't make assertions that are unsupportable—provide evidence to support your claims. Ensure that the depth of analysis and evidence provided is commensurate with the likely impacts of the regulatory decision. (Chapter 3 provides for more information on the depth of analysis required for various impacts.)

Consider the Web Accessibility Guidelines. The RIS will be placed on the OBPR website. Accessibility requirements for websites are mandated under government policy, legislation, and through whole-of-government commitments. It is much easier to keep the web accessibility guidelines in mind during drafting than amending the RIS once it's finished. Familiarise yourself with the Web Content Accessibility Guidelines version 2.0 (see Chapter 6). Some key things to consider are the use of styles and headings; the inclusion of alternative text for pictures, graphs and charts; and ensuring that you don't rely on colour to convey meaning.

7.4 Examples of regulation impact statements are available on the OBPR website (www.ris.finance.gov.au). You can contact the OBPR if you have questions or require assistance at any stage.

The checklists in the following sections will help you include the appropriate level of information and analysis in your RIS. For ease of reference, you will also find the complete set of checklists in Appendix E.

7.5 Preparing a RIS ensures that relevant information is available to stakeholders before they give their feedback on a policy proposal. The options-stage RIS should, at a minimum, include the following elements:

a. the problem
b. the objectives
c. options (at least three, including a regulatory option, a non-regulatory or light-handed regulatory option, and a do-nothing option).

7.6 You may include other elements in an options-stage RIS—such as a preliminary impact analysis and the results of any initial consultation—to facilitate consultation with stakeholders; however, this is not a requirement.

7.7 A details-stage RIS should contain the three elements in the options-stage RIS, as well as four additional elements:

a. impact analysis (informed by consultation with stakeholders at the options stage)
b. consultation
c. conclusion
d. implementation and review.

7.8 More information on the processes surrounding an options-stage RIS and a details-stage RIS can be found in chapters 4 and 5 respectively. The seven elements are discussed in detail in the following sections.

Element 1: Assessing the problem

7.9 Understanding and articulating the problem is the most important aspect of the RIS process. Getting this right is critical in developing an appropriate response to address the problem.

7.10 A poorly defined problem may lead to an inadequate consultation process and, ultimately, difficulty in developing a details-stage RIS that adequately meets the RIS requirements.

Need help developing the problem section of your RIS? You can contact the OBPR for guidance.

7.11 Early in the RIS, you should describe the problem or issue that has prompted possible government action. You should provide information on the nature and magnitude of the problem and identify what government actions (if any) have been taken in the past to address the problem. Box 7.1 provides further guidance on identifying the problem.

Box 7.1: Identifying the problem

Clearly define the problem

What is the problem to be addressed? Be careful not to confuse the problem with the policy objective.

For example, the problem could relate to:

- market failure (such as a lack of or misleading information, presence of externalities or public goods, or use of excessive market power)
- regulatory failure (such as a government-imposed restriction on competition that is not in the public interest)
- unacceptable hazard or risk (such as human health and safety hazards, ill-equipped person or entity bearing risk, or threat of damage to the physical environment)
- social goals or equity issues (such as individuals or groups being unable to access available market information, goods or services).

Be careful not to confuse the problem with the symptom of a problem. Identify the underlying cause of the problem rather than just a result of the problem itself. Is the problem the consequence or the cause? For example, food poisoning could be seen as a problem; however, poor food-handling techniques may be the underlying cause. Poor food-handling techniques would be the basis for the RIS.

How significant is the problem? What is its magnitude? In the case of risk, what is the likelihood of the adverse event occurring? What evidence do you have to support this initial assessment?

What is the nature of the problem—what is the loss, harm or other adverse consequences that are being experienced, and by whom?

How is the problem currently regulated by Commonwealth, state, territory or local government regulations, or by governments overseas? Are there deficiencies in the existing regulatory system?

Is there a case for government intervention or is the problem of purely private interest? Why does current regulation not properly address the identified problem?

If the problem relates to existing legislation or regulation, it should be made clear whether the problem is in relation to its design or implementation (or both).

Assess the consequences of no action

What are the consequences of not taking any action?

Could relying on the market in conjunction with the general application of existing laws and regulations solve the problem? If not, why?

Will the problem self-correct within a reasonable timeframe?

7.12 When identifying the nature and size of the problem, you should refer to empirical evidence where available, as well as perceptions of the problem. If the problem involves risk to the public, businesses, workers or the environment, you should include a description of the hazard and a discussion of the likelihood that it will occur (for an introduction to risk analysis, consult the OBPR guidance note, *Guidance: Risk analysis in Regulation Impact Statements*, available at http://www.finance.gov.au/obpr/proposal/risk-analysis-guidance.html). This includes assessing the worst and best outcomes that could occur if a do-nothing approach were taken.

Why is (new) government action needed to correct the problem?

7.13 The existence of a problem may justify government regulation or other intervention. However, you need to describe why the government's involvement is required to deal with the identified problem. In addressing this issue, you should consider a number of questions:

a. Is the problem one that the government has the capacity to deal with effectively?

b. Is the problem a consequence of existing regulation?

c. If the problem involves risk to members of the community, is the risk great enough to warrant intervention, or is the level of risk acceptable if weighed against the costs of correcting for it?

7.14 The economic concept of 'market failure' can provide a rationale for government action. Market failure refers to situations where markets do not produce economically efficient outcomes. These situations can arise for a number of reasons, including:

a. where the existence of a large firm restricts competition in a market

b. where consumers do not have adequate information about a good or service

c. where pollution or other factors affect third parties.

7.15 If the justification for government action is based on market failure, you should identify the precise nature of the market failure. For instance, the problem may be that irrigators do not take account in their decision-making of the environmental costs, such as salinity resulting from their use of water (an externality). Or the problem may be the inability of consumers to ascertain the quality of services provided by healthcare professionals before purchase (information asymmetry).

7.16 While the existence of market failure indicates that there may be a role for government action to make the community better off, you still need to consider whether the market failure is significant enough to justify government regulation. If the market is well functioning in terms of producers and consumers being able to exchange information on the costs of resources and the value of goods and services, and if there is workable competition, then you may have difficulty justifying regulation on efficiency grounds.

Box 7.2: Market failure

When markets are functioning well, they tend to allocate resources to their most valued uses. Market failure refers to certain situations in which markets may fail to allocate resources efficiently and can provide a strong rationale for government intervention.

Market failure, by itself, does not indicate that government intervention is warranted, particularly if the failure does not have a material impact on the functioning of the market. In such cases, the costs of intervention may outweigh any benefits. Moreover, there are legitimate rationales for government intervention that do not depend on market failure; for example, the delivery of social policy outcomes. Government intervention should lead to an overall improvement in community welfare.

Monopoly and abuse of market power

Problems of market power may arise from uncompetitive market structures or from anti-competitive conduct. Market power is said to exist when one, or relatively few, producers are able to restrict output and maintain prices higher than at competitive levels. Generally, this requires a market with few producers and

goods with no or few close substitutes. Firms may also acquire market power by cooperating to maintain higher prices, although such cooperation would usually be in breach of general competition laws.

Care should be taken not to assume that any market with few producers is characterised by market power. Generally, a barrier to entry (such as regulation or a patent over a product) is required to prevent other businesses from entering the market when an existing firm attempts to raise prices above their competitive level. Identifying this barrier to entry is a key element of regulating in the case of monopoly power.

Asymmetric information

Markets may not allocate resources efficiently if one party in a transaction has significantly more information about a good or service than another. Sellers and buyers may have an incentive to conceal information about a good or service in order to obtain a more favourable price or conditions in a transaction.

It should be noted that, over time, markets can develop responses to issues of imperfect information about goods and services. Buyers may share their experiences with other potential buyers. Sellers may provide guarantees or warranties. Third parties (or government) may offer certification services or insurance, or may collect and publish information about a range of goods and services.

Externalities (external costs and benefits)

An externality occurs when one party imposes on others benefits that are not paid for or costs that are not compensated through market prices. For example, a person receiving a flu vaccination reduces the chances of other people falling ill. Alternatively, individuals may choose to drive on already congested roads, increasing the congestion and imposing costs on other road users.

As most activities generate some form of externality (positive or negative), 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 government intervention will be successful in addressing it at relatively low cost.

Public goods

Some goods and services, by their very nature, are unlikely to be provided to a socially optimal level by the private market. Goods or services that have the following characteristics may be undersupplied without government intervention:

- *non-rivalrous*: when one person's consumption of that good or service does not affect the ability of others to also consume the good or service
- *non-excludable*: when it is difficult to exclude people from consuming the good or service. It is difficult to charge consumers a price for non-excludable goods or services.

Public goods are both non-rivalrous and non-excludable. They include goods and services such as national defence and lighthouses.

Goods or services that are non-excludable but rivalrous are known as common property resources. Such goods are likely to be overused and can be subject to congestion. Examples of common property resources may be the stock of fish in an ocean, a public beach or a congested road.

Behavioural market failures

In recent years, the use of behavioural economics—which draws on psychology and the behavioural sciences in assessing consumer behaviour—has increased in public policy and regulatory considerations. *Behavioural* market failures are often defined as those arising from decisions which individuals make, or are perceived to make, against their own best interests.

Behavioural market failures can be caused by loss aversion, reliance on reference points, time inconsistency of preferences, or social factors[4].

However, to be able to identify a behavioural market failure, evidence needs to show that individuals could have been made better off (as defined by their own preferences) if they had made a different choice. That is, there remains a requirement in a RIS to provide evidence about the problem and why government intervention is warranted to influence consumer behaviour in the absence of self-correcting market forces.

One approach to gathering this evidence is to undertake randomised controlled trials[5]. These trials randomly allocate 'control' and 'treatment' groups and they enable policy-makers to compare the effectiveness of new interventions against what would have happened if there were no changes to conditions. Randomised controlled trials are useful in considering whether a proposed policy or intervention can result in benefits to society. The trials can also be undertaken to evaluate the effectiveness of existing policies.

[4]For further discussion on behavioural economics and regulation, see http://ris.finance.gov.au/2012/12/18/obpr-research-paper-influencing-consumer-behaviour-improving-regulatory-design/.

[5]For further information on randomised controlled trials, see work undertaken by the UK Cabinet Office at www.cabinetoffice.gov.uk/resource-library/test-learn-adapt-developing-public-policy-randomised-controlled-trials.

Is relevant regulation already in place?

7.17 Governments may previously have taken action to address the underlying problem. Where this is the case, you should document the characteristics of existing regulation at all levels of government (federal, state/territory and local), and identify the responsible regulatory organisations and relevant government policy. Questions you should address could include: How effective has the existing regulation been in addressing the problem? And what is the evidence that the existing regulation does not deal with the problem adequately?

7.18 If it is clear that existing regulation is failing to deal with the problem in an acceptable way, is this because the regulation is flawed, or because there are problems with compliance? Could the situation be dealt with by improving enforcement or encouraging better compliance with the existing regulation?

A case study policy problem: ethanol (E85) automotive fuel

In our case study, a growing demand for ethanol (E85) automotive fuel has raised concerns that inferior fuel will enter the market. In this situation, the RIS would point out the risks posed by unregulated E85 fuel, such as:

- environmental and health risks
- risks to vehicle engines
- risks of misfuelling for consumers
- risks of loss of consumer confidence
- risks for competition and trade.

The RIS would present evidence that the market for E85 fuel was expanding, quoting relevant studies or articles. The RIS would also discuss the likely implications for the fuel and vehicle manufacturing sectors of a future shift towards E85 vehicles by Australian consumers.

A number of factors contribute to a strong case for government action to reduce the risks associated with the introduction of low-quality ethanol fuels to the Australian market. The RIS would present a clear argument that ensuring the quality of E85 fuel would address health and environmental concerns while meeting the requirements of vehicle manufacturers and consumers—as is the case for government regulation of mainstream fuels.

Checklist for element 1: Problem/reason for government intervention

The RIS:

- ☐ clearly defines the problem
- ☐ presents evidence that there is a problem/reason for government intervention
- ☐ presents evidence on the magnitude (scale and scope) of the problem
- ☐ documents relevant existing regulation at all levels of government and demonstrates that this regulation is not adequately addressing the problem
- ☐ identifies the relevant risks, if the problem involves risk, and explains why it may be appropriate for the government to act to reduce them
- ☐ identifies who is affected by the problem
- ☐ explains why government intervention is required to address the problem/ issue.

Element 2: Objectives of government action

7.19 In this step of preparing the RIS, you should clearly identify what objectives, outcomes, goals or targets are sought in relation to the identified problem. A common error is to confuse the desired final outcome of a proposal with the outputs, or means of obtaining it. For example, a broad objective of government transport regulation may be to reduce the costs associated with traffic accidents. This objective differs from a narrower objective of mandating the use of seatbelts, which is one of many means of attaining the broader objective.

7.20 The aim of this part of the RIS is not to justify a preferred solution in advance, but to specify the objective broadly enough so that all relevant alternative solutions can be considered. However, you should avoid making it so broad or general that the range of alternatives becomes too large to assess, or the extent to which the objective has been met becomes too hard to establish.

7.21 Other information you could provide at this point includes:

a. any distinction between the primary and subsidiary objectives of the proposal

b. if outcomes are subject to constraints; for example, if they must be achieved within a certain timeframe

c. if there is an authoritative basis for the proposal to review regulations; for example, a relevant Cabinet minute or government policy announcement.

A case study policy objective: ethanol (E85) automotive fuel

In our case study of ethanol (E85) automotive fuel, the broad objectives of government action are to ensure that the quality of E85 fuel supplied in Australia allows for optimum vehicle operability while protecting human health and the environment by minimising pollutants and emissions. A secondary objective is to address the risk of misfuelling. The RIS would clearly present the objectives of government intervention in the E85 fuel market, for example:

- to reduce the level of fuel-related pollutants and emissions that may cause environmental and health problems
- to facilitate the adoption of better engine technology and emission control technology
- to enable the more effective operation of engines
- to ensure that, where appropriate, information about fuel is provided when the fuel is supplied
- to complement existing related government standards, where appropriate
- to harmonise, where possible, with international fuel standards while taking into account specific Australian conditions
- to reduce the risk of misfuelling by motorists.

Checklist for element 2: Objectives of government action

The RIS:

- ☐ clearly identifies what objectives, outcomes, goals or targets of government action are sought in relation to the identified problem
- ☐ considers and identifies constraints (if any)
- ☐ includes the authoritative basis for the proposal to review regulations (if applicable)
- ☐ states objectives that are specific, measurable, accountable, realistic and time-bound.

Element 3: Options that may achieve the objectives

7.22 This section of the RIS needs to set out the practical alternative options that could wholly or partly achieve the identified government objectives. You should describe each option and explain how the option, if implemented, would achieve the desired result.

7.23 The RIS must include at least three options, including a regulatory option, a non regulatory or light-handed regulatory option, and a do nothing option. This requirement does not apply to election commitments or where the Cabinet explicitly agrees to limit options. In these cases, the reason for limiting options should be clearly stated within the RIS. Appendix C provides more information on election commitments and the limiting of options.

Identify a range of viable options

7.24 The RIS should test the effectiveness and appropriateness of alternative options for achieving the stated objectives. As it is impractical to assess in detail every possible alternative solution to a problem, you need only cover those options that are reasonably likely to achieve the government's objectives. Infeasible options do not need to be considered in detail in the RIS; however, you may need to explain why these options are not feasible in terms of the government's objectives.

7.25 You should outline any feasible options that have not been canvassed in the RIS, explaining why they have been excluded.

7.26 If any of the options involve establishing or amending standards in areas where international standards apply, you should indicate whether the standards under consideration deviate from the relevant international standards. If this is the case, you should provide an explanation for the variation and examine the implications of this variation.

Alternative regulatory forms

7.27 *A light-handed regulatory option* refers to regulation that is less prescriptive, providing greater discretion to regulated parties in how they can act. Principles-based regulation is often light-handed regulation. For example, for market access regulation, a light-handed approach would be a framework within which regulated parties could negotiate prices, while heavy-handed regulation would involve a regulator setting prices for market participants.

7.28 Agencies need to consider alternative regulatory forms and only propose to legislate if necessary. Is it possible to achieve the same ends through non-legislative means, such as binding or non-binding guidelines? Policy needs to be implemented in a way that ensures those affected are able to understand their legal rights and obligations; otherwise the regulation may not be effective.

7.29 *Self-regulation* is generally characterised by industry-formulated rules and codes of conduct, where industry is solely responsible for enforcement. You might assess self-regulation as a viable option if:

a. there is no strong public interest concern, and in particular no major public health and safety concern

b. the problem is a low-risk event, or is of low impact or significance

c. the problem can be fixed by the market itself. For example, there may be an incentive for individuals and groups to develop and comply with self-regulatory arrangements (industry survival, market advantage).

7.30 Self-regulation is not likely to be effective if industry has an incentive not to comply with the rules or codes of conduct.

7.31 *Quasi-regulation* includes a wide range of rules or arrangements that are not part of explicit government regulation, but nevertheless seek to influence the behaviour of businesses, not-for-profit organisations and individuals. Some examples of quasi-regulation include industry codes of practice developed with government involvement, guidance notes, industry–government agreements and accreditation schemes.

7.32 *Co-regulation* typically refers to the situation where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced. This is often referred to as 'underpinning' of codes, standards and so on. Sometimes legislation sets out mandatory government standards, but provides that compliance with an industry code can be deemed to comply with those standards. Legislation may also provide for government-imposed arrangements in the event that industry does not meet its own arrangements.

7.33 *Explicit government regulation*—sometimes referred to as black-letter law—comprises primary and subordinate legislation. It is the most commonly used form of regulation.

7.34 You could consider explicit government regulation where:

a. the problem is high-risk, or of high impact or significance; for example, a major public health and safety issue

b. the community requires the certainty provided by legal sanctions

c. universal application is required (or at least where the coverage of an entire industry sector or more than one industry sector is judged as necessary)

d. there is a systemic compliance problem with a history of intractable disputes and repeated or flagrant breaches of fair-trading principles, and no possibility of effective sanctions being applied.

Alternative instruments

7.35 Within each form of regulation, there may be a number of alternative instruments available to address the problem or issue set out in a RIS. Alternative instruments (only some of which will be relevant for a particular type of regulatory form) may include:

a. no specific action—that is, relying on the market in conjunction with existing general liability laws (negligence or breach of contract) and insurance laws

b. information and education campaigns (including product labelling or media campaigns)

c. market-based instruments (including taxes, subsidies, tradeable permits, performance bonds and tradeable property rights)

d. pre-market assessment schemes (such as listing, certification and licensing)

e. post-market exclusion measures (such as bans, recalls, licence revocation provisions and 'negative' licensing)

f. service charters

g. standards (including voluntary and regulatory, performance-based or prescriptive)

h. other mechanisms, such as public information registers, mandatory audits and quality assurance schemes.

7.36 The RIS requirements may apply for any standards used for regulatory purposes, even if they have been developed by Standards Australia or other third parties.

Nudge theory

7.37 Insights from behavioural economics can be used to design regulatory options and non-regulatory or light-handed regulatory options. Nudge theory seeks to explain how changes to choice 'architecture'—that is, the context within which a choice is made—can influence behaviour without restricting, or raising the price of, the set of choices available.

7.38 Nudge theory can provide a useful basis for considering why a current regulation or law may be ineffective. For example, there could be social factors that discourage compliance with a given rule.

7.39 Nudge theory can also inform the design of regulation through a more nuanced understanding of what motivates behaviour. For example, simply changing the default rule from opt-in to opt-out within a given scheme can induce notable changes in behaviour.[6]

Case study policy options: ethanol (E85) automotive fuel

In our case study concerning ethanol (E85) automotive fuel, at least three options must be presented in the RIS, including a regulatory option, a non-regulatory or light-handed regulatory option, and a do-nothing (status quo) option that provides a baseline against which the other options can be compared. The RIS might present the following options:

- the status quo
- voluntary (industry) regulation
- state and territory government regulation
- an E85 fuel quality standard and information standard under the *Fuel Quality Standards Act 2000.*

It's important that you rule out infeasible options in terms of the government's objectives at this stage in the RIS, rather than seeking to demonstrate their ineffectiveness at the impact analysis stage.

Checklist for element 3: Options

The RIS:

- ☐ identifies a range of alternative options (at least three, including a regulatory option, a non-regulatory or light-handed regulatory option, and a do-nothing option)
- ☐ selects options that are feasible approaches to addressing the specified problem
- ☐ clearly states the reasons for limiting the options (if applicable)
- ☐ clearly identifies election commitments (if relevant).

[6]For further discussion on nudge theory, see http://ris.finance.gov.au/2012/12/18/obpr-research-paper-influencing-consumer-behaviour-improving-regulatory-design.

Element 4: Impact analysis—costs, benefits and risks

7.40 A details-stage RIS should contain a comprehensive assessment of the expected impact (costs and benefits) of each identified option. The RIS should provide the net benefit of each option. Your objective here is to inform decision-makers of the likely merits of available options, and thereby inform their decision. The impact analysis in the details-stage RIS should be informed by the options-stage RIS and the results of subsequent consultation on the proposed options.

7.41 When analysing each option, you should consider who would be affected if the option were implemented, what costs, benefits and, where relevant, levels of risk would result, and how significant they would be. Where possible, quantify the impacts; at a minimum, your analysis should attempt to quantify all highly significant costs and benefits. All assessments of costs and benefits, whether quantitative or qualitative, should be based on evidence, with data sources and assumptions clearly identified.

7.42 Where it is not possible to quantify impacts, qualitative analysis may be acceptable as long as you clearly set out the reasons why the impacts are not quantifiable.

How do I quantify costs and benefits?

Dollar values can be estimated from observed behaviour. You can measure the value people place on something by observing how much they are willing to pay. Market behaviour often reveals people's valuations, or is at least a guide to them. For example, if a consumer pays $3.50 for a cup of coffee, the value they place on the coffee is at least $3.50 (it will likely be higher).

That said, quantification can be difficult as some impacts are uncertain, some are difficult to value in dollar terms, and some are both uncertain and difficult to value. Environmental goods or safety provisions are typical examples of goods that are difficult to place dollar values on as they are typically not traded in markets. There are various methods for estimating non-market values of goods and accounting for uncertainty in cost–benefit analyses—these methods are outlined below.

When valuations are uncertain, sensitivity analysis should be used to test how varying the value assigned affects the overall viability of the proposal. If the impacts cannot be valued, they should still be quantified in non-monetary terms. For example, a regulation to reduce pollution could quantify the expected reduction in emissions. The quantification should aim to identify matters such as

the assumptions applied to determine the effects, the impact on the community (such as how many people are affected and how) and the likelihood of the full impact being realised. More information on valuing environmental impacts can be found in the OBPR guidance note, *Guidance note: Environmental evaluation and uncertainty* available at http://www.finance.gov.au/obpr/proposal/environmental-valuation-guidance.html.

The valuation of some impacts might be so difficult or subject to such a high degree of uncertainty that reliance on the estimates may be misleading. In these cases, the impacts should still be described as fully as possible, acknowledging the main sources of uncertainty and explaining the range of possible outcomes. Where possible, an assessment of the relative likelihoods for the various outcomes—particularly those with significant negative consequences—should be included together with the description of these impacts. An OBPR guidance note on cost–benefit analysis is available at http://www.finance.gov.au/obpr/cost-benefit-analysis.html.

7.43 Most regulation impact statements use the status quo as the benchmark for assessing the costs and benefits of each option. Adopting this approach will allow you to clearly identify the extent of the net benefit that would result from implementing the preferred option.

7.44 To assess the costs, benefits and, where appropriate, the level of risk associated with each option, you must present a clear picture of how each option would change the status quo. Accordingly, your analysis should clearly explain how the actions, obligations and circumstances of different stakeholder groups are likely to change if the option is implemented.

7.45 If you have described the options in relatively general terms in the options section of the RIS, you may need to provide a more detailed description of what each option will entail in the impact analysis section.

7.46 If a regulatory proposal involves addressing a risk, such as work health and safety laws targeted at reducing the risk of workplace injury and death, or prudential regulation designed to reduce the risk of financial institution failure, analysis of the impacts can be done within a risk analysis framework. An OBPR guidance note on risk analysis is available at http://www.finance.gov.au/obpr/proposal/risk-analysis-guidance.html.

Is a formal cost–benefit analysis required?

7.47 In general, the depth of the impact analysis should be commensurate with the overall effects. For example, a comprehensive and detailed qualitative

analysis, supported by quantitative evidence where it is available or readily obtained, may be adequate if the impacts of the proposal are not likely to be highly significant. In such cases, the time and expense involved in additional quantitative analysis may not be justified.

7.48 However, for major proposals, you will need to provide a greater level of quantification in the RIS where possible, and a full cost–benefit analysis may be appropriate. Chapter 3 provides more information on assessing the significance of a proposal and the level of analysis required. An OBPR guidance note on quantitative cost–benefit analysis is available at http://www.finance.gov.au/obpr/cost-benefit-analysis.html.

Who is affected by the problem and who is likely to be affected by proposed solutions?

7.49 You must clearly identify all groups affected by the problem and its proposed solution, whether directly or indirectly affected. In addition, you should assess the effects on the community as a whole, such as environmental and social impacts.

7.50 A common misconception is that a RIS is a 'business impact statement'. While an impact on business is a trigger for preparing a RIS, you need to consider the impact of an option on all affected groups in the community.

7.51 Groups should generally be distinguished as consumers, business and government. Depending on the nature of the proposal, these groups may be further subdivided, for instance:

a. within the consumer group it may be necessary to distinguish groups according to income, geographical location (regional and rural), age, family unit, cultural background or levels of information held

b. within business, distinctions may be made by size of business or by type of activity, or along industry or sectoral lines

c. within government, whether impacts are at the federal, state and territory and/or local government level.

7.52 The extent to which groups need to be separately identified in a RIS will vary according to the problem and option being assessed.

7.53 It is important to gather evidence of both the nature and scale of the problem, as well as any evidence that indicates the likely impacts of the proposed options. Reviewing and understanding how similar situations have been dealt with internationally or in comparable markets can also assist in clearly illustrating the expected impacts of the various options considered in a RIS.

7.54 Behavioural studies, in particular from behavioural economics or psychology, can provide further insights into understanding the likely impacts of the proposed options. This is especially the case where previous trials or field experiments have been undertaken for the proposed (or similar) subject matter. These can provide evidence of the various ways stakeholders are likely to react and an estimate of the overall effectiveness of an option.

7.55 Importantly, such studies can raise any unintended or perverse outcomes early in the policy development process. Trials and experiments for the purposes of developing regulation impact statements—and public policy in general—are encouraged, as they are likely to result in a better understanding of the impacts on key stakeholders under a given proposal.

Using behavioural studies

As an example, a behavioural study could be used to assess the potential effectiveness of providing mandatory information to consumers on the energy efficiency of LED televisions, which may be one of many factors (price, brand, appearance) that consumers take into account when making purchase decisions. While some consumers may react to the information by purchasing a television with higher energy efficiency than they otherwise would have, others might place less weight on energy efficiency and continue to make their purchase based largely on other factors. It is also conceivable that some consumers may react to the mandatory information on energy efficiency by purchasing a television with a lower energy efficiency rating than they otherwise would have done.

Identify the expected costs and benefits of the options

7.56 Costs and benefits are terms used to describe the positive and negative effects of a proposal. A cost is any item that makes someone worse off, or reduces a person's wellbeing. Cost items may include 'opportunities forgone' because a particular proposal has been adopted. A benefit is any item that makes someone better off, regardless of whether it can be easily measured or quantified.

7.57 Effective consultation should help agencies to obtain relevant data; however, agencies should not expect stakeholders to present exact figures for compliance costs. Often agencies will have to determine these costs from a range of information sources.

7.58 Once you have identified the costs and benefits to each of the affected parties, you should assess the net impact of each option on the community as a whole.

Costs

7.59 Costs to businesses, including small businesses, might include:

a. 'paper burden' or administrative costs associated with complying with and/or reporting on particular regulatory requirements

b. licence fees or other charges levied by government

c. changes likely to be required in production, transportation and marketing procedures

d. changes to capital requirements

e. shifts to alternative sources of supply

f. higher input prices

g. restricted access to markets.

7.60 In order to help you quantify business compliance costs, the OBPR has developed the Business Cost Calculator, which is described in Appendix B.

7.61 Costs to consumers may include:

a. higher prices for goods and services resulting from restrictions on competition

b. reduced utility (quality, choice, etc.) of goods and services

c. delays in the introduction of goods to the marketplace and/or restrictions in product availability.

7.62 Costs to the community and/or the environment may include:

a. environmental degradation or pollution

b. reduction in health and safety

c. undesirable redistribution of income and wealth

d. lower employment levels or economic growth.

7.63 Costs to government may include:

a. the costs of developing the regulation

b. running education campaigns and providing information

c. administration of licensing and inspection services

d. collection and collation of business information

e. enforcement costs, including the costs of litigation.

Benefits

7.64 You should identify and describe the benefits of the options to business, consumers, government, other affected groups and the community at large. Many benefits may not be readily quantifiable. Examples of benefits include:

a. improvements in product and service quality

b. availability of a wider range of products and services

c. reductions in costs or prices

d. reductions in risks

e. reductions in workplace accidents and improvements in public health and safety

f. improvements in environmental amenity

g. reductions in compliance costs for business and administrative costs for government

h. improvements in the information available to business, the workforce, consumers or the government.

Distribution of costs and benefits

7.65 The distributional effects of each option are also important in determining the overall outcomes for the community. For example, while a particular option may generate net benefits in aggregate, significant benefits may go to a small number of people who bear no costs, while the costs may be borne by a large number or by those who can least afford it. In considering the net impacts of each option, however, you must be careful to avoid double counting: for example, if a cost to businesses is passed on to consumers, you should count this cost only once when estimating the net impact.

Small business

7.66 Regulation can have a disproportionate impact on small businesses. Often, small firms have to divert a greater proportion of their resources to meeting regulatory requirements. In addition, small businesses are less likely to have specialist staff (such as lawyers, accountants or human resources professionals) with detailed knowledge of regulation. While such impacts may be unavoidable (indeed, they may be desirable), it is important that decision-makers are aware of all impacts imposed on small businesses.

7.67 You could consider the degree of impact on individual small businesses, the number of small businesses affected, and whether the overall impact

on small business is in proportion to the impacts on other businesses or groups. The Small Business Advisory Committee (SBAC) may be able to assist you in assessing the impact on small business. More information on the SBAC is available at http://www.innovation.gov.au/SmallBusiness/Support/Pages/SmallBusinessAdvisoryCommittee.aspx. It is important that you pay particular attention to the compliance cost impact on small business. In addition to considering the particular ability (or inability) of these businesses to absorb such costs, also consider in your RIS how many small businesses will be affected.

Quantify the impacts where they are significant

7.68 You must accurately and objectively quantify impacts where this is possible. In general, the standard for quantification is higher for proposals that potentially have a significant impact on business.

7.69 Quantification:

a. provides comprehensive and comparable information to decision-makers

b. encourages close examination of the nature and impact of costs and benefits

c. encourages reduction in the costs associated with regulation

d. clarifies the essential assumptions and judgments that support a decision about the preferred option

e. can provide a basis for consultation with stakeholders.

7.70 The accuracy of quantified estimates may often be uncertain, and you may have made a number of assumptions in order to generate quantified estimates. While these can reduce confidence in the estimates, it is important that you still include these in the RIS where it is possible to do so (to give decision-makers as much relevant information as possible). Appropriately qualifying and explaining your approach is important, including why better estimates are not achievable.

7.71 While some costs and benefits are difficult to quantify, these impacts still need to be considered. The challenge is to assess unquantified impacts adequately. For example, suppose a regulation is proposed that would have quantifiable costs and benefits in addition to unquantifiable benefits. It may be possible for you to assess the net effect of the quantified impacts and compare this to a qualitative assessment of the remaining (unquantified) benefits; you may be able to make a persuasive argument that these benefits make the costs worth paying.

A case study impact analysis: ethanol (E85) automotive fuel

When assessing our case study proposal for ethanol (E85) automotive fuel standards, the OBPR would assign a category level to the RIS ranging from 'A' to 'D', depending on the likely impacts of regulatory options (Table 3.1 shows the characteristics of each RIS category). The OBPR would classify the E85 fuel RIS as Category C because:

- the impact would be felt primarily in a certain sector of the economy
- the regulatory changes are a matter of some disagreement but not fundamental disagreement
- the new regulations would involve change and costs but these would not be considered significant in the sector they apply to.

Based on this Category C classification, the RIS would examine the impacts on the main stakeholders in each of the options presented. In the case of minimum quality standards for E85 fuel, quantification of the impacts would be preferable. The key stakeholders and impacts would be:

- *fuel suppliers and retailers*—costs of labelling, infrastructure and tankage costs, testing requirements, reporting requirements, costs of maintaining documentation. Fuel suppliers may benefit from a level playing field for business competition, and product certainty would support sales and maintain or build reputation.
- *ethanol producers*—costs of production, infrastructure and testing to meet more stringent parameters. Certainty around quality requirements may facilitate/streamline production processes.
- *vehicle manufacturers*—may benefit from confidence in the quality and consistency of fuel and increased customer satisfaction.
- *the motor-racing community*—may be impacted by the costs associated with compliance, labelling and any additional handling requirements. They may benefit from consistency in fuel performance.
- *the Commonwealth and state and territory governments*—costs of monitoring and compliance testing.
- *motorists*—lower repair costs due to avoided damage from inferior-quality E85; misfuelling and safety risks reduced.
- *the wider community*—fuel standards would set parameters that reduce the level of pollutants and emissions that may harm the environment or affect health.

Identify the data sources and assumptions used, and any gaps in data

7.72 You must include the sources of data used in the analysis, as well as identify any assumptions made when conducting the impact analysis. In this way, the reasoning behind the conclusions is made transparent.

7.73 This applies to both quantitative and qualitative information included in the impact analysis. In the case of quantitative information, cite specific sources and explain how data were derived from those sources. Where you have included qualitative assessments of costs and benefits, you should explain the evidence and reasoning on which they are based. All assertions and conclusions in the RIS need to be supported by evidence.

7.74 The RIS should clearly flag any gaps in the data underpinning the analysis and any assumptions that have been made.

7.75 Where there is significant uncertainty about any key data inputs, the RIS will benefit from a sensitivity analysis that considers outcomes for a range of values (the OBPR guidance note on cost–benefit analysis, available at http://www.finance.gov.au/obpr/cost-benefit-analysis.html, contains a discussion of sensitivity analysis).

Box 7.3: Valuing uncertainty in cost–benefit analysis

There are two different types of uncertainty that need to be addressed in a RIS: uncertainty over values, and deep uncertainty over processes.

Uncertainty over values can be taken into account by using a number of various tools and techniques. For the purposes of impact analysis in a RIS, two important techniques are:

- *sensitivity analysis.* Sensitivity analysis is generally applied to assess the impact of changes in a key, uncertain variable on the overall net benefit estimate. In the case of a RIS incorporating environmental valuation, the sensitivity analysis should examine the estimated impacts of the policy on the environmental asset and endpoints, and the valuation that is applied to the impacts. Sensitivity analysis can provide useful insights into the bases of worst- and best-case outcomes.
- *probabilistic modelling*. Where data allow, probabilistic modelling can provide a more sophisticated analysis of the effect of uncertainty over values on the likely impacts of a policy. Monte Carlo analysis can be used to evaluate the effects of simultaneously changing a number of assumptions in the cost–benefit analysis and assessing the impact on net benefit estimates.[7]

[7] Monte Carlo sensitivity analysis allows the values of a number of uncertain variables to be chosen at random, according to predetermined probability distributions. This process is repeated multiple times (sometimes thousands) by computer, generating a probability distribution of model outcomes.

Where deep uncertainty over processes exists, you need to outline the sources and implications of the uncertainty. This includes describing the uncertainty—its sources, size, and how it is likely to change over time—and the implications of the uncertainty for the decision-maker. You will need to make a judgment as to whether the uncertainty is significant enough to consider resilient or adaptive strategies as policy options.

Restrictions on competition

7.76 Some existing and proposed regulations and requirements restrict competition. Such regulations can restrict consumer choice, raise prices and reduce overall economic productivity by denying the economy the efficiency gains that competition provides. Significant restrictions on competition range from legislated monopolies that block competition in entire sectors, to a host of less visible restrictions on starting up and operating businesses, such as quotas on business licences and restrictions on shop opening hours.

7.77 For instance, licensing requirements to promote health and safety objectives may also limit the number of people engaged in an industry or occupation, allowing existing practitioners to raise their charges. Similarly, permitting only some producers to use certain terms on their labels can restrict competition, limiting supply and raising prices to consumers.

7.78 Where your particular proposal restricts competition, the RIS must demonstrate that the proposal delivers benefits to the community that outweigh the costs, and that there is no alternative means of achieving the same objective without restricting competition. This is required to meet the Commonwealth's commitments under the intergovernmental Competition Principles Agreement, which is designed to promote competition in the economy and the benefits that it can bring to the community (COAG 2007).

7.79 The competition checklist set out in Box 7.4 will help you assess whether a proposal will restrict competition.

7.80 If a proposal is likely to restrict competition, the RIS should examine its impact on the following:

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

b. *entry of new businesses*. Will the proposed regulation restrict entry for all (or particular types of) new businesses? What is the likely degree of this restriction and is it likely to significantly reduce competitive pressures in the longer term?

c. *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?

d. *quality and variety of goods and services*. Does the regulation include minimum standards requirements 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?

e. *market growth*. Is the regulation likely to limit market growth, either by increasing costs to all producers or by limiting the possibility of entry by new firms?

f. *related markets*. Does the regulation in one market also have anti-competitive effects in upstream markets (those that supply inputs to the market in question), or in downstream markets (those to which the market in question supplies inputs)?

Box 7.4: Competition assessment

If the answer to any of the questions below is 'yes', then this indicates that a regulatory proposal may restrict competition.

Would the regulatory proposal restrict or reduce the number and range of businesses in an industry? Would it, for example:

- change the ability of businesses to provide a good or service?
- change the requirement for a licence, permit or authorisation process as a condition of operation?
- affect the ability of some types of firms to participate in public procurement?
- significantly alter costs of entry to, or exit from, an industry?
- change geographic barriers for businesses?

Would the regulatory proposal restrict or reduce the ability of businesses to compete? Would it, for example:

- 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?

Would the regulatory proposal alter the incentives for businesses to compete? Would it, for example:

- create a self-regulatory or co-regulatory regime?
- have an impact on the mobility of customers between businesses?
- require/encourage the publishing of data on company outputs, prices of inputs, other costs, sales?
- exempt an activity from general competition law?

Would the regulatory proposal limit the choices and information available to consumers? Would it, for example:

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

Checklist for element 4: Impact analysis

The RIS:

- ☐ identifies the groups in the community likely to be affected by each option and specifies significant economic, social and environmental impacts on them
- ☐ assesses the costs and benefits of all options and is supported by an acceptable level of detail and depth of analysis that is commensurate with the regulatory impact, where appropriate through formal cost–benefit analysis, using the status quo as a baseline
- ☐ assesses the impacts of each option on the community as a whole, taking into account all costs and benefits
- ☐ assesses the impacts on business and the not-for-profit sector, including distributional issues such as the impact on small business, and quantifies the effect of each option on business compliance costs
- ☐ recognises the effect of the options on individuals and the cumulative burden on business
- ☐ quantifies other significant costs and benefits appropriately, taking into account the significance of the proposal and its impact on stakeholders

- ☐ clearly sets out the reasons why impacts are not able to be quantified when qualitative impacts are presented
- ☐ analyses the extent to which each option would reduce the relevant risk, and the costs and benefits involved
- ☐ documents any relevant international standards and, if the proposed regulation differs from them, identifies the implications and justifies the variations
- ☐ demonstrates that regulation results in a net benefit and that the government's objectives can be achieved only by restricting competition (if the proposed regulation would maintain or establish restrictions on competition)
- ☐ provides evidence in support of key assumptions and clearly identifies gaps in the data
- ☐ specifies significant economic, social and environmental impacts on stakeholders
- ☐ identifies the types of likely impacts
- ☐ clearly highlights direct costs to business
- ☐ rigorously assesses non-monetised costs and benefits.

Element 5: Consultation

7.81 Generally, consultation will occur following the release of the options-stage RIS. For significant regulatory proposals, however, it may be beneficial to consult with relevant parties before you release the options-stage RIS.

7.82 A details-stage RIS must show that the consultation undertaken on a proposal has been commensurate with the magnitude of the problem and the size of the potential impact.

7.83 The OBPR can provide advice about the level of consultation appropriate to particular circumstances. It is important to consult the OBPR early in the policy development process so that you have sufficient time to put an appropriate consultation process in place.

7.84 When developing the details-stage RIS, you must outline the consultation process and its outcomes. Relevant information includes:

a. the objectives of the consultation

b. the principal views of the stakeholders

c. areas of agreement as well as areas of difference

d. details on intergovernmental consultation

e. how the proposal has been modified to take account of stakeholders' views. If the proposal has not been modified, the RIS should explain why dissenting views have not been accepted.

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

7.86 It is important that stakeholders' views are listened to and taken seriously, rather than conducting consultation as a 'box-ticking' exercise after the policy decision has effectively been made. To demonstrate this, an agency must complete the checklist below and include in the details-stage RIS, the checklist and one of the following statements:

a. 'With regard to the options-stage RIS, the agency has fully complied with the RIS requirements.'

b. 'With regard to the options-stage RIS, the agency has not fully complied with the RIS requirements.'

c. 'The agency has prepared a single-stage RIS, and as no decision has been previously announced, an options-stage RIS is not required.'

Checklist for assessing an options-stage RIS

An agency must answer 'yes' to each of the following questions to comply with the options-stage RIS requirements:

- ☐ Does the options-stage RIS include a minimum of three elements—the problem, objective and options?
- ☐ Does the options-stage RIS include at least three options (including a regulatory option, a non-regulatory or light-handed regulatory option, and a do-nothing option)?
- ☐ Has the options-stage RIS been certified at the secretary or deputy secretary level and provided to the OBPR before consideration by the decision-maker?
- ☐ Has the options-stage RIS been published following the public announcement of an initial decision to regulate?

7.87 The following set of best practice consultation principles should be considered by all agencies when developing regulation:

a. *continuity*—Consultation should be continuous and should start as early as possible in the policy development process.

b. *targeting*—Consultation should be widely based to ensure that it captures the diversity of stakeholders affected by the proposed changes. This includes state, territory and local governments, as appropriate, and relevant Australian Government agencies.

c. *timeliness*—Consultation should start when policy objectives and options are being identified. Throughout the consultation process, stakeholders should be given sufficient time to provide considered responses.

d. *accessibility*—Stakeholder groups should be informed of proposed consultation and be provided with information about proposals through a range of means appropriate to those groups. You should consider strategies to assist stakeholders who are significantly impacted 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 blogs, infolines (for example, '1800' numbers) and face-to-face meetings. You should also try to consult jointly with other agencies, where appropriate, to minimise the burden on stakeholders. Agencies should consider posting information on the Australian Government's Business Consultation website, www.consultation.business.gov.au.

e. *transparency*—Involving stakeholders from the earliest possible stage in the policy development process will promote transparent and comprehensive participation. Agencies need to explain clearly the objectives of the consultation process and the regulation policy framework within which consultations will take place, and provide feedback on how they have taken consultation responses into consideration.

f. *consistency and flexibility*—Consistent consultation procedures can make it easier for stakeholders to participate. However, this must be balanced with the need for consultation arrangements to be designed to suit the circumstances of the particular proposal under consideration.

g. *evaluation and review*—Agencies should evaluate consultation processes and continue to examine ways of making them more effective.

7.88 An OBPR guidance note to help you incorporate these principles into your consultations is available at http://finance.gov.au/obpr/consultation/gov-consultation.html.

Box 7.5: The consultation process for the Murray–Darling Basin Plan

The Murray–Darling Basin Authority worked closely with stakeholders during the development of the Murray–Darling Basin Plan. Consultation with stakeholders has played an important role in helping to shape the content of the Basin Plan and the accompanying RIS.

The Basin Plan Working Group held over 20 meetings and workshops prior to the release of the draft plan. The Murray–Darling Basin Authority received approximately 70 requests to host or attend meetings, the majority of which were fulfilled. Meetings were mostly organised in consultation with the community, whose advice was sought on when and where they should be held, as well as meeting format and attendees.

The authority also established an online blog (*Freeflow*) so the public could hold open dialogue with authority staff and other stakeholders, and a '1800' infoline to ensure that stakeholders were able to have their questions answered promptly, receive copies of the draft Basin Plan and supporting documentation, and have technical queries directed to appropriate staff.

The Murray–Darling Basin Authority also financially assisted a number of organisations to develop submissions. Subsequently, submissions were received from the New South Wales Aboriginal Land Council, Native Title Services Victoria and eight Aboriginal Nations and clan groups from Victoria.

The authority received significant feedback during the consultation process, including concerns that some of the groundwater limits in the draft plan were too high. As a result of the feedback, the authority carried out further investigations and convened a panel of groundwater experts to review the proposed limits. Accordingly, the authority reduced the total of groundwater sustainable diversion limits.

Checklist for element 5: Consultation

The RIS:

- ☐ outlines the consultation objective
- ☐ describes how consultation was conducted (including when consultation was undertaken, the timeframe given and the methods of consultation)
- ☐ articulates the views of those consulted, including substantial disagreements
- ☐ outlines how those views were taken into consideration
- ☐ describes what changes were made to the elements contained in the options-stage RIS, and why
- ☐ provides a reasonable explanation as to why full consultation was not undertaken (if applicable)
- ☐ states that consultation commensurate with the magnitude of the problem and the size of the proposal's potential impact has been undertaken
- ☐ shows that the consultation process conforms to the government's best practice principles for policy consultation
- ☐ explicitly includes the checklist and a statement from paragraph 7.86 of this handbook, confirming the status of an options-stage RIS.

Element 6: Conclusion

7.89 In the conclusion section of a details-stage RIS, you must provide a clear statement identifying the preferred option; indicate the costs and benefits of this option; highlight any areas of uncertainty; and identify significant distributional impacts of the preferred option.

7.90 Your conclusion must be supported by the preceding analysis. This provision does not prevent you from recommending an option that does not have the highest estimated net benefit to the community. What it means, however, is that you cannot claim that such an option has the highest net benefit, and you will need to explain why you prefer this option.

7.91 Recommendations must be conveyed in a way that reflects your confidence in the underlying assumptions and findings of the preceding analysis. Where there are important caveats in the analysis—whether they relate to the methodologies used to estimate or value impacts, or uncertain knowledge about values or underlying processes—these should be noted.

7.92 You should also consider how best to convey this information to decision-makers. The form of language in any policy recommendations—and the confidence that it conveys that a particular course of action is the best option—will need to reflect these underlying uncertainties.

Checklist for element 6: Conclusion

The RIS:

- ☐ clearly states the preferred option
- ☐ states why the selected option is preferred and backs up the recommendation with clear analysis.

Element 7: Implementation and review

7.93 Having identified the preferred option to meet the objectives stated earlier in the RIS, you should consider how the option will be implemented and enforced, and establish a review strategy that will allow the option to be evaluated after it has been in place for some time.

7.94 Even regulation that is initially well made and cost-effective can require subsequent amendment as costs and benefits change over time due to changes in technology, demographics and consumer preferences, and the accumulation and interaction of regulations. There may be scope to subsequently improve the efficiency, effectiveness and appropriateness of regulation. Where legislation is involved, there may be scope to improve the accessibility and clarity of the legislation.

7.95 It is important that you consider some practical implementation issues (if they have not yet been considered) before the option is adopted. These include:

a. if legislation is involved, timeframe constraints and the possibility of producing legislation that is complex and difficult to understand

b. administrative issues, such as which authority will administer the proposed option and how will it function, including lines of accountability

c. identifying the risks to implementation, and mitigation strategies to minimise or eliminate the likelihood of any identified risk occurring

d. actions regulated parties are required to take, such as maintaining extra information, completing forms, or proving experience, expertise or educational achievements

e. identifying the agencies that will have a role in implementing or enforcing the proposal—resource requirements and costs should be estimated

f. transitional arrangements to minimise the impact on stakeholders; for example, delayed or gradual introduction of new requirements, and provision of information and other assistance to businesses affected

g. how the option would be enforced (including the resourcing of enforcement).

7.96 The RIS must outline how the regulation will be reviewed. This part should set out when and how the review will be carried out; for example, will special data need to be collected? The RIS must also include the mechanism by which the effects of the reforms will be measured.

Checklist for element 7: Implementation and review

The RIS:

- ☐ defines how the preferred option is going to be implemented, monitored and reviewed
- ☐ defines the interactions between the preferred option and existing regulation
- ☐ highlights any risks to the proposed method of implementation, including legislative risks
- ☐ clearly details transitional arrangements, if required.

Use of consultants

7.97 Some agencies use consultants to prepare regulation impact statements, particularly for analysis of highly complex issues where agencies do not have the required technical skills. The RIS remains the responsibility of the agency even when consultants are used.

Tips for using consultants

- Keep in mind that using a consultant to prepare a RIS may not allow skills, expertise and experience to accrue to the agency. Where an agency is likely to need to prepare additional regulation impact statements in the future, it may be preferable to develop the necessary skills in-house.
- If using a consultant, the agency should ensure that there is enough time to complete the RIS.

- The OBPR does not deal directly with consultants, nor will the OBPR manage consultants on the agency's behalf. Managing a consultant could turn out to be more time-consuming than writing the RIS yourself.
- Without modification, consultant reports are rarely adequate as regulation impact statements. Unless the consultancy contract explicitly includes the RIS as a final deliverable, agencies should not expect that a consultant's report will be adequate.
- If using a consultant to assist with just one section of the RIS (for example, the cost–benefit analysis or managing the consultation process), an agency will most commonly write that section itself and refer to the consultant's report. The full report is then attached as an appendix to the RIS.
- When engaging a consultant, you must follow the government's procurement guidelines, available at http://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/index.html.

7.98 The OBPR will deal directly with the agency responsible for the RIS rather than with the consultants preparing the RIS, and will address its comments and concerns directly to the agency.

7.99 The OBPR can advise you on the specifications to include in your request for tenders to ensure that the consultant's terms of reference adequately reflect the work required.

Appendices

Appendix A: Guidance notes

A.1 The Office of Best Practice Regulation (OBPR) has published a number of guidance notes that help agencies to prepare regulation impact statements and post-implementation reviews. Those guidance notes are summarised in this appendix, while the full notes are available on the OBPR website. This appendix also provides information on the Australian Government's cost recovery guidelines as they relate to regulation impact statements.

Post-implementation reviews

A.2 Where a proposal proceeds (either through the Cabinet or another decision-maker) without an adequate details-stage RIS, the resulting regulation must be the subject of a post-implementation review (PIR). The review must commence within one to two years of the regulation being implemented, and will be required regardless of whether or not a Prime Minister's exemption from the RIS requirements was granted.

A.3 Generally, agencies should not need more than three months to complete a PIR. If the regulation is particularly large in scope or has significant impacts, then six months may be more appropriate. If a PIR is not completed within these timeframes, the OBPR may deem the responsible agency to be non-compliant with the government's best practice regulation requirements, unless the agency has agreed an alternative timetable with the OBPR.

A.4 Completed post-implementation reviews are published on the OBPR website. The OBPR will also report on compliance with the PIR requirements on the website, as well as in the *Best Practice Regulation Report*.

A.5 For a PIR to be compliant, the agency should begin the review within one to two years after the announcement of the regulatory proposal, complete the review in a timely manner, and provide the completed review to the OBPR for publication. The OBPR also assesses the PIR for adequacy against the seven RIS elements.

A.6 Further information on post-implementation reviews can be found at http://finance.gov.au/obpr/proposal/pir-guidance.html.

Best practice consultation

A.7 A details-stage RIS must demonstrate that consultation commensurate

with the magnitude of the problem and the size of the proposal's potential impact has been undertaken. The OBPR has prepared a guidance note [accessible at http://www.finance.gov.au/obpr/consultation/gov-consultation.html] that contains more detail on the application of the whole-of-government consultation principles outlined in Chapter 7, and highlights the importance of developing a consultation strategy for regulatory proposals.

Cost–benefit analysis

A.8 The Australian Government is committed to the use of cost–benefit analysis to assess regulatory proposals and encourage better decision-making. A cost–benefit analysis involves a systematic evaluation of the impacts of a regulatory proposal, accounting for all the effects on the community and economy—not just the immediate or direct effects, financial effects or effects on one group. It emphasises, to the extent possible, valuing the gains and losses from a regulatory proposal in monetary terms.

A.9 An OBPR guidance note on how to conduct a cost–benefit analysis is available at http://finance.gov.au/obpr/cost-benefit-analysis.html.

Risk analysis

A.10 Government regulation rarely deals with certainties. Regulation is often designed to reduce the likelihood of harmful or hazardous events occurring. Around half of all new regulations requiring regulation impact statements are risk-related. Examples include regulation to:

a. reduce the incidence of workplace accidents
b. reduce public health hazards (e.g. food standards)
c. reduce risks from faulty consumer products (e.g. product safety standards)
d. reduce the risk of financial institution failure
e. reduce the risk of terrorist attacks.

A.11 Given the importance of risk-related regulation, the OBPR has prepared a guidance note http://www.finance.gov.au/obpr/proposal/risk-analysis-guidance.html on approaches to evaluating regulation aimed at managing risks. An effective approach to risk management requires that agencies develop a thorough understanding of the risks they are seeking to manage. This can be achieved by soundly applying risk analysis and economic evaluation principles.

Carve-outs

A.12 The OBPR is responsible for advising government agencies on whether regulation impact statements are required. To assist in improving the efficiency of this process, the OBPR often grants 'carve-outs'.

A.13 A carve-out is a standing agreement between the OBPR and an agency that removes the need for a preliminary assessment to be sent to the OBPR for certain types of regulatory change. This improves the efficiency of the preliminary assessment process by reducing the workload for both parties, while ensuring consistent advice from the OBPR on whether or not a RIS is required.

A.14 A carve-out can be used for regulatory changes that occur on a regular basis, are minor or machinery in nature, and are consistent with the requirements in this handbook. Possible categories of carve-outs include indexation changes and routine administrative changes.

A.15 More information on carve-outs can be found at http://www.finance.gov.au/obpr/proposal/carve-out.html.

Not-for-profit organisations

A.16 Since not-for-profit organisations function in different ways to commercial businesses, separate consideration is required when assessing the impact of a regulatory proposal. The OBPR's guidance note on not-for-profit organisations http://ris.finance.gov.au/2013/01/15/obpr-guidance-note-not-for-profit-organisations/ aims to help agencies gain a better understanding of the types of issues they should be considering if they are proposing a regulatory change that may impact the not-for-profit sector. This will help to ensure that impacts on not-for-profit organisations are recognised early in the policy process and discussed thoroughly in a RIS, where appropriate.

Competition

A.17 Regulation impact statements for regulatory proposals that restrict competition are required to justify that the benefits to the community outweigh the costs, and that there are no alternative means of achieving the same objective without restricting competition. The OBPR's guidance note on competition http://www.finance.gov.au/obpr/proposal/competition-restrictions-guidance.html outlines how the office assesses whether a proposal restricts competition, and how such a proposal would be justified in a RIS.

Trade impact assessments

A.18 Where a proposed regulation has a direct bearing on export performance, a trade impact assessment should be incorporated into the implementation section of the RIS. The assessment should summarise the impact of regulatory options and proposals on exporters and importers and assess the overall impact on Australia's international trade. The OBPR's guidance note on trade impact assessments http://www.finance.gov.au/obpr/proposal/TradeImpactAssessmentGuidance.html provides more detailed information on how to complete an assessment.

Environmental valuations

A.19 Analysis of projects or policies that affect environmental assets should take into account the benefits they provide to the community. However, unlike many other assets, environmental assets can be difficult to account for in project and policy analyses because the benefits provided by some environmental assets can be hard to understand, and because our scientific knowledge of many environmental processes is limited.

A.20 The OBPR has developed a framework to analyse how decisions can affect environmental assets and the benefits they provide. This framework, while broadly applicable, has the primary goal of informing the development of regulation impact statements. In this way, decision-makers can more easily take account of all of the impacts of their decisions, and allow better decisions to be made.

A.21 The OBPR's guidance note on environmental valuation is available at http://www.finance.gov.au/obpr/proposal/environmental-valuation-guidance.html.

Sunsetting legislative instruments

A.22 Under the *Legislative Instruments Act 2003*, all legislative instruments 'sunset', or cease automatically, after 10 years, unless action is taken to remake them or they are otherwise exempt. Some of these instruments may have impacts on business and the not-for-profit sector, and therefore changes to the future operation of these instruments would fall within the scope of the best practice regulation requirements. However, some streamlined administrative processes apply to sunsetting instruments and a RIS may not need to be prepared in all circumstances.

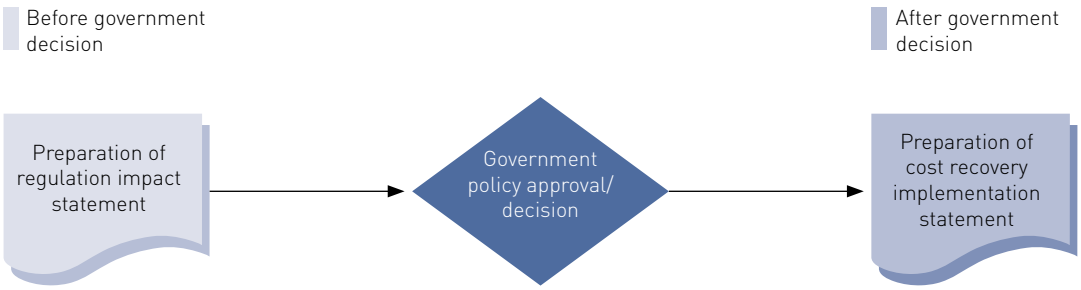
A.23 More information on how the best practice regulation requirements apply to sunsetting instruments can be found in Appendix C, and in the OBPR's guidance note http://www.finance.gov.au/obpr/proposal/sunsetting-instruments-guidance.html.

Australian Government cost recovery guidelines

A.24 In formulating a plan for the implementation of a new policy, an agency will need to consider how the government will meet any additional costs. For example, the government may decide to fund a new policy measure through cost recovery. Cost recovery involves the Australian Government charging the public some or all of the efficient costs of a specific government activity. These government activities may include the provision of goods, services or regulation.

A.25 Cost recovery has two related implications for an agency when writing a RIS. First, the impacts of any cost recovery charges imposed by the government on business, the not for profit sector or individuals need to be included in the cost–benefit analysis of the RIS. Second, should the government agree to use cost recovery for a policy measure, a cost recovery implementation statement must be completed, in consultation with the Department of Finance and Deregulation, before the charging activity begins.

Figure A1: Australian Government cost recovery guidelines



A.26 A new cost recovery activity does not, by itself, require a RIS. The requirement for a RIS is only triggered if the cost recovery activity or associated regulation has an impact on business or the not for profit sector, unless that impact is of a minor or machinery nature. For example, a RIS would be required:

a. where the cost recovery activity is part of a new regulation proposal

b. where the cost recovery activity imposes obligations other than payment of a charge (for example, if it introduces new requirements for business to collect or report data as part of the process of determining the charge that will be payable).

A.27 More information on the Australian Government's cost recovery policy is available at http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/cost-recovery.html.

Appendix B: Business Cost Calculator

B.1 This appendix provides additional details about using the Business Cost Calculator (BCC).

B.2 The BCC is an information technology tool designed to assist you in estimating the business compliance costs of various regulatory options. You can access the BCC at the OBPR website https://bcc.obpr.gov.au/. If you have any queries about how to apply the BCC to your regulatory proposal, contact the OBPR.

Scope of the Business Cost Calculator

B.3 The BCC provides an automated and standard process for quantifying compliance costs of regulation on business by using an activity-based costing methodology.

B.4 The BCC is derived from the Standard Cost Model (SCM Network 2005), designed to measure the administrative or 'paperwork' burden that a regulation places on business. The BCC defines compliance costs more broadly than the Standard Cost Model and includes all direct compliance costs, not just paperwork costs. This broad definition provides a greater scope for capturing the compliance costs of regulation.

B.5 The BCC uses nine categories of compliance tasks. The ninth category, 'Other', is used to capture costs not readily classifiable under one of the other eight categories (see Table B1).

Using the Business Cost Calculator

B.6 Once you have created an overview of the proposal, the BCC asks you to provide details about the compliance tasks associated with the options, supporting evidence for this information, and the level of certainty about this information. There may be a number of compliance tasks (with a number of associated compliance activities) for each option.

B.7 For each compliance task, information is required about:

a. the category of the compliance task and related compliance activities

b. whether the task is an internal cost or outsourced cost

c. whether the task is a start-up or ongoing cost

d. the number of businesses that will have to undertake that compliance activity

e. how long the activity will take and how often it will have to be done

f. who will perform the task and the associated labour cost, including on-costs (for tasks carried out internally), or the purchase cost (for tasks that are outsourced or where the task is the purchase of materials or equipment)

g. supporting evidence for this information and the level of certainty.

Table B1: Compliance task categories in the Business Cost Calculator

Compliance task category	Example
Notification—businesses incur costs when they are required to report certain events to a regulatory authority, either before or after the event has taken place.	Businesses may be required to notify a public authority before they are permitted to sell food.
Education—costs are incurred by business in keeping abreast of regulatory requirements.	Businesses may be required to obtain the details of new legislation and communicate the new requirements to staff.
Permission—costs are incurred in applying for and maintaining permission to conduct an activity.	Businesses may be required to conduct a police check before legally being able to employ staff.
Purchase cost—in order to comply with regulation, businesses may have to purchase materials or equipment.	Businesses may be required to have a fire extinguisher on-site.
Recordkeeping—businesses incur costs when required to keep statutory documents up to date.	Businesses may be required to keep records of accidents that occur at the workplace.
Enforcement—businesses incur costs when cooperating with audits, inspections and regulatory enforcement activities.	Businesses may have to bear the costs of supervising government inspectors on-site during checks of compliance with non-smoking laws.
Publication and documentation—costs are incurred when producing documents required for third parties.	Businesses may be required to display warning signs around dangerous equipment, or to display a sign at the entrance to home-based business premises.
Procedural—some regulations impose non-administrative costs.	Businesses may be required to conduct a fire safety drill several times a year.
Other—when a compliance cost cannot be categorised into one of the above categories, it can be placed into this category.	

B.8 The BCC provides an executive summary and a number of other reports (by business type, size or for total businesses) about compliance costs, including:

a. compliance costs by cost category
b. compliance costs by task
c. summary report of total compliance costs
d. summary of supporting evidence.

Data sources

B.9 The information you will require for input into the BCC can come from a variety of sources. The BCC contains a number of links to help you search for data.

B.10 Where the detailed information is not readily available, you may need to acquire it through consultation or research. Some possible ways of collecting data are:

a. seeking compliance information from businesses through a consultation process (better feedback may be obtained if businesses are given some preliminary estimates to comment on)
b. approaching industry associations or peak bodies
c. surveying businesses
d. using Australian Bureau of Statistics data, especially on business populations.

Support services

B.11 The BCC is supported by a comprehensive online help facility; this can be downloaded as a separate document. There is also a worked example available for download from the OBPR website.

B.12 For further information and assistance on the BCC, contact the OBPR at helpdesk@obpr.gov.au.

Appendix C: Exemptions from the RIS process and other special circumstances

C.1 This appendix provides information on exemptions from the standard two-stage RIS process and outlines other special circumstances that apply to certain regulatory proposals.

Prime Minister's exemptions

C.2 Exemptions from the RIS requirements for exceptional circumstances can only be granted by the Prime Minister in writing. A minister wishing to obtain an exemption should write a letter to the Prime Minister, copied to the Treasurer and the Minister for Finance and Deregulation, addressing the criteria under which an exemption is required.

C.3 Prime Minister's exemptions are only granted where:

a. truly urgent and unforeseen events arise, requiring a decision before an adequate RIS can be undertaken

b. where there is a matter of Budget or other sensitivity and premature announcement (even of options) could cause unintended market effects or lead to speculative behaviour which would not be in the national interest.

C.4 In granting exemptions, the Prime Minister will identify which of the two exemption criteria has been used. The agency must provide a copy of the Prime Minister's letter to the OBPR. If the Prime Minister grants an exemption, the agency will not be deemed as non-compliant with the RIS requirements.

C.5 If a decision to regulate results in legislation, the fact that an exemption was granted by the Prime Minister should be noted in the explanatory material.

C.6 A post-implementation review is required for regulation that the Prime Minister exempted from RIS requirements.

C.7 When the policy decision is announced, the advice concerning the Prime Minister's granting of an exemption will be published, together with the applicable criteria, on the OBPR website.

Sunsetting legislative instruments

C.8 Under the *Legislative Instruments Act 2003,* all legislative instruments 'sunset', or cease automatically, after 10 years, unless action is taken to remake them or they are otherwise exempt. The Attorney-General is able to grant an instrument an exemption from the sunsetting provisions by having the instrument added to the list prescribed by the Legislative Instruments Regulations 2004.

C.9 In cases where an agency or portfolio minister seeks to continue the legislative instrument via an exemption from sunsetting under the Act, and the Attorney-General grants this exemption, no RIS will be required, even if that instrument has regulatory impacts on either business or the not-for-profit sector that are more than minor or machinery in nature.

C.10 Where a sunsetting regulatory instrument is being remade without a significant change, and the OBPR has determined that a RIS would be required, an agency can assess the performance of the instrument. If the regulation is found, through the agency's assessment, to be operating effectively and efficiently, no RIS will be required. The agency's assessment of performance will be published in lieu of publishing a RIS. This assessment must be informed by a formal consultation process with stakeholders.

C.11 If the sunsetting regulatory instrument is being amended to change some aspect of its substance or effect, then a RIS may need to be completed. Also, if the instrument was not assessed as operating effectively and efficiently, a RIS must be completed before the instrument is remade (whether with or without amendment).

C.12 If no RIS or agency assessment was completed when one would have been required, then the agency with policy responsibility for the instrument will be deemed non-compliant with the government's best practice regulation requirements and a post-implementation review will be required.

C.13 More information is provided in the OBPR's guidance note on sunsetting http://www.finance.gov.au/obpr/proposal/sunsetting-instruments-guidance.html.

Independent reviews

C.14 Neither an options-stage nor details-stage RIS will be required where an independent review or other mechanism has undertaken analysis of a regulatory proposal equivalent to a RIS, including analysis of the impact of options.

C.15 This process is intended to apply to those reviews that are informed by a thorough process of consultation and analysis, such as a green paper, a white paper or an official review, and may be spread across related reports. The review may be conducted by the agency itself.

C.16 Agencies will assess whether the review meets the RIS requirements for adequacy. The secretary or deputy secretary will certify that the review has followed a similar process to that required for a details-stage RIS, and has adequately addressed the seven elements that are required for a RIS. The final report of the review must be provided for consideration by the decision-maker prior to, or at the time of, the decision being made. This report must be published when the decision is announced, subject to the need to remove any national security or commercial-in-confidence material.

C.17 Agencies are encouraged to consult the OBPR in preparing review terms of reference to ensure that each of the seven RIS elements will be addressed.

C.18 Where a proposal is considered by the Cabinet and is informed by an independent review, the OBPR has the opportunity to provide coordination comments. The comments will focus on any issues of note with the analysis or other aspects of the document, and whether the policy proposal is within the scope of the review.

C.19 If a policy announcement resulting from an independent review cannot be shown to be within the scope of the review, the decision may be assessed by the OBPR as non-compliant. Only in this case would the agency be required to prepare a post-implementation review.

C.20 More information is provided in the OBPR's guidance note on independent reviews http://www.finance.gov.au/obpr/proposal/independent-reviews-guidance.html.

Election commitments and the limiting of options

C.21 A range of options must be presented in the RIS. A RIS will be required to include a minimum of three options, including a regulatory option, a non-regulatory or light-handed regulatory option, and a do-nothing option. These arrangements do not apply to election commitments or where the Cabinet explicitly agrees to limit options, including in response to a request from a minister to do so.

C.22 Regulation impact statements are required for election commitments that are likely to have an impact on business or the not-for-profit sector, unless the impact is minor or machinery in nature. When a proposal

implements a specific election commitment, however, the RIS should focus on the commitment and the manner in which the commitment should be implemented. That is, the RIS does not need to revisit the initial regulatory decision and is not required to examine alternative options to the commitment. This should be made clear in the RIS.

C.23 If the Cabinet directs that a limited set of options be considered, this must be clearly stated in the RIS, along with a statement that the appropriate authority has been obtained.

C.24 There may be circumstances where regulatory agencies are given a Ministerial direction limiting the options available to be examined. In particular, a Ministerial direction may explicitly exclude the 'do nothing' option. Despite not being a potential option in this case, it is still important to include a 'do nothing' option as it provides the analytical base for assessing the alternative options.

Single-stage regulation impact statements

C.25 Agencies retain the option of preparing a RIS in a single stage. All seven elements must still be addressed. A single-stage RIS is effectively a details-stage RIS without the preceding options-stage RIS. The contents and process for the single-stage RIS are the same as for the details-stage RIS. In particular, a single-stage RIS still requires consultation as outlined in Chapter 7.

C.26 Instances where a single-stage process may be preferable include where a proposal is urgent or straightforward. The OBPR will not prescribe or assess the circumstances in which a single-stage RIS can be prepared. However, a single-stage RIS cannot be undertaken if an agency has simply failed to undertake an options-stage RIS before an initial regulatory decision has been taken. The agency should make it clear in the RIS that it has opted to prepare a single-stage RIS and the reasons why.

Carve-outs

C.27 A carve-out is a standing agreement between the OBPR and an agency that removes 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 regulatory changes occur on a regular basis, and those changes are minor or machinery in nature. More information is available in the OBPR's guidance note on carve-outs http://www.finance.gov.au/obpr/proposal/carve-out.html.

RIS requirements for treaties

C.28 A RIS is required where a treaty is likely to result in domestic regulation that will impact business or the not-for-profit sector, unless the resulting regulation is of a minor or machinery nature.

C.29 When approval is sought for the formal commencement of treaty negotiations, an options-stage RIS should accompany the Cabinet submission or letter to the Prime Minister, Minister for Foreign Affairs or other relevant ministers. The options-stage RIS should focus on the nature of the problem being addressed, the objectives of the proposed treaty, and a preliminary discussion of options and their respective costs, benefits and levels of risk. The OBPR does not publish a RIS that accompanies a request for approval to enter into treaty negotiations.

C.30 When endorsement is sought to sign the final text of a treaty, a details-stage RIS must include a more detailed analysis that assesses the likely impacts on different groups within the Australian community, including business, consumers and governments.

C.31 As part of the transparency stage, the details-stage RIS for the treaty is tabled or made public with the final text of the treaty and national interest analysis.

C.32 A further RIS is not required for domestic legislation to implement a treaty if the terms of the treaty already determine the action required to implement it. However, a RIS may be required for the domestic legislation if there is any discretion about the nature of the action to be taken to implement the treaty.

C.33 Details about regulation impact statements and treaties are also included in the Department of Foreign Affairs and Trade document, *Signed, Sealed and Delivered—Treaties and Treaty Making: An Officials' Handbook*.

The OBPR recognises that there are a large number of different treaty negotiation processes. The OBPR will take the particular circumstances of each treaty process into account, while still observing the principles of sound analysis, informed decision-making and transparency.

You should contact the office as early as possible to discuss the application of the regulatory impact analysis requirements to your treaty proposal.

Appendix D: Frequently asked questions

Are regulation impact statements required for COAG or COAG council decisions?

Yes—but there is a separate set of requirements for decisions made by COAG or COAG councils. These are summarised in the COAG publication *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (COAG 2007).

Are regulation impact statements only required for primary legislation or legislative instruments?

No—regulation impact statements are also required for international treaties and for other requirements that governments impose on business or the not-for-profit sector but that do not form part of explicit government regulation (such as industry codes of practice, guidance notes, industry–government agreements and accreditation schemes).

Is a RIS required if someone other than the Cabinet is making the decision?

Yes—regulation impact statements are required for all decision-makers, including committees of the Cabinet, ministers, delegated officials or heads/boards of statutory agencies.

Is it true that regulation impact statements are not required for election commitments?

No—all RIS requirements apply to election commitments that involve regulation. Where a proposal implements a specific election commitment, a RIS must be prepared, focusing on the commitment and its implementation, and not on the initial regulatory decision.

Are regulation impact statements required for budget proposals?

Yes—RIS requirements apply to all regulatory decisions whether or not they are made as part of the budget process.

Is a RIS required for new regulations only and not for amendments to regulations?

No—RIS requirements apply to both new and amended regulations.

Is it true that regulation impact statements only have to consider the impacts on business or the not-for-profit sector?

No—once a proposal triggers the RIS requirements, the RIS must consider the impacts on all relevant groups, including consumers, governments and the broader community.

Is it true that a RIS is only required if the regulation imposes compliance costs?

No—a RIS is required if a regulatory decision is likely to impact business or the not-for-profit sector. This impact includes items that can be readily quantified in monetary terms (like compliance costs, service charges or subsidies) as well as items that cannot be readily quantified in monetary terms (for example, the costs of pollution).

Is a RIS required even when the regulation will provide a benefit to business or the not-for-profit sector?

Yes—a RIS is required for regulatory decisions likely to have any impact (whether positive or negative) on business or the not-for-profit sector, unless the impact is of a minor or machinery nature.

Is a RIS only required at the policy implementation stage?

No—RIS requirements apply to all decision-making stages in the policy process, whether they are broader decisions on options, or decisions on the detailed implementation of the policy.

Is a RIS only required for tabling?

No—a RIS is required to be presented to decision-makers as they make their decision.

When writing a RIS, who is my audience?

A RIS must be able to be understood by the community and all stakeholders. The material should be communicated in plain English, with minimal use of jargon, and any technical terms should be explained. The material should be concisely presented and structured in a way that is helpful to the reader. It should be drafted with minimal duplication, appropriate use of tables and diagrams, and references to more detailed source material, to help manage the length.

When should I start?

The best time to start thinking about a RIS—and engage with the OBPR—is at the start of the policy development process, before your department, agency or minister has determined a preferred policy solution.

If you think you may need to prepare a RIS, contact the OBPR as early as possible to discuss the policy and the proposal. The OBPR can offer RIS training and advice on drafting.

Does a RIS need to examine non-regulatory options?

Yes—there should be a minimum of three options contained in a RIS, including a regulatory option, a non-regulatory or light-handed regulatory option, and a do-nothing option (status quo). If you are restricted under legislation from considering a non-regulatory option, you must instead examine a light-handed option.

If the benefits are difficult to value, does the RIS still need to have a cost–benefit analysis?

Where it is not possible to quantify impacts, the cost–benefit analysis should recognise this and include a qualitative discussion of these impacts so that they can be compared with other impacts that can be more easily quantified.

Does the RIS need to demonstrate that the preferred option has the greatest net benefit?

No—the details-stage RIS must describe the impacts of all the options you have identified and identify the preferred option but, unless the option restricts competition, it is not necessary to demonstrate that the preferred option has the greatest net benefit to the community, as long as supporting arguments for an alternative proposal are provided in the RIS.

Do the RIS requirements apply to changes in taxation?

Yes—a RIS is required for all regulatory decisions, including changes in taxation, that are likely to have any impact (whether positive or negative) on business or the not-for-profit sector, unless the impact is of a minor or machinery nature or, in the case of taxation, primarily revenue in nature, including for tax integrity purposes.

Do competition impacts include impacts due to an increase in competition?

Yes—competition impacts include both promotion and restriction of competition. If there are no competition impacts, then you would state this in the RIS.

Do I need to quantify compliance costs?

Where there are likely to be significant compliance costs, the quantification of these costs will form part of the RIS.

When do I need to consult stakeholders?

Effective consultation should occur at all stages of the regulatory cycle. Consultation early in the regulatory process will assist in identifying the nature and extent of the problem, the range of possible options for addressing it, and potential costs to consider. For significant proposals, consultation before the development of the options-stage RIS can be very beneficial. The whole-of-government policy on consultation establishes the principles of best practice consultation with stakeholders as part of good regulatory process.

What do I need to do when a regulatory decision has been made?

Under best practice regulation requirements, a RIS must be published following the announcement of a regulatory decision. The OBPR should be advised when a decision is announced and a final copy of the RIS—in Microsoft Word format—should be forwarded to the OBPR.

As it will be published on an Australian Government website, the RIS document must be formatted so that it conforms to the Australian Government's Web Content Accessibility Guidelines. The OBPR recommends liaising with your web services team to ensure that these guidelines are met.

The agency with relevant policy responsibility prepares the RIS and is responsible for its content. The OBPR should be consulted if an agency is considering amendments to a RIS after a decision has been made.

What role does the Small Business Advisory Committee have in the RIS process?

The role of the Small Business Advisory Committee (SBAC) is limited to those regulation impact statements that are likely to have a significant impact on small business. Further information on the SBAC is available at http://www.innovation.gov.au/SmallBusiness/Support/Pages/SmallBusinessAdvisoryCommittee.aspx.

Are agencies required to prepare Annual Regulatory Plans?

Agencies responsible for regulatory changes that may have a significant impact on business are required to prepare and publish an Annual Regulatory Plan by 31 July each year. These plans provide business and the community with information about planned changes to Australian Government regulation, and make it easier for business to take part in the development of regulation that is likely to affect them. Please contact the Department of Finance and Deregulation (deregulationpolicy@finance.gov.au) if you require assistance in preparing or updating your agency's plan.

Appendix E: RIS drafting checklists

RIS process

- ☐ Was an options-stage RIS prepared, provided to the OBPR before being considered by the decision-maker, and published following the announcement of the decision?
- ☐ Were stakeholders consulted following completion of the options-stage RIS?
- ☐ Were stakeholders consulted once the policy options had been developed in sufficient detail to allow meaningful discussion of implementation issues?
- ☐ Was a details-stage RIS prepared and provided twice to the OBPR, as per the two-pass assessment process, before being considered by the decision-maker?
- ☐ Was the details-stage RIS published following the announcement of the decision?

Element 1: Problem/reason for government intervention

The RIS:

- ☐ clearly defines the problem
- ☐ presents evidence that there is a problem/reason for government intervention
- ☐ presents evidence on the magnitude (scale and scope) of the problem
- ☐ documents relevant existing regulation at all levels of government and demonstrates that this regulation is not adequately addressing the problem
- ☐ identifies the relevant risks, if the problem involves risk, and explains why it may be appropriate for the government to act to reduce them
- ☐ identifies who is affected by the problem
- ☐ explains why government intervention is required to address the problem/issue.

Element 2: Objectives of government action

The RIS:

- ☐ clearly identifies what objectives, outcomes, goals or targets of government action are sought in relation to the identified problem
- ☐ considers and identifies constraints (if any)

- ☐ includes the authoritative basis for the proposal to review regulations (if applicable)
- ☐ states objectives that are specific, measurable, accountable, realistic and time-bound.

Element 3: Options

The RIS:

- ☐ identifies a range of alternative options (at least three, including a regulatory option, a non-regulatory or light-handed regulatory option, and a do-nothing option)
- ☐ selects options that are feasible approaches to addressing the specified problem
- ☐ clearly states the reasons for limiting the options (if any)
- ☐ clearly identifies election commitments (if relevant).

Element 4: Impact analysis

The RIS:

- ☐ identifies the groups in the community likely to be affected by each option and specifies significant economic, social and environmental impacts on them
- ☐ assesses the costs and benefits of all options and is supported by an acceptable level of detail and depth of analysis that is commensurate with the regulatory impact, where appropriate through formal cost–benefit analysis, using the status quo as a baseline
- ☐ assesses the impacts of each option on the community as a whole, taking into account all costs and benefits
- ☐ assesses the impacts on business and the not-for-profit sector, including distributional issues such as the impact on small business, and quantifies the effect of each option on business compliance costs
- ☐ recognises the effect of the options on individuals and the cumulative burden on business
- ☐ quantifies other significant costs and benefits appropriately, taking into account the significance of the proposal and its impact on stakeholders
- ☐ analyses the extent to which each option would reduce the relevant risk, and the costs and benefits involved

- ☐ documents any relevant international standards and, if the proposed regulation differs from them, identifies the implications and justifies the variations
- ☐ demonstrates that regulation results in a net benefit and that the government's objectives can be achieved only by restricting competition (if the proposed regulation would maintain or establish restrictions on competition)
- ☐ provides evidence in support of key assumptions and clearly identifies gaps in the data
- ☐ specifies significant economic, social and environmental impacts on stakeholders
- ☐ identifies the types of likely impacts
- ☐ clearly highlights direct costs to business
- ☐ rigorously assesses non-monetised costs and benefits.

Element 5: Consultation

The RIS:

- ☐ outlines the consultation objective
- ☐ describes how consultation was conducted (including when consultation was undertaken, the timeframe given and the methods of consultation)
- ☐ articulates the views of those consulted, including substantial disagreements
- ☐ outlines how those views were taken into consideration
- ☐ describes what changes were made to the elements contained in the options-stage RIS, and why
- ☐ provides a reasonable explanation as to why full consultation was not undertaken (if applicable)
- ☐ states that consultation commensurate with the magnitude of the problem and the size of the proposal's potential impact has been undertaken
- ☐ shows that the consultation process conforms to the government's best practice principles for policy consultation
- ☐ explicitly includes the checklist and a statement from paragraph 7.86 of this handbook, confirming the status of an options-stage RIS.

Element 6: Conclusion

The RIS:

- ☐ clearly states the preferred option
- ☐ states why the selected option is preferred and backs up the recommendation with clear analysis.

Element 7: Implementation and review

The RIS:

- ☐ defines how the preferred option is going to be implemented, monitored and reviewed
- ☐ defines the interactions between the preferred option and existing regulation
- ☐ highlights any risks to the proposed method of implementation, including legislative risks
- ☐ clearly details transitional arrangements, if required.

Abbreviations and acronyms

ARP	Annual Regulatory Plan
BCC	Business Cost Calculator
COAG	Council of Australian Governments
OECD	Organisation for Economic Co-operation and Development
OBPR	Office of Best Practice Regulation
PIR	post-implementation review
RIA	regulatory impact analysis
RIS	regulation impact statement
SBAC	Small Business Advisory Committee
WCAG	Web Content Accessibility Guidelines

Glossary

Adequate	To be assessed as adequate, a details-stage RIS must not contain obvious errors, must have a degree of detail and depth of analysis that is commensurate with the magnitude of the problem and the size of the potential impact of the proposal, and must specifically assess whether an options-stage RIS was prepared consistent with the RIS requirements.
Annual Regulatory Plan (ARP)	A document providing business and the community with information about recent and expected changes to Australian Government regulations. An ARP gives information to stakeholders about how to contribute to the development of regulation that is likely to affect them.
Best Practice Regulation Coordinator	Each Australian Government department and agency has appointed a senior officer to champion sound policy development processes. These Best Practice Regulation Coordinators are responsible for administering the Government's framework at a departmental or agency level, and help ensure compliance with the Government's requirements. The OBPR works with Best Practice Regulation Coordinators to facilitate compliance with the Government's regulatory assessment and consultation requirements.
Business Cost Calculator	An IT-based tool designed to assist with the estimation of the business costs of the various options analysed in a RIS.
Carve-out	A carve-out is a standing agreement between the OBPR and a department or agency that removes the need for a preliminary assessment to be sent to the OBPR for a type of regulatory change – generally minor or machinery changes that occur on a regular basis.
Co-regulation	Typically refers to the situation where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced.
Cost-Benefit Analysis	An analytical tool that can be used to assess the benefits and costs of regulatory proposals. Costs and benefits are examined from the perspective of the community as a whole to help identify the proposal with the highest net benefit.

Consistent	To be assessed as consistent with the RIS guidelines: a details-stage RIS must be prepared and provided to the OBPR, twice, regarding the 'two pass' process prior to being considered by the decision-maker, and published following the announcement of the decision.
Consumer Price Index	A measure of changes, over time, in retail prices of a constant basket of goods and services representative of consumption expenditure by resident households in Australian metropolitan areas.
Decision-maker	Responsible for the decision to agree to and proceed with a regulatory proposal.
Details-stage RIS	A document prepared for the purposes of providing accurate and timely information to decision-makers before a final decision to regulate. The details-stage RIS contains all seven elements of a RIS including: the problem; objectives of government action; options; impact analysis; consultation; conclusion and recommendation; and implementation and review.
Evidence-based policy	Policy based on rigorous and tested evidence in the design, implementation and refinement of policy to meet policy objectives.
First pass/second pass	The 'first pass' requires the OBPR to assess whether the draft details-stage RIS is consistent with the Government's requirements and adequately addresses all seven RIS elements. The 'second pass' requires the OBPR to conduct a final assessment of the details-stage RIS for consistency and adequacy against all seven RIS elements, following which the RIS can proceed to the decision-maker.
Green Paper	A document published to encourage discussion on a given topic.
Impact	Either a positive or negative effect.
In-principle decision	A decision taken to consider a range of policy options which include one or more regulatory options.
Light-handed regulation	Refers to regulation that is less prescriptive, providing greater discretion to regulated parties in how they can act.

Machinery change	Consequential changes in regulation that are required as a result of a substantive regulatory decision.
Market failure	Refers to situations where markets do not produce economically efficient outcomes.
Minor change	Changes that do not substantially alter the existing regulatory arrangements for businesses or not-for-profit organisations.
Multi-stage decision-making	A policy making process may include a number of distinct decision-making stages. For example, a proposal presented to a decision-maker for initial approval may return at a later stage for a further decision or a final decision on the detailed implementation.
Non-compliant	If the OBPR assesses that the details-stage RIS is inconsistent with the RIS requirements or has not met the standards of adequacy it is therefore non-compliant with RIS requirements.
Not-for-profit	The not-for-profit sector consists of organisations that are not operating for the profit or gain of its individual members, whether these gains are direct or indirect.
Net Present Value	The sum that results when the discounted value of the costs of a policy or project (in monetary terms) are deducted from the discounted benefits of that policy or project.
Nudge theory	Changes to choice architecture – the context within which a choice is made – with a view to influencing behaviour but without restricting, or raising the price of, the set of choices available.
Office of Best Practice Regulation (OBPR)	The OBPR plays a central role in assisting Australian Government departments and agencies to meet the Australian Government's requirements for best practice regulatory impact analysis and in monitoring and reporting on their performance.
Options-stage RIS	A document prepared for the purposes of assisting and informing the consultation process. This document contains at least the first three elements of a RIS: the problem; objectives of government action; and at least three options (including a regulatory option, non-regulatory or light-handed option, and a 'do nothing' option).

Post-implementation Review (PIR)	When a proposal proceeds to the decision-maker without an adequate details-stage RIS, the resulting regulation must be subject to a post-implementation review (unless the impacts were considered minor or the change was machinery in nature). The PIR must commence within one to two years from implementation.
Preliminary Assessment	The process of providing the OBPR with details of a proposed regulation and receiving advice on the need for a RIS and the appropriate level of analysis required for that proposal.
Prime Minister's Exemption	An exemption from the RIS requirements granted by the Prime Minister in writing.
Principles-based regulation	Regulatory guidance provides broad compliance principles and provides discretion for regulated firms to apply those principles to their own circumstances.
Probabilistic modelling	A method which involves the use of statistical analysis and modelling for evaluating uncertainties, in order to provide information about a range of future outcomes, including the likelihood of those outcomes occurring. Examples of probabilistic modelling include Monte Carlo simulation and regression analysis.
Quasi-regulation	Includes a wide range of rules or arrangements that are not part of explicit government regulation, but nevertheless seek to influence the behaviour of businesses, not-for-profit organisations and individuals.
Randomised Controlled Trials	An approach to gathering evidence for policy (originating from medical trials).These trials randomly allocate 'control' and 'treatment' groups enabling policymakers to compare the effectiveness of new policies or programs.
Regulation	Any 'rule' endorsed by government where there is an expectation of compliance.
Regulation Impact Statement	A mandatory statement for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements.

Regulatory Impact Analysis	Regulatory Impact Analysis (RIA) is the process of examining the likely impacts of a proposed regulation and a range of alternative options which could meet the government's policy objectives.
Risk analysis	A framework for evaluating regulation aimed at managing risks. It involves identification of the nature of risk, an evaluation of the likelihood of that risk eventuating, options to manage the risk, and an assessment of the costs and benefits of those options.
Self-regulation	Generally characterised by industry-formulated rules and codes of conduct, where industry is solely responsible for enforcement.
Sensitivity analysis	Sensitivity analysis provides information about how changes in different variables will affect the overall costs and benefits of the regulatory proposal.
Small Business Advisory Committee (SBAC)	The SBAC operates as a panel, independent from the government, comprising members who have extensive experience with small business. The SBAC's role is to improve the quality of regulation and minimise compliance costs for small business by being involved throughout the development of the Regulation Impact Statement process.
Single-stage RIS	A RIS that is prepared before a final decision to regulate and which contains all seven elements, but without there being a previous options-stage RIS.
Sunsetting instrument	Under the *Legislative Instruments Act 2003*, all legislative instruments 'sunset', or cease automatically, after 10 years, unless action is taken to preserve them or they are otherwise exempt.
Treaty	Treaties include international treaties, conventions, protocols, covenants, charters, agreements, pacts and exchanges of letters.
Two-pass assessment	There are two opportunities for the OBPR to assess the details-stage RIS.
White Paper	A document containing proposals for action on a particular topic.

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