
OBPR Guidance Note

Post-implementation Reviews

Executive Summary

Australian Government agencies are required to undertake a post-implementation review (PIR) of regulation introduced without a Regulation Impact Statement (RIS), unless the impact is of a minor or machinery nature and the regulation did not substantially alter previous arrangements. The absence of a RIS may be because an adequate RIS was not prepared or the Prime Minister granted an exemption for exceptional circumstances. A PIR must commence within one to two years of the implementation of the regulation, as per the Government's best practice regulation requirements.

A PIR will be very similar in form and substance to a RIS. Like a RIS, a PIR will outline the problem and objectives, provide evidence and analysis, present findings from consultation, and make a conclusion. The main difference is that the impact analysis for a PIR should include information about the actual impacts of the regulation, rather than just estimates. Stakeholder consultation is essential and will form a key part of a PIR.

A PIR's conclusion should provide an assessment, based on the available evidence, that considers whether the regulation remains appropriate, and how effective and efficient the regulation has been in meeting its original objectives.



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Introduction

The Regulatory Impact Analysis Framework Requirements

- 1.1 Central to the Australian Government's Regulatory Impact Analysis (RIA) process is the Regulation Impact Statement (RIS). A RIS is a document prepared by the department, agency, statutory authority or board responsible for a regulatory proposal and it must be presented to decision makers at the time that they are making their decision.
- 1.2 However, for a variety of reasons, an adequate RIS is not always completed prior to a decision being reached. In such cases, Australian Government departments and agencies are required to prepare a Post-implementation Review (PIR).
- 1.3 The Office of Best Practice Regulation (OBPR) administers the Government's RIA requirements. The OBPR has a number of formal roles relating to PIRs. These are listed below. The OBPR's primary role is to help agencies prepare adequate PIRs.

The Office of Best Practice Regulation

With respect to PIRs, the OBPR's role is to:

- oversee the regulatory process, including PIRs and Annual Regulatory Plans;
- assess the adequacy of PIRs against the Government's best practice regulation requirements;
- promote the whole-of-government consultation principles and provide clear guidance on best practice consultation with stakeholders to be undertaken as part of the policy development process;
- provide training and guidance to officials to assist them in meeting the Regulatory Impact Analysis (RIA) requirements;
- provide technical assistance to officials on cost-benefit analysis and consultation processes;
- publish PIRs and provide compliance information on the OBPR website; and
- report annually on compliance with the Government's RIA requirements.

In the shaded sections of this guidance note you will find information relevant to how the OBPR administers the Government's RIA requirements in the context of the PIR process.

- 1.4 These 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, including agencies or boards with administrative or statutory independence.



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- 1.5 This document does not apply to decisions made by COAG or ministerial councils. The RIA requirements for decisions made by these bodies is covered in the COAG publication *Best Practice Regulation: a Guide for Ministerial Councils and National Standard Setting Bodies*. This document is available from the OBPR website (www.finance.gov.au/obpr).

What is the purpose of a PIR?

- 2.1 The purpose of a PIR is to assess whether the regulation remains appropriate, and how effective and efficient the regulation has been in meeting its objectives.
- 2.2 The Government's best practice regulation framework is designed to try and ensure that regulation has efficient outcomes and does not create an unnecessary burden of "red tape" on stakeholders. For this reason, if a regulatory change was not subject to scrutiny under the regulation impact analysis process at the pre-decision stage, it is necessary that it be subject to a PIR. It is also important for all regulatory decisions to be assessed within the same framework to ensure the ongoing quality of regulation, consistent with the OECD Guiding Principles of Regulatory Quality and Performance.
- 2.3 Regular reviews are useful for evaluating the ongoing performance of regulation and the OBPR would encourage agencies to review regulation following implementation even if a PIR is not required.

Do you need to prepare a PIR?

- 3.1 You will need to prepare a PIR if all the following criteria apply:
- an adequate RIS was not prepared for the decision stage of a regulatory change; and
 - the regulatory change has affected businesses or the not-for-profit sector; and
 - the impacts are neither minor nor machinery in nature.

If you are unsure whether or not you need to prepare a PIR based on these criteria, you should contact the OBPR seeking formal advice.

- 3.2 A PIR is required regardless of whether or not an exemption from the RIS requirements for exceptional circumstances was granted by the Prime Minister.
- 3.3 The Australian Government's best practice regulation requirements, as set out in the *Best Practice Regulation Handbook*, do not allow for any exemptions from the obligation to undertake and publish a PIR (in cases where one is required).



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Q: The regulation is already being reviewed for another process. Do I need to do a separate PIR?

A: In some cases, regulation will be subject to a statutory review provision written into the legislation. Alternatively, the policy may be subject to another review, such as a lapsing program review, within close proximity to the required timing of the PIR.

It is entirely appropriate for agencies to draw on the work done for other reviews to meet some or all of the requirements for the PIR. In some cases, the other review can be assessed as meeting the PIR requirements without needing further work. However, the other review must still meet all the criteria for a PIR in order to be assessed as adequate and for the agency to be considered compliant with the best practice regulation guidelines.

If you would like the OBPR to assess an alternate review either as part of, or in lieu of preparing a standalone PIR, you should advise the OBPR of this intention. As PIRs need to be certified by the relevant departmental secretary, deputy secretary, agency head or deputy head, your formal request should be accompanied by an appropriate approval.

The OBPR's PIR List

The OBPR maintains a list of PIRs on its website, including the due date for the PIR to commence, the status of the PIR, and whether the agency is currently compliant with the PIR requirements. In consultation with agencies, the OBPR will update this list each quarter, as well as annually in the *Best Practice Regulation Report*. Individual agency non-compliance with the PIR requirements will be posted each quarter on the OBPR website.

Who is responsible for preparing a PIR?

- 4.1 The PIR must be prepared by the agency responsible for bringing the original regulatory proposal to the decision maker. If machinery-of-government changes result in functions moving, then the PIR would also move to the new agency.
- 4.2 The OBPR will determine the agency responsible for the PIR and maintain a current list on its website.
- 4.3 Neither the nature of the decision, nor the forum in which the decision was made, alters the PIR requirements. Similarly, how the decision was reached will not alter which agency is responsible for the PIR.



When does the PIR need to be prepared?

- 5.1 The Australian Government's *Best Practice Regulation Handbook* states that the PIR should commence "within one to two years of the regulations being implemented". The OBPR is responsible for ensuring that regulation is administered in accordance with the Government's requirements.
- 5.2 The regulation itself, or the broader economic environment in which the regulation operates, can change over time. Therefore, PIRs will generally deal with one of three circumstances:
- i. the regulation has lapsed, or is about to lapse;
 - ii. the regulation is continuing in its current form; or
 - iii. the regulation is to continue, but in a different form.

The circumstances will influence the nature of the PIR. Regulation that has lapsed gives itself to a 'lessons learned' PIR that is predominantly backwards looking. Regulation that is continuing, either in its current or a different form, can address the PIR requirement through a combined document which incorporates a PIR and its findings into the problem section of a new RIS. This approach will be most useful in cases where there are likely to be further regulatory decisions to be made that would require a RIS.

Q: Under the guidelines, agencies are allowed to wait two years before starting the PIR. Can the PIR start sooner?

A: There is judgement to be made between the need to allow sufficient time to gather relevant data, and the need to identify and address inappropriate, non-performing or inefficient regulation through the review process in a timely fashion.

The exact timing for commencing the PIR should be based on the viability of undertaking an informative impact analysis. For example, after one year, the full impacts of the regulation may already be apparent and measurable. In this case, there is no reason to delay commencement of the formal PIR process.

However, allowing a longer period will sometimes be more appropriate. For example, it is possible that even after two years, some benefits of the regulation or regulatory change may not yet be apparent. Where the nature of the regulation means that a year is not enough time to allow complex interactions between market participants and various stakeholders, or for the final impacts to become apparent, the PIR can be temporarily deferred to allow more meaningful analysis to be included in the final document. However, waiting for the 'best' time when all information on the impact of the regulation is known or certain is not likely to be acceptable if it pushes the assessment too far into the future.



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The OBPR can provide technical assistance to help you determine whether or not you have sufficient information to undertake an informative impact analysis.

Finally, consultation with stakeholders is an essential source of information for the PIR. The timing guidelines do not prevent you from establishing strong stakeholder consultation arrangements at the earliest opportunity. Ideally, these arrangements would be in place prior to implementation of the regulation in most cases.

- 5.3 As part of its responsibility administering the Government's best practice regulation requirements, the OBPR determines when the regulations can be considered to have been implemented. The OBPR determines the required timing for the PIR in order to maintain the integrity of the RIA requirements. The outcome will be recorded on the OBPR website.

Q: When is a policy considered to have been “implemented”?

A: For some measures, particularly those that are extensive in scope, there may be some ambiguity regarding when a measure is considered to have been ‘implemented’. The date on which legislation or regulation passes the Parliament, or a Minister announces a regulatory change, may not be a useful proxy for the date of implementation.

The OBPR will determine when a regulation was implemented in consultation with agencies.

Factors which the OBPR will consider in deciding the most appropriate timing for the PIR:

- if there is relevant legislation, the start date for that legislation
- whether or not the regulation has been implemented for the industry or group in the economy for whom it was expected to have the greatest impacts;
- whether or not an effective market has commenced functioning under the new regulation;
- whether or not a significant portion of the affected industry or industries have adopted or otherwise been affected by the new regulation;
- whether or not the measure would be considered to be “fully implemented” for one or more targeted groups or communities;
- whether or not the affected industry or industries can meaningfully assess the impacts the new regulation is having; and
- if any unintended consequences have become apparent as a result of the new regulation.

Q: What about measures which have an explicitly phased implementation plan?

A: For policies which have a number of distinct phases or stages within their implementation, the OBPR will consult with the responsible agency to determine an appropriate scope and timeline for preparation of the PIR to meet the Australian Government's best practice regulation requirements.

The specific requirements will depend on the exact nature of each of the implementation phases. It may be appropriate to review each stage individually, or it may not be necessary for some stages to



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be reviewed within the scope of a PIR. The exact timing for the PIR will depend on how the staged implementation affects the PIR requirements and the OBPR will need to make a decision on a case-by-case basis. The same factors considered in determining appropriate timing will also be applied for measures with phased implementation.

- 5.4 Once the PIR has commenced, the report should be completed within reasonable timeframes, taking into consideration the scope of the policy implemented.
- 5.5 The OBPR keeps maintains a register of outstanding PIRs and determines whether or not agencies are complying with the best practice regulation requirements.

As a guide, agencies should not need more than three months to complete a PIR. If the regulation is particularly large in scope or in its impacts, then six months may be more adequate.

If a PIR is not completed within a reasonable timeframe, the OBPR may deem the responsible agency to be non-compliant with the Government's best practice regulation requirements. The OBPR will consult with agencies during the PIR process to ensure that the requirements with regards to timeliness for compliance are clear throughout.

What does a PIR need to include?

- 6.1 While the terms of reference for each review will depend on individual circumstances, the review should generally be similar in scale and scope to the RIS that would have been prepared for the decision making stage. However, a PIR needs a greater focus on how well the outcomes from the regulation are achieving the original objectives of the policy.

The OBPR will provide advice and assistance on what you will need to include in the PIR in order for it to be assessed as adequate.

- 6.2 Because a PIR is prepared after the regulation has been implemented, the focus of a PIR is slightly different to a RIS. The intent of the PIR is to consider whether the regulation remains appropriate, and to what extent the regulation is efficient and effective in achieving its original objectives. To this end, the agency should report on the implementation of the regulation and, where possible, its actual impacts.
- 6.3 To be assessed as adequate, a PIR must provide a degree of detail and depth of analysis that is commensurate with the impacts of the regulation. Subject to this principle, the criteria which will be used by the OBPR to assess the adequacy of a PIR are set out below.



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Q: Who is the intended audience for a PIR?

A: A PIR will be sent to the relevant portfolio minister and the Prime Minister after being assessed as adequate by the OBPR. The OBPR will also publish the final PIR on its website.

Responsible agencies should also be aware that the PIR is likely to be of most interest to those who have been most greatly impacted by the regulation or the regulatory change, and that the PIR will be publicly available for their reference and comment. Therefore the PIR should be written in a way that is accessible to the public, with particular awareness of the intent to provide useful information to key stakeholders.

- 6.4 Agencies are not required to structure the PIR in any particular way (e.g. using the criteria as headings). All that matters is that the information included in the PIR is sufficient to address each of the criteria.

Criteria 1 – Does the PIR identify the problem?

The PIR should clearly identify the problem(s) that the regulation(s) intended to address. This section of the PIR should:

- summarise the evidence regarding the magnitude (scale and scope) of the problem at the time the decision was made;
- present the background to the regulatory intervention, including a description of the relevant previous regulatory arrangements and explain the manner in which they were not adequately addressing the problem; and
- briefly describe any other policy options that were discussed in consultation or considered by decision makers as part of the regulatory decision-making process.

Criteria 2 – Does the PIR explain the original objectives of the regulation?

The PIR should explain the objectives, outcomes, goals or targets of the regulatory intervention. In most cases, the relevant minister or the Prime Minister will have made an official announcement or press release at the time of the decision. Alternatively, where a regulatory change is associated with a legislative change, the Act will usually state a set of objectives. All relevant public information about the objectives should be referenced in this section of the PIR.

Because of the delay between the decision to introduce a regulation and the preparation of the PIR, the original decision maker may no longer be the current decision maker. Equally, staff turnover may mean that corporate memory around a decision may be limited. In cases where information is limited, agencies should make this limitation transparent.

While the PIR does need to consider whether the regulation is meeting its stated objectives, the focus of the PIR is to consider the overall social, environmental and economic impacts of the regulation and whether it is achieving these outcomes efficiently. The intention is not to provide an opportunity or requirement to criticise previous policy decisions, but rather to help set each



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regulatory decision in its original context, which will help to ensure that the analysis presented in the PIR is balanced.

Criteria 3 – Has the PIR adequately presented and analysed the impacts of the regulation?

The PIR must discuss the implementation of the regulation and its actual impacts on different groups, specifying all significant economic, social and environmental impacts on them and highlighting any differences in how various stakeholders are affected.

The *Best Practice Regulation Handbook* provides guidance on the types of regulatory analysis that may be useful for agencies undertaking a PIR.

When reporting on the impacts from the regulation, the baseline for comparison should be what is most likely to have happened if the regulatory change had not been made.

The level of analysis undertaken in the PIR should be commensurate with the impacts of the measure –the greater the impacts, the more in depth the analysis should be. More detailed analysis will generally need to be backed by stronger evidence.

The PIR should cover a period commencing with the introduction of the regulation up until the present, or the time when the regulation lapsed (in cases where a regulation has ceased to operate).

The PIR needs to provide an analysis of the costs and benefits of the regulation. This analysis should:

- focus on outcomes since implementation;
- assess the costs and benefits of the regulation based on data gathered from consultation or from independent sources such as the ABS;
- assess the impacts on business and the not-for-profit sector, including distributional issues such as the impact on small business;
- assess the net impact of the regulation on the community as a whole, taking into account all costs and benefits and the distribution of those costs and benefits;
- quantify (for example, through consultation and/or the use of surveys, if appropriate) the effect of the regulation on business and not-for-profit compliance costs;
- recognise the effect of the regulation on individuals and the cumulative burden on business and the not-for-profit sector; and
- note any significant changes to the level of competition since the regulation was introduced, for example if a new supplier has joined the market, or if a number of small businesses have left the sector.

Even if a full quantitative cost-benefit analysis is not possible, the PIR should still quantify the costs and benefits which can be measured and provide analysis of the material impacts of the regulation on the main stakeholders.

Government will almost always be a stakeholder in any regulation. To this end, the PIR should also consider any issues with enforcing the regulation that have been highlighted by the regulator either during implementation or identified by other stakeholders during consultation.



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The analysis must be a balanced presentation of the costs and benefits.

Q: How extensive should the analysis be?

A: Each PIR will have its own considerations and emphasis. The OBPR recognises this and will be flexible in determining what is needed for the PIR to meet the Government's requirements.

As a guide, you will need to assess productivity impacts, consider benefits to businesses, consumers, governments and other affected groups, evaluate compliance costs for businesses and any other costs to consumers or the community, and discuss the distribution of these costs and benefits, including jurisdictional differences where relevant.

The level of quantification will depend on data availability, but generally, the OBPR will expect compliance costs to be quantified. Effective consultation with stakeholders should help agencies to obtain relevant data, but agencies should not expect stakeholders to present exact figures for compliance costs. Often, agencies will have to determine these from a range of information sources.

A more detailed list of the types of costs and benefits that agencies might consider for inclusion in a PIR is included in Appendix A in the section titled *Impact analysis of introduced regulation*.

Choosing a baseline

In some cases, it is possible to accurately predict what would have happened in the absence of any regulatory intervention. For example, if a new regulation is introduced in an area where regulations previously did not exist, it could be relatively straightforward to work out what would have happened in the absence of any regulation – forming an obvious baseline against which to calculate impacts.

However, where the regulatory change is more complex – for example, removing one regulation, and replacing it with another - accurately quantifying the baseline against which the impacts of the regulation should be compared can be more difficult. In the case where one regulation has replaced another, the previous arrangements will often be the most appropriate baseline for comparison (as opposed to a “no regulation” scenario).

Even if it is difficult to identify the correct theoretical baseline, or where the most appropriate comparison scenario is very difficult to estimate, you will still need to set some benchmark against which the impacts of the regulation can be consistently measured. The OBPR can assist agencies by providing technical assistance as well as exploring any other options available to help you prepare an adequate PIR.

This process may be a good opportunity to establish some performance indicators (if these have not already been established) which can be used to continue to monitor the appropriateness, efficiency and effectiveness of the regulation over time.



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Unintended consequences

Sometimes a regulation will have additional impacts that were not anticipated when formulating the policy. These could either enhance or reduce the policy's effectiveness, or could fall in an area unrelated to the regulation's objectives.

It is important to include discussion of these impacts in the PIR. You should discuss the nature, and where possible, the reasons for these unintended consequences, particularly in cases where they have had a negative impact on some sector of the economy.

In some cases, it may be necessary or appropriate to suggest ways to change the regulation, or to put forward other non-regulatory methods to address any problems that have arisen.

Criteria 4 – Does the PIR accurately present the findings from stakeholder consultation?

The PIR process should incorporate consultation with relevant stakeholders on the actual impacts of the regulation, including competition impacts and the costs of compliance. This consultation should be in line with the Australian Government's best practice consultation principles (which are set out in Appendix C of the *Best Practice Regulation Handbook*). As with the analysis, the level of consultation should be commensurate with the significance of the measure under review.

It may be more efficient for departments and agencies to gather the necessary data for PIR analysis as part of an ongoing consultation process starting during the implementation phase.

The PIR needs to describe how consultation was conducted (including when consultation was undertaken, the timeframes given and the methods of consultation), and must articulate the views of those consulted, highlighting where there are substantial differences between the views or experiences of different stakeholders

Criteria 5 – Is the conclusion supported by the available evidence?

The PIR should provide an assessment of the overall impact of the regulation. Has the change been positive for the community? The PIR should also make an assessment of the ongoing appropriateness, effectiveness and efficiency of the regulation at addressing the problem and achieving its stated objectives. This statement needs to be supported by a balanced assessment of the evidence presented in the PIR.

In some cases, isolating the impact of a single regulatory change will not be possible, given the other influences over outcomes. In such cases it is reasonable, and possibly desirable, to conclude that it is not possible to draw definitive conclusions.



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Where a regulatory change has restricted competition, the PIR must assess whether or not the regulation generates a net benefit to the community as a whole. The PIR should also consider whether or not the restrictions on competition are essential to achieving the Government's objectives. The PIR should present these findings on competition impacts as part of the conclusion.

It is essential that the conclusions about the impacts and effectiveness of the regulation align with the evidence presented in the PIR.

Assessing your PIR

The OBPR will consider a number of broader questions when assessing whether the PIR meets the Government's requirements:

- Is the PIR well written? Does it have a logical structure and is it relatively free from technical jargon? Does it contain extraneous information?
- Is the PIR transparent? Does it contain all of the relevant information?
- Does the PIR examine and discuss the ongoing appropriateness of the regulation?
- Does the PIR discuss the impacts on all stakeholders? Does it describe the effect of government intervention in a way that helps readers understand whether or not the intended outcomes have been achieved efficiently?
- Is the PIR a balanced document? Does it accurately report the impacts (both positive and negative) and identify any uncertainties in the data?
- Are the views of all stakeholders reported in a balanced manner?
- Are the conclusions logical based on the evidence and the strength of the data?

The PIR is not intended to be used as a means to critique or praise Government policy. We will seek to ensure that the evidence has been gathered rigorously and presented in a balanced fashion in the PIR.

The precise nature of each review will depend on the individual problem and regulations put in place to address that problem. The PIR may need to include other relevant information and discussion in addition to the above before the OBPR can assess the PIR as adequate. Further guidance on the types of content to include in a PIR is in [Appendix A](#).

Process for conducting a PIR

- 7.1 If the Australian Government's best practice regulation requirements for an adequate RIS were not satisfied (due to non-compliance, or because an exemption was obtained), then a PIR will need to be prepared. In most cases, the OBPR will be able to advise the responsible agency of the future obligation to conduct a PIR during the course of the RIS process.
- 7.2 Agencies are required to list upcoming PIRs (including proposed timelines) in their Annual Regulatory Plans (ARPs). Reviews for jointly sponsored proposals should be included in the



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ARP of each sponsoring department or agency. A list of PIRs is also maintained on the OBPR website.

- 7.3 After responsibility for the PIR has been assigned, the OBPR will consult with the responsible agency to determine an implementation date, for the purposes compliance with the one-to-two year PIR commencement requirement in the best practice regulation requirements.

The OBPR's primary role is to help agencies prepare adequate RISs and PIRs. To this end, the OBPR can advise of any issues peculiar to the regulation which are likely to need to be addressed in the PIR. This will help to inform any consultation processes being undertaken during the implementation of the regulation.

Also, if another review has been prepared (for example, to meet a lapsing program or other statutory review requirement), the OBPR can assist agencies to identify which of the requirements for the PIR will be met (or have been met) by the other review, and which areas will require additional work.

- 7.4 After the PIR has been prepared agencies should allow sufficient time for the OBPR to assess the document for adequacy. As with a RIS, the PIR must be certified by the relevant departmental secretary, deputy secretary, agency head or deputy head prior to being passed to the OBPR for final assessment.

After receiving a PIR for assessment, the OBPR will provide formal written advice of its assessment, and provide advice to the agency for improving the PIR to an adequate standard if the PIR is assessed as inadequate.

Most PIRs will require more than one draft to meet the test of adequacy, and as such you should factor multiple iterations into your timeframes. You should advise your OBPR contact officer of any relevant deadlines as early as possible in the PIR process as this will help to allow the officer to work within your timelines if possible.

As noted above, each PIR will require a different level of analysis, depending on the nature and magnitude of the regulation and the scope of its impact. In general, high impact regulation will have the highest level of requirements for the PIR to be assessed as adequate.

- 7.5 After being assessed as adequate, the PIR will be sent to the relevant portfolio minister and the Prime Minister. The PIR will also be published on the OBPR's central online RIS Register.
- 7.6 In some cases, it will already be apparent by the time the PIR is being prepared that there is some aspect of the regulation which needs to be changed. This is likely to result in a new proposal to change existing regulation, and a new RIS will usually be required. In such cases, the findings from the PIR will be relevant to informing the decision relating to that RIS. For this



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reason, it may make sense for the PIR to be incorporated as part of the RIS. The OBPR will be flexible in helping to ensure that PIR requirements can be met in this way if it is appropriate.

Use of consultants for PIRs

Agencies may wish to employ consultants to assist in preparing PIRs, particularly for analysis of highly complex issues where agencies consider that they may not have the required technical skills available. While employing consultants can improve the quality of the analysis in a PIR, it can also reduce the depth of policy expertise developed within the agency. The main objective of the PIR process is to assess the appropriateness, effectiveness and efficiency of the regulation. Where this role has been outsourced to an external consultant, there is a risk that agencies may not develop the depth of understanding of the issues needed to provide decision makers with the best possible advice on any future changes to the regulation.

The PIR remains the responsibility of the agency even where consultants are used. That being said, the OBPR can hold joint consultations with both parties to help ensure that the final PIR is delivered to an adequate standard.

Consequences of non-compliance

- 8.1 The OBPR will report on compliance with the Government's best practice regulation requirements, including PIRs, on its website, and annually in the *Best Practice Regulation Report*.
- 8.2 Exemptions cannot be obtained for PIRs. Therefore, agencies reported as non-compliant with the Government's PIR requirements will need to devote sufficient resources to prepare an adequate PIR.

For further information on any of the topics covered in this guidance note, please contact the OBPR on (02) 6215 1955.

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Frequently Asked Questions

Why do we need Post-implementation Reviews?

Regulation is essential to the proper functioning of society and the economy. The PIR is part of a systematic approach to regulation, which assists the Government to ensure that new regulations remain appropriate and that they are efficient and effective in achieving the intended outcomes.

The regulation has lapsed. Do I still need to prepare a PIR?

Just because a measure has lapsed does not mean that you will not have to do a PIR, if a RIS was not originally prepared. However, if the measure has lapsed, this will usually reduce the impacts of the regulation. You will need to contact the OBPR to obtain formal advice as to whether or not a PIR will be required.

What if regulations have been amended from those initially implemented?

If the regulation has undergone significant changes since implementation, a PIR is still required unless the impact is of a minor or machinery nature. In cases where there have been changes to the nature or objectives of the regulation, these changes should be described in the PIR. Adequately describing the changes and the reasons they occurred will be an important aspect of meeting the OBPR's 'problem' and 'objectives' criteria for assessing PIRs.

Any new proposal to amend regulation may warrant a RIS unless the changes are of a minor or machinery nature. Where a RIS is required for the amendments, departments and agencies have the option of addressing the PIR through the RIS for the amendments.

What is OBPR's Role?

The OBPR is responsible for assisting departments and agencies with the preparation of PIRs and assessing their adequacy in the same way it assesses RISs. It will advise departments and agencies on whether a PIR contains an appropriate level of analysis.

In addition, the OBPR monitors the status and reports on compliance with post-implementation reviews. The OBPR will include information in the *Best Practice Regulation Report* and on its website on reviews to be undertaken, reviews that have been completed, and the adequacy of completed reviews.

Do we need to do a PIR if we have an exemption from doing a RIS?

A PIR is still required even if the Prime Minister has granted the proposal an exemption from the RIS process.

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The Government's best practice regulation framework is designed to ensure that regulation has efficient outcomes and does not create an unnecessary burden of "red tape" on stakeholders. For this reason, if a regulatory change was not subject to scrutiny under the regulation impact analysis process at the pre-decision stage, it is crucial that it be subject to a PIR.

Is there any way to get an exemption from doing a PIR?

No. The Australian Government's best practice regulation requirements state that, without exception, unless regulation is minor or machinery in nature, in the absence of an adequate RIS, the regulation must be subject to a PIR. The only way to avoid doing a PIR is to complete a RIS which the OBPR has assessed as adequate prior to the policy decision being made.

What if we do not have enough departmental resources available to conduct a PIR?

The Government's regulation impact analysis framework (which includes both RISs and PIRs) is the Government's mandated architecture within which regulatory policy development takes place. Agencies seeking exemptions from the RIS process should be mindful of the requirement to complete a PIR in making that request.

As noted above, no exemptions can be obtained for PIRs. Therefore, agencies must devote the existing resources to prepare an adequate PIR if one is required.

What if the regulation was introduced to meet an election commitment?

As noted in the *Best Practice Regulation Handbook*, election commitments are subject to some modified RIS requirements but an adequate RIS is still required between the time of the election and implementation. The OBPR will have advised the agency of the requirement to complete a RIS following the outcome of the election.

If the RIS requirements have not been met, a PIR on the regulation will be required, just as for other regulatory changes made without a RIS. The OBPR will have advised the agency of the requirement to complete a PIR in the absence of an adequate RIS. In this regard, the PIR is no different to any other regulation which has proceeded without an adequate RIS.

As with all PIRs, the focus should be on presenting and analysing the impacts of the policy. As noted in the body of this guidance note, the intention of a PIR is not either to critique or praise Government policy. Equally, to the extent that the policy represents a change in policy following a change of Government, the PIR is not intended to be a vehicle for criticising the past Government's policy. The PIR might also consider whether the Government's objectives could be achieved more efficiently, but this will not always be necessary for the PIR to be considered adequate by the OBPR.



Appendix A: Broad outline of a PIR report

- A.1 The following provides a broad outline which could be used to prepare a PIR. Using this outline will help to ensure that all of the types of information that need to be covered are included in your draft PIR. There are points of similarity between the content described below and the content that should be included in a RIS. However, with a PIR, there needs to be an added focus on how well the outcomes from the regulation are achieving the original objectives of the policy.
- A.2 Agencies should not consider this outline to be exhaustive. As noted elsewhere in this guidance note, the requirements for each PIR will be sensitive to the individual circumstances.

Identify the Problem

- A.3 This section should describe the problem or issue that prompted government action. Agencies should provide information on the nature and magnitude of the problem. Where the justification for government action is based on a market failure, the precise nature of this market failure should be identified. Agencies 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, agencies should include a description of the hazard and an assessment of the likelihood of occurrence. This includes assessing the worst and best outcomes from a 'do nothing' approach.
- A.4 If the problem or issue has changed during the post implementation period, then the PIR should examine the nature of that change, as well as provide some discussion of the reasons for the change. Significant changes may also require a re-evaluation of the need for ongoing intervention, a review of the scope of the existing regulatory response, or a consideration of the need to take additional action.

The case for intervention

- A.5 The agency should include a discussion of previous Government actions that attempted to address this problem. Where previous actions exist, the agency should identify which aspect of the previous regulation either caused the problem or failed to address the identified problem. This should provide the case for why additional or remedial action was deemed to be necessary.
- A.6 The agency should include in the PIR any evidence that a failure to act would have resulted in adverse consequences. This would include any evidence that the market, in conjunction with the general application of existing laws and regulations, would not have solved the problem. Where possible, agencies should also cite evidence or reasons why the problem would not have self-corrected within a reasonable timeframe.



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Articulation of the Policy Objectives

- A.7 This section of the PIR should clearly identify what objectives, outcomes, goals or targets were sought through the action taken by the Government. This will allow for effectiveness of the regulation to be assessed against an impartial benchmark.
- A.8 Information that could be included in the PIR at this point, if relevant, includes:
- any relevant public information, such as official announcements or press releases made at the time of the decision;
 - where a regulatory change is associated with a legislative change, the stated set of objectives in the relevant Act;
 - where there are multiple objectives of the policy, identifying the primary objective, and prioritising the objectives;
 - any constraints on the policy outcomes (for example, if they were required to be achieved within a certain timeframe); and
 - whether circumstances have caused any of the objectives, or the priorities of the objectives, to change over time.

If the available information is limited for any reason, agencies should make this limitation transparent.

- A.9 The aim of this part of the PIR is not to justify the chosen course of action, but to specify the policy aims so that the effectiveness and efficiency of regulation in achieving the aims can be properly assessed.
- A.10 The intention is not either praise or criticise previous policy decisions, but rather to help set each regulatory decision in its original context, which will help to ensure that the analysis presented in the PIR is balanced.

Impact analysis of introduced regulation

- A.11 A PIR needs a comprehensive assessment of the impacts (both costs and benefits) of the regulation, including how well the introduced regulation is achieving the original policy objectives. Generally, the impact analysis should cover the time the regulation was introduced up to the time of writing.
- A.12 Analysis of the impact of the introduced regulation should be conducted against most appropriate counterfactual. In many cases, the status quo prior to the introduction of the new regulation can be used as the benchmark for assessing impacts. Adopting this approach allows clearer identification of the costs and benefits resulting from implementing the policy.



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- A.13 However, if other policies and regulations have notably influenced the introduced regulation in the post implementation period, then the status quo may not be the best benchmark against which to assess impacts. In this case, the PIR should discuss these other policies and regulation, and their interaction with the introduced regulation relative to the status quo.
- A.14 Where appropriate, the analysis should also take account of any trends that were apparent in the benchmark situation. For example, if consumers had already begun to adopt a certain new technology, and a regulation were introduced to accelerate the uptake, the analysis should not assume that all of any observed increase is due to the new regulation.

Costs and Benefits

- A.15 Below is a list of costs and benefits that could be quantified in the PIR. Most of this information should be available through an appropriate level of consultation. Agencies should take advice from OBPR to help determine which costs and benefits need to be quantified for each particular PIR.

Costs

- A.16 Costs to businesses, including small business, might include:
- ‘paper burden’ or administrative costs to businesses associated with complying with and/or reporting on particular regulatory requirements
 - licence fees or other charges levied by governments;
 - changes likely to be required in production, transportation and marketing procedures;
 - shifts to alternative sources of supply;
 - higher input prices; and
 - restricted access to markets.

Impacts on Small Business

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 all impacts on small business be discussed, and where possible, quantified.

The PIR should consider the degree of impact on individual small businesses, the number of small businesses affected, and what the overall impact on small business has been in proportion to the impacts on other businesses or groups. It is important that the PIR pay particular attention to the compliance cost impact on small business, and the ability (or inability) of these businesses to absorb such costs. The Small Business Advisory Committee (SBAC) may assist in assessing the impact on small business.



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A.17 Costs to consumers may include:

- higher prices for goods and services resulting from restrictions on competition;
- reduced quality or range of goods and services; and
- delays in the introduction of goods to the marketplace and/or restrictions in product availability.

A.18 Costs to the community and/or the environment may include:

- environmental degradation or pollution;
- reduction in health and safety;
- undesirable redistribution of income and wealth; and
- lower employment levels or economic growth.

Impacts on the Not-for-Profit Sector

The PIR should consider whether or not the commercial activities of any Not-for Profit organisations (NFPs) are affected by the regulation. NFPs function in different ways to commercial businesses, and as such require separate consideration when assessing the impact of a regulatory proposal.

Because NFPs often lack the resources and skills base available to corporations, the PIR should examine whether or not the NFPs are disproportionately affected by the regulation, as well as considering the ability of NFPs to cope with regulatory change.

A.19 Costs to government may include:

- the costs of developing the regulation;
- running education campaigns/providing information;
- administration of licensing/inspection services;
- collection and collation of business information; and
- enforcement costs, including the costs of litigation.

Benefits

A.20 The PIR should identify and describe the benefits of the regulation to business, consumers, governments, other affected groups and the community at large. The PIR should attempt to quantify the benefits, noting that some benefits may not be readily quantifiable. Examples of benefits include:

- improvements in product and service quality;
- availability of a wider range of products and services;
- reductions in costs or prices;



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- reductions in workplace accidents and improvements in public health and safety;
- improvements in environmental amenity
- reductions in compliance costs for business and administrative costs for government; and
- improvements in the information available to business, the workforce, consumers or the government.

Distribution of costs and benefits

It is important for the PIR to acknowledge where costs or benefits are spread unevenly across the economy. The distributional effects of regulation are 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, with the costs being borne by a different group.

A.21 In considering the net impacts, the PIR must be careful to avoid double counting: for example, if a cost to businesses is passed on to consumers, this cost should be counted only once when estimating the net impact.

Consultation

- A.22 Agencies are expected to consult with stakeholders when undertaking a PIR. This process is intended to give agencies and decision makers some real-world feedback from those directly affected on how well a regulation is working, and can also be a useful tool for identifying easily obtainable improvements.
- A.23 The following set of best practice consultation principles should be considered by all agencies in assessing regulation as part of a PIR:
- Continuity – consultation should be continuous, and start early in the implementation process.
 - Targeting – consultation should be widely based to ensure 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.
 - Timeliness – agencies should consider the need to establish consultative arrangements well before the PIR is due in order to gather the necessary relevant data. Stakeholders should also be given sufficient time to provide considered responses, also taking in to consideration the time needed to incorporate findings to the PIR.
 - Accessibility – stakeholder groups should be informed of proposed consultation through a range of means appropriate to these groups. Agencies should be aware of the opportunities to consult jointly with other agencies to minimise the burden on stakeholders.



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- Transparency – policy agencies need to explain clearly the objectives of the consultation process, and should provide feedback on how they have taken consultation responses into consideration.
- 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.
- Evaluation and review – policy agencies should evaluate consultation processes and continue to examine ways of making them more effective.

Who has been affected?

- A.24 Agencies should gather data from as many affected groups as appropriate for the scope of the PIR, which should be commensurate with the overall impact of the regulation. The PIR will need to identify all groups affected by the regulation, whether directly or indirectly affected. Groups should generally be distinguished as consumers, business and government. Depending on the nature of the proposal, these groups may be further subdivided, such as distinguishing groups by income or geographical location. The extent to which groups need to be separately identified in a PIR will vary according to the regulation that is being assessed.
- A.25 It may also be necessary to identify specific groups that should have been affected, but have not been (e.g. in cases where the regulation is not successfully helping the target group that was identified in its objectives). In addition, the PIR should examine the effects on the community as a whole, such as environmental and social impacts.
- A.26 At a minimum, the PIR should include a discussion of the actual impacts of the measure on business and other stakeholders, including compliance costs. The analysis should examine, and unless impractical, quantify, how the actions, obligations and circumstances of different stakeholder groups have changed following implementation. For regulations that would have required the quantification of compliance costs as part of their RIS, the PIR must include an estimate of the incurred and ongoing compliance costs.

Government administration costs

- A.27 Government will almost always be a stakeholder in any regulation. To this end, the PIR should consider any issues with enforcing the regulation that have been highlighted by the regulator either during implementation or identified by other stakeholders during consultation.

Making use of stakeholder consultations

The views of stakeholders will be important in considering whether or not there are ways to improve the implementation of the regulation. Stakeholders are in a unique position to provide feedback on the implementation process. If available, a discussion of stakeholder views of the implemented regulation would generally be a useful inclusion in a PIR, possibly



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also including any stakeholders suggested changes.

There may be other issues revealed as part of the consultative process, which would make it appropriate for the agency to include in discussing alternative approaches to implementation. For example, the feedback from different stakeholder groups may show serious divergences in the impacts experienced from the regulation. These sorts of issues should also be discussed in this section of the PIR where relevant.

Conclusion

A.28 The PIR should draw a conclusion about whether or not the policy measure is meeting the original objectives, based on the evidence presented. The strength of any conclusions should be commensurate with the strength of the evidence (i.e. a strong conclusion should only be drawn based on high quality quantitative evidence). Where the quality of the available evidence leaves material uncertainties, these should be identified. The conclusion should also outline any proposed changes arising from the findings of the PIR.