BETTER REGULATION HANDBOOK

How to design and review regulation, and prepare a Regulatory Impact Statement

January 2011

Government of South Australia

Published January 2011

1. Introduction

2. The Regulatory Impact Assessment (RIA) Process

3. How to prepare a Regulatory Impact Statement

Chapter 1

Introduction

This Handbook aims to ensure that South Australian government agencies adopt best practice approaches when designing new regulation and reviewing existing regulation. It also guides agencies through the process of preparing a Regulatory Impact Statement (RIS).

The South Australian Government is committed to taking action to maximise the benefits delivered to the community by its regulatory activities, while avoiding or eliminating unnecessary compliance costs imposed on business and the community. The Regulatory Impact Assessment (RIA) process, in conjunction with the Government's Red Tape Reduction strategies and the 5-year rolling reviews[1] of existing regulation, seeks to support these objectives by:

- rigorously analysing the need for and the form of new regulation, so that decision makers are able to make fully informed choices which deliver the greatest benefits to the community while minimising costs to business;
- reinforcing the need for existing regulation to be continually improved and reviewed over time to make sure that it is operating as efficiently and effectively as possible; and
- ensuring that regulation is removed if it becomes irrelevant or ineffective.

It is mandatory that all South Australian Government agencies follow the RIA processes described in this Handbook.

In following the process outlined in this Handbook the South Australian Government will be meeting its commitment to follow the Council of Australian Governments (COAG) best practice regulatory principles as outlined below.

[1]On 28 April 2009, in response to the Economic Development Board's Economic Statement, the Premier announced that a key part of meeting a new $150 million red tape reduction target will be a rolling 5 year review of all business regulation. Agencies have been issued with a set of guidelines - *"Five-Yearly Reviews of Regulation – Guidance to Agencies on Establishing a Work Program"*, which assists them to identify priority regulation which has significant impacts on business for the purposes of the five yearly review program.

COAG Best Practice Regulation Principles

"COAG has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-
   a. the benefits of the restrictions to the community as a whole outweigh the costs, and
   b. the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed."

Source: COAG (2007) *Best Practice Regulation: A guide for Ministerial Councils and National Standards Setting Bodies,* October 2007, p.4.

Guidance material and other directives that are being replaced or their function altered by this handbook include:

- Department of Trade and Economic Development's Business Impact Statement Guidelines. The DTED Guidelines are to apply only to non-regulatory business-related impacts, but have been replaced by this Handbook for all regulatory proposals.
- The Department of Treasury and Finance's Guidelines for the Evaluation of Public Sector Initiatives. The DTF Guidelines remain in place for all proposals of a non-regulatory nature, but have been replaced by this Handbook for all regulatory proposals.
- The Premier and Cabinet Guide for NCP Legislation Reviews. This has been replaced by this Handbook.

This Handbook contains material which has been directly sourced, or adapted, from the Australian Government's Best Practice Regulation Handbook, the New South Wales Government's Guide to Better Regulation, and the Victorian Competition and Efficiency Commission's Victorian Guide to Regulation.

1.1 When should this Handbook be used – what is regulation?

Whenever agencies are proposing to introduce new regulation or review or amend existing regulation (including through the new 5-yearly review arrangements) the requirement to undertake the RIA Process is triggered. This Handbook is designed to guide agencies through this process.

Regulation, for the purposes of the RIA Process, has a broad interpretation and is defined as the range of instruments which are implemented to address a problem or risk and which either impose mandatory requirements upon business and the community, or seek to change behaviour. Generally regulation will involve governments using their powers to alter, control, influence or constrain the behaviour of entities or individuals in the community.

Regulation may be imposed through:

- an Act, or statutory instrument under an Act such as a regulation, proclamation or notice which is designed to govern the conduct of entities or individuals;
- other measures, such as codes, standards or accreditation schemes, to be agreed by the government to influence the behaviour of agents outside of government;
- an agreement between the government and industry members/representatives; or
- market based instruments such as levies or subsidies which are designed to influence or change behaviour.

A full discussion of the range of regulatory responses captured by this definition of regulation is contained at Appendix B.

The RIA process is triggered whenever regulation is being introduced or amended through the above instruments. Having followed the RIA process, agencies may conclude that as an alternative to the above types of regulatory interventions the preferred form of Government response is to use information or education campaigns to influence behaviour. Education and information campaigns do not require a RIS, but agencies do need to consult with the Strategic Communications Unit in DPC – http://www.premcab.sa.gov.au/stratcomms.

NOTE: The term 'regulation' is used throughout this handbook to refer to all regulatory instruments as defined above and discussed more fully in Appendix B.

1.2 Who should use the Handbook?

It is mandatory for all South Australian Government agencies, including bodies established by statute or administratively by government, to follow the process and principles described in this Handbook when introducing or amending any form of government regulation.

This Handbook should be used when introducing or amending any form of government regulation irrespective of whether implementation requires Cabinet sign-off, as a way of ensuring that the most effective and efficient regulatory option is achieved. For example, if regulation can be implemented by the approval of an individual Minister or other authority, the processes described in this Handbook should still be applied.

1.3 Role of Ministers

Ministers' endorsement and promotion of the RIA process described in this Handbook is critical to the achievement of more effective and efficient regulation being advanced to decision makers.

Ministers are responsible for ensuring that:

- the RIA process is undertaken impartially and transparently;
- agencies or those preparing the RIS and consulting with stakeholders have sufficient time and resources to competently complete it;
- RISs adequately address all the required elements described in Chapter 3;
- there is conformity with and support of the sign-off process.

Please address any inquiries relating to the content of this Handbook or to the RIA Process to Cabinet and Policy Coordination (Cabinet Office).

Cabinet Office can be contacted via email at DPCRegulatoryImpacts@sa.gov.au

Chapter 2

The Regulatory Impact Assessment (RIA) Process

It is a Cabinet requirement that the RIA Process is followed by all agencies.

This will result in all submissions to Cabinet on regulatory proposals being accompanied by a RIS, subject to the exclusions set out in Step 1 below.

Chapter 3 of this Handbook provides guidance on how to prepare a Regulatory Impact Statement (RIS). All submissions to be lodged with Cabinet must obtain sign-off from Cabinet Office that the RIS meets the requirements set out in this Handbook. A statement on the Cabinet Submission cover sheet will indicate whether Cabinet Office has signed-off on the RIS.

Agencies who submit regulatory proposals to Cabinet which have failed to gain Cabinet Office's sign-off and which impose costs on business (including non-government organisations) will be required to find off-setting red-tape reduction measures via the Red Tape Reduction Program, administered by the Office of the Economic Development Board (DPC).

A RIS is required when Cabinet is asked to make the initial decision regarding a regulatory proposal. In cases where legislation is involved, this will be the initial submission which seeks approval to draft. If a legislative proposal has been the subject of a RIS at the approval to draft stage it does not need to be repeated when Cabinet is asked to approve its introduction to Parliament, unless the proposal has changed significantly.

The RIA Process involves a number of steps, as shown in the flow chart below. The major steps, which are detailed more fully below, are:

Step 1: Determine if the policy proposal requires a RIS

Step 2: Assess whether consultation is required

Step 3: Plan consultation with stakeholders

Step 4: Prepare and submit a RIS for assessment by Cabinet Office, DTED, DTF, DFC and DENR[2].

Step 5: Red Tape Reduction Offset Requirement

[2]DENR acts as a co-ordinator of the assessment of environmental impacts and seeks the views of Department for Water, the EPA, the Sustainability and Climate Change Division in DPC and Zero Waste SA

Step 1: Does the policy proposal require a RIS?

Any proposal to impose or amend regulation (as defined in Section 1.1), which is submitted to Cabinet for approval, must be accompanied by a Regulatory Impact Statement unless the proposal is:

- Likely to have nil or minor impacts; or
- Subject to an exemption; or
- Required to be urgently implemented.

Proposals with nil or minor impacts

Agencies are not required to prepare a Regulatory Impact Statement where the proposed implementation or amendment of regulation:

- does not impact on business, consumers, the public or the environment (e.g. it only deals with administrative procedures within or between departments or it involves changes to the electoral rules); or
- is of a minor nature and does not substantially alter existing arrangements. A clear example is the annual indexation of regulatory fees by the Cabinet approved indexation factor.

Proposals subject to an exemption

Agencies are not required to prepare a RIS where the proposed implementation or amendment of regulation:

- relates to taxation or other revenue raising policy measures which are purely budgetary in nature; or
- relates to general criminal laws. A RIS is not required for proposals that involve changes to existing laws relating to offences, sentencing or court procedures unless the proposed change impacts on third parties. A RIS is required for proposals that introduce new offences; or
- deals with rare and exceptional emergency matters relating to the administration of justice or the protection of personal and public safety, where the impact of the regulatory proposal on business costs (either one-off or ongoing) is not significant. The meaning of "significant" is defined on page 8 below; or
- provides solely for the commencement of all or part of enabling legislation and a RIS has already been completed at an earlier stage of the Cabinet decision process; or
- is required to meet an obligation under a national agreement where a Regulatory Impact Statement has already been prepared (e.g. where the COAG best practice guidelines have been used, see note below). In these instances, proponent agencies are not required to prepare a new RIS but must advise Cabinet of the key findings of the national RIS, particularly the outcome of any cost-benefit analysis. If not already identified in the national RIS, the South Australian share of the costs and benefits of the national proposal should be estimated on the basis of population share or other appropriate indicators.

NOTE: There are Specific COAG Guidelines for Ministerial Councils.

The Government of South Australia's Better Regulation Handbook should not be used for regulation-making which occurs through the auspices of Ministerial Councils.

It is important that all Ministerial Councils follow consistent principles in developing proposals which have a regulatory impact. As such, in October 2007 COAG issued new guidelines for Ministerial Councils on best-practice regulation making and review. Where State Government agencies are involved in regulation making or review activities that are occurring through Ministerial Councils they should follow the COAG guidelines, which can be accessed at http://www.coag.gov.au/ministerial_councils/docs/COAG_best_practice_guide_2007.pdf

Proposals which require urgent implementation

The requirement to prepare a RIS in advance of Cabinet approval may be waived at the decision making stage in legitimate emergency situations. Waiver of the requirement to prepare a RIS in these circumstances must be obtained from Cabinet Office. In these cases, a RIS need not be prepared before the regulation comes into effect, but agencies must prepare a RIS within 12 months of making the regulation and Cabinet should be asked to formally note the emergency nature of the proposal and the timeframe for preparation of a RIS. As the RIS will be made after the event, the information in the RIS required by this Handbook should include an assessment of the actual performance to-date of the regulation to the extent that this can be assessed.

Decisions about whether a RIS is required

Where there is doubt as to whether the proposal involves minor impacts or whether it meets one of the exemption categories, agencies should consult with Cabinet Office to seek clarification of whether their proposal requires a RIS. Where agencies make decisions based on self assessment they need to consider the risk that Cabinet Office will make a finding contrary to that of the agency. This may result in delayed implementation/amendment of regulation while a RIS is prepared, or the agency may have their red-tape reduction target adjusted if the regulation would impose additional burden on business.

Where an agency assesses that a policy proposal does not require a RIS, the Cabinet Submission relating to the proposal must contain a statement which identifies that a RIS has not been prepared and upon what basis it has been assessed that a RIS is not required.

Step 2: Is consultation required?

Agencies should consult with affected stakeholders in relation to most, if not all, new and existing regulatory proposals. Consultation should be an ongoing feature of regulatory administration, not just at the time of introduction or review.

Consultation is designed to:

- help identify the problem, develop the options, identify and assess the costs and benefits of options and determine the optimal approach;
- provide feedback on the need for regulation and the level of support for the potential options; and
- ensure that regulatory policies across jurisdictions are consistent and complementary.

For the purposes of the RIA process, agencies must consult with stakeholders where a regulatory proposal:

- will have significant impacts on business, the community or the environment, and/or
- where the views of parties/stakeholders who are affected by the proposal will be an important consideration for decision makers or the proponent agency.

Test of Significance

The test of significance will vary with the problem and the regulatory proposal designed to address the problem.

A regulatory proposal may be deemed to impose significant impacts on business, the community or the environment if it:

- adds materially to business costs, directly or indirectly;
- affects a significant number of businesses overall or a significant proportion of businesses or activity within a particular industry;
- imposes any restrictions on competition in the affected industry, or the competitiveness of South Australian businesses;
- alters the ability or incentives for business to operate, invest or innovate (e.g. the capacity and willingness of business to establish new activities or expand existing activities, including investment, production, employment and export from South Australia);
- it materially affects the cost, quality, choice or availability of goods and services available to consumers;
- restricts the activities able to be undertaken by the community, or deals with risks to public health and safety; or
- has material impacts on environmental values including flora, fauna, biodiversity and the sustainability and quality of natural resources.

More detailed guidance is provided in Appendix C. Significance tests invariably contain an element of subjective judgement. Where agencies are uncertain as to the significance of the impacts they should seek advice from Cabinet Office on whether consultation is required.

In some cases consultation may be impractical or inappropriate (for example, if there are confidentiality concerns or the impacts are not considered significant enough to warrant an extensive consultation exercise).

Step 3: Plan consultation with stakeholders

Before undertaking consultation with stakeholders a consultation plan should be developed which considers:

- the objectives of each phase of consultation;
- who should be consulted;
- the form of consultation to be undertaken;
- the resources and time required to undertake the consultation;
- how the consultation will be evaluated; and
- review of the consultation and report results back to participants.

Phases of Consultation

Appropriate consultation should occur throughout the regulatory lifecycle, where possible, so that stakeholders have an opportunity to be genuinely engaged in the process.

Appendix D provides guidance on who should be consulted, the different forms of consultation and their advantages and disadvantages, the time required for consultation, and evaluating and reviewing consultation.

There are three phases of consultation to consider.

Phase 1: Initial contact with stakeholders.

Agencies may approach key stakeholders to gather preliminary information in order to develop an understanding of the problem, identify who the effected parties may be and ascertain whether a response is required, and if so, the possible regulatory options. This may take the form of consultation with individual stakeholders.

Phase 2: Broad consultation with stakeholders.

Having developed a preliminary understanding of the problem, this round of consultation provides for wider interaction with stakeholders. It enables agencies to acquire a more detailed understanding of the problem, check their understanding of the problem and float and garner feedback on regulatory options. Consultation at this stage may take the form of publication of an issues paper and requests for submissions in response, or a public forum.

Agencies can use this opportunity to seek information from stakeholders to assist in identifying the expected impacts of the proposed regulatory options and to gain stakeholder data on, or estimates of, the value of the costs and benefits of the various options. Agency staff involved in administering existing regulation may be able to provide insights into compliance costs.

Phase 3: Consultation with key stakeholders on the preferred regulatory option

After deciding on a preferred regulatory option, agencies may seek stakeholder feedback on any unintended or perverse outcomes that may result, any implementation issues, and suggestions on how to monitor the effectiveness of the proposed regulatory option. The key stakeholders may be revised to include new parties discovered during the second phase of consultation. This may take the form of small group or individual consultation.

Step 4: Prepare and submit RIS for Gatekeeper assessment

A RIS consists of seven elements, outlined below and explored more comprehensively in Chapter 3.

The RIS should be attached to the Cabinet Submission. The key findings of the RIS should be concisely summarised in the body of the draft Cabinet Submission, including a clear statement that the benefits of the proposal to the community outweigh the costs and the recommended option has the greatest net benefit for the community.

Cabinet guidelines require the RIS to be signed-off by Cabinet Office before it is submitted to Cabinet for decision. The Cabinet Office Sign-off Process is an evaluation of the adequacy of the assessment of the regulatory proposal undertaken by the agency as described in the RIS.

In assessing whether a RIS meets the requirements of this Handbook, Cabinet Office will consider all seven elements:

Element 1: Describing the Problem;

Element 2: Objectives of Government Action;

Element 3: Statement of Options;

Element 4: Analysis of Costs and Benefits;

Element 5: Consultation;

Element 6: Conclusion and Recommended Option; and

Element 7: Implementation, monitoring and review.

To initiate the RIS Gatekeeping Process (see page 12), the draft Cabinet Submission with the attached RIS should be circulated to Cabinet Office, DTF, DTED, DFC and DENR ('1' in the flow diagram). DTF will provide advice on the adequacy of the cost-benefit analysis, DTED will provide advice on business and regional impacts, DFC will provide advice on family and societal impacts, and DENR will co-ordinate advice on environmental impacts.

It should be noted that the DTF assessment of the cost-benefit analysis does not incorporate a Costing Comment regarding the budgetary impacts of the proposal. This must be obtained separately as per the process for all Cabinet submissions.

To ensure this process operates as quickly and efficiently as possible each impact assessment agency will respond directly to the proponent agency, providing a copy to Cabinet Office and other advising agencies so that they are kept abreast of changes. DTF, DTED, DFC and DENR will provide feedback to agencies within 5 working days of receiving the draft RIS ('2' in the flow diagram on page 12).

Where all impact assessment agencies and Cabinet Office advise that the RIS is adequate. Cabinet Office will provide sign-off for submission of the RIS to Cabinet ('5' in the flow diagram).

Where revisions are required, the proponent agency will need to resubmit the draft RIS, repeating circulation to all impact assessment agencies and Cabinet Office ('3' in the flow diagram).

Impact agencies will provide advice to Cabinet Office on the adequacy of the revised RIS within 3 working days of receiving the resubmitted draft RIS. Cabinet Office will make an overall determination of the RIS adequacy within 5 working days of receiving the resubmitted draft RIS (2 working days after receiving advice from the impact assessment agencies) ('4' in the flow diagram). Cabinet Office will be the final arbiter of the adequacy of the RIS taking into account the impact assessment agencies' comments. They will advise the proponent agency of their decision to sign-off on the RIS or provide detailed feedback on the RIS' deficiencies where they do not give sign-off. Where Cabinet Office sign-off is gained the proposal can be submitted to Cabinet for a decision ('5' in the flow diagram).

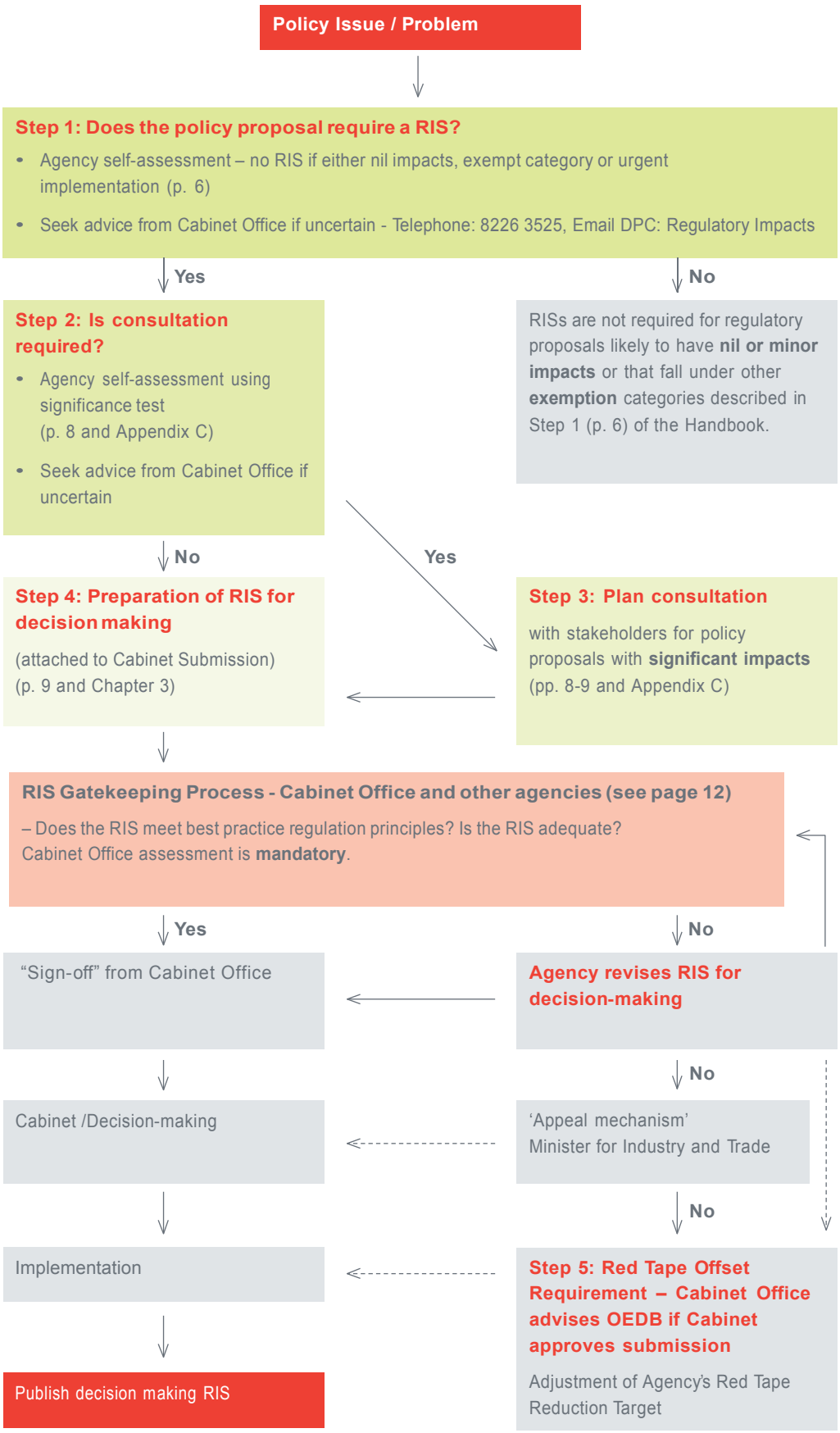
Where agencies have engaged with the relevant assessment agencies during the preparation of the RIS prior to seeking formal assessment to supply information and seek preliminary feedback a shorter response time may be negotiated. **Proponent agencies are encouraged to consult with the impact assessment agencies early in the process of developing their RIS to avoid any requirement for revisions.**

Where Cabinet Office sign-off is not gained and the agency does not revise the RIS, the agency may access an appeal mechanism. If deemed appropriate, the Minister for Industry and Trade, in his capacity as Chair of the Competitiveness Council, can override the Cabinet Office assessment. The proponent Minister should submit the appeal to the Minister for Industry and Trade.

Step 5: Red Tape Reduction Offset

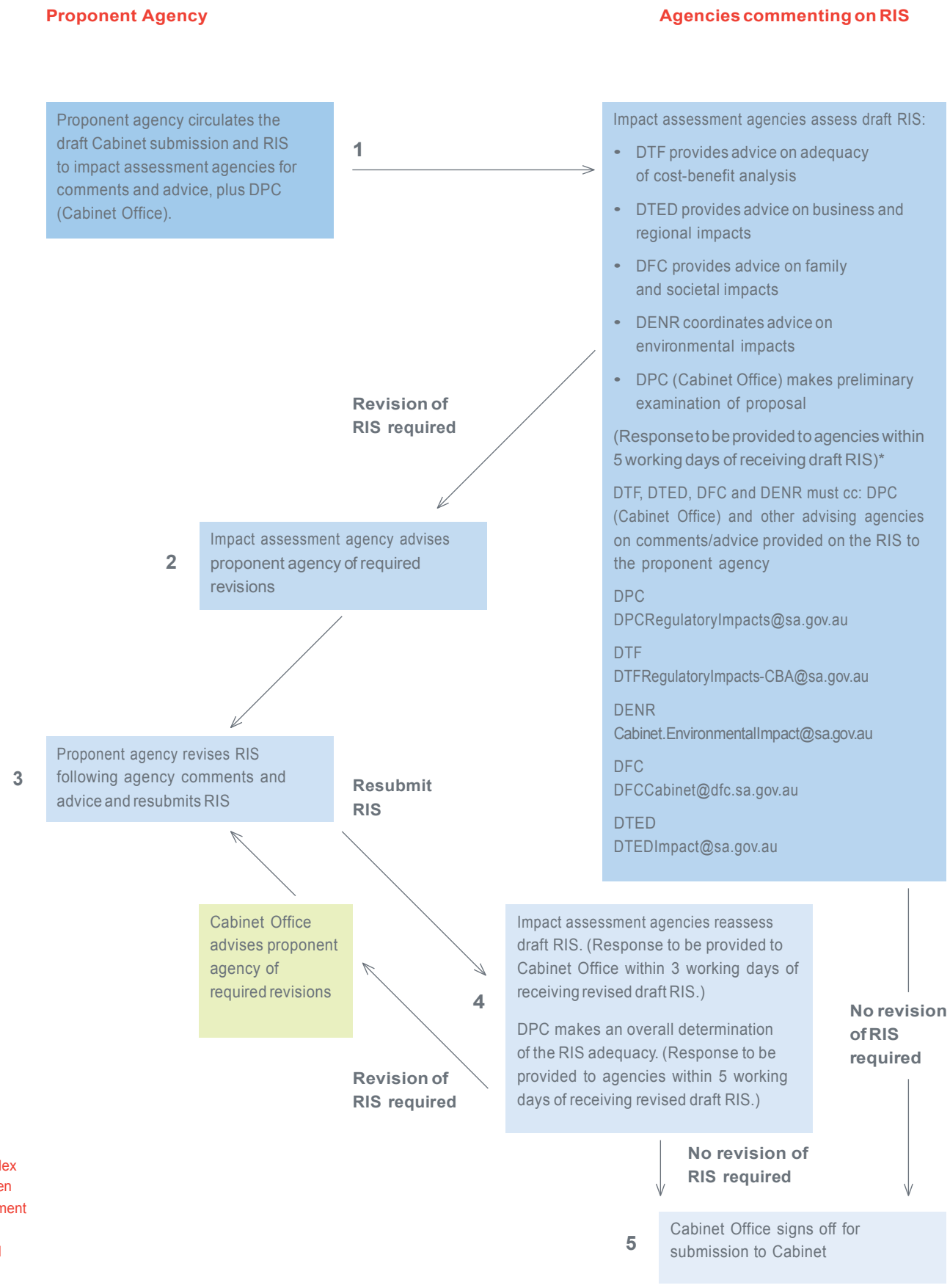
Where an agency does not get Cabinet Office's sign-off on a RIS, but seeks and obtains the approval of Cabinet for their proposal, Cabinet Office will advise the Office of the Economic Development Board (OEDB). The OEDB will then record and assess any business costs imposed by the submission as an increase in costs under that agency's red tape reduction assessment, requiring the agency to find offsetting savings to meet their red tape reduction target (unless Cabinet makes an explicit decision to the contrary).

Regulatory Impact Assessment



Note: Where it is 'optional' for agencies to seek advice from Cabinet Office, the onus is on the agency to comply with RIS requirements.

RIS Gatekeeping Process



*Note: Where proposals are particularly complex and there has been no prior arrangement the Gatekeeping agency may need to negotiate an extension to the turn around times.

Chapter 3

How to prepare a Regulatory Impact Statement

This section outlines the process for preparing a RIS and the key questions for consideration at each stage of the process.

The detail and depth of analysis in a RIS should be commensurate with the magnitude of the problem and with the size of the potential effects of the proposal. The time devoted by assessment agencies to reviewing the RIS should also be expected to be commensurate with the magnitude of the problem

A RIS need not be a lengthy document so long as each of the key elements are discussed and analysed with sufficient rigour. As a guide, a RIS is expected to be no more than 20 pages in length and shorter for less complex proposals. Some more complex proposals may need to have technical reports attached.

It is important that when reviewing or proposing amendments of existing regulation, that agencies approach this process from the very beginning, impartially, thoroughly and with no preconceived notions associated with the existing regulation.

Element 1
Describing the Problem

Element 1 of the RIS requires:

- the clear identification of the fundamental problem that needs to be addressed;
- an assessment of the significance of the problem, and
- establishing a case for government action.

The RIS should identify what is causing the problem, its duration and who is affected by the problem.

To gauge the significance of the problem the consequences of the problem should be described. The size of the problem should be described in terms of any loss or other repercussions that are being, or may be, experienced and identify the parties which are, or are likely to be, affected. This assessment should preferably draw on empirical evidence. This should include the description of the possible best and worst outcomes if no action is undertaken. Given these factors, a preliminary assessment of significance of the problem should be made.

Where the problem involves an element of risk, the description of the problem should include an assessment of the likelihood or probability of the problem occurring, with a description of the consequential harm and the costs which this harm would incur.

Having identified that a 'problem' is observed, and has significant consequences, the next step is to consider whether the problem can be effectively addressed by government regulation or another form of intervention. As government intervention has the potential to create cost and benefits, it needs to be kept in mind that subsequent elements of the RIS will require the agency to demonstrate that government intervention will lead to an overall improvement in community welfare.

The RIS should establish that government intervention is the most appropriate and effective form of intervention. There may be a case for government intervention where:

- Market forces are failing to generate an efficient outcome or maximise net benefits, i.e. a type of market failure exists. The main types of market failure are imperfect competition and market power, imperfect information, externalities and public goods (see Appendix E for further information on types of market failure).
- existing regulation is failing to achieve its objective or is creating unwanted consequences, i.e. regulatory failure (such as a government-imposed restriction on competition that is not in the public interest);
- an unacceptable hazard or risk is posed (such as human health and safety hazards, or threat of damage to the physical environment). The event, the probability of it occurring and the consequences should be described (see Appendix F for further discussion);
- social goals or equity issues need to be addressed (such as individuals or groups being unable to access available market information, goods or services); or
- issues of public order or protection need to be addressed.

If the problem is not caused or attributable to one of these problem types there is no case for government action. As such, there is no basis for policy intervention and no need to progress the development of the RIS.

If government intervention has previously been or is currently operating, describe the existing regulation and discuss the reasons for it not adequately addressing the problem.

Consideration should be given to which level of government may best address the problem.

Any constraints to addressing the problem should be identified. These may be technological, economic, political, administrative, social, or environmental.

[Note: the term market failure is sometimes misunderstood to indicate a failure of markets to deliver desirable economic, social or equity goals or industry development outcomes- these are not market failures if they do not arise from the circumstances described in Appendix E. Furthermore, market failure, by itself, does not indicate that government intervention is warranted, as the costs of this may outweigh the benefits. Government intervention can only be justified if it leads to an overall improvement in community welfare.]

Questions to ask:

What is the problem? What are the consequences of the problem? What is the magnitude of the consequences? Who is affected by the problem? What would happen if there was no intervention? Will the problem resolve itself within a reasonable amount of time? What supporting evidence of the problem is there?

What is the source of the problem? Is there a lack of information or differences in the availability of information for different groups? Is a particular goods or service provider abusing their market power? Are there factors which are influencing the way goods or service providers compete? Are parties, which are not involved in a market transaction, experiencing any unpriced gains or losses attributable to that transaction? Are there any goods or services which the market is not adequately providing because of the nature of the good or service? Is government regulation ineffective? Are there unacceptable hazards or risks that need to be addressed? Are there social goals or equity issues that require intervention?

Is there existing regulation to address the problem? Why is it inadequate? Could it be amended to effectively address the problem?

What constraints exist which may modify the choice of action to address the problem? Are these temporary or enduring?

Element 2
Objectives of Government Action

If the conclusion reached in Element 1 is that there is a potential role for government action, then the next step is to clearly articulate the primary objective of government action. The intended outcomes, goals or targets should be described. The objectives should not pre-justify a preferred solution. Nor should government regulation be considered to be an objective of government action (that is, regulation is a means to an end, not an end in itself).

The objective should be stated in specific terms, where progress will be measurable. It should be achievable in the prevailing economic conditions, specified time frames and with the resources available. It must be within the realm of government influence.

As far as possible the RIS should avoid articulating multiple objectives for the regulatory proposal. There should be a primary problem that the action is designed to address. Even if other ancillary objectives may be met through the action then the RIS should separately identify the primary objective and other secondary objectives.

Questions to ask:

What is the desired outcome of government action? What would represent a successful outcome?

Is the objective specified in a way that allows its achievement to be measured?

Are the objectives consistent with the Government's policy aims?

Element 3
Statement of Options

The Statement of Options of a RIS should demonstrate that a range of alternative ways of solving the problem or meeting the objectives of the proposal have been considered. One of the options must be maintaining the status quo, as this will form the base case, against which comparison of other options will be made.

As it is impractical to assess in detail every possible alternative solution to a problem, it is necessary to cover the most feasible range of options. However, the reasons for rejecting options without detailed analysis should be stated.

Options, or the combination of options, that may be considered include:

- explicit government regulation (black letter law);
- self-regulation;
- quasi-regulation;
- co-regulation;
- alternative instruments such as the direct provision of goods and services including information and education campaigns; and
- market-based instruments (including taxes, subsidies, tradeable permits).

A summary of alternative forms of regulatory intervention is given in Appendix B along with relevant case studies.

The starting point is to consider any government action that would achieve the specified primary objective.

The effectiveness of each option in achieving the objective should then be considered in order to rule out options that are likely to be infeasible or ineffective. This can be done by considering the following:

- The compliance and administrative burdens that the option will impose should be minimised as much as possible. Options which involve large costs but are unlikely to be any more effective than lower cost options could be rejected. Any potential impacts on economic incentives, such as competition, and other secondary effects should also be minimised.
- How the proposed regulatory option will operate alongside existing regulation, including those imposed by other governments. Any interaction of the proposed option with existing regulation should be identified and any conflict or duplication should be resolved. Consideration should be given to whether a uniform, harmonised or jurisdiction-specific model would achieve the least burdensome outcome (or generate the greatest net benefit for the community).

- How the option would be implemented and enforced, including what costs may be incurred by regulators and complying parties. Duplication of any requirements should be identified and eliminated where possible (e.g. where complying parties will be required to provide information that is already produced for another regulatory process; these should be collected once and shared between enforcement agencies). An assessment of the likely compliance and any associated issues should be described, as this will determine the ability to achieve the objective.
- Any constraints associated with addressing the problem should be examined, removing any unworkable or unattainable options.

The resulting list of feasible options should then be described in sufficient detail to allow assessment of the costs and benefits of the option.

Questions to ask:

Which options are capable of addressing the objective?

Which options are likely to be most effective in achieving the objective?

Are there any constraints that will rule out any of the options?

Have the options been described in sufficient detail to allow assessment of the associated costs and benefits?

Element 4
Analysis of Costs and Benefits

Every RIS must contain a cost benefit analysis (CBA) which comprehensively evaluates the effects of the regulatory proposal on the entire community.

The resources devoted to undertaking the CBA should be proportional to the significance of the proposal and the size of the likely economic and social implications. Where the impacts (costs and benefits) are not significant the CBA analysis will be quite straightforward.

The CBA template for writing up the findings of the analysis is included within the RIS template at Appendix A. Technical details regarding identification of costs and benefits, valuation approaches and calculating net present values are set out at Appendix G.

For each regulatory option proposed, the CBA should identify the impacts on all sectors of the community within the State – business, consumers, the wider community and the environment.

Where possible these impacts are to be quantified in terms of monetary value. The monetary value of the beneficial impacts is netted off the value of the cost impacts to arrive at a net benefit figure to the community.

This allows decision makers to:

- only recommend the implementation of those options that make the whole community better off (i.e. they have an estimated positive net benefit); and
- compare the net benefits of the different feasible regulatory options being considered and rank them according to the size of the net benefit thereby facilitating the decision maker's choice of the option which delivers the greatest net benefit to the community.

However the net benefit calculation is not in all instances the bottom line of the CBA. The CBA may ultimately contain:

1) A net benefit calculation for those items where monetary values can be assigned;
2) A discussion of whether any costs and benefits which cannot be expressed in monetary terms are sufficiently large to alter the net benefit finding;
3) A discussion of whether distributional outcomes are sufficiently concerning to alter the conclusion drawn from the first two steps above as to the appropriate policy decision.

The following steps should be undertaken in order to develop the CBA:

- Describe the 'base case' and set of short-listed policy options for which costs and benefits will be estimated;
- Establish the time frame over which the proposal is to be assessed;
- Delineate the scope of the assessment of costs and benefits;
- Identify the impacts, how they will be measured and any uncertainties surrounding them;
- Timeline the impacts;
- Monetise, quantify or describe the impacts;
- Undertake the Net Present Value calculation;
- Conduct sensitivity analysis;
- Detail any other factors for consideration in choosing the optimal option; and
- Rank the policy options.

Step 1: Describe the 'base case' and the short-listed regulatory options for which impacts will be estimated

The CBA aims to compare the impacts associated with the base case, which reflects the current arrangements, to the impacts incurred under each of the short-listed regulatory options. Where new regulation is being proposed the base case would consist of a 'do nothing' scenario over the time frame being considered. Where amending regulation is being considered the base case would consist of the current regulation continuing for the time period under consideration. The base case is not intended to be a static scenario but should incorporate all expected changes over the time frame being considered on a no policy change basis.

Not all policy options need to be considered in the CBA if a rigorous approach has been undertaken at Element 3 to arrive at the short-listed options.

Step 2: Establish the time frame over which the proposal is to be assessed

The total period over which impacts should be analysed needs to be long enough to capture all potential costs and benefits of the proposal. This will depend on the purpose of the regulation. For regulation which will last in perpetuity it is suggested that the time frame be no longer than 20 years due to the difficulty of making informed estimates this far in advance (some environmental regulation may have a longer time horizon and as such may be an exception to this generalised rule). For transitional regulation the time frame should be the period up to when the other measures come into effect.

Step 3: Delineate the scope of the assessment of costs and benefits

For the majority of proposals, the scope of the assessment of costs and benefits should extend to the entire State. However, where there are likely to be flow on effects to interstate businesses, consumers, governments or the wider community, including environmental spillovers, these should be taken into consideration. For example: a regulatory regime which differs from interstate regimes may impose costs on nationally operating businesses and these costs should be brought to account in the CBA; or, a reduction in greenhouse gas emissions from South Australia may result in higher emissions elsewhere in Australia under a fixed national cap/allocation of permits.

Step 4: Identify the impacts, how they will be measured and any uncertainties surrounding them

For each of the proposed regulatory options, the CBA should identify all the expected impacts and who will bear these impacts. The impacts should be measured as the additional (incremental) impacts incurred as a result of the regulations over and above the base case. Impacts that would have happened anyway (that is, before the regulation was in place or as part of normal business practice) should not be included.

Impacts judged to be advantageous or beneficial should be classified as benefits, while those that are deemed to be disadvantageous or which impose a cost should be classified as costs.

Once the impact has been identified, the most appropriate measure for it should be chosen (e.g. administrative time may be measured by the wage rate of the person assigned the administrative task multiplied by the time required to complete the task).

Any uncertainty surrounding the size and timing or any other factor relating to the particular impact should also be noted. This will be utilised in the sensitivity analysis, described at step 8.

The consultation process may assist with this step. During consultation, stakeholders should be asked to comment on the identified impacts to ensure they are comprehensively and accurately identified. Feedback should be sought on the appropriateness of the impact measure and on the estimated value, quantity or any qualitative effect of the impact.

The impacts should be broadly grouped by the type of impact - compliance costs, economic impacts, social impacts and environmental impacts. These impacts should then be divided into who is affected by these impacts - business, consumers, government and the wider community. This is discussed in more detail in Appendix G.

Step 5: Timeline the impacts

The impacts should be apportioned or assigned to the time period in which they are incurred over the life of the regulatory proposal.

Step 6: Monetise, quantify or describe the impacts

The next step is to consider whether the cost and benefit estimates can be:

- Valued in monetary terms; or
- Estimated as quantity measures, where it is not possible to monetise; or
- Qualitatively described, where quantification of any kind is not possible.

It is important that agencies attempt to value as many of the impacts in monetary terms as possible. Monetised values will form the basis of the net benefit calculation.

Once all costs and benefits have, as far as possible, been converted into monetary values they should be entered into a spreadsheet and allocated to time periods taking into account how each cost and benefit will change over time. As discussed earlier, this assessment should in most cases extend no longer than 20 years.

Where costs and benefits cannot be measured in dollar terms then the net benefit calculation will need to be supplemented with further information about non-monetised costs and benefits.

The RIS template at Appendix A contains a summary table for describing the key costs and benefits and the overall net benefit result. When seeking DTF assessment of the CBA, agencies will also need to supply the detailed CBA calculations in spreadsheet form along with any supporting documentation. DTF will review the methodology and robustness of the CBA (agencies will need to provide references to source data and evidence that it is the most contemporary and robust available). Agencies should retain all documentation and evidence relied upon for the CBA.

Assigning monetary value to impacts

In most cases, dollar values can be directly estimated from market prices.

However, converting some costs and benefits into dollar values can be difficult as competitive markets in the relevant outputs may not exist. For example, a regulatory proposal may lead to an increase in safety or a reduction in pollution emissions.

Where there are no direct market prices that can be observed to convert costs and benefits into dollar terms, it may be possible to use a range of indirect valuation techniques. These are discussed in more detail in Appendix G.

Quantification of impacts where monetisation is not possible

It may be difficult to value costs and benefits (e.g. a reduction in the incidence of disease, the avoidance of pollution, the protection of an endangered species, improvements in social outcomes, and reductions in deaths or serious injuries) where there is no 'market' for them. While attempts are sometimes made to assign financial values to such benefits and costs often the methodology is such that little reliance can be placed on the values obtained. If impacts cannot be measured in financial terms without a high degree of uncertainty, it may be preferable to quantify the impacts in non-monetary terms or describe the impacts.

One technique which is used to make a comparison between regulatory options, where quantification is possible but assigning a monetary value is not, is cost-effectiveness analysis which is discussed in more detail in Appendix G.

Alternatively, calculations can be done for a range of monetary values per unit to illustrate the impact on the net benefit result. Decision makers can then decide if the value necessary to give a positive or acceptable net benefit is a reasonable one. This approach is particularly useful when ranking similar projects. So, for example, if the costs exceed the benefits, but a major benefit cannot be expressed reliably in monetary terms, a 'low', 'medium' and 'high' range of monetary values could be constructed for that benefit to assess what impact these scenarios may have on the net cost/benefit result.

Qualitative description, where quantification is not possible

Where quantification is not possible, a qualitative description of the impact should be given.

Impacts which cannot be quantified at all are best dealt with by providing decision makers with a qualitative discussion of the likely impacts and allowing them to make a judgement as to whether the benefits justify accepting a proposal with an otherwise negative NPV or the costs would be sufficient to justify rejecting a proposal with an otherwise positive NPV.

Step 7: Net present value calculation

The net present value (NPV) calculation will be applied to all the monetised impacts described in step 6. Essentially the NPV calculation allows the stream of costs and benefits calculated over the lifetime of the proposal to be converted to a single figure which demonstrates whether the proposal results in a net benefit to the community (subject to assessment of any costs and benefits which are not able to be monetised).

In order to be able to compare the different regulatory options the NPV is calculated for each option. Guidance on how to calculate the NPV of the net benefit/cost of a proposal is provided in Appendix G.

If the NPV is positive, the policy improves community welfare. If the NPV is negative, the policy lessens community welfare. If all costs and benefits cannot be valued in dollars, the NPV result will need to be supplemented with information analysing the effects of non-monetised costs and benefits, as described above.

Step 8: Sensitivity analysis

There may be considerable uncertainty about predicted impacts and their appropriate monetary valuation. Sensitivity analysis provides information about how changes in different variables will affect the overall costs and benefits of the regulatory proposal. It shows how sensitive predicted net benefits are to different values of uncertain variables and to changes in assumptions. It tests whether the uncertainty over the value of certain variables matters, and identifies critical assumptions.

Sensitivity analysis helps assess uncertainties from the regulatory proposal and determines reasonable expected values for costs and benefits. The process of considering and trying to quantify uncertainties is valuable. It identifies the factors critical for policy success, allowing decision makers to focus more attention on estimating and managing them to reduce uncertainty.

The first step in a sensitivity analysis is to substitute the estimates you have made for each cost and benefit item within the most pessimistic estimates you can justify. This should be done for each variable simultaneously to see how much the net present value is affected. If the result is still greater than or equal to zero, then it may be concluded that even under worst case assumptions, the CBA supports the proposal.

The second step is to try to assess how risky the proposal is, that is, which variables significantly affect the net present value and which do not. This can be established by varying each variable one at a time, holding all other variables unchanged.

Step 9: Other factors to be considered in choosing the optimal option

Equity or distributional considerations

The analysis of costs and benefits in the CBA sums the costs and benefits across individuals without regard to the distribution of those costs and benefits. This aspect of the CBA is directed at whether the proposal delivers a net benefit society as a whole, rather than who receives the benefits or who pays the costs.

The way in which costs and benefits are distributed among various groups can also be important to decision makers. While the net benefit analysis cannot resolve equity issues, the CBA can draw attention to them by describing the impacts of proposed policies on different groups. Agencies may choose to further analyse the regulatory impacts by sub-groupings, for example, it may appropriate to group impacts by the size of business or community group, or different locations such as urban or rural.

If the information is available, a CBA can identify potential winners and losers and the magnitude of their gains and losses. It is then up to decision makers to decide whether distributional impacts or equity issues are important and need addressing. For example, the decision maker may decide to reject an option with the largest net benefit in NPV terms if it has significant adverse equity impacts. The reasons should be made explicit.

A single monetary value will not be able to be placed on the "cost" of less equitable outcomes or the benefit of more equitable outcomes. However, if information is available, the distributional impacts may be able to be quantified and even monetised for each group (e.g. the cost to those in the bottom 20 percent of the income distribution is $20 per week, whereas for those in the top 20 percent of the income distribution it is $5 per week).

Before rejecting a proposal with adverse equity impacts, however, some consideration by decision makers may be given to the relative ease or difficulty of addressing the distributional issues through other means. If there are existing mechanisms which are able to significantly and relatively easily address inequities created by the most beneficial regulatory option, then that option should not be rejected immediately on the grounds of equity but given further due consideration.

Cumulative regulatory burden

It may be necessary to consider the effects of multiple layers of regulatory burden on particular groups.

Step 10: Rank the policy options

Generally, the preferred option will be the one with the largest positive NPV, subject to consideration of non-monetised costs and benefits and distributional issues.

While maximising the net benefits to the community (in NPV terms) is the primary objective, agencies should be mindful also of the government's objectives to reduce regulatory costs imposed on business. If two (or more) options have a similar net benefit NPV result, but the costs imposed on business vary considerably, consideration could be given to the lowest cost option even if not the option which maximises the net social benefit.

Furthermore, the sensitivity analysis might suggest that the option with the largest NPV is not necessarily the best under all circumstances. For example, proponent agencies might be more confident in recommending the option with a lower expected value of net benefits, but with a smaller chance of imposing a significant net cost on the community (lower 'downside risks').

Element 5
Consultation

Effective consultation with affected stakeholders is an important part of the regulatory design and decision-making process. Consultation is required where there are likely to be significant impacts on business, families, society, the community or the environment, and/or where the views of parties/stakeholders who are affected by the proposal will be an important consideration for decision makers or the agency considering the various alternatives. The consultation process to be undertaken is outlined in Chapter 2.

After consultation has occurred and the feedback has been incorporated into the analysis, the final RIS should:

- detail the consultation that was undertaken throughout the RIA process, stating the objective of the consultation, when it occurred, the form, the time period during which input was sought or could have been provided, the input that was sought, and the stakeholders involved;
- outline the views expressed, including areas of agreement as well as areas of difference, and any information that was provided at the various consultation stages; and
- outline how those views were taken into consideration, including describing how consultation aided in clarifying the problem, identifying feasible options and their impacts, and determining the preferred option.

Questions to ask:

Who are the affected parties? Have they been consulted? What are their views?

How were stakeholders' views taken into consideration?

Element 6
Conclusion and Recommended Option

No new information should be introduced in this section of the RIS.

The RIS should describe the preferred regulatory option, how it will achieve the objective and the size and nature of the net benefits. Identify the groups affected by the preferred option and indicate how they will be impacted.

The RIS should demonstrate that the benefits of the preferred option to the community outweigh the costs, and that it delivers the greatest net benefit to the community. Any areas of uncertainty should be highlighted, particularly if they may have a significant impact on expected outcomes. It should be noted that while maximising the net benefits to the community is the primary objective, agencies should be mindful also of the government's objectives to reduce regulatory costs imposed on business. If two (or more) options have a similar net benefit result, but the costs imposed on business vary considerably, preference should be given to the lowest cost option.

The reasons that the other proposed options were rejected should be stated.

Any interaction with existing State regulation and any required amendments should be outlined. The consistency of this option with interstate measures should also be discussed, where appropriate.

Questions to ask:

What is the preferred regulatory option? How is the choice justified?

How will the preferred option achieve the objective?
What will be the impacts on the affected groups?

Element 7
Implementation, Monitoring and Review

This section of the RIS should detail how the preferred option will be implemented and monitored once implemented.

The implementation process should be described.
The parties required to administer, enforce and monitor the regulatory option on an ongoing basis should be identified, their roles described, and their resource requirements funding, staffing, training) outlined for each of these three tasks. A statement summarising the cost recovery mechanisms should be given.
Further information on cost recovery may be obtained from the Commonwealth Department of Finance and Administration' Australian Government Cost Recovery Guidelines <http://www.finance.gov.au/publications/finance-circulars/2005/docs/Cost_Recovery_Guidelines.pdf> and the Productivity Commission's Cost Recovery by Government Agencies, <<http://www.pc.gov.au/projects/inquiry/costrecovery/docs/finalreport>.

Those required to comply with regulation should be identified and the actions they will be required to undertake should be outlined (e.g. data collection and reporting, completing forms, undertaking training).

Any transitional arrangements to minimise the initial impact of the proposal (e.g. graduated introduction of requirements, information provision to complying parties) should be described.

The compliance strategy should be outlined (e.g. audit profiling, number and timeframe over which the audits would occur), detailing the penalty structure for non-compliance. The rationale for the chosen approach and the penalty mechanism should be given. A statement indicating the rate of compliance and the basis upon which this opinion was formed should be provided.

Once implemented, the regulatory option should be monitored to ensure that it remains relevant and effective over time. This is achieved by responding to ongoing feedback and by undertaking periodic comprehensive reviews of the regulation.

The RIS should identify how the regulation will be monitored. The data and information that will be collected to be able to monitor or objectively assess the performance of the regulation should be identified. The choice of measures should be able to be collected in an accurate and timely fashion. The measure, where possible, should be a direct quantification of the single policy objective.

The RIS should describe the parties that will be responsible for collection and provision of the data and information, the frequency with which it will be collected and any envisaged shortcomings of the data or information.

Provision for ongoing review should be made in order to ascertain and respond to any compliance issues, any unexpected consequences of the regulation, and any other matters that may arise. Measures for ongoing review may include provision of a complaints-handling or feedback mechanism or consultation with affected stakeholders.

Triggers for review and amendment of the regulation should be established for when the circumstances that led to the introduction of the regulation change.

At a minimum, a specific time period should be set for when a comprehensive review of the regulation will be undertaken.

When the review occurs it should consider whether:

- the original problem still exists;
- there is evidence of the objectives being met;
- the regulation has had the expected impacts or whether there were any unanticipated effects;
- the problem is still significant enough to warrant intervention; and
- the regulation is still the most appropriate action.

A sunset clause may be an effective way of requiring the review. Where sunset clauses are not used, and the regulation has no statutory or built-in review requirement, the RIS should note that the regulation will be reviewed under the automatic expiry provisions of the Subordinate Legislation Act 1978 or the Government's rolling 5 year reviews.

Questions to ask:

How will the option be implemented and enforced? By whom? With what resources? What cost recovery mechanisms are proposed and do they recover all of the administration costs? Is there any interaction with existing regulation?

What requirements will be placed on the regulated parties? Are transitional measures required? Is there any overlap or duplication of compliance requirements?

What is the process for monitoring the effectiveness of the regulation on an ongoing basis? What indicators will be collected, from whom, how frequently? Are there plans for ongoing consultation or feedback or complaint mechanisms? How will the regulation be amended in response to this feedback?

When is a comprehensive review scheduled? What will the review process involve?

Appendix A

RIS Template

Government of South Australia

Regulatory Impact Statement

RIS title: (proposed regulation)

Prepared by: (name, agency)

Date: (email date)

Executive Summary

Problem:

Summarise the main problem (Element 1) – describe the problem, its significance and who is affected. Outline the consequences of not taking action.

Objective:

Summarise the objectives of government action (Element 2). State the objective of government action and summarise the case for government intervention.

Proposed options:

Summarise the proposed options (Element 3) – describe the range of possible options and discuss their effectiveness in addressing the problem.

Preferred option:

Summarise the preferred option (Elements 4 and 6) – demonstrate that the preferred option delivers the greatest net benefit to the community. Summarise the compliance, economic, family and societal, and environmental costs and benefits of the preferred option, the sensitivity of the results, and the relative impact on the various groups of society affected (e.g. business, consumers, government, community). Provide the NPV estimate for the preferred option, and where the preferred option does not have the greatest net benefit as measured by the NPV calculation, discuss the overriding factors. Provide the estimated cost to business of the preferred option.

Consultation:

Discuss any consultation which has occurred and outline advanced positions (Element 5).

Implementation, monitoring and review plan:

Summarise Element 7. Outline the implementation plan, the resource requirements and how they will be funded, the data requirements for effective monitoring and the review timeframe. Discuss any consultation which occurred and outline the positions advanced.

A copy of this template can be downloaded from the Cabinet Office and Policy Coordination Intranet site;

http://intra.sa.gov.au/site/cabinet/ <http://intra.sa.gov.au/site/cabinet/>

Element 1 - Problem:

Describe the main problem.

- Describe the nature of the problem. Provide evidence of the scale, scope and costs of the problem. Identify who is affected by the problem.
- Outline the consequences of not taking action. Establish that government action is warranted and appropriate (e.g.. market failure, regulatory failure, unacceptable hazard or risk, social goals/equity issues). Where government action is already being undertaken, demonstrate that it is not adequately addressing the problem.
- Identify any constraints to addressing the problem (e.g.. economic, technological, economic, political, administrative, social or environmental).

Element 2 - Objective:

Describe the objectives of government action.

- Describe the primary objective of government action in addressing the problem. Describe the intended outcomes, goals or targets of government action.

Element 3 – Statement of options:

- Describe the options (which should include the status quo as an option). Describe each of the options' likely effectiveness in addressing the problem and comment on the feasibility of each including whether it is the least onerous form of regulation. Detail any risks associated with any of the options.
- Detail any implementation and enforcement issues and the likely levels of compliance.
- Comment on whether other jurisdictions have addressed the problem. Describe if the proposed option will duplicate, be uniform with, or harmonise with other jurisdictions' regulation.
- Narrow down and describe the feasible options and the reasons for rejecting other options:

Base case:

Describe the 'base case' for which impacts will be estimated.

Other options:

Describe the feasible short-listed regulatory options for which impacts will be estimated – which will usually be the status quo.

Scenario 1:

Scenario 2:

Scenario 3:

Scenario 4:

[add or delete the appropriate number of scenarios]

Element 4 – Analysis of costs and benefits:

Time frame:

Describe the time frame over which the proposal is to be assessed. DTF recommends no longer than 20 years.

Scope of assessment:

Define the scope of the assessment of costs and benefits – i.e. what are costs and benefits arising from the proposal.

Element 4 - Base case

Impacts:

Describe the impacts on business, consumers, government and the community for the 'base case'.

Go through:

- compliance (one-off and on-going);
- other economic;
- family and social; and
- environmental impacts.

Classify the impacts as benefits or costs.

Measurement of the impacts - monetise, quantify or describe

Identify how the impacts are to be measured in terms of:

First best – money. Use the Business Cost Calculator to estimate the value of compliance costs on business;

Second best – quantified; and

Last – qualitatively described.

Uncertainties surrounding the measurement of the impact – e.g. timing, magnitude

Describe any uncertainties surrounding the impacts.

Enter data in the supporting calculation template

Element 4 - Scenario 1

Impacts:

Describe the impacts on business, consumers, government and the community for Scenario 1 (compared to the base case).

Go through:

- compliance (one-off and on-going);
- other economic;
- family and social; and
- environmental impacts.

Classify the impacts as benefits or costs.

Measurement of the impacts - monetise, quantify or describe

Identify how the impacts are to be measured in terms of:

First best – money. Use the Business Cost Calculator to estimate the value of compliance costs on business;

Second best – quantified; and

Last – qualitatively described.

Uncertainties surrounding the measurement of the impact – e.g. timing, magnitude

Describe any uncertainties surrounding the impacts.

Enter data in the supporting calculation template

Element 4 - Scenario 2

Impacts:

Describe the impacts on business, consumers, government and the community for Scenario 2 (compared to the base case).

Go through:

- compliance (one-off and on-going);
- other economic;
- family and social; and
- environmental impacts.

Classify the impacts as benefits or costs.

Measurement of the impacts - monetise, quantify or describe

Identify how the impacts are to be measured in terms of:

First best – money. Use the Business Cost Calculator to estimate the value of compliance costs on business;

Second best – quantified; and

Last – qualitatively described.

Uncertainties surrounding the measurement of the impact – e.g. timing, magnitude

Describe any uncertainties surrounding the impacts.

Enter data in the supporting calculation template

Repeat the above for additional scenarios

Element 4 - In the supporting calculation template

For the base case and each of the scenarios:

Convert any nominal costs and benefits to real costs and benefits using the last sheet in the workbook;

Enter the annual real gross costs and benefits in the year in which they are incurred by the group that bears the legal cost of them e.g. business, consumers, government, community. Note: the template is set-up to calculate the annual net benefit and the net present value; and

Undertake sensitivity analysis on the uncertainties identified.

Element 4 - Discount rate

If the discount rate is not the DTF default discount rate, provide the rationale for using an alternative rate.

Element 4 - Assess non-monetised impacts against the NPV results

For the base case and each of the scenarios:

Monetised impacts

Rank each option according to the NPV of the monetised impacts.

Quantifiable impacts

Calculate and describe the quantifiable impacts, the method of quantification and assumptions made.

Qualitatively described impacts

Describe the qualitative impacts.

Sensitivity analysis results

Report the results of the sensitivity analysis – e.g. the range of NPV results under the different assumptions.

Assessment of whether and how these impacts modify the NPV results

Provide the rationale as to whether the quantified or qualitatively described impacts or the sensitivity analysis modify the ranking of the NPV results.

Element 5 - Consultation

- Detail the consultation that was undertaken throughout the RIS process, including when it occurred, the form, the time period during which input was sought or could have been provided, the input that was sought, and the stakeholders involved.
- Outline the views expressed and information provided at the various consultation stages.
- Describe how consultation aided in clarifying the problem, identifying feasible options and their impacts, and determining the preferred option.

Element 6 – Recommended Option

- State the preferred regulatory option. Detail the size and nature of the net benefits. Identify the groups affected by the preferred option and indicate how they will be impacted.
- Provide justification for this option in terms of its effectiveness in meeting the regulatory objective and its efficiency (i.e. providing the greatest net benefit to the community subject to other considerations).
- State the reasons that the other proposed options were rejected.

Element 7 – Implementation, monitoring and review

- Detail how the preferred option will be implemented and enforced. Identify those parties who will have a role in administering and enforcing the proposal and detail their resourcing requirements taking into account any cost recovered amounts. Identify the requirements that are imposed on those parties that will be subject to the regulation. Outline the compliance strategy and penalties.
- Comment on the preferred option's consistency with existing regulations, policies or agreements and any required amendments and the time frame in which this will be undertaken.
- Detail any transitional issues and plans for addressing these.
- Describe how the regulatory option will be monitored to measure the performance of the option in meeting the objective. Describe the measure(s) and the method of collecting the data or information.
- State the times specified for reviewing the preferred regulatory option.

Appendix B

Types of Regulation

Regulation, for the purposes of the RIA Process, has a broad definition and refers to the range of instruments which are implemented to address a problem or risk and which either impose mandatory requirements upon, or seek voluntary change of behaviour from, business and the community.

The range of regulatory responses is described more fully below to assist agencies to consider the various types of regulation available when exploring feasible options for addressing the problem under consideration.

Explicit government regulation (black letter law)

Explicit government regulation – sometimes referred to as black letter law – encompasses the government passing legislation, which may be either primary or subordinate, which sets out the achievement of specific outcomes. The regulation may range between being performance based, where the objectives are specified but regulated parties are able to choose how they meet the objectives, to prescriptive, where the manner or means of attaining the objectives are specified. This form of regulation relies upon monitoring and punitive sanctions (e.g. fines) to achieve compliance.

Consider using where:

- the problem is high risk and/or of high impact/ significance (e.g. a major public health and safety issue)
- the government requires the certainty provided by legal sanctions;
- 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);
- there is a systemic compliance problem with a history of intractable disputes or repeated or flagrant breaches of fair trading principles, and no possibility of effective sanctions being applied without statutory force; and
- existing industry bodies lack adequate coverage of industry participants, are inadequately resourced or do not have a strong regulatory commitment

Advantages

- Provides a high level of certainty
- Ability to impose punitive sanctions yields higher compliance rates
- Provides broader industry-wide coverage

Disadvantages

- Imposes uniformity and may be less flexible and less responsive to changing conditions
- Not effective for changing the quality of complex services
- Difficulties in understanding the legislation may reduce compliance
- Higher government budgetary costs and compliance costs, which are likely to be passed on to regulated entities

Self-regulation

Self-regulation involves an industry or profession developing rules, standards or codes of conduct which reflect accepted benchmark standards for carrying on their activities. The industry or profession is solely responsible for enforcement. The government usually has no input other than the provision of information or advice.

Consider using where:

- the problem is low-risk or has a low impact
- incentives exist, such as industry survival, market advantage or collective reputation, for industries or professions to address the problem (e.g. professions benefit by minimising negative publicity generated by sub-standard practice by a member)
- sufficient power and common interest exists to achieve broad coverage and compliance across the industry or profession
- the industry or professional association has the expertise, sufficiently wide representation and administrative capacity to undertake the development, maintenance and enforcement of the standards or codes of conduct
- the cost of compliance is small

Advantages

- High compliance, where there is broad coverage and support
- Draws upon industry expertise and experience
- Enables innovative behaviour
- Low government administration costs

Disadvantages

- Not legally enforceable
- May facilitate protectionist behaviour or reduce competition
- Monitoring costs are borne by industry/ the professions

Example of self-regulation

South Australian Fitness Industry (Voluntary) Code of Practice

The South Australian Fitness Industry Code of Practice (the Code) applies to Recreation SA Fitness Industry Organisational Members who are signatories to the Code.

When joining a gym, customers should look for Fitness Industry Accredited Members who comply with the Code, which ensures that standards are maintained and good service is guaranteed in the accredited centres.

The key objective of the Code is to provide high value services and facilities and enhance consumer confidence in the industry. The Code sets a standard of business practice that protects consumers' rights beyond those provided under the Fair Trading Regulations 2007 as well as a standard of service that protects the health and well being of the consumer. The Code establishes procedures to resolve complaints and disciplinary processes for defaulting signatories.

The Code is administered by the Recreation SA Fitness Standing Committee (RecSA FSC), which appoints a Code Administration Committee (CAC). Where a breach of the Code has been determined, the RecSA FSC will request corrective action. The RecSA FSC may issue warnings or censures to non complying Code signatories. If corrective action is not undertaken within the time allocated, the CAC may recommend that the RecSA FSC suspend the signatory's membership for a period, or, in the event of continued non-compliance, the CAC may recommend that the signatory be expelled.

http://www.fitness.org.au/sa_fitness_industry_code_of_practice.pdf

Quasi-regulation and co-regulation

Quasi-regulation includes a wide range of rules, arrangements or standards where governments influence or pressure businesses to act in a certain way, but which are not legally binding. Examples of quasi-regulation include government-endorsed industry codes of practice or standards, government-issued guidance notes, industry–government agreements and accreditation schemes. The government may bear influence by providing official endorsement, having representation on regulation setting/monitoring bodies, grant funding or other assistance, or threatening to introduce explicit regulation.

Co-regulation (e.g. code of practice, an accreditation or rating scheme) is where a regulatory arrangement is developed by an industry or profession, in consultation with government, and is legally enforceable due to the government provision of legislative backing. Legislative underpinning may take the form of:

- delegating power to industry to regulate and enforce codes;
- enforcing that undertakings comply with a code;
- providing for a reserve power to have a code;
- requiring industry to have a code, with the provision that a government code may be imposed in the absence of an industry code; and
- prescribing industry codes as voluntary or mandatory.

Consider using where:

- self-regulation is unlikely to be effective and there is a case for low-level government intervention to address the issue
- a short-term urgent response is required while a long-term regulatory solution is developed
- a collaborative approach between government and industry is advantageous, with industry driving compliance. This relies on there being a specific industry solution to the issue, a cohesive industry with aligned incentives and interests, the ability to apply effective sanctions or the existence of sufficient incentives to achieve compliance, low scope for benefits to be shared by non-participants, and a strong industry association with sufficient resources

Advantages

- Draws upon industry expertise and experience
- More flexible and responsive
- Encourages industry and professions to be responsible for its collective behaviour
- Low government administration costs
- Higher compliance because industry generated regulation

Disadvantages

- Not legally enforceable (quasi-regulation)
- May facilitate protectionist behaviour or reduce competition
- Monitoring costs are borne by industry/the professions

Examples of Co-regulation

Independent Gambling Authority
State Lotteries Responsible Gambling Code of Practice

The State Lotteries Responsible Gambling Code of Practice (the Code) provides a framework through which the Lotteries Commission ("gambling provider") can ensure that its general gambling practices are consistent with the community's expectations that South Australian Lotteries business will be conducted in a responsible manner so as to minimise the harm caused by gambling.

The Independent Gambling Authority approved the Code for the purposes of Section 13C of the State Lotteries Act 1966 (the Act).

Under the Act, a Commission must adopt a code of practice approved by the Authority dealing with:

(i) the display of signs, and the provision of information, at offices, branches and agencies of the Commission relating to responsible gambling and the availability of services to address problems associated with gambling; and

(ii) the provision of training of staff relating to responsible gambling and the services available to address problems associated with gambling; and

(iii) any other matters designed to reduce the incidence of problem gambling determined by the Authority.

http://www.salotteries.com.au/library/RG-Code.pdf

Medical Board of South Australia
Code of Professional Conduct

The aim of this Code of Professional Conduct (the Code) is to set out general principles, which promote professionalism in the practice of medicine, thereby protecting the health and safety of the public. The principles complement the requirements of the Medical Practice Act 2004 (the Act) and case law. However, they are not a substitute for the provisions of law and case law and in the event of any doubt, the legislative provisions take precedence. The Code applies to all medical practitioners in South Australia.

The Medical Board of South Australia is a statutory authority established under the Act. The Board oversees the registration of medical practitioners and monitors their professional conduct, to ensure that doctors provide the community with the highest quality of medical care.

http://health.adelaide.edu.au/gp/education/acute_chronic/Med_Board_SA_Code_of_Conduct.pdf

The Real Estate Institute of South Australia
The Real Estate Code (Conduct, Ethics and Behaviour in Real Estate)

The Real Estate Institute of South Australia (REISA) is the peak industry body representing more than 2200 real estate professionals in South Australia. All members are required to abide by the Real Estate Code (Conduct, Ethics and Behaviour in Real Estate) (the Code).The objectives of the Code are to define, encourage and reward compliance and enable enforcement of conduct, ethics and appropriate behaviour.

The Code sets boundaries of acceptable conduct in real estate practice and defines the minimum standards of behaviour required in order to be eligible to hold membership of REISA. The Code also provides a public standard of behaviour, which the profession, the legal system, Government legislators and consumers can use to benchmark behaviour and upon which disciplinary actions may be established.

http://wic003lc.server-web.com/~admin417/index.php?page=code-of-conduct

Alternative instruments

Within each form of regulation, a number of alternative instruments can often be used. Alternative instruments (only some of which will be relevant for a particular type of regulatory form) may include:

- no specific action (that is, rely on the market in conjunction with existing general liability laws (negligence or breach of contract) and insurance laws);
- ongoing monitoring of the problem and its consequences;
- information and education campaigns (including product labelling or media campaigns) – this would not require a RIS as it is subject to review by the Strategic Communications Unit in DPC (http://premcab.sa.gov.au/stratcomms;
- market-based instruments (including taxes, subsidies, tradeable permits, performance bonds and tradeable property rights);
- pre-market assessment schemes (such as listing, certification and licensing);
- post-market exclusion measures (such as bans, recalls, licence revocation provisions and 'negative' licensing);
- service charters;
- standards (including voluntary and regulatory, performance-based or prescriptive); and
- other mechanisms, such as public information registers, mandatory audits and quality assurance schemes.

In thinking about alternative instruments, particularly information and education campaigns, agencies should consider whether there may be ways to achieve behavioural change in the community through interventions which could impose lower cost burdens than traditional regulatory or control interventions.

Once a problem has been identified and the objectives of government intervention are determined, an understanding is required of the determinants of any behaviour that may be producing adverse impacts on community welfare. This is likely to be particularly important in areas such as health and the environment where human behaviour (e.g. smoking, recycling, littering) is the target of regulatory activity.

Many traditional regulatory approaches rely on an assumption that people will respond rationally to government intervention that seeks to address a market failure or externality.

In most instances this will be the case and regulations, taxes, financial incentives, fines or penalties etc will have the desired outcomes if they are effectively constructed.

Human behaviour is, however, very complex and certain behaviours may persist despite clear incentives for change. Behaviour may be difficult to alter because of factors such as:

- conditioning – people may have long held associations (e.g. that smoking is a glamorous activity) that are hard to break down;
- convenience – people may see the community benefit in certain behaviours (e.g. recycling, catching public transport) but still may not adopt them if not personally convenient even if they are made financially attractive.
- inertia – e.g. a tendency to select a default option over a change option even where the default decision is quite arbitrary;
- biases in decision making - such as placing more value on avoiding losses than obtaining a gain, placing greater weight on events that happened more recently than those which happened some time ago or having higher discount rates than market interest rates may imply (particularly individuals and households with limited means).

An understanding of the causes of resistance to behavioural change is essential in order for messages to be targeted effectively. For example, the perceived authority attached to a message may be an issue in order to gain acceptance, which may require governments to consider using other groups to help convey messages (e.g. partnerships with GPs to promote public health messages). Helplines may assist people to gather more information particularly where issues are complex or behavioural change at an individual level requires support mechanisms. Behavioural change (e.g. quitting smoking) may require a number of staged approaches with simple steps taken one at a time. The costs of undesirable behaviours should be highlighted through clear examples, and the benefits of changed behaviours emphasised and brought into the present time to the maximum extent possible.

Consider using where:

- the problem or market failure could respond effectively to price signals (e.g. taxes, subsidies, fixed permit allocations)
- the compliance costs associated with legal interventions are prohibitive
- legally enforceable responses such as fees or penalties may have uncertain effects on entrenched behaviour

Advantages

- Can enable innovative responses by harnessing market forces
- May avoid or minimise costs
- Can be targeted at different segments of the community

Disadvantages

- Indeterminate compliance outcomes
- Potential budgetary costs (e.g. subsidies, information campaigns)

Examples of alternative instruments through certification

Primary Industry and Resources
South Australian Seed Certification Scheme

Primary Industries & Resources South Australia (PIRSA) Seed Services operates an official South Australia Seed Certification Scheme (the Certification Scheme) based on the Rules and Directives of the Organisation for Economic Co-operation and Development Seed Schemes and the International Seed Testing Association.

The Certification Scheme is provided on a voluntary basis, as there are no parliamentary acts or regulations governing its operation. Service fees applied by PIRSA are based on full cost recovery and user pay principles, and are reviewed annually.

The Certification Scheme aims to provide the consumer with seed of high varietal or genetic purity but gives no guarantee of this other than to certify that an acceptable procedure, based on internationally recognised standards and accreditation protocols, has been followed to achieve this goal.

http://www.pir.sa.gov.au/ data/assets/pdf_file/0005/43367/sm_intro.pdf

Example of alternative instruments through government information

Essential Service Commission of South Australia Ports Price Monitoring Report – Price Monitoring Regime

The Essential Service Commission of South Australia (ESCOSA) publishes an annual series of Ports Price Monitoring Reports under the price monitoring regime applying to Essential Maritime Services.

The purpose of these reports is to provide South Australian port customers and the community with information regarding certain port costs at South Australian proclaimed ports.

Annual price monitoring also assists ESCOSA to identify any trends that might suggest whether or not a port operator has misused their market power. This issue is directly relevant to the ESCOSA's consideration of the appropriate form of price regulation that should be applied under future price determinations.

http://www.escosa.sa.gov.au/library/101101-2010_PortsPriceMonitoringReport.pdf

Appendix C

Assessing the significance of regulatory impacts to determine when consultation is required

Where a regulatory proposal is likely to impose significant impacts, the agency is required to undertake consultation with stakeholders in relation to the proposal.

In order to provide guidance on whether the regulatory impact is significant the following list has been compiled. The effects imposed by regulation on business, the community or the environment which would be considered significant are listed below. The list is not exhaustive.

Business impacts

A 'significant' impact on business includes situations where the proposal will, or is likely to produce the following effects:

- add materially to business costs, directly or indirectly
- imposes non trivial requirements on the conduct of their business operations in terms of:
  - > the manner in which they produce and / or sell goods and services;
  - > the information they are required to provide to consumers;
  - > the information they are required to disclose about their operations to Government or other parties;
  - > their employment practices;
  - > requirements imposed upon them to be able to operate their businesses (licensing, registration, etc.);
  - > reporting obligations or any other requirement that imposes direct or indirect costs on business (even if these costs are passed on to consumers);
  - > the way the activities of a business, or group of businesses are undertaken.
- place South Australian businesses at a competitive disadvantage with interstate and overseas competitors; and
- affect a significant number of businesses overall or a proportionately large number of businesses within a particular industry
- have immediate and longer term implications for the capacity and willingness of business to establish new activities or expand existing activities, including investment, production, employment and export from South Australia
- affect the efficiency of resource use and productivity levels
- affect the ability of business to access debt or equity finance
- affect the ability of business to access local, interstate and overseas markets
- affect the ability of business to tender for or make Government contracts
- have a concentrated effect on a particular group, region or industry
- have a large aggregated impact on the South Australian economy
- impact disproportionately on the prospects for small businesses
- impose higher costs on a particular class of business or type of products or services
- create a disincentive to private investment
- affect the ability of businesses to innovate, adopt new technology, or respond to the changing demands of consumers

Examples of impacts with low significance for business might be:

- a change in the format of reporting requirements for businesses;
- changes to regulation that are machinery in nature involving technical changes that will not have an appreciable impact on business and are consistent with existing policy (such as annual indexation of regulatory fees), or
- changes involving very small initial one-off costs to business and no ongoing costs.

Impacts on family, society and the community or the environment

Consumers

A 'significant' impact on consumers may occur where the proposal:

- materially alters the prices of goods and/or services
- alters the choices available to consumers
- affects the quality of consumer products or services
- creates or remove restrictions on access to a product
- promotes or restricts information dissemination to consumers, or affects product complexity

Family, Society and Community Members and the Environment:

The following issues should be considered in assessing whether there are significant impacts on the community generally:

- Will the proposal have significant impacts on public health and safety?
- Will the proposal have significant economic consequences for families on a low income including pensioners and welfare recipients?
- Is the proposal likely to impact significantly on:
  - > housing, education, health, social and support services?
  - > the social and physical infrastructure of neighbourhoods?
  - > recreational opportunities or on the safety and security of families?
  - > family relationships, or the autonomy or rights of individual family members?
- Will the proposal disproportionately impact (culturally and socially) on single parent families, aboriginal families and families with non-English speaking backgrounds?:
- Will the functions of family members be materially affected (e.g. parenting and caring roles, capacity to engage in community life)?
- Will families in a particular region (for example rural families or families on the metropolitan outskirts) be particularly affected by the proposal?
- Will the proposal add to the economic disadvantage of families and groups excluded from the community?
- Will the standard of delivery or accessibility of services in the regions be affected by the proposal?
- Will the proposal have an impact on community development and participation in community activities?
- Will the proposal have an impact on regional infrastructure, or local access to land and water?
- Will the proposal have significant noise impacts or significant impacts on pollution that may contaminate air, land or water or affect human or other species health?
- Will the proposal have significant impacts on greenhouse gas emissions?
- Will the proposal have significant impacts on the use of water or the sustainability of water catchment areas?
- Will the proposal impact on natural or cultural heritage, e.g. indigenous flora and fauna or cultural heritage sites?
- Will the proposal have significant impacts on the production or disposal of waste?

Appendix D

Undertaking Consultation

Agencies are required to consult with stakeholders where a regulatory proposal is expected have a significant impact on business, families, societies and the community or the environment, and/or where the views of parties/stakeholders who are affected by the proposal will be an important consideration for decision makers or the agency considering the various alternatives. However, this stipulation is not intended to prohibit or dissuade agencies from undertaking consultation where impacts are not expected to be significant. The resources devoted to consultation should be proportional to the significance of the problem.

There are broad principles which should be applied when undertaking consultation. Consultation should:

- occur throughout the process of determining an optimal regulatory option, from the initial delineation of the problem, the advancement of options, the assessment of the impacts of the various options, to the final endorsement of the chosen option.
- be directed towards those parties who will regulate, who are to be regulated, and those otherwise affected by the problem and the proposed regulatory option.

There should be an appropriate amount of time devoted to the consultation process in order that considered responses and information may be assimilated into and influence the outcome of the regulation' development process. All interested parties should be afforded the opportunity to express their views. The consultation process should be transparent, with sufficient background information given to parties in order for them to make an informed contribution and stakeholder input from the consultation process should be publically available. The form of consultation should facilitate the participation of all parties likely to be interested in contributing to the consultation process. Consultation outcomes should be reported and upon conclusion, the processes undertaken should be reviewed for their effectiveness, with the aim of improving future processes.

When consultation should occur

Consultation should occur throughout the process of developing and reviewing regulation. The phases of consultation are described in Chapter 2, Step 3.

It should be noted that public consultation may not always be possible due to obligations such as the requirement to maintain Cabinet confidentiality, the protection of security-related or commercial-in-confidence issues. Where possible, agencies should consult with stakeholders or experts on an in-confidence basis.

Consultation should preserve Cabinet confidentiality and the principle of collective ministerial responsibility in order to ensure the ongoing full and free consideration of the full range of policy options. Ministers and agencies may not make statements relating to Government policy unless they have been approved by Cabinet, committees of Cabinet or the Premier.

Where possible, if particular stakeholders are being asked to repeatedly participate in consultation, the consultation should be integrated across processes and consolidated, in order to avoid consultation fatigue.

Who should be consulted?

Consultation should occur as widely as possible. At a minimum it should include those who are affected by the problem and those most likely to be affected by regulatory action. In order to ensure full representation, effort should be made to target any divergent views.

Representative groups should be invited to provide input. For example, for business this may include industry and small business associations, for the community there may be special interest groups. However, consultation should not be limited to these groups as they may not represent a consensus view and not all viewpoints may be advanced. Consideration may need to be given to the form of consultation in order to gain the input of all interested parties. This may require addressing access issues for groups such Aboriginal and Torres Strait Islander people, non-English speaking backgrounds, people with disabilities, and socially or economically marginalised groups.

Input should also be sought from other Ministers whose area of responsibility may overlap with the area of proposed regulation. Other Commonwealth, state, territory and local governments should be consulted to gain information about how they are addressing similar problems and to ensure that the proposed regulatory option would be non-duplicative, consistent, and complementary to existing regulation in the other jurisdiction.

When considering the input and views from stakeholders, the differing levels of resources available between groups should be taken into account when weighing interests.

Form of consultation

The form of consultation chosen should align with the objectives of the consultation; where specific information is sought, it may be more appropriate to select participants, while if a full representation of the views of all interested parties is the aim, then a broad, self-selection method would be more optimal.

In all cases, parties involved in the consultation should be made aware of the aims of the particular round of consultation, be given background information in order to make informed comment, and be given sufficient time and opportunity to provide input. Depending on the phase of consultation, the background information should describe the problem, its consequences, the range of feasible options being proposed, the likely impacts of the proposed options, and the groups affected by them. In presenting background information care should be taken that a particular option is not alluded to as the Government's or Minister's preferred or proposed position. To do so may constrain full and frank discussion of new policy proposals.

Suggested forms of consultation include:

- *Written consultation paper (e.g. issues paper- any interested parties may make submissions)*

A consultation paper explores issues relating to the problem and regulatory options and poses specific questions in relation to those issues, with the intention of receiving submissions from stakeholders which will respond to those questions.

Used where input is sought from all interested parties or where formal consultation is required. Requires a consultation paper which outlines issues in a simple and accessible way and poses well-defined questions. Participants need to have a sufficient amount of time to respond.

Strengths

- Allows self-selection of interested parties
- Allows in-depth consideration and responses
- Inexpensive

Weaknesses

- Requires considerable preparation time
- It may be difficult to explore or clarify the views presented in submissions

- *Public forums*

Public forums allow regulatory issues to be raised with a large group in one location. This is often done in a conference format, possibly using a combination of presentations, small group discussions, and/or question and answer sessions to elicit responses on issues.

Works best when participants have a good level of background information. Is dependent upon good facilitation skills, especially to ensure that the discussion remains focused on soliciting the information required to meet the consultation objective. Relies on having participants who represent the range of opinions related to the proposal.

Strengths

- Allows self-selection of interested parties
- A large range of viewpoints may be elicited
- Interactive
- Transparent

Weaknesses

- Expensive
- Quality of the participation is not able to be controlled as easily
- Hi-jacking of the forum with special interest agendas
- It may be difficult to achieve in-depth exploration of particular issues

- *Small group consultation (e.g. focus group sessions, expert working group, round table workshops)*

Small group consultations of up to 25 people may also be a viable approach depending on the nature of the regulatory proposal. This type of consultation tends to be focused on a specific set of issues, or on a sector or region.

Useful when trying to elicit expert or specific information from particular people or resolve areas of contention. Works well when there are specific issues that are to be explored and the chosen parties have equivalent expertise and represent different viewpoints. Broader consultation should be undertaken to ensure that the particular views elicited under small group consultation are consistent with wider opinion.

Strengths

- Allows more directed engagement with stakeholders
- Allows particular issues to be explored
- Elicits the concerns of key stakeholders
- Enables discussion with relevant experts

Weaknesses

- Sensitivities associated with participant selection
- Tendency to involve reputed experts which risks excluding alternative viewpoints
- Time consuming
- Subject to criticism due to the exclusivity of participant selection

- *Survey or questionnaire*

A survey or questionnaire may be a useful supplement either prior to, or after, the circulation of a consultation document.

Relies on having a well-defined topic and a clear understanding of the issues so that any useful information can be sought within a limited number of questions. Useful where there is likely to be a broad range of interested parties or it may be difficult to identify the interested parties. May be useful when there is limited time or money available for consultation.

Strengths

- May be completed quickly
- Allows specific areas to be focused upon
- Enables broad participation
- Allows self-selection of interested parties
- Relatively inexpensive
- Useful where information is sought from respondents over time through repeat surveys

Weaknesses

- Limited ability to engage in exploration of survey responses
- Difficult to elicit comprehensive responses
- Responses may be influenced by the survey design and the background information provided

- *Internet forum/ website*

The internet be used to notify stakeholders that consultation is occurring on a particular issue.

May be useful to engage stakeholders who are geographically isolated. Enables a broad range of parties to be involved. May be used to ask high-level questions and initiate discussion.

Strengths

- Wide participation, including remote parties
- Enables immediate engagement with parties
- Allows self-selection of interested parties
- Responses may be explored
- Allows for debate and ideas to be developed over time
- Inexpensive

Weaknesses

- Excludes parties unable to use the internet
- Requires knowledge of the web site
- May elicit mostly superficial responses
- Participant veracity may be compromised

- *Information contacts*

Having a single point of contact can help stakeholders find information quickly and effectively. It is important that information contacts have comprehensive knowledge of the project, that they know the key stakeholders and stakeholder groups and are able to answer questions quickly with a high level of accuracy and authority. This approach is most useful when a consultation process is intensive and widespread and it is used in conjunction with other consultation methods.

Time required for consultation

The consultation process should allow sufficient time for stakeholders to assimilate background information provided, collect their own information and provide a considered response. However, consultation should not create unnecessary cost or delay the introduction of regulatory proposals, thereby delaying the realisation of the envisaged benefit of the proposal.

Stakeholders are to be given a minimum of 30 days to comment on an issues paper or draft legislative instruments. This does not prevent longer consultation periods being employed for more significant or complex proposals. Consultation periods longer than 30 days may be appropriate where the proposal is particularly complex, highly contentious or would have significant impacts on groups whose participation in consultation requires additional efforts to facilitate.

Evaluation and review of consultation

Consultation should be evaluated and the outcomes reported to stakeholders, as a way of ensuring their continued full participation.

The consultation process undertaken at each phase of the development of the regulatory option should be reviewed for its effectiveness. Any areas for future improvement should be noted.

A plan for the evaluation and review of the consultation process should be outlined at the beginning of the regulatory development process. This should include questions which will be asked to evaluate the effectiveness of the consultation undertaken. The process for providing feedback to stakeholders should also be outlined.

Further information

The publication, A Guide to Regional Consultation for South Australian Government Agencies provides more detailed assistance in identifying appropriate consultation techniques, with a particular emphasis on rural and regional South Australia. A copy of the guide can be found at

http://www.southaustralia.biz/library/A%20Guide%20to%20Regional%20Consulatation.pdf

Appendix E

Reasons why government may intervene in the operation of the market

It is generally accepted that allowing markets to operate with the least amount of government intervention possible will in most cases deliver the best outcome for the community, in that overall community welfare is maximised.

In some situations markets may not achieve the most beneficial allocation of resources. These situations are called market failures and may arise because of: the existence or abuse of market power, imperfect information, externalities or public goods.

Other reasons that governments may intervene in the market are to address social goals or equity issues. These are not explored in this Appendix.

When considering the need for regulation, it is necessary to identify the specific market failure which warrants consideration of a regulatory intervention. However, the existence of a market failure is not sufficient to justify government intervention – there must also be an assessment which demonstrates that there are benefits to the community of the government action which outweigh any costs.

The existence or abuse of market power

Inefficient outcomes may result where firms engage in anti-competitive behaviour or have market power which enables them to restrict output and increase prices above those that would prevail if there was competition.

Firms may exhibit anti-competitive behaviour by agreeing to restrict output or collude on prices. This would breach the Trade Practices Act 1974 and the Australian Competition and Consumer Commission would have responsibility for investigating the breach.

However, the issue of market power does not necessarily arise in all instances where there are only a small number of producers in a given market. Generally market power is only possible where the good or service produced has few substitutes and there are barriers to other firms entering the market to compete with the incumbent firm(s).

Normally when a producer raises prices and increases their revenue, it creates an incentive or 'market signal' that attracts new producers to the market and, in turn, drives the market price back down to the competitive level. The existence of barriers to other firms entering the market shields the monopoly producer from competitive forces. Such barriers to entry may include a patent held by the monopoly producer or an industry characterised as a 'natural monopoly' where it does not make economic sense for additional producers to enter the market (e.g. setting up a new pipeline, railway or electricity network where one already exists). The identification of barriers to entry is therefore an important element involved in demonstrating that market power exists and may justify the need for government action.

Governments may intervene to correct for the effects of market power by influencing the operation of the market and/or prices set in that market.

Imperfect information

Sometimes individuals do not have all the information available to make an informed decision. In other instances there can be a difference in the information available to the respective parties (buyers and sellers) involved in a transaction. In these instances decisions made by the individual may be sub-optimal in the sense that they do not receive the full value that they expected from the transaction. They don't maximise their own welfare and so the overall community' welfare is not maximised.

It is not always necessary for governments to intervene where there is imperfect information. Sometimes the market develops solutions in response to the problem, for example, information may flow from past buyers and sellers to potential ones about their experiences via various media fora, sellers may provide guarantees or warranties, and third parties may provide information services (Choice magazine), certification services (Heart Foundation tick) or insurance. Even if residual information failures exist there impact may not be large enough to justify the costs of correcting them.

Where required governments may intervene to correct information failures by requiring information disclosure or placing restrictions or conditions on the sale of certain goods and services.

Externalities

Where a transaction occurs between two parties but a third party, who is not involved in the transaction, experiences a gain or a loss which has not been priced into the transaction, then the gain or loss is called an externality.

Externalities can result in too much or too little of a good or service being produced. A classic example of a negative externality is pollution; where a manufacturer is likely to produce too much of this good because it does not face the cost of the pollution. The community pays for the cost of the pollution through impacts such as increased health costs and the costs of lost production if the pollution damages productive ecosystems such as rivers or agricultural land. These costs are not incorporated into the price of the good. They are borne by individuals who were not involved in the transaction, representing a negative externality.

Since there are externalities associated with most activities, the mere existence of an externality is not sufficient to establish a case for government intervention. There must be evidence that the externality is of a size that warrants action and it must also be demonstrated that government action will be cost effective.

Potential government interventions to correct for an externality may include direct regulation (e.g. banning a factory from polluting a natural resource), creating rights (e.g. permits to pollute), imposing taxes or levies on those whose activities generate the externality costs, or advertising campaigns that attempt to influence behaviour.

Public goods

Public goods are those goods or services that, once provided, cannot be excluded from another person free television broadcast) and can be consumed by any number of persons without a loss of benefits (e.g. defence, lighthouses).

Because the cost of public goods is difficult to recoup from all of those that benefit from their provision, free markets may provide fewer public goods and services than the community as a whole values, and hence would be willing to pay for. Government intervention may be required to ensure such goods are provided, either directly by government or indirectly through public funding of private provision.

Appendix F

Risk Analysis

Where the problem under consideration involves a level of risk or a hazard (such as human health and safety hazards, or the threat of damage to the physical environment), the Regulatory Impact Statement (RIS) should incorporate an assessment of this risk or hazard. The standard elements of the RIS should be completed as described in Chapter 3, with the points below provided as additional guidance in relation to risks or hazards.

Element 1 Describing the Problem

The description of the problem should identify the risk or hazard, the mechanisms causing the risk, the probability of the risk or hazard occurring and the consequences of the risk or hazard. The consequences of the risk or hazard should be outlined in terms of who is affected and the size or severity of the consequences on those affected.

The following questions may assist in describing the problem:

- What is the hazard? It is necessary to define exactly what the hazard is;
- What is the risk? It is important to distinguish between commercial risks and physical risks. Commercial risks should ordinarily be borne by the business entity or industry affected and so addressed by them. By contrast, a physical risk (e.g. a threat to life or environmental pollution) is a problem that is likely to affect individuals and society as a whole and therefore may be best addressed at the appropriate government level;
- How widespread is the risk? Is it local, state-wide or national? The extent of measures to be considered to combat the risk will depend on this assessment, and may include the need for national co-operation;
- Is the risk transmittable? For example, in the case of medical risks (such as a contagious disease), the ability of the risk to be transmitted is crucial to this assessment, as is the means of transmission and its ability to be avoided. This will also involve identification of the source of the risk and whether transmission occurs across boundaries, for example, from plants to insects to animals to humans, or between different geographical locations;
- In what circumstances will the risk arise? Is the risk continuous, or will it arise only in particular circumstances? (for example, if a product is used only in a specific way; or only if a particular chemical is used);
- Who or what is most at risk? Identification of the at-risk groups is crucial. It is necessary to determine for instance whether children of certain ages are most at risk, whether it is the population as a whole, whether the risk is confined to a particular group (for example, only plants, or male children below the age of 10, or women over 45); and
- Is harm or injury liable to occur? Having gone through the above steps, it is important to determine whether any actual harm (for example, to the environment) or injury is liable to occur. This necessarily involves assessing not only the immediate effects but also the longer term effects. If no actual harm or injury is liable to occur, then any question of intervention probably becomes almost superfluous.

An assessment of the level of risk should then be indicated, as this will form the basis of determining the acceptable level of risk, given the costs of addressing the risk, and so the degree of government intervention required.

One way of assessing the level of risk is to categorise it as low, medium or high according to the likelihood or probability of the outcome or event occurring and the severity of the consequences of the risk, as per table F.1.

Table F.1 Assessment of the level of risk of an outcome or event

Likelihood	**High**	**Medium**	**High risk**	**High risk**
	Moderate	**Low risk**	**Medium risk**	**High risk**
	Low	**Low risk**	**Low risk**	**Medium risk**
		Low	**Moderate**	**High**
	Consequence			

Source: VCEC (2007) Victorian Guide to Regulation, p.2-4.

Element 2 Objectives of government action

It may not be realistic or cost effective to eliminate the described risk or hazard entirely.
Instead the objective of government action may be to minimise the size or severity of the consequences of the risk or hazard, reduce the probability of it occurring or reduce the number of people affected by the risk or hazard.

Element 3 Statement of options

Options may include intervention which:

- Interrupts the risk mechanism e.g. prohibiting the activity which could lead to the occurrence of the risk;
- Transfers the risk to other parties e.g. making professionals liable for the unreasonable consequences of advice rendered to clients;
- Ensures that the party voluntarily accepting risk bears any consequences of the risk e.g. requiring sports participants to sign waivers of liability.
- Reduce the likelihood or consequences of the risk e.g. mandating safety equipment to minimise the size of any injury that could be sustained.

It is particularly important that the options presented for consideration are the minimum required to achieve the objectives.

Element 4 Analysis of costs and benefits

Under element 4 of the RIS, the costs and benefits of each option should be calculated taking into account any change in the probability of a risk or hazard occurring or the consequences of the risk or hazard when it occurs.

Element 6 Conclusion and recommended option

Under element 6 of the RIS, the conclusion should describe the chosen option with reference to the trade off between the level of risk targeted and the cost of achieving it.

Appendix G

Further details regarding Cost Benefit Analysis

There are ten steps in completing the cost benefit analysis (CBA).

Step 1 involves describing the 'base case' and the short-listed regulatory options in order to be able to ascribe impacts for each.

Step 2 seeks to identify the timeframe over which the proposal is to be assessed.

At Step 3 the scope of the assessment of costs and benefits is established.

Further information on Step 4

Step 4 involves identifying the impacts, how the impacts will be measured and any uncertainties attached to the occurrence or measurement of the impacts.

The impacts should be broadly grouped by the type of impact -compliance costs, or economic, societal or environmental impacts. These impacts should then be divided into who is affected by these impacts – business, consumers, government and the wider community.

Compliance costs imposed on business, consumers and other sectors of the community

Compliance costs are the direct costs of complying with regulation. This may include regulatory charges, administration time and costs, substantive compliance costs, and implementation and enforcement costs. The government, business and the community may be subject to these costs depending on the nature of the regulation.

Compliance costs can usually be divided into two broad categories:

- One-off costs – For business and the wider community this may include the costs of acquiring sufficient knowledge to meet regulatory obligations, purchasing/leasing additional equipment and buildings, changing production processes, legal consultancy fees and training. For government this may include the costs associated with implementing the regulation such as providing education to staff required to administer the regulation and to those obliged to comply with regulation, development of forms, information sheets, etc; and
- Recurring and ongoing costs – For business and the wider community this may include the cost of monitoring processes to ensure ongoing compliance, preparing periodic reports to a regulator, undertaking audits or inspections (that is, costs arising from the ongoing need to devote additional time and resources to satisfying regulatory requirements) or ongoing additional costs incurred to produce goods and services in a specified manner. For government this may include the cost of providing staff for monitoring, assessing and enforcing compliance.

For business costs, Cabinet has mandated the use of the Commonwealth Office of Best Practice Regulation "Business Cost Calculator" (BCC) to assess the cost that compliance with regulation imposes on business. Where difficulties are encountered with using the BCC DTED should be consulted. If following DTED's advice the BCC is not used, the RIS should clearly state the reasons for this. Appendix I provides more information on the use of the BCC. No matter what assessment method is used, it is a Cabinet requirement that the overall costs to business must be identified in the RIS.

Assessment of business compliance costs should consider differences between the proposed South Australian regulatory model and those operating in other jurisdictions and whether this will increase compliance costs for businesses operating across jurisdictions.

Other economic impacts

In addition to the direct impacts on business or individuals, some regulatory proposals may create economic efficiency impacts from changed resource allocation in the economy (e.g. changes to consumption patterns), productivity (e.g. holding costs), competition (e.g. barriers to entry created by licensing), or innovation.

While some of these other economic efficiency related impacts will vary in nature, generally they will result in some positive or negative impact on the material living standards of the South Australian community. Generally they will either reveal themselves as an improvement in the incomes of South Australians or their real consumption spending. General equilibrium modelling is most likely to be required to explore these economic impacts but given the resources and technical skills required to conduct such modelling the impacts would need to be significantly large to warrant conducting such modelling. When using general equilibrium models, the impact on per capita income or per capita household consumption is the generally preferred measure of the welfare impacts of a proposal (rather than GSP or GDP which is a measure of production rather than economic welfare).

Employment or other impacts that flow from costs or benefits already included in the CBA should not be included because it would represent double counting to include them.

Similarly, flow on impacts, such as multiplier effects commonly associated with economic contribution studies, should not be included in the assessment. All economic activities give rise to multiplier effects through their linkages with other sectors of the economy, and the use of multipliers ignores the opportunity costs associated with the displacement of one set of economic activities with another.

The RIS should include an assessment of the extent to which the proposal restricts competition. Regulation should not restrict competition unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs and that the objectives of the regulation can only be achieved by restricting competition. Further detail regarding the assessment of competition impacts is provided in Appendix H.

Impacts on Family and Society and the Community

Social impacts capture any changes in quality of life. This may include changes in equity, public health and safety, crime, ability to carry out desired activities, or freedom and rights.

Regulation may improve public safety or reduce exposure to crime with benefits measured in terms of the avoided costs of injury and property damage based on evidence of current incidence rates and the assumed impact of the regulatory intervention.

Regulation may have different impacts on different groups in society. For example, imposts which are imposed on tobacco consumption may have relatively greater impacts on low income groups. Similarly regulation may reduce complexity through improved information and certain disadvantaged sectors of society may receive proportionally greater benefits from this.

Environmental impacts

Environmental impacts refer to any changes to or impacts on the natural environment, either directly or indirectly. This may include any impacts on air, land, water (fresh or marine or groundwater), landscape, cultural heritage, particular species or biological systems. These impacts may result from human behaviours which may in return reflect the fact that the costs of environmental damage are not borne by those who contribute to it. These impacts may be significant in their own right or a contributor to a cumulative impact that needs to be taken into consideration.

Attribution of costs and benefits

A summary of examples of the types of costs and benefits which may arise from a regulatory proposal for various segments of the community is provided in table G.1.

It is important not to double count costs and benefits in the final net benefit analysis. For example, double counting may occur if costs are imposed on business which are assumed to be passed on to consumers in the form of higher prices for goods and services. In the final net cost/benefit calculation these costs should only be counted once. Costs should be attributed to the party which bears the direct (legal) obligation even if they may subsequently pass this cost on to others. For example, most government regulation imposes costs on business. Businesses are likely to increase the prices of their goods and services to recoup this cost. The RIS should discuss any evidence gathered as to how costs may be passed through, but in the CBA the costs should be attributed to business. This will assist in accounting for the Government's Red Tape Reduction program. Governments may incur costs to administer regulation. Where these costs are recovered through licence fees, etc the CBA should attribute the licence fee costs to the sector liable to pay these fees but also indicate the revenue as a benefit to government, and the costs incurred in administering the regulation would be included as a cost to government. From a government perspective this should result in a nil net impact if there is full cost recovery. If there is not full cost recovery then the government licence fee etc revenues will be higher that the administrative costs and this will influence the CBA outcome.

It is important that where costs and benefits are incurred by some parties but recovered or transferred to others that these are fully recorded. Examples of such transfers include:

- where licence fees are incurred, the cost benefit analysis should include both the cost to those that are paying it (e.g. business) and the benefit to those who are receiving it (e.g. government);
- where some businesses enjoy increased profits at the expense of other businesses, both the benefit and the cost attributable to each group of businesses should be recorded;
- where there are increased property prices in one locale which are offset by reduced prices in another area, both the increases and decreases should be included;
- where reduced greenhouse gas emissions are achieved in one activity area but these reductions are offset by increased emissions elsewhere, both the increase and decrease should be recorded and attributed to the activity area (business); or
- where there is an increase in the wages for some employees but a resultant reduction in profits to business or increased prices to consumers, the increased wages should be recorded for those individuals and the reduced profits/increased prices should be included for business/consumers.

Table G.1 Examples of Cost and Benefits for Different Groups

Group	Examples of Costs [quantifiable/ qualitative]	Examples of Benefits [quantifiable/qualitative]	Examples of Measures
Business	• Administrative costs associated with compliance and reporting (one-off and ongoing) • Substantive compliance costs e.g. Buy new equipment, maintain equipment, undertake specific training • Licence and permit fees, levies, government charges • Changes to production, transportation and marketing processes (e.g. costs associated with constructing a building to meet regulatory specifications) • Shifts to alternative sources of supply • Holding costs e.g. costs of delays in approvals • Higher input prices • Restricted access to markets	• Reductions in compliance costs • Increased efficiency or productivity • Better information • Reduction in input costs • Reduction in approval times	• Costs of staff time • Capital expenditure costs • Profits foregone as a result of delay • Costs of materials • Costs of permits and licences
Consumers	• Higher prices for goods and services (only where not already accounted for in business cost impacts) • Reduced quality and choice of goods and services • Delays in introduction of goods to market and/or restrictions in product or service availability • Delays in access or restricted access to services	• Improvements in product and service quality and safety • Lower prices • Wider range of products and services • Better product information (cost saving from more informed decision making/ avoided losses)	• Savings to consumers from reduced cost of buying goods or services • Cost saving from more informed decision making/ avoided losses
Government	• Administration of licensing/inspection services* • Collection and collation of business information* • Enforcement costs* • Costs of education campaigns/ providing information	• Licence fee revenue* • Reduction in administrative costs	• Based on total cost to agency (goods and services as well as salaries)
Family, Society and community, and the environment	• Environmental degradation and pollution (pollution of air, water, soil, loss of biodiversity, loss of natural resources (temporary and irreversible) • Reduced health and safety • Increased crime • Loss of cultural or scenic values	• Reductions in workplace accidents • Improvements in public health and safety • Reductions in crime and anti-social behaviour • Improvements in environmental amenity or values • Increases in per capita consumption or disposable incomes from improved resource allocation or productivity in the economy	• Impacts on health • Impacts on property damage • Changes in pollution, flora, fauna, vegetation, heritage • Impacts on heritage, culture or landscape

* Regulatory costs to government and licence fee revenues should be largely offsetting on the basis of cost recovery principles.

In Step 5 the impacts are assigned to the time period in which they are incurred.

Step 6 requires the impacts to be either monetised, quantified or described in qualitative terms.

Further information on Step 6

Indirect valuation techniques which enable a monetary value to be assigned to impacts

Where there are no direct market prices that can be observed to convert costs and benefits into dollar terms, a range of indirect valuation techniques may be available. These include using market-based, revealed preference or stated preference techniques.

Market-based techniques establish a link between the impact to be valued and activities that already have a value.

Market-based techniques for estimating monetary value

The value contributed by an ecosystem or environmental system to the production levels, costs or prices of commercially marketed goods could be estimated (e.g. the value of bees by estimating the impact they have on almond production through their pollination activity). This is the productivity method.

Estimates of foregone earnings and the cost of illness could be used to value impacts on health and labour productivity (e.g. cost of health impacts attributable to air pollution). This is known as the human capital method

The cost of replacing environmental assets or the cost of providing substitute services could be calculated (e.g. the cost of engineering works to prevent soil erosion may be used to value the cost of land clearing, the value of clean water may be measured by the cost of cleaning the water up). This is called the replacement cost, repair cost or substitute cost method.

Estimates of the value of changes to the ecosystem or quality of the environment could be based on the cost of avoiding damages (e.g. the value of clean water may be inferred from the cost of stopping it from becoming polluted in the first place, the amount that households are willing to pay to insulate their houses against noise may be a useful proxy for the value that they place on reducing noise pollution). This is the defensive expenditure or damage cost avoided method.

Revealed preference techniques allow values to be inferred from consumers' behaviour in a similar or related market. Such techniques need to be used carefully however, and should not be used if there are significant limitations to the data and/or its applicability to the analysis being conducted.

Revealed preference techniques for estimating monetary value

The market price of goods and services that are close substitutes can be used to establish the value of the good or service in question. This is called the proxy good method.

Where a good or service is not traded in the market (e.g. government provision of a service for free), the value of the same good or service traded in a normal market is used to establish the value. This is the market analogy method.

How much people are willing to pay to alter an impact may be used to attribute value to the impact (e.g. the value paid for air bags may indicate the value a person places on incremental changes to road safety). This is the trade off method.

If the costs or benefits of a characteristic do not have a market price, it may be possible to do comparisons with other goods and services which are similar in all other aspects except for that characteristic, thereby isolating the value attributable to the particular characteristic. For example, comparisons of differences in property prices for similar properties located under an aircraft flight path and those not under the flight path may provide an indication of the revealed community cost of aircraft noise. This is called hedonic pricing.

The value of a recreational site could be assumed to be reflected in how much people are willing to pay to travel to visit the site and so in turn the cost of that travel. This is the travel cost method.

People can be asked to state their willingness to pay or the amount of compensation that would be required for a particular outcome. This is the stated preference or contingent valuation method, but can be subject to criticism particularly where willingness to pay is not subject to any practical budget outcome.

People can be asked to make tradeoffs among sets of outcomes with associated costs. Values are inferred from the choice of tradeoffs made. This is known as the contingent choice method.

Quantifying the impacts where monetisation is not possible

Cost effectiveness analysis may be able to be employed when quantification of impacts is possible, but not in monetary terms.

Cost-effectiveness analysis

Cost-effectiveness analysis involves specifying the regulatory objective or benefit in physical units of the particular outcome that is desired (e.g. lives saved, children educated, reduction in cubic tonnes of land fill, volume of environmental water flow). The cost of each option in achieving that particular quantity is estimated in monetary terms. From this the cost-effectiveness ratio is calculated for each option:

CE = C/E

where CE is the cost-effectiveness of the proposal, C is the cost (measured in dollars) and E is the effectiveness or benefit measured in physical units.

The option with the lowest cost-effectiveness ratio would then be chosen, indicating that it is the least costly way of achieving the specified outcome.

The limitation of cost effectiveness analysis is that while it can rank options it cannot, on its own, determine whether any option delivers a net benefit to the community because the costs and benefits are not measured in the same way and therefore not comparable.

The CBA still needs to provide an assessment which attempts to reach a conclusion on the overall net benefit.

This may be able to be done by applying a range of feasible dollar values to those costs or benefits that are difficult to value, and assessing what this range of values could mean for the net benefit calculation. For example, assume that the cost of a regulatory option was $1 million, the benefit was a reduction in deaths to which it is difficult to apply a monetary value. If it is estimated that 1,000 deaths could be avoided, then the monetary value of each life need only be $1,000 for the proposal to demonstrate a net benefit. It could be safely assumed in this simple example that a net benefit has been demonstrated.

Step 7 of the CBA involves undertaking the net present value calculation.

Further information on Step 7

Net present value calculation

As a result of step 6 you should have a spreadsheet that contains the costs and benefits on a year-by-year basis (up to 20 years into the future – see step 2). These estimates should be expressed in real terms.

The easiest way to create real value estimates is to ignore the effects of price inflation in the future when calculating monetary values for future years. If, however, your costs and benefits for future years contain inflation impacts you will need to convert them back into real terms estimates.

Once all costs and benefits have been converted to real terms values, a net benefit can be calculated in real terms for each year by subtracting the real value of the costs from the real value of the benefits. The next step is to convert the stream of real net benefits into a single net present value. The NPV of a particular option represents the value in today's dollars of all of the costs and benefits generated by the regulation over the time period over which the regulation is being assessed.

In order to arrive at the current value, or NPV, the net benefit incurred in each time period need to be adjusted by a discount rate, which reflects the fact that people generally attribute a higher value to consumption today rather than later. For example, if a person can borrow or lend at 6 per cent interest per year, one dollar now is equivalent to $1.06 received in one year's time. One dollar received in one year's time is worth only 94 cents ($1/1.06) now.

The net benefit figures for each year are converted into a single NPV net benefit figure by applying the discount rate as follows:

$$NPV = \sum_{t=0}^{T} (B_t - C_t)/(1+r)^t$$

where $\sum_{t=0}^{T}$ = the sum of all net benefits starting at year 0 to year T

B_t = the benefit at time t

C_t = the cost at time t

r = the discount rate

t = the year

T = number of years over which the future costs or benefits are expected to occur (the current year being year 0)

Box G.1 Calculating the real value of costs and benefits

The value of costs and benefits in terms of the prices that exist in each particular year is called the nominal value. The nominal value of the costs and benefits includes the effects of inflation on prices. In order to be able to compare values in today's dollars we need to remove the effects of inflation.

Choose your base year – i.e. you will express all values in terms of the value of a dollar in that particular year, which is assigned year 0.

For each year after year 0, convert nominal values into real values. An example of this calculation is given below. Assistance with this or advice on inflation forecasts may be obtained from DTF.

For example:

	Year 0	Year 1	Year 2	Year 3	Year 4
Price in that year (nominal value)	$100	$120	$134	$213	$287
Forecast inflation rate		2.5%	2.75%	3%	2.7%
Cumulative inflation index	1	1.025(a)	1.053(b)	1.085(c)	1.114(d)
Price in the base year (real price)	$100	$117.07	$127.23	$196.35	$257.61

Note: (a) 1.025 = 1 x 1.025

(b) 1.053= 1.025 x 1.0275

(c) 1.085 = 1.025 x 1.0275 x 1.03

(d) 1.114 = 1.025 x 1.0275 x 1.03 x 1.027

Choice of discount rate

Where regulatory costs and benefits are measured in constant price or real terms as recommended, they should be discounted back to present values using the real rate of 6% per annum, which has been chosen to reflect the social opportunity cost of capital. Where it can be justified, the agency may select a different real discount rate but the reasoning and justification for its choice must be discussed with DTF and outlined in the RIS. Other rates may be considered as sensitivity tests on a case by case basis – e.g. a sensitivity at a lower discount rate could be considered in instances where there are up front costs and longer term benefits, if there was evidence to suggest that this aligned with societal preferences.

Box G.2 Example of a net present value calculation

Consider an option that will require industry to install new equipment to limit air pollution. The equipment costs $5 million to install, and will operate for the following four years. Ongoing (annual maintenance) costs to business are $1 million a year (in constant prices). The benefits are estimated at $3 million a year (in constant prices). The real discount rate is 6 per cent.

	Costs (C_t)	Benefits (B_t)	Annual net benefit ($B_t - C_t$)	Net present value $\sum_{t=0}^{T} (B_t - C_t)/(1+0.06)^t$
	$m	$m	$m	$m
Year 0	5		-5 $(-5)/(1+0.06)^0$	-5.00
Year 1	1	3	2 $(2)/(1+0.06)^1$	1.89
Year 2	1	3	2 $(2)/(1+0.06)^2$	1.78
Year 3	1	3	2 $(2)/(1+0.06)^3$	1.68
Year 4	1	3	2 $(2)/(1+0.06)^4$	1.58
Net present value of proposal				**1.93**

Step 8 requires sensitivity analysis to be undertaken in order to test how robust the analysis is and also identify the factors which will potentially have the greatest impact in determining the outcome of the CBA.

Step 9 takes into account factors which are not able to be taken into account when undertaking the CBA and may modify the decision maker's choice of policy. In Step 10 the policy options are ranked in order of preference.

Appendix H

Assessment of Competition Impacts

It is generally accepted that allowing the market to operate freely results in the most efficient allocation of resources, which in turn maximises society's welfare. In light of this, where a regulatory proposal may impact upon competition, the competition effects must be described and estimated. It must then be demonstrated that there are no other forms of regulation which would adequately address the problem and, after taking into account the costs of the restriction on competition that a positive benefit will result for the community.

A regulatory proposal may impact upon competition if:

- The number or the range of suppliers is affected.

This may be indicated where the regulatory proposal -

> provides a supplier with the exclusive rights to provide a good or service;

> requires that a licence, permit or authorisation process is held/completed in order to operate;

> differentially affects the ability of firms to participate in public procurement;

> significantly alter a supplier's cost of entry or exit; or

> affects the ability of businesses to supply goods or services, invest capital or supply labour through the creation of a geographic barrier.

- The ability of suppliers to compete is changed.

This may be indicated where the regulatory proposal -

> limits or substantially influences the price at which a good or service is sold;

> changes suppliers' ability to advertise or market their products;

> sets standards for product/service quality that differentially advantage some suppliers or that impose levels that are significantly higher than many well-informed consumers would choose; or

> differentially and significantly alters the costs of production for some suppliers.

- The incentive for suppliers to compete vigorously is reduced.

This may be indicated where the regulatory proposal -

> establishes a self-regulatory or co-regulatory regime;

> raises the prospect of collusion among firms;

> alters the ability of customers to change suppliers;

> requires or encourages companies to provide public information on outputs, price, sales, or costs; or

> differentially exempts the activity of an industry or particular companies from the operation of general competition law.

Where any of the factors described above are likely to occur once the proposed regulatory option is introduced, further analysis of competition impacts is required.

The subsequent analysis should be proportional to the competition effects initially identified. It should involve an assessment of the impact (for primary and relevant related markets) of the regulatory option on the following:

- Competition between incumbent businesses. Will there be differential affects on incumbent firms leading to changes in the competitive relation between them which could reduce the intensity of competition in the market as a whole?
- Entry of new businesses. Could entry of (particular types of) new businesses be restricted? What degree of restriction is likely and could it significantly reduce the pressure to compete?
- Prices and production. Could the regulation result in higher prices due to higher costs on producers? Could it lead to the sharing of information which may facilitate collusion and so higher prices? Could it result in firms exiting causing a reduction in supply and higher prices?
- Quality and variety of goods and services. Are there minimum standards requirements that will decrease the availability of goods and services across a range of qualities and prices? Where there is likely to be restricted entry of new firms, will there be a reduction in product variety?
- Innovation. Will the incentive to innovate be reduced? Is there restriction on firm entry or advertising which could reduce the incentive to innovate? Is there a restriction on the movement of goods or services which may reduce the incentive to innovate?
- Market growth. Could market growth be reduced due to increased production costs or reduced competition attributable to restricted entry by new firms?
- Competition in related markets. Does the regulation in one market affect the competition in upstream markets (input suppliers) or downstream markets (input purchasers or retailers of finished goods)?

These affects should be incorporated into the cost benefit analysis of the regulatory option.
Where there are alternative policy options which do not restrict competition but which deliver similar net benefits these should be given preference. If there are no available alternatives, the proposal should only be recommended for implementation where a net benefit is able to be demonstrated.

Appendix I

Business Cost Calculator

This Appendix provides additional details about using the Business Cost Calculator (BCC).

The South Australian Government is committed to taking action on the compliance costs imposed on business. All regulatory proposals, and any other proposals with a significant impact on business, that are submitted to Cabinet must:

- use the Commonwealth Office of Best Practice Regulation's (OBPR) Business Cost Calculator to assess the cost of compliance impost on business, with the results included in the Regulatory Impact Statement; and
- include a sign off from DTED (as part of the Cabinet Office sign off on the RIS) that the assessment is adequate.

The BCC is an IT-based tool designed to assist you to estimate the compliance cost of various options. The BCC can be accessed from the OBPR website (www.finance.gov.au/obpr).

Scope of the Business Cost Calculator

The BCC has been developed to provide an automated and standard process for quantifying compliance costs of regulation on business. It enables you to quantify the compliance costs of regulation on business using an activity-based costing methodology.

The BCC is derived from the Standard Cost Model, designed by the Dutch government to measure the size of the administrative or 'paperwork' burden 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.

The BCC identifies eight categories of compliance tasks. The ninth category, 'Other', is used to capture costs not readily classifiable to one of the other eight (see Table 1).

Using the Business Cost Calculator

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.

For each compliance task, information is required about:

- the category of the compliance task and related compliance activities
- whether the task is an internal cost or outsourced cost
- whether the task is a start-up or ongoing cost
- the number of businesses that will have to undertake that compliance activity

Table 1. Compliance task categories in the Business Cost Calculator

Compliance tasks	Examples
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.
Record keeping – 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.	

- how long the activity will take and how often it will have to be done
- 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), and
- supporting evidence for this information and the level of certainty.

The BCC provides an executive summary called the BCC report and a number of other reports (by business, by size of business or for total businesses) about compliance costs, including:

- compliance costs by cost category
- compliance costs by task
- summary report of total compliance costs, and
- summary of supporting evidence.

Data sources

1. 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.
2. Where the detailed information required is not readily available, you may need to acquire it through consultation or research. Some possible ways of collecting data are:
   - seeking compliance information from businesses through a consultation process (better feedback may be obtained if business are given some preliminary estimates to comment on)
   - approaching industry associations or peak bodies
   - surveying businesses, and
   - using Australian Bureau of Statistics data, especially on business populations.

Supporting information

3. 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 BCC website.
4. DTED also provides a range of training sessions on the BCC. These sessions include overview sessions as well as one-on-one training. For further information and assistance on application of the BCC, contact DTED at DTED:Impact@sa.gov.au.
5. Technical assistance is available from OBPR at helpdesk@obpr.gov.au.