

# **The Northern Territory Government Regulation-Making Framework**

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Acronyms	
The following acronyms are used in this document	
Acronyms	Full form
RMF	Regulation-Making Framework
PRIS	Preliminary Regulation Impact Statement
RIS	Regulation Impact Statement
RIC	Regulation Impact Committee
RIU	Regulation Impact Unit
COAG	Council of Australian Governments
CRBM	Commonwealth Regulatory Burden Measure
DTF	Department of Treasury and Finance

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# 1 Introduction

This document has been prepared for use by Northern Territory Government officers in all agencies involved in the regulation-making process. The objective of this document is to assist officers in undertaking thorough analysis of regulatory proposals that impact on business or the community.

Regulation for the purpose of this document refers to any 'rule' endorsed by the Territory Government where there is an expectation of compliance. It includes primary (that is, Acts) and subordinate legislation, including regulations, rules, codes and plans of management.

Cabinet procedures and procedures for making subordinate legislation such as regulations are set out in the Cabinet Handbook and the Executive Council Handbook, respectively, while the Legislation Handbook provides a description of the procedures involved in making Northern Territory legislation. The Cabinet Handbook is available on the website of the Department of the Chief Minister (<https://dcm.nt.gov.au>), and the Executive Council and Legislation handbooks are available on NTG Central, the Territory Government intranet site (<http://ntgcentral.nt.gov.au/>).

Further guidance on best practice regulation-making principles and processes can be found in the Department of the Prime Minister and Cabinet website (<https://www.dpmc.gov.au/regulation/best-practice-regulation>).

## 1.1 Principles of best practice regulation

All jurisdictions including the Northern Territory have committed to implement best practice regulation principles agreed by the Council of Australian Governments (COAG), as detailed in Box 1 below. Agencies should take these principles into account when developing regulations.

Government regulation is essential for the functioning of society and the economy. Regulation includes laws or other government-endorsed rules that influence the way people behave. The challenge for government is to deliver effective and efficient regulation that:

- addresses an identified problem
- is the minimum level of intervention necessary to achieve stated policy objectives
- maximises benefits to the community, while taking account of the costs.

### Box 1: Best Practice Regulation Principles

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

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

While much regulation is necessary and beneficial, there are cases where this may not be so, or where regulations could be better designed. Determining whether regulation meets the dual goals of 'effectiveness' and 'efficiency' requires a structured approach to policy development that can systematically evaluate costs and benefits.

Consistent with COAG commitments and best practice regulation the Territory Government has adopted a formal process, the Regulation-Making Framework (RMF), which mandates the preparation of a Preliminary Regulation Impact Statement (PRIS) and the potential preparation of a Regulation Impact Statement (RIS) (see Table 1 for an overview of the RMF).

As a general principle, the Territory Government's RMF is not intended to impose additional administrative burden on agencies but seeks to enshrine best practice principles as part of normal policy and legislative development processes. Therefore, agencies should comply with the PRIS and RIS processes as appropriate when developing Cabinet Submissions.

A flowchart of the RMF process is included in the Appendix for the benefit of policy officers.

**Table 1: Overview of the Regulation-Making Framework**

Aim	To reduce unnecessary impacts on business and the community of inefficient regulation, including excessive business red tape, unwarranted compliance burdens and restrictions on competition.
Purpose	Implement a formal mechanism to ensure impacts of regulation are appropriately assessed and made fully transparent to Government prior to decisions being made.
Scope	<p>All regulatory proposals, including subordinate legislation.</p> <p>Certain regulatory proposals may be excluded or exempted from the RMF process (refer to sections 6 and 7).</p>
Administrative Arrangements	<p>The Treasurer is responsible for the regulation-making policy framework.</p> <p>The Regulation Impact Committee (RIC) independently assesses and certifies the PRIS and RIS for compliance with regulation-making principles.</p> <p>The RIC comprises officers from the:</p> <ul style="list-style-type: none"> <li>• Department of Treasury and Finance (Chair)</li> <li>• Department of the Chief Minister</li> <li>• Department of the Attorney-General and Justice</li> <li>• Department of Trade, Business and Innovation.</li> </ul> <p>Coordination and support of the RMF process is undertaken by the Department of Treasury and Finance Regulation Impact Unit (RIU).</p>
Process	<p>A two-step process:</p> <ul style="list-style-type: none"> <li>• a PRIS, which is a preliminary analysis identifying likely impacts, consultation process and policy options, including non-regulatory responses, is submitted to the RIC through the RIU</li> <li>• where the RIC determines after assessment of a PRIS that impacts are material, a full RIS will need to be prepared by the agency. Where impacts are assessed as not significant, the agency will be advised that a full RIS does not need to be prepared, and a PRIS certificate is issued.</li> </ul>
Review	The RMF is to be subject to five yearly reviews to ensure efficient regulation objectives are being achieved and the associated administrative burden for agencies is minimised.

## 2 Preliminary Regulation Impact Statement (PRIS)

The first stage of the RMF process is for the agency to prepare a PRIS. A PRIS is required for all regulatory proposals, unless granted exclusion or exemption from the RMF process (refer to Section 6 and 7), and is used to establish whether the proposal is likely to impact significantly on business or the community and therefore whether a full RIS is warranted.

The preliminary assessment is designed to improve the quality of regulation by ensuring the decision-maker understands the problem to be addressed, has considered a number of options to address the problem and is fully informed of the potential impacts, costs and benefits of the proposal across business, consumers, the community and governments.

A PRIS should include any material necessary to support the proposal, including drafting instructions, results of consultation and cost-benefit analysis. However, Cabinet submissions should not be included as attachments, as they are confidential documents. Where reference to a previous Cabinet decision is required, the reference should paraphrase the decision, for example, the decision could be referred to as a Government decision. Cabinet decisions, decision numbers and decision dates should not be quoted in the PRIS to ensure confidentiality should the PRIS be made public.

Once adequate documentation has been provided to the RIU, it is circulated to the RIC. The RIC normally takes around 10 working days to review a submission, however this timeframe is subject to change, depending on whether more information is required by the RIC and the time taken by an agency to respond. This should be factored into the agency's policy and submission development timeline.

When a proposal seeking approval to draft legislation is submitted to Cabinet, it must be accompanied by a PRIS Certificate from the RIU noting that RMF requirements have or have not been met and indicating whether or not a RIS needs to be undertaken prior to Cabinet considering approval for introduction in the Legislative Assembly. The RIU will issue the appropriate certificate directly to the Cabinet Office.

In the case of regulations being submitted to Executive Council, a PRIS must be completed. As with Cabinet submissions, Executive Council submissions must be accompanied by a PRIS Certificate noting that RMF requirements have or have not been met. The RIU will issue the appropriate certificate directly to the Cabinet Office.

The PRIS should be submitted to the RIU via email ([RIS.DTF@nt.gov.au](mailto:RIS.DTF@nt.gov.au)), prior to the agency seeking Cabinet approval to draft legislation.

## 3 Regulation Impact Statement (RIS)

Where the preliminary analysis (PRIS) does not provide a sound case that regulatory intervention is necessary, does not demonstrate the impact of regulation on the community is likely to be negligible, or does not establish clear and obvious net public benefit, the agency will be required to conduct a full RIS, which builds on the level of analysis in the PRIS.

A RIS is a more detailed assessment compared to a PRIS. It considers the problem, objectives, options, impacts, benefits and consultation, and outlines a strategy to implement and review the preferred option.

As with the PRIS process, where the RIC deems the RIS does not comply with best practice regulation principles, comment and advice will be provided to the agency to assist in meeting the RMF requirements. The RIU will issue a RIS Certificate noting RMF requirements have or have not been met, and will forward the appropriate certificate along with the RIS submitted for assessment directly to the Cabinet Office.

The RIS should be submitted to the RIU via email ([RIS.DTF@nt.gov.au](mailto:RIS.DTF@nt.gov.au)), prior to the agency seeking Cabinet approval to introduce the proposal in the Legislative Assembly.

## 4 Certification for PRIS and RIS

On completion of the PRIS assessment by the RIC, a certificate will be issued stating whether or not a full RIS must be prepared. Where the PRIS reliably demonstrates that regulatory intervention is necessary to address a clearly defined problem and the impact of regulation is unlikely to be significant or clearly in the public interest, further analysis through a full RIS will not be required. However where the PRIS does not satisfy this criteria, preparation of a full RIS will be required.

Box 2 identifies criteria the RIC use to assess PRIS or RIS against best practice regulation principles.

### Box 2: Criteria for assessing PRIS/RIS

Criteria for assessing PRIS or RIS:

- Is there a clear statement defining the extent and nature of the problem to be addressed?
- Is there a clear articulation of the objectives, outcomes, goals or targets being sought through regulation?
- Is there a description of the proposed legislation? Is a case made why legislation is needed?
- Is there a clear assessment of alternatives to regulation and is it demonstrated that the proposed regulatory response is the most efficient approach?
- Are the groups in the community likely to be affected identified and the impacts on them specified? There must be explicit assessment of the impact on businesses and the community. Costs and benefits must be set out, making use of quantitative information where possible.
- Is it established that the benefits to the community outweigh the costs and the Government's objective can only be achieved by regulating?
- Is there a statement of consultation included? Have the views of those consulted been articulated, including substantial disagreements? Is there an explanation of how stakeholders' views have been addressed? If no consultation was undertaken, was an explanation provided?
- Is information provided on how the legislation would be implemented and how the operation/effectiveness of the legislation will be reviewed/assessed post implementation?

Where the RIC is satisfied with the PRIS or RIS analysis based on the above criteria, a certificate will be issued by the RIU stating the level of compliance with the RMF requirements.

## 5 Postponement

It is acknowledged that occasionally regulatory proposals concern matters of immediate priority and due to the urgent nature of the matter, sufficient time may not be available for agencies to undertake regulatory analysis. Under exceptional circumstances, the RIC may consider it appropriate to postpone or vary the PRIS or RIS process. In such cases, the RIU should be contacted in the first instance for advice and guidance on the process for managing urgent submissions.



## 6 Exclusion from the RMF process

The assessment of impacts of some proposals under the RMF process would be of limited value given the standard nature of the proposals. Acknowledging that subjecting such proposals to regulatory impact analysis is likely to be an administrative burden for agencies, a proposal may be excluded from the RMF process if it falls under one of the following exclusion categories:

- existing binding legislative, contractual and commercial arrangements
- self-regulation, quasi-regulation and negative licensing
- standard annual fee variations in line with indexation and actuarially determined assessments
- internal management of the public sector or a statutory authority
- police powers, general criminal laws, and administration of courts, tribunals and corrective services
- legislative or regulatory proposals of a transitional or savings nature, and regulation that makes consequential amendments or is of a machinery nature:
  - a notice about subordinate legislation, a statutory instrument or quasi-regulation
  - regulation that provides for the commencement of an Act or subordinate legislation, or a provision of an Act or subordinate legislation
  - appropriation bills
  - minor amendments that change neither the intent nor interpretation of the legislation and do not affect stakeholders (for example, changing the name of a report referenced in legislation to update a reference)
- taxation or royalties:
  - regulation amending tax or royalty rates, or amending tax or royalty bases
  - regulation introducing new taxes or royalties
- drafting error corrections such as technical amendments that do not change the intent or interpretation of the legislation (for example, correct an obvious typographical or punctuation error).

Agencies are required to self-assess whether their regulatory proposal falls under one of the exclusion categories identified above and discuss the proposal with the RIU at the Department of Treasury and Finance (DTF) before proceeding to exclude the proposal from the RMF process. This is because proposals incorrectly excluded from the RMF process could be subjected to regulatory impact analysis at Cabinet's discretion, which can cause unnecessary delays to the agency's policy-making process.

Examples of proposals that may be granted exclusion from the RMF include, but are not limited to:

- if the *Local Government Act* was amended to change the term 'local government' to 'local council', consequential amendments would be required across the statute book to change all 'local government' references to 'local council'
- regulation prescribing a wage increase for public sector employees covered by a continuing agreement under the *Public Sector Employment and Management Act*
- changes to legislation providing for the administration of courts and tribunals and to associated rules of court and practice directions.

Agency compliance with the exclusion policy will be reviewed after one year as a quality control measure to ensure the effectiveness of the exclusion policy.

## 7 Exemption from the RMF process

All regulatory proposals in the Territory should be subjected to regulatory impact analysis under the RMF process, unless granted exclusion as mentioned in the previous section. In exceptional circumstances, a proposal that does not fall under one of the 'exclusion categories' identified in the previous section may need to be exempted from the RMF process. For instance, regulatory proposals in response to emergencies may not be subject to the RMF process due to their urgent nature.

In such circumstances, the Treasurer – or the Chief Minister if the Treasurer is the sponsoring minister – can grant an exemption from the RMF process. To seek exemption from the RMF process the minister for the agency initiating the regulatory proposal must write to the Treasurer – or the Chief Minister if the Treasurer is the sponsoring minister – at the earliest possible stage in the policy-development process.

The exemption policy should be used as the last resort and only where absolutely warranted, and must not be used as a means to circumvent the RMF process. Moreover, getting exemption approval from the Treasurer or Chief Minister could incur significant time, which can delay an agency's policy-making process.

Agencies must forward a copy of the signed memorandum authorising the exemption from the Treasurer – or the Chief Minister if the Treasurer is the sponsoring minister – to the RIU via email to [RIS.DTF@nt.gov.au](mailto:RIS.DTF@nt.gov.au).

## 8 Consequences of not complying with RMF requirements

The RIC will work with and assist agencies to address issues where:

- agencies incorrectly identify the proposal as non-regulatory
- agencies incorrectly self-assess the proposal as falling under one of the exclusion categories
- agencies fail to complete a PRIS or RIS where the proposal was not granted exemption
- agencies complete a PRIS or RIS, but fail to provide further information required by the RIC
- the consultation undertaken by agencies is not considered effective and appropriate by the RIC
- the assessment of the PRIS or RIS is incomplete or inadequate.

Where the issue could not be resolved, the proposal will be assessed as inadequate and agencies will be advised through a PRIS or RIS certificate stating the agency has not met the RMF requirements.

Where agencies fail to comply with the RMF requirements, the RIU may advise Cabinet of relevant issues identified by the RIC through the Cabinet submission process. Furthermore, the Cabinet Office may refuse a proposal submitted for Cabinet consideration if it has not satisfied the RMF requirements.

## 9 Alternatives to regulation

Regulation in the form of primary and subordinate legislation can have a number of advantages, when compared to other lighter forms of economic intervention, but can also have several disadvantages.

Although regulation can provide certainty and stability for those who must comply, it may not be flexible enough to account for changing community sentiments or other developments (for example, technological advancement), or apply the appropriate incentives and disincentives in every situation. This may result in a need for more or amending regulation, which may take considerable time to implement.

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By typically providing punitive measures that force compliance, regulation is quite often effective in modifying behaviour, yet these measures can be inappropriately rigid and strict, and involve high compliance costs to businesses if the regulation does not follow commercial principles. These costs are to some extent passed on to consumers.

Costs involved with implementation and enforcement of regulation can be considerable for the Government as well as the legal system, and are ultimately borne by the taxpayer. Also, to the extent the regulation restricts competition and business conduct, costs to society may be significant in terms of relatively inefficient use of resources and lower rates of growth.

From a commercial perspective, regulation can sometimes be an inefficient method of achieving a given policy objective, and should only be considered as a last resort. It may be appropriate where:

- the problem involves a high risk of an adverse event occurring, for example, a major public health and safety issue
- the government and industry require 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 and repeated or deliberate breaches of fair trading principles and little possibility of effective sanctions being applied
- market failure is present and the lack of regulatory intervention could result in significant economic costs to the broader community, or
- existing industry bodies lack adequate coverage of industry participants, are inadequately resourced or do not have a strong regulatory commitment.

Alternatives to regulation can take the broad forms of self-regulation, quasi-regulation and co-regulation. Other alternatives include public education campaigns, market exclusions and quality assurance schemes. The default alternative, to do nothing or retain the status quo, should be implicitly examined in determining the need for regulation.

### 9.1 Self-regulation

Self-regulation (voluntary codes of practice or standards) should be one of the first options considered within the RMF. It is generally characterised by an organised group (usually an industry association) formulating rules and codes of conduct, with the group solely responsible for their enforcement. However, governments may also be involved in a limited way, for example, through the provision of advisory information.

Costs of enforcement may be reduced as the rules are more likely to be observed by those involved in their formulation. Problems may arise, however, where the rules are not stringent enough and have been formulated with the interests of members in mind, rather than overall community welfare. Voluntary codes also do not have the advantage of being able to impose legal sanctions.

Self-regulation should be considered where:

- there is no strong public interest concern (in particular, no major public health or safety concern)
- the problem is a low-risk event, of low impact or significance
- the problem can be fixed by the market itself, for example, there may be an incentive for individuals and groups to develop and comply with self-regulatory arrangements
- when the cost of compliance is small.

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Most commonly, voluntary codes are most effective where industry reputation is critical (for example, financial services) and where competition is strong. Self-regulatory industry schemes are likely to be successful where there is:

- an adequate coverage of industry concerned
- a viable industry association
- a cohesive industry with like-minded and motivated participants committed to achieve the goals
- evidence that voluntary participation can work – effective sanctions and incentives can be applied, with low scope for the benefits being shared by non-participants
- a cost advantage from tailor-made solutions and less formal mechanisms such as access to quick complaints handling and redress mechanisms.

Self-regulation is excluded from the scope of the RMF, meaning agencies are not required to submit a PRIS or RIS for such proposals.

### 9.2 Quasi-regulation

Quasi-regulation refers to a wide range of rules or arrangements by which governments influence businesses to comply but which do not involve direct government intervention. Some examples of quasi-regulation include government-sanctioned industry codes of practice, industry-government agreements and accreditation schemes.

Quasi-regulation should be considered where:

- there is a public interest in some government involvement in regulatory arrangements and the issue is unlikely to be addressed by self-regulation
- there is a need for an urgent, interim response to a problem in the short term, while a long-term regulatory solution is being developed
- government is not convinced of the need to develop or mandate a code for the whole industry
- there are cost advantages from flexible, tailor-made solutions and less formal mechanisms such as access to speedy, low-cost complaints handling and redress mechanisms.

There are advantages to government engaging in a collaborative approach with industry, with industry having substantial ownership of the self-regulatory scheme. For this to be successful, there needs to be:

- a specific industry solution rather than regulation of general application
- a cohesive industry with like-minded participants, motivated to achieve the goals
- a viable industry association with the resources necessary to develop and or enforce the scheme
- effective sanctions or incentives to achieve the required level of compliance, with low scope for benefits being shared by non-participants
- effective external pressure from industry itself (survival factors), or threat of consumer or government action.

Quasi-regulation is excluded from the scope of the RMF, meaning agencies are not required to submit a PRIS or RIS for such proposals.

### 9.3 Co-regulation

Co-regulation typically refers to the situation where industry develops and administers its own arrangements but government provides legislative backing to enable the arrangements to be enforced. This is known as 'underpinning' codes and standards.

Sometimes regulation sets out mandatory government standards, but provides that an industry code can override those government standards.

Regulation may also provide for government-imposed arrangements in the event that industry does not develop arrangements of its own.

The government may provide legislative support to industry-based codes and standards through:

- delegating enforcement powers to industry
- requiring that certain conduct complies with the standard
- stating situations where standards can be overridden by industry
- incorporating a reserve power to have a code
- prescribing codes and standards as voluntary or mandatory.

Since co-regulation involves legislation, co-regulatory proposals must be subject to regulatory impact analysis under the RMF and agencies must submit a PRIS or RIS as required.

### 9.4 Negative licensing

Negative licensing is designed to ensure participants who previously demonstrated they are incompetent are prohibited from operating in a particular industry. As a result, the worst offenders against the set standards are removed from the industry or profession without placing an undue burden of registration on the entire industry or profession.

Negative licensing should be considered where:

- monitoring requirements are low
- the screening processes are already carried out by an organisation or law enforcement body.

While negative licensing may reduce the administrative and regulatory burden incurred by business, the potential risk is that an offender may be able to operate undetected or act inappropriately before being detected.

Negative licensing is excluded from the scope of the RMF, meaning agencies are not required to submit a PRIS or RIS for such proposals.

### 9.5 Specific instruments

In conjunction with or as alternatives to the above, the following options should also be considered:

- consumer information and education campaigns (for example, product labelling or media campaigns)
- information disclosure (for example, hazardous substances in use and food labelling)
- market-based instruments (for example, taxes, subsidies, tradable permits and performance bonds)
- tradable property rights
- pre-market assessment schemes (for example, listing, certification and licensing)
- post-market exclusion measures (for example, bans, recalls, licence revocation provisions)
- service charters
- public information registers
- mandatory audits
- quality assurance and compulsory warranty schemes.

## 10 Assessing the impact of regulation

The PRIS and the RIS, both require an assessment of the impact of regulation. A PRIS establishes likely impacts on competition, business and the community and, if warranted, triggers an RIS. The level of analysis undertaken to assess costs and benefits of a regulatory proposal should be commensurate with the level of impact expected. This document provides guidance on undertaking regulatory impact analysis and on addressing this requirement in a PRIS or RIS.

Government intervention in markets is usually justified on economic efficiency grounds, or to achieve social and environmental objectives. From an economic perspective, free markets are expected to provide the most efficient means of allocating goods and services so as to maximise the wellbeing of the community.

Ideally, regulation should only be implemented if the overall benefits to the community exceed the costs, if the regulation is the minimum necessary to achieve the stated policy objective and only where non-legislative alternatives are considered inappropriate.

The level of detail required for this analysis will depend on the importance or significance of the regulation, the uncertainty over the net impact of the regulation, the information available and the costs of preparing the analysis.

At the very least, a qualitative assessment of all the effects is expected. This may be the case where quantitative evidence is not readily obtainable or where the regulation is expected to produce a significant and obvious net benefit. Additional effort in compiling detailed evidence on costs and benefits would only be likely to confirm this finding and therefore may not be warranted.

More comprehensive analysis is useful if the impact of the proposed regulation is unclear and where the impact is expected to be significant or concentrated on specific stakeholders. In these cases, more effort in determining the likely impact of the regulation is required.

The costs and benefits of the regulation should distinguish between the following categories (while recognising there may be overlaps between categories):

- economic and financial: those that impact on the economic welfare of particular individuals, groups or industries, such as the establishment and ongoing costs of, and revenue from, a particular program
- social: those that generally impact on the wellbeing of individuals or groups, such as increased public safety
- environmental: changes in the state of the environment that cannot be objectively measured.

Alternative options should be assessed to identify a preferred approach to addressing a problem or issue. A clear and consistent framework, including using a standard unit of measurement (ideally a dollar value) to measure disparate costs and benefits will allow the net overall impact of each option to be compared.

All costs and benefits should be quantified wherever possible, however, where quantitative information is not available, a discussion on the probable impacts and their likelihood of occurring, including any assumptions made, will need to be provided so a reliable assessment is possible.

In determining the net impact of the regulation, the analysis should:

- identify affected parties
- assess costs and benefits
- discuss changes to welfare distribution
- note data sources and assumptions
- summarise the net outcome.

### 10.1 Identify affected parties

Each group likely to be affected by the regulation should be identified. Consultation is critical to understanding who is affected and in what way. Affected groups should be further classified where the regulation will have different effects on those subgroups. Such classifications might include:

- government, business and consumers
- within the government category, national, state, territory or local governments, including different agencies within these levels
- within the business category, large, medium and small businesses, specific industries, importers, exporters and firms supplying the local market
- within the consumer category, groups with different levels of information and abilities to process information
- groups in different geographical areas (for example, urban, regional, remote) or different states and territories
- groups with different age, language, physical, cultural, gender, family or income and wealth characteristics.

To properly and objectively identify all affected parties, the impact analysis should take a community-wide perspective. In taking this perspective, it is more likely all specific groups affected by the regulation will be identified. The extent and type of relevant groups will vary according to the regulation being assessed.

### 10.2 Assess impact on business

Business could be affected when regulation imposes compliance costs on them. Large firms are more able to pass these costs on to customers or find other ways to meet these costs, including making short-term losses or by reducing inefficiencies. Small businesses, however, may not have a large customer base or have sufficient capacity to absorb these costs. As a result, smaller firms may leave the industry, thereby reducing competition and consumer choice.

New investment by smaller firms may also be discouraged, resulting in reduced employment by small businesses. While the analysis should be sensitive to the effects on business generally, it should also be careful to distinguish between large and small businesses, since various costs, particularly regulatory compliance, can disproportionately affect small business.

A key objective of the RMF is to reduce inefficient compliance costs for business, including overlapping and duplicative regulation and the cumulative effect of new and existing regulation on business. Inefficient compliance costs can generate broader economic costs by diverting business resources away from core activities, reducing the extent to which businesses can innovate and operate at least cost, and creating uncertainty and risk.

In quantifying business compliance costs, agencies are encouraged to make use of the Commonwealth Regulatory Burden Measure (CRBM). The CRBM is an information technology-based tool designed to assist in quantifying the likely compliance costs of regulatory proposals on business, individuals and community organisations using an activity-based costing methodology.

The CRBM can be downloaded from the Office of Best Practice Regulation website at <https://rbm.obpr.gov.au>.

Agencies should also consult the Department of Trade, Business and Innovation regarding business compliance cost aspects of regulation impact analysis.

## 10.3 Assessing the costs and benefits of regulation

Once affected parties are identified, the analysis should detail how they are affected. Where someone would become better off under the regulation, this should be recorded as a benefit and, conversely, where someone would become worse off, this should be recorded as a cost.

Direct and indirect costs should both be taken into account. Direct impacts are those clearly related to the purpose of the proposed regulation, while indirect impacts are incidental to the main purpose, although they may be of significant magnitude and should therefore be taken into account.

Cost items should include 'opportunities forgone' because a particular proposal has been adopted in place of another proposal. In this way, the analysis should not be restricted to tangible or monetary items and, where applicable, should also include possible changes in environmental amenity, health and safety outcomes, and other non-monetary outcomes. Costs and benefits that cannot be quantified should still be listed, along with a qualitative estimate for each. Likewise, where there is some uncertainty over whether a particular effect will be realised, a range of estimates or a best estimate should be provided.

Agencies should also be mindful of transfers and avoid double counting. It is important to identify costs and benefits that are purely a transfer (or redistribution) from one group of the community to another and those not leading to an overall increase or decrease in costs or benefits when considered from the viewpoint of society as a whole (a payment of money for which no good or service is received in return). An example would be the transfer of welfare payments, which represents a cost to government but a benefit to the recipient.

In many cases, the regulation will seek to address the likelihood of a particular risk, for example, environmental damage or personal injury. Where government action seeks to reduce the risk of a detrimental event occurring, this section should outline the probability of such an event occurring under the existing arrangements and the associated costs and benefits in the process of decreasing the risk.

In all cases, the costs and benefits should be assessed as occurring over the expected lifetime of the regulation and can be classified as occurring in the short or long term. Benefits and costs can be further classified as direct or indirect, as short-term effects can force changes in behaviour that may produce secondary, indirect effects.

### 10.3.1 Examples of costs and benefits

Examples of costs and benefits to government, business, consumers and the wider community that may result from introducing regulation are shown in Table 2. Costs may be incurred by various groups but almost always by government. In most cases, regulation confers benefits to the broader community but may also produce direct and indirect benefits to governments, consumers, business and other groups within the community.



**Table 2: Costs and benefits that may result from introducing regulation**

<b>Costs</b>	<b>Benefits</b>
<p>Government will almost always incur costs when introducing regulation in terms of formulation and enforcement. The measures proposed may give rise to additional costs in terms of:</p> <ul style="list-style-type: none"> <li>• increased levels of staffing (and on-costs)</li> <li>• operational costs</li> <li>• costs of other relevant items such as special advertising, accommodation, travel.</li> </ul>	<p>Benefits to government may include:</p> <ul style="list-style-type: none"> <li>• streamlined regulatory processes and requirements</li> <li>• reduced monitoring and enforcement costs</li> <li>• higher levels of compliance.</li> </ul>
<p>Typical costs to business may include:</p> <ul style="list-style-type: none"> <li>• ‘paper burden’ or administrative costs associated with complying with or reporting on regulatory requirements</li> <li>• product or service standards that could be complicated or unnecessarily high</li> <li>• licence fees or other charges levied by government</li> <li>• restricted access to markets and forgone investment opportunities</li> <li>• requirements affecting production, transportation and marketing costs</li> <li>• forced shifts to more costly sources of supply</li> <li>• increases in risk and uncertainty</li> <li>• delays in the introduction of goods to the marketplace or restrictions in product availability.</li> </ul>	<p>Benefits to business may include:</p> <ul style="list-style-type: none"> <li>• a reduction in plant or property damage</li> <li>• a reduction in lost production time</li> <li>• reduced insurance costs and lower levels of litigation</li> <li>• reduced compliance costs</li> <li>• less anti-competitive behaviour in the market or greater regulatory transparency, certainty and predictability.</li> </ul>
<p>Costs to consumers may include:</p> <ul style="list-style-type: none"> <li>• higher prices for goods and services</li> <li>• reduced utility (quality, choice) of goods and services</li> <li>• delays in the introduction of goods to the marketplace or restrictions in product availability</li> <li>• more difficult or more expensive options for seeking redress.</li> </ul>	<p>Benefits to consumers may include:</p> <ul style="list-style-type: none"> <li>• reduction in pain and suffering</li> <li>• increased access to information</li> <li>• lower prices and increased product choice</li> <li>• improved safety of products, workplaces and services.</li> </ul>
<p>Costs to the general community may include:</p> <ul style="list-style-type: none"> <li>• lower employment levels</li> <li>• lower economic growth and hence reduced growth in living standards</li> <li>• reduced levels of technological innovation</li> <li>• re-allocation of government expenditure or higher taxes</li> <li>• environmental degradation.</li> </ul>	<p>Benefits to the community may include:</p> <ul style="list-style-type: none"> <li>• improved environmental outcomes</li> <li>• safer workplaces</li> <li>• greater access to services or opportunities</li> <li>• greater equity and social welfare</li> <li>• more efficient use of resources and higher economic growth</li> <li>• higher living standards and quality of life.</li> </ul>

### 10.3.2 Consistent comparison of costs and benefits

In order to identify the preferred approach to addressing a problem or issue, the alternative options should be compared using a clear and consistent framework (a standard unit of measurement). Where possible, impacts should try to be valued in dollar terms using market data as this allows disparate costs and benefits to be aggregated so an estimate can be derived of the net impact of a proposal on the community.

### 10.4 Identify changes to welfare distribution

In most cases, the introduction of new regulation will redistribute welfare among parties affected from the regulation change. That is, there may be groups that gain a benefit from the regulation, while others may suffer a loss (even when there is an overall net public benefit). Therefore, as well as analysing the extent of the costs and benefits of a regulation change, consideration should be given to changes to allocating welfare between affected parties.

Changes to the allocation of welfare between affected parties will be important for two reasons. First, a redistribution of welfare does not represent a cost or benefit in its own right and, to avoid double counting, should not be considered as such. For example, if a regulation is likely to impose costs on business and it is expected businesses will pass these costs on to consumers in the form of higher prices, this cost item should be counted once when assessing costs and benefits. However, the likelihood it may be passed on to consumers should be noted. A redistribution of welfare may also result in further costs and benefits that need to be considered. For example, licensing fees as an expense for business but revenue for government may result in new costs for administration and new benefits in terms of protecting the interests of consumers.

Second, it is important for decision makers and the public to be aware of changes in welfare distribution. However, unless it is the objective of the legislation to result in a redistribution of welfare, perhaps to address an equity issue, analysis should remain factual and not pass judgement on whether a particular distribution is favourable. In most cases, analysis of distributional effects of a regulation is merely provided to assist decision makers in choosing among competing priorities.

### 10.5 Data sources and assumptions

Data sources and assumptions used in calculating costs and benefits should be listed in the interests of transparency, and in case new information becomes available that alters the understanding of the likely impact of the regulation.

### 10.6 Summarise the net impact

An overall statement on the net impact should be made, including those costs and benefits not directly comparable or quantifiable.

For the regulation to be implemented, it must be shown that, on the balance of probabilities, the benefits outweigh the costs. The analysis should also clearly demonstrate the regulation will maximise net benefits when compared to other regulatory options and the recommended regulatory approach is preferred over all available alternatives.

## 11 Best practice principles for effective consultation

Consultation ensures both government and stakeholders have a good understanding of the problem, alternative options to address it, possible administrative and compliance mechanisms, and associated benefits, costs and risks.

Lack of consultation may lead to regulation that is not appropriate to the risk and or circumstance, that is costly and or complex to comply with, and or poorly observed by regulated entities.

As an overarching principle, the nature and extent of consultation should be commensurate with the potential magnitude of the problem and impact of proposed regulatory and non-regulatory solutions.

The following principles for best practice consultation are recommended by the Commonwealth Office of Best Practice Regulation:

- continuity – consultation should be continuous throughout the policy development process
- targeting – breadth of consultation should be sufficient to ensure it captures the diversity of stakeholders affected by the proposed changes. This includes national, state, territory and local governments, as appropriate
- appropriate time lines – consultation should start when policy objectives and options are being identified. Throughout the consultation process, stakeholders should be given sufficient time to provide considered responses
- accessibility – stakeholder groups should be informed of proposed consultation and be provided with information about proposals through a range of means appropriate to those groups
- transparency – agencies need to explain clearly the objectives of the consultation process, the regulation policy framework within which consultations will take place and provide feedback on how they have taken stakeholder responses into consideration
- consistency and flexibility – consistent consultation procedures can make it easier for stakeholders to participate. However, this must be balanced with the need for consultation arrangements to be designed to suit the circumstances of the particular proposal under consideration
- evaluation and review – policy agencies should evaluate consultation processes and continue to examine ways of making them more effective.

Various consultation mechanisms can be used that are consistent with these principles, such as annual regulatory burden reduction plans, business consultation portals and the use of policy ‘green papers’ and exposure drafts for matters of major significance.

These consultation guidelines are to be applied to all significant initiatives and cover all aspects of developing regulation, from the policy proposals and ideas stage to post-implementation reviews.

For more information on consultation principles refer to *The Australian Government Guide to Regulation* on the Office of Best Practice Regulation’s website at <https://www.dpmc.gov.au/regulation/best-practice-regulation>.

## 12 Guidelines for preparing a Preliminary Regulation Impact Statement (PRIS)

The PRIS should be in the form of a short statement with the following components at a minimum:

- identify the problem
- objectives of government action
- consideration and impact of options
- impact analysis of the preferred option
- fee analysis
- overall net public benefit analysis
- consultation
- timing.

### 12.1 Identify the problem

Relevant background information should be provided in this section with no assumption the RIC will have prior knowledge of the issue being addressed. The problem may be described briefly in this section, including the extent of government action taken to date to address the problem and why further intervention is required.

### 12.2 Objectives of government action

The objectives of the regulatory proposal must be clearly defined, including the intended outcomes and, where applicable, the goals and targets of government action, to make a compelling case for government intervention.

### 12.3 Consideration and impact of options

Once the problem has been defined and a case for government intervention is established, feasible policy options must be identified, including non-regulatory options where possible, that could effectively achieve the stated objectives. Agencies should consider as many policy options as appropriate, including status quo, the recommended option and other alternatives to address the problem.

Working from an initial presumption against new or increased regulation, the overall goal is the effective achievement of the stated objectives.

For further discussion on alternative regulatory options including self-regulation, quasi-regulation and co-regulation, refer to section 9 – Alternatives to regulation.

### 12.4 Impact analysis of the preferred option

The section must identify the sectors of the community likely to be impacted by the regulation, for example, government, not-for-profit organisations, individuals, industries and business, and to what extent they will be affected.

The PRIS template provides a series of questions to assist agencies in determining whether the proposed regulation is likely to materially affect the community. If the answer is yes to any of the questions under this section, agencies must clearly explain the likely impact on business or the community. The template is not an exhaustive list and should be used as a starting point in considering the sectors of the community likely to be impacted by the regulation.

Agencies must consider the implications for national markets. For instance, mutual recognition by jurisdictions reduces compliance costs to businesses, and cross-jurisdictional policy and legislation means regulations are not developed in isolation. In addition, Territory-specific impacts will need to be considered in assessing the overall net public benefit.

For assistance on assessing the impact of regulation, including undertaking cost-benefit analysis, refer to section 10 – Assessing the impact of regulation.

### 12.5 Fee analysis

If fees are proposed as part of the regulatory proposal, the agency should provide further information including:

- when fees will commence
- how fees will be determined
- cost to government for enforcing fees
- potential impact of fees on the affected stakeholders.

### 12.6 Overall net public benefit

The preliminary analysis should identify and demonstrate a net public benefit for all proposed regulations. Justification should be provided for choosing the preferred policy option, that is, the preliminary assessment must show how the overall benefit of the proposal outweighs the costs or impacts of addressing the problem. For example, benefits could include improved access, increased safety or greater cost recovery to the community/business/consumer/government, the net benefit of which is shown to outweigh the regulatory costs imposed by the policy.

### 12.7 Consultation

The preliminary analysis should provide a brief overview of any consultation process undertaken with the affected stakeholders. Key stakeholder concerns raised during consultation and any substantial disagreements should be provided along with how these concerns are to be addressed by the agency. Public interest in the proposal should also be determined through the consultation process. The analysis provided in the PRIS should also outline whether further consultation will occur and if so, how. If consultation has not been undertaken, details on why this is the case must also be provided.

For further discussion on consultation, refer to section 11 – Best practice principles for effective consultation.

### 12.8 Timing

Agencies must clearly state the date the proposal is to be considered by Cabinet.

## 13 Guidelines for preparing a Regulation Impact Statement (RIS)

The RIS structure is based on the PRIS, but requires more information. All elements of a RIS should contain a degree of detail and depth of analysis that is commensurate with the magnitude of the problem and the size of the potential impacts of the proposal. The RIS should, as far as possible, draw from and build on the PRIS. There is no fixed length for a RIS and the emphasis is on quality of analysis rather than quantity.

## The Northern Territory Government Regulation-Making Framework

The general structure of a RIS is similar to a PRIS in that it comprises:

- executive summary
- problem identification
- objectives of government action
- consideration and impact of options
- preferred policy option
- fee analysis
- consultation
- implementation and review.

As shown in Table 3, the complexity of the policy and expected impact of the regulation will determine the level of analysis required in the RIS. A complex policy with a significant impact on the Territory will require greater analysis than a simple policy with a low impact.

**Table 3: Impact analysis of regulation**

Expected Impact of Legislation  Complexity of Analysis	Large Impact	Small Impact
	Entire economy affected  Particular industries or interest groups greatly affected  Particular regions greatly affected  Precedent established	Particular industries slightly affected  Particular interest groups slightly affected  Particular regions slightly affected  No real precedent
<b>Complex</b>  Legislation complex and highly restrictive  None or few previous studies  Powerful interest groups  Several regions affected  Important downstream impacts  Old legislation  More than one jurisdiction	Significant potential for misunderstanding and much at stake  Requires maximum resources to conduct review	Potential for misunderstanding but stakes not high  Needs sufficient resources to avoid setting bad precedents
<b>Simple</b>  Legislation only lightly restrictive  Previous studies already done  Interest groups unconcerned	Much at stake but relatively straightforward  Must be well resourced to ensure 'desired' outcome	Little at stake and straightforward  Low priority for resource allocation

### 13.1 Executive summary

The section should briefly mention the identified problem, the preferred policy option and its likely impact on business and the community.

### 13.2 Identify the problem

The RIS should clearly identify the fundamental problems to be addressed, in order to demonstrate the need for regulatory intervention. This part of the analysis must:

- present evidence on the magnitude (nature and size) of the problem
- describe why government involvement is required to address the problem
- document relevant existing regulation at all levels of government and demonstrate it is not adequately addressing the problem
- if the problem involves risk, identify the relevant risks, and explain why it may be appropriate for government to act to reduce the risks.

This section must establish a clear case for government intervention.

### 13.3 Objectives of government action

Identify the outcomes, goals, and any standards or targets the Government seeks to attain to address the problem. If there is an authoritative basis for the new or amending regulation, it should be identified, for example, government direction, intergovernmental agreement or treaty obligation.

### 13.4 Consideration and impact of options

The RIS should identify a range of appropriate options that may include non-regulatory, self-regulatory and co-regulatory options, and consider at least three policy options, including status quo, the preferred option and other alternatives. Where relevant, options should rely on existing regulation. Alternatives to regulation should be considered, including community education campaigns. Further discussion on alternative regulatory options is at section 9 – Alternatives to regulation.

Specifically, this part of the analysis should:

- assess the costs and benefits of all the options supported by evidence (for example, cost-benefit analysis), taking into account the significance of the proposal and its impact on stakeholders
- identify the stakeholders likely to be affected by each option and specify significant economic, social and environmental impacts on them
- recognise the effect of the options on individuals and the cumulative burden on business
- assess the impacts on business and quantify the costs (refer to the Department of the Prime Minister and Cabinet's Cost-Benefit Analysis guidance note at: <https://www.dpmc.gov.au/resource-centre/regulation/cost-benefit-analysis-guidance-note>)
- include dynamic effects, such as adjustment costs and benefits likely to accrue over time
- if an objective of regulation is to reduce risk, analyse the extent to which each option would reduce the relevant risk, and the associated costs and benefits involved
- document any relevant national standards, and if the proposed regulation differs from them, identify the implications and justify the variations
- if the proposed regulation maintains or establishes restrictions on competition and businesses, demonstrate that Government's objective can only be achieved by imposing the restriction

- consider the implications for national markets and, where possible, ensure the proposal is consistent with other jurisdictions' regulatory regimes
- provide evidence in support of key assumptions and clearly identify any gaps in data.

For assistance on assessing the impact of regulation, including undertaking cost-benefit analysis, refer to section 10 – Assessing the impact of regulation.

### 13.5 Preferred policy option

This section should provide reasons for recommending the preferred policy option and reasons for rejecting other options (status quo and alternative options).

### 13.6 Fee analysis

If fees are proposed as part of the proposal, the agency should provide further information including:

- when fees will commence
- how fees will be determined
- cost to government for enforcing fees
- potential impacts of fees on the affected stakeholders.

### 13.7 Consultation

This section should outline views expressed by stakeholders during the consultation process and how those views were taken into account as part of the regulation-making process. More specifically, the RIS should:

- describe how consultation was conducted (including the stages of the policy development process at which consultation was undertaken, the timeframes given and the methods of consultation)
- articulate the views of those consulted, including substantial disagreements with the proposed course of regulatory action
- outline how those views were taken into consideration
- if consultation was not undertaken, provide a reasonable explanation of why it was not.

The consultation process reported in the RIS should conform to the best practice principles on consultation discussed in greater detail in section 11 – Best practice principles for effective consultation.

### 13.8 Implementation and review

In order to ensure regulation is effective in achieving defined policy objectives and maintains relevance over time, the RIS should describe implementation, monitoring and review arrangements.

An implementation strategy should be developed for the preferred option to ensure objectives will be effectively and efficiently achieved. Implementation planning helps to achieve the greatest level of compliance at the lowest possible cost.



## The Northern Territory Government Regulation-Making Framework

The implementation process should be described and information provided on the resources required to administer the regulation, as well as the cost recovery mechanisms. Specifically, the following points should be considered:

- How will the regulation be enforced, including any compliance inspections and reporting?
- Is the business/industry regulated by other agencies, national and or local government?
- Is there opportunities to streamline enforcement of the proposed regulation with other regulatory bodies?
- Will regulator training be required to ensure interpretation, application and enforcement of the regulation is consistent and unambiguous, and are outcomes focused and risk-based?
- Is there a proposed transition strategy to enable business and industry to adapt to changes?

Agencies are also responsible for continually reviewing the legislation they administer and to amend or repeal legislation where appropriate. Therefore, it is essential agencies develop performance indicators based on the objectives of regulations. Outcome-based performance indicators should be developed and reported alongside the more traditional process-based indicators. Agencies should routinely monitor the performance of regulation by collating and analysing queries by stakeholders. Measures for ongoing review may also include provision of a complaints handling or feedback mechanism, or consultation with affected stakeholders.

When undertaking a review, the following should be considered:

- Does the original problem still exist?
- Is there evidence of the objectives being met?
- Has the regulation had the expected impacts, and are there any unanticipated effects?

As part of this process, consideration should also be given as to whether any compliance strategies need to be reviewed.

### 14 Role of the Regulation Impact Committee (RIC)

The RIC is an inter-agency committee responsible for reviewing the regulatory impacts and benefits of proposed regulation and determining whether a net public benefit exists. The RIC comprises officers from the Departments of: Treasury and Finance; the Chief Minister; the Attorney-General and Justice; and Trade, Business and Innovation. All correspondence and other information provided by agencies to the RIC for the purpose of the RMF process are treated as confidential.

The RIC oversees the regulation-making process by:

- assessing the PRIS and determining whether the proposed regulation should be subject to a full RIS
- providing guidance to agencies in the preparation of a PRIS or RIS through the RIU
- assessing the adequacy of PRIS or RIS against formal best practice regulation principles
- advising Cabinet through the issuing of relevant PRIS or RIS certificates through the RIU
- advising Cabinet on the RMF.

## 15 Role of the Regulation Impact Unit (RIU)

The RIU is located within the Economic Group of the Department of Treasury and Finance. The RIU is the point of contact for agencies submitting PRIS or RIS and supporting information under the RMF process.

The role of the RIU is to:

- provide administrative support to the RIC
- provide guidance to agencies in the preparation of PRIS or RIS
- advise Cabinet through the issuing of relevant PRIS or RIS certificates
- advise and assist agencies in complying with the RMF requirements, including guidance on processes for managing urgent Cabinet submissions.

Once the RIC has made a determination on a proposal, the RIU will advise agencies of the outcome of the RIC's assessment with a copy of the appropriate PRIS or RIS certificate. The RIU will also forward the appropriate certificate and RIS directly to the Cabinet Office.

## Appendix A: The Regulation-Making Framework process

