

# Victorian Guide to Regulation

A handbook  
for policy-makers  
in Victoria



COMMISSIONER FOR  
BETTER REGULATION

The Secretary  
Department of Treasury and Finance  
1 Treasury Place  
Melbourne, Victoria, 3002  
Australia  
Tel: +61 3 9651 5111  
Fax: +61 3 9651 2062  
Website: [dtf.vic.gov.au](http://dtf.vic.gov.au)

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# Treasurer's message



## Better regulation: boosting productivity and community wellbeing

The Andrews Government is committed to best practice principles in regulatory design and policy.

Efficient regulation ensures efficient government with a flow on effect to productivity and general community wellbeing.

Where appropriate gateway and periodic reviews through Regulatory Impact Statements (RIS) and Legislative Impact Assessments (LIA) are a vital part of the Victorian legislative system. They provide the Government and the community with analysis and evidence about what works — and, just as importantly, what does not.

Ensuring our RIS and LIAs are of high quality is key to achieving 'best practice' and is one of the reasons Victoria leads the nation.

It is the role of the Commissioner for Better Regulation to support departments and agencies to deliver continuous improvements in regulation and review the adequacy of impact assessments.

The Commissioner will continue to support the Government in its efforts to guide departments and agencies through this process as we streamline a modern and progressive regulatory system for Victoria.

This Guide has been simplified to provide reader-friendly practical tips on how to prepare these impact statements. It will become a very important tool and I encourage departments and agencies to use it in this work as well as other policy development.

A handwritten signature in blue ink, appearing to read 'Tim Pallas'.

**Tim Pallas MP**  
**Treasurer of Victoria**

### Principles for regulation in Victoria

The Government is committed to the following best practice regulatory principles to guide the design, implementation and review of all regulatory proposals and changes to existing regulations in Victoria.

The Government requires regulation to be:

- effective in addressing the underlying causes of harm
- cost effective
- proportionate to the harm or risk to the community
- flexible to accommodate changes in technology, markets, risks and community views
- consistent with the Government's priorities to enhance Victoria's liveability and growth in productivity and employment
- consistent across Government to avoid unnecessary overlap and duplication
- clear and easily understood by business and the community



# Table of contents

## Structure of this handbook

Part I: Provides an overview of impact assessment and the role of the Commissioner for Better Regulation.

Part II: Describes what needs to be done for each stage of an impact assessment, and how to do it.

Practical guidance to complete an impact assessment and to design and implement regulation is also available in 'toolkits' available at [www.betterregulation.vic.gov.au](http://www.betterregulation.vic.gov.au)

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## What you need to know

This handbook has been prepared for policy advisers ('you') who need to develop policy proposals (including regulatory or other approaches) or review current regulations. It focuses on how to develop an impact assessment, which is part of an overall regulation-making process.

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### Purpose of this document

This handbook helps you prepare **impact assessments** for regulatory proposals based on an evidence-based policy framework and incorporating best practice regulatory principles.

It updates the Victorian Guide to Regulation (DTF, 2014), and sets the requirements for impact assessment.

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### Requirements

There are two types of **impact assessment** in Victoria:

- Legislative Impact Assessment (LIA) — for primary legislation
- Regulatory Impact Statement (RIS) — for subordinate legislation

The formal requirements for Ministers to prepare these are set in the [Cabinet Handbook](#) and the *Subordinate Legislation Act 1994* (SLA).

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### Purpose of impact assessments

**Impact assessments** document credible, evidence-based advice that facilitates consultation with the community and helps the Government determine the best approach for achieving better community outcomes as well as broader growth and productivity objectives.

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### When to use

Good policy development requires early planning. This handbook is useful throughout policy development, including for the evaluation of current regulations and the analysis of new issues and options. Use this handbook to set the scope of forthcoming impact assessments, and engage with the **Office of the Commissioner for Better Regulation (OCBR)** for advice.

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### Role of the Commissioner

The **Commissioner for Better Regulation** independently assesses the adequacy of all impact assessments prior to their release for public consultation (for a RIS) or prior to consideration by Cabinet or Cabinet Committee (for a LIA). Adequacy relates to the clarity of analysis, the strength of evidence used and judgements made, and is determined against the requirements of the SLA and this handbook.

The OCBR supports the Commissioner and provides practical support on preparing impact assessments, including training.

The Commissioner also has an important role in supporting better regulatory practice in Victoria, with a focus on assisting agencies to improve regulatory design, practice and evaluation.

Contact the OCBR: [regulationreview@betterreg.vic.gov.au](mailto:regulationreview@betterreg.vic.gov.au) or 9092 5800 or visit [www.betterregulation.vic.gov.au](http://www.betterregulation.vic.gov.au)

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### What this document doesn't cover

Other Government bodies are involved in the development and review of legislation and regulation. These include: the Department of Premier and Cabinet (for extensions and some exemptions to impact assessment requirements); the Department of Treasury and Finance (on cost recovery issues); the Department of Justice and Regulation (for human rights, offences, penalties, infringements and powers of inspection matters); and the Office of Chief Parliamentary Counsel (on drafting legislation). You may also need to consult early with them.

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# **Part I – Overview of impact assessment**





## Introduction

Governments use a mix of regulation and other policy approaches to affect community and business behaviour, and to increase overall community wellbeing. Achieving better regulatory design and practice, requires high quality evidence, analysis and stakeholder consultation.

Impact assessment is central to achieving better regulatory performance and has been a core requirement of the Victorian Government for over 30 years. This handbook helps you to prepare impact assessments for regulatory proposals. It updates the Victorian Guide to Regulation (2014) in setting out the requirements for impact assessments.

### What is 'regulation'?

At its broadest, 'regulation' means the actions and requirements of government that are intended to change the choices and actions of individuals, community organisations and businesses. It includes rules backed by government authority (e.g. legislation) and the activities of regulators, such as approval processes and enforcement activity.

Regulation can also be viewed as a continuum with mandatory rules enforced by government at one end, and self-regulatory approaches at the other. Self-regulation typically involves voluntary standards or rules being developed and enforced by industry. In such arrangements, direct government involvement may be limited or non-existent.

Government can also influence the choices and actions of individuals and groups through non-regulatory approaches, including through public information and education, incentives and program design.

While a broad range of options are worth considering when you are approaching a policy problem, the impact assessment requirements set out in this handbook are principally focused on regulation through primary or subordinate legislation.

### What is 'impact assessment'?

'Impact assessment' is the framework used to develop and explain policy advice. It provides a foundation for effective and efficient regulation.

Policy advice to the Government needs to consider the:

- nature of the policy problem or case for action;
- outcomes, or objectives, sought as a result of government action;
- most feasible options for delivering the desired outcomes;
- likely effects of implementing feasible options; and
- views of stakeholders on all of the above issues.

Impact assessment also paves the way for the evaluation of regulatory arrangements, which facilitates continuous improvement in regulatory design and practice over time.

## Why undertake impact assessment?

Impact assessment is fundamentally good policy-making. To get the most value from impact assessment, build it into policy development from the outset, rather than treat it as an additional compliance exercise at the end.

An impact assessment that presents a sound analysis based on credible evidence enables the Government to consider all relevant information before making a decision. It also supports informed and effective consultation by enabling stakeholders to comment on the detailed analysis, evidence and judgements presented to the Government.

Preparing an impact assessment promotes government action that:

- will create benefits for the community;
- minimises cost and inconvenience;
- considers potential unintended consequences;
- can be evaluated or 'tested' for effectiveness, and therefore be refined over time; and
- takes account of the preferences, views and expertise of the community.

For regulations that set fees for government services and activities, an impact assessment helps to:

- set fees that support the achievement of policy objectives;
- consider the efficient cost of delivering government processes and programs;
- achieve full cost recovery (unless there are compelling policy reasons not to do so);
- make subsidies between different users of government activities transparent ; and
- demonstrate that any proposed fees (or fee increases) are warranted.

## When is impact assessment required?

The obligation to prepare an impact assessment rests with the Minister responsible for the regulation. In practice, departments and agencies will prepare an impact assessment to support their advice to the responsible Minister. Impact assessment can be required for the *introduction, amendment* and *sunsetting review* of legislation, including for:

- primary legislation (acts of Parliament)
- subordinate legislation, such as:
  - statutory rules (which include regulations)
  - legislative instruments (which include codes of practice, mandatory guidelines and orders)

In Victoria there are two types of impact assessment (Table 1). The main elements of each impact assessment are similar and key differences will be highlighted in later sections of the handbook.

**Table 1 – Two types of impact assessment in Victoria — LIA and RIS**

Features	LIA — Legislative Impact Assessment	RIS — Regulatory Impact Statement
<b>Application</b>	For proposals that may result in, or change, <b>primary</b> legislation.	For proposals that may result in, or change, <b>subordinate</b> legislation, or replace sunsetting regulations
<b>When it is required</b>	An LIA is required for proposals that are likely to impose a significant burden. <a href="#">The Cabinet Handbook</a> (cl. 4.2.7, 5.4.16) specifically requires an LIA for Approval in Principle of proposed legislation.	A RIS is required under the <i>Subordinate Legislation Act 1994</i> (SLA) for proposals that are 'likely to impose a significant economic or social burden on a sector of the public'.

In practice, an impact assessment (RIS or LIA) must be prepared for any proposal that is likely to impose a significant economic or social burden on a sector of the public.

The indicative threshold is that the impact of a proposal is likely to be greater than \$2 million per year, including readily quantifiable impacts (such as licensing or registration requirements) as well as other unquantifiable, intangible or human rights impacts. In addition, an impact assessment may also be required if, for example, the overall effects are unlikely to exceed \$2 million per year, but there are concentrated effects on particular groups or sectors.

When applying the threshold, you need to consider the gross burden or cost on a sector of the community. While the benefits for the community or offsetting cost reductions for specific sectors or groups from a proposal are not relevant for the threshold, they need to be fully considered in an impact assessment.

Even where an impact assessment is not required, it is still good practice to apply the impact assessment framework when analysing policy issues and preparing advice for government.

## Role of the Commissioner for Better Regulation

When impact assessment is required, the responsible Minister is required to seek independent advice on whether the impact assessment is 'adequate'. This role is performed by the Commissioner for Better Regulation ('the Commissioner').

The Commissioner assesses the adequacy of an impact assessment against the requirements of the SLA and this handbook. The Commissioner looks for the impact assessment to:

- contain analysis that is logical and proportionate to the proposal's expected effects;
- draw on sufficient and relevant evidence; and
- be transparent about assumptions used.

In determining adequacy, the Commissioner does not assess the merits of the proposed approach (or other options), any value or moral judgements that may need to be made, or the weights given to the views of particular groups in the community. The Commissioner is required to ensure that the impact assessment presents a credible, transparent and evidence-based analysis that is suitable for public consultation and decision-making.

In some cases, an impact assessment may require specialised and complicated modelling. In these cases the Commissioner looks for evidence that the modelling approach was consistent with the requirements of the SLA and this handbook (including that key assumptions are clear and justified), rather than providing a detailed peer review of the analysis.

The Commissioner communicates the outcomes of this assessment in a 'letter of adequacy' to the responsible agency. This letter accompanies the impact assessment document in public consultation (RIS) or with Cabinet submissions (LIA).

The Office of the Commissioner for Better Regulation (OCBR) will work with you as you prepare and draft the impact assessment — including through general advice and feedback on drafts of the impact assessment — to help you meet the adequacy requirements.

The OCBR is here to help you and can provide practical support and assistance as you scope and develop your impact assessment. This includes:

- initial planning for a future impact assessment (e.g. well in advance of an upcoming sunset date for regulations);
- support during the early stages of policy development that could eventually result in regulatory proposals; and
- advice on how to analyse specific issues and prepare and 'adequate' impact assessment.

## Rules for regulation making

The *Subordinate Legislation Act 1994* (SLA) governs development and oversight of subordinate legislation (statutory rules/regulations and legislative instruments). As well as defining requirements for impact assessment, consultation and scrutiny, the SLA defines exemptions and associated processes and roles, including those of responsible Ministers.

The *Subordinate Legislation Act Guidelines* (sometimes referred to as ‘the Premier’s Guidelines’) further explain how to apply the SLA, including the ‘significant burden’ threshold, public consultation and other process requirements.

The *Subordinate Legislation (Legislative Instruments) Regulations 2011* defines types of legislative instruments that are exempt from the impact assessment requirements.

This handbook mainly focuses on how to develop a suitable impact assessment. The handbook and the toolkits reflect the requirements of the SLA and *Subordinate Legislation Act Guidelines*, with a focus on the practical use of the impact assessment framework by policy advisors.

## Key features of an impact assessment

### An impact assessment answers key questions

An impact assessment answers the following key questions:

- Why is the Government considering action? (problem analysis)
- What outcomes is the Government aiming to achieve? (objectives of action)
- What are the possible different courses of action that could be taken? (identify feasible options)
- What are the expected impacts (benefits and costs) of feasible options and what is the preferred option? (impact analysis)
- What are the characteristics of the preferred option, including small business and competition impacts? (summarise the preferred option)
- How will the preferred option be put into place? (implementation plan)
- When (and how) will the Government evaluate the effectiveness of the preferred option in meeting the objectives? (evaluation strategy)

Part 2 of this handbook will help you to work through the key questions, and provides guidance for each section of an impact assessment.

### An impact assessment contains clear and relevant evidence and analysis

To meet the ‘adequacy’ requirements, you need to present credible, relevant evidence on the nature and extent of the problem, demonstrate a logical link to feasible options to address the problem, and analyse the expected impacts of these options. This requires you to:

- draw on relevant quantitative and qualitative evidence, gathered through consultation and the evaluation of existing settings;
- collect new information where important gaps have been identified; and
- succinctly present evidence and conclusions drawn from this evidence, using a clear analytical framework
- explain assumptions and judgements made, where there are gaps in information, or where the expected effects of options are not known.

The impact assessment should be a clearly written document that stakeholders can read easily and which facilitates consultation.

## Analysis in an impact assessment is proportionate

The scope and depth of analysis in an impact assessment, and the time and resources devoted to undertaking it (including the extent of stakeholder consultation), should be ‘proportionate’ — reflecting the significance of the problem and the effect of likely potential options to address it. In applying the principle of proportionality, policy advisors and the Commissioner for Better Regulation need to consider the appropriate *level of quantification* and the *breadth of analysis*, both of which are important to developing well-considered regulatory proposals.

### Quantification

Quantification of social, economic and environmental costs and benefits helps to account systematically for all the effects of options, including possible unintended consequences, and minimises the need for subjective judgements. This is particularly important where options could impose significant obligations on the community.

You should always quantify the effects of options as far as possible, particularly where data are readily available or easy to obtain. Proportionality means that for options with:

- relatively small impacts (those closer to \$2m per year), a mix of quantitative and qualitative analysis may be sufficient (including indicative estimates);
- impacts between \$2m and \$8m per year, the quantification of costs and benefits will likely vary, but is expected to improve as the size of the impacts increase; and
- higher expected impacts (e.g. ≥\$8m per year) quantification of all costs and benefits is generally required.

In all cases it is important to be clear about the credibility of the data and evidence used – and to be clear about the estimated benefits and costs.

### Breadth of analysis

As the complexity of the problem and of potential regulatory arrangements increases, this *may* require more detailed analysis and explanation in an impact assessment. For example, complex, multi-faceted problems may require options to be considered for different aspects of the problem or there may be complex interactions with other regulatory regimes.

For example, the occupational health and safety regulations cover a large number of distinct issues, including falls from heights, working in confined spaces and the use of powered equipment. In this case, the diverse range of harms, different and complex underlying causes and affected groups, mean that each issue will likely require quite different options to be considered.

This is discussed further in part 2 of this handbook.

### Preliminary scoping to apply proportionality

To determine whether an impact assessment is required, and the appropriate extent of analysis, it is worth considering an early scoping exercise: collate the available data, perform an approximate calculation of impacts, consider the level of stakeholder concern, and consult with the OCBR.

Even if an impact assessment is not required, the impact assessment framework (including the analysis and data collection undertaken to date) provides a basis for best-practice policy advice, and supports public consultation on government proposals.

## Case studies of proportionate approaches to policy analysis

### Regulatory fees

The regulations that set fees for a local government service are being reviewed. These impose a significant annual financial cost. The impact assessment needs to include a detailed review of the costs of delivering services across local government areas, based on monitoring service delivery, surveys and primary research; and examine how different pricing approaches might affect compliance, access to services, and flow-on economic costs.

### Licensing a high risk activity

The regulations that require operators of a high-risk activity to obtain a licence and operate under Australian Standards for safety and environmental risk management are being reviewed. The financial impact of these regulations is marginally higher than the 'significant impact' threshold of \$2 million per year, but is highly concentrated.

The effectiveness of the regulations has been evaluated and there is a strong case to retain the current licence requirement. However, the regulatory regime also interacts with statutory planning, environmental licensing and occupational safety licensing systems, with potential for overlap and duplication that can be complex for business or gaps in coverage that may risk shortcomings in government oversight. The regulations also set licence fees.

The impact assessment therefore explores options to reduce unnecessary regulatory duplication, improve effectiveness (including improvements to related regulatory regimes) and the appropriate fee structure.

### Environmental approvals

The government is considering how best to manage or control emissions to the environment from specific sites. The policy objective is to avoid pollution from proposed and current developments, which could be achieved through better design of developments and environmental management practices.

The initial analysis indicates that a regulatory option — requiring a licence for emissions or approval to build sites that discharge emissions — may be the preferred approach. The financial impact of this regulation is likely to exceed \$10 million per year, requiring in depth analysis to value the environmental benefits of regulation, and to confirm the estimated costs as well as the effects on entry into markets and prices for goods and services.

In addition, because there are other approaches to promoting environmental management and gaining information about business, the impact assessment needs to look at other options. This includes better alignment of statutory planning approvals and information sharing in government, as well as the costs and benefits of using targeted inspections and support services to obtain information and improve business practices.

## Impact assessment promotes consultation and participation

The experience and views of stakeholders should inform the impact assessment. Early stakeholder consultation should be the default approach for any proposal. The benefits of stakeholder participation include:

- providing a better understanding of the problem from different perspectives, including directly affected groups, regulators and the broader community;
- highlighting gaps in information or analysis, and collecting data and information;
- drawing on practical insights and experiences;
- generating ideas and developing options;
- understanding the likely effects (costs and benefits) of options; and
- testing your reasoning and conclusions.

Participation also helps the Government to understand and respond to stakeholder perspectives on issues and can help to promote community understanding of — and support for — proposals.

Early consultation within government is also important, including:

- with Ministers, departments and agencies that may be affected, or who have related responsibilities and regulatory regimes;
- with other departments and agencies involved in the development and review of legislation, including:
  - the Department of Premier and Cabinet (for extensions and some exemptions to impact assessment requirements);
  - the Department of Treasury and Finance (on cost recovery issues);
  - the Department of Justice and Regulation (for human rights, offences, penalties, infringements and powers of inspection matters); and
  - the Office of Chief Parliamentary Counsel (on drafting legislation).

The impact assessment document itself is a key consultation tool. Public release of the impact assessment document (required for a RIS) can help you to reach additional stakeholders who could not easily be engaged with early, or to validate and complete analysis that has drawn on early consultation with stakeholders.





# **Part II – Completing the impact assessment**



# Drafting the impact assessment — the seven key questions

The seven key questions that must be answered in an impact assessment are:

- Why is the Government considering action? (problem analysis)
- Which outcomes is the Government aiming to achieve? (objectives of action)
- What are the possible different courses of action that could be taken? (identify feasible options)
- What are the expected impacts (benefits and costs) of options and what is the preferred option? (impact analysis)
- What are the characteristics of the preferred option, including small business and competition impacts? (summarise the preferred option)
- How will the preferred option be put into place? (implementation plan)
- When (and how) will the Government evaluate the effectiveness of the preferred option in meeting the objectives? (evaluation strategy)

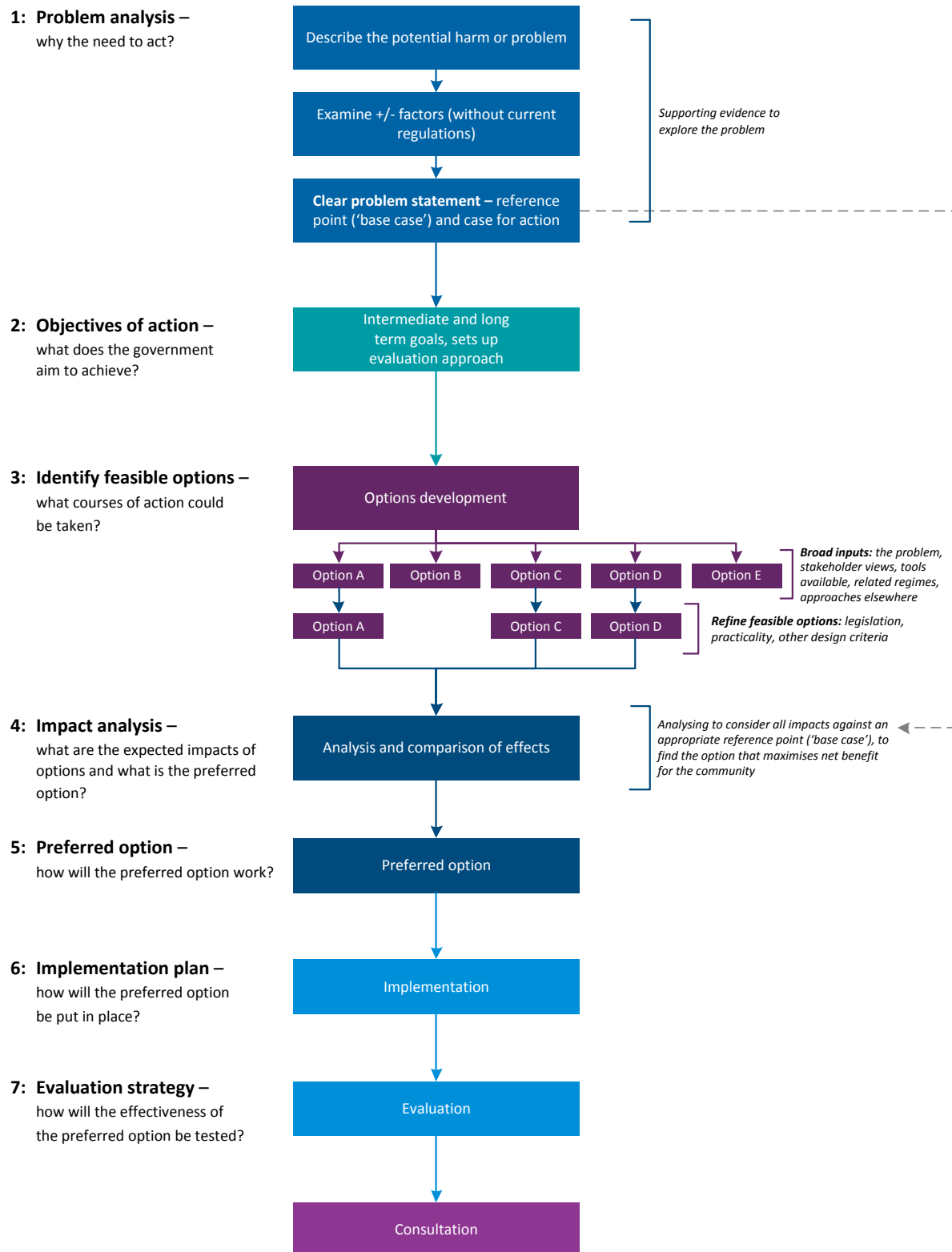
In addition, an impact assessment must include the views of stakeholders consulted to date and how future consultation will be undertaken (consultation).

Although providing answers to these questions will be an iterative process, addressing them in sequence (to the extent possible) will help you to:

- ground your preferred approach in a comprehensive understanding of the identified problem, before assuming a potential solution;
- set clear objectives to test the likely effectiveness of possible options;
- think broadly about possible courses of action, including new and different approaches;
- develop options that can be applied in practice by regulators and regulated parties;
- test assumptions and estimates of the expected impacts of options;
- set out how you have reached your recommendation on the best way forward to address the problem(s); and
- set up continuous improvement in regulatory policy and practice, with clear accountabilities for monitoring, evaluation and adjustment over time.

Follow the diagram at Figure 1 to see how the seven key questions work together to form the impact assessment.

**Figure 1 – The seven key questions to answer in an impact assessment**



The impact assessment framework supports you to develop logical and transparent thinking, from the problem and its causes to the final policy proposal

# Getting started

## Start early!

Where timeframes are known, you should set the scope and start preparing your evidence gathering and analysis well ahead of the deadline for proposals. This will help you to:

- focus your analysis on critical issues;
- consult with the OCBR on the policy issues and any data or analytical constraints;
- avoid unnecessary analysis or financial outlay on consultants (where analysis could be done in-house);
- keep opportunities open for identifying new and different options for addressing the problem;
- plan ahead for gathering evidence and access to specialist skills and expertise (if required); and
- finalise your written advice (RIS/LIA) within deadlines.

Early engagement with the OCBR will help you to scope your impact assessment, understand the most important issues, and identify knowledge gaps. Figure 2 shows the role of early engagement in the regulation-making process.

## Identify and engage with your key stakeholders

Consultation with stakeholders is essential in helping to identify harms or risks to the community; test the effectiveness of existing regulations (including opportunities to reduce regulatory burdens or other improvements); identify possible options; and collect relevant evidence and data.

Early consultation within government is also important. Consultation with regulators (including local government) may provide valuable information on potential harms or risks; test the practicality of different options and consider key implementation issues. Other agencies that may need to be consulted are the Department of Justice and Regulation (for human rights, penalty and infringements matters), and the Office of Chief Parliamentary Counsel (on drafting legislation).

The most suitable approach to consultation will depend on the nature of the policy issues to be considered, stakeholder perspectives and other considerations (for example, Cabinet confidentiality).

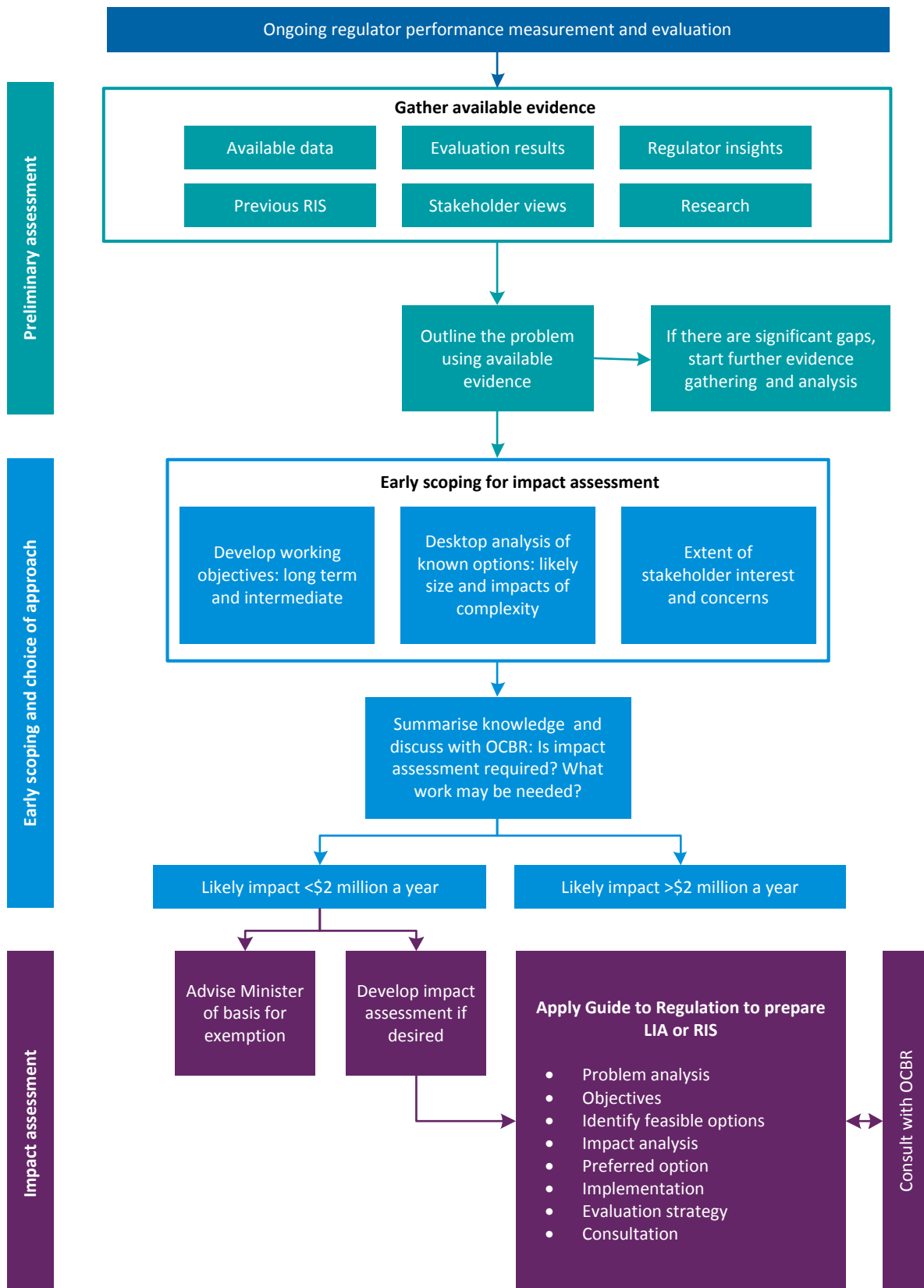
## Consider whether existing data is sufficient

The impact assessment represents an important stage in the life of regulation, to identify opportunities to review current practices. The sunseting mechanism in particular should ensure existing regulations — and their implementation — are regularly evaluated.

In the early stages of policy development it is therefore important to consider whether existing data and evaluation mechanisms will provide sufficient evidence to enable current arrangements and different approaches to be examined. It may be possible to undertake data gathering and evaluation within existing regulatory activities and stakeholder engagement, or additional work may be required.

By doing this early (well before sunset dates and the project work of drafting the impact assessment), you will have sufficient time to put in place any additional evaluation and analysis activities that you need to inform your advice through your impact assessment.

**Figure 2 – Impact assessment – start early and engage early**



## Risk assessment is important

Although government interventions are often aimed at reducing risk to the community, there are no circumstances which are entirely risk-free and it is not possible for governments to eliminate all risks. Risk assessment is therefore an important component of the impact assessment framework.

In the first instance, this may include considering whether risks should be acted on, or acknowledged and tolerated. Where legislation or regulation aims to address risk, it is important to prioritise your focus and effort on significant risks and/or those with significant consequences. It is also important to test to what extent options would reduce the likelihood or consequence of risks, or to eliminate hazards — and any residual risks after the preferred option has been implemented.

### Tips for drafting

An impact assessment needs to include a sound analysis of different options and be written clearly so that stakeholders and the community can be readily consulted. When dealing with complex issues, clear explanations are vital. It is important to remember that an impact assessment does not need to be lengthy or complex to be 'adequate'.

#### Drafting approach

- Use plain English and avoid industry or technical jargon. Provide brief explanations of key terms.
- Keep the impact assessment short and to the point.
- Use flowcharts or diagrams to explain how elements of the regulatory structure work together.

#### Organising information

- Include an overview or executive summary.
- Consider placing calculations, modelling and technical discussions in appendices or make them available on a website or on request.
- Include references for information sources, such as data and research findings, and include a bibliography.
- For a RIS, include a consolidated list of 'questions for stakeholders' to facilitate public consultation.





# 1. Problem analysis

## Purpose of this stage

To set out clearly the case for action. The **'problem'** could be an actual or potential harm to the community that the Government wishes to address or reduce.

For sunseting regulations, the problem analysis sets out what will happen if the regulations are allowed to sunset. This helps to establish whether a case for government action remains, and to evaluate the efficacy of the current regulatory framework in addressing the problem.

## Output of this stage

A clear, succinct, and evidence-based description of:

- the problems or risks;
- their actual or potential significance;
- the underlying causes; and
- who is affected.

## The approach

You can use various approaches to provide a logic to your analysis, including market failures, behavioural sciences, risk management and equity concerns.

Explain how relevant factors (such as private incentives, social norms, and other regulations) influence the causes, or extent, of the problem. This helps to understand what the situation would be in the absence of government action.

This approach is necessary because the case for action is based on the problem that would exist after accounting for other factors.

## How the output will be used

The insights gained in describing the problem are used to develop the **objectives** that the government is seeking to achieve.

The description of the **problem** will help you to identify **feasible** options, and as a reference point in choosing between them to achieve the objectives.

## What the OCBR looks for

- clear and credible problem diagnosis, considering the underlying causes, impacts and other relevant factors that mitigate the problem;
- clear understanding and presentation of stakeholder views of the problem;
- proportionate analysis, drawing on relevant evidence;
- for sunseting regulations, evaluation of the cost effectiveness of the current regulations; and
- for fee setting, consistency with the Department of Treasury and Finance's *Cost Recovery Guidelines*.

Well-developed problem analysis is the starting point for a credible impact assessment. It is critical that you invest adequate time and resources in problem definition, as a poor understanding of the problem can lead to poorly specified objectives and badly designed responses, with negative consequences for the Government, the community and the economy.

## Requirements for impact assessment

An impact assessment needs to clearly define the nature, extent and underlying causes of policy problems that result in harm to the community. In some cases, the Government may have policy objectives that focus on promoting improvements for the community (such as social welfare objectives), rather than reducing a risk or harm. In both situations, it is important to have a well-developed understanding of the situation on which the Government wishes to act.

The problem analysis is therefore a necessary first step in an impact assessment to set the objectives for a proposed statutory rule or legislative instrument (which are often specified in terms of reducing harms) and to define feasible options (which target the causes of these harms).

## How to approach problem analysis

The problem analysis needs to identify the underlying causes of the problem, who is affected, and the economic, social and environmental consequences.

The goal of the problem analysis is to describe the nature, extent and effect of the problem after accounting for other factors that positively or negatively influence it. This is because potential risks may already be addressed, at least in part, by other factors (e.g. other regulations, standard business practices, or social norms). Thinking about the residual problem helps you explore these factors, and represent what the world would be like if you did not proceed with *any* proposal. This then provides a reference point (called the base case) for options development and impact assessment.

To define the problem, ask the following questions and draw on relevant evidence.

### Describe the harm(s)

- What is the harm(s) (type, level and extent) to the community?
- Which risks would likely arise, and what would be the likely consequences?
- For sunseting regulations, what is the problem today? How has the nature and extent of the problem changed since the regulations were last made?

### Define who is affected

- Who is affected by the problem?
- Do the causes and impacts vary across different groups, and how?

### Identify the source or cause

- What is the source, or underlying cause(s) of this problem or harm?
  - Which behaviours or actions are of concern?
  - Why are these behaviours occurring?

### Consider how to 'break down' the problem

- Is the problem best understood as an 'aggregate' issue, or should it be 'broken down' into sub-issues or affected groups?
- Is a high-level or 'macro' understanding of the issues (such as general trends of incidents, disease rates) sufficient for analysing the problem?
- In which different ways can the problem be analysed, considering its causes — for example, geographic, type of actor, industry sector? Which approaches might best explain why and how the problem occurs?

<b>Consider the effect of non-government factors</b>	<ul style="list-style-type: none"> <li>• Are there other factors that reduce the problem — for example, are there other incentives or norms that might drive behaviour?</li> <li>• Which changes in technology or design might we anticipate will reduce the problem going forward?</li> </ul>
<b>Consider the effect of existing government action</b>	<ul style="list-style-type: none"> <li>• Are there existing government interventions that can address the problem?</li> <li>• Is additional government action required?</li> <li>• Are there existing government controls that might be impeding potential solutions to the problem? Or are there other constraints relevant to the problem?</li> </ul>
<b>Fees and charges</b>	<ul style="list-style-type: none"> <li>• For fees and charges (for cost recovery), why is provision of a government service(s) or regulatory activity necessary? What would be the efficiency and equity effects if no fees were charged for these activities?</li> </ul>

In answering these questions, you should aim to:

- draw from varied perspectives by engaging with regulators, regulated parties and other stakeholders where possible; and
- apply a suitable structure to your explanation. For example, the problem may be diagnosed in terms of:
  - market failures, such as shortcomings in information, or externalities (where parties undertaking an action are not the only ones affected by it);
  - behavioural science, to explore why people might expose themselves to risks or not consider or act on information as expected; and
  - social or equity concerns, including human rights, protecting vulnerable and disadvantaged individuals or communities, and relieving geographic and social isolation.

### Sunsetting regulations and identifying the problem

A RIS for sunseting regulations needs to analyse the problem as if the existing regulations did not apply. This enables significant changes in technology, community expectations and business practices to be considered so that the basis for analysis is the nature of the problem today, and not 10 years ago.

This can be challenging to do in practice and may be a hypothetical exercise. However, the analysis can draw on an evaluation of the existing regulations, consultation (including with regulated parties and regulators) and other research.

The analysis can help you identify other factors that influence the problem, and lessons learnt during the implementation of current regulatory arrangements. This can support you to develop better options that do not simply maintain the status quo and will help define the ‘base case’ for analysing the benefits and costs of these options.

### Case study approaching a problem definition

There is a concern about injuries from manual handling in the workplace (lifting, pushing, holding, throwing and carrying objects) resulting in chronic and acute injuries.

To understand the issue, industry representatives and workplace safety experts are consulted and injury and inspection data are examined. This information shows there are a range of causes of manual handling injuries, including:

- employees and employers underestimating risks, particularly with repetitive movements;
- specific workplaces where injuries are more likely to occur, because of heavy, unstable or moving loads;
- machines that vibrate when not appropriately fastened; and
- employees choosing not to use available lower-stress supports (e.g. winches and trolleys) because of habit, convenience or workplace pressure.

The analysis shows there are other incentives for employees and employers to reduce risks of injury (e.g. insurance premiums, loss of work and productivity, personal impacts of injury) that can have a positive influence. However, the analysis shows these are not wholly effective across all industries — particularly smaller businesses — because of cost pressures and lower capacity to proactively identify and manage risks.

These insights help to better define the problem and suggest areas to further examine through additional research and analysis, including disaggregating existing data to better understand specific risks.

### Draw on relevant evidence

It is important to provide evidence in the impact assessment that supports and explains your problem analysis. The following approaches are worth considering.

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#### Use a hypothesis-led approach

Form clear hypotheses about each of the important aspects of the problem. For example, ‘injuries from machinery happen because people ignore safety messages’.

Think about the evidence you would need to test these hypotheses. Consider drawing on combinations of qualitative and quantitative evidence. You may need to test multiple hypotheses in response to what the evidence suggests.

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#### Draw on and build on existing data and evidence

Use data and evidence from a range of sources to develop an understanding of the problem. For sunseting regulations, this will involve drawing on the evidence base provided through an evaluation of the regulation’s effectiveness, including compliance and enforcement data from regulators.

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#### Collect further data and evidence – higher impact proposals

Where options are likely to be high impact, or where there are significant gaps in knowledge, collect further data and evidence. Remember that your approach to evidence gathering and analysis should be proportionate.

- Lower impact proposals may generally rely on existing evidence and analysis, risk assessment, and relevant examples from other jurisdictions.
  - Higher impact proposals generally require the collection of new data to enable you to estimate the incidence of harms and their effects, impact and distribution in Victoria.
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**Use credible sources of evidence** Be aware of the relative strength of the evidence sources that you use. For example, an analysis that draws from a range of credible data sources would carry more weight than one that relies on subjective opinions or anecdotes.

Be cautious about how you use assertions by interest groups or industry, promotional material, or media or public interpretations of a public risk. Seek source material (studies, operational data) where it is available, and when referencing studies or surveys, consider their sample size, level of confidence, and comparability for Victoria.

When using case studies, put these in context and do not over-emphasise them to support your analysis.

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**Explain the basis for statements** Support the statements you make by:

- outlining your understanding of the components of the problem;
- stating the evidence base used to establish your conclusions; and
- identifying areas where further analysis or research is required.

This helps to ensure your understanding of the components of the problem is complete. This is necessary to establish the strength of the case for action, and to identify the type of options that may be appropriate for addressing the problem.

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**Be transparent about evidence limitations**

Consider the limitations of your evidence. Although it is not necessary to have complete proof of a harm to take action, it is important to be transparent about the limitations of your knowledge. Explain clearly:

- what you know is accurate;
  - what you think on balance is accurate; and
  - what you do not know, but assume is accurate, and why.
- 

**Consider future uncertainty**

Often the nature of the problem in the future will be highly uncertain. This is especially the case when facing problems associated with rapid technological change, dynamic and evolving markets, major social and demographic transitions, and/or complex systems, where different influences interact to affect the extent of the problem.

Acknowledge these uncertainties and outline plausible future scenarios that may characterise the problem, noting the implications for identifying potential options.

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The OCBR can support you by advising on:

- how to define the nature, extent and underlying causes of problems;
- how to find, analyse and determine the robustness of different sources of evidence;
- how to interpret evidence cautiously when faced with uncertainty (to avoid creating unrealistic expectations of what government can achieve, and the likely effectiveness of options);
- the credibility of the conclusions you have drawn from the evidence you have used; and
- the type of evidence and level of analysis that would be 'proportionate', given the expected impacts of the potential options.



## 2. Objectives of action

### Purpose of this stage

To define the specific outcome(s) the Government aims to achieve in relation to the problem defined in the previous stage (such as to reduce a harm).

### Output of this stage

A clear description of:

- the objectives of government action (for example, improved health) – this may be described as the *long-term outcomes* sought;
- where there are multiple objectives, a clear statement of the relative importance of these objectives (such as defining them as primary and secondary objectives); and
- where relevant, *intermediate indicators* that help to assess whether the Government is achieving the objectives.

### The approach

- focus on the *ends* that you aim to achieve, rather than the *means* to achieving them;
- link to broader government objectives (such as increasing productivity), and be consistent with objectives of existing legislation, where relevant; and
- refer to your knowledge of the problem, particularly of the behaviours that exacerbate or mitigate the harms to the community.

### How the output will be used

The objectives are used to identify **feasible options** and choose between them — i.e. how well options would meet the long-term outcomes sought.

The objectives are the starting point for an **evaluation strategy** to assess the effectiveness of the preferred option in practice over time.

### What the OCBR looks for

- an understanding of how objectives link to the **problem**;
- objectives are consistent with any relevant existing policies and broader Government objectives;
- objectives specified in a form that enables you to measure results;
- clear logic that links intermediate and long-term outcomes, and focuses on outcomes (ends), not activities/outputs (means); and
- for fee setting, consistency with the Victorian Government's *Cost Recovery Guidelines*.

Once the problem is clearly defined, it is possible to be clear about the specific policy objectives — the outcomes that the Government is seeking to achieve through action. This will enable you to identify the most appropriate option.

## Requirements for impact assessment

Sections 10(1)(a) and 12H(1)(a) of the SLA require that a RIS sets out the objectives of the proposed statutory rule or legislative instrument that are consistent with the authorising legislation.

The policy objectives included in a RIS or LIA must be expressed as the desired outcomes for the community (ends rather than means). These objectives should be consistent with the Government's strategic policy aims (for example, to support economic growth), as well as other relevant Government objectives as expressed in policy statements, other official documents and relevant legislation.

It is important to note that the policy objectives in a RIS or LIA *may* differ from those in the legislation or statutory rule. Where objectives are included in legislation or statutory rules, they can be expressed more narrowly to reflect the purpose and scope of the legislation, rather than the desired outcome.

## How to approach objective setting

Use the following approaches to develop suitable objectives.

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### **Ask questions to define the Government's goals**

Consider questions such as:

- What is the Government trying to achieve?
  - What is the desired change in behaviour or outcomes?
  - What would success look like?
- 

### **Focus on the ends, not the means**

State objectives in terms of the ends to achieve (the outcome) rather than the means of achieving them. This helps you avoid pre-determining a preferred approach or option, or narrowing down potential approaches too early.

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### **Define objectives at the right level**

Avoid defining objectives:

- too broadly, so it may be unfeasible to isolate the effectiveness or contribution of a proposal to addressing a problem (e.g. the objective is to 'reduce climate change') or
  - too narrowly, so they pre-determine the preferred approach (e.g. the objective is to regulate a behaviour).
- 

### **Consider setting intermediate indicators of progress**

Where you cannot reliably measure the ultimate objective, you may need to use intermediate or 'proxy' indicators with a credible link to the ultimate objective (e.g. improvements in local air quality as a proxy for reduced health burden over time).

The value and form of intermediate indicators will depend on the complexity and time-scale of the problem and ultimate objectives. However, in many cases, thinking early about these indicators can support objective setting, defining criteria for comparing the likely efficacy of options, and for building future evaluation strategies.

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**Be mindful of evaluation needs**

The objectives you set will link directly to the evaluation strategy for your preferred option. They can also inform your evaluation of the effectiveness of current regulatory arrangements in tackling the problem (e.g. for sunseting regulations).

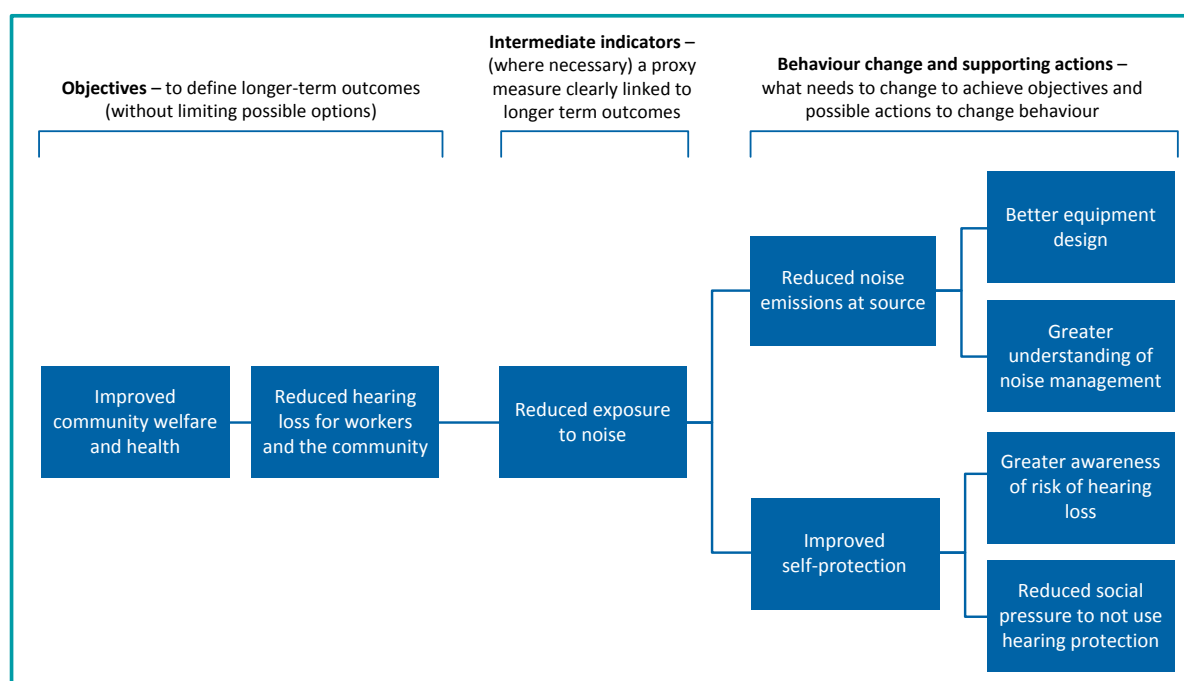
**Fees and charges**

For regulations that impose fees and/or charges, the objectives should align with the principles outlined in Victorian Government’s *Cost Recovery Guidelines*.

Typically, the objectives are to improve the efficiency and equity of funding arrangements by ensuring that those who give rise to the need for regulation bear the costs of administering and enforcing it. The Government’s policy is that there should be full cost recovery for regulatory fees unless this would substantively undermine other important objectives.

Figure 3 shows how intermediate outcomes can be linked to long-term outcomes. The amount of effort you put into ‘unpacking’ outcomes in this way should reflect the complexity and significance of the problem.

**Figure 3 – Hypothetical example of long-term outcomes and intermediate indicators**



The OCBR can support you by advising how to:

- set objectives that can be measured;
- find the right balance and level of specificity in objectives; and
- integrate cost recovery and other policy objectives.



# 3. Identify feasible options

## Purpose of this stage

To identify feasible options capable of addressing the problem. This is followed by the **impact analysis**, which enables you to assess the various options.

## Output of this stage

A description of the broad range of possible options which address the **problem**.  
An explanation of how **feasible options** were selected, and why other options were considered infeasible.

## The approach

Getting the most out of this stage requires:

- a thorough understanding of the problem and its causes;
- thinking broadly about different ways to tackle the problem, including non-regulatory options, approaches in other jurisdictions, and improvements to existing regulatory regimes and regulatory practice;
- (subject to confidentiality constraints) involving stakeholders to identify possible options; and
- for sunseting regulations, a ‘clean slate’ approach to generating options that are not tied to current approaches, as well as consultation with stakeholders to identify potential improvements to existing regulations (including to address onerous, complex, duplicative, redundant or ineffective requirements).

## How the output will be used

The analysis in this section provides clear advice to the Government and stakeholders about which approaches could achieve policy **objectives**, and why other options were considered and rejected.

The feasible options will be taken to the **impact analysis** stage.

## What the OCBR looks for

- options that address the underlying causes of the problem;
- consideration of a range of different options, including non-regulatory options;
- a range of feasible options for more detailed analysis;
- a clear rationale for excluding unfeasible options; and
- where appropriate, evidence of involvement of key stakeholders in identifying, designing and assessing feasible options — particularly in the review of sunseting regulations.

There is usually more than one way to achieve a given objective. You should think broadly about a range of possible options, and apply a consistent method to refine these into a set of the most feasible options (typically 2-4 options, although this may vary with more complex and multifaceted problems).

## Requirements for impact assessment

Sections 10(1)(c) and 12H(1)(d) of the SLA require a RIS for a proposed regulation or legislative instrument describe other practicable means of achieving the objectives, including 'non-regulatory' options.

Examples of 'non-regulatory/non-legislative' options include:

- information and education campaigns to raise awareness;
- funding or delivery of grants or support services;
- arrangements where industry adopts a voluntary code of conduct; or
- market-based approaches (such as the use of tradeable permits).

It is an ongoing commitment of the Government to reduce unnecessary and burdensome regulation on business and the community. Consequently, for sunseting regulations, it is a requirement that you undertake appropriate consultation with regulated parties to identify at least one option which reduces regulatory burden relative to current arrangements. This could include approaches such as:

- remove or simplify regulatory obligations;
- using information technology to streamline or simplify requirements;
- reduce the number of parties subject to an obligation (for example, through changing thresholds);
- reducing the frequency of an obligation, for example, how often reporting is required; and
- provide greater discretion for how regulators apply requirements, such as allowing for greater streamlining or exemptions on the basis of risk or past performance.

The purpose of this requirement is to look for opportunities to reduce the regulatory burden, and highlight any trade-offs between achieving burden reduction and other policy outcomes. This allows stakeholders to understand and comment on these trade-offs where they exist.

## How to approach options development

Options are developed in relation to the identified **problem**, after accounting for all the factors that positively or negatively influence the problem, or elements of it.

You will always need to consider whether the 'base case' may address the problem. For example, if no government action were taken, would technology or market changes alter the problem?

When considering possible options for government action, do not limit yourself to existing legislation. Think broadly about possible approaches to include:

- approaches that do not require legislation (such as education and support);
- approaches that have been suggested or recommended by stakeholders or in previous reviews;
- market-based approaches (for example, taxes, tradeable permits, and auctions);
- improving the design, implementation or enforcement of existing regulations; and
- approaches used for similar problems in other jurisdictions (where these are less onerous but are deemed inappropriate for Victoria, you will need to say why it is not appropriate to adopt them in Victoria).

For legislative options, there may be variations in the overall approach (such as level of control, form of regulation), as well as other significant (sub)choices that shape what regulated parties have to do, follow, avoid or exclude.

In some cases, you may identify options that may be outside the scope of the current enabling or authorising framework (for example, a measure that may require a change to legislation to extend the use of a related State or local government compliance regime). Where these options have significant potential value, or have been raised by stakeholders, they should be included as well as a discussion of the changes which would be required to make them viable in future.

Your aim should always be to provide a clear narrative about possible options available, and how these have been refined to arrive at a narrower set of feasible options which will be subjected to detailed analysis. This includes reference to the *objectives* and any other important policy criteria that may affect choices, and explaining how options were assessed against these criteria.

Consider the following approaches to help you generate ideas for options and consider how options might change or influence behaviours and other factors affecting the problem.

**Make the most of existing influences and regimes**

Consider whether the Government could:

- enhance the effect of existing incentives that would reduce the problem (for example, businesses acting for reputational or competitive reasons);
- modify approaches in existing regulatory regimes that may already affect the problem, rather than creating new regulatory requirements;
- better coordinate existing regulatory regimes (including related state or local government regulation) to target the issue; and
- deliver guidance, information and monitoring through existing regulatory regimes (reducing the need for additional regulation).

**Explore opportunities to improve market design**

Consider whether objectives could be delivered by making markets work more effectively or by using market-based mechanisms that alter the incentives for affected groups (rather than ‘command and control’ requirements). For example, explore options such as tradeable permits, auctions, deposit-refund systems, levies, subsidies, or property rights.

**Define the overall regulatory approach**

Examples include:

- the scope of the risks you are choosing to tackle, manage or accept;
- degree of self-regulation or direct government regulation; and
- form of regulation, such as prescriptive (specifying design standards for compliance), outcome-based (setting performance standards, with flexibility on achieving these) or process-based (defining risk management methods).

**Define how requirements would be set**

Examples include:

- introducing or changing licensing, registration, or permitting regimes, or information keeping, reporting and disclosure obligations;
- how obligations are formalised, including through regulation, guidance, licences, incorporated standards and other instruments;
- differentiating approaches (such as the level of control or review) according to risk, or the capability and performance of regulated parties; and
- for sunseting regulations, consider possible options that would reduce regulatory burden, relative to the current regulations

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**Broadly consider delivery** Issues to consider include:

- the 'level' at which decision-making should occur (for example, Minister, department, regulator, or local community decision-making);
- which body is best suited to regulate (considering the principle of subsidiarity, the balance between consistency and flexible local approaches, and the capacity/skills of different bodies);
- scope of discretion for the regulator to adjust approach according to risk;
- the general approach to compliance or education programs (including choices about the level and focus of monitoring and compliance); and
- the interaction between design and delivery — the delivery of regulation is not a separate consideration to the design of regulation.

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**Design fees and pricing (where applicable)** Consider:

- the need to deliver the activity at all;
- the scope to alter the level of government service provision or regulatory activity that is funded through fees and charges — for example, remove discretionary activity, move to online systems, outsource processes;
- variations in the fee structure — such as flat versus variable fees; and
- whether there is a credible rationale for setting fees below full cost recovery — noting full cost recovery is a Government requirement, unless there is a strong case to deviate from this.

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## Testing and filtering to identify the most feasible options

The following approaches may be adopted to identify the most feasible options:

- Start with broad possible choices about different approaches (for example, decisions to regulate or not, and the type of regulatory tool), before moving to narrower design choices — providing an explanation of this hierarchy of choices in the impact assessment document.
- Focus attention on options where there are meaningful differences in their effect on regulated parties or on outcomes. Avoid excessive effort to develop and compare options that represent only minor variations to one approach.
- Briefly explain why certain options cannot be progressed due to policy or legislative constraints. (This may include identifying which changes would be required for options that would otherwise be preferred).
- Only discard options if they are clearly inappropriate, disproportionate or unworkable, not simply because considering them in further detail (for example, impact analysis with assessment of costs and benefits) would be complicated or time consuming.

The following questions will help you consider the practicalities of implementing options, and identify potential impediments that may affect their feasibility. These are provided as a general guide, and not all of these will be relevant to every problem. You should briefly document the process and decision-making criteria used.

**Consider efficacy of options**

- How well would the option change or influence behaviour and other causes of the problem?
- How well would the option promote the Government's objectives?
- How does the option address reasons for non-compliance?
- What are potential gaps and shortcomings, and what might fill these?
- What are the possible unintended consequences?
- Is it sufficiently flexible to respond to changes in the problem over time? (Refer below to **considering degree of uncertainty**)

**Consider legal or other constraints**

- What legal head of power is required to do this? Is it available?
- What other factors apply, such as Government policy?

**Broadly consider the practicalities of options**

- What specific measures and actions would business or the community need to take as a result of this option (e.g. administrative tasks, planning for and developing compliance requirements)?
- What effects will the options have on different groups (e.g. how might it affect small business, community groups, regional industry, or local governments? Is there an additional burden on these groups)?
  - For small business, consider whether the lack of economies of scale or other factors (for example, the absence of dedicated legal support) may affect their ability to understand or comply with different options.
  - If so, consider whether flexible options may be appropriate given the stated objectives. For example, specific requirements (that are easy to understand) and/or flexibility to comply may be appropriate for small businesses, while performance-based standards may be appropriate for larger businesses)?
- How might the options affect competition, such as by creating barriers to entry or restricting market participation?
  - Where an option would restrict competition, consider whether this is necessary to achieve the objectives. Could other feasible options achieve the objectives without significantly affecting competition?
- Could the options affect human rights, such as freedom of movement, freedom of expression, privacy and reputation, property rights, rights to fair hearing and fair criminal proceedings?

**Consider how compliance and enforcement would affect the feasibility of options**

- How would regulation and its implementation interact? Implementation issues can affect the feasibility of some options.
- Would monitoring and compliance require new programs, or changing priorities? What relative priority (for example, in inspections or complaint response) would it have?
- Does local government have a role and have you consulted appropriately? (The Victorian State-Local Government Agreement requires consultation with local government on proposals which involve them).
- How might people attempt to evade or work around obligations? What would the consequences be?

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**Consider regulatory duplication**

- How does this option differ from or repeat existing obligations, including under other regimes?
  - How would this option interact with other laws and regulations? Could another (existing) regulator address the problem (either with or without additional regulation)?
  - Is there a risk of cumulative burden or duplication, and a need for harmonisation?
- 

**Consider uncertainty and adaptability of options**

Where there is significant future uncertainty, 'stress test' options to assess how they would perform given key trends and challenges, and identify implementation considerations.

- How well would the option deal with changes in technology, demographics, community expectations or other trends?
  - How would the option perform if the assumed behaviours and responses did not occur? Would it still address the problem?
  - What scope does the option have for discretion, variation and adaptation by the regulator? What scope is appropriate (for example, to develop instruments or vary compliance)?
  - How would discretion be managed? Are governance, policies and processes and appeal provisions sufficient?
- 

## Feasible options for impact analysis

As a guide, all impact assessments should analyse at least three feasible — and substantively different — options. For higher impact issues, the impact assessment should analyse four feasible options.

For sunseting regulations, the impact assessment should generally include an option that:

- is substantively different to the current regulations (such as strengthening related regulatory regimes, using a market-based approach, improving access to information, or leveraging off other factors that influence the problem); and
- reduces the regulatory burden relative to the existing regulations.

The OCBR can support you by advising on:

- potential approaches to identified problems;
- approaches used in other jurisdictions or regulatory areas;
- the suitability of different approaches; and
- potential unintended effects and risks of options.

Consult with the OCBR before you narrow your options.



# 4. Impact analysis

## Purpose of this stage

To identify the anticipated impacts of the **feasible options** and to provide a clear explanation of how this was done.

To determine the **preferred option**, after accounting for all the costs and benefits.

To provide clear advice to the Government on the potential effects of options, for informed final decisions.

## Output of this stage

A description of the expected costs and benefits of the **feasible options** (economic, social and environmental), including possible unintended effects.

An objective, transparent and consistent comparison of options, using the **problem analysis** as the starting point.

## The approach

Draw on relevant evidence and data, and use quantitative and qualitative approaches to estimate the likely effects of the **feasible options**, in terms of:

- who will be affected (groups/populations) and the actions people/organisations will take (time and resources);
- the size and value of benefits in terms of reduced harms, or improved outcomes; and
- potential indirect and flow-on effects of actions taken (e.g. where businesses may pass on costs to customers, or reduce the services they offer).

Use the most appropriate decision-making tool (such as cost-benefit analysis) to compare options and determine their net benefit. Where a fully quantified cost-benefit analysis is not possible, the judgements used to compare options need to be clearly stated.

## How the output will be used

**Impact analysis** allows you to identify the likely effects of each option, and to compare options objectively using an appropriate decision tool (or mix of decision tools where relevant).

This analysis leads to the identification of a **preferred option**. This should be the option with the highest net benefits that maximises community wellbeing.

## What the OCBR looks for

- a clear and logical qualitative explanation of how each option may lead to particular behaviours or outcomes, and the overall impacts of these;
- a transparent description of the evidence used, and assumptions made, to determine how parties are expected to respond to each option (behaviours, practices, rate of compliance, etc.);
- quantitative analysis of the costs and benefits associated with the effects of each option, where possible;
- greater depth and precision of quantitative analysis in line with the size of the expected impacts (proportionality principle); and
- an appropriate tool for comparing options that draws on all the evidence.

By considering and estimating the likely effects of the most feasible options, you can develop a credible, transparent and objective way to decide on the ‘preferred option’ (your proposal). Doing this well involves drawing on both qualitative and quantitative analysis of the likely positive and negative effects of each option (the ‘costs and benefits’) and comparing options using an objective decision-making tool.

The analysis documented in an impact assessment should focus on factors relevant to comparing options — not analysis for its own sake because information is available. Most of this can usually be done ‘in-house’ by policy-makers. For more complex analysis, support from technical experts can be used.

## Requirements for impact assessment

Sections 10(1)(d, e) and 12H(1)(e, f) of the SLA require a RIS to assess the costs and benefits of the proposed regulation or legislative instrument, and the other feasible options to achieve policy objectives, and that the RIS state why the (not preferred) feasible options are not appropriate.

Sections 10(2) and 12H(2) require the assessment of the costs and benefits include the economic, environmental and social impacts, and the likely administration and compliance costs, including resource allocation costs.

## How to approach impact analysis

In the **problem analysis** stage, you described what the world would be like if you did not proceed with any proposal. This can be understood as the *base case* — the ‘reference point’ to use for comparing options, to establish their net effect after accounting for all of their likely benefits and costs.

Using this reference point, you ultimately determine which option is preferred by:

- considering the likely positive and negative effects of implementing each option (who will be affected, what they will do, and how this will change outcomes);
- measuring these effects, by categorising and counting them;
- estimating the costs and benefits (using monetary values as a method), where feasible; and
- comparing options using an objective decision-making tool or tools.

### Establishing the ‘base case’ reference point

In some cases, the **problem analysis** stage may not provide a suitable reference point for the comparison of options. This may be a particular challenge with sunseting regulations that have existed for a long time. In this case, it may be difficult to infer the likely state of the problem if the regulations no longer existed, and to set a suitable reference point for estimating the likely effects of options.

In these situations, engage the OCBR early about your approach to comparing options, the appropriate reference point, and how to focus analytical effort to support decision making.

## Consider the likely effects of each feasible option

All impact assessments explain the likely effects of the feasible options. ‘Effects’ include economic, social, and environmental changes that may occur by implementing each option, and cover:

- likely benefits or positive effects, such as reductions in injury, higher environmental quality, better product safety, reduced prices; and
- likely costs or adverse effects, such as administration, compliance, training, and authorisation costs, reduced choice and lower safety or environmental quality.

The following checklist will help you consider the likely effects.

**Consider how actions will change as a result of the option**

Consider and describe:

- **who** will change behaviours or practices (where relevant, breaking down the various groups by sector, location, size, capacity or other relevant characteristic — e.g. small business, regional organisations);
- **what** they will do (the specific actions and measures taken, and the flow-on consequences of these actions in terms of subsequent steps, actions forgone, alternative actions taken, market competition, and so on);
- **how** the above will change outcomes and produce benefits (for example, reduced risks or harms, consumer protection, better health, environmental quality and so on).

**Describe the expected costs**

Describe likely costs:

- administration costs (such as finding guidance materials, working out and demonstrating compliance, paperwork reporting and record keeping);
- compliance costs (works carried out, equipment purchased, management costs, training, consultancy, legal or audit and inspection fees, etc.);
- market costs associated with lower productivity, delays to production or getting goods to market, more expensive or lower quality supplies, etc.;
- other opportunity costs, such as lost ‘enjoyment’ due to constrained behaviour;
- where relevant, one-off transition or implementation costs; and
- government costs (such as administering licence/permit processes, education, and enforcement activities), which may be recovered through fees and charges on regulated parties.

**For regulatory options, document your assumptions about compliance**

Consider demonstrated or likely compliance/compliance rates.

- Will all comply with the rules? Why/why not? To what extent does this compromise the expected outcomes?
- Will they comply in all areas? Why/why not?
- What will influence compliance? Relevant factors could include social norms, understanding of specific obligations, threat of detection and punishment and reputation?

**Consider direct and indirect effects**

In addition to analysing the expected direct or immediate effects of options, where practical, consider the possible indirect effects — what is likely to happen next as a consequence (will businesses bear the costs themselves, or pass on the costs through higher prices?).

**Test your understanding of likely effects with stakeholders**

Businesses and other regulated groups may hold extensive knowledge about the potential effects of options. You should seek to establish and validate these.

Where analysis illustrates that the effects are not the same across stakeholder groups (for example, small and large business, different local governments), investigate these differences through more detailed analysis, testing and stakeholder consultation.

For a RIS (or LIA released for consultation), where your analysis relies on assumptions that were not possible to validate and test during initial consultation, highlight these and seek to confirm your understanding through specific questions for consultation.

## Measuring the effects

Develop a quantitative estimate of the effects outlined above and, where possible, the value of these effects. This helps you objectively assess and compare options, and demonstrate transparency and rigour in your decision making.

You can build a credible estimate of effects by:

- describing the size of the effects you identified above, such as the time spent, the actions taken, the number of people affected, and the outcomes achieved;
- explaining any assumptions and uncertainties about the size of effects, and the potential ranges, including upper and lower bounds (where the size of effects differs across groups, factor this into your impact assessment by disaggregating effects by group); and
- expressing effects in a common unit of measurement, which enables easier comparison of options — this generally means converting effects to monetary values, where possible.

Factors relevant to measuring effects include the following:

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### Estimating benefits: all proposals

Impact assessments:

- must qualitatively describe benefits; and
- should include quantitative estimates of benefits where it is practical to do so (considering the availability of data, the level of uncertainty, the nature of the problem, and the available measurement methods).

At a minimum:

- explain the likely size of benefits (for example, small, medium and large), so that you can better compare these; and
- provide counts/numbers of units of estimated benefits, e.g. the number of people affected, area of land protected, and number of incidents of harms avoided.

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### Estimating benefits: higher impact proposals

Impact assessments involving higher impact options or problems are also required to:

- specify benefits in monetary terms wherever data are available, or data collection is feasible; and
- include sensitivity analysis where data/assumptions are uncertain.

Seek technical expertise on relevant analytical techniques ('valuation methods'), where this would add sufficient value to understanding the positive effects of options.

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### Estimating costs: all proposals

Impact assessments:

- are required to qualitatively describe costs;
- are required to estimate likely costs to the Victorian Government, drawing on actual cost data;
- should estimate direct costs to others, drawing on available cost data, stakeholder testing, validation and feedback, and published studies;
- should disaggregate costs, where these differ across groups; and
- should acknowledge and discuss indirect costs (e.g., reductions in the choice or availability of goods and services).

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### Estimating costs: higher impact proposals

Impact assessments involving higher impact options or problems are also required to estimate indirect costs. This may require additional data collection.

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## Determine the ‘preferred option’

By using an objective decision-making framework, you can use the information and data analysed through the steps above, to identify the ‘preferred option’ and to demonstrate why it is superior to alternative options.

Ideally, the impact analysis should reflect a full cost-benefit analysis, to account for all the benefits and costs, and to work out which option has the highest ‘net benefit’. However, where there are justifiable gaps in knowledge and data (e.g. data do not exist, or gathering data would require disproportionate effort), other decision-making tools are available.

In some situations, more than one analytical approach may be appropriate for different elements of a proposal, depending on the information available. OCBR can help you to find a suitable approach.

### Using different decision tools — storing dangerous chemicals

The Government is concerned about the storage of a dangerous chemical, where the combination of large volumes of hazardous material and poor management practices mean some sites can pose significant risk of catching fire. Such fires produce noxious gasses and are extremely difficult to extinguish.

The options identification process explored a range of regulatory and non-regulatory approaches to addressing risks. Voluntary and educative approaches were considered alongside different options for a licensing and approvals regime.

The costs of regulation are quantified by considering which sites would be licensed, and the specific obligations to be imposed (including the time to apply for a licence, changes to management practices, and the installation of new equipment and potential diversion of chemicals to illegal dumps). The benefits of these options depending on the extent to which they reduce the risk of a fire starting and, when a fire does start, containing the fire and enabling it to be more readily extinguished. However, there is limited data to reliably estimate the reduction in the risk and or consequences of a fire as these are generally low-probability, high-consequence events.

This makes a full cost-benefit analysis infeasible. The analysis therefore first considers whether any of the options would ‘break even’ (i.e., whether the minimum level of effectiveness of each option was sufficient for the benefits to at least equal the costs) and then uses a multi-criteria analysis to determine the preferred option against relevant criteria (including reduction in likelihood/consequence of fire, regulatory costs, and diversion to illegal dumps).

**Figure 4 – Choosing a decision-making tool**

If...	and...	then use...	Limitations
<p>Most costs, including the most important, are known and can be quantified and their value estimated</p>	<p>Most benefits are known and can be quantified and estimated</p>	<p><b>Cost–Benefit Analysis (CBA)</b>, to compare different options, supported by qualitative explanation.</p>	<p>Requires all costs and benefits to be estimated, which may not be practicable in all cases.</p>
	<p>Most benefits cannot be quantified, but can be estimated (for example, it may not be possible to determine number of injuries avoided through the proposal, but the dollar cost of an injury avoided is known).</p>	<p><b>Break Even Analysis (BEA)</b>, to establish how effective an option needs to be to offset its costs.  Provide supporting reasoning and evidence to explain whether the proposal will likely deliver or exceed the ‘break even’ point.</p>	<p>Requires units of benefit to be estimated. Does not allow the relative effectiveness of different options to be compared.</p>
	<p>Most benefits can be quantified but cannot be estimated in monetary terms (for example, the likely area of habitat preserved by the proposal, may be known but not the dollar value of the benefits of preserving that habitat).</p>	<p><b>Cost Effectiveness Analysis (CEA)</b>, to compare different options and identify which option delivers the outcome at lowest cost ‘per unit of outcome’.</p>	<p>Considers only the least cost way of achieving a given outcome, not whether the outcome itself is optimal.</p>
<p>It is not possible to quantitatively estimate the effects of, many or most of the impacts of an option.  However, you are able to define the objectives and their relative importance, as a basis for comparing options.</p>		<p><b>Multi Criteria Analysis (MCA)</b>, to assign and aggregate scores to decision criteria and compare across options.  Use transparent criteria and weightings that are consistent with the policy objectives.</p>	<p>Requires clearly defined criteria to be weighted based on their relative importance, and a credible explanation of the allocation of scores to compare different options.</p>
<p>You are working with a complex proposal that involves a range of parts, each with different data limitations and characteristics.</p>		<p>Use the most rigorous tool available to compare within choices, estimating overall costs and benefits to the extent feasible.</p>	

The OCBR can support you by advising on:

- the level of quantification expected in your impact analysis
- methods for data collection, analysis and estimation
- the appropriate decision-making tool to use
- targeted use of expertise such as consultants, and scoping tenders to support and build on your qualitative analysis.

# 5. Summarise the preferred option

## Purpose of this stage

To ensure that the Government and stakeholders are given sufficient summary information about the preferred option to understand what it will mean in practice. For some simple proposals, this section of the impact assessment document may not be required, because all relevant information can be covered in the impact analysis section and executive summary.

## Output of this stage

This section summarises the key features of the preferred option and how it will function in practice. It differs from the previous **identify feasible options** and **impact analysis** sections in that it may:

- provide more detail on specific design issues for the preferred option;
- compare the preferred option with the status quo;
- link to the drafting instructions (legislation) or exposure draft (proposed regulations or legislative instruments); and
- provide a summary for stakeholders who may not read the **impact analysis**.

It will include a summary of the analysis of small business impact (for an LIA, and for a RIS where identified as relevant) and the competition effects (for all proposals).

For a RIS analysing fees and charges, there must be a table listing proposed (and current, if applicable) fees expressed in both dollar and fee unit terms and the percentage change in proposed fees relative to current fees (where these exist).

## The approach

No new analysis is required, but include what stakeholders would need to know about the preferred option and how it would affect them (if they had not read the preceding sections). Consider the knowledge, expectations and needs of affected stakeholders when drafting.

## How the output will be used

This summary helps stakeholders to understand the exposure draft regulations or legislative drafting instructions. It can be read alongside the **implementation** section to provide a fuller picture of policy and practice.

## What the OCBR looks for

- Clear writing that is suitable for the audience.
- Sufficient content to complement the exposure draft or drafting instructions.
- For an LIA, a copy of the drafting instructions.
- For a RIS, a copy of the proposed statutory rules or legislative instrument.

The preceding sections of this handbook provided guidance on the data and analysis needed to demonstrate the choice of the preferred option. These sections may not:

- have explained all aspects of the preferred option (for example, if there were aspects where the impacts were very small, and it was disproportionate or unnecessary to include these in the **identify feasible options** stage)
- be of interest to all stakeholders, such as those who are principally concerned only with the impacts and implementation of the preferred option.

The description of the preferred option in this section, therefore, provides a comprehensive overview of all of its elements. For large or complex proposals, the impact assessment may need to be supplemented by other information for stakeholders.

If you have documented logical and transparent analysis in the preceding sections, the focus in this section should be on summarising the proposal in a way that is meaningful to all stakeholders, including non-specialists.

## Requirements for impact assessment

Sections 10(1)(b) and 12H(1)(b) of the SLA require a RIS to include a description of the preferred option, while for changes to fees, sections 10(1)(ba) and 12H(1)(c) require a comparison of existing and proposed fees (including the percentage change).

To ensure that the impacts of legislation and regulation on small business are appropriately examined, LIAs are required to include a specific assessment of the impacts on small business impact section. It is not mandatory for a RIS to include an assessment of the impacts on small business, but it is highly desirable and good practice to do so.

Victoria is a party to the Competition Principles Agreement, which requires that any new primary or subordinate legislation should not restrict competition unless it can be demonstrated that the government's objectives can only be achieved by restricting competition and that the benefits of the restriction outweigh the costs. This requirement is met by including a 'competition assessment' in an LIA or RIS.

## Key components

This section generally describes:

- all elements of the preferred option (including those that may not have been covered earlier), although minor details and lists of changes can be presented in accompanying appendices;
- where these elements are reflected in exposure draft regulations or legislative drafting instructions;
- whether the proposal refers to existing standards, guidelines or rules (such as Australian Standards), which will be 'incorporated by reference' into Victorian legislation, and how to access this material;
- how the preferred option will function in practice;
- whether the proposed measures are new, or replace, update or consolidate existing regulations, highlighting key differences from current regulations and the reasons for these;
- where applicable, how the preferred option:
  - interacts with other legislation, including the cumulative effect on the affected groups from recent changes to legislation/regulation;
  - is consistent with Victorian Government policy;
  - relates to intergovernmental agreements; and
- for a RIS, the specific sections of legislation that authorise making the regulations.



In addition, this section will include, where applicable:

- a summary of the analysis of the small business impact;
- a statement on competition effects; and
- for fees, statements on the level of cost recovery and/or any cross-subsidisation between different fee-payers, as well as a comparison of the proposed fees to any existing fees.

## Describe competition and small business impacts

The **identify feasible options** and **impact analysis** stages should have accounted for the effects on specific groups, including groups that may be disproportionately affected by regulatory requirements.

Nonetheless, there are Victorian Government requirements to consider specifically the impacts on small businesses (mandatory for an LIA, and good practice for a RIS) and to apply a competition test. Although considered and explored in earlier sections, these results should also summarised in this section.

### Small business

Small businesses may experience disproportionate effects from regulatory requirements for a range of reasons, including limited resources to interpret compliance requirements, or to keep pace with regulatory changes and the cumulative effect of different requirements. For these reasons, this section of the impact assessment document should document explicitly how the preferred option will affect small business, and link to how it is planned to address these issues under the implementation plan.

### Likely impacts on competition

In some cases, regulation can affect competition by preventing or limiting the ability of businesses and individuals to enter and compete within particular markets. Where this occurs, there are likely to be adverse effects for consumers (through reduced choice of products and/or higher prices) and the broader economy (through reduced opportunities or incentives for businesses to invest and innovate, leading to lower productivity and employment growth).

Given these potential effects, the Competition Principles Agreement requires that the analysis of all regulatory proposals consider whether the preferred option will restrict competition. If so, the analysis must demonstrate that the Government's objectives can be only achieved by restricting competition and that the benefits of the restriction outweigh the costs.

The OCBR can support you by advising on:

- whether a separate preferred option section is required for your proposal; and
- which aspects of the proposal need to be highlighted specifically in this section.



# 6. Implementation plan

## Purpose of this stage

To set out a clear, practical strategy for implementing the preferred option, by outlining:

- what needs to be done;
- who will be doing it;
- when it will be done; and
- who will monitor implementation (including identification and management of implementation risks).

## Output of this stage

This section will set out responsibilities for, and approach to:

- implementation planning, including transitional arrangements; communications, and compliance;
- how any capability and resourcing issues will be addressed; and
- delivery oversight, feedback and review needs.

## The approach

Draw on the analysis from options development about likely implementation issues, and collaborate with those who will implement the preferred option (regulators and regulated parties) to address these in the implementation plan. This will be easier when affected parties, delivery agencies, and regulators are involved early in the impact assessment.

Document the Government's roles and resource requirements at a sufficient level to ensure accountability and to govern delivery and performance over time.

## How the output will be used

This section will provide a reference for setting up the design and oversight of delivery of the preferred option. It may need to be built into departmental and regulator annual plans and compliance programs.

## What the OCBR looks for

- Evidence that delivery agencies and regulators were involved in the development of the implementation plan.
- An explanation of the timeframes and any special arrangements needed for transition.
- Consideration of how different groups may have different implementation needs.
- Consideration of how government processes and systems may be affected.
- A realistic understanding of how compliance will be achieved, including an outline of the approaches required to give effect to the preferred option.
- Firm commitments to taking actions in the implementation plan.

Understanding and explaining how the preferred option will work in practice is a key part of regulatory design. A well-considered implementation plan increases the likelihood that the preferred option will deliver its expected outcomes in practice.

The implementation plan is most effective when developed with those who will implement, administer and enforce the proposal (such as regulators and local government) and with those who will be subject to the requirements. Genuine consultation on the implementation plan is critical, especially for new or substantially changed regulatory regimes.

## How to approach implementation planning

The level of effort and planning for implementation will need to reflect the:

- complexity of the preferred option (such as whether it is managed through routine processes, or requires adaptive management by regulators);
- significance of the obligations imposed by the preferred option; and
- extent of change from current approaches.

Include sufficient detail to identify key timing, skill and resource requirements for effective implementation, consultation and communication. Although plans may sometimes need to recognise that those responsible for implementation will address details later, the implementation plan in the LIA or RIS should identify and account for the type of work required and its timing.

### Renewal of sunseting regulations

Where you are remaking sunseting regulations, and the proposed regulations are substantively the same as the current requirements and the regulatory approach will also not change, you can acknowledge this and a detailed implementation plan may not be required. However, this section should still outline how implementation and enforcement will be undertaken.

The following questions can prompt design of your implementation plan.

#### Understand what regulators need to deliver

- How will support, compliance monitoring and enforcement be delivered?
- Are additional powers, policies, processes or systems required?
- How will information (e.g. on risks) be gathered and managed?
- What relative priority (e.g. in rating risks and allocating resources) does this have, in the context of other activities by the regulator?

#### Understand what regulated parties will need to do

- What are regulated parties' attitudes to compliance? What is their capacity (considering skills, resources, and current knowledge) to comply? How will you address these issues?
- How do these requirements fit in with existing contact with the regulator, such as education and compliance programs?
- What significant constraints or impediments might they face, and how might this vary across affected groups?
- What will be the impacts of changing practices when the proposal is introduced? How complex and difficult will it be for people and organisations to change? What does this mean for existing assets they hold?

Next, identify in summary form (with the level of detail proportionate to the compliance needs) how the proposal will be delivered, key risks to achieving compliance, and which supporting regulatory approaches and capacities may be required.

The implementation plan establishes a reference point for designing ongoing delivery, monitoring outcomes, and accountability over the life of the preferred option. It also helps to promote an integrated outlook, clear accountabilities and collaboration between policy-makers and regulators.

**Establish clear accountabilities**

- Establish a clear chain of accountability and line of communication between parties responsible for implementing and monitoring.
- Indicate the resource, training and assistance needs of those implementing the preferred option, and how these will be provided
- Describe governance and feedback systems, for monitoring performance, delivery against objectives, addressing unforeseen issues as they arise, and promoting continuous improvement.

**Develop and resource a consultation and communication strategy**

Develop the consultation and communication approach in partnership with those who would implement the preferred option. This involves:

- identifying the key parties to contact before any regulations take effect;
- deciding which communication tool(s) to use (such as guidance documents, training, information sessions, support services), and explaining why you have selected these;
- establishing who is best placed to deliver these communication tools (for example, are policy-makers best placed to prepare guidance material, and who should engage with regulated parties?);
- assigning accountabilities for communicating the changes.

Be aware that implementing consultation strategies often requires specific resources and skills. If consultation is handled poorly, this can undermine the effectiveness of implementation. The transition to implementation is the key stage to address this risk.

**Consider transitional arrangements where appropriate**

Bearing in mind possible competition effects, consider whether a mixture of the following may be required:

- setting a delayed commencement date, or staged commencement dates; and
- setting a transitional period (for example, staggered implementation or phased compliance and enforcement).

For statutory rules and legislative instruments, you may need to consider whether the authorising legislation enables transitional measures to be adopted.

The OCBR can support you by advising on:

- the level of detail that needs to be included in the implementation plan;
- specific issues for which special transitional arrangements might need to be considered; and
- whether particular attention should be paid to specific groups or elements of the proposal in developing the plan.



# 7. Evaluation strategy

## Purpose of this stage

To put in place mechanisms that will enable the Government to explain how, and how well, the **preferred option** has worked in practice, and to drive continuous improvement of regulatory arrangements over time.

## Output of this stage

A clear strategy, or method, for evaluating the actual effects of the preferred option. The evaluation strategy will explain:

- what will be evaluated;
- how it will be done;
- who will do it; and
- when it will be done.

## The approach

- Consider the information and data you already collect, and important areas about which information and data are lacking.
- Work with regulators/delivery agencies to determine the evidence needed to assess effectiveness of the preferred option, considering:
  - the long-term **objectives** and outcomes sought (such as reduced harms);
  - intermediate outcomes (such as the awareness and behaviours of regulated parties); and
  - implementation of the preferred option, including regulator activities, outputs and immediate outcomes.
- Document an evaluation strategy that shows the relationships between these elements, and confirms roles and responsibilities for evidence gathering, monitoring and evaluation.

## How the output will be used

The evaluation strategy is a starting point for future activities by all agencies involved in designing and delivering/implementing the preferred option.

For a RIS (or published LIA), stakeholders have an opportunity to comment on the suitability of the proposed evaluation strategy and to suggest improvements.

## What the OCBR looks for

- A proportionate evaluation strategy that:
  - establishes baseline and progress indicators to measure success;
  - can be built into the corporate planning and ongoing management of agencies responsible for policy and implementation;
  - places specific emphasis on significant areas where there are substantial information or data gaps; and
  - reflects the level of uncertainty about the preferred option's effects.
- A clear understanding of how the interests and activities of regulators (measuring delivery) and policy advisors (evaluating regulations) interact.
- Commitments to data collection and evidence review that are clear and accountable and reflect the proportionality principle.
- Provision for feedback and adjusting evaluation, implementation and policy approaches, if relevant (such as for uncertain or dynamic issues).
- Planning for mid-term evaluation (required for higher-impact proposals).

Consistent with the Victorian Government's commitment to better regulation and a culture of continuous improvement, agencies must evaluate all regulations.

Evaluation involves more than just measuring the actual effects of a regulation — it involves improving knowledge about the problem to improve regulatory effectiveness over time. A mature evaluation framework can also enhance the partnerships between Ministers, departments and regulators, through agreement on common goals and meaningful measures of effort.

Monitoring and evaluation should form part of a continuous improvement loop — with feedback on indicators and evaluation results informing regulatory practice and, if necessary, the (re)design of policy settings and regulation.

## Requirements for impact assessment

The Government requires that all LIAs and RISs include an evaluation strategy for the preferred option. The methodology and data to be collected through the evaluation strategy should be proportionate to the impacts of the preferred option.

Consistent with the evaluation strategy in an LIA or RIS, an evaluation must be undertaken for all legislation and regulation. For high impact proposals (where the impacts are greater than \$8 million per annum), a mid-term evaluation needs to be undertaken three to five years after implementation. Where the date for an evaluation coincides with the sunset date for regulations, it may be completed as part of a RIS prepared to 're-make' the regulations.

The OCBR will monitor a schedule of upcoming evaluations and liaise with the relevant departments and agencies as appropriate.

## How to approach the evaluation strategy

Evaluation design should be considered throughout your overall approach to impact assessment, starting with the long-term and intermediate outcomes you developed when defining the **objectives of action**, through to considering the set of evidence sources you will need to assess the effectiveness of the preferred option.

Building on this, the evaluation strategy:

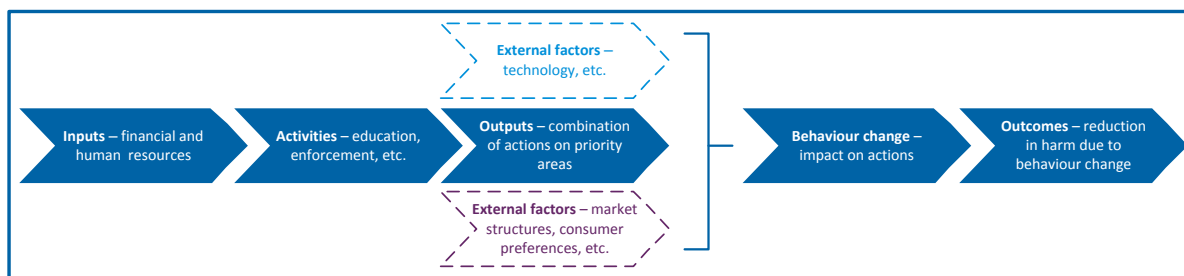
- sets up a clear and considered approach for delivering assessments of the effectiveness of the preferred option and forms the basis for the next steps in data gathering and analysis
- specifies monitoring and evaluation roles for the agency developing the regulations, and for the agencies or regulators that will implement them.

Evaluation strategies benefit from an organising framework, such as a [program logic](#) model (Figure 5), that includes:

- an intervention logic explaining how the preferred option, and related activities, are expected to bring about desired changes in behaviours, and how these changed behaviours help to promote achievement of the Government objectives; and
- a defined set of measurement indicators, and the forms of evidence, that will be used in combination to track the actual impacts and performance of the preferred option over time.



**Figure 5 – Elements of a regulatory program logic model**



One of the main reasons for developing the evaluation strategy before the preferred option is implemented is that the evaluation will require information and data collection be embedded in general regulatory or program activity. This generally means:

- immediately establishing baseline measures, as a reference for tracking effectiveness and monitoring the problem over time;
- that mechanisms for ongoing evaluation should be in place no later than three years into the life of the preferred option; and
- preparing for mid-cycle or ‘year five’ review of regulations/legislative instruments (or primary legislation, where relevant) as part of agency and regulator forward planning.

## Requirements for evaluation strategies

Following the proportionality principle, the evaluation approach should reflect the scale and significance of the expected impacts of the preferred option:

### Minimum requirements

All evaluation strategies must:

- clearly and simply describe the objectives of the evaluation;
- set up an appropriate framework for the evaluation linking the elements evaluated to the outcomes sought (‘intervention logic’);
- outline the key information that will be collected (for example, relevant indicators and types of evidence, and the quantitative and/or qualitative methods that will be used) to assess progress against delivering objectives;
- describe how data and information will be gathered, including the processes and datasets that will be used, improved or established;
- explain how the chosen evaluation methods are appropriate and proportionate to the preferred option’s expected impacts;
- identify the department/agency or team(s) responsible for collecting, analysing and reporting on data and information, and outline a method for ensuring these activities occur;
- outline a consultation plan for stakeholder input into developing an effective evaluation strategy and for completing evaluations; and
- specify when evaluations will occur, and how often.

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**Mid-term evaluation may also be required**

A mid-term evaluation (3–5 years from initial implementation) is generally required, particularly where:

- the preferred option has a high impact (generally ≥\$8m per year);
  - there are complex implementation and delivery issues (such as coordination between multiple agencies / parties);
  - where the **problem analysis** stage revealed significant gaps in knowledge, understanding or evidence (including those identified in evaluating the effects of existing regulatory arrangements); and
  - where there is significant uncertainty about the expected benefits and costs of the **preferred option**.
- 

## Principles for evaluation strategies

The following principles should guide the design of your evaluation strategy. The principles highlight what you should consider when assessing this part of the impact assessment document or when monitoring the implementation of evaluation strategies.

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**Evaluation is a core part of government delivery**

Evaluation is not an afterthought. It is built into how agencies develop objectives, refine options and design implementation and consultation.

Arrangements ensure that evaluation occurs during delivery and management as a matter of course. Ongoing program and project assessments allow and require organisations to deliver long-term reviews of regulation effectiveness.

Outcomes of evaluations contribute to improvements in knowledge and guide adaptive regulatory approaches over time.

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**The objectives guide evaluation design and implementation**

The **objectives** guide the design of the evaluation strategy by outlining measures of long-term success (such as improved outcomes or reduction in harm) and intermediate measures that are linked to achieving the objectives.

An integrated approach to evaluation considers the level of investment made in delivering regulatory activities, the outputs, the influence on actions and behaviours, and ultimately changes to long-term outcomes.

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**Evaluation tracks a range of measures, not only specific targets**

Effective evaluation strategies contain a suite of performance measures to prompt reflection and investigation of how regulatory action influences outcomes, rather than measuring pre-defined targets (such as targeted number of inspections delivered). Narrow goals set as pre-defined activity targets for a regulator can result in perverse outcomes (high-volume, low-quality activity) that may or may not link directly to promoting the underlying policy objectives.

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**Evaluation strategy draws on diverse information sources**

Evaluation design should aim to build a comprehensive picture by collecting information (even if partial) from a broad range of sources (for example, social research, regulator operational data, audits, consultation, literature). This should include an appropriate mixture of ‘hard’ (such as data) and ‘soft’ (such as stakeholder views) evidence.

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**Evaluation is proportionate to the expected impacts**

The effort applied to design and undertake evaluation is proportionate to the significance of the problem, the level of uncertainty, the expected burden or costs imposed by the regulation and the scale of regulatory effort.

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## Review of evaluation

The Commissioner is required to monitor and report on the implementation of evaluation strategies, including mid-term reviews of high-impact regulations. The Commissioner performs this role by providing guidance, notifying departments of required evaluations, and providing support and feedback on proposed implementation strategies and reporting on implementation progress.

The OCBR can support you by advising on:

- the priority areas for future data collection;
- performance indicators, data that should be gathered, and the possible methods for obtaining these;
- who should be involved in and consulted as part of the evaluation; and
- timing considerations — including whether some areas should be reviewed earlier than others.

# Finalising the impact assessment

Once you have asked, answered and documented the seven key questions in your impact assessment, you need to include a consultation section and executive summary.

## Consultation

Early consultation is required for the development of all proposals —to inform the impact assessment and policy design and to ensure that other requirements for the development and implementation of legislation are met. This includes consultation with :

- any sector of the public (businesses, community groups, not-for-profits) that may face a significant economic or social burden from the proposal;
- Ministers, departments and agencies that may be affected, or who have related responsibilities and regulatory regimes; and
- other departments and agencies involved in the development and review of legislation, particularly the Department of Justice and Regulation (for human rights, offences, penalties, infringements and powers of inspection matters) and the Office of Chief Parliamentary Counsel (on drafting legislation).

Public consultation on the final analysis and preferred option provides additional opportunities to:

- acknowledge and seek to fill gaps in knowledge;
- test assumptions and conclusions;
- reach a broader range of stakeholders;
- pick up on issues that may have been missed; and
- validate and improve on implementation planning and on the design of the evaluation strategy.

## Requirements for impact assessment

Sections 6, 11 and 12 (for statutory rules) and sections 12C, 12I and 12J (for legislative instruments) of the SLA set minimum requirements for public consultation before and after a RIS is completed. These include draft regulations settled by the Office of the Chief Parliamentary Counsel, the notice of a RIS release, consideration of submissions, and a notice of the final decision.

As the purpose of LIAs is to inform Cabinet deliberations, the information in it is treated as Cabinet in Confidence, and can only be released to the public with the agreement of the Premier and responsible Minister. However, although legal requirements for RIS consultation do not apply, credible legislative proposals often rely on early consultation with affected stakeholders, and should be undertaken wherever possible.

Although it may not be possible to release an LIA for consultation, the impact assessment framework provides a logical way to frame early engagement materials (such as discussion papers, research), before writing the LIA document itself. Where it is not appropriate to fully consult outside government, you should explain the reasons for this and any proposed consultation steps after Cabinet approval.

## Consultation in an LIA or RIS

Where consultation with stakeholders has been undertaken during initial policy development and analysis, this should be reflected in the relevant sections of the impact assessment.

In addition, the consultation section of an LIA (where relevant) or RIS needs to include:

- who has been consulted to date, and how their views have been reflected in the impact assessment; and
- the planned public consultation process following the public release of an LIA or RIS.

## Notice of RIS and exposure draft regulations

Agencies must advertise the release of a RIS through specified channels (the *Government Gazette*, a daily newspaper circulating throughout Victoria, and trade publications if appropriate). This notice must provide context on the proposal and the contents of the RIS, and seek public comment on the RIS. A RIS must be available in electronic form on a website (which could include via the Victorian Government's [consultation platform](#)) and be available in hard copy.

The minimum public consultation period is 28 days. However, Victorian Government policy is that, wherever feasible, consultation should be for at least 60 days. This gives stakeholders additional time to assess the RIS and to prepare a more considered response.

## Delivering effective consultation

The public consultation requirements outlined above are the minimum for a RIS. They may be sufficient to test the proposal, and secure public input, only if there has already been extensive early consultation with all affected groups, and if these groups are notified of the RIS release.

Going beyond these minimum requirements will often be necessary for a RIS (or an LIA, where this has been released), especially for proposals that are complex or affect multiple groups in different ways, that are substantively different from current arrangements, and where there has been varying levels of early consultation.

Key issues to consider for effective consultation include:

- defining your consultation goals (is the goal to understand a topic or to test ideas?)
- identifying relevant stakeholders (who may have an interest or role) and the appropriate level of engagement; and
- selecting the most appropriate consultation tools, which could include the use of information sessions, discussion papers, existing government communication channels, direct communications, and social media.

## After formal consultation

### Requirement to consider public submissions

On behalf of the responsible Minister, agencies must consider all public submissions and comments received on the RIS, and must provide reasons for the direction taken in the final regulations, broadly addressing any general issues raised in the submissions.

In addition, the Scrutiny of Acts and Regulations Committee (SARC) of Parliament expects agencies to send responses ‘to those who have taken the time and effort to send in a submission’ (SARC 2012, *Annual Review 2011*, p. 11).

The transparency and thoroughness reflected in your department or agency’s response to public comments and submissions is important. The effort of providing detailed explanations for proceeding in a particular direction (and rejecting particular suggestions) can result in greater community acceptance of the final regulations.

Your response should clearly demonstrate that matters raised in public submissions have been appropriately considered. If there are a large number of submissions, a general letter with an attachment covering the various issues raised, and documenting how each issue has been addressed, can be used. Preparing and documenting your agency’s response in this way contributes to promoting transparency of the regulatory process. It also demonstrates to stakeholders that they have been heard, which will make them more likely to engage in future.

### Notice of final decision

Agencies must publish notices (in the *Government Gazette*, and a daily newspaper circulating throughout Victoria) of the responsible Minister’s decision to make, or not make, the proposal after considering public comments and submissions.

You will need to prepare a statement explaining how the general issues raised in the public comments/submissions have been addressed. This ‘statement of reasons’ must be published on the same website used to consult on the RIS and be made available in hard copy on request.

The OCBR can support you by advising on:

- how to define your consultation objectives;
- how to broadly consider possible stakeholders; and
- the methods and timing for effective consultation.

## Executive summary

An executive summary outlining the key messages and conclusions contained in the document must be included. This will be particularly important where the complex nature of the proposal and related issues results in relatively a lengthy impact assessment.

When summarising the key points for each section, it should highlight:

- key features of the preferred option (highlighting the main changes from existing arrangements, if any apply), and its impacts (benefits and costs) on Victorians;
- what other options were considered in the impact assessment and why these were rejected;
- key assumptions that underpin the conclusions reached during the impact assessment process, and the main shortcomings or uncertainties that exist in drawing those conclusions;
- outstanding issues, if any, that the department/agency is particularly wishing to explore via feedback during public consultation (if applicable); and
- a consolidated list of all the stakeholder questions found throughout the document, to facilitate public consultation and feedback where applicable (e.g. for a RIS).

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