



Government of **Western Australia**
Department of **Treasury**

Better Regulation Program

Information paper for agencies



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Better Regulation Program: Information paper for agencies
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Further information relating to this paper may be obtained by emailing betterregulation@treasury.wa.gov.au

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Introduction

The Better Regulation Program guides the development, design and implementation of regulatory proposals in Western Australia and is the Cabinet-approved replacement for the Regulatory Impact Assessment program.

This information paper provides agencies with essential information on the Better Regulation Program and how it can be used to develop and design regulatory proposals that support improved economic and social outcomes for Western Australians.

The information provided in this paper assumes that agencies are already familiar with the key steps involved in identifying and scoping policy problems and developing potential regulatory responses to address those problems. For this reason, the information paper focuses on the salient new features of the Better Regulation Program rather than seeking to be a comprehensive guide on policy and regulatory processes.

Using this information paper

This information paper sets out the main steps for agencies when developing and seeking approval for regulatory proposals (see Box 1) initiated after 31 March 2020.

Box 1: What is a regulatory proposal

A regulatory proposal is a proposal to amend or introduce regulatory instruments including primary legislation approved by the Cabinet and enacted through the Parliament, subordinate legislation enacted through the Governor in Executive Council, and remaining forms of subordinate legislation and quasi regulation.

Agencies with partially completed regulatory impact assessment processes for proposals with economically significant impacts as at 31 March should continue with these processes and apply, where relevant, the Better Regulation Principles.

As outlined in this information paper, the Better Regulation Program involves three broad steps for agencies that are developing and seeking approval for regulatory proposals.

- Step 1: Apply the Better Regulation Principles to the policy problem and potential options;
- Step 2: Determine if the regulatory proposal has economically significant impacts; and
- Step 3: If the regulatory options have economically significant impacts, engage with the Better Regulation Unit and undertake formal consultation and assessment.

Important aspects for each of these steps are outlined in the 'Developing a regulatory proposal' section of this information paper.

The information included in this paper should be considered in conjunction with the guidance and requirements set out in documents such as the Cabinet Handbook and the Executive Council Guidelines.

The Better Regulation Unit

Treasury's Better Regulation Unit provides advice and training to government agencies on the development of regulation, application of best practice regulatory principles, and regulatory impact assessment.

Agencies are encouraged to engage with the Better Regulation Unit throughout the regulatory development and approval process, although formal engagement is only required for proposals that proceed to Step 3.

- Step 3 may not be required if a Treasurer's Exemption is granted. Treasurer's Exemptions are usually sought if an emergency regulatory response is required. Where a Treasurer's Exemption is granted, agencies will be required to complete a Post-Implementation Review within three years of implementation.
- Step 3 may also not be required if a regulatory proposal is going through consultation and assessment processes that could be considered as equivalent to the consultation and assessment requirements of the Better Regulation Program. For example, where the proposal is part of a Commonwealth-led consultation and impact assessment process that includes Western Australia.

Help and support

If you are unsure about any aspect of the Better Regulation Program, or regulation more broadly, please contact the Better Regulation Unit (08 6551 2777 or betterregulation@treasury.wa.gov.au).

Agencies can also access a range of information and guidance material on the Better Regulation Program published by the Better Regulation Unit and available at: [www.wa.gov.au/organisation/department-of-treasury/regulatory-impact-assessment].

The Better Regulation Program

Overview

The Better Regulation Program retains key consultation and impact assessment features of the previous Regulatory Impact Assessment program while providing a more targeted, collaborative and agency-led approach to regulatory development.

A central feature of the Program is removing the requirement for agencies to complete and submit 'exclusion' requests and Preliminary Impact Assessments to Treasury's Better Regulation Unit. Instead, agencies will undertake their own initial assessments and only economically significant regulatory proposals will require formal consultation and assessment.

The new Program also enables a more pragmatic approach to the treatment of formally announced election commitments (regardless of whether they are funded). If impact assessment is required in these cases, it will only need to focus on implementation options. This will avoid the need to assess the policy rationale for the election commitment.

Another important feature of the new Program is the emphasis on a principles-based approach to regulatory design and practice, which will be guided by a set of five Better Regulation Principles (Box 2).

Box 2: The Better Regulation Principles

The Better Regulation Principles provide broad and high-level guidance on the fundamental outcomes to be achieved through regulation. They recognise that good regulation encompasses good design, proportionate compliance and enforcement measures, and a commitment to continuous review and improvement.

Consistent with the Principles, regulation should be designed to:

1. support policy objectives and deliver maximum net benefits to the community;
2. allow for risk based regulatory assessments and decision making focused on outcomes;
3. provide clarity and certainty for affected parties, recognising that different groups may be affected differently;
4. avoid duplication or conflict with other existing or proposed regulations; and
5. allow for well-considered, efficient and effective administration and enforcement arrangements.

Principles have also been developed to guide other regulatory activities, such as administration and management, and evaluation and review, which are usually best considered, even at a high level, during the design phase for regulatory proposals. The full suite of Better Regulation Principles is outlined in **Attachment 1**.

This section provides further information and guidance on the steps involved in developing and seeking approval for a regulatory proposal.

Developing a regulatory proposal

The steps described below are usually only necessary if an agency proposes to implement a regulatory response to address a policy problem or issue.

As such, an essential precursor to the activities outlined in these three steps is to define the nature and scope of the policy problem, determine if there is a need for a regulatory response, and identify potential options to address the policy problem.

Under the old Regulatory Impact Assessment program, this policy development work would have informed the preparation of a Preliminary Impact Assessment document, which was then used to determine if a regulatory proposal required further consultation and assessment.

Agencies are no longer required to prepare and submit Preliminary Impact Assessments to the Better Regulation Unit, although it would be good practice for agencies to continue to prepare similarly structured assessments as part of their approach to policy development and decision making.

Step 1: Apply the Better Regulation Principles

The Better Regulation Principles provide broad and high-level guidance for agencies on the outcomes to be achieved through regulation. The Principles should be applied throughout the design, implementation and evaluation of regulatory proposals.

An important advantage of this approach is flexibility for agencies to apply the Principles to a wide range of issues and challenges in a similarly wide range of circumstances. For example, the Principles could be used in a 'forward looking' sense to assess the merits of different regulatory design options. They could also be used in a 'backward looking' sense to evaluate the outcomes associated with a specific regulatory design.

Not all the Principles will be relevant for all types of regulatory proposal, so there is no requirement for agencies to apply every Principle in exhaustive detail. It is more important to consider the degree of alignment between the regulatory proposal and the outcomes implied by the Principles. For example, proposals that support policy objectives and deliver large benefits are preferable to those that have a weak policy rationale and impose costs.

A discussion of the Principles, and some of the factors agencies should consider in applying these principles to the design and development of regulatory proposals, is outlined below.

Principle 1: Support policy objectives and deliver maximum net benefits to the community

Regulation, in combination with other government initiatives, must be focused on the problem and achieve its intended policy objectives with minimal side-effects. At its simplest, according to this principle, a regulatory proposal should have a clear purpose and offer the greatest net benefit for the community.

Other things equal, regulatory options that provide the greatest net benefit to the community should be preferred over those that deliver fewer benefits. Sometimes, non-regulatory options can offer the greatest net benefits and may in these circumstances be preferable.

Principle 2: Allow for risk based regulatory assessments and decision making focused on outcomes

Risk-based regulation enables a focus on issues involving greatest concern (eg, risk of harm), while applying a light (or zero) regulatory touch for issues that are low risk. Risk-adjusted requirements can be an important element of good practice regulation that achieves desired outcomes at lowest cost.

Regulation should have identifiable outcomes and, unless prescriptive requirements are unavoidable in order to ensure public safety, include performance-based requirements that specify outcomes rather than inputs or other prescriptive requirements.

Principle 3: Provide clarity and certainty for affected parties, recognising that different groups may be affected differently

Regulation should be clear and predictable in order to create a stable regulatory environment and foster confidence. The regulatory approach should be applied consistently across regulated parties with similar circumstances.

It is not necessary for the regulatory proposal to seek to treat all parties in the same manner, although it is important that each of the parties subject to proposed regulation have a clear sense about how they are affected and how they can comply.

Principle 4: Avoid duplication or conflict with other existing or proposed regulations

Regulation should be consistent with other policies, laws and agreements affecting regulated parties. It should also be designed to minimise overlaps and competing or conflicting requirements.

Principle 5: Allow for well-considered, efficient and effective administration and enforcement arrangements

It is critical to consider how the proposed regulation will be administered and enforced as part of the design phase. The administration and enforcement of regulation should be risk-based, fair, consistent and transparent, involve appropriate consultation with stakeholders, and minimise unnecessary compliance costs.

Step 2: Determine if impacts are economically significant

A key feature of the Better Regulation Program is the emphasis on assessing regulatory options and proposals that have an economically significant impact.

The focus on significance removes the requirement for agencies to complete and submit ‘exclusion’ requests and Preliminary Impact Assessments to Treasury’s Better Regulation Unit. Instead, agencies will be able to determine independently whether a regulatory proposal will have economically significant impacts – this is an important step as only those proposals considered to have economically significant impacts will require formal consultation and assessment.

In regulatory assessment, impact is a broad measure of the direct and indirect economic effects on a wide range of stakeholders, including government, business, and consumers.

The economic significance of the impact associated with a regulatory proposal should not be confused with the significance of the underlying policy problem or issue – for example, while a policy problem could be significant, the impacts associated with the proposed regulatory response may not be significant.

A simple framework for understanding and determining the economic significance of the impacts associated with a regulatory policy is presented in Table 1 below. Proposals with economically significant impacts are typically complex, contentious, impose new or onerous requirements, and create clear groups of winners and losers.

Table 1: Economic significance framework for regulatory proposals

Low economic impact	High economic impact
<p>Relevant considerations:</p> <ul style="list-style-type: none"> Identifiable but minor impacts on business, consumers, and government Small number of stakeholders affected Proposals not controversial or broadly supported Impose limited or minor additional costs No interdependencies or broader linkages 	<p>Relevant considerations:</p> <ul style="list-style-type: none"> New, unique or bespoke policy design Complex effects on multiple parties or systems Clear groups of winners and losers Applies unequally to different groups Imposes high or onerous costs Proposal controversial and could be contested
<p>Indicative examples:</p> <ul style="list-style-type: none"> Vaccination status reporting requirements for school enrolment Prohibiting importation of blank firing firearms Reinstatement of annual fee for private aircraft operators using Rottneest airport 	<p>Indicative examples:</p> <ul style="list-style-type: none"> Introduction of a container deposit scheme Strata title reforms Residential tenancies reforms On-demand transport reforms and taxi compensation scheme

Regulatory proposals included in the 'exclusions' list outlined below would automatically be regarded as not economically significant for the purposes of the Better Regulation Program. This is because they typically involve minor or standard changes to regulatory instruments or go through some form of consultation and assessment process that is broadly equivalent to the approach expected under the Better Regulation Program.

- Standing Rules and Orders of Legislative Council and Legislative Assembly.
- Regulatory proposals that concern, or are related to, electoral rules.
- Regulatory proposals that are machinery of government or administrative in nature, including those relating to:
 - the administration or procedural arrangements within or between agencies; or
 - the consolidation of legislation, minor legislative amendments, correction of drafting errors, the commencement or repeal of legislation.
- Regulatory proposals that are related to the management of the public sector.
- Regulatory proposals relating to:
 - police powers and general criminal laws with no impact on business; and/or
 - the administration of justice, such as rules of court and sentencing.
- Regulatory proposals which relate to increases in existing fees and charges, in line with a standard index (such as the Consumer Price Index) and/or that maintain cost recovery, since the last adjustment.
- All regulatory budget and taxation proposals referred to the Expenditure Review Committee, unless the Committee requests further consultation and assessment.

Determining economic significance can be challenging, especially because it can involve judgements about the potential impacts of regulatory proposals where there is limited data, ambiguous information, or uncertainty.

Further information and guidance on assessing significance is provided in [Guidance Note 1](#) published by the Better Regulation Unit.

Treasury's Better Regulation Unit can assist agencies to identify potential economic impacts and assess their significance. Ideally, there will be alignment between agencies and the Better Regulation Unit about the economic significance of the impacts associated with regulatory proposals before they are considered by Cabinet or the Governor in Executive Council.

Step 3: Undertake formal consultation and impact assessment

Formal consultation and assessment are required for regulatory options or proposals that are considered to have economically significant impacts.

The only exceptions to these requirements are outlined below.

- A Treasurer's Exemption has been granted for a regulatory proposal with economically significant impacts.
- The regulatory proposal is subject to processes the Better Regulation Unit considers are consistent with the formal consultation and assessment requirements of the Better Regulation Program. For example, the proposal was examined in an Economic Regulation Authority or Productivity Commission inquiry and this process also considered or discussed Western Australian impacts.
- The regulatory proposal involves the adoption of an Australian or international protocol, standard, code or Intergovernmental Agreement and an adequate assessment of the costs and benefits has already been made, and the assessment was made for, or is relevant to, Western Australia. For example, a reform initiated by the Council of Australian Governments.

Where the regulatory proposal relates to a formally announced election commitment and is considered to have economically significant impacts, consultation and assessment will only need to focus on implementation options rather than the policy rationale for the election commitment.

Agency engagement with the Better Regulation Unit on regulatory proposals with economically significant impacts is an essential part of the regulatory design and approval process.

In the context of the Better Regulation Program, formal consultation and assessment involves the preparation of documentation that supports stakeholder consultation and well-informed decision making on regulatory proposals and their impacts. This typically involves the preparation and publication of a Regulatory Impact Statement at both the consultation and decision phase for a regulatory proposal.

- Consultation on a regulatory proposal is usually facilitated via a Consultation Regulatory Impact Statement (CRIS), which describes the problem to be addressed, discusses potential options, and sets out the potential impacts of these options.
- Regulatory decision making is usually facilitated via a Decision Regulatory Impact Statement (DRIS), which sets out a final position on a regulatory proposal, its associated impacts, and implementation and evaluation framework.

There is no prescribed structure or content for a Consultation Regulatory Impact Statement, although good examples typically feature a clear articulation of the:

- policy problem to be addressed;
- objectives of acting;
- range of potential options that could address the policy problem;
- expected costs and benefits of the potential options;
- preferred option, including key features and how it might operate in practice;
- considerations relevant to implementation; and
- strategy or method for evaluating the effects of the preferred option.

The Decision Regulatory Impact Statement should build on the Consultation Regulatory Impact Statement, highlighting stakeholder views on the regulatory proposals and discussing, where relevant, how this feedback has been incorporated into the final design of the proposal.

Alternative documentation, such as discussion papers, reform proposals or business cases, could also satisfy the consultation and assessment requirements for regulatory proposals with economically significant impacts, as long as they provide information and analysis that is adequate to support stakeholder consultation and well-informed decision making.

Further information and guidance on preparing Regulatory Impact Statements is provided in [Guidance Note 2](#) published by the Better Regulation Unit.

Approval processes

Once Steps 1-3 (as relevant) have been completed, proposals can progress through the normal channels to Cabinet or the Governor in Executive Council.

Regulatory proposals brought to Cabinet are subject to the requirements of the Better Regulation Program. These include:

- Applying the Better Regulation Principles;
- Explaining the economic significance of any impacts associated with the proposal; and
- Undertaking formal impact assessment for proposals that have economically significant impacts.

The Cabinet Handbook provides further detail on the requirements for regulatory proposals submitted to Cabinet.

Once the regulatory proposal is approved, the relevant CRIS and DRIS should be published on the agency's website. They can also be provided to the Better Regulation Unit, which can include the documents in the publicly available CRIS and DRIS archive.

Attachment 1: Better Regulation Principles

Regulation Design Principles

Regulation should be designed to:

- support policy objectives and deliver maximum net benefits to the community;
- allow for risk based regulatory assessment and decision making focused on outcomes;
- provide clarity and certainty for all affected parties, recognising that different groups may be affected differently;
- avoid duplication or conflict with other existing or proposed regulations; and
- allow for well-considered, efficient and effective administration and enforcement arrangements.

Regulation Administration and Management Principles

Administration and management of regulation should:

- achieve outcomes and support regulated parties;
- be transparent and fair;
- encourage digital and online solutions for improved efficiency;
- be streamlined;
- ensure regulatory staff develop and maintain appropriate capabilities; and
- encourage a culture that embraces information sharing and collaboration across agency lines.

Regulation Evaluation Principles

Regulatory evaluation should:

- be proportionate and designed in collaboration with key stakeholders;
- consider the perspective and experience of regulated parties and affected stakeholders, as well as cross jurisdictional developments;
- transparently measure and clearly demonstrate net benefits for Western Australians as a whole; and
- allow for adjustments or withdrawals as circumstances change.