Guidance Note 2: Preparing a Consultation and Decision RIS

If you have determined that your regulatory proposal requires formal impact assessment under the Better Regulation Program (BRP), then the next step is to prepare a Consultation Regulatory Impact Statement (CRIS) and a Decision Regulatory Impact Statement (DRIS).

Regulatory Impact Statements

As per the previous Regulatory Impact Assessment (RIA) program, the Regulatory Impact Statement (RIS) under the BRP serves two purposes:

- Facilitating stakeholder consultation and feedback via a CRIS that sets out the proposal's objectives, regulatory options and potential impacts including benefits and risks.
- Compiling analysis of stakeholder feedback and other information for the decision-maker via a DRIS, which sets out the recommended position on a regulatory proposal, its associated impacts, and implementation and evaluation framework.

Consultation RIS

The CRIS documents information for consultation with stakeholders and how those stakeholders can provide feedback regarding the proposed regulation.

Although there is no prescribed structure or content for a CRIS, a good consultation document should include clear articulation of the following:

- policy problem to be addressed;
- objectives of the action;
- 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 any implementation and transitional arrangements; and
- strategy or method for evaluating the effects of the preferred option.

The CRIS document may take the form of a discussion paper, reform proposal, business case or similar, if these documents provide information and analysis that is adequate to support stakeholder consultation and well-informed decision making.

Preparing a CRIS

The Better Regulation Unit (BRU) encourages full public consultation, as it is considered 'best practice' and it is often difficult to specifically identify the most affected stakeholders.

However, the extent of work involved in preparing a CRIS and consultation undertaken should be proportionate to the scope of the proposal and its impacts.

In some cases, an initial phase of targeted consultation may help you formulate or refine regulatory options and identify key stakeholder issues, before consulting more widely.

Table 1 provides a guide for preparing a good RIS and you can contact the BRU if you require further assistance. You can access CRIS examples at the Better Regulation Unit website.

The publication of a CRIS document is not the only method of consultation available to agencies when developing a regulatory proposal. For example, an agency may conduct a survey using social media or hold workshops with key stakeholders (see Guidance Note 4 – Table 4).

For this reason, a CRIS should also include a detailed summary of other consultation strategies that you have or intend to use to consult stakeholders.

Alternate/Equivalent Consultation

In some cases a regulatory proposal may undergo alternate consultation outside of the BRP. For example, if your proposed regulation is part of a broader national set of regulations and has undergone consultation that allowed local stakeholders to provide their feedback, then it probably would not benefit from further or additional consultation.

If the analysis of the proposal's impact does not specifically address Western Australia's circumstances, the BRU might ask you to prepare a summary CRIS to:

- demonstrate the level of consultation that has occurred;
- outline the proposal's potential impacts on WA stakeholders; and
- publish on your agency's website after the regulations have been approved.

BRU is available to assist on alternate consultation to ensure the outcomes of it are equivalent to the CRIS and will properly inform your DRIS.

What happens next?

- Share your draft CRIS with the BRU as early as possible.
- The BRU will work with your agency to help finalise the CRIS document in line with the RIS Checklist (Table 1).
- Once finalised with the BRU, your agency should commence consultation using the CRIS.
- Your agency will need to publish the CRIS on your agency's website.

Decision RIS

After you have obtained and applied your stakeholder feedback to your proposal, you should start preparing your DRIS. The DRIS documents how and why you are recommending a regulatory option, supported by details of costs and benefits, stakeholder feedback and any other analysis to assist your decision-maker.

- Your DRIS should discuss stakeholder feedback and whether there are objections to the position put forward in the CRIS and why. It should point out whether stakeholder feedback resulted in any changes to the proposed regulations and why.
- Your DRIS must therefore include an examination of the problem and recommendations to adopt the option that yields the greatest net benefit.
- As your DRIS is intended to inform the decision-maker, it is provided to the decision-maker prior to Approval to Draft and the development of drafting instructions.

Preparing a DRIS

There is no prescribed template for a DRIS. However, at a minimum, your DRIS should include the following:

Contents of a DRIS

Executive Summary: Provide a clear and transparent summary of the key findings and the proposed way forward.

Statement of issue: Identify and define the policy issue or problem that might require a regulatory intervention.

Policy Objectives: Define the policy objective of the intervention and the outcomes to be achieved, not the means by which it will be achieved.

Options and alternatives: Present the options for addressing the issue, including any non-regulatory options.

Impact assessment: Assess all the direct and indirect impacts for each option, including economic, social and environmental impacts to determine the most beneficial solution.

Consultation: Provide details of the consultation undertaken, with whom and the outcomes of that consultation.

Preferred option: Identify the option that is most effective in achieving the policy objectives of the intervention and generates the highest net benefit to the community.

Implementation, Transition, Enforcement and Evaluation: Explain how the preferred option will be implemented, how it will be enforced and the review and evaluation strategy to ensure the regulations remain effective and relevant over time.

What happens next?

Share your draft DRIS with the BRU as early as possible before it goes to your decision-maker and before the development of drafting instructions.

You will need to publish the final DRIS together with any BRU advice on your agency website when the Bill is introduced, or the Regulation gazetted.

Remember to include essential analysis information with your Cabinet submission, including a copy of your DRIS.

Help and support

The Better Regulation Unit can work with agencies to advise on the development of Regulatory Impact Statements. For further information or general enquiries please contact the BRU on (08) 6551 4777 or email: betterregulation@treasury.wa.gov.au.

RIS Checklist

Table 1: – RIS Checklist

Feature	What should be considered?
Statement of the issue (problem)	**Has the RIS clearly defined the issue to be addressed?** ▪ Is there a justification for Government intervention such as a market failure (for example, a lack of/or misleading information, presence of externalities or public goods, or use of excessive market power); or regulatory failure (for example, regulation that does not properly address the policy issue has undesirable effects). ▪ Is there sufficient evidence that: • a problem/issue exists (is data provided to support this)? • the significance of the problem/issue warrants Government action? • the probability of the problem/issue occurring is sufficiently high to warrant action? ▪ What are the consequences of maintaining the status quo (taking no action)?
Objectives	**Has the RIS clearly and objectively articulated:** • the policy objectives? • the outcomes, goals or targets in resolving the issue? ▪ Has relevant existing regulation, at all levels of Government, been documented, and demonstrated to not adequately address the issue? **Note: Objectives should not be aligned to or pre-justify a particular option.**
Options to address the issue	**Does the RIS contain:** • a range (minimum of 3) of viable options including non-regulatory options? If not, has justification been provided? • a summary of key features of the viable options, and any assumptions underlying them? • assessment of whether there is significant existing duplication or incongruity with existing State, Local or Federal laws or policies? • some discussion of other jurisdictions' approaches?
Consultation	**Does the Consultation RIS:** • outline the consultation objectives and methodology? • provide details as to how and where submissions may be made? • identify likely target groups to be consulted? • give adequate timeframes for responses? • request feedback from affected parties on the impacts of the various options identified, and encourage additional feasible options to be raised? **Does the Decision RIS address:** • who was consulted, and the relevant timeframes given? • what form the consultation took (i.e. public/restricted; and verbal/written)? • if restricted consultation only took place, why was this appropriate? • key feedback from stakeholders on the options considered. ▪ If any significant concerns were raised about a preferred option, how did the agency authoring the RIS alter the proposal to address these concerns?

Feature	What should be considered?
Impact Analysis	**In the RIS:** ▪ Are those in the community and industry groups i.e. individuals, Government including local government, business and consumers, likely to be impacted by the proposal identified? Are the impacts specified? ▪ Are the economic, environmental, social justice, health, equity and other relevant impacts identified and discussed where appropriate? ▪ Are the implications for inter-jurisdictional trade in goods and services identified and discussed where relevant, with mutual recognition issues adequately considered? ▪ Are both costs and benefits for each viable option detailed, making use of quantitative information where possible, or otherwise qualitatively through objective discussion? (Regulatory Burden Measurement tool recommended) ▪ Is there analysis of the extent to which each option achieves the policy objectives? ▪ Is the impact analysis supported by an acceptable level of evidence? ▪ If an option establishes a Government owned (or part-owned) entity to operate in competition with the private sector, are the competitive neutrality implications identified?
Preferred Option	**In this section:** ▪ Is there a clear statement as to what the preferred option is and why? Does it outline the net benefit to the community? ▪ Does the preferred option create a market/regulatory failure? ▪ Is the preferred option evidence based and/or with a clear relationship to the outcome sought? ▪ If restrictions on competition are recommended, are they the minimum necessary to achieve the objective? ▪ If there are compliance, administrative or enforcement costs to business, consumers or Government, are they reasonable and proportionate to the objectives of the regulation? ▪ Is there a description of how the proposed regulation will co-exist with other regulation?
Timeliness	**Was the draft RIS shared with the BRU with ample time for advice and then finalised in a timely manner (i.e. before Approval to Draft)?**
Implementation and Evaluation	**Does the RIS provide information on how the preferred option will be implemented and the review arrangements (including metrics) after it has been put in place?** ▪ Compliance – is it easy to understand, does it motivate parties to comply and are the penalties graduated? ▪ Costs – consider costs to both affected and administering parties. ▪ Measurement – clear performance and reporting framework. ▪ Review – set a reporting timeline e.g. 5-year review etc. ▪ Have transitional arrangements and compensation been considered.