The Queensland Government Guide to Better Regulation

May 2019

Queensland Government

Contents

Boxes, Figures and Tables

1 Introduction

1.1 Regulatory impact analysis and public policy development

Public policy development is the process by which the government determines the most appropriate approach to dealing with problems or issues that require its attention. When considering a policy proposal, it is essential government decision makers are provided with the necessary information and advice to make informed decisions.

This is particularly important for policy proposals that introduce or amend government regulation as these can have significant impacts on business, the community and the Queensland economy. The consideration of regulatory best practice principles helps ensure the introduction or amendment of regulation is necessary, effective and minimises the burden on affected stakeholders.

A crucial element in developing best practice regulation is effective regulatory impact analysis (RIA). RIA is a systematic approach to critically assessing the impacts of proposed regulatory policy options and is an integral part of good policy making processes. It is designed to improve the quality of regulatory policy by providing relevant and timely information to government decision makers about the expected impacts of different policy options for addressing a particular issue.

The Queensland Government established the independent Office of Best Practice Regulation (OBPR) to assist agencies in applying effective and rigorous RIA as part of their standard policy development process.

A key focus of undertaking RIA is to increase the rigour with which new and amended regulation is made. It also provides the basis for community consultation during policy development. After government decisions are made, RIA also performs an important accountability function by enabling the community to understand what decisions have been made and why.

For regulatory proposals with potentially significant adverse impacts (refer to section 2.5) on some stakeholders, the preparation of a Regulatory Impact Statement (RIS) assists decision makers by providing factual evidence about the impacts of the feasible options for dealing with the specific policy issue.

The earlier an RIA is undertaken, the more valuable it is to policy development and decision making. It should ideally commence when a problem or policy issue emerges that may require a regulatory response.

This Guide is an administrative policy approved by the Treasurer. Its purpose is to assist agencies in developing better regulation that is effective and efficient and to facilitate the provision of better information to Queensland Government decision makers.

1.2 How much analysis and consultation should be undertaken?

The depth of analysis and consultation undertaken for a proposal should be proportional to the complexity and significance of the problem and the size of the potential impacts.

As a consequence, the level of analysis, degree of quantification of impacts and extent of consultation undertaken by agencies will vary depending on the regulatory proposal.

It is critical that, in all cases where consideration is being given to potential regulatory proposals, agencies carefully consider the application of this guide as part of their standard policy development process.

The RIA process, as outlined in this guide, is specifically designed to allow agencies to determine the appropriate level of analysis required at key decision points.

For many simple proposals, that meet certain criteria, agencies may determine the proposal is excluded from RIA and no detailed analysis or formal engagement with OBPR is necessary.

In other cases, where agencies seek OBPR's assessment of whether the proposal is excluded from further consideration under RIA, the agency may only need to provide OBPR with a brief overview of the proposal.

More complex or potentially significant proposals may require a more detailed preliminary impact assessment and more in-depth engagement with OBPR and other relevant agencies.

In the few cases where it is determined the proposed options may have significant adverse impacts on some stakeholders, agencies may develop a comprehensive Consultation RIS and undertake formal consultation with stakeholders on the various options being proposed.

1.3 Regulatory best practice principles

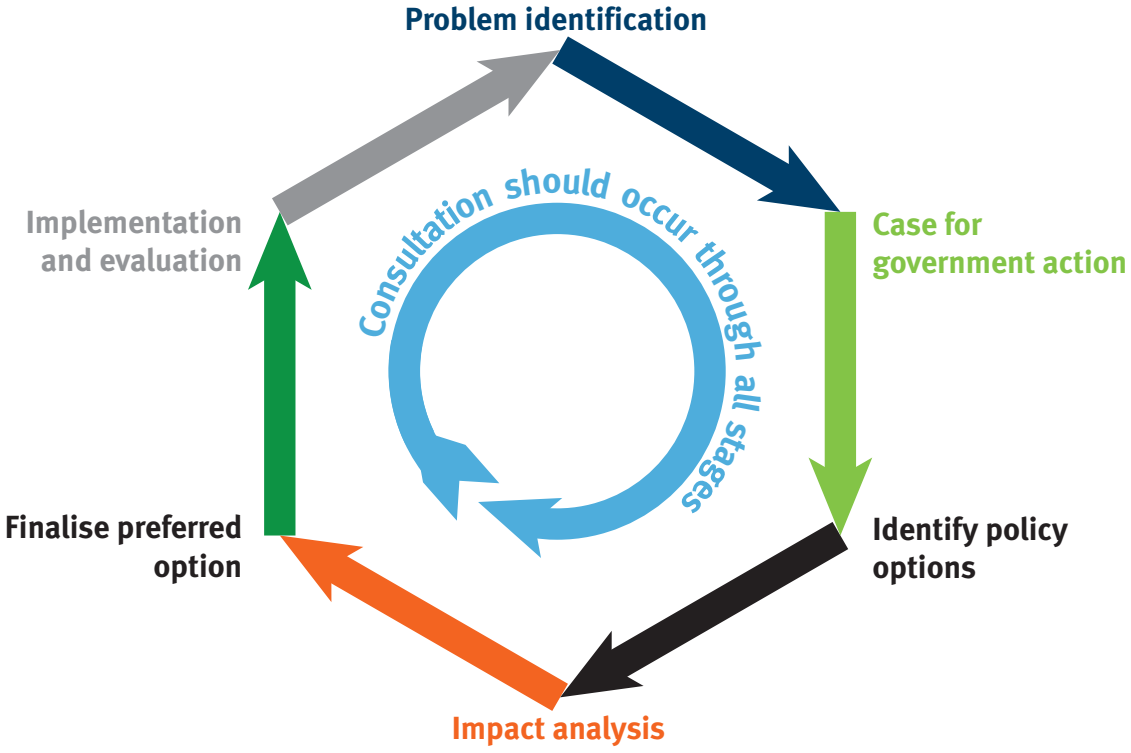
The Queensland Government has agreed that regulatory processes in the state will be consistent with the Council of Australian Governments (COAG) *Best Practice Principles for Regulation Making* (COAG 2007) (Box 1). Agencies should consider these best practice principles if considering a regulatory response to a policy issue. The RIA process, as outlined in this guide, is designed around the application of these principles.

Figure 1 reflects these principles and illustrates the policy cycle integrated with RIA.

Box 1: COAG Best Practice Principles for Regulation Making

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

Figure 1: Policy cycle and RIA



1.4 Risk based approach to regulation

The Government's response to a potential policy issue should be proportionate to the risk that the issue presents. A challenge for both governments and the community is acknowledging that not all risks can be eliminated through regulation and that trade-offs may sometimes need to be made between risk reduction and regulatory burdens.

A risk based regulatory approach is based on the premise that the nature and level of regulation, and the compliance activity undertaken by the regulator in administering that regulation, is targeted and proportionate to the risk of non-compliance or regulatory failure.

There are two key elements for a successful risk based approach to regulation:

- ensuring that regulations are designed and drafted with consideration of risk; and
- that regulators' compliance and enforcement activities are appropriate based on the risk that particular businesses and activities pose.

For example, a low-risk activity or action performed by a business may require less prescriptive regulation and attract less compliance activity on behalf of the regulator, such as allowing businesses to undertake self assessments, self-monitoring and/or reduced reporting, thus reducing the level of interaction required between the regulator and regulated businesses. This approach creates efficiencies by allowing both the regulator and industry to devote more time and resources to activities of higher risk or more productive activities.

Conversely for a high-risk activity, where the consequences of a breach of regulatory obligations may have significant negative consequences, more prescriptive regulation and stronger compliance activity may be required to safeguard the community and/or environment.

Risk based approaches are relevant at all stages of the policy/regulatory cycle, from determining whether there is a problem requiring regulatory intervention through to evaluating the impact and effectiveness of the regulator's response after implementation.

The transition to risk based design, implementation and administration of regulation may be challenging for some departments and regulators. This can include an in-depth consideration of the risks present in the industries that are regulated and an assessment of whether certain businesses or activities present a higher or lower risk than others, which may warrant different regulatory approaches.

There is a variety of published guidance material which methodically sets out how regulatory policy makers and regulators can consider risk and implement new methods of monitoring, compliance and enforcement, including the use of self-diagnostic tools. Consulting this guidance material will assist agencies in ensuring that the regulatory burden on low risk activities and stakeholders is reduced.

Further information on appropriate guides is provided in Appendix A.

1.5 What types of proposals are subject to RIA?

Regulatory best practice principles and RIA should be considered in the development of both primary and subordinate legislative instruments, as well as quasi-regulation for which there is an expectation of compliance (Box 2).

Box 2: Types of regulation

- Primary legislation refers to Acts of Parliament.
- Subordinate legislation comprises rules or instruments that have been made by an authority to which Parliament has delegated part of its legislative power. These include disallowable instruments such as statutory rules, ordinances, regulations, bylaws, and other subordinate legislation that are not subject to Parliamentary scrutiny.
- Quasi-regulation includes those rules, instruments and standards by which government influences business and the community to comply, but which do not form part of explicit government regulation. Examples can include government endorsed industry codes of practice or standards, industry–government agreements and accreditation schemes. Whether or not a particular measure is deemed to be quasi-regulation depends on whether there is an expectation of compliance.

Regulatory impact analysis is not required for:

- information released to inform or educate the community, such as safety alerts, technical guidance notes, fact sheets, guides and brochures
- recommendations and guidelines issued by public sector integrity and governance organisations such as the Queensland Audit Office and the Crime and Corruption Commission
- policies and guidelines for application by government agencies relating to public sector internal management and reporting
- commercial agreements or contracts
- amendments moved during consideration in detail of a Bill.

1.6 What agencies should undertake RIA?

RIA should be considered by all Queensland Government agencies, including statutory authorities, developing regulatory proposals that require agency or Ministerial approval. The guidelines do not apply to:

- statutory authorities who are not subject to direction by an agency or Minister
- local governments.

1.7 Interaction with other requirements of the legislative development process

The guidelines should be considered in conjunction with existing legislative development requirements, including the need to take account of:

- fundamental legislative principles in the development of regulation, outlined in the *Legislative Standards Act 1992*
- Queensland Cabinet Handbook
- Queensland Legislation Handbook
- Queensland Executive Council Handbook.

If there is inconsistency between an Act and the guidelines, the Act will prevail.

1.8 The Office of Best Practice Regulation

OBPR provides advice and training to government agencies on the development of regulation, application of regulatory best practice principles and RIA. Government agencies are strongly encouraged to engage early with OBPR on issues that may require a regulatory response.

OBPR is responsible for:

- advising agencies whether a regulatory proposal is excluded from the RIA process
- assessing Preliminary Impact Assessments (PIA) to advise agencies on whether a Consultation RIS should be undertaken
- assessing the adequacy of Consultation and Decision RISs prepared by agencies
- assessing the adequacy of Post Implementation Reviews (PIR) prepared by agencies
- advising agencies on assessing business compliance costs
- providing training and guidance on both RIA and generic competencies and best practice behaviours in administering regulation
- promoting the government's consultation principles and providing guidance on best practice consultation as part of policy development
- providing technical assistance on cost benefit analysis (CBA) or alternative evaluation techniques
- reporting annually on agency implementation of RIA
- maintaining a central RIS register on its website
- managing implementation and oversight of the Regulator Performance Framework (see Chapter 5), including advising regulators on the requirements of the framework and publishing copies or links to regulators' annual performance reports on the OBPR website.

To seek OBPR's advice or to lodge an exclusion, PIA or RIS, please visit http://www.qpc.qld.gov.au/regulatory-review.

1.9 Consultation with other government agencies

When developing policy, including potential regulation, it is essential agencies have early and ongoing engagement with the Department of the Premier and Cabinet (DPC) and Queensland Treasury to ensure the best possible policy outcome. The Policy Division within DPC and the Economics and Budget Portfolio Divisions within Treasury can provide valuable assistance to agencies in defining a problem, determining if government action is required, exploring different policy options and identifying possible impacts on stakeholders.

Agencies should also ensure they engage with other agencies that may be affected by, or have an interest in, policy issues they are seeking to address.

Where a legislative response is being considered, agencies should consult early with the Office of the Queensland Parliamentary Counsel (OQPC) and the Parliamentary Liaison Officer to schedule sufficient time for drafting and other legislative processes.

2 Key steps in RIA

2.1 Key questions informing effective policy development

Once an issue that may require government intervention is identified, there are several key questions agencies should consider as part of standard policy development. These questions reflect the various stages of policy development and are informed by key steps in RIA as depicted in Figure 2.

1. Problem identification – what is the problem or issue you are trying to address?
2. Case for government action – is government action needed and, if so, why?
3. Identify policy options – if government intervention is necessary, what feasible policy options (regulatory and non-regulatory) could address the problem?
4. Impact analysis – what are the potential net impacts (costs and benefits) of each option (regulatory and non-regulatory) on stakeholders?
5. Finalise preferred option – which option most effectively addresses the problem and has the greatest net benefit?
6. Implementation and evaluation – how should the preferred option be implemented and its effectiveness evaluated?
7. Consultation – which stakeholders should be consulted in the development, analysis, implementation and evaluation of the policy response? How should this consultation be undertaken?

Before seeking government's approval for any regulatory proposal, agencies should have considered each of these questions to ensure their policy advice has identified the most effective and appropriate action. As discussed in section 1.9, agencies should be seeking the advice and assistance of central agencies (DPC and Treasury) through early and ongoing consultation throughout policy/regulatory development.

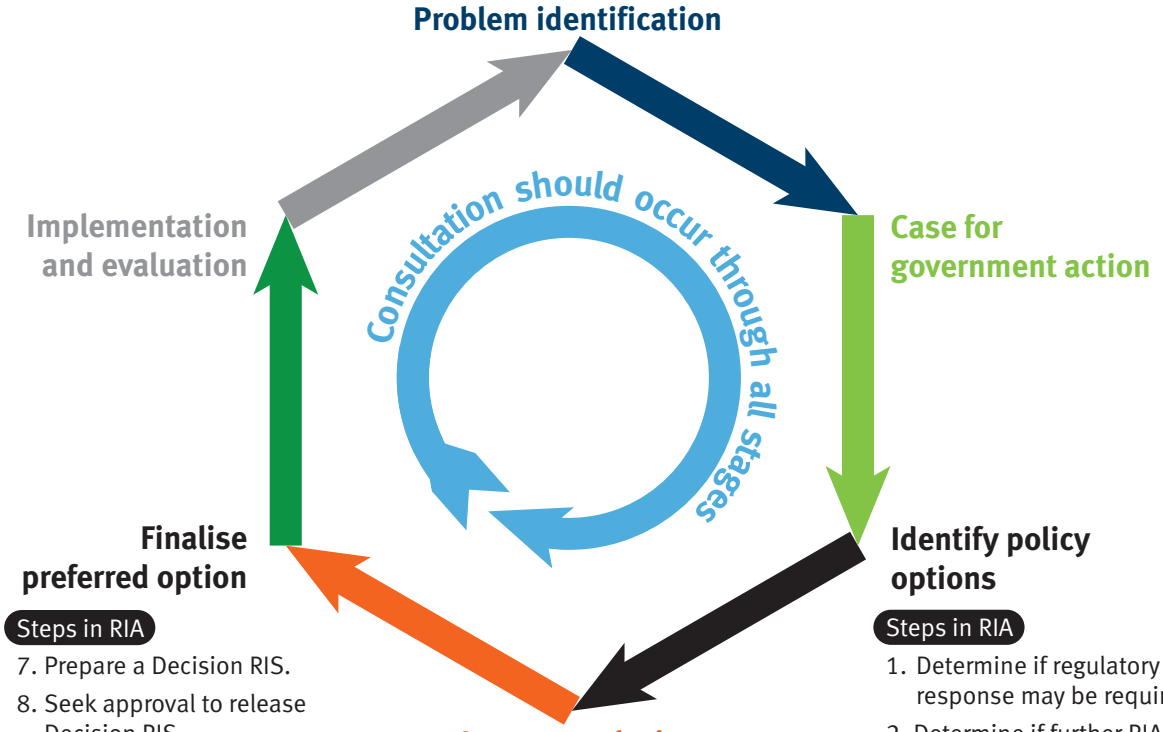
2.2 The RIA process

If it is determined that regulatory intervention is required, the following specific steps in RIA, as outlined in the rest of this chapter, should be taken. These steps facilitate a thorough and transparent consideration of the key policy development questions.

Importantly, RIA adopts a proportionate approach to assessing potential regulatory impacts. The more complex a proposal and the more significant its potential impacts, the greater the degree of RIA required.

The key steps in RIA for developing new or amending regulation are depicted in Figure 3.

Figure 2: Policy development and the key steps in RIA



2.3 STEP ONE
Does the problem potentially require a regulatory response?

If the creation or amendment of a regulation may be required to address a clearly identified problem or issue, agencies should consider the subsequent steps in RIA outlined in Figure 3.

Note: If the agency considers the proposed regulatory option is likely to have significant impacts and intends to undertake a RIS, it should consult as early as possible with OBPR about the development of the RIS.

2.4 STEP TWO
Does the proposal require further RIA?

Certain regulatory proposals may not require further RIA because the costs of doing so would outweigh the benefits and would provide no additional benefit to decision makers or stakeholders.

Examples include proposals that would have negligible impacts on business and community, such as machinery of government changes or correcting technical errors, or proposals that have already undergone an extensive RIA process comparable to a RIS.

Figure 3: Key steps in RIA

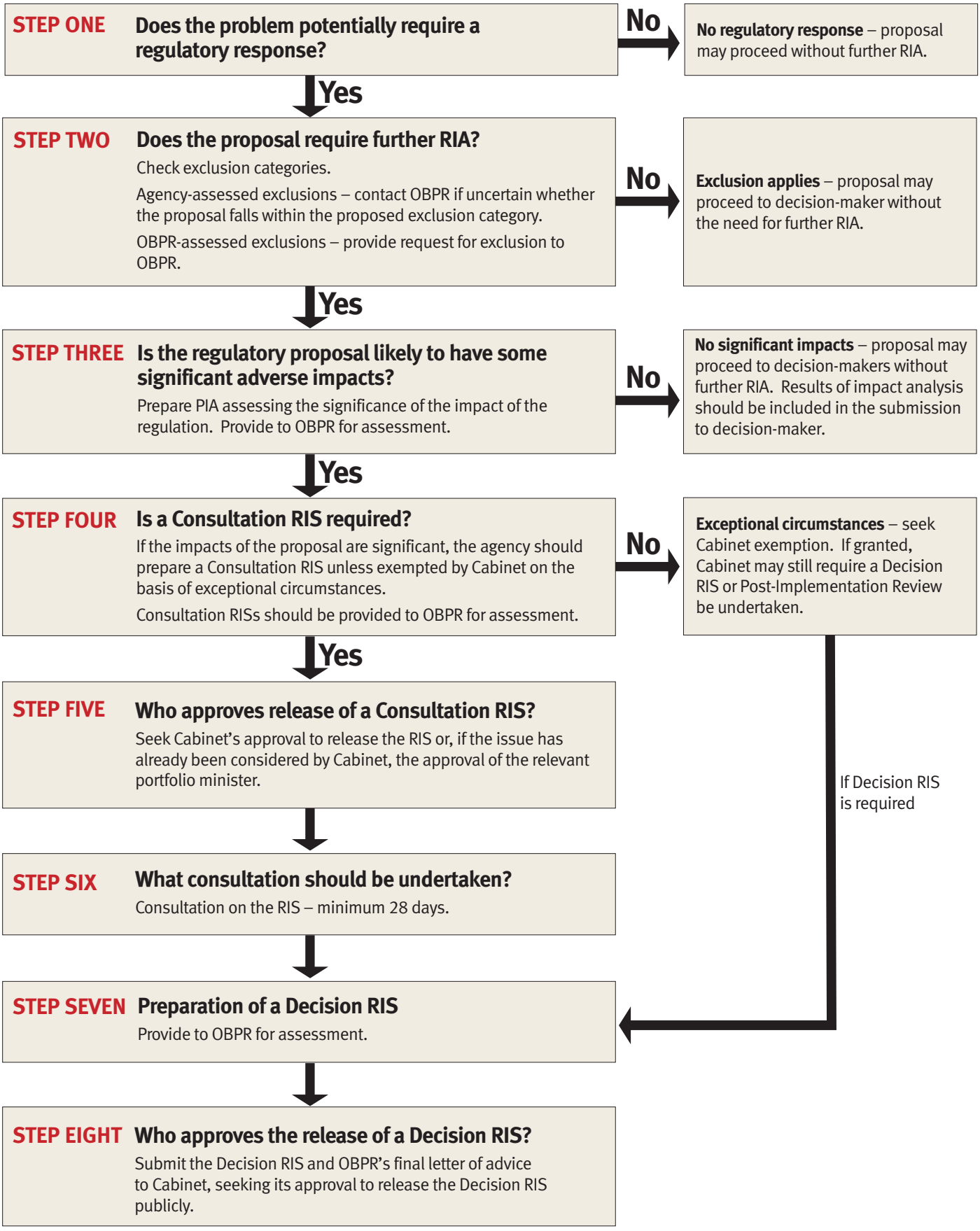


Table 1: Agency-assessed exclusion categories

Category	Criteria	Examples
(a) Regulatory proposals that make consequential amendments.	• Amendments that are made as a consequence of an Act being enacted or subordinate legislation being made. • New legislation may result in consequential amendments to other legislation for which there is limited discretion available to the decision maker.	• If the *Local Government Act 2009* was amended to change the term 'local government' to 'local council', consequential amendments would be required across the statute book to change all 'local government' references to 'local council'.
(b) Regulatory proposals that impose taxation or a royalty (excluding the administration of taxation or a royalty).	• Introducing a new tax or royalty or changing an existing tax or royalty. • This exclusion category does not relate to introducing a new levy, fee or charge or changing an existing one.	• A tax is a compulsory exaction of money and is not a payment for services rendered. The revenue collected is not linked to a particular good or service and is allocated to general consolidated revenue. • A royalty is a usage based payment made by the user to the owner for the right to ongoing use of an asset.
(c) Regulatory proposals for the internal management of the public sector or statutory authority.	• Proposals that only impact on the internal operations of the public sector or a statutory authority but have no material impact on business or the community. • Implementation of changes to internal systems to improve performance and efficiency while maintaining the quality of services to the community. • Where a function or service is moved within or between departments, or from a department to a statutory authority, or from a statutory authority to a department.	• Responsibility for oversight of the RIA process being transferred from Treasury to the OBPR. • Responsibility for HIV prevention being moved from the Department of Health to a new statutory agency HIV Foundation Queensland. • The merging of government departments where there is no reduction in the quality of services to the community. • Regulation prescribing a wage increase for public sector employees covered by a continuing agreement under the *Industrial Relations Act 1999*.
(d) Regulatory proposals of a savings nature.	• Applies to proposals which are designed to preserve or 'save' a law, a right, a privilege or an obligation that would otherwise be repealed or cease to have effect.	• It will quite often be the case that specific savings provisions are needed to transition from a pre-amended Act to the amended Act.
(e) Regulatory proposals that are of a transitional nature.	• When a new Act is to come into operation or a principal Act is amended, it is often the case that special arrangements must be made for transitional matters.	• It will quite often be the case that specific transitional provisions are needed to transition from a pre-amended Act to the amended Act.
(f) Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice.	• Amending the technical error will not result in a change from the original intent, interpretation or effect of the legislation. • Amending the legislation to reflect a change in drafting practice does not affect the original intent, interpretation or effect of the legislation.	• Technical errors could include a typographical or punctuation error or incorrect reference to a section in the legislation, but would not include inserting new provisions. • Replacing 'meter operating charge' with 'meter usage charge' to ensure that the correct meter charge will apply.

Category	Criteria	Examples
(g) Regulatory proposals that are of a machinery nature.	• No substantive policy change has been made. • Consists of provisions that are merely declaratory. • Repealing redundant regulations. • Facilitating routine tasks of government. • Adds or removes items from prescribed lists to reflect technological developments. • Updates thresholds and dates. • Gazettal processes.	• An Act provides for a person to delegate powers to a prescribed person. • Proclamations that are required before an Act or sections of an Act can be brought into operation. Some are also required as part of the day-to-day operation of complex legislative schemes. • Setting opening and closing dates for fisheries. • Adding drug testing saliva analysing instruments to the prescribed list in the *Traffic Regulations 1962*. • Gazetting changes made to Queensland's protected area estate.
(h) Regulatory proposals that put forward standard annual fee variations in line with or below a government endorsed indexation factor.	• The annual government indexation rate for fees and charges that applies to the fees and charges of departments and statutory bodies.	• The annual government indexation rate for fees and charges from 1 July 2013 to 30 June 2014 was 3.5 per cent.
(i) Regulatory proposals for variations to fees/ premiums in line with actuarially determined assessments.	• Relates to specific regulatory-imposed fees/premiums where an actuarially-based formal risk assessment is required to determine an appropriate fee/premium structure to cover the budget/financial risk to the State.	• Some specific premium adjustments may need to be considered for insurance premiums imposed by the Motor Accident Insurance Commission where an actuarially-based assessment has determined a shift in the risk profile. • Section 26A of the *Queensland Building and Construction Commission Act 1991* requires the Commission to manage the Queensland Home Warranty Scheme in accordance with actuarially sustainable principles to ensure the amounts paid into the insurance fund are sufficient to meet the cost of claims and administration.
(j) Regulatory proposals relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services.	• Changes to police powers and administration. • Changes to laws/rules relating to the administration of courts and tribunals. • Changes to the powers of corrective service officers. • Changes in the general criminal law and procedure.	• Changes to general criminal laws such as the Criminal Code and the *Penalties and Sentences Act 1992*. • Changes to legislation providing for the administration of courts and tribunals and to associated rules of court and practice directions. • Changes to the *Corrective Services Act 2006* and *Corrective Services Regulations 2006*.

There are two broad types of RIA exclusion categories:

- Agency-assessed, where agencies make their own assessment on whether the regulatory proposal falls within an exclusion category and OBPR's advice is not required. However, agencies are encouraged to seek OBPR's advice if they are uncertain as to whether a regulatory proposal meets the agency-assessed exclusion criteria.
- OBPR-assessed, where OBPR advice should be sought to determine whether the regulatory proposal falls within the exclusion category.

In cases where a regulatory proposal satisfies the criteria for one of the exclusion categories, no further RIA is required.

Agency-assessed exclusions

Exclusions for which agencies can self-assess are listed in Table 1. These are exclusions that are relatively easy to determine. If agencies consider the regulatory proposal clearly meets one of these exclusions, they do not need to submit their assessment to OBPR.

However, agencies are strongly encouraged to seek OBPR's advice as early as possible if there is any doubt as to whether a regulatory proposal meets the specified criteria for exclusion from RIA.

Agencies are accountable for ensuring proposals they determine are excluded from RIA meet the specific criteria for the exclusion category identified. However, to ensure the rigour and transparency of RIA is maintained, OBPR will periodically review and report to government on the performance of the agency assessment model. It is expected agencies keep a record of each of the proposals they have self-assessed, including the rationale for how the regulatory proposal meets the criteria for the self-assessable exclusion, and be able to provide this information to OBPR upon request.

OBPR-assessed exclusions

If agencies consider the regulatory proposal belongs to one of the OBPR-assessed exclusion categories, as listed in Table 2, the agency should provide their justification for the exclusion to OBPR for its advice on whether the regulatory proposal falls within the exclusion category.

OBPR may request more information about the regulatory proposal in considering whether it can be excluded.

To help OBPR consider agency requests for exclusion from RIA, agencies should provide the following, as a minimum, in a word document:

- a brief explanation of the regulatory proposal
- category of exclusion sought
- the reason/s why the regulatory proposal meets that exclusion category (referring to the listed criteria).

Table 2: OBPR-assessed exclusion categories

Category	Criteria	Examples
(k) Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.	• Removing or reducing the requirements on business or the community that are unlikely to increase costs or risks on third parties. • No change or increase in the regulatory burden on business or the community.	• Reducing unnecessary or excessive compliance cost burdens on business.
(l) Regulatory proposals that have already undergone an extensive impact assessment process.	• The process must be comparable to the requirements of RIA in terms of analysis and consultation. • The process must take into account the impacts on Queensland and regulatory best practice principles.	• COAG Decision RISs. • Independent reviews. • Green papers. • White papers. • A process that mirrors RIA that is enshrined in legislation - for example, a water plan or water use plan approved under the *Water Act 2000*.
(m) Regulatory proposals for matters that require an immediate legislative response to prevent damage to property or injury to persons.	• The additional time required by the preparation of a RIS would represent an unacceptable increase in the risk of damage or injury.	• Management of an outbreak of a disease or biosecurity threat.

2.5 STEP THREE
Is the regulatory proposal likely to have significant adverse impacts?

Undertaking a Preliminary Impact Assessment

A Preliminary Impact Assessment (PIA) is a tool to help agencies (and OBPR) determine whether further analysis and engagement with the community would improve the development of a particular regulatory proposal. If the PIA indicates the proposal is likely to have some significant adverse impacts on a sector or sections of the community (even though the proposal may provide net benefits to the community as a whole), a RIS should then be undertaken.

A PIA should be completed for all regulatory proposals, except:

- where it meets an exclusion category
- where the agency has concluded (on its own or with assistance from OBPR) the proposal would benefit from further detailed analysis and consultation, and has decided to proceed directly to preparing a Consultation RIS.

The PIA identifies and outlines the need for, and likely effects of, a regulatory proposal including whether any adverse impacts are significant enough to require the additional analysis and consultation undertaken in a RIS.

The PIA should clearly demonstrate why a regulatory response is required, and why existing regulation is insufficient for addressing the policy issue. If the regulatory proposal involves new regulation not in place in other jurisdictions, the PIA should clearly demonstrate why Queensland circumstances require such a regulatory approach.

The key questions in the PIA, closely reflecting the key policy development questions and the key questions explored in a RIS, are:

- What is the problem to be addressed?
- What are the objectives of government action?
- What are the feasible options to address the problem?
- What are the likely impacts of identified options?
- What consultation has/will be undertaken?
- What is the preferred option for addressing the problem?

These questions are considered in detail in Chapter 3.

The PIA template is available at http://www.qpc.qld.gov.au/regulatory-review.

Assessing impacts

A fundamental element of the PIA is an assessment of the proposal's potential:

- economic (including competition and compliance) impacts
- social impacts
- environmental impacts.

These impacts should be quantified where possible. If the impacts are not able to be quantified (e.g. in doller terms), then they should be assessed and discussed qualitatively.

When assessing the costs and benefits for new or amending regulation, it is necessary to compare the incremental costs and benefits of the proposed regulatory change against the base case of the 'no action' option.

The PIA should include an estimate of the impacts of the proposal, including changes in compliance costs, from the base case for the options analysed. If the impacts are considered to be negligible or trivial, the agency should explain how it has drawn this conclusion.

Estimating compliance costs

A costing methodology that conforms to the principles in Appendix A should be used to estimate the compliance costs of the options. This could be as simple as a multiplication of relevant variables (see section 3.5). OBPR can provide guidance on calculating compliance costs.

When is an impact likely to be significant?

Deciding whether a regulatory proposal is likely to have significant adverse impacts on business, the community or government requires careful assessment and judgement.

In determining the significance of an impact, consider the following factors:

- the breadth of the impact — does it affect a large number of industries or individuals or a large proportion of businesses within an industry?
- the intensity of the impact — does it affect a small number of industries or individuals or a small proportion of businesses within an industry, but the impact is intense?
- the proportionality of the impact — does it have a disproportionate impact on a particular stakeholder group (such as small business)?
- the frequency of the impact — does it occur frequently rather than one-off?
- the probability of the impact — does it have a high probability of occurring?
- the extent to which the impact is reversible or can be mitigated — can it be reversed or mitigated?
- the degree of uncertainty regarding the impact — is there a high degree of uncertainty?
- the level of community concern regarding the impact — is it a matter of debate and fundamental disagreement within the community?

What constitutes 'significant' will vary with each regulatory proposal. Examples of the types of impacts a proposal may have on stakeholders are provided in Box 3. This list of examples is not exhaustive. If there is doubt about the magnitude of the impact, it should be assumed to be potentially significant.

Anti-competitive conduct

Part IV of the *Competition and Consumer Act 2010* (Cth) sets out specific examples of anti-competitive conduct. If a regulatory proposal seeks to authorise anti-competitive conduct which, without a legislated exemption or other legal authority, would contravene Part IV of the *Competition and Consumer Act 2010* (Cth), a Consultation RIS must be undertaken to justify the need for the legislation. Without this justification, a regulation may be overturned by the

Commonwealth Government. Agencies seeking to authorise anti-competitive conduct must consult with Treasury immediately. More detail on competition impacts is provided in section 3.5.

Mutual recognition

Where relevant, agencies should consider any implications a regulatory proposal may have for the State's mutual recognition obligations relating to inter-jurisdictional trade of goods and services.

2.6 STEP FOUR
Is a Consultation RIS required?

Agencies should provide their completed PIA to OBPR so it can assess the analysis of costs and benefits and determine whether the regulatory proposal will likely result in significant adverse impacts.

If OBPR considers the proposal is not likely to result in significant adverse impacts, a Consultation RIS is not required. However, the agency may still choose to undertake further analysis and consultation (including a RIS) if it considers it appropriate. For proposals proceeding to Cabinet, the findings of the PIA should be clearly summarised within the Cabinet Submission.

If the agency, in consultation with OBPR, determines the proposal is likely to result in significant adverse impacts, a Consultation RIS should be prepared, unless an exemption has been granted by Cabinet.

Seeking a Cabinet exemption - exceptional circumstances

If there are exceptional circumstances where a Minister considers an exemption from preparing a Consultation RIS is appropriate, Cabinet may exempt the proposal from requiring a RIS.

Such circumstances may include the need to urgently implement government policy priorities or situations where public consultation on a proposal would not be appropriate and may compromise the public interest. This would include matters that are commercial-in-confidence or where advance notice of the proposal through public consultation would undermine the objectives of the regulation.

In granting an exemption, Cabinet may attach conditions on the approval, including requiring either a Decision RIS or PIR.

If Cabinet determines a Decision RIS should be prepared, the Decision RIS should include the reasons for the exemption

Box 3: Examples of adverse impacts on the community

Business impacts

- Increases business costs or decreases business profitability.
- Creates barriers to businesses entering or exiting a market through the allocation of licences, rights, entitlements, quotas.
- Introduces controls that reduce the number of participants in a market.
- Imposes restrictions that reduce the range, quality or availability of goods and services in a market.
- Alters or limits the way in which a business operates:
  - changes work practices within the business
  - introduces price controls
  - restricts hours of operation
  - regulates the size or nature of premises
  - requires or limits the provision of specified facilities
  - imposes geographical limits on business operations
  - limits advertising or promotion
  - requires the provision of specific information to consumers.
- Imposes reporting requirements on business.
- Creates a disincentive to private investment.
- Limits the ability of businesses to access local, interstate and international markets.
- Places businesses at a competitive disadvantage with interstate and international competitors.
- Reduces employment opportunities, limits skills development or restricts labour mobility.
- Limits the ability of businesses to innovate, adopt new technology or respond to the changing demands of consumers.

Competition impacts

- Increases the price of a good or service.
- Imposes restrictions that reduce the range, quality or availability of goods and services in a market.
- Makes it more difficult for consumers to move between service providers.

Social and environmental impacts

- Reduces public health and safety.
- Displaces the community or parts of the community.
- Restricts basic community services and/or access to these services.
- Constrains fundamental rights or freedoms of individuals.
- Damages flora, fauna or biodiversity.
- Increases air, land, water pollution.
- Reduces the sustainability of water catchments.
- Increases waste production.

Government impacts

- Requires additional resources.
- Increases the financial burden on government.
- Decreases the effectiveness and efficiency of government.

Box 4: Adequacy criteria for assessing a RIS

1 The RIS should clearly identify the problem that needs to be addressed. It must present:
- evidence of the nature and magnitude of the problem
- evidence of who is affected by the problem
- evidence that the existing regulation is not adequately addressing the problem and, where new regulation not in place in other jurisdictions is being considered, why Queensland circumstances require a regulatory approach
- any relevant risks and explain why they are excessive
- a clear case for why additional government intervention may be required to address the problem.

2 The RIS should clearly identify the objectives of government action. It must:
- express the objectives of the regulatory proposal in terms of what is to be achieved
- state objectives that are specific, measurable, accountable, realistic and time-bound.

3 The RIS should identify a range of feasible options. It must:
- select options that are feasible approaches to addressing the problem including (as appropriate), non-regulatory, self-regulatory and co-regulatory options
- provide a clear justification where options are limited or constrained.

4 The RIS should provide an adequate analysis of the costs and benefits of the feasible options. It must:
- assess the costs and benefits of all feasible options using an appropriate level of analysis commensurate with the complexity and significance of the problem and the size of the potential impacts on the community
- identify the groups in the community likely to be affected by each option and specify any significant economic, social or environmental impacts on them
- clearly identify any compliance costs
- rigorously justify non-monetised costs and benefits
- analyse the extent to which each option would reduce the relevant risk, and the costs and benefits involved
- provide evidence in support of key assumptions and clearly identify any gaps in data
- Identify and assess any implications for mutual recognition obligations relating to goods and services.

5 The RIS should demonstrate the level of consultation that has been undertaken in the policy development process. It must:
- outline the consultation objective
- describe how consultation was conducted including when consultation was undertaken, the timeframe given and the methods of consultation
- articulate the views of those consulted, including substantial disagreements
- outline how those views were taken into consideration
- provide a reasonable explanation as to why full public consultation was not undertaken if applicable.

6 The RIS should clearly outline why the selected option is the recommended option. It must:
- demonstrate that the option chosen is the one that generates the greatest net benefit to the community
- provide analysis that supports the recommended option.

7 The recommended option should be consistent with other policies and legislation. The RIS should:
- provide a brief assessment of the consistency of the proposed regulation with clause 5 of the Competition Principles Agreement. Reasons must be provided for any inconsistencies
- provide a brief assessment of the consistency of the proposed regulation with the fundamental legislative principles as defined by section 4 of the *Legislative Standards Act 1992* Qld. Reasons must be provided for any inconsistencies.

8 The RIS should outline an implementation, evaluation and compliance support strategy for the recommended option. It must:
- briefly describe the proposed implementation plan, including any implementation issues or risks that may arise
- briefly describe what guidance or compliance support strategy will be conducted to mitigate any issues or risks
- outline a monitoring and evaluation strategy for the recommended option to ensure it remains effective and relevant over time. This should include identifying possible service standards or performance indicators against which the recommended option can be assessed.

from a Consultation RIS. Where required by Cabinet, a PIR should be commenced by the proponent agency within two years, and completed within three years of the regulation's implementation date (see section 4.2).

OBPR will report on exemptions granted by Cabinet as part of its annual reporting on RIA.

Agencies are strongly encouraged to consult with both DPC and Treasury if considering seeking a Cabinet exemption from undertaking a RIS.

Note: Any regulatory proposal that contains anti-competitive conduct is not eligible for a Cabinet exemption, unless the Treasurer authorises an alternative form of public benefit test. Without a public benefit justification, the regulation may be overturned by the Commonwealth Government. Agencies seeking to authorise anti-competitive conduct must consult with Treasury immediately.

Preparing a Consultation RIS

Where the regulatory proposal has been assessed as likely to result in significant adverse impacts and no Cabinet exemption has been granted, the agency should prepare a Consultation RIS. Agencies are strongly encouraged to consult with OBPR at the earliest opportunity for advice on the preparation of a Consultation RIS. Further guidance on how to prepare a Consultation RIS is outlined in section three.

For most proposals, the increased transparency and engagement with stakeholders resulting from a Consultation RIS will improve the quality of analysis used to inform government decisions. At the very least, the Consultation RIS will help stakeholders understand and accept the impacts of the regulatory proposal.

OBPR can assist agencies with the structure of a RIS.

Assessment of adequacy by OBPR

The adequacy of a Consultation RIS should first be assessed by OBPR, in accordance with the criteria (see Box 4), before it is submitted to the relevant portfolio Minister or Cabinet for approval to release for public consultation.

The time taken for assessment by OBPR will depend on the:

- complexity of the issue
- quality of the agency's analysis.

OBPR will endeavour to provide an initial assessment within 10 working days of receiving the draft Consultation RIS. Various iterations of a draft RIS may be necessary before a RIS is finalised and assessed as adequate, depending on the extent of changes to be made to the RIS and the level of complexity. However, the agency can request final advice on the adequacy of the Consultation RIS at any point in the assessment process.

OBPR will provide a letter of final advice to the agency and issue two broad categories of advice, as follows:

(a) adequate

(b) inadequate.

OBPR's assessments may also raise specific issues or qualifications about the adequacy of the analysis in the RIS.

The agency may choose to resubmit a revised Consultation RIS that has been subject to a final letter of advice for re-assessment. OBPR will reassess the Consultation RIS and re-issue a new final letter of advice.

2.7 STEP FIVE
Who approves the release of a Consultation RIS?

Following appropriate consultation between the portfolio agency and central agencies, the portfolio Minister should seek the approval of Cabinet prior to releasing a Consultation RIS. However, where the policy issue has been previously considered by Cabinet, the Minister may, on a case-by-case basis, determine if Cabinet approval is required, taking into account the nature of the matters in question.

In those circumstances where Cabinet's approval is sought, the completed Consultation RIS and the final letter of advice from OBPR should be attached to the submission seeking Cabinet's approval for the release of the Consultation RIS.

Once release of the Consultation RIS has been approved by the relevant portfolio Minister or Cabinet, OBPR will publish the Consultation RIS and its final letter of advice on the OBPR website.

Box 5: Best practice stakeholder consultation principles

Consultation processes should be effectively targeted and easily accessible.

Correct identification of interested and/or affected stakeholders is critical to the overall effectiveness of consultation. Relevant stakeholders should be identified before the regulatory development process starts.

Consultation methods must be appropriate and accessible to each stakeholder group to ensure the benefits of stakeholder engagement can be maximised.

Stakeholders should be given adequate opportunity to participate in regulatory development, implementation and review.

Consultation should occur at all stages of the regulatory development process, critically when establishing the case for government action, in identifying and assessing a range of policy options, and when developing the preferred option in detail.

Stakeholders should be adequately notified of proposed consultation.

Where feasible, agencies should provide advance notice to business and community of all upcoming reviews or other consultation activities and associated consultation periods, and seek nominations of interest to be consulted.

Adequate time should be given for stakeholders to participate in consultation.

The consultation period should be long enough to enable all stakeholders to provide informed and valuable contributions to the policy and regulatory development process.

Outcomes of consultation should be reported back to stakeholders.

Notification of when and where outcomes of the consultation will be made available to stakeholders should be provided during the consultation process to encourage greater transparency in government's decision-making processes.

Consultation processes should be evaluated.

Evaluation of the consultation processes and mechanisms should be undertaken at each stage of the regulatory development process so improvements can be incorporated at the next stage.

2.8 STEP SIX
What consultation should be undertaken?

After the release of the Consultation RIS has been approved, the agency should make the necessary arrangements for the publication of the Consultation RIS and OBPR's final letter of advice on the Queensland Government's *Get involved* website.

A minimum period of 28 calendar days should be allowed for public consultation. For major regulatory proposals, a longer time period, sufficient for interested parties to provide a considered response, would be advisable (for example, 60 days).

Using a Consultation RIS as the main basis for consulting with interested parties allows stakeholders to consider and comment on the analysis of impacts and the evaluation of policy options.

The Queensland Government's best practice stakeholder consultation principles (Box 5) should be followed to ensure effective consultation with all interested parties at all stages of the regulatory cycle.

2.9 STEP SEVEN
Preparation of a Decision RIS

Once the agency has completed public consultation on the Consultation RIS, it should prepare a Decision RIS to reflect the outcomes of the consultation.

The Decision RIS is a stand-alone document that builds on the Consultation RIS.

A summary of the key messages/issues raised in the submissions should be incorporated in the most appropriate section of the Decision RIS, together with the agency's response. A brief list of the submissions received by the agency should be provided as an attachment to the Decision RIS.

Depending on the issues raised in the submissions, the agency may decide to revise certain sections of the Consultation RIS in preparing the Decision RIS. Where changes are made, these should be marked up (in track changes) in the relevant sections of the Decision RIS when provided to OBPR for assessment.

Updating the Consultation RIS by articulating the views of those consulted and how those views were taken into consideration aids transparency on how the final regulatory decision is made by government. By incorporating feedback from the consultation process, a Decision RIS also eliminates the need for the Consultation RIS to be reconciled with supplementary information arising from consultation with interested parties.

All submissions made in response to the Consultation RIS should be provided to OBPR as part of its adequacy assessment of the Decision RIS. OBPR will use these submissions to assess the Decision RIS. Although OBPR will not publicly release these submissions, the agency is encouraged to release them.

The assessment of adequacy of the Decision RIS by OBPR will follow the same process as described in section 2.6 for a Consultation RIS. Once OBPR has completed its assessment of the Decision RIS, the agency should provide a clean copy of the Decision RIS to OBPR for its records.

2.10 STEP EIGHT
Who approves the release of a Decision RIS?

A Decision RIS should be finalised prior to seeking Cabinet's approval, either to commence drafting of a Bill or to forward significant subordinate legislation to Executive Council. OBPR's final letter of advice on the adequacy of the Decision RIS should be submitted to the decision maker with the RIS.

The responsible Minister should seek Cabinet's approval for the release of a Decision RIS, usually as part of the submission seeking Cabinet's final approval of the regulatory option. The Decision RIS and the final letter of advice from OBPR should be attached to the submission. Cabinet may then delegate to the portfolio Minister responsibility for determining the appropriate time to release the RIS. However, in general, the release should be as soon as practical after the Government has finalised approval of the regulatory option.

Once release of the Decision RIS has been approved by the portfolio Minister or Cabinet, OBPR will publish the Decision RIS and its final letter of advice on its website.

2.11 Integration of RIA with legislative processes

Where a legislative policy response is being considered, agencies should consult early with OQPC and the Parliamentary Liaison Officer to schedule sufficient time for drafting and other legislative processes.

3 Contents of a Consultation RIS

3.1 Purpose of a RIS

A RIS provides government decision makers with useful information on which to base their policy decisions and informs stakeholders of the reasons why a particular option is preferred. It also allows stakeholders to comment and provide new evidence in support of various policy options.

To help decision makers and stakeholders understand the analysis undertaken in the RIS and why it was undertaken, an effective executive summary/overview explaining the key outcomes of the RIS is critical. It should include a brief description of the policy problem, the policy objectives to be achieved, each option analysed, the justification for the recommended option (as well as why other options were rejected) and the extent of consultation already undertaken.

The information is best included as a table in the executive summary so people can see upfront what policy option/s are being proposed and why.

The 'proportionality principle' should underpin all RIS documents. That is, the depth of analysis in the RIS should be commensurate with the complexity and significance of the problem and the size of the potential impacts of the proposal. As a consequence, the depth of analysis and degree of quantification will vary depending on the regulatory proposal.

Finally, the RIS should be an objective, balanced public statement, rather than an advocacy document. The recommended option should be the one that generates the greatest net benefit to the community compared to the other options.

The format of a RIS should follow the eight numbered headings in this chapter:

❶ **Identification of the problem**

❷ **Objectives of government action**

❸ **Consideration of options**

❹ **Impact analysis of the options**

❺ **Consultation**

❻ **Conclusion and recommended option**

❼ **Consistency with fundamental legislative principles**

❽ **Implementation, compliance support and evaluation strategy.**

3.2 Identification of the problem

To design appropriate solutions to a problem, the problem needs to be clearly specified. This is the most important step as limited information on the nature and magnitude of the problem makes identification of policy options and estimating the likely benefits of proposed actions very difficult.

As government action is not costless on the community, there is an onus on agencies to describe why government involvement is required to deal with a particular problem. When identifying the nature and magnitude of the problem agencies should refer to empirical evidence where available. This provides a more convincing evidentiary base than solely relying on perceptions of the problem by stakeholders or on unsupported assertions.

If the problem involves risk to the community, agencies should describe the risk and discuss its likelihood: Is the risk great enough to warrant intervention, or is the level of risk acceptable if weighed against the costs of reducing it? Box 6 provides further guidance on identifying the problem.

Government intervention is often suggested in cases of market failure. When markets are working well, they allocate resources to their most valued uses as measured by individuals' willingness to pay. Market failure refers to certain situations where markets do not allocate resources efficiently (see Appendix B for different types of market failure).

However, market failure as a rationale for government intervention is only warranted if the benefits of intervention outweigh the costs. In this case the precise nature of the market failure and its effects should be identified.

Whilst using regulation for social objectives such as income redistribution or fairness and equity is also possible, it is difficult to do effectively because regulation is a blunt instrument and can create perverse incentives for market participants, for example:

- A subsidy on the cost of water provided to low income consumers may have the unintended effect of providing an incentive for these consumers to use excessive amounts of water.
- A cap on private rental costs for low income renters may have the unintended effect of reducing the availability of 'affordable' housing provided by private landlords.

In many cases, distributional goals can be achieved at less cost by direct wealth transfers such as income support payments that do not distort market prices.

3.3 Objectives of government action

This step should identify what outcomes, goals or targets are sought in relation to the identified problem.

It is important to not confuse 'ends' with 'means' when setting an objective. For example, an objective of government health

policy may be 'to reduce the health care costs associated with the use of a particular piece of equipment'. This objective differs from the narrower objective of 'banning the use of the piece of equipment by people under 18 years of age', which is only one means or option by which the broader objective may be obtained.

The objective should be clear, concise and as specific as possible. It should be broad enough to allow consideration of all relevant alternative options, but not so broad that the range of options becomes too large to assess, or the extent to which the objective has been met becomes too hard to establish. A clear statement of objectives is critical for the evaluation of options and any future reviews. Objectives should be accountable and measurable.

Sometimes a regulatory proposal can have a number of objectives. If applicable, a distinction should be made between the primary and lesser objectives of the proposal.

If objectives are subject to constraints, for example that they must be achieved within a certain time frame, these should also be clearly specified in the objectives.

3.4 Consideration of options

It is important that a RIS considers a wide range of options to improve the likelihood that the best approach to achieving the objective will be identified. A RIS should assess all feasible options to ensure the recommended option is the one that generates the greatest net benefit to the community.

Box 6: Identification of problems and risks

What is the **nature** of the problem? For example, is it related to:

- market failure (monopoly or abuse of market power, presence of externalities or public goods and information asymmetry)
- regulatory failure (regulation that is not delivering outcomes in the community's interest)
- unacceptable hazard or risk to human health, safety or the environment
- poor social/equity outcomes.

What is the **magnitude** of the problem?

- What is the scale of the problem (intensity of impact on those affected)?
- What is the scope of the problem (who or what is being affected)?
- In the case of risk, what is the likelihood of the adverse event occurring? Why is this risk excessive?

How is the problem regulated?

- Why do current regulations not properly address the identified problem?
  Is this because the regulations are flawed in design, or because there are problems with compliance? Could the situation be dealt with by improving enforcement or encouraging greater compliance with the existing regulation?
- What are the consequences of not taking any action?
- Could relying on the market with existing regulation solve the problem? If not, why not?

As the RIS develops, it is not unusual for particular options to become infeasible (because they appear unlikely to achieve the objective or it becomes obvious without an impact assessment that costs outweigh benefits). Where this occurs, it should be made transparent and no further analysis of these options is required in subsequent sections of the RIS.

Options can also be curtailed when there are certain constraints, including in relation to:

- the funding available for the policy;
- the short timeframes for implementing policy (while policy design should not be rushed, not all alternatives will be capable of implementation within available timeframes);
- the extent of consistency with existing policies.

Where such constraints occur these need to be explained and justified in the RIS.

During consultation, stakeholders may identify other options to achieve the objective. Agencies should be willing to add to their analysis further feasible options that emerge from consultation. A rationale for the rejection of options that are not considered feasible should also be included.

When considering options, consideration should be given to approaches adopted in other Australian jurisdictions to the same policy issue. If the RIS concludes that a regulatory approach, which differs from that of other jurisdictions, is the preferred option, the RIS will need to conclusively demonstrate why circumstances in Queensland require such an approach.

Alternatives to legislation

Explicit regulation in the form of primary and subordinate legislation is seldom the only option available to government. There are a number of other alternatives that should be considered if they have the potential to achieve the government's objective.

These include:

- **Self-regulation** — generally characterised by industry-formulated rules and codes of conduct, with industry solely responsible for enforcement.
- **Quasi-regulation** — includes those rules, instruments and standards by which government influences business to comply, but which do not form part of explicit government regulation. Examples can include government endorsed industry codes of practice or standards, government issued guidance notes, industry-government agreements and accreditation schemes. Whether or not a particular measure is deemed to be quasi-regulation depends on the nature of government involvement and if there is an expectation of compliance.
- **Co-regulation** — generally characterised by situations where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced. Sometimes legislation sets out mandatory government standards, but provides that compliance with an industry code can be deemed to comply with those standards. Legislation may also provide for government imposed arrangements in the event that industry does not implement its own arrangements.

Within these regulatory alternatives, governments can pursue a range of options to achieve their policy objectives. These may include:

- no action (that is relying on the market in conjunction with existing general tort, liability and insurance laws)
- information and education campaigns
- market-based instruments including taxes, subsidies, tradeable permits and tradeable property rights
- pre-market assessment schemes such as listing, certification and licensing
- post-market exclusion measures such as bans, recalls, licence revocation provisions and 'negative' licensing
- service charters
- standards including voluntary and regulatory, performance-based or prescriptive
- other mechanisms, such as public information registers, mandatory audits and quality assurance schemes.

Consistency with other regulation

Maintaining consistency of regulation across all levels of government can help businesses and individuals minimise compliance costs, lower administrative costs for government, and benefit the broader community through increased efficiency and effectiveness of regulation. As a result, options should be developed to maintain consistency with other regulation. To meet this requirement, two key questions should be answered:

- Is the option consistent with, and not duplicative of, other Queensland Government policy and regulation?
- Is the option consistent with, and not duplicative of, Commonwealth or local government regulation?

If an option is not consistent with other regulation, it should be reviewed and amended to ensure consistency. If this is not possible, then the option is unlikely to be feasible.

3.5 Impact analysis of the options

One of the most important steps in a RIS is the assessment of impacts likely to result from implementing a proposal. A comprehensive RIS should consider all significant costs and benefits that a proposal is likely to impose on the community.

The appropriate depth of analysis in a RIS varies with the size, nature and likelihood of the impacts of the proposal. As mentioned earlier in the chapter, application of the proportionality principle would suggest that the depth of analysis undertaken on a proposal be commensurate with the size of the potential impacts. However, it is useful to place technical details in appendices to improve readability of the RIS document.

This section should include the sources of data used in the analysis, as well as any assumptions made when conducting the impact analysis. In this way the analysis behind the conclusions is made transparent.

Identify expected costs and benefits of the options

Costs and benefits are terms used to describe the negative and positive effects of a proposal. Costs and benefits should be assessed in a systematic and objective manner to identify the option likely to be of greatest net benefit to the community. Summary tables that compare the impacts of different options are encouraged in this section.

For new or amending regulation, the costs and benefits of the proposal relate to changes compared to what would have happened in the absence of the proposal. In other words, the incremental costs and benefits are measured using the base case of the 'no action' option. It is inappropriate to merely calculate incremental costs and benefits compared with the 'status quo', unless no further changes would have eventuated in the absence of the proposal.

Sunsetting regulation

Where a RIS is being prepared in relation to sunsetting regulation, the 'no regulation' option should be considered as the base case against which other options (including the existing regulation) are measured in terms of costs and benefits. This may prove difficult if regulations have been in place for a long time. Nevertheless, for sunsetting reviews to achieve their objective of ensuring the stock of regulation is up to date and relevant, it is important that the base case is 'no regulation'. However, if an agency believes an alternative base case is appropriate it should consult OBPR. Refer to section 4.3 for more information on reviews.

Assessing costs and benefits

There are a number of alternative methods for assessing costs and benefits in a RIS — cost benefit analysis (CBA), cost-effectiveness analysis (CEA) and multi-criteria analysis (MCA). The CBA guidance note on OBPR's website has more detailed information on these alternative valuation methods and their pros and cons.

CBA is the preferred method of assessing costs and benefits in a RIS for a proposal with significant impacts. However, it tends to be highly data intensive, requiring impacts to be valued in dollars (or monetised). When assessing costs and benefits, the rule of thumb should be:

- Impacts should be monetised wherever possible.
- Where monetisation is not possible, impacts should be quantified (that is lives saved, injuries/accidents avoided, etc).
- Where quantification is not possible, impacts should be qualitatively assessed with convincing justification and argument.

Regardless of the extent of monetisation of costs and benefits, all RIS documents should follow a cost–benefit framework.

Valuing costs and benefits in dollars can add rigour to RIA and allow for better engagement with stakeholders about the anticipated impacts of regulatory proposals. However, this is not always possible, particularly for the valuation of benefits. Even in these cases, valuing the costs in dollars can indicate the minimum value of benefits that are necessary for the option to break-even.

Where there is significant uncertainty about any key inputs, the RIS will benefit from sensitivity analysis. Sensitivity analysis provides information about how changes in different input variables will affect overall costs and benefits of the proposal. For further information on sensitivity analysis, refer to the CBA guidance note on the OBPR website.

Often a wide variety of impacts will result from a proposal, including economic impacts (including competition and

compliance cost impacts), environmental impacts and social impacts.

Competition impacts

Regulatory restrictions on competition can raise consumer prices, stifle business innovation, reduce choice and convenience and drive down productivity.

A RIS must provide a brief assessment of the consistency of the proposed regulation with clause 5 of the Competition Principles Agreement (CPA). Clause 5(1) of the CPA requires that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs
- the objectives of the legislation can only be achieved by restricting competition.

In accordance with clause 1(c) of the CPA, a Consultation RIS undertaken for any regulatory proposal that restricts competition must take the following matters, where relevant, into account:

- government legislation and policies relating to ecologically sustainable development
- social welfare and equity considerations, including community service obligations
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity
- economic and regional development, including employment and investment growth
- the interests of consumers generally or of a class of consumers
- the competitiveness of Australian businesses
- the efficient allocation of resources.

A competition assessment is required in the RIS, irrespective of whether the regulatory proposal is ultimately assessed as having competition impacts.

The Organisation for Economic Co-operation and Developement (OECD) Competition Checklist set out in Box 7 helps assess whether a proposal will restrict competition. If the answer to any of the questions in Box 7 is 'yes', this indicates that a regulatory proposal may restrict competition and further analysis of the costs and benefits of the restriction is required.

Compliance impacts

The RIS should include an estimate of the change in compliance costs (from the base case) for the options analysed. If compliance cost changes are considered to be negligible or trivial, the agency needs to justifiy this conclusion.

An appropriate costing methodology that conforms to the principles outlined in Appendix A should be used to estimate compliance costs.

Compliance costs for business and community groups include:

- additional resources required to comply with new regulations (for example, staff numbers, staff time, training expenses, travel, expert external advice, licence fees and technical equipment)
- additional costs associated with new compliance activities (for example, reporting certain events, obtaining permission to conduct an activity, record keeping, purchasing specific materials, participating in monitoring or enforcement activities such as audits, or following specific procedures or practices).

Box 7: OECD competition checklist

Would the regulatory proposal restrict or reduce the number or range of suppliers? Would it:

- grant exclusive rights for a supplier to provide goods or services
- establish a licence, permit or authorisation process as a requirement of operation
- limit the ability of some types of suppliers to provide a good or a service
- significantly raise cost of entry or exit by a supplier
- create a geographical barrier to the ability of businesses to supply goods, services or labour, or invest capital.

Would the regulatory proposal restrict or reduce the ability of suppliers to compete? Would it:

- limit suppliers' ability to set the prices for goods or services
- limit the freedom of suppliers to advertise or market their goods or services
- set standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
- significantly raise costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants).

Would the regulatory proposal restrict or reduce the incentive for suppliers to compete? Would it:

- create a self-regulatory or co-regulatory regime
- require or encourage information on supplier outputs, prices, sales or costs to be published
- exempt the activity of a particular industry or group of suppliers from the operation of general competition law.

Would the regulatory proposal limit the choice and information available to consumers? Would it:

- limit the ability of consumers to decide from whom they can purchase goods and services
- reduce mobility of customers to move between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
- limit information required by consumers to shop effectively.

Compliance costs for government include:

- additional resources (for example, recruitment, administrative costs, new equipment and new technologies)
- requirements to amend systems and procedures.

In many cases, measuring compliance costs involves a simple multiplication of input variables such as the time taken to complete the compliance activity, average hourly wage rate of the person undertaking the compliance activity, frequency of the compliance activity each year and the number of stakeholders affected. For a worked example of measuring changes in compliance costs, refer to the CBA guidance note on OBPR's website. For further guidance on calculating compliance costs, please consult OBPR.

Small business compliance costs

Small businesses generally have more limited compliance capacities than larger businesses and can face disproportionate costs in fulfilling regulatory obligations. As a consequence, agencies should carefully consider ways to reduce the compliance cost burden on small business. Agencies could consider differential treatment for small business where net benefits to the community are likely to be enhanced. In determining whether such treatment is appropriate, consider:

- the likely change in compliance outcomes and any risks to regulatory objectives
- the potential to reduce unnecessary compliance costs for small business
- the administrative cost, complexity and potential for resulting distortions to business behaviour from altering the content or delivery of regulation for small businesses.

In cases where regulatory proposals are likely to impact on small business, agencies are encouraged to consult with the Department of Employment, Small Business and Training (DESBT). DESBT can provide agencies advice on the potential small business impacts of proposed regulation.

Environmental and social impacts

Governments are often faced with decisions about whether to impose costs on the community to safeguard the environment or reduce social harms. However, making such trade-offs is difficult because, while estimating the costs on the community can be straightforward, measuring environmental and social benefits is difficult. For example, while it is clear that many people value the experience of observing flora and fauna in a national park or feeling safe in an entertainment precinct, there are no market prices that directly reflect these values.

Environmental and social impacts include those listed in Table 3 below.

Table 3: Environmental and social impacts

Environmental impacts	Social impacts
• environmental amenity • biodiversity • pollution level (air, ground, water) • habitat or species • protection of natural resources.	• health and safety • employment opportunities • recreational opportunities • access to social services and infrastructure • affordability/availability of housing • heritage values.

The two main types of non-market valuation methods that can estimate such values are revealed preference and stated preference.

Revealed preference methods infer value from observed behaviour. A non-market good's value may be reflected indirectly in markets for related goods. **Stated preference** methods rely on surveys to obtain information on how people value non-marketed goods. In addition, 'benefit transfer' or using 'plug-in values' is a technique that can be used to apply existing value estimates to new contexts. Refer to the CBA guidance note on OBPR's website for more detailed information on these valuation methods.

Mutual recognition

Under the *Mutual Recognition Act and the Trans-Tasman Mutual Recognition Act*, Queensland has certain obligations regarding the inter-jurisdictional trade of goods and services. Where relevant, agencies should identify and assess any implications a proposed regulatory proposal may have for the State's mutual recognition obligations.

3.6 Consultation

Consultation is a key driver of regulatory quality. It allows agencies to obtain information that may help them better understand how current regulations could be improved and also how those regulated would respond to a change in policy. Consultation helps decision makers better foresee and appreciate the impact of the decisions they are contemplating.

Consultation with the community should be a key element of most RIA processes and provides an opportunity for stakeholders to refine existing options, identify new options and comment on their impacts. Consultation requirements should not be overly prescriptive but should be sufficiently robust to ensure that consultation informs consideration of a regulatory proposal and its viable alternatives. Consultation needs to be genuine and meaningful, not just conducted for its own sake or used to simply justify or 'sell' a pre-determined regulatory proposal.

The RIS should demonstrate consultation commensurate with the complexity and significance of the problem and the size of the potential impacts of the proposal has been undertaken. OBPR can provide advice about the level of consultation appropriate to particular proposals.

A minimum 28 calendar days must be allowed for public consultation on a Consultation RIS. For major regulatory proposals, a longer time period, sufficient for interested parties to provide a considered response, would be advisable (for example, 60 days).

It is important to consult OBPR early in the policy development process so that there is sufficient time to develop an appropriate consultation process.

The Consultation RIS needs to provide evidence of the consultation undertaken in the policy development process to date and the future consultation strategy that will inform the Decision RIS.

3.7 Conclusion and recommended option

As a document to inform decision making, the RIS needs to reach a conclusion based on the analysis of the options and recommend the best option for the community.

This section should not introduce new information but should present the key outcomes of the RIS from preceding sections. The results of the analysis need to be carefully communicated so that the essential points are easily understood.

It should provide a brief summary of each option and then explain why the recommended option generates the greatest net benefit to the community compared to the other options. It needs to be clearly communicated why the alternatives to the recommended option were rejected. It is also important to outline any critical assumptions on which the analysis relies.

Where the preferred option is regulatory, it should be clear from the analysis in the RIS why it is the best option for addressing the policy issue and, where necessary, demonstrate why Queensland has adopted a different regulatory approach to that of other Australian jurisdictions.

This section should include a table that compares the impacts of different options, a clear statement of the quantitative and qualitative costs and benefits of each option and a presentation of any uncertainties related to the impacts.

3.8 Consistency with fundamental legislative principles

This section requires a brief assessment of the consistency of the proposed regulation with the fundamental legislative principles (FLPs) as defined by section 4 of the *Legislative Standards Act 1992* (LSA). A statement saying the principles have been considered is not sufficient. Reasons must also be provided for any inconsistencies.

These principles require regulation to have sufficient regard to the rights and liberties of individuals and also the institution of Parliament. Section 4 of the LSA provides further details on the types of issues that need to be considered in determining whether proposed legislation is consistent with FLPs. Where the proposal relates to primary or subordinate legislation, the OQPC has a role in advising on the application of FLPs under section 7 of the LSA, and accordingly should be consulted as part of the legislative drafting process regarding any such issues.

3.9 Implementation, compliance support and evaluation strategy

The manner in which regulations are applied and enforced can be a significant driver of costs for business and the community. Having identified the recommended option, it is necessary to consider how it will be implemented and enforced, and to establish a review strategy that will allow it to be evaluated after it has been in place for an appropriate length of time.

A clear implementation plan with milestones is suggested in this section. It is also important to consider practical implementation and enforcement issues (if they have not already been sufficiently considered in the assessment of impacts of options) before the recommended option is adopted, such as:

- identifying the agencies that will have a role in implementing or enforcing the recommended option, including associated resource requirements and costs
- identifying risks to implementation (such as timeframe constraints), and mitigation strategies/actions regulated parties are required to take, such as maintaining extra information, completing forms or submitting qualifications for assessment
- transitional arrangements to reduce the impact on stakeholders, such as delayed or gradual introduction of new requirements and/or provision of information and assistance to regulated parties.

This section must also outline how the proposal will be monitored and evaluated to ensure it remains effective and relevant over time. This should set out when reviews will be carried out and identify possible service standards or performance indicators that the recommended option can be assessed against. A monitoring and evaluation framework should comprise the performance indicators and data an agency will use to assess the performance of the regulation over time. Some important design issues for a monitoring and evaluation framework include:

- establishing performance indicators that directly link to the regulation's objective
- developing a data collection strategy, including frequency of collection
- deciding on the frequency of evaluation and reporting.

4 Other elements of RIA

4.1 Regulatory Impact Statements that deal with fees

The regulatory impacts of any new fee or change to the level of an existing fee should be considered using RIA. Where the introduction of a new fee or an increase in an existing fee is likely to result in significant adverse impacts, a RIS should be prepared.

The fees RIS should clearly document the decision for setting fees and their relationship to the cost of supplying the goods and services and, where applicable, the reasons for setting any fees at a level below full cost recovery. OBPR has published a guidance note on its website to assist agencies preparing a fees RIS.

4.2 Post Implementation Reviews

A PIR may be required by Cabinet for regulatory proposals that were exempted from a RIS. In those cases, a PIR should be commenced by the proponent agency within two years and completed within three years of the implementation date of the regulation being implemented (unless Cabinet prescribes a different timeline or approach).

The purpose of the PIR is to assess the impacts, effectiveness and continued relevance of the new regulation. The PIR should have a degree of detail and analysis commensurate with the impacts of the regulation. An agency should consult with OBPR on the extent of analysis required in the PIR.

PIRs should generally be similar in scale and scope to a RIS. However, because a PIR is prepared after a regulation is implemented, its focus is on the actual impacts rather than the expected impacts. OBPR has published a guidance note on its website to assist agencies in preparing a PIR.

The PIR follows a similar two-stage process to that for a RIS. A Consultation PIR and a Decision PIR should be assessed by OBPR and the agency should seek approval from the relevant portfolio minister for the publication of a Consultation PIR (unless the Minister considers Cabinet approval is required). Approval to release the Decision PIR should be sought from Cabinet by the responsible minister.

4.3 Other reviews of regulation

All regulation should be regularly reviewed to determine its continuing relevance, effectiveness and efficiency. Regulatory review ensures that consideration is given as to whether a regulation is still the most appropriate and effective way to address a policy issue and provides an opportunity to identify and remove unnecessary regulatory burdens on business, the community and government.

Reviews should be proportionate to the level of impact of the regulation and follow the RIA framework by:

- identifying the need for continued regulatory action - does a problem still exist?
- evaluating whether the regulation satisfies its objectives, meets regulatory best practice principles and does not impose unnecessary costs on stakeholders
- considering competition impacts
- considering whether the regulatory objectives could be achieved in a more effective and efficient way, including whether the design and implementation of the regulation is sufficiently risk based (both in its design and administration)
- including consultation with stakeholders.

To maximise the effectiveness of consultation, where feasible advance notice should be provided to stakeholders of upcoming reviews so they can be adequately prepared to meaningfully and effectively contribute to consultation opportunities.

How frequently a regulation should be reviewed will depend on a number of factors. Circumstances where more frequent regulatory reviews may be appropriate include:

- the regulation imposes significant costs on business or the community
- the regulation is contentious and is a significant source of business and/or community concern
- there is considerable uncertainty about the impacts and efficacy of the regulation
- significant changes have occurred in the regulatory environment (e.g. technological innovations; social changes).

Reviews undertaken in response to such circumstances are likely to elicit more 'buy in' from stakeholders and result in comparatively greater reform benefits, such as reducing burdens on business and the community, while better achieving policy objectives.

At a minimum, all new regulation (including quasi-regulation) developed and implemented under the RIA process from March 2010 should be reviewed within 10 years of the regulation's commencement date, unless:

- it has a minimal impact on business, community or government
- it is already the subject of a *Statutory Instruments Act 1992* (SIA) review obligation (sunsetting provisions) or National Competition Policy review obligations
- it is already scheduled for review in the agency's regulatory reform program.

Sunset reviews

Agencies should be aware that subordinate legislation has a firm 'sunset' (expiry) date under section 54 of the SIA.

The regulatory review under the RIA process should be completed before this expiry date if the regulation is proposed to continue beyond its initial 10-year operation. This should avoid a regulation expiring under the SIA while a 10-year review of the regulation is being completed. Agencies are

encouraged to engage with OBPR at least 12 months before the expiry date of the regulation to discuss the extent of RIA required.

Once finalised, these sunset reviews should be sent to OBPR to assess whether any further analysis is required. As discussed in section 3.5, where a RIS is being prepared in relation to sunsetting regulation, the 'no regulation' option should be considered as the base case against which other options (including the existing regulation) are measured in terms of costs and benefits. If an agency believes an alternative base case is appropriate it should consult OBPR. OBPR provides a guidance note on its website to assist agencies in preparing a PIA/RIS related to sunsetting regulation.

Provisions in the regulation that have recently been reviewed or amended do not need to be reviewed again providing:

- details are given of when they were last reviewed or amended
- the results of the review demonstrated the continued relevance, effectiveness and efficiency of the provisions.

In certain circumstances, an earlier review of a particular regulation may be required. For example, the government may direct that a review be conducted more frequently than once every 10 years.

5 Regulator Performance Framework

5.1 Regulator model practices

Minimising regulatory burden in pursuit of policy objectives depends upon more than good regulatory design. The actions of regulators in how regulations are implemented, administered and enforced plays a significant role in effectively and efficiently achieving policy objectives and determining the level of regulatory burden experienced not just by stakeholders/regulated parties but by regulators themselves.

Improving the way regulators operate complements the objectives of RIA to minimise unnecessary regulatory burden by providing an opportunity to reduce unnecessary compliance costs on regulated entities when administering and enforcing regulation.

The Queensland Government has identified a number of model practices that will support the achievement of policy objectives through better interactions between regulators and their stakeholders, resulting in reduced burden/costs for all parties. These practices are consistent with similar principles adopted in other jurisdictions nationally and internationally.

Where appropriate to their role, the Queensland Government encourages its regulators to adhere to the practices, noting the applicability of the practices may vary among regulators. The five practices and some supporting principles are outlined below.

Model practice 1: Ensure Regulatory Activity is Proportionate to Risk and Minimises Unnecessary Burden

Supporting principles:

- a proportionate approach is applied to compliance activities, engagement and regulatory enforcement actions
- regulators do not unnecessarily impose on regulated entities
- regulatory approaches are updated and informed by intelligence gathering so that effort is focused towards risk

Model practice 2: Consult and Engage Meaningfully with Stakeholders

Supporting principles:

- formal and informal consultation and engagement mechanisms are in place to allow for the full range of stakeholder input and Government decision making circumstances
- engagement is undertaken in ways that helps regulators develop a genuine understanding of the operating environment of regulated entities
- cooperative and collaborative relationships are established with stakeholders, including other regulators, to promote trust and improve the efficiency and effectiveness of the regulatory framework

Model practice 3: Provide Appropriate Information and Support to Assist Compliance

Supporting principles:

- clear and timely guidance and support is accessible to stakeholders and tailored to meet the needs of the target audience
- advice is consistent and, where appropriate, decisions are communicated in a manner that clearly articulates what is required to achieve compliance
- where appropriate, regulatory approaches are tailored to ensure compliance activities do not disproportionately burden particular stakeholders (e.g. small business) or require specialist advice

Model practice 4: Commit to Continuous Improvement

Supporting principles:

- regular review of the approach to regulatory activities, collaboration with stakeholders and other regulators to ensure it is appropriately risk based, leverages technological innovation and remains the best approach to achieving policy outcomes
- to the extent possible, reform of regulatory activities is prioritised on the basis of impact on stakeholders and the community
- staff have the necessary training and support to effectively, efficiently and consistently perform their duties

Model practice 5: Be Transparent and Accountable in Actions

Supporting principles:

- where appropriate, regulatory frameworks and timeframes for making regulatory decisions are published to provide certainty to stakeholders
- decisions are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions
- indicators of regulator performance are publicly available.

5.2 Regulator reporting on performance

Consistent with model practice 5, *Be Transparent and Accountable in Actions*, Queensland Government regulators whose regulatory activities impact business, particularly small business, are required to publicly report annually on their regulatory performance, including demonstrating the extent to which they are translating the model practices into business practices and outlining plans for future improvements.

Given the diversity of regulators across government, and the varying nature of the regulation they administer, the applicability of some of the model practices to individual regulators may vary and reporting will reflect this.

The supporting principles associated with each model practice are not meant to be exhaustive but provide some examples which may inform regulators' consideration of how they might report against each model practice. However, agencies are not

required to report specifically against the supporting principles and may identify other examples that would fit under the overarching model practices and which they may consider more appropriate to their circumstances.

The level of reporting required by the various regulators aims to be commensurate with the relative size and reach of their activities.

Given the diversity of regulators and regulatory activities across government, and consistent with the enhanced focus on risk based regulation, regulators will have the flexibility to determine the appropriate level, form and content of the reporting they provide, having regard to the relative size and reach of their activities and the nature of their stakeholders.

Such an approach will help minimise administrative burden on agencies and help maximise the relevance of the reporting to their stakeholders. For example, where there are multiple regulators within a department, reporting might be done at the level of the individual regulatory units or it may be done in relation to the main areas of legislation/regulation administered.

This approach is important to ensure there is sufficient flexibility to ensure each regulator can present their information in a way that is most relevant and accessible to those they regulate.

Regulators have the option of providing the annual performance reporting as a standalone report, or as part of an existing report if appropriate, such as the agency's annual report.

Each regulator is required to publish their annual performance report on their own website. All regulator performance reports, or links to them, will also be collectively published on the OBPR's website.

While the model practices and supporting principles are relevant to all Queensland Government regulators to help inform their regulatory performance and engagement with stakeholders, formal reporting against these principles is initially intended to be focussed on regulators whose regulatory activities (e.g. approvals, compliance monitoring, enforcement) directly impact business, in particular small business.

Therefore, for the purposes of the performance reporting against the practices, the Government regulators required to report have been identified in relation to their: coverage or reach of regulatory activity; number of stakeholders regulated; significance or risk of the area of regulation; and capacity of the regulator to meet reporting requirements.

5.3 Role of the Office of Best Practice Regulation

As noted above, regulators within scope of the framework are required to both publish copies of their annual performance reports on their own website as well as provide copies of, and links to, their reports to OBPR. The OBPR will publish these reports, or links to them, collectively on its website and will also provide regulators advance notification of when the reports are due to be completed.

Consistent with its role in providing government agencies advice on best practice regulatory approaches, OBPR provides a point of contact for regulators seeking clarification of the Regulatory Performance Framework's requirements.

OBPR will undertake an evaluation of the Regulator Performance Framework's effectiveness in consultation with Queensland Treasury.

The OBPR is the point of contact for, and will maintain a record of, external stakeholder inquiries or issues raised in relation to the regulator performance reports. This information will help inform the two-year review and evaluation of the framework.

Appendix A : Guidance on implementing risk based practices

There is a variety of published guidance material which methodically sets out how regulatory policy makers and regulators can consider risk and implement new methods of monitoring, compliance and enforcement, including the use of self-diagnostic tools. Consulting such guides will assist agencies in ensuring that the regulatory burden on low risk activities and stakeholders is reduced.

Victorian Competition and Efficiency Commission - Smart regulation: grappling with risk

In April 2015, VCEC released a guidance note and supporting paper providing information for policy makers and regulators on viewing risk from regulatory design, through to the implementation and administration of regulation.

This material may assist agencies in considering risk assessment and ways to streamline reporting and assessments for low risk businesses.

The guidance can be accessed here:

http://www.betterregulation.vic.gov.au/files/384b1b8c-a6f4-421a-ad83-a4ec00a520bd/Smart-regulation-Grappling-with-risk-Guidance-Note.pdf

http://www.betterregulation.vic.gov.au/files/2ac6a363-edca-4de5-9d52-a4ec00a4e27b/Smart-regulation-Grappling-with-risk-Supporting-Paper.pdf

NSW Government- Guidance for regulators to implement outcomes and risk based regulation

In October 2016, the NSW Department of Finance, Services and Innovation released a guidance for regulators on how to implement outcomes and risk based regulation.

The guidance material provides a clear and practical framework for regulators to implement outcomes and risk based regulation through:

- a clear focus contributing to regulatory outcomes (i.e. the impact) and the resources and activities used to achieve these outcomes (i.e. the impacts efficiency);
- greater flexibility to adapt to changing circumstances;
- increased transparency through clear outcomes and accountability;
- a more informed basis for effective organisational improvement;
- more informed and meaningful discussions with regulated entities; and
- more effective customer engagement, thereby reducing unnecessary regulatory burden.

The guidance provides a framework outlining a process for regulators to implement, and provides worksheets and a diagnostic tool to assess the processes and practices associated with implementing outcomes-based reporting and a risk based approach to compliance and enforcement.

The guidance can be accessed here: https://www.finance.nsw.gov.au/better-regulation/quality-regulatory-services-initiative.

For further information in relation to risk based approaches to regulatory design, implementation and review please contact the Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission. Details for the OBPR can be found at www.qpc.qld.gov.au/regulatory-reviews/

Appendix B : Principles for a robust compliance costing methodology

The following compliance cost principles are designed to ensure rigour and consistency in the way compliance costs are quantified and costed. A regulatory proposal that is likely to have compliance costs that are not negligible or trivial, must quantify the estimated compliance costs using an appropriate costing methodology that satisfies the following principles:

❶ Commensurate with the significance of the regulatory proposal.

At a minimum, this will require consideration of the number of stakeholders affected and the quantum of compliance costs on individual stakeholders and in total.

❷ Sufficiently robust to withstand community and Cabinet scrutiny.

At a minimum, this will require that the methodology have clearly defined and conservative assumptions; where possible, utilise independent data (e.g. Australian Bureau of Statistics); be evidence based; is well documented.

❸ Clearly identifies all stakeholders (business, community and government) impacted or potentially impacted by the regulatory proposal.

❹ Clearly identifies all relevant compliance cost categories (paperwork, non-paperwork and direct financial charges) for each group of stakeholders.

❺ Quantifies all relevant compliance cost categories for each group of stakeholders.

❻ Ensures stakeholder consultation is undertaken to ensure that all stakeholder and cost categories have been identified and quantified.

❼ Includes only compliance costs directly attributable to the regulatory proposal.

❽ Ensures that any changes in compliance costs are not double counted.

Appendix C : Different types of market failure

A competitive market delivers the goods and services consumers value at the lowest cost, thereby producing an efficient outcome and maximising economic welfare. An efficient outcome is obtained where no feasible changes in prices, production or consumption can benefit society as a whole. However, the necessary conditions that must be satisfied if markets are to achieve this result are strict. Key characteristics of a competitive market include large numbers of buyers and sellers, costless entry and exit for firms, perfect information, homogeneous goods, no transactions costs, and the ability to manage risk efficiently. Few markets, if any, conform to this competitive ideal, and market failures can arise for several reasons — market power, externality, public goods and asymmetric information.

- **Market power,** where one firm (monopoly) or a few firms (oligopoly or a cartel) can profitably raise price above the competitive level. A monopolist charges more and produces less than a competitive industry. As a result the price it charges exceeds the marginal costs of production and consumers demand less of the product than is optimal. The social costs of monopoly are the lost consumers' surplus (the difference between willingness to pay and the marginal costs) on the output not produced by the monopolist's action of creating artificial scarcity.
- **Externality**, where activities impose costs or benefits on third parties which the market does not take into account. In other words, the private costs or benefits of an activity do not reflect the social costs or benefits. Externalities can impose costs (such as pollution) or benefits (such as bees pollinating flowers). The presence of external costs or benefits implies that the activity giving rise to them is over or under resourced relative to the optimal level. Pollution, congestion, anti-social behaviour and crime are examples where the social costs are higher than the private costs which influence individual actions.
- **Public goods**, where consumption of a good is non-rivalrous (consumption by one person does not affect the amount available to others) and non-excludable (people cannot be prevented from consuming the good). Producers cannot capture the full benefits of provision and payments for provision cannot be enforced. As a result, public goods are likely to be under-provided by the private sector. Examples of public goods are the defence and police forces. Goods or services that are rivalrous and non-excludable are known as common property resources. An example of a common property resource is the stock of a fish in the ocean. Such goods can be over-exploited without government action.
- **Asymmetric information**, where one party to a transaction possesses more information about the good or service than the other. This in turn can affect the nature, pricing and volume of goods and services leading to an inefficient allocation of resources. Asymmetric information gives rise to two problems — adverse selection and moral hazard. Adverse selection is where one party cannot distinguish between two or more categories of goods, actions, or outcomes which have different costs, benefits, or risk and therefore makes a choice based on the average value of these. Moral hazard is a situation where the prospect of compensation to cover risks and losses increases the likelihood and size of the losses because risky behaviour cannot be monitored and priced appropriately and excessive losses are compensated.

For more information please contact
Queensland Treasury
Telephone: (07) 3035 1823
Email: rrb@treasury.qld.gov.au

Queensland
Government

19-041