



Government
of South Australia

BETTER REGULATION HANDBOOK

How to design and review
regulation, and prepare a
Regulatory Impact Statement



**Government
of South Australia**

Government of South Australia Copyright

First published January 2022. Minor update December 2023.

The text in this document may be reproduced free-of-charge in any format providing that it is reproduced accurately and not used in any misleading context.

Unless otherwise noted, copyright and any other intellectual property rights (if any) in this publication are owned by the Government of South Australia.

With the exception of the Coat of Arms, this publication is licensed under a Creative Commons Attribution 3.0 Australia Licence, a standard form license agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work. The full licence terms are available from:

<http://creativecommons.org/licenses/by/3.0/au/legalcode>

TABLE OF CONTENTS

PART A

CONTEXT

Introduction	4
Scope	4
Legal Framework	5
Policy Design	5
Definitions	5
What is a Regulatory Impact Assessment (RIA)?	5
What is regulation and what are alternatives to regulation?	6
What is a Regulatory Impact Statement (RIS)?	6
The policy cycle and the relationship with RIA	7

PART B

KEY STAKEHOLDERS

Ministers	8
Agencies or statutory bodies	8
Cabinet Office	8

PART C

OVERVIEW OF THE REGULATORY IMPACT ASSESSMENT (RIA) PROCESS (INITIATION TO SIGNOFF)

Step 1	9
Determine if the proposal requires a RIS	
Step 2	9
Preparing the RIS – where a proposal has a significant regulatory impact – Answer the seven better regulation questions	
Step 3	11
Finalise and submit the RIS for Cabinet Office assessment	
Step 4	11
RIS publishing	
Step 5	12
Evaluation – Post Implementation Review	

PART D

GUIDANCE NOTES

1. Responsibility Matrix	14
2. Assessing a Proposal for Significant Impact	15
3. Exemptions	17
4. Answering the Seven Better Regulation Questions:	
1. What is the problem you are trying to solve?	19
2. Why is government action needed?	19
3. What policy options are you considering?	21
4. What is the likely net benefit of each option?	24
5. Who will you consult about these options and how will you consult them?	26
6. What is the best option from those you have considered?	28
7. How will you implement and evaluate your chosen option?	29
5. Cost Benefit Analysis (CBA)	31
6. RIS Template	40

PART A: CONTEXT

INTRODUCTION

This Handbook is designed to guide South Australian policy makers in critically examining, designing, consulting and implementing regulation and contains material which has been directly sourced, or adapted, from Australian Government Guides, and other jurisdictional counterparts. It is an update of the 2011 Better Regulation Handbook and has been prepared in the context of recommendations made by the SA Productivity Commission in 2021 and the *OECD Best Practice Principles for Regulatory Policy - Regulatory Impact Assessment (2020)*.

OECD BEST PRACTICE PRINCIPLES

- Commitment and buy in for RIA
- Governance of RIA- having the right set up or system design
- Embedding RIA through strengthening capacity & accountability
- Targeted and appropriate RIA methodology
- Continuous monitoring, evaluation and improvement

<https://www.oecd.org/gov/regulatory-policy/regulatory-impact-assessment-7a9638cb-en.htm>

SCOPE

The Handbook sets out principles and practices for better regulation making that are recommended for the development of all regulatory change proposals, as well as some mandatory process elements applying to regulatory initiatives that come to Cabinet.

It is a Cabinet requirement that all South Australian Government agencies, and statutory and administrative bodies consider the Handbook when proposing or making regulatory changes.

In Scope agencies:

All public authorities subject to the *Public Finance and Audit Act 1987*

Mandatory process elements:

Apply to legislative and regulatory initiatives being considered by Cabinet, except where specific exemptions are in place.

OUT OF SCOPE

Regulatory change proposals initiated by Ministers' Meetings and National Standard Setting Bodies are out of scope for the purposes of this Handbook.

The Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies can be accessed at <https://obpr.pmc.gov.au/resources/guidance-impact-analysis/regulatory-impact-analysis-guide-ministers-meetings-and-national>.

PART A: CONTEXT

LEGAL FRAMEWORK

Treasurer's Instructions 17 — Public Sector Initiatives, deals with the evaluation of and approvals to proceed with public sector initiatives. It requires that the Chief Executive of each public authority ensure that a justification statement is prepared for each public sector initiative. The justification statement is required to apply evaluation principles detailed in this Handbook.

POLICY DESIGN

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. More specifically, this advice needs to consider the:

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

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 South Australian economy.

The South Australian Government released the first Better Regulation Handbook (the Handbook) in January 2011 to guide policy makers in critically examining, designing, consulting and implementing regulation. In accordance with good governance and continuous improvement this revision of the Handbook guides South Australian government agencies in:

- adopting better practice when designing new regulation or reviewing existing regulation
- undertaking Regulatory Impact Assessment (RIA)
- the steps to be taken in preparing a Regulatory Impact Statement (RIS).

DEFINITIONS

What is Regulatory Impact Assessment (RIA)?

RIA is used to develop policy advice that may result in a proposal for a regulatory initiative.

It provides a foundation for developing effective and efficient regulation, by providing a structured framework for critically assessing the need for and impacts of proposed regulatory initiatives.

Where the outcome of a RIA is documented in a RIS it can improve the quality of regulatory policy by providing relevant and timely information in a consistent format to government decision makers and others about the rationale for and expected impacts of different policy options for addressing an issue.

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

PART A: CONTEXT

RIA 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 (where there is not a material expectation of compliance)
- 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, and private member bills.

What is regulation and what are alternatives to regulation?

For the purpose of this Handbook, 'regulation' refers to any rule endorsed by government where there is an expectation of compliance. This includes the broad range of instruments which impose mandatory requirement or otherwise impact upon the behaviour required of businesses, the community or individuals.

Regulation can be imposed through:

- an Act, or statutory instrument under an Act such as a regulation, proclamation or notice which is designed to govern the conduct of entities or individuals
- other measures, such as codes, guidelines, policies, standards or accreditation schemes, management plans, to be agreed by the government to influence the behaviour of agents outside of government
- an agreement between the government and industry
- market-based instruments such as levies, grants or subsidies which are designed to influence or change behaviour.

Further advice on types of policy options to be canvassed as part of a RIA is provided in the *Guidance Note 4* below, RIS Question 3: What policy options are to be considered?

What is a Regulatory Impact Statement?

A RIS is a mechanism for documenting the RIA process in a consistent and coherent way. It is a document that summarises an agency's best advice to its Minister and Cabinet (or other decision maker), including, a definition of the problem to be addressed, the objectives of any solution proposed, the full range of practical policy options and an analysis of each option.

As explained in *Guidance Note 4*, the RIS must answer seven key questions. The detail and depth of analysis in a RIS should be commensurate with the magnitude of the problem and with the size of the potential impact of the proposal.

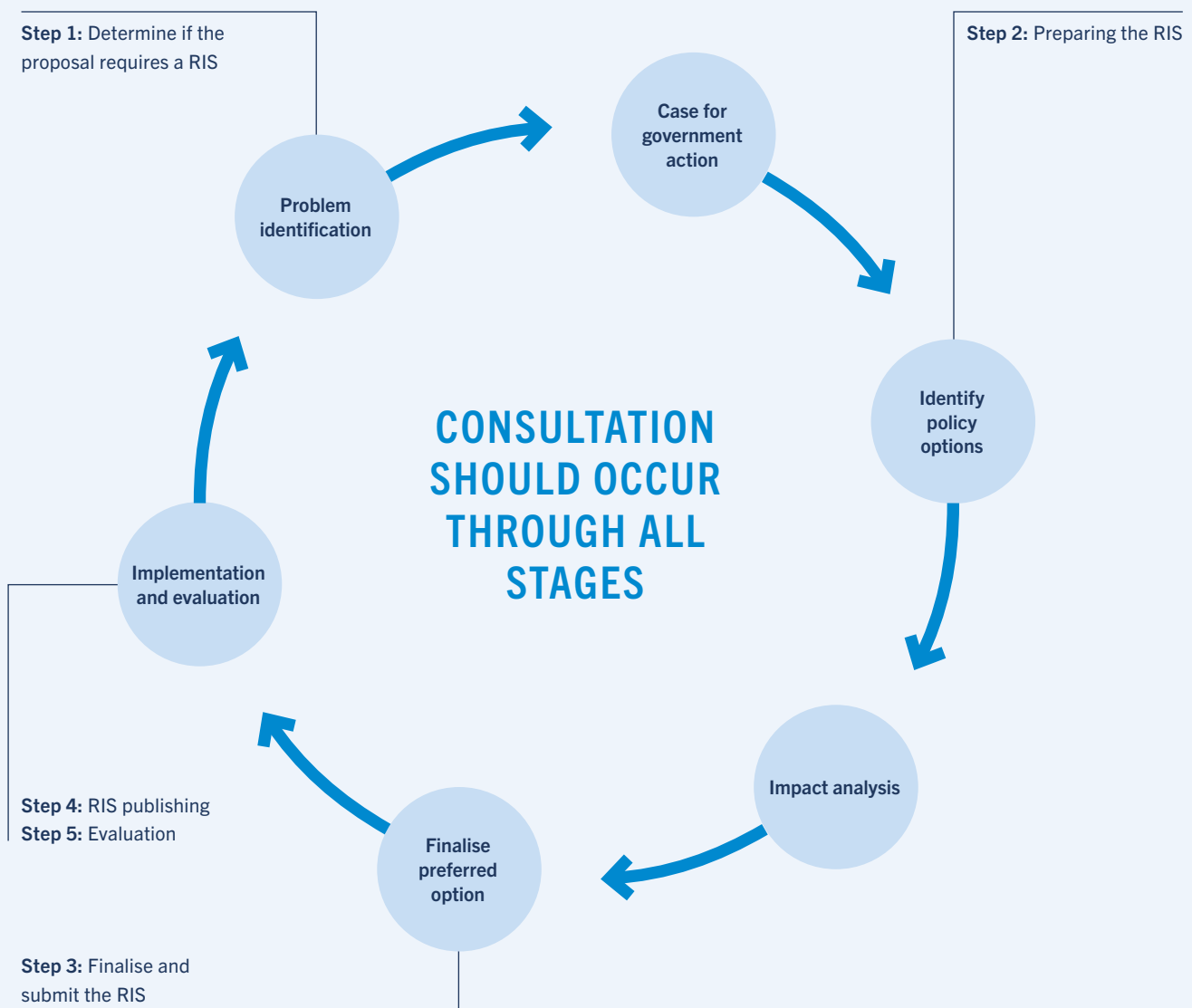
A RIS template is provided in *Guidance Note 6*. Some flexibility can be exercised in the use of this template. For example, it may be useful to include an introductory or background section to outline the purpose of the RIS and provide brief context on the existing operating environment, market or regulatory system, prior to responding to the seven RIS questions.

PART A: CONTEXT

THE POLICY CYCLE AND THE RELATIONSHIP WITH RIA

RIA is an integral part of the policy development cycle as shown in Figure 1 below. It formally starts at the identification of policy options but requires a clear problem definition and case for government action to be made before policy options are identified.

Figure 1: Overview of RIA in the Policy Cycle



PART B: KEY STAKEHOLDERS IN THE RIA PROCESS

MINISTERS

The responsibility for RIA (and the preparation of a RIS) rests with the Minister responsible for the regulation, to ensure that the RIA process is undertaken impartially and transparently. See *Guidance Note 1*.

In practice, departments and agencies will prepare a RIS to support their advice to the responsible Minister.

Ministers are responsible for ensuring that:

- agencies preparing the RIS and consulting with stakeholders have sufficient time and resources
- all RIS's adequately address the seven better regulation questions (see *Guidance Note 4*)
- the sign-off process is complied with.

AGENCIES OR STATUTORY BODIES

Agencies support their Minister(s) in the development, consultation and implementation of policy proposals.

Agencies are responsible for:

- ensuring the RIS and policy development process is undertaken in accordance with this handbook
- ensuring that any data presented to Cabinet is correct and robust
- ensuring the Cabinet submission process is adhered to
- where an exemption from the RIS process is requested, providing adequate justification for the exemption
- consulting and implementing the proposal in line with the RIS and recommendations to Cabinet.

CABINET OFFICE

Cabinet Office is responsible for advising on the effective implementation of the handbook.

Cabinet Office will:

- brief Cabinet on Cabinet proposals for regulatory initiatives
- provide advice to agencies on whether proposals for regulatory initiatives may trigger the need for a RIS
- guide agencies through the RIA/RIS process when requested
- provide training to agencies.

PART C: OVERVIEW OF THE RIA PROCESS (INITIATION TO SIGNOFF)

Agencies developing proposals for regulatory initiatives should consider the seven better regulation questions at the start of the process to support the development of good quality proposals rather than at the end to merely justify a chosen regulatory intervention.

The RIA process involves the following steps.

STEP 1

DETERMINE IF THE PROPOSAL REQUIRES A RIS

A RIS is only required for proposals that go to Cabinet and that have a significant regulatory impact, such as a significant impact on businesses, the community, regional South Australia or a specific region, or individuals (See *Guidance Note 2*), and not otherwise exempt.

What is a significant regulatory impact?

The test of significance will vary with the problem and the regulatory proposal designed to address the problem.

As a result, the significance test contains an element of subjective judgement.

See *Guidance Note 2*. Ask Cabinet Office for advice.

Where a proposal is non-regulatory, has non-significant impacts, or is exempt (See *Guidance Note 3*), no RIS is required.

Regardless of the requirement to prepare a RIS, it is good practice to undertake RIA for all proposed regulatory initiatives and consider the seven better regulation questions in this Handbook (See *Guidance Note 4*).

Where a RIS is not formally required, the main impacts of the regulatory initiative should still be outlined in the submission to Cabinet.

Agencies are required to self-assess whether a RIS is required. However, where there is doubt as to whether the proposal involves significant impacts or whether it meets one of the exemption categories, agencies should consult with Cabinet Office to seek advice on whether their proposal requires a RIS (see *Guidance Note 2 & 3*).

Where agencies make decisions based on a self-assessment, they need to consider the risk that Cabinet Office may make a finding contrary to that of the agency when the submission is forwarded for a Cabinet Office Comment. This may result in delayed implementation/amendment of regulation while a RIS is prepared.

STEP 2

PREPARING THE RIS – WHERE A PROPOSAL HAS A SIGNIFICANT REGULATORY IMPACT - ANSWERING THE SEVEN BETTER REGULATION QUESTIONS

Where it is established that a RIS is required, *Guidance Note 4* outlines the seven better regulation questions to be covered and documented.

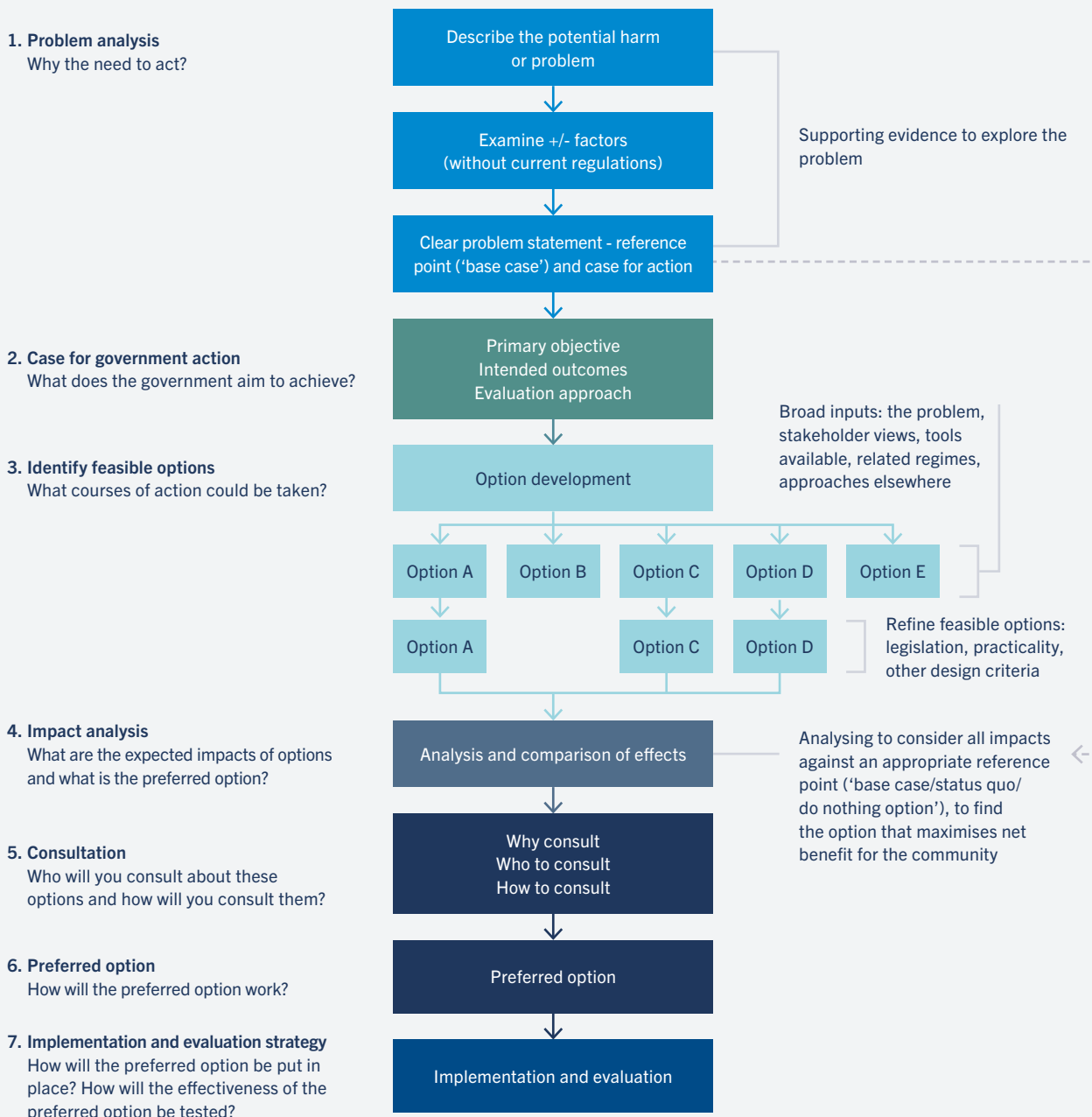
It is important to pay particular attention upfront to the problem definition, as without being clear about the problem to be solved it is impossible to properly address the remaining questions.

It is also important to consider early the proposed stakeholder engagement plan and whether a draft RIS should be prepared and shared as part of the process of engaging with stakeholders and refining the proposed regulatory initiative.

When reviewing or proposing amendments of existing regulation, agencies should consider opportunities for reducing, streamlining or eliminating the regulatory burden on business, regions and the community where justified by an evidence-based assessment and without compromising community safety or wellbeing.

PART C: OVERVIEW OF THE RIA PROCESS (INITIATION TO SIGNOFF)

The level of analysis in the RIS should be tailored to the scale of the problem being addressed and the impacts of the preferred regulatory intervention. As a guide, a RIS is expected to be no more than 20 pages in length and far shorter for less complex proposals. Technical reports can also be attached for more complex proposals. Where the complexity of the proposal(s) require longer documents an executive summary should be provided. (See *Guidance Note 4*).



PART C: OVERVIEW OF THE RIA PROCESS (INITIATION TO SIGNOFF)

STEP 3

FINALISE AND SUBMIT THE RIS

The RIS is required at the point Cabinet is asked to make the initial decision regarding a regulatory proposal. In cases where legislation is involved, this will be the initial submission which seeks approval to draft.

The key findings of the RIS should be concisely summarised in the body of the Cabinet submission, including a clear statement that the recommended option has the greatest net benefit for the community.

If a legislative proposal has been the subject of a RIS at the approval to draft stage it does not need to be repeated when Cabinet is asked to approve its introduction to Parliament (or in the case of regulations, approval to 'make'), unless the proposal has changed significantly.

Submission process

A RIS sign off should be obtained from Cabinet Office at or prior to lodging the final submission for a Cabinet Office comment.

The purpose of the Cabinet Office sign-off is to provide a level of assurance to the Cabinet Secretary that the RIS is adequate for supporting a sound decision on the proposed regulatory initiative.

RIS's should be emailed as early as possible to: DPCDraftCabSubs@sa.gov.au, noting that there may be a need for Cabinet Office to seek technical or other advice from the Department of Treasury and Finance (e.g. regarding cost benefit analysis), or other relevant agencies.

Early engagement with central agencies throughout the RIA process will support a faster sign-off process.

STEP 4

RIS PUBLISHING

Publishing of RIS's provides the opportunity for all interested stakeholders to examine the rationale and impacts of the regulatory initiative, and can support the government justification for regulatory initiatives that negatively impact on particular groups.

Where published at the draft stage, a RIS also allows stakeholders to comment on and influence proposals for regulatory initiatives.

Where published as final document, a RIS allows stakeholders to examine the evidence used to justify the regulatory initiative.

The publication of the RIS is encouraged, however the Minister may decide not to publish in certain instances.

Where the regulatory initiative is subject to a Cabinet approval process, the submission should clearly indicate when there is an intent not to publish the RIS.

Once approved, agencies should arrange for the RIS to be published as soon as practicable:

- on the agency's website site and
- on the Department of the Premier and Cabinet's website.

DPC Strategic Communications can assist with adding content to the DPC website. Contact DPCCommunications@sa.gov.au

PART C: OVERVIEW OF THE RIA PROCESS (INITIATION TO SIGNOFF)

STEP 5

EVALUATION - POST IMPLEMENTATION REVIEW (PIR)

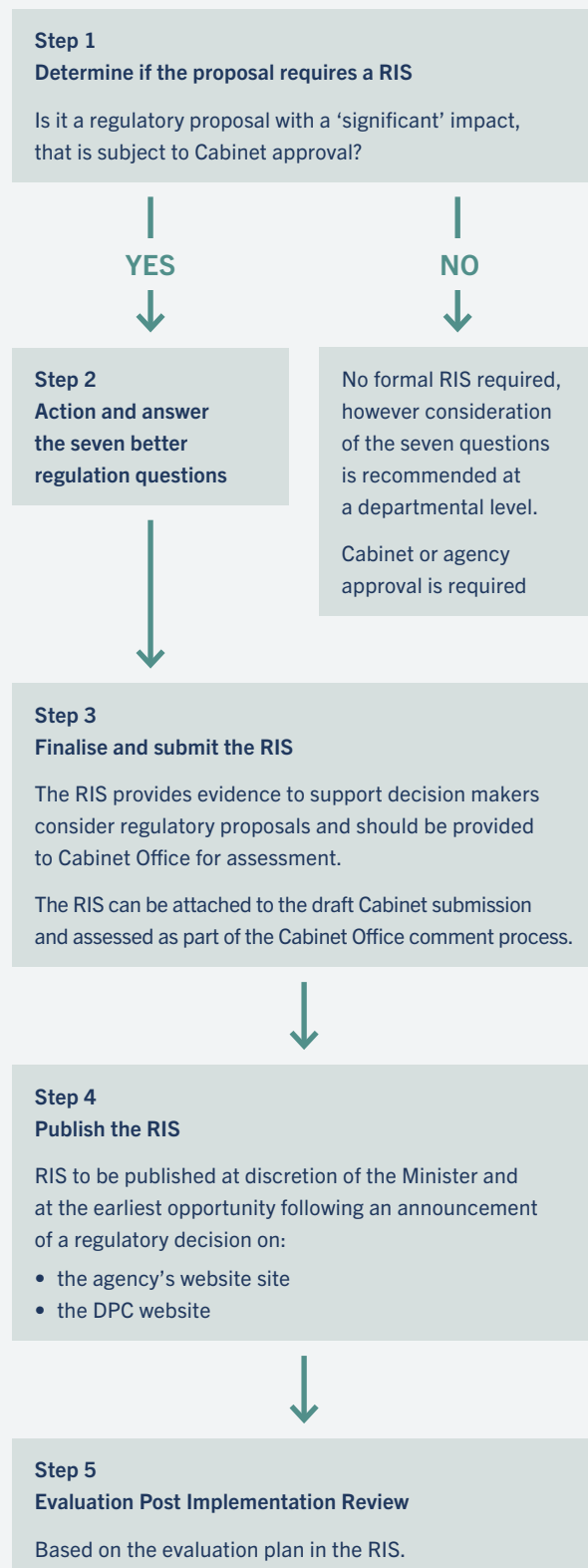
A PIR evaluates whether the implemented policy is operating as intended and is effectively and efficiently meeting the Government's objectives in addressing the original problem.

The purpose of a PIR is to assess whether the regulation remains appropriate, and how effective and efficient it has been in meeting its objectives. The PIR requirements apply to all agencies that review or make regulations that have an impact on businesses, regions, community organisations or individuals, including those agencies with administrative or statutory independence.

The RIS outlines the evaluation plan and provides a baseline for assessing how the regulation is performing against the upfront expectations.

There may also be requirements for periodic review built directly into legislation or regulations. Regulations are subject to the sunset program, where they automatically expire after ten years unless reviewed or re-made.

Figure 2: Overview of the RIS Process



PART D: GUIDANCE NOTES

Guidance Note 1:

Regulatory Impact Assessment Lifecycle -
Responsibility Matrix

Guidance Note 2:

Assessing a Proposal for Significant Impact

Guidance Note 3:

Exemptions

Guidance Note 4:

Answering the Seven Better Regulation Questions

1. What is the problem you are trying to solve?
 2. Why is government action needed?
 3. What policy options are you considering?
 4. What is the likely net benefit of each option?
 5. Who will you consult about these options
and how will you consult them?
 6. What is the best option from those you
have considered?
 7. How will you implement and evaluate
your chosen option?
-

Guidance Note 5:

Cost Benefit Analysis (CBA)

Guidance Note 6:

RIS Template

PART D: GUIDANCE NOTES

GUIDANCE NOTE (1)

REGULATORY IMPACT ASSESSMENT LIFECYCLE—RESPONSIBILITY MATRIX

Activity	Responsible	Accountable	Consulted	Informed
The issue requires government intervention - explore key questions to inform policy development	Drafting Agency	Minister	Relevant internal and external stakeholders DTF Cabinet Office	Relevant internal and external stakeholders
Develop regulatory proposal, considering the seven better regulation questions	Drafting Agency	Minister	Relevant internal and external stakeholders DTF Cabinet Office	Relevant internal and external stakeholders
Assess need for RIS: Significant impacts and non-exempt	Drafting Agency	Minister	Cabinet Office	
Prepare RIS for Cabinet, if required	Drafting Agency	Minister	Relevant internal and external stakeholders DTF Cabinet Office	Cabinet
Consider publication	Drafting Agency	Minister		Cabinet
Evaluation PIR	Agency	Minister		Cabinet

PART D: GUIDANCE NOTES

GUIDANCE NOTE (2)

ASSESSING A PROPOSAL FOR SIGNIFICANT IMPACT

As a guide to agencies, the following should be taken into consideration when assessing whether the proposal has a 'significant impact'.

Impacts on Business including Not for Profits (NFP)

A proposal with a significant impact on business may occur where the proposal:

- adds materially to business costs, directly or indirectly
- adds materially to requirements on the conduct of business operations in:
 - the manner in which they produce and / or sell goods and services
 - the information they are required to provide to consumers
 - the information they are required to disclose about their operations to Government or other parties
 - their employment practices
 - requirements imposed to be able to operate their businesses (licensing, registration, etc.)
 - reporting obligations or any other requirement that imposes direct or indirect costs on business (even if these costs are passed on to consumers)
 - the way the activities of a business, or group of businesses are undertaken.
- places South Australian businesses at a competitive disadvantage with interstate or overseas competitors
- affects the ability of business to access local, interstate or overseas markets
- affects a significant number of businesses overall or a proportionately large number of businesses within an industry
- has immediate and longer-term implications for the capacity and willingness of business to establish new activities or expand existing activities, including investment, production, employment and export from South Australia
- affects the ability of business to access debt or equity finance
- affects the ability of business to tender for or make Government contracts
- has a concentrated effect on a group, region or industry
- has a large, aggregated impact on the South Australian economy
- impacts disproportionately on the prospects for small businesses
- imposes higher costs on a particular class of business or type of products or services
- creates a disincentive to private investment
- affects the ability of businesses to innovate, adopt new technology, or respond to the changing demands of consumers
- restricts competition
- restricts the ability of a business to provide a good or service
- affects existing property rights.

Impacts on Consumers

A significant impact on consumers may occur where the proposal:

- materially alters the prices of goods and/or services
- alters the choices available to consumers
- affects the quality of consumer products or services
- creates or remove restrictions on access to a product or service
- promotes or restricts information dissemination to consumers, or affects product complexity.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (2)

Impacts on Family and the Community

- A significant impact on families and the community may occur where the proposal
- has a significant impact on public health and safety
- has significant economic consequences for families on a low-income including pensioners and welfare recipients
- is likely to impact significantly on:
 - housing, education, health, social and support services
 - the social and physical infrastructure of neighbourhoods
 - recreational opportunities or on the safety and security of families, or
 - family relationships, or the autonomy or rights of individual family members.
- has a disproportionate impact (culturally and socially) on single parent families, aboriginal families and families with non-English speaking backgrounds
- materially affects the functions of family members (e.g. those in parenting and caring roles or the capacity to engage in community life)
- has an impact on community development and participation in community activities, or
- affects the rights of or obligations on a significant cohort of the community.

Impacts on the Environment

A significant impact on the environment may occur where the proposal:

- has significant noise impacts or significant impacts on pollution that may contaminate air, land or water or affect human or other species health
- has significant impacts on greenhouse gas emissions, or may compromise the state's emission targets
- has significant impacts on the use of water or the sustainability of water catchment areas
- impacts on natural or cultural heritage, e.g. indigenous flora and fauna or cultural heritage sites, or
- has significant impacts on the production, recovery, recycling or disposal of waste.

Impacts on regional South Australia or a specific region

A proposal with a significant impact on regional South Australia or a specific region may occur where the proposal:

- has a concentrated effect on a region
- materially affects families in a particular region (for example rural families or families on the metropolitan outskirts)
- affects the standard of delivery or accessibility of services in relevant regions
- has a significant impact on an industry or group concentrated in a particular region
- has a significant impact on primary or resources industries, or
- has an impact on regional infrastructure, or local access to land and water.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (3)

EXEMPTIONS

Policy makers are exempt from producing a RIS in the following circumstances only:

1. In urgent or legitimate emergency situations where:
 - i. there are truly urgent or unforeseen events requiring a decision before an adequate RIS can be undertaken
 - ii. the administration of justice or the protection of personal and public safety and the environment is required in urgent circumstances and where the impact of the regulatory proposal on business costs (either one-off or ongoing) is not significant (as defined in this Handbook), or
 - iii. there is a budgetary emergency or matter of sensitivity and the development of a RIS could compromise confidentiality and cause unintended market effects or lead to speculative behaviour which would not be in the state's interest.
2. Taxation or other revenue raising policy measures which are purely budgetary in nature including:
 - i. increases in existing fees and charges, in line with a standard index (such as the Consumer Price Index)
 - ii. the introduction, maintenance or alteration of cost recovery fees for specific government services in line with standard indexing or other necessary adjustments¹.
3. Regulatory proposals that concern, or are related to, electoral rules.
4. Regulatory proposals that relate to the management of the public sector or are machinery of government or administrative in nature, including those relating to:
 - i. the administration or procedural arrangements within or between agencies
 - ii. the consolidation of legislation, minor legislative amendments, correction of drafting errors or the commencement or repeal of legislation.
5. Regulation relating to police powers and general criminal law with no impact on business and the administration of justice, such as rules of court and sentencing.

Waiver of the requirement to prepare a RIS in these circumstances must be obtained from Cabinet Office or the Cabinet Secretary.

Exemptions granted under legitimate emergency situations for proposals with a significant impact, require the preparation of a RIS within 12 months of making the regulation.

¹ Where announced budget measures have significant impacts or could be seen to go beyond being purely budgetary in nature, and where they require further Cabinet decisions, advice should be sought from Cabinet Office regarding the extent of regulatory impact analysis to be undertaken.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (3)

6. Regulatory proposals involving the adoption of an Australian or international protocol, standard, code or intergovernmental agreement if there is a National RIS, or other assessment of the costs and benefits which Cabinet Office has approved as adequate.

Agencies must advise Cabinet of the key findings particularly the outcomes of any cost benefit analysis. If not already identified in the national RIS or consultative paper, the South Australian share of the costs and benefits should be estimated on the basis of population share or other appropriate indicators.

7. Regulatory proposals that are subject to analytical and consultative processes which Cabinet Office has approved as equivalent to RIS requirements.
8. Standing Orders or procedural measures of the Legislative Council and House of Assembly.

Regulatory proposals that are exempt from the RIS requirement, should still be developed in line with the seven better regulation questions and this Handbook to ensure best practice is followed.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

ANSWERING THE SEVEN BETTER REGULATION QUESTIONS

This Guidance Note sets out the seven questions that agencies should consider when conducting a regulatory impact assessment.

1 What is the problem you are trying to solve?

In this introductory section, you must:

- clearly identify the fundamental problem that needs to be addressed including its significance and causes, and gather supporting evidence
- identify the parties that are affected by the problem
- describe the consequences of failing to remedy the problem and the costs of failing to take action by drawing on empirical evidence
- explain which, if any, current government measures have sought to address this problem and why those measures are not working
- identify any constraints to addressing the problem e.g. technological, economic, political, administrative, social, or environmental.

Have you:

- Clearly defined the problem/issue to be addressed?
- Provided sufficient evidence that a problem/issue exists (is data provided to support this)?
- Examined any consequences of failing to address the problem/issue?

2 Why is government action needed?

Here you should clearly articulate the primary objective of government action including the intended outcomes, goals and targets. Secondary objectives may be identified separately in your analysis.

You should not pre-justify a preferred solution, but rather use empirical evidence to justify government intervention. Regulation is not the default option and policy alternatives must be meaningfully considered.

The analysis must make the case that the proposed regulatory options are achievable in the prevailing economic conditions, within specified time frames and within available resources.

Generally speaking there may be a case for government intervention where:

- existing regulation is failing to achieve its objective or is creating unwanted consequences, i.e. regulatory failure
- an unacceptable hazard or risk is posed (e.g. health and safety hazards or threats to the environment)
- social goals or equity issues need to be addressed (e.g. individuals or groups being unable to access available market information, goods or services)

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

- issues of public order or protection need to be addressed, or
 - market forces are failing to generate an efficient outcome or maximise net benefits, i.e. market failure. Types of market failure are:
 - **imperfect competition and market power** - where anti-competitive behaviour or market power creates barriers to others entering the market, for example, patents, government-established monopolies (e.g. where regulation stipulates there is only a single operator in a market) or a 'natural monopoly' where it does not make economic sense for additional businesses to enter the market.
 - **imperfect information** - government intervention requiring information disclosure or placing restrictions or conditions on the sale of certain goods and services.
 - **externalities** - where a transaction occurs between two parties but a third party, who is not involved in the transaction, experiences a gain or a loss. A typical example is where a manufacturer emits a pollutant yet does not face the cost of the pollution, which is likely borne by the community.
- The mere existence of an externality is not sufficient to establish a case for government intervention. There must be evidence that it is of a size or type (e.g. noxious pollutant) that warrants action and that government action will lead to more beneficial outcomes and be cost effective.
- **public goods** - are goods or services that, once provided, cannot be excluded from another person (e.g. free television broadcast) and can be consumed by any number of persons without a loss of benefits.

Government intervention may be required to ensure such goods are provided, either directly by government or indirectly through public funding of private provision.

Policy makers should note that market failure, by itself, does not indicate that government intervention is warranted, as the costs of this may outweigh the benefits.

Government intervention can only be justified if it leads to an overall improvement in community welfare.

If the problem is not caused or attributable to one of these problem types, there is no case for government action.

Have you:

- Clearly identified why there is a legitimate reason for government to intervene (such as market or regulatory failure)?
- Demonstrated that government has the capacity to intervene successfully?
- Stated the policy objectives, the outcomes, goals and targets?
- Established that the objectives are consistent with the Government's policy objectives and its economic priorities?

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

3 What policy options are you considering?

In this section of the RIS you must:

- identify a range of genuine and viable alternative policy options
- ensure any live options can achieve the stated policy objective
- give the decision-maker confidence that all of the available options have been identified.

All other things being equal, the policy option offering the greatest net benefit should always be the recommended option.

Judgement is required. It's rare for all other things to be equal. But the arguments must be able to support the conclusions with clear thinking, logical argument and thoroughly checked facts. If the option offering the highest net benefit is not the recommended option, the reasons for this must be transparent and defensible. This could include, for example, consideration of fairness, distributional impacts, risk, simplicity, budget impacts and ease of implementation.

While the number of viable options may vary, a minimum of three options should be presented including the status quo, which will form the base case against which a comparison of the other options will be made.

Be sure to present your policy options in enough detail to allow an assessment of the costs and benefits of each option. The effectiveness of each option in achieving the objective should be considered in order to rule out options that are likely to be infeasible or ineffective.

Consider how the proposed regulatory option will operate alongside existing regulation, including those imposed by:

- local, state and federal government agencies
- the private sector, e.g. retailers and food manufacturers commission food safety and quality audits of suppliers each year.

Examine how the subject matter is regulated (or deregulated) in different jurisdictions both nationally and internationally and consider the successes or failures of those systems.

Any conflict or duplication should be resolved or mitigated through this process.

Consideration should also be given as to whether a nationally harmonised or jurisdiction-specific model would achieve the least burdensome outcome or generate the greatest net benefit for the community.

Increasingly, regulators are expected to deliver more with fewer resources, delivering better outcomes and minimising the regulatory burden. Implementing outcome and risk-based approaches to regulation will help regulators maximise the effectiveness and efficiency of policy making and its implications on resourcing and compliance.

Compliance and administrative burdens that will be imposed should be minimised as much as possible. The resources of the regulatory body to implement robust oversight including monitoring, enforcement and auditing should be a key consideration in this regard. Imposing regulation that is not practical or is unable to be enforced, does not comply with the better regulation principles in that it provides little benefit to a regulatory regime and imposes unnecessary costs on businesses and the community.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

Potential impacts on economic incentives, such as competition, and other secondary effects should also be minimised.

Particular consideration should be given to the potential for unintended negative consequences arising from how people may respond to regulatory interventions. Known as the Cobra effect, people react to every rule, regulation, and order governments impose, and their reactions can result in outcomes that can be quite different than the outcomes lawmakers intended.

Further key issues include:

- Consider small businesses and the impact on them. A small business will be disproportionately affected by any regulatory burden due to fewer staff and resources to ensure compliance.

- If a group is less likely to present a risk or the risk is smaller, you should consider whether they should be exempt from the new regulation, or be subject to a simpler, lighter touch approach.
- Would better enforcement of existing regulation achieve the same results?
- Is the proposed approach technology neutral providing for market and technology innovation?
- Do not select options that would not achieve desired outcomes merely for the sake of highlighting the strengths of the preferred option unless they have been publicly discussed as options.

A summary of the broad range of policy options available for assessment is provided in Box 1.

Box 1: Summary of Policy Options

Better enforcement of existing regulation

Sometimes better staff training, enforcement or a different management focus to address cultural, behavioural or systems issues can be an effective means of achieving the policy outcome. Always assess the potential for improving policy outcomes with better enforcement of the rules already in place.

Consider that people can have poor awareness of their obligations. Better targeted education can be a useful tool in achieving the stated objectives.

Light-touch regulation

Can be chosen that is less prescriptive and give discretion to regulated parties on how they can act. Principles-based regulation allows maximum flexibility among affected groups as to how they achieve compliance. For example, where a market operates

inefficiently, light-touch regulation might lay down rules for the participants on how to agree on prices. More heavy-handed regulation might involve government determining the price itself.

It is often possible to achieve regulatory ends by non-legislative means, such as binding or non-binding guidelines on market participants. Light touch regulation must be implemented to ensure those affected understand their legal rights and obligations otherwise the regulation may not be effective.

Self-regulation

May consist of industry-written rules and codes of conduct enforced by the industry itself. Where industry participants understand and appreciate the need for self-regulation, this can be a good option.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

Box 1 cont.

Any red tape resulting from self-regulation is usually minimal and often administered sympathetically by the industry. Self-regulation is a good option where the consequences of market failure are low and the market is likely to move towards an optimal outcome by itself.

This is not a viable option if an industry has no incentive to comply with its own rules. In some cases, self-regulation may create public concern, where, for example, perceived conflicts of interest could threaten safety, such as in food-handling, healthcare or aviation. Self-regulation should be approached carefully where previous attempts to achieve compliance or penalise non-compliance have failed.

Quasi-regulation

May cover a wide range of rules or arrangements that are not part of explicit government regulation, but nevertheless seek to influence the behaviour of businesses, community organisations and individuals. Examples include industry codes of practice developed in response to government's public contemplation of regulatory action in the event industry action was not taken.

Co-regulation

Describes a solution where industry develops and administers its own arrangement and government provides the underpinning legislation to enforce it. Such legislation can set out mandatory standards but may provide for enforcement through a code overseen by the industry.

Explicit government regulation

So called black-letter law, explicit government regulation comprises primary and subordinate legislation and is probably the most common form of regulation. It is usually used as a regulatory tool where there is a high perceived risk or public interest and achieving compliance is seen as critically important.

Where this form of regulation is advocated, ensure it is drafted in plain language.

Alternative instruments

With each of the regulatory options, there may be alternative instruments available to address the problem or issue set out in a RIS. Alternative instruments can include:

- No specific action—that is, relying on the market in conjunction with existing general liability laws (e.g. negligence or breach of contract) and insurance laws
- Information and education campaigns, including product labelling or media campaigns
- Market-based instruments including taxes, subsidies, tradeable permits, performance bonds and tradeable property rights
- Pre-market assessment schemes, such as listing, certification and licensing
- Post-market exclusions like bans, recalls, licence revocation or negative licensing
- Service charters
- Standards, which may be voluntary, compulsory or performance based
- Other mechanisms like public information registers, mandatory audits and Quality Assurance schemes.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

Have you:

- Considered a range of viable options including non-regulatory options?
- Demonstrated that the proposed options are appropriate, cost effective, have a minimal regulatory impact and achieve your stated policy objective?
- Provided a discussion on whether there is any duplication or incompatibility of the proposed options with existing commercial practices or state, local or federal laws?
- Examined and discussed other jurisdictions' approaches?
- Identified any context surrounding the options? (e.g. is the policy an election commitment?)

4 What is the likely net benefit of each option?

Every proposal must contain an assessment of the net benefit / impacts of each option. The tool(s) chosen will depend on the significance and nature of the proposal, and the time and resources available, and the availability of data for quantitative analysis.

Cost Benefit Analysis (CBA), Cost Effectiveness Analysis (CEA) and Multi-Criteria Analysis (MCA) are analytical tools that can be used to evaluate the costs, benefits and risks of options presented in a RIS. They may also need to be supplemented by specific consideration of distributional impacts and competition impacts.

Where possible impacts are to be quantified in terms of monetary value. Qualitative impacts (e.g. non-monetary social or community benefits) also aid decision makers in their assessment of the proposal and should be included.

Where impacts cannot be identified in monetary terms, attempts should be made to quantify them to the extent possible to help decision makers understand the scale of the impacts. Qualitative impacts that are sufficiently large, may alter the net benefit finding or conclusions drawn from the arguments presented.

Cost Benefit Analysis (CBA)

CBA provides an effective framework for analysing net benefits in dollar terms, for evaluating the effects the proposal has on affected sectors, and for providing assurance that the benefits of a proposal exceed the costs.

Policy makers should consider the CBA process a valuable tool in the policy development process to aid in considering the impacts of regulation on business, the environment and the community.

The CBA is commonly used where the major costs and benefits impacting on the broader community can be valued (monetised) for each option over the evaluation period. CBA is not limited to the direct financial impacts (like a financial evaluation) but also includes other socioeconomic factors that can be measured in monetary terms even where no market price exists. A CBA seeks to include all the costs and benefits associated with an option that impact on the community.

From this assessment, discounted cash flow analysis can be undertaken in order to determine financial measures such as the Net Present Value (NPV) as a basis for comparing and ranking options.

A CBA assesses whether the economic, social and environmental benefits of a proposal to the community outweigh the costs imposed on the community. It seeks to assess if there is an aggregate 'net benefit'. Given this singular focus on net benefit, CBA may need to be supplemented with specific analysis of distributional impacts.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

The resources devoted to undertaking the CBA should be proportional to the significance of the proposal and the size of the likely economic and social implications.

Guidance on Cost Benefit Analysis is provided in *Guidance Note 5*.

Cost Effectiveness Analysis (CEA)

CEA is used where the major benefits are not measurable in monetary terms but in physical units, while the costs are still expressed in monetary units. It is a technique for comparing the monetary costs of different options which achieve the same or similar physical outputs.

Where alternative options generate differing quantities of outputs of the same or similar quality, CEA can be used to measure the differential cost per unit of output between the options. The preferable option will be that which delivers the required outputs at the lowest cost per unit.

There is further guidance on CEA in the [Treasurer's Instruction 17 Guidelines for the Evaluation of Public Sector Initiatives part B](#).

Multi-Criteria Analysis (MCA)

Multi-Criteria Analysis can be used as an adjunct or alternative to CBA.

Applying MCA involves identifying the underlying policy objectives and then determining all of the factors (the criteria) that would indicate achievement of the objectives. The criteria can be ranked (or weighted) in terms of their relevant importance—or left to decision makers to determine what they think the ranking should be. Policy options are then identified and scored against the individual criterion, this scoring is often summarised in a table.

There is further guidance on MCA in the [Treasurer's Instruction 17 Guidelines for the Evaluation of Public Sector Initiatives part B](#), appendix 7.

Distributional analysis

Distributional analysis is necessary when a policy proposal has a significant impact on different groups across society, or when a proposed policy has an explicitly redistributive objective.

Distributional analysis should supplement the overall assessment of the costs and benefits of each option, breaking down costs and benefits so decision-makers have information about the groups in society likely to gain or to lose as a result of each option, as well as the nature and size of those gains and losses.

Distributional analysis could see costs and benefits further disaggregated by their impacts on people of different genders, ages, indigeneity, disabilities, or locations. Distributional analysis won't be required in every RIS, but where required should be done to a standard commensurate with the significance of those impacts and relevance of those to the decision-maker.

Status of Distributional Analysis

The distributional implications of a policy can be obscured by the aggregating character of the cost benefit process. Distributional analysis should include all the information available to ensure decision-makers are aware of the identity of the groups likely to gain and to lose resulting from a decision, and the nature and size of the gains and losses. This information should be carefully presented, most usefully in the form of a distributional incidence chart or matrix.

The RIS should take a 'utilitarian' approach to costs and benefits as a standard approach. Judgements about the relative value of costs and benefits on different cohorts in the community are appropriately made at the political level. To avoid subjective bias, analysis should refrain from attaching distributional weights to different costs and benefits.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

An exception to this principle might apply where an unambiguous direction has been given by government to assess costs and benefits on different cohorts of the community differently. Any application of distributional weights for this purpose should be detailed in the RIS, along with their rationale and methodological approach. The presence of other government policies aimed at cohorts does not meet this exemption standard.

Competition considerations

If the proposal is likely to restrict competition, the RIS must demonstrate benefits that outweigh the costs and that no alternative means of achieving the same objective is available. This is required to meet the State's commitments under the intergovernmental Competition Principles Agreement, designed to promote competition and established by the Council of Australian Governments (COAG) in 1995.

Have you:

- Identified who is affected by each regulatory option and assessed, where significant, the economic, competition, social and environmental costs and benefits as well how those costs and benefits are likely to be distributed?
- Where relevant, quantified both the benefits and costs (including regulatory costs) of the policy proposal and alternative options on businesses, community organisations, individuals, the broader community, the environment and government to a degree commensurate with its impacts?
- Analysed qualitative impacts as well as quantitative impacts?
- Considered any competition impacts?

5 Who will you consult about these options and how will you consult them?

Appropriate consultation should occur throughout the regulatory lifecycle so that stakeholders have an opportunity to be genuinely engaged in the process.

Broadly speaking consultation is designed to:

- help identify the problem, develop the options, identify and assess the costs and benefits of options and determine the optimal approach
- provide feedback on the need for regulation and the level of support for the potential options and
- ensure that regulatory policies across jurisdictions are consistent and complementary.

Consultation should be undertaken in accordance with Premier and Cabinet Circular [PC036 - Community and Stakeholder Engagement](#), and the [Better Together: Principles of Engagement \(Better Together\)](#) which provide a guide to engaging communities and stakeholders in decisions that matter to them and a foundation upon which to build a continually improving culture of engagement practice.

Better Together details six principles which equip policy makers with a solid understanding of what should be done to ensure a good engagement strategy is developed and implemented. The principles are:

Principle one: We know why we are engaging

Principle two: We know who to engage

Principle three: We know the history

Principle four: We start together

Principle five: We are genuine

Principle six: We are relevant and engaging

The document can be downloaded at: [Better Together Principles](#).

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

It is acknowledged that in rare cases consultation may be impractical or inappropriate (for example, if there are confidentiality concerns or the impacts are not considered significant enough to warrant an extensive consultation exercise). However, where a RIS is concerned, the proposal will have a 'significant impact' and thus consultation is required unless your proposal is exempt.

Phases of Consultation

Consultation should be undertaken in four phases and according to the [Better Together Principles](#). The phases are:

Phase 1: Initial contact with stakeholders

Phase 2: Broad consultation with stakeholders

Phase 3: Consultation with key stakeholders on the preferred regulatory option

Phase 4: Incorporate stakeholder feedback into your proposal.

Be sure to provide clear instructions to stakeholders on how and where submissions are to be made and any key dates.

Importantly, consultation should not just be an exercise in process. It should be meaningful and assist in both policy and RIS development. Effective consultation is a crucial part of the regulatory design and decision-making process and will also add great value to constructing your CBA.

Before undertaking consultation with stakeholders, a consultation plan should be developed which considers the Better Together principles and includes:

- the objectives of each phase of consultation
- who should be consulted
- the form of consultation to be undertaken
- the resources and time required to undertake the consultation
- how the consultation will be evaluated
- review of the consultation and report results back to participants.

Phase 1: Initial contact with stakeholders

Agencies may approach key stakeholders to gather preliminary information in order to develop an understanding of the problem, identify who the effected parties may be and ascertain whether a response is required, and if so, the possible regulatory options. This may also take the form of consultation with individual stakeholders.

Phase 2: Broad consultation with stakeholders

Having developed a preliminary understanding of the problem, this round of consultation provides for wider interaction with stakeholders. It enables agencies to acquire a more detailed understanding of the problem, check their understanding of the problem and float and garner feedback on regulatory options. Consultation at this stage may take the form of publication of an issues paper and requests for submissions in response, or a public forum.

Agencies can use this opportunity to seek information from stakeholders to assist in identifying the expected impacts of the proposed regulatory options and to gain stakeholder data on, or estimates of, the value of the costs and benefits of the various options. Agency staff involved in administering existing regulation may be able to provide insights into compliance costs.

Phase 3: Consultation with key stakeholders on the preferred regulatory option

After deciding on a preferred regulatory option, agencies may seek stakeholder feedback on any unintended or perverse outcomes that may result, any implementation issues, and suggestions on how to monitor the effectiveness of the proposed regulatory option. The key stakeholders may be revised to include new parties discovered during the second phase of consultation. This may take the form of small group or individual consultation.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

Phase 4: Incorporate stakeholder feedback into your proposal

After consultation has occurred and the feedback has been incorporated into your analysis, you should:

- detail the consultation that was undertaken throughout the process, stating the objective of the consultation, when it occurred, the form, the time period during which input was sought or could have been provided, the input that was sought, and the stakeholders involved
- outline the views expressed, including areas of agreement as well as areas of difference, and any information that was provided at the various consultation stages
- outline how those views were taken into consideration, including describing how consultation aided in clarifying the problem, identifying feasible options and their impacts, and determining the preferred option
- provide details as to how and where submissions on the RIS may be made.

The Government is committed to being open and accountable taking into consideration the will of the community through a robust and transparent consultation process.

Have you:

- Identified who are the affected parties?
- Outlined the consultation objectives and methodology?
- Followed the Better Together principles?
- Undertaken the four phases of consultation?
- Provided details as to how and where submissions may be made?
- Consulted all relevant parties using a variety of forums including digital forums, social media, meetings, stakeholder events or otherwise?
- Represented the views of stakeholders in your RIS?

6 What is the best option from those you have considered?

Your proposal should describe the preferred regulatory option including:

- how it will achieve its objectives
- the size and nature of the net benefits (or costs)
- identify the groups affected and how they will be impacted.

The proposal should clearly demonstrate that the benefits of the preferred option outweigh the costs, and that it delivers the greatest net benefit to the community.

Any areas of uncertainty should be discussed openly and honestly, particularly if they may have a significant impact on expected outcomes. Any assumptions you have made must be disclosed, discussed and assessed for their impacts on the final decision.

Any interaction with existing local, state or federal regulations (including any commercial auditing or regulatory type activities) and any required amendments should be outlined.

It should be noted that while maximising the net benefits to the community is the primary objective, agencies should be mindful of the government's objectives to reduce regulatory costs imposed on business.

If two (or more) options have a similar net benefit result, but the costs imposed on business vary considerably, preference should be given to the lowest cost option.

The reasons that the other proposed options were rejected should also be stated.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

Have you:

- Identified the preferred regulatory option?
- Provided a sound rationale as to why it is the preferred option including if it is an election commitment?
- Identified how the preferred option will achieve its objectives?
- Identified the impacts on affected groups?
- Provided evidence that government intervention will not create a market/regulatory failure?
- Demonstrated that if restrictions on competition are recommended, that they are the minimum necessary to achieve their objectives?
- Shown if there are compliance, administrative or enforcement costs to business, consumers or government and are they proportionate and reasonable to achieve the objectives of the regulation?

7 How will you implement and evaluate your chosen option?

Having a clear plan to implement and evaluate your preferred option is essential and should be clearly outlined in this section of the RIS.

Issues to consider include:

Implementation

You should provide a brief description of the implementation strategy including any communications activities, resource requirements and timelines. Your implementation strategy should also include a discussion of the transitional arrangements and whether any aspects of the regulations may be deferred or staged and why.

Be sure to address any implementation challenges that may be faced.

Evaluation, monitoring and review

Illustrate how the success of the regulatory change will be measured and reported on.

Consider how to assess if:

- the original problem still exists
- there is evidence of the objectives being met
- the regulation has had the expected impacts
- there were any unanticipated effects
- the problem is still significant enough to warrant intervention
- regulation is still the most appropriate action.

Provision for ongoing review (and any triggers for review) should be made in order to ascertain and respond to any compliance issues, any unexpected consequences of the regulation, and any other matters that may arise. Measures for ongoing review may include provision of a complaints-handling or feedback mechanism or consultation with affected stakeholders.

At a minimum, a specific time period should be set for when a comprehensive review/evaluation of the regulation will be undertaken, noting that regulations are subject to automatic expiry after 10 years.

Compliance

The parties required to administer, enforce and monitor the regulatory option on an ongoing basis should be identified, their roles described, and their resource requirements (e.g. funding, staffing, training) detailed.

This includes a description of the compliance strategy with information such as the number and frequency of audits, expected rates of compliance and any proposed penalties for non-compliance.

A statement summarising the cost recovery mechanisms should also be given.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (4)

Further information on cost recovery may be obtained from the following links or via your agency's cost recovery policies:

- the Commonwealth Department of Finance publication: [Australian Government Cost Recovery Guidelines: Resource Management Guide No. 304 \(July 2014 – third edition\)](#)
- the Productivity Commission's [Cost Recovery by Government Agencies Report: \(2001\)](#).

Requirements on business and the community

Those required to comply with regulations should be identified and the actions they will be required to undertake should be outlined (e.g. data collection and reporting, completing forms, undertaking training, etc).

Considering the practical impacts on business and the community is a crucial step in policy making and agencies should at all times seek to reduce the regulatory burden (noting also the government's commitment to a digital by default strategy).

Have you:

- Provided information on how the preferred option will be implemented and on the review arrangements?
- Canvassed how the option will be implemented and enforced and by whom?
- Identified what cost recovery mechanisms are proposed, if appropriate?
- Analysed whether there is any interaction with existing regulation and if there is, how this can be streamlined?
- Listed any transitional requirements?
- Considered and streamlined any regulatory requirements on business or the community?

PART D: GUIDANCE NOTES

GUIDANCE NOTE (5)

COST BENEFIT ANALYSIS (CBA)

This guidance note provides an overview of ten steps in completing a CBA.

Undertaking a CBA involves considerable professional judgement and understanding of the policy options under consideration and their impacts.

Given its role in supporting decision makers to assess the case for a regulatory intervention it is important that it:

- articulates clearly the options under consideration
- documents any supporting assumptions
- highlights any known deficiencies or missing elements in the analysis

Agencies undertaking CBA should ensure that their staff have appropriate training and skills, and should allow time for consultation and peer review.

Appropriate peer review can provide a level of assurance to decision makers, especially in relation to:

- avoiding double counting of benefits or costs
- under playing non-financial or non-monetised costs and benefits
- estimating the marginal benefits and costs from the intervention
- setting an appropriate discount rate.

The Department of Treasury and Finance is available to provide advice on request to agencies regarding CBA before a submission is lodged for Cabinet and can provide advice to Cabinet Office on a case-by-case basis regarding the quality of CBA that is included in Cabinet proposals.

In addition, the Commonwealth has published more detailed guidance for CBA in the Commonwealth context, including:

- [Cost Benefit Analysis guidance note \(2023\)](#)
- the [Handbook of Cost Benefit Analysis \(2006\)](#).

Overview of steps

1) Describe options

2) Set time horizon

3) Establish scope

4) Identify impacts

5) Predict when impacts will occur

6) Monetise impacts

7) Discount future impacts

8) Test sensitivity of results to different scenarios or assumptions

9) Identify limitations

10) Rank best options

PART D: GUIDANCE NOTES

GUIDANCE NOTE (5)

1 Describe the options

Step 1 involves describing the ‘base case’ and the short-listed options in order to be able to ascribe impacts for each.

The options should all be genuine and viable.

The base case is effectively a ‘do nothing’ or ‘business as usual’ option, against which the incremental costs and benefits of each alternative are determined.

Generally there should be three options including the base case presented in the CBA.

Particular care is needed in describing the base case in order to consider what would happen in the absence of the alternate options being pursued.

2 Set time horizon

Step 2 seeks to identify the timeframe over which the proposal is to be assessed.

There is a trade-off here in that the horizon period should be long enough to capture the major foreseeable costs and benefits over the reasonable life of the proposed intervention, but not so long that uncertainty about the future makes the analysis unreliable.

The Commonwealth has recommended exercising particular caution if using an evaluation period over 20 years.

3 Establish scope

At Step 3 the scope of the assessment of costs and benefits is established.

This is about deciding whose costs and benefits count.

For most proposals the scope should include the current residents of South Australia.

4 Identify impacts

Step 4 involves identifying the impacts, how the impacts will be measured and any uncertainties attached to the occurrence or measurement of the impacts.

The impacts are expressed in terms of the incremental costs and benefits for each option, relative to the base case.

The impacts should be broadly grouped by the type of impact—compliance costs, or economic, societal or environmental impacts. These impacts should then be divided into who is affected by these impacts—business, consumers, government and the wider community.

Compliance costs imposed on business, regions, consumers and other sectors of the community

Compliance costs are the direct costs of complying with regulation. This may include regulatory charges, administration time and costs, and other substantive compliance costs. The government, business, regions and the community may be subject to these costs depending on the nature of the regulation.

Compliance costs can usually be divided into two broad categories:

- One-off costs—For business and the wider community this may include the costs of acquiring sufficient knowledge to meet regulatory obligations, purchasing/leasing additional equipment and buildings, changing production processes, legal consultancy fees and training. For government this may include the costs associated with implementing the regulation such as establishing systems, providing education to staff required to administer the regulation and to those obliged to comply with regulation, development of forms, information sheets, etc.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (5)

- Recurring and ongoing costs—For business and the wider community this may include the cost of monitoring processes to ensure ongoing compliance, preparing periodic reports to a regulator, filling in forms, undertaking audits or inspections (that is, costs arising from the ongoing need to devote additional time and resources to satisfying regulatory requirements) or ongoing additional costs incurred to produce goods and services in a specified manner. For government this may include the cost of providing staff for monitoring, assessing and enforcing compliance.

Assessment of business compliance costs should consider differences between the proposed South Australian regulatory model and those operating in other jurisdictions and whether this will increase compliance costs for businesses operating across jurisdictions.

The Commonwealth Regulatory Burden Measurement Framework, administered by the Commonwealth Office of Impact Analysis may be used to calculate the compliance costs of regulatory proposals on business, individuals and community organisations using an activity-based costing methodology.

Other economic impacts

In addition to the direct impacts on business, consumers, government and the wider community, some regulatory proposals may create economic efficiency impacts from changed resource allocation in the economy (e.g. changes to consumption patterns), productivity (e.g. holding costs), competition (e.g. barriers to entry created by licensing), or innovation.

While some of these other economic efficiency related impacts will vary in nature, generally they will result in some positive or negative impact on the material living standards of the South Australian community. Generally they will

either reveal themselves as an improvement in the incomes of South Australians or their real consumption spending.

General equilibrium modelling may be required to explore these economic impacts, but given the resources and technical skills required to conduct such modelling, the impacts would need to be significantly large to warrant conducting such modelling. When using general equilibrium models, the impact on per capita income or per capita household consumption is the generally preferred measure of the welfare impacts of a proposal (rather than GSP or GDP which is a measure of production rather than economic welfare).

Employment or other impacts that flow from costs or benefits already included in the CBA should not be included because it would represent double counting to include them.

Similarly, flow on impacts, such as multiplier effects commonly associated with economic contribution studies, should not be included in the assessment. All economic activities give rise to multiplier effects through their linkages with other sectors of the economy, and the use of multipliers ignores the opportunity costs associated with the displacement of one set of economic activities with another.

Societal impacts

Societal impacts capture any changes in quality of life. This may include changes in equity, public health and safety, crime, ability to carry out desired activities, or freedom and rights.

Regulation may improve public safety or reduce exposure to crime with benefits measured in terms of the avoided costs of injury and property damage based on evidence of current incidence rates and the assumed impact of the regulatory intervention.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (5)

Regulation may have different impacts on different groups in society and regions. For example, imposts which are imposed on tobacco consumption may have relatively greater impacts on low income groups. Similarly regulation may reduce complexity through improved information and certain disadvantaged sectors of society may receive proportionally greater benefits from this.

Environmental impacts

Environmental impacts refer to any changes to or impacts on the natural environment, either directly or indirectly. This may include any impacts on air, land, water (fresh or marine or groundwater), landscape, cultural heritage, particular species or biological systems. These impacts may result from human behaviours which may in return reflect the fact that the costs of environmental damage are not borne by those who contribute to it. These impacts may be significant in their own right or a contributor to a cumulative impact that needs to be taken into consideration.

Attribution of costs and benefits

A summary of examples of the types of costs and benefits which may arise from a regulatory proposal for various segments of the community is provided in table 5.1.

It is important not to double count costs and benefits in the final net benefit analysis. For example, double counting may occur if costs are imposed on business which are assumed to be passed on to consumers in the form of higher prices for goods and services. In the final net cost/benefit calculation these costs should only be counted once. Costs should be attributed to the party which bears the direct (legal) obligation even if they may subsequently pass this cost on to others. For example, most government regulation imposes costs on business. Businesses are likely to increase the prices of their goods and services to recoup this cost. The RIS should discuss any evidence gathered as to how costs may be

passed through, but in the CBA the costs should be attributed to business. Where these costs are recovered through licence fees, etc the CBA should attribute the licence fee costs to the sector liable to pay these fees but also indicate the revenue as a benefit to government, and the costs incurred in administering the regulation would be included as a cost to government. From a government perspective this should result in a nil net impact if there is full cost recovery.

It is important that where costs and benefits are incurred by some parties but recovered or transferred to others that these are fully recorded. Examples of such transfers include:

- where licence fees are incurred, the cost benefit analysis should include both the cost to those that are paying it (e.g. business) and the benefit to those who are receiving it (e.g. government)
- where some businesses enjoy increased profits at the expense of other businesses, both the benefit and the cost attributable to each group of businesses should be recorded
- where there are increased property prices in one locale which are offset by reduced prices in another area, both the increases and decreases should be included
- where reduced greenhouse gas emissions are achieved in one activity area but these reductions are offset by increased emissions elsewhere, both the increase and decrease should be recorded and attributed to the activity area (business)
- where there is an increase in the wages for some employees but a resultant reduction in profits to business or increased prices to consumers, the increased wages should be recorded for those individuals and the reduced profits/increased prices should be included for business/consumers.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (5)

Table 5.1: Examples of Costs and Benefits for Different Groups

Group	Examples of Costs [quantitative/qualitative]	Examples of Benefits [quantitative/qualitative]	Examples of Measures
Business	<ul style="list-style-type: none"> Administrative costs associated with compliance and reporting (one-off and ongoing) Substantive compliance costs e.g. buy new equipment, maintain equipment, undertake specific training Licence and permit fees, levies, government charges Changes to production, transportation and marketing processes (e.g. costs associated with constructing a building to meet regulatory specifications) Shifts to alternative sources of supply Holding costs e.g. costs of delays in approvals Higher input prices Restricted access to markets 	<ul style="list-style-type: none"> Reductions in compliance costs Increased efficiency or productivity Better information Reduction in input costs Reduction in approval times 	<ul style="list-style-type: none"> Costs of staff time Capital expenditure costs Profits foregone as a result of delay Costs of materials Costs of permits and licences
Consumers	<ul style="list-style-type: none"> Higher prices for goods and services (only where not already accounted for in business cost impacts) Reduced quality and choice of goods and services Delays in introduction of goods to market and/or restrictions in product or service availability Delays in access or restricted access to services 	<ul style="list-style-type: none"> Improvements in product and service quality and safety Lower prices Wider range of products and services Better product information (cost saving from more informed decision making/ avoided losses) 	<ul style="list-style-type: none"> Savings to consumers from reduced cost of buying goods or services Cost saving from more informed decision making/ avoided losses
Government	<ul style="list-style-type: none"> Administration of licensing/inspection services* Collection and collation of business information* Enforcement costs* Costs of education campaigns/ providing information 	<ul style="list-style-type: none"> Licence fee revenue* Reduction in administrative costs 	<ul style="list-style-type: none"> Based on total cost to agency (goods and services as well as salaries)
Family, society and community, and the environment	<ul style="list-style-type: none"> Environmental degradation and pollution (pollution of air, water, soil, loss of biodiversity, loss of natural resources (temporary and irreversible) Reduced health and safety Increased crime Loss of cultural or scenic values 	<ul style="list-style-type: none"> Reductions in workplace accidents Improvements in public health and safety Reductions in crime and anti-social behaviour Improvements in environmental amenity or values Increases in per capita consumption or disposable incomes from improved resource allocation or productivity in the economy 	<ul style="list-style-type: none"> Impacts on health Impacts on property damage Changes in pollution, flora, fauna, vegetation, heritage Impacts on heritage, culture or landscape

* Regulatory costs to government and licence fee revenues should be largely offsetting on the basis of cost recovery principles.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (5)

5 Predict when impacts will occur

In Step 5 the impacts are assigned to the time period in which they are incurred.

In predicting when impacts will occur there is inherent uncertainty. Modelling assumptions, risks and alternate scenarios should be fully documented.

6 Monetise impacts

Step 6 requires the impacts to be either monetised, quantified or described in qualitative terms.

Indirect valuation techniques which enable a monetary value to be assigned to impacts

Where there are no direct market prices that can be observed to convert costs and benefits into dollar terms, a range of indirect valuation techniques may be available. These include using market-based, revealed preference or stated preference techniques.

Market-based techniques establish a link between the impact to be valued and activities that already have a value.

Market-based techniques for estimating monetary value

The value contributed by an ecosystem or environmental system to the production levels, costs or prices of commercially marketed goods could be estimated (e.g. the value of bees by estimating the impact they have on almond production through their pollination activity). This is the productivity method.

Estimates of foregone earnings and the cost of illness could be used to value impacts on health and labour productivity (e.g. cost of health impacts attributable to air pollution). This is known as the human capital method.

The cost of replacing environmental assets or the cost of providing substitute services could be calculated (e.g. the cost of engineering works to

prevent soil erosion may be used to value the cost of land clearing, the value of clean water may be measured by the cost of cleaning the water up). This is called the replacement cost, repair cost or substitute cost method.

Estimates of the value of changes to the ecosystem or quality of the environment could be based on the cost of avoiding damages (e.g. the value of clean water may be inferred from the cost of stopping it from becoming polluted in the first place, the amount that households are willing to pay to insulate their houses against noise may be a useful proxy for the value that they place on reducing noise pollution). This is the defensive expenditure or damage cost avoided method.

Revealed preference techniques allow values to be inferred from consumers' behaviour in a similar or related market. Such techniques need to be used carefully however, and should not be used if there are significant limitations to the data and/or its applicability to the analysis being conducted.

Revealed preference techniques for estimating monetary value

The market price of goods and services that are close substitutes can be used to establish the value of the good or service in question. This is called the proxy good method.

Where a good or service is not traded in the market (e.g. government provision of a service for free), the value of the same good or service traded in a normal market is used to establish the value. This is the market analogy method.

How much people are willing to pay to alter an impact may be used to attribute value to the impact (e.g. the value paid for air bags may indicate the value a person places on incremental changes to road safety). This is the trade off method.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (5)

If the costs or benefits of a characteristic do not have a market price, it may be possible to do comparisons with other goods and services which are similar in all other aspects except for that characteristic, thereby isolating the value attributable to the particular characteristic. For example, comparisons of differences in property prices for similar properties located under an aircraft flight path and those not under the flight path may provide an indication of the revealed community cost of aircraft noise. This is called hedonic pricing.

The value of a recreational site could be assumed to be reflected in how much people are willing to pay to travel to visit the site and so in turn the cost of that travel. This is the travel cost method.

People can be asked to state their willingness to pay or the amount of compensation that would be required for a particular outcome. This is the stated preference or contingent valuation method, but can be subject to criticism particularly where willingness to pay is not subject to any practical budget outcome.

People can be asked to make tradeoffs among sets of outcomes with associated costs. Values are inferred from the choice of tradeoffs made. This is known as the contingent choice method.

Describing the impacts where monetisation is not possible

Where it is impossible or inappropriate to express impacts in monetary terms they should be described as clearly as possible in quantitative or qualitative terms in order to be considered alongside the summary CBA measures. In cases where non-monetised impacts are significant it may be necessary to consider either the CBA summary measures as one input in a multi-criteria analysis, or to conduct a Cost Effectiveness Analysis instead.

7 Discount future impacts

Step 7 of the CBA involves undertaking the net present value calculation.

The costs and benefits of regulatory interventions are spread out over time. In order to reflect that society prefers benefits to occur sooner rather than later (and costs to occur later rather than sooner) it is necessary to discount future benefits and costs to express them in terms of what they are worth today in today's dollars.

In converting future benefits and costs into a present value it is necessary to account both for the time value of money and expected inflation. It is usual practice to express the stream of costs and benefits in real terms, i.e. with any expected inflation taken out, and then discounting them back to present value estimates using a standard real discount rate.

The Net Present Value (NPV) is the present value of all of the benefits minus the present value of all of the costs. A positive NPV therefore indicates that the expected benefits exceed the expected costs.

Choice of discount rate

Where regulatory costs and benefits are measured in constant price or real terms as recommended, they should be discounted back to present values using the real rate of 6% per annum, which has been chosen to reflect the social opportunity cost of capital. Where it can be justified, the agency may select a different real discount rate but the reasoning and justification for its choice must be discussed with DTF and outlined in the CBA. Other rates may be considered as sensitivity tests on a case by case basis – e.g. a sensitivity at a lower discount rate could be considered in instances where there are up front costs and longer term benefits, if there was evidence to suggest that this aligned with societal preferences.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (5)

Box 5.2 Example of a net present value calculation

Consider an option that will require industry to install new equipment to limit air pollution. The equipment costs \$5 million to install, and will operate for the following four years. Ongoing (annual maintenance) costs to business are \$1 million a year (in constant prices). The benefits are estimated at \$3 million a year (in constant prices). The real discount rate is 6 per cent.

	Costs (C _t)	Benefits (B _t)	Annual net benefit (B _t −C _t)	Net present value $\sum_{t=0}^T (B_t - C_t)/(1+0.06)^t$
	\$m	\$m	\$m	\$m
Year 0	5		-5 (-5)/(1+0.06) ⁰	-5.00
Year 1	1	3	2 (2)/(1+0.06) ¹	1.89
Year 2	1	3	2 (2)/(1+0.06) ²	1.78
Year 3	1	3	2 (2)/(1+0.06) ³	1.68
Year 4	1	3	2 (2)/(1+0.06) ⁴	1.58
Net present value of proposal				1.93

8 Test sensitivity of results to different scenarios or assumptions

Step 8 requires sensitivity analysis to be undertaken in order to test how robust the analysis is and also identify the factors which will potentially have the greatest impact in determining the outcome of the CBA. It reflects that there may be significant uncertainty about the future and shows how sensitive predicted net benefits are to different values of uncertain variables and to changes in assumptions.

The main value in sensitivity analysis is in showing how the net benefit estimate changes in response to different scenarios. If the net benefits are positive under a wide range of scenarios there can be more confidence in the merit of the proposal.

Approaches to sensitivity analysis may include:

- Worst case / best case analysis – re-estimating the NPV using the most pessimistic and optimistic set of assumptions
- Partial sensitivity analysis – showing how net benefits change over a plausible range for a single variable at a time. It is common to do this for discount rates and for the most important, uncertain or contentious variables
- Monte Carlo sensitivity analysis – considering the distribution of estimated net benefits by drawing key assumptions or parameter values from a probability distribution.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (5)

9 Identify limitations

Step 9 takes into account factors which are not able to be taken into account when undertaking the CBA and may modify the decision maker's choice of policy.

10 Rank best options

In Step 10 the policy options are ranked in order of preference.

Where the preferred option does not have the highest net present value of benefit to cost ratio, the rationale should be explained.

It may be that an option with a lower net present value may be preferred if it has, for example, lower downside risk, lower negative externalities or better distributional outcomes.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (6)

RIS TEMPLATE

Regulatory Impact Statement

RIS title: (proposed regulation)

Prepared by: (name, agency)

Date: (email date)

Executive Summary

Outline the key messages and conclusions. This will be particularly important where the complex nature of the proposal requires a long impact assessment.

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

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

RIS report

Problem:

Summarise the main problem (Question 1), its significance and who is affected.

Outline the consequences of not taking action.

Objective:

Summarise the objectives of government action (Question 2) and the case for government intervention.

Proposed options:

Summarise the proposed options (Question 3) and discuss their effectiveness in addressing the problem.

Preferred option:

Summarise the preferred option (Questions 4 and 6) and demonstrate that it delivers the greatest net benefit to the community.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (6)

Summarise the compliance, economic, family and societal, and environmental costs and benefits of the preferred option, the sensitivity of the results, and the relative impact on the various groups of society affected (e.g. business, consumers, government, community). Provide the NPV estimate for the preferred option, and where the preferred option does not have the greatest net benefit as measured by the NPV calculation, discuss the overriding factors. Provide the estimated cost to business of the preferred option.

Consultation:

Discuss any consultation which has occurred and outline stakeholder positions (Question 5).

Implementation, monitoring and review plan:

Summarise Question 7. Outline the implementation plan, the resource requirements and how they will be funded, the data requirements for effective monitoring and the review timeframe.

Question 1 – What is the policy problem?

Describe the main problem.

- Describe the nature of the problem. Provide evidence of the scale, scope and costs of the problem. Identify who is affected by the problem.
- Outline the consequences of not taking action. Establish that government action is warranted and appropriate (e.g. market failure, regulatory failure, unacceptable hazard or risk, social goals/equity issues). Where government action is already being undertaken, demonstrate that it is not adequately addressing the problem.
- Identify any constraints to addressing the problem (e.g. economic, technological, economic, political, administrative, social or environmental).

Question 2 – Why is government action needed?

Describe the objectives of government action.

- Describe the primary objective of government action in addressing the problem.
Describe the intended outcomes, goals or targets of government action.

PART D: GUIDANCE NOTES

GUIDANCE NOTE (6)

Question 3 – What policy options are to be considered?

Describe the options (which should include the status quo as an option). Describe each of the options' likely effectiveness in addressing the problem and comment on the feasibility of each including whether it is the least onerous form of regulation. Detail any risks associated with any of the options.

Detail any implementation and enforcement issues and the likely levels of compliance.

Comment on whether other jurisdictions have addressed the problem. Describe if the proposed option will duplicate, be uniform with, or harmonise with other jurisdictions' regulations.

Narrow down and describe the feasible options and the reasons for rejecting other options.

Base case:

Describe the 'base case' for which impacts will be estimated. The base case could also be considered as the 'do nothing' option, or the status quo option.

Other options:

Describe the policy options. Impacts of these options will be estimated against the status quo.

Option 1:

Option 2:

Option 3:

[add or delete the appropriate number of options]

PART D: GUIDANCE NOTES

GUIDANCE NOTE (6)

Question 4 – What is the likely net benefit of each option?

- Time frame and scope

Describe the time frame over which the proposals are to be assessed. DTF recommends no longer than 20 years. Also define the scope of the assessment of costs and benefits – i.e. what are costs and benefits arising from the proposal.

- For the base case then each of the options:

Using the guidance materials for developing a CBA in Guidance Note 5.

- i. Describe the impacts on business, consumers, government and the community, first for the base case
- ii. Using the step by step guide to developing a CBA, discuss your analysis and identify how the impacts on the relevant sectors (e.g. business, consumers, government, the environment, the community) are measured in terms of:

First best – monetary value. Use the [Commonwealth Regulatory Burden Measurement Framework](#) to estimate the value of compliance costs on business

Second best – quantified

Last – qualitatively described.

- iii. Rank the results and reach a conclusion.

Question 5 – Who was consulted and how was their feedback incorporated?

- Detail the consultation that was undertaken throughout the RIS process, including when it occurred, the form, the time period during which input was sought or could have been provided, the input that was sought, and the stakeholders involved.
- Outline the views expressed and information provided at the various consultation stages.
- Describe how consultation aided in clarifying the problem, identifying feasible options and their impacts, and determining the preferred option.

PART D: GUIDANCE NOTES

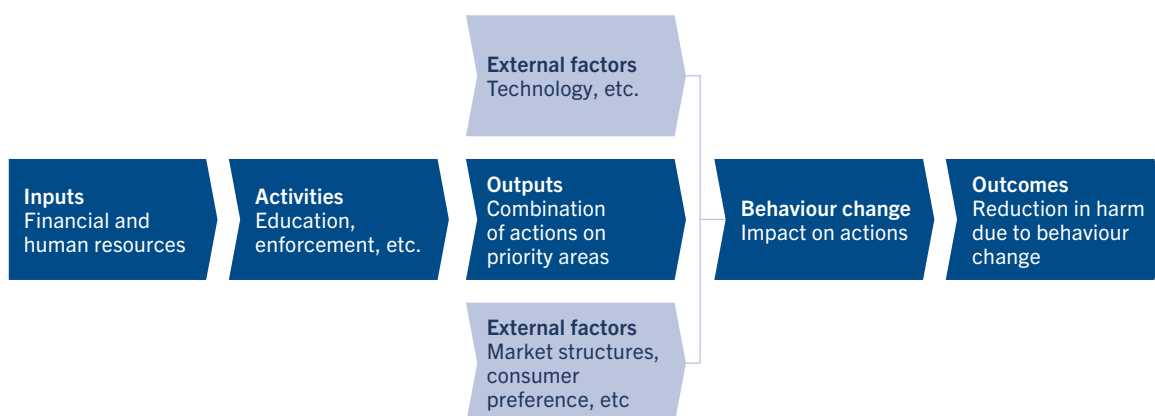
GUIDANCE NOTE (6)

Question 6 – What is the best option from those considered?

- State the preferred regulatory option. Detail the size and nature of the net benefits. Identify the groups affected by the preferred option and indicate how they will be impacted.
- Provide justification for this option in terms of its effectiveness in meeting the regulatory objective and its efficiency (i.e. providing the greatest net benefit to the community subject to other considerations).
- State the reasons that the other proposed options were rejected.

Question 7 – How will the chosen option be implemented and evaluated?

- Detail how the preferred option will be implemented and enforced. Identify those parties who will have a role in administering and enforcing the proposal and detail their resourcing requirements taking into account any cost recovered amounts. Identify the requirements that are imposed on those parties that will be subject to the regulation. Outline the compliance strategy and penalties.
- Comment on the preferred option's consistency with existing regulations, policies or agreements and any required amendments and the time frame in which this will be undertaken.
- Detail any transitional issues and plans for addressing these.
- Describe how the regulatory option will be monitored to measure the performance of the option in meeting the objective. Describe the measure(s) and the method of collecting the data or information.
- State the times specified for reviewing the preferred regulatory option.





Government
of South Australia

Review number: 1.1

Review date: December 2023

Date of approval: 17 January 2022

Next review date: 1 July 2027