



Australian Government

Department of the Prime Minister and Cabinet

Office of Best Practice Regulation

USER GUIDE TO

THE AUSTRALIAN GOVERNMENT GUIDE TO REGULATION

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About this User Guide

The *Australian Government Guide to Regulation* provides an overview of how to approach the task of making policy whenever regulation may be considered as a policy option. The principles in the *Guide to Regulation* are also useful for policy makers more generally.

The *Guide to Regulation* provides high-level principles for policy makers and an outline of the process for developing Regulation Impact Statements (RISs). It is intended for policy officers and anyone else involved in analysing, developing or implementing policy where regulation may be under consideration. An important point to remember is that the RIS is a departmental document. It is prepared to assist policy makers in developing and implementing policy and to inform their decisions.

This User Guide is designed to be read alongside the Guide to Regulation. It provides detail on the specifics of developing your RIS and having it assessed by the Office of Best Practice Regulation (OBPR).

Among other things, this guide will help you decide what type of RIS to undertake and provide helpful step-by-step advice.

Remember: help is always available from your Regulatory Reform Unit and OBPR should you need it.

What has changed from the previous guidance note?

1. An Interim RIS can be used for a Cabinet decision where a Standard form or Long Form RIS has been recommended by OBPR but an agency does not provide one in the time available.
2. A RIS needs to have at least three options unless the agency certifies in the RIS that the policy problem and circumstances are such that fewer than three options are feasible for consideration.
3. If a portfolio brings forward a proposal with net regulatory increases and offsetting regulatory savings are not included in the RIS and agreed with the OBPR, the proposal can only proceed if the portfolio can demonstrate satisfactory progress towards its net objective.
4. A PIR is now required to commence within two years if the Assistant Minister for Productivity, assisted by the advice of OBPR, together with the relevant portfolio Minister, agree that the analysis included in a Standard or Long Form RIS that is presented to policy makers at the final decision point sufficiently diverges from best practice.
5. A one page RIS executive summary replaces the previous up to five page RIS executive summary for Cabinet submissions. The one page RIS summary needs to be prepared for both Cabinet and non-Cabinet decision makers.

Introduction

What is regulation?

Regulation is any rule endorsed by government where there is an expectation of compliance. It includes legislation, regulations, quasi-regulations, and any other aspect of regulator behaviour that can influence or compel specific behaviour by business and the community. It also includes the red tape imposed by the Commonwealth's procurement, grants and the cost-recovery frameworks.

Quasi-regulations are rules or arrangements that are not established by a parliamentary process, but that can influence the behaviour of businesses, community organisations and individuals. They can include industry codes of practice, guidance notes, industry–government agreements and accreditation schemes.

When is a RIS required?

A RIS is required for all Cabinet submissions. This includes proposals of a minor or machinery nature and proposals with no regulatory impact on business, community organisations or individuals.

A RIS is also mandatory for any non-Cabinet decision made by any Australian Government entity if that decision is likely to have a measurable impact on businesses, community organisations, individuals or any combination of them.

A RIS is *not* required for non-Cabinet decision makers if the proposal is non-regulatory or the regulatory impact is of a minor or machinery nature. Where a RIS is not required but there are regulatory costs or savings, those costs or savings will need to be quantified and, where there is a net increase in regulatory costs, offsetting regulatory savings need to be considered.¹ See the *Regulatory Burden Measurement framework* guidance note for more information (details are in Appendix 1).

The agency responsible for bringing the proposal to the decision maker is responsible for ensuring that all RIS requirements are met.

Some further detail on definitions

In the RIS process, *businesses* include any organisation that aims to make a profit.

Community organisations can include not-for-profit entities pursuing a range of for-profit commercial activities. They can also include organisations engaged in advocacy or other activities that may not be primarily charitable.

An *individual* is a person who is subject to Australian law and interacts with government or is affected by regulation, and whose activities have an impact in Australia.

Regulation that affects individuals and businesses outside Australia is in the scope of the RIS requirements if there is also an impact in Australia. See the *Regulatory Burden Measurement framework* guidance note for further information (details are in Appendix 1).

Minor changes do not substantially alter the existing regulatory arrangements for businesses, community organisations or individuals. For example, a minor change may involve a small one-off cost but no ongoing costs; examples are the introduction of an online application process, an indexation arrangement, or the setting of opening and closing dates in a fishing ground.

Machinery changes are consequential changes required as a result of a substantive regulatory decision. There is often limited discretion available to the decision maker. The fact that some of these changes may have a significant impact does not prevent them being machinery changes. For example, a machinery change may involve legislative changes to correct errors, administrative changes (such as name changes), changes to levy rates in line with movements in the Consumer Price Index or the updating of fee or levy thresholds.

¹ Changes in regulatory costs arising from changes in administrative processes (such as efficiency benefits from form simplification) also need to be quantified according to the Regulatory Burden Measurement framework. You should seek OBPR's advice on whether a RIS would be required for such changes.

The three steps of the RIS process

Step 1: Preliminary assessment

You need to contact OBPR to confirm whether a RIS is required for any regulatory proposal and any proposal proceeding to Cabinet. It is a good idea to alert your Regulatory Reform Unit to your proposal at this stage as well.

A Preliminary Assessment determines whether a proposal requires a RIS and helps to identify best practice for your policy process.

It is your responsibility to initiate a Preliminary Assessment as early during policy development as possible. This allows time for OBPR to advise on whether a RIS is required before a decision is made and to provide additional information on what will be best practice for your proposal. Early advice to your Regulatory Reform Unit will also allow you to take into account any portfolio- or agency-specific requirements.

As soon as you have a rudimentary set of answers to the seven RIS questions (set out under ‘Step 2’ below), give a written summary to OBPR. The ‘Is a RIS required?’ template form on the OBPR website will help you identify the key features of your proposal and prepare the summary, but it is not compulsory to use the form (a link to the form is in Appendix 1).

The key questions you need to answer are:

- Will Cabinet be the decision maker?
- What is the policy problem?
- What are the objectives of government action?
- What policy options are available?
- What are the likely regulatory impacts of the proposal (including whether there are any market or competition impacts)?
- What are the likely regulatory costs of the proposal, including administrative, substantive compliance and delay costs? Are average annual regulatory costs or savings likely to be less than \$2 million?
- What are the key dates and timelines?

Once you have provided this information, OBPR will look to advise you within five working days whether a RIS is required. If one is required, OBPR will also advise on the type of RIS that would be appropriate.

Where time allows, OBPR will assist you by advising on what best practice would be for your RIS. A follow-up discussion with OBPR and your Regulatory Reform Unit can help to clarify this advice.

To help improve the efficiency of the Preliminary Assessment process, OBPR can grant a ‘carve-out’. This is a standing agreement between OBPR and an agency that removes the need for a Preliminary Assessment to be sent to OBPR for minor or machinery changes that occur regularly. See Appendix 1 for more details on carve-outs.

What type of RIS is required?

There are four types of RISs: Long Form, Standard Form, Short Form and Interim. Along with confirmation that a RIS is required, OBPR will provide written advice on whether a Long Form, Standard Form, or Short Form RIS is appropriate. See page 12 of the *Guide to Regulation* for a table explaining these three types of RIS and when they are recommended.

Which RIS is the most appropriate is up to the agency to decide, in conjunction with advice provided by the OBPR. However, the Short Form RISs and Interim RISs are only available for matters to be considered by the Cabinet.

In general, Short Form RISs should only be prepared when a proposal is non-regulatory or administrative/machinery in nature, or is expected to have only a minor regulatory impact on individuals, businesses and community organisations. If an agency does in fact prepare a Short Form RIS for a Cabinet proposal that has a more than minor regulatory impact it will be classified as an Interim RIS and will be subject to the Interim RIS arrangements.

Where OBPR advises that a Standard Form or Long Form RIS is appropriate for a matter and an agency for whatever reason does not prepare the RIS for a Cabinet decision, an Interim RIS can be used.

In circumstances where an Interim RIS is used, it needs to be converted to a Standard Form or Long Form RIS (as appropriate) prior to a final decision. If the Interim RIS is not converted before a final decision then the Interim RIS will be published by the OBPR following public announcement of the decision and noted as non-compliant. If an Interim RIS is prepared for a Cabinet proposal that has a more than minor regulatory impact, and the Cabinet decision is considered to be the final decision point, then the Interim RIS will be published by the OBPR following public announcement of the decision and noted as non-compliant.

The Interim RIS process is also demonstrated by the diagram below.

RIS type recommended by OBPR	Interim RIS prepared by agency	Final decision	Published RIS	RIS compliance
Standard or Long Form RIS	Interim RIS prepared (not for final decision)	Interim RIS is converted into a Standard or Long Form RIS and assessed by OBPR	Standard or Long Form RIS is published following announcement of a decision	OBPR assesses best practice/compliance
		Interim RIS continues to be used for final decision	Interim RIS is published following announcement of a decision	OBPR does not assess best practice. Proposal is noted as non-compliant following announcement of a decision

See the *Short Form and Interim Regulation Impact Statements* guidance note for further information on Interim RISs (details are in Appendix 1).

Step 2: Prepare your RIS

You should start your RIS at the very beginning of the policy process to allow it to develop over time before a final decision is made. Don't wait to know all the answers before you start drafting.

OBPR is available to identify best practice for your policy process. Its views on best practice may also be provided to others, such as the Cabinet.

Except for Short Form RISs, OBPR is obliged to publish a public assessment of the adequacy of your RIS process. A poor process may draw OBPR's criticism in its final assessment of your RIS. If the shortcomings are serious enough, or sufficiently diverge from best practice, you may be required (under arrangements agreed by the government) to conduct a post-implementation review (PIR). Further information on PIRs is in the *Post-implementation reviews* guidance note (details are in Appendix 1).

What standard of RIS is required at each major decision point?

Major policy decision points include:

- an in-principle decision to regulate
- a decision by the government to consult on a regulatory proposal
- a decision by the government to announce regulation in a particular form (such as announcing an intention to legislate), but to consult on the detail of the final regulation
- a decision to preclude one or more options from further consideration
- a final decision on the proposal.

The content of a RIS depends on the type of RIS required. Standard and Long Form RISs require a detailed analysis of the proposal.

Those RISs should answer the following seven questions:

1. What is the policy 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?

Short Form RISs should include a summary of the proposed policy and any options considered, an overview of likely impacts, and an outline of regulatory costs and cost offsets (if identified).

The Interim RIS could have similar content to a Short Form RIS, but preferably would have more detailed information to inform key aspects of the early assessment decision.

See the *Short Form and Interim Regulation Impact Statements* guidance note for more information (details are in Appendix 1).

Best practice will normally require you to submit your Standard or Long Form RIS for at least an Early Assessment (see below) before any major policy decision is made. This allows OBPR to give you a view on whether the current draft of the RIS is sufficient for the decision about to be made and/or as a basis for consultation.

Your Standard or Long Form RIS needs to pass through a Final Assessment before a final decision is reached.

Consultation will vary according to your issue and policy process but is mandatory before a final decision occurs.

When does OBPR assess the RIS?

OBPR can offer advice on preparing your RIS at any stage of the RIS process, but will formally assess its consistency and adequacy only after it has been certified by your secretary, deputy secretary, chief executive or other delegate² (whoever is relevant to the proposal).³

OBPR provides an Early Assessment and a Final Assessment. An Early Assessment is optional; a Final Assessment is not.

Early assessment

OBPR can provide an Early Assessment once you have completed the first four RIS questions, planned your consultations, and had your RIS certified by your secretary, deputy secretary or chief executive.

The RIS provided to OBPR for an Early Assessment must also be accompanied by a one page executive summary of the RIS.⁴

OBPR will then assess your RIS (and RIS summary) for adequacy against best practice and comment on how well you have answered the seven RIS questions and followed the 10 regulation principles.

At the Early Assessment stage, the focus will be on the first four RIS questions. OBPR will ask two important questions:

- Have you accurately costed the regulatory burden of all your policy options (and offsets where applicable)?
- Do you have an appropriate plan for consulting those affected by your policy?

² Portfolios may develop their own policy regarding who can certify or sign-off a RIS. Where this option is exercised, the policy (certified by the deputy secretary) needs to be submitted to OBPR for publication on its website. The document needs to contain a process detailing the mechanism by which the policy can be changed or amended.

³ A template certification letter is available from the OBPR on request.

⁴ See Appendix 2 for details on preparing the RIS summary and access to the RIS summary template.

Following this assessment, OBPR will write to tell you whether you have met best practice and whether the RIS is suitable as a basis for consultation or for a decision. Alternatively, OBPR will advise on the areas that need to be addressed for the RIS to meet best practice. OBPR will also provide direction for the development of your RIS before the Final Assessment.

When an Early Assessment RIS proceeds to the decision maker, your RIS, a one page executive summary of the RIS and OBPR's assessment⁵ needs to be included with documents provided to the decision maker.

Final assessment: the two-pass process

A final policy decision always needs to be accompanied by a RIS and a one page executive summary of the RIS that has been through a Final Assessment.

The Final Assessment of a Standard or Long Form RIS is subject to a two-pass process, as described in the *Guide to Regulation*. It is up to you to decide when a Final Assessment is undertaken, although all seven RIS questions need to be answered in full before this can happen.

For a Final Assessment, OBPR needs to be given details of the regulatory costs (and offsets where applicable) at least 10 business days before the RIS is provided to the decision maker (or is circulated for coordination comments for Cabinet submissions).

In the first pass, OBPR assesses your RIS (and RIS summary) and your process against best practice. In particular, it comments on whether your RIS is consistent with the government's requirements, adequately addresses all seven RIS questions and provides an accurate description of the status of the RIS at each major decision point in the proposal's development.

OBPR provides formal written advice to you. You then have an opportunity to revise the RIS in response to OBPR's assessment.

There is no limit on the time your agency may take to revise a RIS after receiving initial advice from OBPR, and no restriction on the number of times you can discuss a RIS with OBPR before submitting the RIS for the second pass.

For the second pass, OBPR relies heavily on the certification by your secretary, deputy secretary, chief executive or other delegate in determining the adequacy of the RIS (including the RIS summary), provided the certification letter directly addresses in detail OBPR's written comments at the first pass. OBPR will also provide its assessment against best practice. Following this assessment, the RIS can proceed to the decision maker.

If OBPR assesses that your RIS is less than best practice, including where this is significant enough for the RIS to be found to be non-compliant with the requirements, you can nevertheless choose to bring forward the proposal for decision by the decision maker. OBPR will give you written advice of its assessment, including reasons.

If the proposal proceeds to the decision maker after the second pass, your RIS, a one page executive summary of the RIS and OBPR's assessment⁶ needs to be included with the documents provided to the decision maker.

⁵ For Cabinet proposals, only the one page summary of the RIS approved by OBPR is attached to the final submission; the full RIS is available to Ministers on request. Note that the full RIS should be circulated for coordination comments.

When a decision is announced, the Long Form or Standard Form RIS provided to the decision maker will be published on the OBPR website, together with your second pass certification letter and written advice from OBPR setting out the status of the RIS.

Short Form and Interim RISs are not subject to the two-pass final assessment process.

Short Form RISs are not published⁷. The OBPR will however, publicly outline its view on the appropriate RIS form if requested by a stakeholder. In those circumstances OBPR will not publicly comment on the adequacy of the Short Form RIS, but will outline its assessment of the agency's compliance with RIS requirements following an announcement of a decision.

Interim RISs which are not converted to a Standard or Long Form RIS (as appropriate) prior to a final decision will be published following an announcement of the final decision. When publishing an Interim RIS, the OBPR will outline which type of RIS was recommended for the proposal, while noting that the agency is non-compliant.

OBPR provides its assessment of the Short Form and Interim RIS in its coordination comment. The comment includes OBPR's view on what would be best practice for the appropriate form of the RIS and consultation method. If the OBPR publishes an Interim RIS on its website (because the Interim RIS was not converted to a Standard or Long Form RIS before the final decision point), it will outline which type of RIS was recommended for the proposal.

How does OBPR assess the RIS?

When OBPR makes a formal assessment, it assesses your RIS against best practice requirements using the 10 principles in the *Guide to Regulation* and the seven RIS questions. You should aim to have a RIS that meets best practice requirements.

In assessing best practice, OBPR will examine whether you have adequately addressed the seven RIS questions. In particular, OBPR considers the following:

- Does your RIS simply and clearly explain the problem and your objective?
- Does it examine a range of viable, genuine policy options, including non-regulation and options put forward during consultations?
- Where the policy problem and circumstances are such that there are fewer than three options feasible for consideration, does the RIS include a clear explanation why other alternatives are not viable or practical? Was this certified by the secretary, deputy secretary or chief executive (or delegate) in the certification letter?
- Have the benefits and costs of all the proposed options for business, community organisations and individuals been clearly analysed in a balanced and objective manner?
- Are the regulatory costs (and offsets where applicable) quantified and agreed by OBPR?

⁶ For Cabinet proposals, only the one page summary of the RIS approved by OBPR is attached to the final submission; the full RIS is available to Ministers on request. Note that the full RIS should be circulated for coordination comments.

⁷ A Short Form RIS for a Cabinet proposal that has a more than minor regulatory impact will be classified as an Interim RIS and will be published if it is not converted into a Standard or Long Form RIS prior to a final decision.

- Does your RIS show how the impact of the options will be distributed across the community, including on small business?
- Does it explain the purpose and objectives of consultation (before final decision)?
- Does it include an appropriate plan for consulting those affected by the policy (before final decision)?
- Does it demonstrate that the views of affected stakeholder groups have been considered?
- Does it recommend the option with the highest net benefit?
- Does it have a clear implementation and evaluation plan?
- Does it make transparent the RIS status before each major decision point?
- Was a one page RIS executive summary provided to the OBPR? Was it an accurate reflection of the underlying analysis in the RIS?
- Was the RIS certified by the secretary, deputy secretary or chief executive (or delegate) before formal assessment?
- Was it published at the earliest opportunity following an announcement of a decision?

What happens if you do not meet best practice requirements?

If your RIS does not meet best practice, you should try to address OBPR's concerns if that is practical. For its part, OBPR will identify and communicate the reasons for the RIS not meeting best practice through a range of methods, such as:

- writing to you, outlining areas of concern and suggested remedies
- briefing the Prime Minister or the Assistant Minister for Productivity on areas of concern
- briefing Cabinet, through coordination comment, on areas of concern
- publishing information on areas of concern in the OBPR assessment
- determining non-compliance with the RIS requirements, communicating this to you in writing and publishing that information, including the requirement to undertake a post-implementation review.
- determining and communicating to you in writing that the analysis presented to policy makers at the final decision point sufficiently diverges from best practice and thus a PIR may need to be undertaken. A formal assessment on the need to undertake a PIR under these circumstances will be made by the Assistant Minister for Productivity and the relevant portfolio Minister when the policy is announced. See the *Post-implementation reviews* guidance note for further information (details are in Appendix 1).

Non-compliance

To encourage agencies to produce the best RIS possible, OBPR generally relies on the first four options above. This reflects the fact that the RIS process is primarily the responsibility of the agency.

However, serious departures from best practice may lead to a finding of non-compliance.

Serious departures include:

- making a final decision to regulate without a RIS that has been the subject of an OBPR Final Assessment
- not publishing a RIS at the earliest opportunity following the announcement of the final decision
- not considering at least three policy options in the RIS (including the mandatory non-regulation option) in circumstances where the deputy secretary (or delegate) has not certified that the policy problem and circumstances are such that there are fewer than three options feasible for consideration
- not selecting the option with the highest net benefit as the preferred option
- not conducting the appropriate form of consultation as part of the RIS process
- not addressing the seven RIS questions adequately
- not having OBPR's agreement on regulatory burden costings (and offsets where applicable)
- not adequately describing the RIS status at each major decision point of policy development.

Non-compliance with the RIS requirements triggers the need for a post-implementation review to be completed.

Portfolio cost and offsetting requirements

All proposals subject to a RIS (except for non-regulatory proposals) need to quantify the regulatory costs to business, community organisations and/or individuals and identify offsets using the Regulatory Burden Measurement framework.

If a portfolio brings forward a proposal with net regulatory increases and offsetting regulatory savings are not included in the RIS and agreed with the OBPR, the proposal can only proceed if the portfolio can demonstrate satisfactory progress towards its net objective.

This requirement can be satisfied by the portfolio Deputy Secretary or delegate warranting in the RIS certification letter that the portfolio's net regulatory objective will be met by the end of the relevant reporting period. For the purposes of Short Form RISs and Interim RISs where a certification letter is not required, it will be sufficient to include in the RIS the Deputy Secretary's or delegate's statement warranting that the net objective will be met.

For COAG processes, the head of the relevant Regulatory Reform Unit needs to warrant that the portfolio's net regulatory target will be met by the end of the relevant reporting period. This advice from the Regulatory Reform Unit head needs to be provided when the COAG RIS (consultation or decision) and regulatory costing is provided to the OBPR for assessment.

The *Regulatory Burden Measurement framework* guidance note contains further details on costing requirements. You should also consult your portfolio Regulatory Reform Unit to discuss costing and offsetting issues.

Step 3: Ensuring transparency

Transparency is one of the purposes of regulatory impact analysis. The publication of RISs and information about their adequacy is critical to transparency.

RISs, certification letters and OBPR's assessments of those statements will be published on at least the OBPR website on the announcement of the policy proposal, in consultation with your agency. Where a regulation is tabled in Parliament, your RIS (or its equivalent) needs to be included in the explanatory memorandum (for primary legislation) or the explanatory statement (for legislative instruments). RISs for treaties will be tabled along with the final text of the treaty and the national interest analysis. Short Form RISs are not required to be published⁸.

Post-implementation reviews certified by the relevant departmental secretary or deputy secretary (or agency head or deputy head) are published on the website once they have been assessed by OBPR as compliant with requirements for such reviews and provided to the relevant minister and the Prime Minister.

OBPR also publishes any Prime Minister's exemptions, including the applicable criteria and the costing information. Agencies will not be deemed non-compliant with the RIS requirements when a Prime Minister's exemption is granted.

If a decision to regulate results in legislation, the fact that the RIS was subject to a Prime Minister's exemption should be noted in the explanatory material.

In practice, publication on the OBPR website generally occurs as soon as possible after the decision is publicly announced (for example, by media release). To assist in this process, you should notify OBPR when that occurs.

OBPR will obtain your agency's approval before publishing the RIS. The published RIS should be the RIS provided to the decision maker, subject to the exceptions discussed below. There is some limited scope for your RIS to be modified after the decision maker's consideration but before publication:

- where the RIS refers to commercial-in-confidence or national security information
- to correct minor errors, such as spelling or grammar, without substantially changing the meaning or analysis in the RIS
- to include additional relevant information that does not substantially alter the analysis in the RIS (for example, additional information about consultation processes or extra details of future reviews of the regulation)
- to update costing information, where the proposal was modified by the decision maker.

Changes of these types need to be approved by OBPR before publication.

If no RIS is prepared, if your RIS is not formally assessed, or if your agency does not grant approval for publication, OBPR will make that clear on its website.

⁸ Short Form RISs that have a more than minor regulatory impact (classified as Interim RISs) which are not subsequently converted to a Standard or Long Form RIS prior to a final decision will be published following public announcement of a decision.

Amending offsets following the announcement of a decision

There are sometimes instances where Ministers or agencies may have provided offsets at the time of the decision but might not want to publish the regulatory offsets at the same time that the RIS is published (for example, if a decision on the policy proposal is made before the offset is finalised or the decision maker does not agree with the offset).

Where offsets are provided by portfolios at the time of the decision, there is flexibility about the publication of those offsets, including removing them from the Regulatory Burden estimate table.⁹ This includes:

- removing the offset from the RIS and replacing it with advice that an offset was provided but is yet to be agreed
- presenting the estimated offset, but without supporting information to identify the offset, in order to give a broad magnitude of the offset
- publishing all details about the offset, but noting that they are preliminary and subject to further refinement.
- separately publishing offsets over time at the total portfolio level, including progress against annual net reduction objectives.

Placing the discussion of the offsets in a separate section of the RIS allows easy removal or updating following an announcement of a decision.

Following agreement of the offsets, the RIS can be updated on the OBPR website. If the offsets are presented in another RIS, for example as part of a larger process, they can be cross-referenced.

Reporting of compliance

OBPR monitors regulations tabled in parliament, news reports, media releases and other sources for indications that a regulatory decision has been made. Where it appears that a regulation may have been introduced, amended or removed before a RIS was completed, it contacts the agency in the first instance to obtain additional information. After consultation with the agency, OBPR determines one of the following:

- the RIS requirements have been met and no further action is required
- the process used to prepare a RIS was in some way inconsistent with the RIS requirements (the reason for this determination will be published as part of OBPR's compliance advice)
- the requirement to prepare a RIS has not been met and the agency needs to undertake a post-implementation review (in addition, the agency will be reported as non-compliant).

If OBPR confirms that a decision on a policy proposal was made without the appropriate level of supporting analysis, it will report that on its website.

⁹ See the *Regulatory Burden Measurement framework* guidance note for more information on the Regulatory Burden estimate table.

An agency may be non-compliant in Step 3 (Ensuring transparency) if it does not provide the RIS to OBPR for publishing as soon as practicable after a final decision is made. Non-compliance at this stage is reported on the OBPR website, but it does not trigger a requirement to complete a post-implementation review.

Web accessibility

RISs and post-implementation reviews supplied to OBPR for publication on the OBPR website must conform to the [Web Content Accessibility Guidelines 2.0 \(WCAG\)](#).

The Australian Government, together with state and territory governments, has endorsed the guidelines for all government websites. This means that all documents published online by Australian governments must conform to the standards specified in the WCAG.

For RISs and post-implementation reviews, certain formatting and style conventions must be observed, and any PDF documents must be published in at least one alternative format, such as rich-text format or HTML. If your document contains charts and tables, you may have to do additional work and you should build that into your timeframes.

Agencies that take too long to provide web accessible versions of the RIS for publication may attract a negative comment from the OBPR or an assessment of non-compliance. Therefore, you should liaise with your web services team before drafting the RIS to ensure that the guidelines are met.

More information on making content accessible can be found at: [Making content accessible](#).

Appendix 1: Other guidance material available

The following material provides further guidance on specific aspects of the RIS process, including the regulatory costing process, where applicable.

Best practice consultation

The *Best practice consultation* guidance note contains more detail on the application of the whole-of-government consultation principles outlined in the *Australian Government Guide to Regulation* and highlights the importance of developing a consultation strategy for policy proposals.

More information on the Government's consultation principles is available in the [Best practice consultation guidance note](#).

'Is a RIS required?' form

An agency is required to contact OBPR to seek advice on whether a RIS is required for an Australian Government regulatory proposal—this is known as a Preliminary Assessment. This form will help you identify the key features of your proposal, which, in turn, will allow OBPR to quickly assess whether a RIS is required.

More information on the Preliminary Assessment process is available in the ['Is a RIS required?' form](#).

Regulation Impact Statement Policy Options

When preparing a Regulation Impact Statement, Australian Government agencies must consider a range of viable policy options. The number of options included in the analysis should take into account the magnitude of the policy problem being considered. The RIS should consider all practical policy alternatives that can be implemented to achieve the policy objective and address the identified problem.

A RIS needs to include at least three options unless the agency certifies in the RIS that the policy problem and circumstances are such that fewer than three options are feasible for consideration. For election commitments and international agreements, a RIS can have fewer than three options.

More information on the number of policy options that need to be considered in a RIS is available in the [Regulation Impact Statement Policy Options guidance note](#).

Carve-outs

OBPR is responsible for advising government agencies on whether RISs are required. To make this process more efficient, OBPR grants 'carve-outs'.

A carve-out is a standing agreement between OBPR and an agency that removes the need for a Preliminary Assessment to be sent to OBPR for minor or machinery changes that occur regularly. This reduces the workload for both parties while ensuring consistent advice on whether or not a RIS is required.

A carve-out can be used for regulatory changes that occur on a regular basis, are minor or machinery in nature, and are consistent with the requirements in the *Guide to Regulation*. Possible categories of carve-outs include indexation changes and routine administrative changes. Carve-outs are not applicable to Cabinet submissions.

More information on carve-outs is available in the [Carve-outs guidance note](#).

Regulatory Burden Measurement framework

All proposals need to quantify the regulatory costs to business, community organisations and/or individuals and identify offsets using the Regulatory Burden Measurement framework. As a minimum, the framework includes consideration of:

- administrative costs
- substantive compliance costs
- delay costs.

Further information on the framework is available in the [Regulatory Burden Measurement framework guidance note](#).

Regulatory Burden Measure

You should use the [Regulatory Burden Measure](#) (RBM, formerly known as the Business Cost Calculator) to quantify the regulatory costs and offsets for your proposal. The RBM has associated documentation to help you understand each section of the measure and what information is required.

Cost-benefit analysis

The Australian Government is committed to the use of cost–benefit analysis to assess regulatory proposals and encourage better decision making. A cost–benefit analysis involves a systematic evaluation of the impacts of a proposal, accounting for all the effects on the community and economy—not just the immediate or direct effects, financial effects or effects on one group. It emphasises valuing the gains and losses from a regulatory proposal in monetary terms as far as possible.

More information on conducting a cost–benefit analysis is available in the [Cost–benefit analysis guidance note](#).

Individuals

The trigger for preparing a RIS has been expanded to capture impacts on individuals, reflecting the significant regulatory burden experienced by individuals and the Government’s objective of reducing it.

The [Individuals guidance note](#) helps agencies to understand when a RIS may be required for proposals that affect individuals and provide guidance on how to quantify the regulatory costs on individuals.

Commonwealth programmes

Red tape burden imposed by the Commonwealth’s procurement, grants and cost recovery frameworks is now included in the definition of regulation.

The [Commonwealth programmes guidance note](#) provides additional information to help agencies understand when a RIS is required for government benefits, grants, procurement and cost recovery proposals and how to quantify the regulatory costs of those proposals.

Short Form and Interim Regulation Impact Statements

This document provides guidance on preparing Short Form RISs and Interim RISs for proposals being considered by the Cabinet. It also provides templates for preparing Short Form RISs for proposals.

More information on is available in the [Short Form RISs and Interim RISs guidance note](#).

Competition and regulation

RISs for policy proposals that restrict competition are required to demonstrate that the benefits to the community outweigh the costs, and that there are no alternative means of achieving the same objective without restricting competition. The [Competition and regulation guidance note](#) outlines how OBPR assesses whether a proposal restricts competition, and how such a proposal would be justified in the RIS.

Risk analysis in RISs

Government regulation rarely deals with certainties, but is often designed to reduce the likelihood of harmful or hazardous events occurring.

Given the importance of risk-related regulation, OBPR has prepared a guidance note on approaches to evaluating regulation aimed at managing risks. An effective approach to risk management requires that agencies develop a thorough understanding of the risks they are seeking to manage. This can be achieved by soundly applying risk analysis and economic evaluation principles.

More information on dealing with risk in RISs is available in the [Risk analysis in Regulation Impact Statements guidance note](#).

Environmental valuation

Analyses of projects or policies that affect environmental assets should take into account the benefits that those assets provide to the community. However, unlike many other assets, environmental assets can be difficult to account for in project and policy analyses because the benefits that some of them provide can be hard to understand and because our scientific knowledge of many environmental processes is limited.

OBPR has developed a framework to analyse how decisions can affect environmental assets and the benefits they provide. While the framework is broadly applicable, its main aim is to inform the development of RISs.

More information can be found in the [Environmental evaluation and uncertainty guidance note](#).

Community organisations

Because community organisations function in different ways from commercial businesses, they should be considered separately when assessing the impact of a proposal. OBPR's [Community organisations guidance note](#) aims to help agencies gain a better understanding of the types of issues they should be considering if they are proposing a regulatory change that may affect community organisations. This will help to ensure that those impacts are recognised early in the policy process and discussed thoroughly in the RIS, where appropriate.

Trade impact assessments

If a policy proposal has a direct bearing on trade performance, a trade impact assessment should be incorporated into the implementation section of the RIS. The assessment should summarise the impact of regulatory options and proposals on exporters and importers and assess the overall impact on Australia's international trade. OBPR's [Trade impact assessments guidance note](#) provides more detailed information on how to complete an assessment.

Independent reviews and RIS-like processes

If an independent review or other RIS-like process has been undertaken by a department, agency, statutory authority, or board that results in analysis equivalent to a RIS, this analysis can substitute for the RIS. OBPR has prepared the guidance note [Independent reviews, RIS-like processes and the RIS Requirements](#) to help agencies understand the use of independent reviews RIS-like processes.

Sunsetting legislative instruments

Under the *Legislative Instruments Act 2003*, all legislative instruments 'sunset', or cease automatically, after 10 years, unless action is taken to remake them or they are otherwise exempt. Some instruments may have impacts on business, community organisations or individuals, so changes to their future operation fall within the scope of the RIS requirements. However, some streamlined administrative processes apply to sunseting instruments and a RIS may not need to be prepared in all circumstances.

More information can be found in the [Sunsetting legislative instruments guidance note](#).

Post-implementation reviews

PIRs need to be prepared when regulation has been introduced, removed, or significantly changed without a regulation impact statement (RIS). This may be because a compliant RIS was not prepared for the final decision, or because the Prime Minister granted an exemption from the RIS requirements. Where an adequate RIS for the regulatory change was *not* prepared for the final decision, a PIR needs to be completed within two years of the regulation being implemented.

Where the Assistant Minister for Productivity, assisted by the advice of OBPR and in agreement with the relevant portfolio Minister, has assessed a Standard or Long Form RIS as sufficiently diverging from best practice, a PIR needs to commence within two years of the regulations being implemented.

For regulations assessed by OBPR as having a substantial or widespread impact on the Australian economy, a PIR needs to be completed and signed off by OBPR within five years following the implementation of the regulation.

More information can be found in the [Post-implementation reviews guidance note](#).

Small Business

The [Small Business guidance note](#) describes the factors unique to small business that should be considered when undertaking a regulatory impact analysis. It expands on The Australian Government Guide to Regulation by providing policy makers with principles to consider in developing policy that affects small business.

Appendix 2: One page RIS executive summary

A one page executive summary of the RIS (RIS summary) needs to be produced by the department or agency for all Standard and Long Form RISs at both the Early Assessment and Final Assessment stages. The RIS summary will assist decision makers to understand the regulatory impacts of a proposal. The summary is to be prepared for both Cabinet and non-Cabinet decision makers.

The RIS summary is strictly limited to one page. At a minimum you need to describe the problem that has necessitated a policy response and the option that is being recommended. You need to then provide content that you determine would be the most important for the decision makers to know in the short amount of time that they would have to consider the proposal.

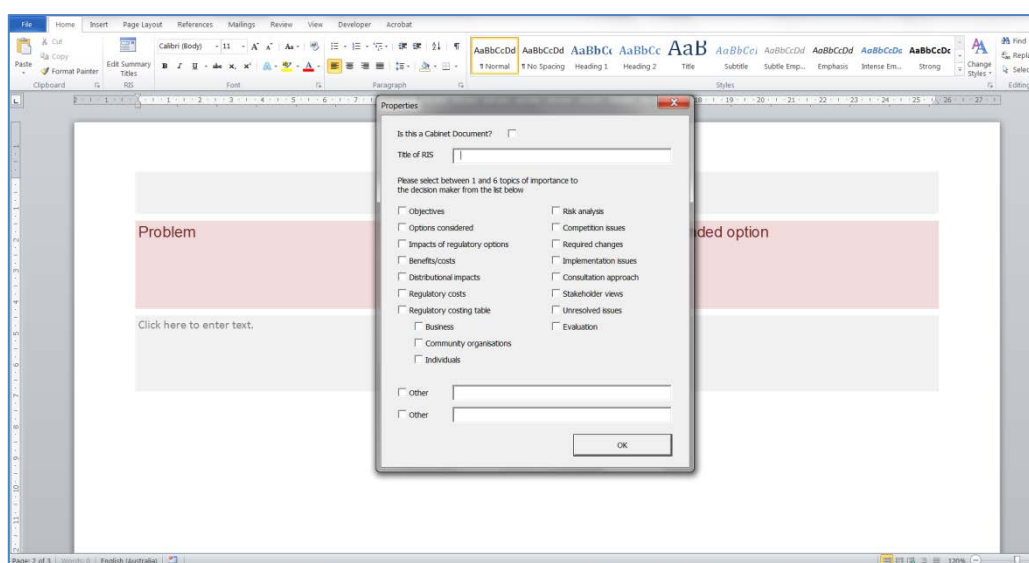
The RIS summary needs to be approved by the OBPR along with the RIS itself. For Cabinet submissions, the summary is attached to the final submission, while the full RIS is available to Ministers on request. For non-Cabinet decision makers, the summary is attached to the final RIS for consideration.

While the content of the RIS summary is up to you, whatever is included in the summary needs to be an accurate reflection of the underlying analysis in the RIS. It is not a requirement that all of the seven RIS questions are covered off in the summary.

A [one page RIS summary template](#) has been prepared to assist agencies in this process. The template is available on the Department of the Prime Minister and Cabinet's website. This template needs to be used to ensure consistency in presentation for all RIS summaries.

The following steps describe how to use the RIS summary template.

1. Save the template document to your local network or hard drive (e.g. g drive). Do not save the file to your 'Desktop' however as the macros will not work.
2. Launch the file in Microsoft Word. You will see the following dialog box:



- Enter the title of the RIS, and select the topics (between 1 and 6) that you determine to be of most importance to inform the decision maker(s). The Problem and Recommended Option are compulsory and therefore do not appear in this list. Selecting the 'Regulatory costing table' will insert a Regulatory Burden Estimate table, which can be tailored to cover businesses, community organisations and/or individuals by checking the appropriate sub topics. There are two free text fields next to 'Other' to include topics not covered in the defined list above. Lastly, select whether the RIS summary is a Cabinet document – this will automatically insert the security classifications.
- The following is an example of a template prepared for a Cabinet submission aiming to describe the objectives of the policy, the options considered, the regulatory costing table and stakeholder views.

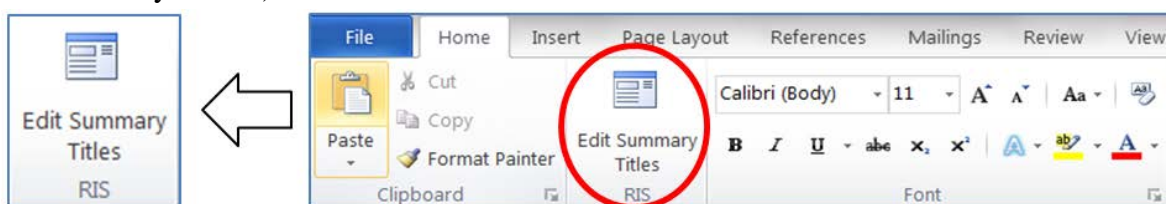
PROTECTED
Sensitive: Cabinet

Example RIS Proposal
Regulation Impact Statement summary

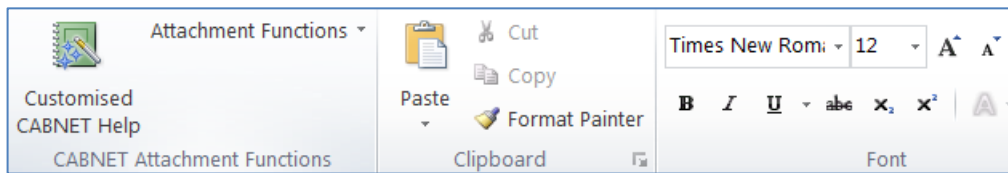
Problem	Recommended option															
Objectives	Options considered															
Regulatory costing table <table border="1" style="width: 100%; border-collapse: collapse; font-size: small;"> <thead> <tr> <th colspan="5">Average annual regulatory costs (from business as usual)</th> </tr> <tr> <th>Change in costs (\$ million)</th> <th>Business</th> <th>Community organisations</th> <th>Individuals</th> <th>Total change in costs</th> </tr> </thead> <tbody> <tr> <td>Total, by sector</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Average annual regulatory costs (from business as usual)					Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs	Total, by sector					Stakeholder views
Average annual regulatory costs (from business as usual)																
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs												
Total, by sector																

PROTECTED
Sensitive: Cabinet

- Once you have prepared your template, populate each box (topic) with the relevant summary.
- It is possible to later change the topics covered in the summary, or change whether it is a Cabinet document. Click on the 'Edit Summary Titles' button in the Menu Ribbon. This will bring up the dialog box with all the RIS titles. Select the new topics that you want covered, as well as the ones that you want to remain in the summary (remembering between 1 and 6 topics can be selected). This process may delete text in those boxes that you want to keep, so make sure to take a copy of that information before you undertake this process. ('Undo' should bring back this information if you inadvertently lose it.)



7. For Cabinet submissions, the entire content of the OBPR-approved RIS summary should be selected and copied, then pasted into the Cabinet attachment template. When copying the content, do not use the Ctrl-A short cut, instead highlight the content and copy it. This approach avoids copying across the security classifications which will already be embedded in the Cabinet attachment template.
8. You will need to insert a landscape page in the Cabinet template to the above step. This option can be found in the Attachment Functions drop down menu on the Menu Ribbon in the Cabinet Attachment template (see below).



9. If you have any difficulties saving the template file from the web address above, contact the OBPR at help-desk@pmc.gov.au and we will email you the file.