



AUSTRALIAN GOVERNMENT REGULATION IMPACT STATEMENT PRELIMINARY ASSESSMENT FORM: IS A RIS REQUIRED?

September 2017

The Government has introduced the *Australian Government Guide to Regulation*, which outlines the process for developing a regulatory proposal, including a Regulation Impact Statement (RIS).

All Cabinet submissions require a RIS. RISs are also required for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on businesses, community organisations or individuals, unless the proposed change is a minor or machinery change.

It is your responsibility to contact OBPR for advice on whether a RIS is required for your proposal. OBPR conducts a Preliminary Assessment to determine whether one is needed, based on the information that you provide in the form discussed in this guidance note.

Contacting OBPR early during policy development will help you to:

- progress the proposal through decision making forums, such as Cabinet, in a timely manner
- ensure full compliance with the Government's requirements.

Early advice to your Regulatory Reform Unit will also allow you to take into account any portfolio or agency specific requirements.

The Preliminary Assessment form

When you have a rudimentary set of answers to the seven RIS questions listed in the *Guide to Regulation*, give a written summary to OBPR in the form shown on the following page. If you provide enough information to help OBPR understand the nature of the proposal, you should receive a response within five working days confirming whether or not a RIS is required and, if so, what type. This is known as a Preliminary Assessment.

While filling in this form is not compulsory, it will help you identify the key features of your regulatory proposal. This will allow OBPR to quickly assess whether a RIS is required.

If you have any questions about completing the form, contact the OBPR at Helpdesk-OBPR@pmc.gov.au or call (02) 6271 6270.

A different Preliminary Assessment form is required for COAG regulatory proposals.

What's new?

This preliminary assessment form has been updated with additional questions and information relating to:

- Small business – to encourage agencies to contact the Australian Small Business and Family Enterprise Ombudsman when developing regulation likely to impact small business; and
- Australia's international obligations – to improve understanding of the need to consider Australia's international obligations when developing regulation.

Preliminary Assessment Form	
Overview	
Name of department/agency	
Name of proposal	
Description of the problem	
Outline of the objectives of government action	
Outline of the options available	
Other elements of your proposal (including consultation undertaken or proposed)	
Will Cabinet be the decision maker? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Likely impact on businesses, community organisations	
Is your proposal likely to have any regulatory impacts? If so, please specify.	
Is your proposal likely to affect regulatory costs (including administrative, substantive compliance costs and delay costs)? If so, how? If known, are the average annual regulatory costs likely to be: <input type="checkbox"/> less than \$100,000 <input type="checkbox"/> \$100,000 or above but less than \$2 million <input type="checkbox"/> \$2 million or more?	
Have you considered whether small businesses should have different obligations from larger businesses in relation to the operation of the possible regulation? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Have you designed the operation of the possible regulation taking into account the impact on small business? <input type="checkbox"/> Yes <input type="checkbox"/> No	
The <u>Australian Small Business and Family Enterprise Ombudsman's (ASBFEO)</u> office should be contacted to help assess this (contact: regulation@asbfeo.gov.au)	
If you answered yes above:	1. Have you contacted the ASBFEO's office? <input type="checkbox"/> Yes <input type="checkbox"/> No
	2. How does the design of the proposed regulation take into account the impact on small business?
Is your proposal likely to have any international trade and investment law impacts? <input type="checkbox"/> Yes <input type="checkbox"/> No	
The Trade and Investment Law Branch at the Department of Foreign Affairs & Trade (trade.law@dfat.gov.au) can help you assess these impacts.	
Timing	
Key dates and timeline	
Contact information (Please enter your contact information below)	
Name:	
Email and Phone:	
Date:	
Please forward the completed form to OBPR at Helpdesk-OBPR@pmc.gov.au or call (02) 6271 6270 do discuss your	

Preliminary Assessment Form

proposal with an OBPR officer.

Overview

Description of the problem

Describe the problem that the proposed regulation is intended to solve:

- Do not confuse the problem with a ‘symptom’ of the problem. Identify the underlying cause of the problem. Is the problem the consequence or the cause?
- What is the nature of the problem? What loss, harm or other adverse consequences are being experienced, and by whom?
- How significant is the problem? What is its magnitude? If your proposal is intended to mitigate risk of an adverse event, what is the likelihood of that event occurring? What evidence do you have to support that assessment?
- How is the problem currently regulated by Australian Government, state, territory or local government regulations, or by governments overseas? Are there deficiencies in the existing regulatory system?
- Is there a case for government intervention or is the problem of purely private interest?
- Why does current regulation not properly address the problem?
- If the problem relates to existing legislation or regulation, is it caused by faulty design, implementation, or both?
- What are the consequences of not taking any action?
- Could relying on the market in conjunction with the general application of existing laws and regulations solve the problem? If not, why not?
- Will the problem self-correct within a reasonable timeframe?

Outline of the policy objectives

Clearly identify why there is a legitimate reason for the Government to intervene. Demonstrate that the Government has the capacity to intervene successfully, and identify alternatives to government action. List objectives, outcomes, goals or targets that are sought in relation to the problem, and constraints or barriers to achieving them.

A common error is to confuse the desired final outcome of a proposal with the outputs, or means of obtaining it. The aim is not to pre-justify a preferred solution, but to specify the objective broadly enough so that all relevant alternative solutions can be considered.

Outline of the options

Outline a range of genuine and viable alternative policy options available to address the problem and achieve the policy objectives. Identify a minimum of three options¹, of which at least one option must always be non-regulatory.

Other elements of your proposal

Include any additional information that is relevant to the proposal. For example: have there been recent proposed regulations similar or related to this proposal, or is it a new regulation, an amendment to an existing regulation, or a replacement for sunseting regulation.

State whether any consultation has already been undertaken, and what consultation is proposed.

Likely impact on businesses, community organisations and individuals

Impacts can be thought of as either regulatory impacts or compliance costs.

Regulatory impacts

Regulatory impacts may include:

- changes to the number or type of products that businesses can offer, such as:
 - banning products or industry practices
 - changing the way products can be offered
- impacts on consumer demand for certain products, such as:
 - increasing prices through the regulation's requirements
 - changing the information available to consumers
- impacts on the ability of businesses to compete in the market or on their incentives to compete, such as:
 - creating a self-regulatory or co-regulatory regime
 - changing the requirements for a licence, permit or other authorisation
 - influencing the price or quantity of goods that are sold
 - setting standards for product or service quality
 - changing the prices or types of inputs available to businesses.

¹ In certain circumstances, fewer than three options can be considered in a RIS. See the [Regulation Impact Statement Policy Options](#) guidance note for more information.

Regulatory Compliance costs

All RISs must quantify the regulatory costs of new regulations to businesses, community organisations and individuals. 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. See the [Regulatory Burden Measurement framework](#) guidance note for more information on demonstrating satisfactory progress towards your net regulatory objective.

Regulatory costs include:

- compliance costs:
 - administrative costs
 - costs incurred by regulated entities mainly to demonstrate compliance with the regulation (usually record keeping and reporting costs)
 - costs incurred through complying with government taxes, fees, charges and levies, beyond the amount paid (for example, the time taken to pay a licence fee).
 - substantive compliance costs
 - costs that lead directly to the regulated outcomes being sought (usually purchase and maintenance costs for plant and equipment to meet regulatory requirements, fees paid to training providers, costs of providing information to third parties, and costs of operation—for example, energy costs).
- delay costs:
 - expenses and loss of income incurred by a regulated entity through one or both of:
 - an application delay—the time taken to complete an administrative application requirement that prevents the party from beginning its intended operations
 - an approval delay—the time taken by the regulator to communicate a decision on the administrative application that prevents the party from beginning its intended operations (this includes the time taken to assess and consider an application).

Small Business Impacts

Small businesses make up over 98% of businesses in Australia and often operate in a fundamentally different way to large or medium businesses. When a policy proposal is judged to have an impact on small business, this should be described in the preliminary assessment. The Small Business Guidance Note will assist with the identification and understanding of impacts affecting small businesses:

<https://www.pmc.gov.au/resource-centre/regulation/small-business-guidance-note>.

The Office of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) was established under the *Australian Small Business and Family Enterprise Ombudsman Act 2015* to undertake advocacy and assistance functions. This includes the review of proposals in relation to relevant legislation to ensure that policies and regulation do not have unintended consequences that adversely impact the small business sector. The ASBFEO's office should be contacted to help determine whether there are likely to be impacts on small business and whether they should have different obligations from larger businesses in relation to the operation of the possible regulation. The ASBFEO's office can provide assistance with effective consultation with the small business sector and key stakeholders.

The ASBFEO's office can be contacted on 02 62631500 or regulation@asbfeo.gov.au.

International Trade and Investment Law Impacts

Reducing the risk of implementing measures inconsistent with international trade and investment law requires that government agencies:

- develop a basic understanding of Australia's trade and investment law obligations; and
- seek advice as early as possible in the policy cycle.

Australia's international trade and investment law obligations are contained in the multilateral World Trade Organization Agreements, Australia's bilateral and plurilateral Free Trade Agreements, and Australia's bilateral investment Agreements. Our obligations exist in relation to trade in goods, services, investment and intellectual property.

Ensuring consistency with Australia's trade and investment law obligations is an important consideration when developing policy proposals in order to mitigate the risk of a dispute being brought against Australia for allegedly breaching these obligations. In this context, it is worth noting that the cost of defending Investor-State Dispute Settlement (ISDS) proceedings is generally borne by the agency with the relevant policy interest at stake.

The Trade and Investment Law Branch at the Department of Foreign Affairs & Trade (trade.law@dfat.gov.au) or the Office of International Law within the Attorney-General's Department (oil.coordinator@ag.gov.au) can help you understand how your proposed policy may interact with Australia's trade and investment law obligations.

Timing

Outline key dates and give an indicative timeline.

More information on the RIS process

More information on the RIS process is in the [Australian Government Guide to Regulation](#).