

GUIDANCE NOTE

Implementing National Agreements

The purpose of Regulatory Impact Analysis (RIA) is to establish whether there is evidence of a policy problem requiring government action and, if so, to identify the option (to address the problem) that will deliver the greatest net benefit for the Queensland community.

RIA should be undertaken for any proposed changes to regulation (or quasi-regulation) where there is an expectation of compliance by Queensland business in Queensland. Regulatory analysis and consultation should be proportional to the anticipated impacts, uncertainty and complexity of any options being considered. This applies in cases where Queensland harmonises its policy with other jurisdictions as part of a national agreement.

This guidance note is a companion to *The Queensland Government Better Regulation Policy* (the Policy) and explains how Queensland Government agencies can leverage regulatory impact analysis (RIA) performed in other jurisdictions to inform Queensland stakeholders and decision-makers.

This guidance note discusses the following topics:

- advantages and disadvantages of harmonisation of regulation
- when a national or alternate RIA process can be considered 'comparable' to the process required under the Policy
- ways to incorporate national standards into Queensland instruments.

National agreements and standards

National agreements express the commitment of governments to work together on certain goals or objectives such as a more effective response to shared risks and market failures, and more efficient regulation through harmonisation and mutual recognition.

Adopting national standards and agreements are common ways of achieving regulatory harmonisation across Australian jurisdictions. Various mechanisms can be used including:

- mutual recognition of regulatory requirements in other jurisdictions
- referencing technical standards developed by Australian or international standard-setting bodies
- adopting 'model' laws developed as part of a national process

- referencing 'national' laws passed in other Australian Parliaments in primary or subordinate legislation.

Harmonisation can produce significant benefits...

Harmonisation can reduce the regulatory burden—particularly for businesses that operate in multiple jurisdictions—and can enable businesses to access a wider range of markets and reduce regulatory compliance costs.

The Queensland community can also benefit from improved competition, greater choice, and downward pressure on prices.

...But not all harmonisation will result in an overall benefit.

As some businesses only operate in Queensland, and some workers only work / live in Queensland, harmonising regulation might not generate benefits for them, but still impose costs.

Harmonisation can generate costs that exceed benefits. For instance:

- Businesses may be required to comply with requirements that do not fit their local circumstances.
- Compromises may be needed to reach agreement between jurisdictions that may result in less than best practice regulation.
- Changing regulatory schemes may lead to significant adjustment costs.
- Harmonisation can hinder policy innovation when the 'best practice' approach to a problem is not clear or well established.¹

Given that harmonisation may generate costs, any proposal must be supported by analysis demonstrating a net benefit for the Queensland community.

¹ Queensland Competition Authority, 2013. Measuring and Reducing the Burden of Regulation (Final Report).

Leveraging existing analysis

The primary aim of the Policy is to ensure government decision-makers are provided with the necessary information to make informed decisions on regulatory proposals. As such, where a regulatory proposal with significant impacts has undergone a RIA process equivalent to a Full Impact Analysis Statement (IAS) (for example, through a national Regulatory Impact Statement, Green Papers, White Papers or independent reviews), agencies may be able to rely on this RIA rather than duplicating assessment activities.

In such cases, agencies should complete a Summary IAS and attach the 'IAS equivalent' as a Full IAS. This can save considerable resources. However, to meet the requirements of the Policy, the alternate assessment must meet the criteria outlined below.

Therefore, it is useful to consult with the OBPR early in any alternate process and prior to the release of documents for consultation. This will ensure agencies are aware of any additional analysis or consultation that may be required to meet the regulatory review requirements under the Policy.

When is a process 'comparable'?

A process or equivalent document is comparable when:

- the process is comparable / equivalent to the requirements of RIA in terms of analysis and consultation
- the analysis informs the decision-maker of the impacts on Queensland (or an agency must be able to draw these out from supplementary analysis).

Equivalency to RIA

For a process to be considered equivalent to a Full IAS under the Policy it must clearly define a problem to be addressed, assess feasible solutions and demonstrate that the recommended option generates the greatest net benefit. Public consultation is required. Box 2-1 provides some tips for efficiently conducting RIA—which also applies to any comparable process.

Regulatory proposals should be the minimum intervention required to achieve the desired outcomes. When considering the implementation of regulatory options through a national agreement, some important factors to consider include:

- potential incentives and disincentives for all stakeholders – these are not always obvious and may result in unintended consequences
- secondary effects – the initial response of businesses or consumers can lead to further changes in behaviour
- minimisation of regulation and administrative burdens – through good regulatory design and sound compliance and enforcement strategies.

Alternatives to regulatory options should always be considered. These might include non-regulatory options such as education campaigns or contributing to Australian Government or shared national activities.

It is important that an agency can demonstrate the recommended option achieves the greatest net benefit for the Queensland community.

Consideration of impacts in Queensland

Often a proposal is considered on a national basis. Some proposals may have a uniform impact across different jurisdictions, but there are some instances where the impacts can vary substantially. For example, technical specification for residences in tropical north Queensland might not be suitable for alpine Victoria; and regulatory impacts on metropolitan markets may not compare to those in a remote community.

If a proposal is likely to have fairly uniform impacts, then Queensland government agencies can directly utilise the results of the national analysis as evidence for RIA.

However, if the impacts of a proposal are likely to affect Queensland differently, it is unlikely that a national analysis will meet the requirements of the Policy on its own. In such instances further analysis and additional consultation with local stakeholders on Queensland-specific impacts may be required to meet the requirements of the Policy.

Box 2-1 Tips for efficient RIA

- Fully consider the Queensland context – the problem statement may appear very different in Queensland compared with other jurisdictions.
- Notify the OBPR early for advice and guidance on how to conduct best practice impact analysis and consultation.
- Endeavor to undertake RIA and complete a Draft Impact Analysis Statement (IAS) before Ministers are required to commit to specific policy options.
- Actively participate in discussions around joint regulatory impact analysis with other jurisdictions to determine whether requirements in the guidelines are met.
- Consider the specific effects of policy changes on the Queensland community, not just the mechanics of regulatory changes.
- Consider a range of options and their impacts on Queensland, including the costs to business and consumers.
- Examine the feasibility of those options. Provide clear reasons for not considering certain options.
- Consider whether the policy setting has changed, irrespective of whether primary or subordinate legislation needs to change to implement it.
- Note that technical, scientific, or other analyses may not meet the regulatory review requirements in the Policy because they do not cover economic and social impacts.
- Allow for a minimum of 28 days public consultation in any timelines. Consultation should be open to Queensland stakeholders, and be specific to the regulatory proposal.

Incorporating national standards into Queensland legislative instruments

Appendix A shows how RIA applies in Queensland during the steps in developing a national agreement. Agencies are responsible for ensuring the requirements in the Policy are met, and if necessary, should notify and seek advice from the OBPR early in the process.

How national agreements are implemented can also have a significant impact on the regulatory burden.

There are two broad types of instruments that can be used to implement national standards into Queensland legislation: fixed instruments and ambulatory instruments. Both have advantages, although ambulatory instruments have one important drawback in relation to regulatory review.

Fixed instruments

A specific version of an instrument may be referenced in a Queensland act or regulation—for example, an Australian Standard ‘AS 1234, 2003’. Alternatively, the actual text of the standard may be included, commonly as a schedule or appendix.

Using a fixed instrument to implement a national agreement will trigger RIA under the guidelines. This means that the regulatory change, including an evaluation of the costs and benefits of implementing the national agreement in Queensland, will have both governmental oversight and be subject to parliamentary scrutiny.

Ambulatory instruments

A standard may be referenced in Queensland regulation without specifying the version or date—for example ‘AS 1234’—any changes or updates to the standard will automatically flow through to Queensland legislation.

While using ambulatory instruments may make it easier to keep regulation up to date, there is a risk of unintended consequences. Specifically, there is no trigger for RIA, and as a result, policy changes occur without scrutiny from the Queensland Parliament or the Executive.

As with any change to an act or regulation, material changes or updates to standards may result in significant changes to their costs or benefits. It may also be difficult or costly for members of the community to stay informed about the changes and they risk inadvertently not complying.

Other considerations

Some things to consider when referencing national or international standards are:

- What process is in place to notify the agency and any stakeholders of changes to standards?
- How much does it cost people to obtain or access the standard?
- Is the standard consistent with relevant international standards or practices?

As with any other regulatory proposal, agencies should ensure that the implementation plan contains details of transitional arrangements, policy milestones, compliance support measures and performance indicators for monitoring and evaluation purposes, along with a timeline for review of the effectiveness and continuing relevance of the policy.

For further information:

- contact the Office of Best Practice Regulation at obpr@treasury.qld.gov.au
- visit our website treasury.qld.gov.au/queenslands-economy/office-of-productivity-and-red-tape-reduction

Appendix A: Indicative steps

