

# GUIDANCE NOTE

## Exclusions from undertaking regulatory impact analysis

### Why are some regulatory proposals excluded?

Some regulatory proposals may not benefit from regulatory impact analysis (RIA) because the costs of doing so would outweigh the benefits.

The *Queensland Government Guide to Better Regulation- May 2019* (the Guidelines) provides for certain regulatory proposals to be 'excluded' from further assessment if they meet a designated exclusion category (see page 9).

Examples include proposals that would have negligible impacts on business and the community (for example correcting technical errors), or proposals already subjected to extensive RIA (such as a Regulatory Impact Statement (RIS) prepared for National Cabinet or similar ministerial forums).

If a proposal is excluded, an agency is not required to complete a Preliminary Impact Assessment (PIA) or a Regulatory Impact Statement (RIS) for the introduction of the regulation.

### How are exclusions assessed?

There are two types of exclusion assessments.

#### Agency-assessed



Agencies are accountable for assessing whether a regulatory proposal meets one of the exclusion categories listed in **Table 1** (overleaf). With an agency-assessed

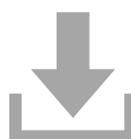
exclusion, OBPR advice is not required.

Agencies are required to maintain a record of their self-assessments, including:

- date of the self-assessment
- name of the regulation and a brief description of the proposal
- rationale for how the regulatory proposal meets the relevant exclusion category.

Agencies are encouraged to seek OBPR's advice if there is any doubt that a regulatory proposal meets the specified criteria for exclusion from RIA.

#### OBPR-assessed



Agencies should submit a request for exclusion to OBPR where a regulatory proposal meets one of the exclusion categories listed in **Table 2**.

Such requests can be lodged with OBPR online (using the exclusion template available on the QPC webpage). Include reasons why the proposal should be excluded from further RIA.

OBPR will review a request and may ask for more information about the regulatory proposal to aid its assessment.

Where OBPR assesses that a regulatory proposal satisfies the criteria for one of the exclusion categories, no further RIA is required.

### Regulatory proposals that are not excluded

If OBPR considers that a regulatory proposal does not meet an exclusion category, it may recommend the agency prepare a PIA to clearly identify: the policy problem, the objectives for government action and options to address the problem. Alternatively, OBPR may recommend the agency consult with stakeholders to identify potential adverse impacts that could arise if the proposal is implemented.

If a PIA demonstrates a policy proposal is likely to impose significant adverse impacts on a sector or sections of a community (even if the benefits of the regulatory proposal may outweigh its costs), then a RIS should be undertaken. An agency may also conclude (on its own or with assistance from OBPR) that a proposal would benefit from the preparation of a RIS without undertaking a PIA first.

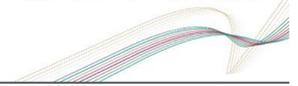
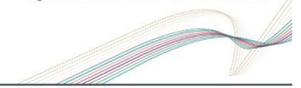


Table 1: Agency-assessed exclusions

Exclusion Category		Criteria	Examples
a)	Regulatory proposals that make consequential amendments.	<ul style="list-style-type: none"> <li>Amendments that are made as a consequence of an Act being enacted or subordinate legislation being made.</li> <li>New legislation may result in consequential amendments to other legislation for which there is limited discretion available to the decision maker.</li> </ul>	<ul style="list-style-type: none"> <li>If the <i>Local Government Act 2009</i> was amended to change the term 'local government' to 'local council', consequential amendments would be required across the statute book to change all 'local government' references to 'local council'.</li> </ul>
b)	Regulatory proposals that impose taxation or a royalty (excluding the administration of taxation or a royalty).	<ul style="list-style-type: none"> <li>Introducing a new tax or royalty or changing an existing tax or royalty.</li> <li>This exclusion category does not relate to introducing a new levy, fee or charge or changing an existing one.</li> </ul>	<ul style="list-style-type: none"> <li>A tax is a compulsory exaction of money and is not a payment for services rendered. The revenue collected is not linked to a particular good or service and is allocated to general consolidated revenue.</li> <li>A royalty is a usage-based payment made by the user to the owner for the right to ongoing use of an asset.</li> </ul>
c)	Regulatory proposals for the internal management of the public sector or statutory authority.	<ul style="list-style-type: none"> <li>Proposals that only impact on the internal operations of the public sector or a statutory authority but have no material impact on business or the community.</li> <li>Implementation of changes to internal systems to improve performance and efficiency while maintaining the quality of services to the community.</li> <li>Where a function or service is moved within or between departments, or from a department to a statutory authority, or from a statutory authority to a department.</li> </ul>	<ul style="list-style-type: none"> <li>Responsibility for oversight of the RIA process being transferred from Treasury to the OBPR.</li> <li>Responsibility for HIV prevention being moved from the Department of Health to a new statutory agency HIV Foundation Queensland.</li> <li>The merging of government departments where there is no reduction in the quality of services to the community.</li> <li>Regulation prescribing a wage increase for public sector employees covered by a continuing agreement under the <i>Industrial Relations Act 2016</i>.</li> </ul>
d)	Regulatory proposals of a savings nature.	<ul style="list-style-type: none"> <li>Applies to proposals which are designed to preserve or 'save' a law, a right, a privilege or an obligation that would otherwise be repealed or cease to have effect.</li> </ul>	<ul style="list-style-type: none"> <li>It will quite often be the case that specific transitional provisions are needed to transition from a pre-amended Act to the amended Act.</li> </ul>
e)	Regulatory proposals that are of a transitional nature.	<ul style="list-style-type: none"> <li>When a new Act is to come into operation or a principal Act is amended, it is often the case that special arrangements must be made for transitional matters.</li> </ul>	<ul style="list-style-type: none"> <li>It will quite often be the case that specific savings provisions are needed to transition from a pre-amended Act to the amended Act.</li> </ul>



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Exclusion Category		Criteria	Examples
f)	Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice.	<ul style="list-style-type: none"> <li>Amending the technical error will not result in a change from the original intent, interpretation or effect of the legislation.</li> <li>Amending the legislation to reflect a change in drafting practice does not affect the original intent, interpretation or effect of the legislation.</li> </ul>	<ul style="list-style-type: none"> <li>Technical errors could include a typographical or punctuation error or incorrect reference to a section in the legislation but would not include inserting new provisions.</li> <li>Replacing 'meter operating charge' with 'meter usage charge' to ensure that the correct meter charge will apply.</li> </ul>
g)	Regulatory proposals that are of a machinery nature.	<ul style="list-style-type: none"> <li>No substantive policy change has been made.</li> <li>Consists of provisions that are merely declaratory.</li> <li>Repealing redundant regulations.</li> <li>Facilitating routine tasks of government.</li> <li>Adds or removes items from prescribed lists to reflect technological developments.</li> <li>Updates thresholds and dates.</li> <li>Gazettal processes.</li> </ul>	<ul style="list-style-type: none"> <li>An Act provides for a person to delegate powers to a prescribed person.</li> <li>Proclamations that are required before an Act or sections of an Act can be brought into operation. Some are also required as part of the day-to-day operation of complex legislative schemes.</li> <li>Setting opening and closing dates for fisheries.</li> <li>Adding drug testing saliva analysing instruments to the prescribed list in the <i>Traffic Regulation 1962</i>.</li> <li>Gazetting changes made to Queensland's protected area estate.</li> </ul>
h)	Regulatory proposals that put forward standard annual fee variations in line with or below a government endorsed indexation factor.	<ul style="list-style-type: none"> <li>The annual government indexation rate for fees and charges that applies to the fees and charges of departments and statutory bodies.</li> </ul>	<ul style="list-style-type: none"> <li>The annual government indexation rate for fees and charges from 1 July 2013 to 30 June 2014 was 3.5 per cent.</li> </ul>
i)	Regulatory proposals for variations to fees/premiums in line with actuarially determined assessments.	<ul style="list-style-type: none"> <li>Relates to specific regulatory-imposed fees/premiums where an actuarially based formal risk assessment is required to determine an appropriate fee/premium structure to cover the budget/financial risk to the State.</li> </ul>	<ul style="list-style-type: none"> <li>Some specific premium adjustments may need to be considered for insurance premiums imposed by the Motor Accident Insurance Commission where an actuarially based assessment has determined a shift in the risk profile.</li> <li>Section 26A of the <i>Queensland Building and Construction Commission Act 1991</i> requires the Commission to manage the Queensland Home Warranty Scheme in accordance with actuarially sustainable principles to ensure the</li> </ul>



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Exclusion Category		Criteria	Examples
			amounts paid into the insurance fund are sufficient to meet the cost of claims and administration.
j)	Regulatory proposals relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services.	<ul style="list-style-type: none"> <li>• Changes to police powers and administration.</li> <li>• Changes to laws/rules relating to the administration of courts and tribunals.</li> <li>• Changes to the powers of corrective service officers.</li> <li>• Changes in the general criminal law and procedure.</li> </ul>	<ul style="list-style-type: none"> <li>• Changes to general criminal laws such as the <i>Criminal Code</i> and the <i>Penalties and Sentences Act 1992</i>.</li> <li>• Changes to legislation providing for the administration of courts and tribunals and to associated rules of court and practice directions.</li> <li>• Changes to the <i>Corrective Services Act 2006</i> and <i>Corrective Services Regulation 2017</i>.</li> </ul>

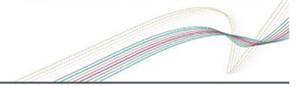


Table 2 OBPR-assessed exclusions

Exclusion Category		Criteria	Examples
k)	Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.	<ul style="list-style-type: none"> <li>Removing or reducing the requirements on business or the community that are unlikely to increase costs or risks on third parties.</li> <li>No change or increase in the regulatory burden on business or the community.</li> </ul>	<ul style="list-style-type: none"> <li>Reducing unnecessary or excessive compliance cost burdens on business.</li> </ul>
l)	Regulatory proposals that have already undergone an extensive impact assessment process.	<ul style="list-style-type: none"> <li>The process must be comparable to the requirements of RIA in terms of analysis and consultation.</li> <li>The process must consider the impacts on Queensland and regulatory best practice principles.</li> </ul>	<ul style="list-style-type: none"> <li>National Decision RISs.</li> <li>Independent reviews.</li> <li>Green papers.</li> <li>White papers.</li> <li>A process that mirrors RIA that is enshrined in legislation - for example, a water plan or water use plan approved under the <i>Water Act 2000</i>.</li> </ul>
m)	Regulatory proposals for matters that require an immediate legislative response to prevent damage to property or injury to persons.	<ul style="list-style-type: none"> <li>The additional time required by the preparation of a RIS would represent an unacceptable increase in the risk of damage or injury.</li> </ul>	<ul style="list-style-type: none"> <li>Management of an outbreak of a disease or biosecurity threat.</li> </ul>