

# The Queensland Government Better Regulation Policy

September 2023

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## The Policy

The Queensland Government is committed to ensuring a competitive regulatory framework that supports Queensland's economy and encourages investment while ensuring necessary community and environmental safeguards are maintained. The government supports this commitment through a fit-for-purpose regulatory framework to ensure the development, review and administration of regulation is necessary, effective and efficient, thereby achieving policy objectives while minimising costs on business and the community. This *Better Regulation Policy* (the Policy) outlines the Queensland Government's requirements for the development and review of regulation. Requirements relating to the administration of regulation are outlined separately in the Queensland Government's Regulator Performance Framework available at [treasury.qld.gov.au/rpf](https://treasury.qld.gov.au/rpf)

Regulation can provide a range of benefits to the community. When it works well, it can support the efficient functioning of markets, address safety issues, and improve outcomes for consumers and the environment. But when it does not, regulation may fail to achieve its safety, environmental or consumer protection objectives and have unintended impacts on prices, competition and consumers.

When considering a policy proposal, it is essential government decision makers are provided with well-informed advice and a strong evidence base. This is particularly important for policy proposals that introduce or amend regulation as these can have significant impacts on business, the community and the Queensland economy. Regulatory Impact Analysis (RIA) helps ensure the introduction or amendment of regulation is necessary and effective and avoids unnecessary burden on affected stakeholders.

RIA is a systematic approach to critically assessing the impacts of proposed regulatory policy options and is an integral part of good policy making. It is designed to improve the quality of regulation by providing relevant and timely information to government decision makers about the expected impacts of different policy options for addressing a policy problem. It also provides the basis for the community to be consulted on the policy problem and how to address it. After government decisions are made, it performs an important accountability function by enabling the community to understand what decisions have been made and why.

This policy is set out in three parts:

- The regulatory review requirements — the RIA process that must be undertaken for all new and amending regulation.
- Preparing an Impact Analysis Statement (IAS) — the requirements and guidance for preparing an IAS.
- Appendix — IAS template.

A range of additional information and guidance material to provide further support to the application of RIA is available online at [treasury.qld.gov.au/betterregulation](https://treasury.qld.gov.au/betterregulation)

### Role of Ministers and agencies

The relevant portfolio Minister and Director-General are responsible for ensuring the regulatory review requirements are met and for approving IASs, including those for submission to Cabinet (for Cabinet proposals) and for publication.

Departments and agencies are responsible for preparing IASs and undertaking consultation to report to the Minister.

### The Office of Best Practice Regulation

The Office of Best Practice Regulation (OBPR) provides regulatory advice, analytical support and training on the development of regulation, application of regulatory best practice principles and RIA.

It is responsible for:

- providing advice on the costs, benefits and risks of regulation
- assisting agencies to scope policy problems, estimate impacts, identify and develop alternative options and undertake cost-benefit analysis
- providing training on RIA, including the preparation of IASs
- reporting annually on agency implementation of RIA.

The OBPR also manages implementation and oversight of the Queensland Government's Regulator Performance Framework.

The OBPR can be contacted at [obpr@treasury.qld.gov.au](mailto:obpr@treasury.qld.gov.au)

# 1. The regulatory review requirements

## 1.1 What is meant by regulation?

Regulation is any rule endorsed by government where there is an expectation of compliance (Box 1).

### Box 1: Types of regulation

- Primary legislation refers to Acts of Parliament.
- Subordinate legislation comprises rules or instruments that have been made by an authority to which Parliament has delegated part of its legislative power. These include disallowable instruments such as statutory rules, ordinances, regulations, bylaws, and other subordinate legislation that are not subject to Parliamentary scrutiny.
- Quasi-regulation includes those rules, instruments and standards by which government influences business and the community to comply, but which do not form part of explicit government regulation. Examples can include government endorsed industry codes of practice or standards, industry–government agreements and accreditation schemes. Whether or not a particular measure is deemed to be quasi-regulation depends on whether there is an expectation of compliance.

## 1.2 When does the Policy apply

The Policy applies to all Queensland Government agencies, including statutory authorities, developing regulatory proposals that require agency or Ministerial approval. The Policy does not apply to:

- statutory authorities who are not subject to direction by an agency or Minister
- local governments.

## 1.3 What is an IAS?

An Impact Analysis Statement (IAS) is an assessment of a regulatory proposal. It is designed to answer seven questions:

- 1 What is the problem or issue the government is trying to address? (problem identification)
- 2 Is government action needed and, if so, why? (case for government action)
- 3 If government intervention is necessary, what feasible policy options (regulatory and non-regulatory) could address the problem? (identify policy options)

- 4 What are the potential net impacts (costs and benefits) of each option? (impact analysis)
- 5 Which option most effectively addresses the problem and has the greatest net benefit?
- 6 How should the preferred option be implemented and its effectiveness evaluated? (implementation and evaluation)
- 7 Who was consulted and what was their feedback? (consultation)

## 1.4 What is required?

- The relevant Minister and Director-General are responsible for ensuring the regulatory review requirements are met
- An IAS must be completed for new and amending regulatory proposals, with the level of information and analysis commensurate with the likely impact of the proposal
- All approved IAS are published on the relevant agency website.

## 1.5 The IAS process

The IAS process has five key steps.

### Step 1: Advise the OBPR

An agency must notify the OBPR when a regulatory solution has first been identified as a viable option to address a policy issue under consideration, either as a new policy or as part of a review. For proposals likely to require RIA, basic information on the first three IAS questions in section 1.3 should be provided to the OBPR with the notification.

The OBPR will provide agencies with preliminary advice on potential costs, benefits and risks from regulation for significant proposals or where proposals would benefit from early advice.

The OBPR is available to provide guidance, assistance and support for all proposals to meet the RIA requirements.

### Step 2: Prepare an IAS

An IAS is required for all regulatory proposals. Guidance on how to prepare an IAS is set out in section 2 of this Policy. Appendix A sets out the IAS template that must be completed.

The proportionality principle applies to IASs. This means the depth of analysis and consultation undertaken for a proposal should be proportional to the complexity and significance of the problem and the size of the potential impacts.

Consequently, the level of analysis, degree of quantification of impacts and extent of consultation undertaken will vary depending on the regulatory proposal. Where a proposed legislative instrument (such as a Bill) contains a number of regulatory proposals, agencies can include all proposals in one IAS or prepare multiple IAS as appropriate.

### Certain regulatory proposals do not require further impact analysis:

Regulatory proposals that are minor and machinery in nature (that is, with no or negligible costs):

- Consequential amendments
- Corrections, technical errors and minor updates
- Declaratory provisions
- Routine updates (no substantive regulatory or policy change)
- Transitional and savings provisions
- Updates for current drafting practice or technological developments
- Repeal of redundant regulations, facilitating routine tasks of government, gazettal processes.

Regulatory proposals where no RIA is required under the Policy:

- Regulatory proposals which propose only standard fee variations, in line with, or below a government endorsed indexation factor or actuarially determined assessments
- Regulatory proposals relating to taxation or royalties (not including fees or levies for service)
- Regulatory proposals relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services
- Regulatory proposals for the internal management of the public sector
- Regulatory proposals for matters that require an immediate response to prevent damage to property or injury to persons (such as a temporary regulation to address an immediate biosecurity risk)
- Regulatory proposals that are deregulatory (remove regulation), and do not increase costs or regulatory burden on business or the community.

For these proposals, the agency must complete a short statement in the IAS template, for example: *The proposal relates to the internal management of the public sector and is not subject to RIA requirements under the Better Regulation Policy.* See Appendix A for further information.

For proposals that have some, but not significant, impacts, the agency must complete the Summary IAS, including reporting direct costs and consultation undertaken. This may include, for example, targeted consultation with directly affected parties reported in the Summary IAS.

For proposals that have significant impacts, a Summary and Full IAS must be completed, including analysis that addresses the RIA requirements (Box 2), that reports on direct and indirect costs and benefits and includes both a Consultation and Decision IAS.

Table 1 outlines how the proportionality principle applies in a range of common scenarios.

Table 1: Application of proportionality principle		
Type of proposal	IAS requirements	Example
<b>Proposal is:</b> <ul style="list-style-type: none"> <li>• minor or machinery</li> <li>• does not require RIA under the Policy</li> </ul>	IAS can be limited to a short statement in the IAS template	Updates to account for minor changes in practice  Consequential amendments  Machinery of government changes
Proposal has some (but not significant) impacts, that decision makers should be aware of	IAS required  Summary IAS to be completed	A new requirement to support existing compliance activities  A moderate fee increase above the indexation factor
Proposal has significant impacts	Summary and Full IAS required, including analysis that addresses all RIA requirements (Box 2), and both a Consultation and Decision IAS	Significant intervention in a market  New or significant changes to a licensing regime
Proposal has significant impacts – assessed through an RIA process equivalent to a Full IAS	IAS required  Complete Summary IAS and attach IAS-equivalent as Full IAS	National Regulatory Impact Statement  White paper
Proposal is exempted from RIA by Cabinet (exceptional circumstances exemption)	IAS can be limited to a short statement in the IAS template	There is a need to urgently implement policy or where consultation on a proposal would compromise the public interest

## Box 2: RIA requirements

Regulatory proposals for which RIA is required must meet the requirements set out below. The proportionality principle applies — for significant proposals, the Consultation and Decision IAS should address the requirements to the highest standard possible. For less significant proposals, the Summary IAS should meet the core elements of the requirements, with proportionate analysis and consultation.

**1 The IAS must clearly identify the problem that needs to be addressed. It should present:**

- evidence of the nature and magnitude of the problem
- evidence of who is affected by the problem
- evidence that the existing regulation is not adequately addressing the problem and, where new regulation not in place in other jurisdictions is being considered, why Queensland circumstances require a regulatory approach
- any relevant risks and explain why they are excessive
- a clear case for why additional government intervention may be required to address the problem.

**2 The IAS must clearly identify the objectives of government action. It should:**

- express the objectives of the regulatory proposal in terms of what is to be achieved
- state objectives that are specific, measurable, accountable, realistic and time-bound.

**3 The IAS must identify a range of feasible options. It should:**

- select options that are feasible approaches to addressing the problem including (as appropriate), non-regulatory, self-regulatory and co-regulatory options
- provide a clear justification where options are limited or constrained.

**4 The IAS must identify the likely impacts of the regulatory proposal and provide an adequate analysis of the costs and benefits of the feasible options. It should:**

- assess the costs and benefits of all feasible options using an appropriate level of analysis commensurate with the complexity and significance of the problem and the size of the potential impacts on the community
- identify the groups in the community likely to be affected by each option and specify any significant economic, social or environmental impacts on them
- estimate and report compliance costs using the direct costs calculator tool
- rigorously justify non-monetised costs and benefits
- analyse the extent to which each option would reduce the relevant risk, and the costs and benefits involved
- provide evidence in support of key assumptions and clearly identify any gaps in data
- identify and assess any implications for mutual recognition obligations relating to goods and services.

**5 The IAS must demonstrate the level of consultation that has been undertaken in the policy development process. It should:**

- describe how consultation was conducted including when consultation was undertaken, the timeframe given and the methods of consultation
- articulate the views of those consulted, including substantial disagreements
- outline how those views were taken into consideration
- provide an explanation as to why full public consultation was not undertaken if applicable.

**6 The IAS should clearly outline why the selected option is the recommended option. It should:**

- demonstrate that the option chosen is the one that generates the greatest net benefit to the community
- provide analysis that supports the recommended option.

**7 The recommended option should be consistent with other policies and legislation. The IAS should also:**

- provide a brief assessment of the consistency of the proposed regulation with clause 5 of the *Competition Principles Agreement*. Reasons must be provided for any inconsistencies
- where relevant, agencies should identify and assess any implications a proposed regulatory proposal may have for the state's mutual recognition obligations under the *Mutual Recognition Act* and the *Trans-Tasman Mutual Recognition Act*.

**8 The IAS outlines an implementation, evaluation and compliance support strategy for the recommended option. It should:**

- briefly describe the proposed implementation plan, including any implementation issues or risks that may arise
- briefly describe what guidance or compliance support strategy will be conducted to mitigate any issues or risks
- outline a monitoring and evaluation strategy for the recommended option to ensure it remains effective and relevant over time.



## When is an impact likely to be significant?

Deciding whether a regulatory proposal is likely to have significant impacts on business, the community or government requires careful assessment.

In determining the significance of an impact, consider the following factors:

- the breadth of the impact — does it affect a large number of industries or individuals or a large proportion of businesses within an industry?
- the intensity of the impact — does it affect a small number of industries or individuals or a small proportion of businesses within an industry, but the impact is intense?
- the proportionality of the impact — does it have a disproportionate impact on a particular stakeholder group (such as small business)?

- the frequency of the impact — does it occur frequently rather than one-off?
- the probability of the impact — does it have a high probability of occurring?
- the extent to which the impact is reversible or can be mitigated — can it be reversed or mitigated?
- the degree of uncertainty regarding the impact — is there a high degree of uncertainty?
- the level of community concern regarding the impact — is it a matter of debate or fundamental disagreement within the community?

What constitutes ‘significant’ will vary and will depend on the regulatory proposal. Examples of the types of impacts a proposal may have on stakeholders are provided in Box 3. This list is not exhaustive. If in doubt about the significance, it should be assumed that the proposal is significant.

Box 3: Examples of impacts of regulation on the community	
Business impacts	Competition impacts
<ul style="list-style-type: none"> <li>• Increases business costs or decreases business profitability.</li> <li>• Creates barriers to businesses entering or exiting a market through the allocation of licences, rights, entitlements, quotas.</li> <li>• Introduces controls that reduce the number of participants in a market.</li> <li>• Imposes restrictions that reduce the range, quality or availability of goods and services in a market.</li> <li>• Alters or limits the way in which a business operates: <ul style="list-style-type: none"> <li>- changes work practices within the business</li> <li>- introduces price controls</li> <li>- restricts hours of operation</li> <li>- regulates the size or nature of premises</li> <li>- requires or limits the provision of specified facilities</li> <li>- imposes geographical limits on business operations</li> <li>- limits advertising or promotion</li> <li>- requires the provision of specific information to consumers.</li> </ul> </li> <li>• Imposes reporting requirements on business.</li> <li>• Creates a disincentive to private investment.</li> <li>• Limits the ability of businesses to access local, interstate and international markets.</li> <li>• Places businesses at a competitive disadvantage with interstate and international competitors.</li> <li>• Reduces employment opportunities, limits skills development or restricts labour mobility.</li> <li>• Limits the ability of businesses to innovate, adopt new technology or respond to the changing demands of consumers.</li> </ul>	<ul style="list-style-type: none"> <li>• Increases the price of a good or service.</li> <li>• Imposes restrictions that reduce the range, quality or availability of goods and services in a market.</li> <li>• Makes it more difficult for consumers to move between service providers.</li> </ul>
	Social and environmental impacts
	<ul style="list-style-type: none"> <li>• Reduces public health and safety.</li> <li>• Displaces the community or parts of the community.</li> <li>• Restricts basic community services and/or access to these services.</li> <li>• Constrains fundamental rights or freedoms of individuals.</li> <li>• Damages flora, fauna or biodiversity.</li> <li>• Increases air, land, water pollution.</li> <li>• Reduces the sustainability of water catchments.</li> <li>• Increases waste production.</li> </ul>
	Government impacts
	<ul style="list-style-type: none"> <li>• Requires additional resources.</li> <li>• Increases the financial burden on government.</li> <li>• Decreases the effectiveness and efficiency of government.</li> </ul>



## Seeking a Cabinet exemption — exceptional circumstances

Cabinet may exempt a proposal from RIA requirements in exceptional circumstances.

Such circumstances may occur where there is the need to urgently implement government policy or situations where public consultation on a proposal would not be appropriate because it may compromise the public interest. This would include matters that are commercial-in-confidence or where advance notice of the proposal through public consultation would undermine the objectives of the regulation.

In granting an exemption, Cabinet may attach conditions on the approval, including requiring a Post Implementation IAS after the regulation has been in place for a certain period of time.

Where an exemption is granted, the agency must note the exemption and the reasons for the exemption in the summary section of the IAS template.

Note: Any regulatory proposal that contains anti-competitive conduct is not eligible for a Cabinet exemption, unless the Treasurer authorises an alternative form of public benefit test. Without a public benefit justification, the regulation may be overturned by the Commonwealth Government.

## Step 3: IAS approval

An IAS must be approved and signed by the Minister and Director-General.

For an IAS on regulatory proposals that are minor and machinery or do not require RIA under the Policy, the Minister and/or Director-General must confirm that the proposal meets those conditions and therefore meets the requirements of the Policy.

For all other proposals, the relevant Minister and Director-General must confirm the IAS meets the requirements of the Policy and is consistent with the RIA requirements set out in Box 2.

Confirmation is indicated using the signature block in the IAS template.

For regulatory proposals requiring Cabinet, cabinet committee or Governor-in-Council approval, the Minister and Director-General approve the IAS to accompany the submission to the decision-making body. The Minister and/or Director-General may seek advice from the OBPR on the IAS at any time.

Note: For proposals that are not formally approved by a Minister (for example, quasi-regulations whose approval are delegated by legislation to an officer of an agency), then only the Director-General / relevant Chief Executive is required to sign the IAS.

## Step 4: Undertake formal consultation process (for significant proposals only)

### A) Release Consultation IAS

Proposals with significant impacts require a Full IAS consisting of a Consultation IAS and a Decision IAS. The contents of a Full IAS are outlined in Box 1 of the IAS template (Appendix A). A Summary IAS should also be completed and attached to and submitted with the Full IAS when submitted to government.

A Consultation IAS should be prepared and released for a minimum period of 28 calendar days for public consultation. Depending on the nature of the proposal, a longer time period, sufficient for interested parties to provide a considered response, would be advisable (for example, 60 days).

Using a Consultation IAS as the main basis for consulting with interested parties allows stakeholders to consider and comment on the analysis of impacts and the evaluation of policy options.

The Consultation IAS should be published on the Queensland Government *Get involved* website and the departmental website to facilitate stakeholder consideration and feedback.

Consultation should comply with the Queensland Government's best practice stakeholder consultation principles (see Box 7 in section 2.5).

### B) Prepare Decision IAS

Once the agency has completed public consultation on the Consultation IAS, it should prepare a Decision IAS:

- strengthening the analysis to reflect evidence collected to ensure it meets the RIA requirements
- outlining feedback from stakeholders and responses to issues raised.

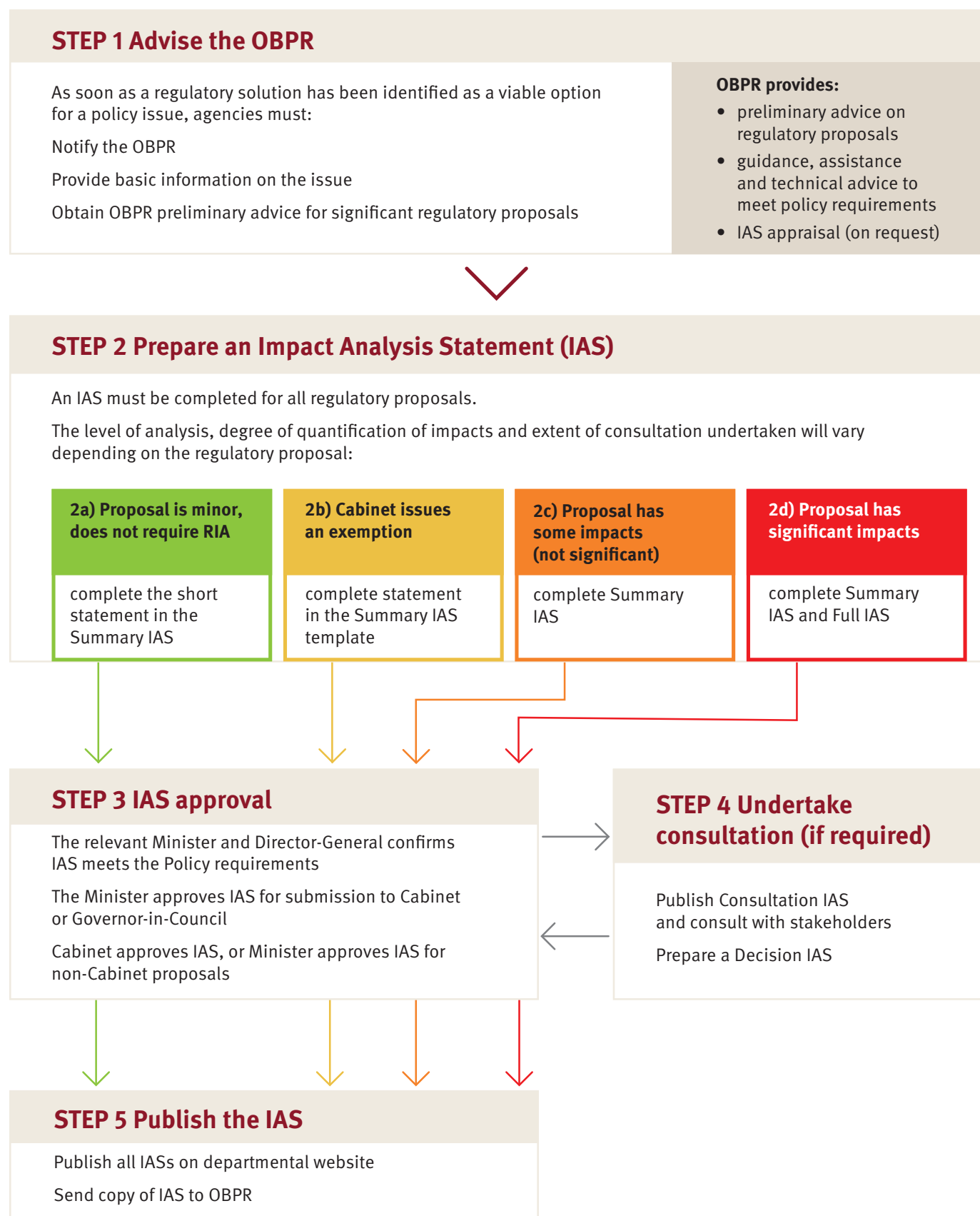
Step 3 should be repeated for IAS finalisation and approval.

Note: A reference to a regulatory impact statement in an Act (for example, s24 of the *Legislative Standards Act 1992*) is taken to be a reference to a Decision Full IAS.

## Step 5: Publish the IAS

All IASs must be published on the departmental website and a copy provided to the OBPR for its records following final approval of the regulatory proposal by the relevant decision-making body (such as Cabinet or Governor-in-Council). IASs should be maintained on the departmental website.

Figure 1: Key steps in RIA



## 2. Preparing an IAS

This section provides guidance on preparing an IAS. While the guidance focuses on preparing a full IAS, it is equally relevant for preparing a Summary IAS for proposals requiring RIA, noting the proportionality principle means that a Summary IAS may not involve the same level of analysis or requirements for consultation.

An IAS provides government decision makers with evidence and analysis on which to base their policy decisions and informs stakeholders of the reasons why a particular option is preferred. The IAS should be an objective, balanced statement, rather than an advocacy document. The recommended option should be the one that generates the greatest net benefit to the community compared to the other options.

The format of an IAS should follow the below steps, as outlined in this chapter:

- 1 Summary IAS (Appendix A template)
- 2 Identification of the problem
- 3 Objectives of government action
- 4 Consideration of options
- 5 Impact analysis of the options
- 6 Consultation
- 7 Conclusion and recommended option
- 8 Implementation, compliance support and evaluation strategy

### 2.1 Identification of the problem

The starting point to develop any policy or regulatory response is to identify and assess the nature, size and scope of the problem the government is trying to address. This is fundamental to determine an appropriate response that targets the problem in the most effective and efficient way. As government action is not costless, there is an onus on agencies to describe why government involvement is required to deal with a particular problem. When identifying the nature and magnitude of the problem agencies should cite observed outcomes and provide quantitative evidence where available. A lack, or absence, of regulation does not constitute a problem definition.

If the problem involves risk to the community, agencies should describe the risk and consider whether it is large enough to warrant intervention, or assess whether the level of risk is acceptable when weighed against the costs of reducing it. Box 4 provides further guidance on identifying the problem.

#### Box 4: Identification of problems and risks

What is the **nature** of the problem? For example, is it related to:

- market failure (monopoly or abuse of market power, presence of externalities or public goods and information asymmetry)
- regulatory failure (regulation that is not delivering outcomes in the community's interest)
- unacceptable hazard or risk to human health, safety or the environment
- poor social/equity outcomes.

What is the **magnitude** of the problem?

- What is the scale of the problem (intensity of impact on those affected)?
- What is the scope of the problem (who or what is being affected)?
- What is the probability of an adverse event occurring? Why is this risk excessive?

How is the problem regulated?

- Why do current regulations not properly address the identified problem?
- Is this because the regulations are poorly designed, or because there are problems with compliance? Could the problem be addressed by improving enforcement or encouraging greater compliance with the existing regulation?
- What are the consequences of not taking any action?
- Could relying on the market with existing regulation solve the problem? If not, why not?

Government intervention is often suggested in cases of market failure. When markets are working well, they allocate resources to their most valued uses. Market failure refers to situations where markets do not allocate resources efficiently (see Box 5).

## Box 5: Market failures

**Lack of effective competition** can occur where one or a few firms can profitably raise price above the competitive level, so that consumers demand less of a product than is optimal. The threat of entry and customers' countervailing power may discourage this.

**Externalities** occur where activities impose costs (such as pollution) or benefits (such as bees pollinating flowers) on third parties, with the result that these impacts are not reflected in prices and too much or too little of them is produced.

**Public goods** (such as defence and police forces) are goods or services for which consumption is non-rivalrous (consumption by one person does not affect the amount available to others) and non-excludable (people cannot be prevented from consuming it). Private firms are likely to under-provide public goods, because they cannot charge for them.

**Asymmetric information** occurs where one party to a transaction has more information about key aspects of the transaction than the other. This gives rise to two problems — adverse selection and moral hazard. Adverse selection is where one party to a transaction can use their private knowledge of the risks involved in a transaction to maximise their outcomes at the expense of other parties to the transaction. Moral hazard is a situation in which one party engages in risky behaviour because it knows the other party bears the costs of its behaviour.

However, market failure only justifies government intervention if the benefits of intervention will outweigh the costs. The IAS should identify the precise nature of the market failure and its effects.

Whilst using regulation to achieve social objectives such as income redistribution or fairness and equity is also possible, it is difficult to do this effectively because regulation is a blunt instrument that can have unintended effects, for example:

- subsidising the cost of water provided to low income consumers may encourage excessive use of water
- introducing price caps may reduce the supply and quality of goods and services offered to consumers.

In many cases, distributional goals can be achieved at less cost by direct wealth transfers, such as income support payments, that do not distort market prices.

## 2.2 Objectives of government action

This step should identify what outcomes, goals or targets are sought in relation to the identified problem.

It is important to not confuse 'ends' with 'means' when setting an objective. For example, an objective of government health policy may be 'to reduce the health care costs associated

with the use of a particular piece of equipment'. This objective differs from the narrower objective of 'banning the use of the piece of equipment by people under 18 years of age', which is only one means or option by which the broader objective may be obtained.

The objective should be clear, concise and as specific as possible. It should be broad enough to allow consideration of all relevant alternative options, but not so broad that the range of options becomes too large to assess, or the extent to which the objective has been met becomes too hard to establish. A clear statement of objectives is critical for the evaluation of options and any future reviews. Objectives should be measurable.

Sometimes a regulatory proposal can have a number of objectives. If applicable, a distinction should be made between the primary and lesser objectives of the proposal.

If objectives are subject to constraints — for example, that they must be achieved within a certain timeframe — these should also be clearly specified.

## 2.3 Consideration of options

It is important that an IAS considers a wide range of options, to improve the likelihood that the best approach to achieving the objective will be identified. At the outset, all feasible options should be considered, to enable the recommended option to be the one that generates the greatest net benefit to the community.

As the IAS develops, it is not unusual to determine that particular options are infeasible (because they appear unlikely to achieve the objective or it becomes obvious without further assessment that their costs outweigh their benefits). Where this occurs, it should be made transparent and no further analysis of these options is required in subsequent sections of the IAS.

Options can also be curtailed when there are certain constraints, including in relation to:

- the funding available for the policy
- the timeframes for implementing policy (while policy design should not be rushed, not all alternatives will be capable of implementation within available timeframes)
- inconsistency with existing policies.

Where such constraints occur these need to be explained and justified in the IAS.

During consultation, stakeholders may identify other options to achieve the objective. Agencies should be willing to add to their analysis further feasible options that emerge from consultation. A rationale for the rejection of options that are not considered feasible should also be included.

When considering options, consideration should be given to approaches adopted in other Australian jurisdictions. If the IAS concludes that a regulatory approach, which differs from that of other jurisdictions, is the preferred option, the IAS should conclusively demonstrate why circumstances in Queensland require such an approach.

## Alternatives to legislation

Explicit regulation in the form of primary and subordinate legislation is seldom the only option available to government.

Governments can pursue a range of options to achieve their policy objectives. These may include:

- no action (that is, relying on private behaviour, in conjunction with existing general tort, liability and insurance laws)
- information and education campaigns
- market-based instruments including taxes, subsidies, tradeable permits and tradeable property rights
- pre-market assessment schemes such as listing, certification and licensing
- exclusion measures such as bans, recalls, licence revocation provisions and 'negative' licensing
- service charters
- standards, which can be voluntary or regulatory, and performance-based or prescriptive
- other mechanisms, such as public information registers, mandatory audits and quality assurance schemes.

Non-regulatory approaches should be considered if they have the potential to achieve the government's objective. These include:

- **Self-regulation** — generally characterised by industry-formulated rules and codes of conduct, with industry solely responsible for enforcement.
- **Quasi-regulation** — includes those rules, instruments and standards by which government influences business to comply, but which do not form part of explicit government regulation. Examples can include government-endorsed industry codes of practice or standards, government-issued guidance notes, industry—government agreements and accreditation schemes. Whether or not a particular measure is deemed to be quasi-regulation depends on the nature of government involvement and if there is an expectation of compliance.

- **Co-regulation** — where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced. Sometimes legislation sets out mandatory government standards, but provides that compliance with an industry code can be deemed to comply with those standards. Legislation may also provide for government-imposed arrangements in the event that industry does not implement its own arrangements.

## Consistency with other regulation

Maintaining consistency of regulation across governments can help businesses and individuals minimise compliance costs, lower administrative costs for government, and benefit the broader community through increased efficiency and effectiveness of regulation. As a result, options should generally be developed to maintain consistency with other regulation. To meet this requirement, two key questions should be answered:

- Is the option consistent with, and not duplicative of, other Queensland Government policy and regulation?
- Is the option consistent with, and not duplicative of, Commonwealth or local government regulation?

## 2.4 Impact analysis of the options

One of the most important steps in an IAS is its assessment of a proposal's likely impacts. An IAS should consider all significant costs and benefits.

As mentioned in an earlier chapter, the proportionality principle suggests that the depth of analysis should be commensurate with the size, nature and likelihood of a proposal's potential impacts.

For transparency, the IAS should report the sources of data used in the analysis, and any assumptions that have been made.

### Identify expected costs and benefits of the options

Costs and benefits are terms used to describe the negative and positive effects of a proposal. These include compliance costs and economic, social and environmental costs and benefits. They should be assessed in a systematic and objective manner to identify the option likely to be of greatest net benefit to the community.

For new or amending regulation, the costs and benefits of the proposal relate to changes compared to what would have happened in the absence of the proposal. In other words, the incremental costs and benefits are measured using the base



case of the 'no action' option. The 'no action' base case (or counterfactual) should represent a robust estimate of what would happen without the proposal, and should not just assume no other changes, unless no other changes would have eventuated in the absence of the proposal.

## Sunsetting regulation

Where an IAS is being prepared in relation to sunseting regulation (see section 3.4), the 'no regulation' option should be considered as the base case against which other options (including the existing regulation) are measured in terms of costs and benefits. This may prove difficult if regulations have been in place for a long time. Nevertheless, for sunseting reviews to achieve their objective of ensuring the stock of regulation is up to date and relevant, it is important that the base case is 'no regulation'.

## Assessing costs and benefits

There are a number of alternative methods for assessing impacts in an IAS — cost-benefit analysis (CBA), cost-effectiveness analysis (CEA) and multi-criteria analysis (MCA).

CBA is the preferred method of assessing costs and benefits in an IAS for a proposal with significant impacts. However, it tends to be data-intensive. When assessing costs and benefits, the rules of thumb should be:

- impacts should be monetised wherever possible
- where monetisation is not possible, impacts should be quantified (that is, lives saved, injuries/accidents avoided, etc)
- where quantification is not possible, impacts should be qualitatively assessed with convincing justification and argument.

Regardless of the extent of monetisation of costs and benefits, all IAS documents should follow a cost–benefit framework.

Valuing costs and benefits in dollars can add rigour to RIA and allow for better engagement with stakeholders about the anticipated impacts of regulatory proposals. However, this is not always possible, particularly for the valuation of benefits.

Even in these cases, valuing the costs in dollars can indicate the minimum value of benefits that are necessary for the option to break-even.

Where there is significant uncertainty about any key inputs, including assumptions, the IAS will benefit from sensitivity analysis to provide information about how changes in different input variables will affect the proposal's costs and benefits.

## Competition impacts

Regulatory restrictions on competition can raise consumer prices, stifle business innovation, reduce choice and convenience and drive down productivity.

An IAS must provide a brief assessment of the consistency of the proposed regulation with clause 5 of the Competition Principles Agreement (CPA). Clause 5(1) of the CPA requires that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs
- the objectives of the legislation can only be achieved by restricting competition.

In accordance with clause 1(3)(c) of the CPA, an IAS is undertaken for any regulatory proposal that restricts competition and must take into account the following matters, where relevant:

- government legislation and policies relating to ecologically sustainable development
- social welfare and equity considerations, including community service obligations
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity
- economic and regional development, including employment and investment growth
- the interests of consumers generally or of a class of consumers
- the competitiveness of Australian businesses
- the efficient allocation of resources.

A competition assessment is required in the IAS, irrespective of whether the regulatory proposal is ultimately assessed as having competition impacts.

The Organisation for Economic Co-operation and Development (OECD) competition checklist set out in Box 6 helps assess whether a proposal will restrict competition. If the answer to any of the questions in Box 6 is 'yes', this indicates that a regulatory proposal may restrict competition and further analysis of the costs and benefits of the restriction is required.

#### Box 6: OECD competition checklist

Would the regulatory proposal restrict or reduce the number or range of suppliers? Would it:

- grant exclusive rights for a supplier to provide goods or services
- establish a licence, permit or authorisation process as a requirement of operation
- limit the ability of some types of suppliers to provide a good or a service
- significantly raise cost of entry or exit by a supplier
- create a geographical barrier to the ability of businesses to supply goods, services or labour, or invest capital?

Would the regulatory proposal restrict or reduce the ability of suppliers to compete? Would it:

- limit suppliers' ability to set the prices for goods or services
- limit the freedom of suppliers to advertise or market their goods or services
- set standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
- significantly raise costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)?

Would the regulatory proposal restrict or reduce the incentive for suppliers to compete? Would it:

- create a self-regulatory or co-regulatory regime
- require or encourage information on supplier outputs, prices, sales or costs to be published
- exempt the activity of a particular industry or group of suppliers from the operation of general competition law?

Would the regulatory proposal limit the choice and information available to consumers? Would it:

- limit the ability of consumers to decide from whom they can purchase goods and services
- reduce mobility of customers to move between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
- limit information required by consumers to shop effectively?

## Compliance burden

Regulatory compliance burdens are a subset of the broader costs in an impact assessment, but should be readily identifiable in the IAS and reported in the Summary IAS. The

direct costs calculator tool should be used to estimate the regulatory compliance burden (available at [treasury.qld.gov.au/betterregulation](https://treasury.qld.gov.au/betterregulation)).

Compliance costs for business and community groups include:

- resources required to comply with new regulations (for example, staff numbers, staff time, training expenses, travel, expert external advice, licence fees and technical equipment)
- additional costs associated with new compliance activities (for example, reporting certain events, obtaining permission to conduct an activity, record keeping, purchasing specific materials, participating in monitoring or enforcement activities such as audits, or following specific procedures or practices).

Compliance costs for government include:

- additional resources (for example, staff, administrative costs, new equipment and new technologies)
- requirements to amend systems and procedures.

## Environmental and social impacts

Governments are often faced with decisions about whether to impose costs on the community to safeguard the environment or reduce social harms. However, making such trade-offs is difficult because, while estimating the costs on the community can be straightforward, measuring environmental and social benefits is difficult. For example, while it is clear that many people value the experience of observing flora and fauna in a national park or feeling safe in an entertainment precinct, there are no market prices that directly reflect these values.

Environmental and social impacts include those listed in the table below:

Environmental impacts	Social impacts
<ul style="list-style-type: none"> <li>• environmental amenity</li> <li>• biodiversity</li> <li>• pollution level (air, ground, water)</li> <li>• habitat or species</li> <li>• protection of natural resources.</li> </ul>	<ul style="list-style-type: none"> <li>• health and safety</li> <li>• employment opportunities</li> <li>• recreational opportunities</li> <li>• access to social services and infrastructure</li> <li>• affordability/availability of housing</li> <li>• heritage values</li> <li>• cultural impacts.</li> </ul>

The two main types of non-market valuation methods that can estimate such values are revealed preference and stated preference.

**Revealed preference** methods infer value from observed behaviour. A non-market good's value may be reflected



indirectly in markets for related goods. **Stated preference** methods rely on surveys to obtain information on how people value non-marketed goods. In addition, ‘benefit transfer’ or using ‘plug-in values’ is a technique that can be used to apply existing value estimates to new contexts.

## 2.5 Consultation

Consultation is a key driver of regulatory quality. It allows agencies to obtain information to better understand how current regulations could be improved and also how those regulated would respond to a change in policy. Consultation helps decision makers better foresee and appreciate the risks and impact of the decisions they are contemplating. See Box 7 for the best practice stakeholder consultation principles.

Consultation with the community is a key element of RIA. It provides an opportunity for stakeholders to refine existing options, identify new options and comment on their impacts. Consultation processes should not be overly prescriptive but should be sufficiently robust to ensure that it informs consideration of a regulatory proposal and viable alternatives. Consultation needs to be genuine and meaningful, not just conducted for its own sake or used to justify or ‘sell’ a pre-determined regulatory proposal.

The OBPR can provide advice about the level and form of consultation appropriate to particular proposals.

A minimum 28 calendar days must be allowed for public consultation on a Consultation IAS. For major regulatory proposals, a longer time period, sufficient for interested parties to provide a considered response, is advisable (for example, 60 days).

Once the agency has completed public consultation on the Consultation IAS, it should prepare a Decision IAS.

The Decision IAS is a stand-alone document that builds on the Consultation IAS.

The Decision IAS should include any additional evidence and analysis and reflect the outcomes of consultation. A summary of the key messages/issues raised in the submissions should be incorporated in the Decision IAS, together with the agency’s response. A list of the submissions received by the agency should be provided as an attachment to the Decision IAS.

Updating the Consultation IAS by articulating the views of those consulted and how those views were taken into consideration aids transparency on how the final regulatory decision is made by government.

### Box 7: Best practice stakeholder consultation principles

Consultation processes should be effectively targeted and easily accessible.

Correct identification of interested and/or affected stakeholders is critical to the overall effectiveness of consultation. Relevant stakeholders should be identified before the regulatory development process starts.

Consultation methods must be appropriate and accessible to each stakeholder group (including vulnerable cohorts) to ensure the benefits of stakeholder engagement can be maximised.

Stakeholders should be given adequate opportunity to participate in regulatory development, implementation and review.

Consultation should occur at all stages of the regulatory development process, critically when establishing the case for government action, in identifying and assessing a range of policy options, and when developing the preferred option in detail.

Stakeholders should be adequately notified of proposed consultation.

Where feasible, agencies should provide advance notice to business and community of all upcoming reviews or other consultation activities and associated consultation periods, and seek nominations of interest to be consulted.

Adequate time should be given for stakeholders to participate in consultation.

The consultation period should be long enough to enable all stakeholders to provide informed and valuable contributions to the policy and regulatory development process.

Outcomes of consultation should be reported back to stakeholders.

Notification of when and where outcomes of the consultation will be made available to stakeholders should be provided during the consultation process to encourage greater transparency in government’s decision-making processes.

Consultation processes should be evaluated.

Evaluation of the consultation processes and mechanisms should be undertaken at each stage of the regulatory development process so improvements can be incorporated at the next stage.

## 2.6 Conclusion and recommended option

As a document to inform decision-making, the IAS needs to reach a conclusion based on the analysis of the options and recommend the best option for the community.

The conclusion section of the IAS should not introduce new information but should present the key outcomes of the IAS from preceding sections.

It should explain why the recommended option generates the greatest net benefit to the community compared to the other options. It should clearly communicate why the alternatives to the recommended option were rejected. It is also important to outline any critical assumptions on which the analysis relies.

Where the preferred option is regulatory, it should be clear from the analysis in the IAS why it is the best option for addressing the policy issue and, where necessary, demonstrate why Queensland has adopted a different regulatory approach to that of other Australian jurisdictions.

## 2.7 Implementation, compliance support and evaluation strategy

How regulations are applied and enforced can be a significant driver of their costs and benefits. The IAS should explain how this will be done, and should establish a review strategy that will allow the new regulation to be evaluated over time.

The implementation plan should set out key issues with milestones. It is important to consider practical implementation and enforcement issues (if they have not already been sufficiently considered in the assessment of impacts of options) before the recommended option is adopted, such as:

- identifying the agencies that will have a role in implementing or enforcing the recommended option, including associated resource requirements and costs
- identifying risks to implementation (such as timeframe constraints), and mitigation strategies/actions regulated parties are required to take, such as maintaining extra information, completing forms or submitting qualifications for assessment
- transitional arrangements to reduce the impact on stakeholders, such as delayed or gradual introduction of new requirements and/or provision of information and assistance to regulated parties.

This section must also outline how the proposal will be monitored and evaluated to ensure it remains effective and relevant over time. Some important design issues for a monitoring and evaluation framework include:

- establishing performance indicators that directly link to the regulation's objective
- developing a data collection strategy, including frequency of collection
- deciding on the frequency of evaluation and reporting.

## 3. Other IAS and regulatory review

### 3.1 Fees and charges IAS

An IAS is required when introducing a new fee or significant change to or increase in an existing fee.

The Fees IAS should clearly document the decision for setting fees and their relationship to the cost of supplying the goods and services and, where applicable, the reasons for setting any fees at a level below full cost recovery. The OBPR has published a guidance note on its website to assist agencies preparing a fees IAS.

### 3.2 Post Implementation IAS

A post implementation IAS (Post IAS) may be required by Cabinet for regulatory proposals that were exempted from an IAS. In those cases, a Post IAS should be commenced by the proponent agency within two years and completed within three years of the implementation date of the regulation being implemented (unless Cabinet prescribes a different timeline or approach).

The purpose of the Post IAS is to assess the impacts, effectiveness and continued relevance of the new regulation. The Post IAS should have a degree of detail and analysis commensurate with the impacts of the regulation. OBPR can provide advice to agencies on the extent of analysis required in the Post IAS.

Post IASs should generally be similar in scale and scope to IASs. However, because a Post IAS is prepared after a regulation is implemented, it focuses on the actual impacts rather than the expected impacts. The OBPR has published a guidance note on its website to assist agencies in preparing a Post IAS.

The Post IAS follows a similar two-stage process to that for a Consultation/Decision IAS.

### 3.3 Reviewing existing regulation

All regulation should be regularly reviewed to determine its continuing relevance, effectiveness and efficiency. Regulatory review considers whether a regulation is still the most appropriate and effective way to address a policy issue and provides an opportunity to identify and remove unnecessary regulatory burdens on business, the community and government.

Reviews should be proportionate to the level of impact of the regulation and follow the RIA framework by:

- identifying the need for continued regulatory action – does a problem still exist?
- evaluating whether the regulation satisfies its objectives, meets regulatory best practice principles and does not impose unnecessary costs on stakeholders
- considering competition impacts
- considering whether the regulatory objectives could be achieved in a more effective and efficient way
- including whether the design and implementation of the regulation is sufficiently risk-based (both in its design and administration)
- including consultation with stakeholders.

How frequently a regulation should be reviewed will depend on a number of factors. Circumstances where more frequent regulatory reviews may be appropriate include:

- the regulation imposes significant costs on business or the community
- the regulation is contentious and is a significant source of business and/or community concern
- there is considerable uncertainty about the impacts and efficacy of the regulation
- significant changes have occurred in the regulatory environment (for example, technological innovations; behavioural and social changes).

Reviews undertaken in response to such circumstances are likely to elicit more ‘buy in’ from stakeholders and result in comparatively greater reform benefits, such as reducing burdens on business and the community, while better achieving policy objectives.

At a minimum, all regulation (including quasi-regulation) should be reviewed within 10 years of the regulation’s commencement date, unless:

- it has a minimal impact on business, community or government
- it is already the subject of a *Statutory Instruments Act 1992* (SIA) review obligation (sunsetting provisions) or National Competition Policy review obligations
- it is already scheduled for review in the agency’s regulatory reform program.

### 3.4 Sunset reviews

Agencies should be aware that subordinate legislation has a firm ‘sunset’ (expiry) date under section 54 of the SIA.

The review should be completed before this expiry date if the regulation is proposed to continue beyond its initial 10-year operation. This should avoid a regulation expiring under the SIA while a sunset review is being completed. Agencies are encouraged to engage with the OBPR at least 12 months before the expiry date of the regulation to discuss the extent of RIA required.

Sunset reviews have the same requirements and follow the same process as IASs for new regulatory proposals.

Once finalised and approved, a sunset review IAS should be published and sent to the OBPR for its records.

Where an IAS is being prepared for sunset regulation, the ‘no regulation’ option should be considered as the base case against which other options (including the existing regulation) are measured in terms of costs and benefits. The OBPR provides a guidance note on its website to assist agencies in preparing an IAS related to sunset regulation.

Provisions in the regulation that have recently been reviewed or amended do not need to be reviewed again, providing:

- details are given of when they were last reviewed or amended
- the results of the review demonstrated the continued relevance, effectiveness and efficiency of the provisions.

In certain circumstances, an earlier review of a particular regulation may be required. For example, the government may direct that a review be conducted more frequently than once every 10 years.

## 4. Annual reporting and policy review

The OBPR will report to the Treasurer on an annual basis on performance against the policy.

A review of this policy (*The Queensland Government Better Regulation Policy*) will be completed two years after commencement to assess:

- compliance with the policy
- effectiveness of the policy in improving regulation
- whether any improvements can be made for greater effectiveness and efficiency.

# Appendix A: Impact Analysis Statement template

A Summary Impact Analysis Statement (IAS) must be completed for all regulatory proposals. A Full IAS (see Box 1) must also be completed and attached for proposals that have significant impacts. Once completed, the IAS must be published.

## Summary IAS

### Details

<b>Lead department</b>	
<b>Name of the proposal</b>	
<b>Submission type</b> (Summary IAS / Consultation IAS / Decision IAS)	
<b>Title of related legislative or regulatory instrument</b>	
<b>Date</b>	

### For proposals noted in table below

Complete and delete rows where applicable. No further analysis is required.

Proposal type	Details
<b>Minor and machinery in nature</b>	<p><i>“This proposal is minor and has zero/negligible regulatory costs [for example, correcting technical errors or minor updates]”</i></p> <p>or</p> <p><i>“This proposal is machinery in nature, to [for example, gazettal processes, update fees in line with indexation, update schedules etc] and does not result in a substantive change to regulatory policy or new impacts on business, government or the community”</i></p>
<b>Regulatory proposals where no RIA is required</b>	<i>“The proposal relates to [regulatory type not requiring RIA*]. No regulatory impact analysis is required under the Better Regulation Policy.”</i>
<b>Cabinet exemptions</b>	<i>“This proposal was exempted from further impact analysis due to [reasons], [note if Cabinet request Post Implementation IAS]”</i>

\* Refer to *The Queensland Government Better Regulation Policy* for regulatory proposals not requiring regulatory impact analysis (for example, public sector management, changes to existing criminal laws, taxation).

### For all other proposals

What is the nature, size and scope of the problem? What are the objectives of government action?
What options were considered?

What are the impacts?
Who was consulted?
What is the recommended option and why?

## Impact assessment

**All proposals** – complete:

	First full year	First 10 years**
Direct costs – <i>Compliance costs*</i>		
Direct costs – <i>Government costs</i>		

\* The *direct costs calculator tool* [treasury.qld.gov.au/betterregulation](https://treasury.qld.gov.au/betterregulation) should be used to calculate direct costs of regulatory burden. If the proposal has no costs, report as zero.

\*\* Agency to note where a longer or different timeframe may be more appropriate.

**Significant proposals** – also complete this table and a Full IAS (refer Box 1):

	First full year	First 10 years
Total costs***		
Total benefits***		
Net present value***		

\*\*\* Detail and assumptions should be recorded in the Full IAS.

## Signed

Director-General	Minister
Date	Date

### Box 1: Full Impact Analysis Statement

For all significant proposals, a Full IAS to be attached:

1. Identification of the problem
2. Objectives of government action
3. Consideration of options
4. Impact analysis of the options
5. Consultation
6. Conclusion and recommended option
7. Implementation, compliance support and evaluation strategy

Refer to *The Queensland Government Better Regulation Policy* [treasury.qld.gov.au/betterregulation](https://treasury.qld.gov.au/betterregulation) for further detail.