



Better Regulation
Victoria

Victorian Guide to Regulation

A handbook for policy-makers in Victoria

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MINISTER'S MESSAGE

Better regulation: supporting economic growth and enhancing community and environmental protections

The Victorian Government is committed to delivering better regulation, which makes doing business easier and improves consumer confidence in the products and services they buy – playing a key role in supporting sustained economic growth in Victoria.

Better regulation is:

- *effective* in protecting the community from harm and *efficient* in terms of limiting burden on businesses and the community
- *clear* to stakeholders, *consistent* with other regulatory obligations
- *proportionate* to the scale of the problem and *flexible* to changes in technology and society.

The Commissioner for Better Regulation supports the Government to make better regulation through working with departments and agencies on the design and review of regulations. The Commissioner also supports departments and agencies preparing Regulatory Impact Statements (RISs) and Legislative Impact Assessments (LIAs) and assesses the adequacy of these documents.

RISs and LIAs are a critical part of designing regulations. They provide the Government and the Victorian community with evidence and analysis about proposed regulations and opportunities for the community to provide input into their design. This improves the quality of regulations, helping to make Victoria the most liveable state and best state to do business.

This updated Guide reaffirms the Government's commitment to better regulation and provides new guidance on several topics, including making better use of existing regulatory frameworks before making new regulations, understanding the effects of regulations on different groups in the community and designing regulations that facilitate and manage potential risks from emerging technology.

The Guide continues to support best-practice regulatory design and provides practical guidance on preparing RISs and LIAs.

I encourage departments and agencies to use this Guide and engage with the Commissioner when developing regulations and policy more broadly.

Danny Pearson MP
Assistant Treasurer

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Principles for regulation in Victoria

The Government is committed to the following best practice regulatory principles to guide the design, implementation and review of all regulatory proposals and changes to existing regulations in Victoria.

The Government requires regulation to be:

- effective in addressing the underlying causes of harm
- cost effective
- proportionate to the harm or risk to the community
- flexible to accommodate changes in technology, markets, risks and community views
- consistent with the Government's priorities to enhance Victoria's liveability and inclusive economic growth
- consistent and streamlined across government to avoid unnecessary overlap and duplication
- clear and easily understood by businesses and the community
- appropriately administered and implemented
- regularly reviewed to understand changes in harms.

Structure of this handbook

Part I: Provides an overview of impact assessment and the role of the Commissioner for Better Regulation and Better Regulation Victoria.

Part II: Describes what needs to be done for each stage of an impact assessment, and how to do it.

Practical guidance is also available in the toolkits available at www.betterregulation.vic.gov.au

What you need to know

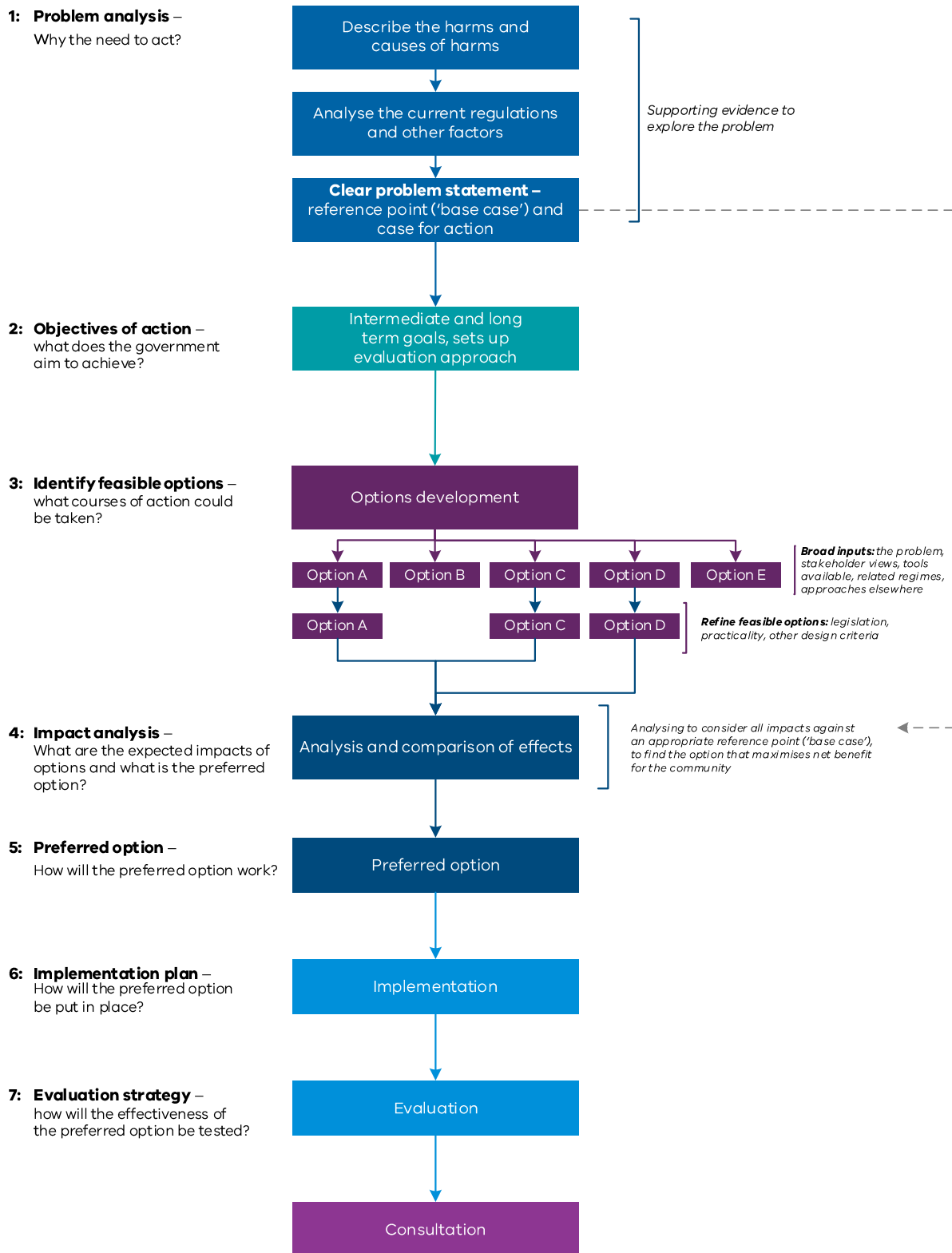
This handbook has been prepared for policy advisers who are developing policy proposals (including making new regulations or reviewing existing regulations). It focuses on how to develop an impact assessment as part of policy development.

Purpose of this document	<p>This handbook helps you prepare impact assessments for regulatory proposals, using an evidence-based policy framework and incorporating best practice regulatory principles.</p> <p>It updates the Victorian Guide to Regulation (2016) and sets the requirements for impact assessment. The updated Guide continues to require impact assessments to address seven key questions, but has additional guidance including: designing regulations to be flexible to technological change; assessing impacts of regulations on different groups; managing impact assessment projects.</p>
Requirements	<p>There are two types of impact assessment in Victoria:</p> <ul style="list-style-type: none">• Legislative Impact Assessment (LIA) – for primary legislation• Regulatory Impact Statement (RIS) –for subordinate legislation <p>The formal requirements for Ministers to prepare these are set in the Cabinet Handbook and the Subordinate Legislation Act 1994 (SLA).</p>
Purpose of impact assessments	<p>Impact assessments document credible, evidence-based advice on regulatory proposals. They facilitate consultation with the community and inform government decision making.</p>
When to use	<p>Good policy development requires early planning. This handbook is useful throughout the policy development process, including during evaluation of current regulations and analysis of new issues and options. Use this handbook to support the preparation of structured impact assessments and engage with Better Regulation Victoria (BRV).</p>
Role of the Commissioner	<p>The Commissioner for Better Regulation independently assesses the adequacy of all impact assessments prior to their release for public consultation (for a RIS) or prior to consideration by Cabinet or Cabinet Committee (for a LIA). Where there is a vacancy in the office of the Commissioner for Better Regulation, the Secretary of the Department of Treasury and Finance (or their delegate) can provide the independent advice.</p> <p>Adequacy relates to the clarity of analysis, the strength of evidence used and judgements made, and is determined against the requirements of the SLA and this handbook.</p> <p>BRV supports the Commissioner and provides practical support on preparing impact assessments, including training.</p> <p>Contact BRV: contact@betterreg.vic.gov.au or 7005 9772 or visit www.betterregulation.vic.gov.au</p>

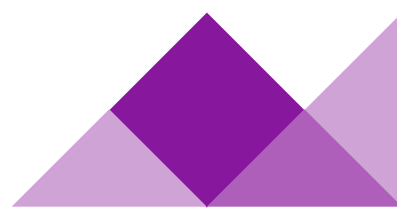
What this document doesn't cover

Other government bodies are involved in the development and review of legislation and regulation. These include: the Department of Premier and Cabinet (for extensions and some exemptions to impact assessment requirements); the Department of Treasury and Finance (on pricing and cost recovery issues); the Department of Justice and Community Safety (for human rights, offences, penalties, infringements and powers of inspection matters); the Office of the Victorian Information Commissioner on privacy and data security issues; the Commission for Gender Equality in the Public Sector; and the Office of Chief Parliamentary Counsel (on drafting legislation). You may also need to consult early with them.

At a glance – Flow of an impact assessment



Part I – Overview of impact assessment



Introduction

Governments use a mix of regulation and other policy approaches to affect community and business behaviour, and to increase overall community wellbeing. Achieving better regulatory design and practice requires high-quality evidence, analysis and stakeholder consultation.

Impact assessment is central to achieving better regulatory performance and has been a core requirement of the Victorian Government for over 30 years. This handbook helps you to prepare impact assessments for regulatory proposals. It updates the Victorian Guide to Regulation (2016) and sets out the requirements for impact assessments.

Impact analysis should consider how regulators put regulations into practice, including monitoring compliance and enforcement. This handbook explains how regulator practices and the characteristics of those subject to regulation can affect compliance. Better Regulation Victoria (BRV)'s Towards Best Practice guide and companion papers provide support on regulator practice and operations, including how policy-makers and departments can best equip regulators.

What is 'regulation'?

At its broadest, 'regulation' means the actions and requirements of government that are intended to change the choices and actions of individuals, community organisations and businesses. It includes rules backed by government authority (e.g. legislation) and the activities of regulators, such as approval processes and enforcement activity.

Regulation can also be viewed as a continuum, with mandatory rules enforced by government at one end, and self-regulatory approaches at the other. Self-regulation typically involves voluntary standards or rules being developed and enforced by industry. In such arrangements, direct government involvement may be limited or non-existent.

Government can also influence the choices and actions of individuals and groups through non-regulatory approaches, including through public information and education, incentives and program design.

While you should consider a broad range of options when approaching a policy problem, the impact assessment requirements set out in this handbook are focused on regulation through primary or subordinate legislation.

What is 'impact assessment'?

'Impact assessment' is a framework used to develop policy and explain its likely effects on individuals, businesses, not-for-profit organisations and the broader community. 'Impacts' include economic, social and environmental effects. Impact assessment should consider effects that can be quantified and monetised as well as effects that cannot meaningfully be quantified. It provides a foundation for effective and efficient regulation.

Policy advice to the Government needs to consider the:

- nature of the policy problem or case for action
- outcomes, or objectives, sought as a result of government action
- most feasible options for delivering the desired outcomes
- likely effects of implementing feasible options
- implementation and evaluation of the feasible options
- views of stakeholders on all of the above issues.

Impact assessment paves the way for evaluating regulatory arrangements once they are in place, which facilitates continuous improvement in regulatory design and practice over time.

Why undertake impact assessment?

Impact assessment is fundamentally good policy-making. To get the most value from impact assessment, build it into policy development from the outset, rather than treat it as an additional compliance exercise at the end. The impact assessment framework can also support overall project management for policy development, and design of early stakeholder consultation.

An impact assessment should present a transparent analysis based on credible evidence, enabling the Government to consider all relevant information before making a decision. It also supports informed and effective consultation by enabling stakeholders to comment on the detailed analysis, evidence and judgements presented to the Government.

Preparing an impact assessment promotes government action that:

- will create benefits for the community
- minimises cost and inconvenience
- considers potential unintended consequences
- can be evaluated or 'tested' for effectiveness, and therefore be refined over time
- takes account of the preferences, views and expertise of the community.

For regulations that set fees for government services and activities, an impact assessment helps to:

- set fees that support the achievement of policy objectives
- consider the efficient cost of delivering government processes and programs
- consider the appropriate level of cost recovery
- make subsidies between different users of government activities transparent
- demonstrate that any proposed fees (or fee increases) are warranted.

When is impact assessment required?

The obligation to prepare an impact assessment rests with the Minister responsible for the regulation. In practice, departments and agencies will prepare an impact assessment to support their advice to the responsible Minister. Impact assessment can be required for the *introduction, amendment, revocation and sunset review* of legislation, including for:

- primary legislation (acts of Parliament)
- subordinate legislation, such as:
 - statutory rules (which include regulations)
 - legislative instruments (which include codes of practice, mandatory guidelines and orders).

In Victoria there are two types of impact assessment (Table 1). The main elements of each impact assessment are similar. Key differences will be highlighted in later sections of this handbook.

Table 1 – Two types of impact assessment in Victoria – LIA and RIS

Features	LIA – Legislative Impact Assessment	RIS – Regulatory Impact Statement
Application	For proposals that may result in, or change, primary legislation.	For proposals that may result in, or change, subordinate legislation, or replace sunseting regulations
When it is required	An LIA is required for proposals that are likely to impose a significant burden. The Cabinet Handbook notes that an LIA should be prepared at the Approval in Principle stage of proposed legislation.	A RIS is required under the <i>Subordinate Legislation Act 1994</i> (SLA) for proposals that are 'likely to impose a significant economic or social burden on a sector of the public'.

In practice, an impact assessment (RIS or LIA) must be prepared for any proposal that is likely to impose a significant economic or social burden on a sector of the public.

The indicative threshold is that the burden (cost) of a proposal is likely to be greater than \$2 million per year, including readily quantifiable impacts (such as licensing or registration requirements) as well as other unquantifiable, intangible or human rights impacts. In addition, an impact assessment may also be required if the overall costs are unlikely to exceed \$2 million per year, but there are concentrated effects on particular groups or sectors.

When applying the threshold, account for the gross burden or cost on a sector of the community. The gross burden includes transfer costs. For example, if a proposal leads to \$1 million in costs being transferred from Group A to Group B, then the burden on Group B should be accounted for.

While the benefits for the community or offsetting cost reductions for specific sectors or groups are not relevant for the threshold, they need to be fully considered in an impact assessment.

Even where an impact assessment is not required, it is still good practice to apply the impact assessment framework when analysing policy issues and preparing advice for government.

Role of the Commissioner for Better Regulation

When impact assessment is required, the responsible Minister is required to seek independent advice on whether the impact assessment is 'adequate'. This role is performed by the Commissioner for Better Regulation ('the Commissioner'), unless the Commissioner role is vacant, in which case the role is performed by the Secretary of the Department of Treasury and Finance (or their delegate).

The Commissioner assesses the adequacy of an impact assessment against the requirements of the SLA and this handbook. The Commissioner looks for the impact assessment to:

- contain analysis that is logical and proportionate to the proposal's expected effects
- draw on sufficient and relevant evidence
- be a balanced and impartial analysis of the expected effects
- be transparent about assumptions used
- explain the analysis clearly.

In determining adequacy, the Commissioner does not assess the merits of the proposed approach (or other options), or the weights given to the views of particular groups in the community. The Commissioner is required to ensure that the impact assessment presents a credible, transparent and evidence-based analysis that is suitable for public consultation and decision-making.

Some impact assessments may include economic modelling to estimate the impacts of the proposal and alternative options. In these cases, the Commissioner looks for the RIS or LIA to:

- draw on an appropriate model that is proportionate to the scale of the problem and supports determining the preferred option
- explain the modelling approach and results transparently, including limitations, as well as include supporting qualitative analysis where required.

The Commissioner's role is to ensure that modelling is used appropriately in the impact assessment rather than provide a detailed peer review.

The Commissioner communicates the outcomes of this assessment in a 'letter of assessment' to the responsible agency. This letter accompanies the impact assessment document in public consultation (RIS) or with Cabinet submissions (LIA).

BRV will work with you as you prepare and draft the impact assessment – including through general advice and feedback on drafts – to help you meet the adequacy requirements.

BRV provides practical support and assistance as you scope and develop your impact assessment. This includes:

- initial planning for a future impact assessment (e.g. well in advance of an upcoming sunset date for regulations)
- support during the early stages of policy development that could eventually result in regulatory proposals
- advice on how to analyse specific issues and prepare and 'adequate' impact assessment.

Rules for regulation making

The *Subordinate Legislation Act 1994* (SLA) governs the development and oversight of subordinate legislation (statutory rules/regulations and legislative instruments). As well as defining requirements for impact assessment, consultation and scrutiny, the SLA also defines exemptions and associated processes and roles, including those of responsible Ministers.

The *Subordinate Legislation Act Guidelines* (sometimes referred to as 'the Premier's Guidelines') further explain how to apply the SLA, including the 'significant burden' threshold, public consultation and other process requirements.

The *Subordinate Legislation (Legislative Instruments) Regulations 2021* define types of legislative instruments, including those that are automatically exempt from the impact assessment requirements.

This handbook focuses on how to develop a suitable impact assessment. The handbook and the toolkits reflect the requirements of the SLA and *Subordinate Legislation Act Guidelines* for preparing RISs. It does not go into detail about the process for making subordinate legislation. The Office of the Chief Parliamentary Council (OCPC) provides guidance on preparing subordinate legislation including a [guidance note](#) on preparing statutory rules.

The Cabinet Handbook outlines the requirements to prepare a LIA.

Key features of an impact assessment

An impact assessment answers seven key questions

1. Why is the Government considering action? (problem analysis)
2. What outcomes is the Government aiming to achieve? (objectives of action)
3. What are the possible different courses of action that could be taken? (identify feasible options)
4. What are the expected impacts (benefits and costs) of feasible options and what is the preferred option? (impact analysis)
5. What are the characteristics of the preferred option, including small business and competition impacts? (summarise the preferred option)
6. How will the preferred option be put into place? (implementation plan)
7. When (and how) will the Government evaluate the effectiveness of the preferred option in meeting the objectives? (evaluation strategy)

Part 2 of this handbook will help you to work through the key questions and provides guidance for each section of an impact assessment.

An impact assessment clearly presents relevant evidence and analysis to stakeholders

To meet the 'adequacy' requirements, you need to present credible, relevant evidence on the nature and extent of the problem, demonstrate a logical link to feasible options to address the problem, and analyse the expected impacts of these options. This requires you to:

- draw on relevant quantitative and qualitative evidence, gathered through consultation and the evaluation of existing settings
- collect new information where important gaps have been identified
- succinctly present evidence and conclusions drawn from this evidence, using a clear analytical framework
- account for current and expected changes to behaviours and actions of businesses or the community that the options address
- explain assumptions and judgements made, where there are gaps in information, or where the expected effects of options are not known.

The impact assessment should be a clearly written and accessible document that stakeholders can easily read, and which facilitates consultation, including stakeholder input on key assumptions, gaps in knowledge, and on the expected effects of the preferred option and how it can best be implemented.

Importantly, the executive summary of the impact assessment is a key communication tool that helps to highlight the impacts and most important attributes of the preferred option.

Analysis in an impact assessment is proportionate

The scope and depth of analysis in an impact assessment, and the time and resources devoted to undertaking it (including the extent of stakeholder consultation), should be 'proportionate' to reflect the significance of the problem and the effect of likely potential options to address it. In applying the principle of proportionality, policy advisors and the Commissioner for Better Regulation need to consider the appropriate *level of quantification* and the *breadth of analysis*, both of which are important to developing well-considered regulatory proposals.

Quantification

Quantification of social, economic and environmental costs and benefits helps to account systematically for all the effects of options, including possible unintended consequences, and minimises the need for subjective judgements. This is particularly important where options could impose significant obligations on the community.

You should always quantify the effects of options where practical, particularly where data are readily available or easy to obtain. Proportionality means that for options with:

- relatively small impacts (those closer to \$2 million per year), a mix of quantitative and qualitative analysis may be sufficient (including indicative estimates)
- impacts between \$2 million and \$8 million per year, the quantification of costs and benefits will likely vary, but is expected to improve as the size of the impacts increase
- higher expected impacts (e.g. \geq \$8 million per year) quantification of all costs and benefits is generally required which might include modelling.

In all cases it is important to be clear about the credibility of the data and evidence used and the level of certainty around estimated benefits and costs.

Breadth of analysis

As the complexity of the problem and of potential regulatory arrangements increases, this may require more detailed analysis and explanation in an impact assessment. For example, complex problems may require options to be considered for different aspects of the problem, and account for interactions with other regulatory regimes. Analysis in these situations might include:

- the roles and actions of different agencies (including local government) and programs
- the capacity and capability of regulators
- how regulator practice interacts with or gives effect to the legislation, including how compliance (including with related regulations) is likely to be monitored and enforced
- how to harmonise or enhance the operation of current regulations and regulatory tools and powers (including under other existing legislation) before creating new regulations

In addition, where there are multiple parts to a regulatory proposal with different causes or affected groups, separate analysis may be needed for each part of the proposal. For example, a regulatory proposal may include licensing, registration and fees.

This is discussed further in part 2 of this handbook.

Preliminary scoping to apply proportionality

To determine whether an impact assessment is required, and the appropriate extent of analysis, it may be worth undertaking preliminary analysis where you collate the available data, consider the level of stakeholder concern and roughly estimate impacts.

Even if an impact assessment is not required, the impact assessment framework (including the analysis and data collection undertaken to date) provides a basis for best-practice policy advice and supports public consultation on government proposals.

Case studies of proportionate approaches to policy analysis

Lower burden reporting requirements

Regulations that establish additional annual reporting requirements for businesses in the energy industry are being developed. The Government intends to use information from these additional reporting requirements to monitor risks in the industry.

It is estimated it will take the typical business about half a day to compile the required information and include it in their existing annual reporting. Given there are a relatively small number of businesses, it is estimated that the total costs across the industry will fall short of \$2 million, but a RIS is being prepared to test analysis with stakeholders.

The Government undertakes initial consultation, which will inform analysis in the RIS. A survey of businesses is done, and the relevant department tests the steps required to input additional information into existing reporting platforms. The department decides to prepare a RIS in-house drawing on industry advice and desktop analysis. Given the relatively low impacts, the RIS is equivalent in length to a short discussion paper with a high-level analysis of costs and benefits, to inform engagement questions.

Regulatory fees

The regulations that set fees for a local government service are being reviewed. The fees for these impose significant costs on the local community. The impact assessment needs to include a detailed review of the costs of delivering services across local government areas, based on monitoring service delivery, surveys and primary research; and examine how different pricing approaches might affect compliance, access to services, and flow-on economic costs.

Licensing a high-risk activity

The regulations that require operators of a high-risk activity to obtain a licence and operate under Australian Standards for safety and environmental risk management are being reviewed. The financial costs of these regulations are marginally higher than the 'significant burden' threshold of \$2 million per year, but are highly concentrated.

The effectiveness of the regulations has been evaluated and there is a strong case to retain the current licence requirement. However, the regulatory regime also interacts with statutory planning, environmental licensing and occupational safety licensing systems, with potential for overlap and duplication, which can be complex for business, or gaps in coverage that may risk shortcomings in government oversight. The regulations also set licence fees.

The impact assessment therefore explores options to reduce unnecessary regulatory duplication, improve effectiveness (including improvements to related regulatory regimes) and the appropriate fee structure.

Environmental approvals

The Government is considering how best to manage or control emissions to the environment from specific sites. The policy objective is to avoid pollution from proposed and current developments, which could be achieved through better design of developments and environmental management practices.

The initial analysis indicates that a regulatory option – requiring a licence for emissions or approval to build sites that discharge emissions – may be the preferred approach. The financial impact of this regulation is likely to exceed \$10 million per year, requiring in depth analysis to value the environmental benefits of regulation, and to confirm the estimated costs as well as the effects on entry into markets and prices for goods and services.

In addition, because there are other approaches to promoting environmental management and gaining information about business, the impact assessment needs to look at other options. This includes better alignment of statutory planning approvals and information sharing in government, as well as the costs and benefits of using targeted inspections and support services to obtain information and improve business practices.

Occupational health and safety

The occupational health and safety regulations cover a large number of distinct issues, including falls from heights, working in confined spaces and the use of powered equipment. In this case, the diverse range of harms, different and complex underlying causes, and affected groups, mean that in a RIS for proposed regulations each issue requires different options to be considered. Options analysis must account for the impact of existing regulator guidance and compliance programs that support regulatory requirements.

Impact assessment promotes engagement and participation

Inclusive engagement supports better decisions for all parts of government. The Victorian Government's *Public Engagement Framework* provides principles for and approaches to engagement and aims to strengthen engagement. See: www.vic.gov.au/public-engagement-framework-2021-2025.

The approach to engagement on regulatory proposals should follow this framework, with the experience and views of stakeholders informing the impact assessment. Early stakeholder consultation should be the default approach for any proposal. Consultation should be proportionate to impacts.

The benefits of effective engagement include:

- providing a better understanding of the problem from different perspectives, including directly affected groups, regulators and the broader community
- highlighting gaps in information or analysis, and collecting data and information
- drawing on practical insights and experiences
- generating ideas and developing options
- understanding the likely effects (costs and benefits) of options and potential unintended consequences
- testing your reasoning and conclusions.

Early and effective engagement also helps the Government to understand and respond to stakeholder perspectives on issues and can help to promote community understanding of and support for proposals.

Early consultation within government is also important, including consultation:

- with Ministers, departments, agencies and the regulator/s that may be affected, or who have related responsibilities and regulatory regimes (mandatory under the SLA)
- with other departments and agencies involved in the development and review of legislation, including:
 - the Department of Premier and Cabinet (for extensions and some exemptions to impact assessment requirements)
 - the Department of Treasury and Finance (on pricing and cost recovery issues)
 - the Department of Justice and Community Safety (for human rights offences, penalties, infringements and power of inspection matters)
 - the Office of Chief Parliamentary Counsel (on drafting legislation).

The impact assessment document itself is a key consultation tool and should be written with engagement in mind – particularly the executive summary and any supporting materials or approaches to help communicate with different groups. Public release of the impact assessment document (required for a RIS) can help you reach additional stakeholders who could not easily be engaged early, or to test and complete analysis that has drawn on early consultation with stakeholders.

This handbook highlights key engagement considerations when developing an impact assessment. This is supported by the Toolkit: Consultation and Engagement.

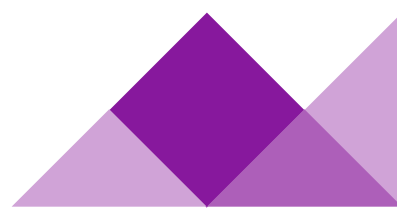
The executive summary is a key feature of a RIS or LIA

A RIS or LIA must include an executive summary, which outlines the key messages and conclusions of the document. A clearly written, straightforward and understandable executive summary is particularly important where the proposal is complex or the analysis is extensive.

The executive summary should highlight:

- the main problem(s) that the preferred option is intended to address
- key features of the preferred option (highlighting the main changes from existing arrangements, if any apply), and its impacts (benefits and costs) on Victorians, noting direct financial costs such as licence fees
- any concentrated impacts, including on small businesses, vulnerable groups, or parties that may find it challenging to absorb costs or meet regulatory requirements
- feasible alternatives considered in the impact assessment and why these were rejected
- key assumptions underpinning the conclusions reached during the impact assessment process, and the main shortcomings or uncertainties that exist in drawing those conclusions
- any outstanding issues, that the department/agency wants to explore via feedback during public consultation (if applicable)
- a consolidated list of all stakeholder questions found throughout the document, to facilitate public consultation and feedback (for RISs)
- the proposed approach to implementation and evaluation.

Part II – Completing the impact assessment



Drafting the impact assessment – The seven key questions

As detailed earlier in this guide's Key Features of an Impact Assessment section, seven key questions must be answered in an impact assessment:

1. Why is the Government considering action? (problem analysis)
2. What outcome(s) is the Government aiming to achieve? (objectives of action)
3. What are the possible different courses of action that could be taken? (identify feasible options)
4. What are the expected impacts (benefits and costs) of options and what is the preferred option? (impact analysis)
5. What are the characteristics of the preferred option, including small business and competition impacts? (summarise the preferred option)
6. How will the preferred option be put into place? (implementation plan)
7. When (and how) will the Government evaluate the effectiveness of the preferred option in meeting the objectives? (evaluation strategy)

These questions provide the structure for an impact assessment. In addition, an impact assessment must explain how the views of stakeholders consulted to date informed the impact assessment and how future consultation will be undertaken.

Although providing answers to these questions will be an iterative process, addressing them in sequence (to the extent possible) will help you to:

- ground your approach in a comprehensive understanding of the problem, before assuming a potential solution
- set clear objectives to test the likely effectiveness of possible options
- think broadly about possible courses of action, including new and different approaches
- develop options that can be applied in practice by regulators and regulated parties
- test assumptions and estimates of the expected impacts of options
- set out how you have reached your recommendation on the best way forward to address the problem(s)
- set up continuous improvement in regulatory policy and practice, with clear accountabilities for monitoring, evaluation and adjustment over time.

Figure 1 on page 2 illustrates how the seven key questions work together to form the impact assessment.

Getting started

Tips for drafting

An impact assessment needs to include a sound analysis of different options and be written clearly so that stakeholders and the community can be readily consulted. When dealing with complex issues, clear explanations are vital. An impact assessment does not need to be lengthy or complex to be 'adequate'.

Drafting approach

- Use plain English and minimise use of industry or technical jargon. Provide brief explanations of key terms.
- Keep the impact assessment concise.
- Use flowcharts or diagrams to explain how elements of the regulatory structure work together.
- Consider how other engagement materials and strategies can support consultation on the impact assessment.

Organising information

- Include an overview or executive summary that captures key issues and impacts, (particularly concentrated impacts, or those that could be challenging for groups to meet or adjust to) and explains the degree of uncertainty around impacts.
- Consider placing calculations, modelling and technical discussions in appendices or make them available on a website or on request.
- Include references for information sources such as data and research findings.
- For a RIS, include a consolidated list of 'questions for stakeholders' to facilitate public consultation.

Start early!

Where timeframes are known, you should set the scope and start gathering evidence and preparing your analysis early. This will help you to:

- focus your analysis on critical issues
- consult with BRV on the policy issues and any data or analytical constraints
- avoid unnecessary analysis or financial outlay on consultants (where analysis could be done in-house)
- keep opportunities open for identifying new and different options for addressing the problem
- plan ahead for gathering evidence and access to specialist skills and expertise (if required)
- finalise your written advice (RIS/LIA) within agreed timeframes.

Early engagement with BRV will help you to scope your impact assessment, understand the most important issues, and identify knowledge gaps. It is also important to start drafting regulations early (in parallel with drafting the RIS) and consult with OCPC.

Identify and engage with your key stakeholders

Consultation with stakeholders is essential in helping to identify harms or risks to the community, test the effectiveness of existing regulations (including opportunities to reduce regulatory burdens or other improvements), identify possible options and collect relevant evidence and data.

Early consultation within government is also important. Consultation with regulators (including local government) may:

- provide valuable information on potential harms or risks,
- test the practicality of different options and
- consider key implementation issues.

Other agencies that may need to be consulted are:

- the Office of Chief Parliamentary Counsel (on drafting legislation)
- the Department of Justice and Community Safety (for human rights, penalty and infringements matters)
- the Office of the Victorian Information Commissioner on privacy and data security issues, and
- the Commission for Gender Equality in the Public Service (about how to meet any Gender Impact Assessment requirements under the *Gender Equality Act 2020*, which may apply to your policy proposal).

The most suitable approach to consultation will depend on the nature of the policy issues to be considered, stakeholder perspectives and other considerations (e.g. Cabinet confidentiality).

Further guidance on stakeholder engagement is provided in the Toolkit: Consultation and Engagement

Account for a full range of societal impacts, experiences and perspectives

An impact assessment supports the development of an objective assessment of policy options to address a problem or achieve an objective. To do this, impact analysis involves the use of objective frameworks to compare options, using a common benchmark or frame of reference. This comparison (see impact analysis) will often involve estimating impacts in dollar values.

However, there may be impacts that are challenging or not meaningful to value in monetary terms. It is therefore important to ensure that the nature of impacts (including non-monetary) from the proposed regulations is carefully considered for different groups. This will shape your policy thinking, as well as your approach to consultation.

Aim to identify where there may be groups who are specifically, or more acutely, impacted by the policy problem or potential options. This can include First Nations individuals or groups, small businesses, regional and rural communities, people of different gender or cultural identities, people experiencing disability, and people or businesses who live and operate across Victoria and other states or territories. Impacts may also be amplified where people experience multiple forms of disadvantage that intersect with each other.

Accounting for gendered impacts of policy

A proposal where a RIS or LIA is prepared might also require a Gender Impact Assessment under the *Gender Equality Act 2020*. Depending on the proposal, gender analysis might be an important part of problem analysis, options design and impact analysis. The Gender Equality Commission provides guidance on how to deliver a Gender Impact Assessment, which can support the regulatory impact assessment process.

Accounting for the experiences of First Nations communities

The design or review of regulations provides important opportunities to account for the lived experience of government regulation by Aboriginal Victorians. This includes both the substance of rules, and how they are implemented and enforced.

The potential scope and application of regulations may also be shaped by Traditional Owner rights as recognised by agreements under the *Traditional Owner Settlement Act 2010*.

The review of existing regulations is often an ideal opportunity to meaningfully consult on issues in how existing rules are applied, regulator practices, and effects on First Nations individuals and organisations.

First Nations peoples may be specifically impacted by regulation in a range of policy areas, including social services, environment and land management, justice and safety, health and wellbeing, and learning and skills.

Regulatory design can be critical to enabling greater self-determination for Aboriginal Victorians, particularly for the transfer of power and resources to First Nations communities, and about how regulatory objectives are met in a culturally safe way.

Risk assessment is intrinsic to regulation

Although government interventions are often aimed at reducing risk to the community, there are no circumstances which are entirely risk-free, and it is not possible for governments to eliminate all risks. Actions of governments may sometimes only modestly reduce risk, or may transfer risk between parties (e.g. from businesses to government).

Risk assessment is therefore an important component of the impact assessment framework.

In the first instance, this may include considering whether risks should be acted on or acknowledged and tolerated. It is important to prioritise your focus and effort on significant risks and/or those with significant consequences. It is also important to test to what extent options would reduce the likelihood or consequence of risks, or to eliminate hazards and any residual risks after the preferred option has been implemented.

The Toolkit: Problem Analysis provides advice on risk assessment within an impact assessment.

Consider whether existing data is sufficient

The impact assessment represents an important stage in the life of regulation, to identify opportunities to review current practices. The sunseting mechanism should ensure existing regulations and their implementation are regularly evaluated.

In the early stages of policy development, it is important to consider whether existing data and evaluation mechanisms will provide sufficient evidence to enable current arrangements and different approaches to be examined. It may be possible to undertake data gathering and evaluation within existing regulatory activities and stakeholder engagement, or additional work may be required.

Early stakeholder consultation (e.g. surveys) can be a useful data source. Other areas of government might hold useful data. By doing this early (well before sunset dates and the project work of drafting the impact assessment), you will have sufficient time to put in place any additional evaluation and analysis activities that you need to inform your advice through your impact assessment.

Plan your project

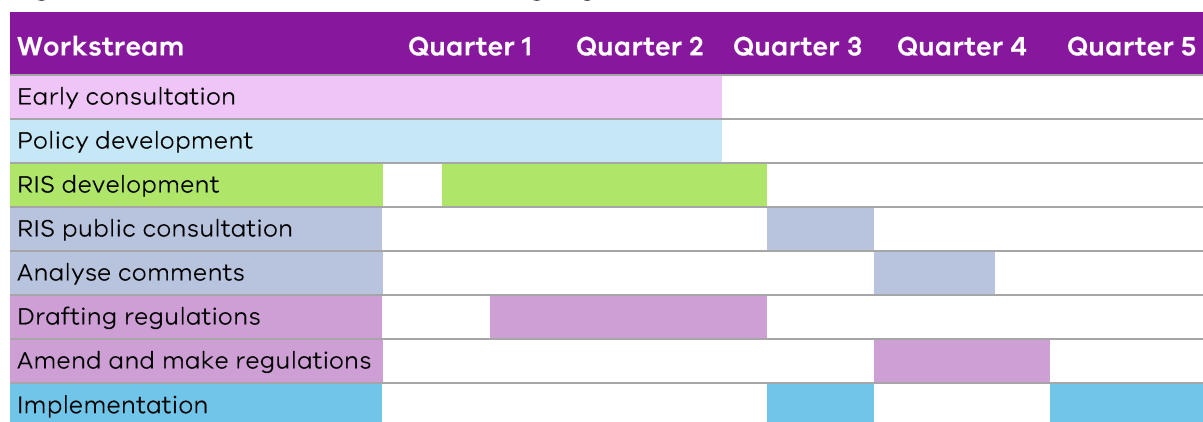
Planning your impact assessment helps make it more *effective* for designing best-practice regulation and more *efficient* in terms of completing your project on time and within budget.

Impact assessments are part of broader projects to make legislation or subordinate legislation, and involve multiple workstreams, stakeholders and approval processes. Some steps can be done in parallel while others need to be done sequentially. Common steps for these projects include:

- **Planning:** Getting the required approvals, resourcing the project (considering internal budget and planning cycles), engaging a consultant (if required), stakeholder engagement activities and identifying information/evidence needed.
- **Consultation and engagement:** An important step in developing and implementing regulations, as well as being a key source of information.
- **Policy development:** Understanding the problem(s) and nature of harms, and considering various options that could be considered as part of the impact analysis.
- **Preparing the impact assessment:** Occurs in parallel and draws on analysis that is undertaken as part of policy development (such as material prepared for Ministerial briefings). Departments and agencies should allow at least four months for drafting and should engage early and often with BRV to ensure the impact assessment is progressing well.
- **Public consultation (for RISs):** A minimum period of 28 days of public consultation is required for RISs but it is best practice to consult for 60 days. It is important to allow sufficient time to consider submissions on the RIS and complete the require steps to finalise the regulations.
- **Implementation:** Re-engaging with stakeholders and undertake required implementation activities. Some stakeholders such as small businesses or local councils might require additional support. Implementation needs to be sufficiently resourced.

Figure 1 provides an illustrative timeline for making medium complexity subordinate legislation. In this example, it takes five months to prepare the RIS, 12 months to make the regulations, with an additional three months for implementation.

Figure 1 – Illustrative timeline for making regulations

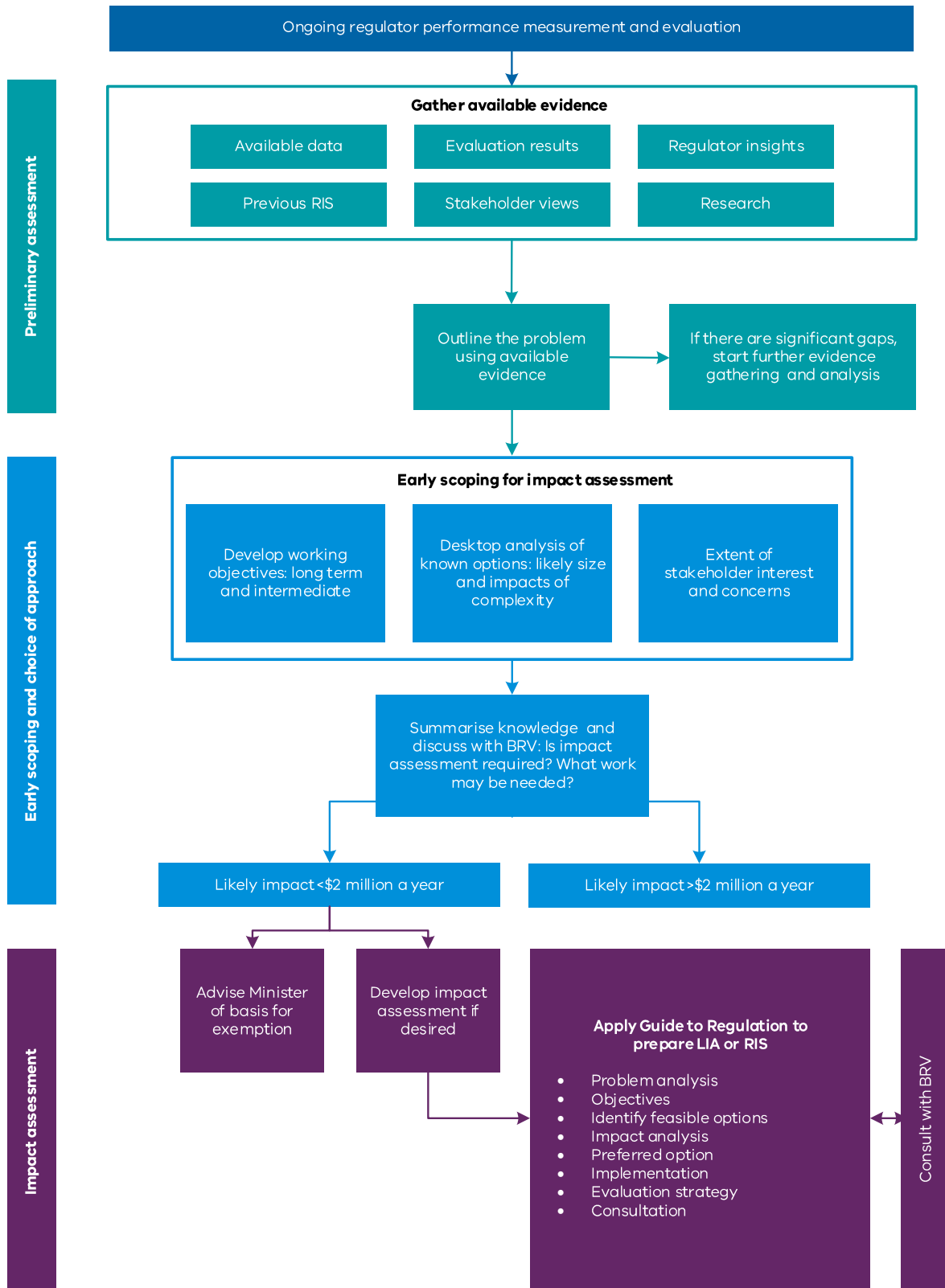


Please contact BRV for further guidance on planning your project.

Planning your impact assessment

Figure 2 provides a detailed flowchart from undertaking a preliminary assessment of the evidence and problem, to early scoping and choice of approach (including determining whether an impact assessment is required), to undertaking an impact assessment.

Figure 2 – Impact assessment – start early and engage early



1. Problem analysis

Purpose of this stage	<p>To clearly set out the case for action. The ‘problem’ could be an actual or potential harm to the community that the Government wishes to address or reduce.</p> <p>The problem should be described in terms of both the extent and concentration of risks or impacts, and why these occur.</p> <p>For sunseting regulations, the problem analysis sets out what will happen if the regulations are allowed to sunset. This helps to establish whether a case for government action remains, and to evaluate the efficacy of the current regulatory framework in addressing the problem.</p>
Output of this stage	<p>A clear, succinct, and evidence-based description of:</p> <ul style="list-style-type: none"> • the problems or risks • their actual or potential significance • the underlying causes • who is affected.
The approach	<p>You can use various approaches to support the logic of your analysis, including market failures, behavioural sciences, risk management and equity concerns.</p> <p>Explain how relevant factors (such as private incentives, social norms, and other regulations) influence the causes, or extent, of the problem. This helps to understand what the situation would be in the absence of government action.</p> <p>This approach is necessary because the case for action is based on the problem that would exist after accounting for other factors.</p>
How the output will be used	<p>The insights gained in describing the problem are used to develop the objectives that the Government is seeking to achieve.</p> <p>The description of the problem will help you to identify feasible options, and as a reference point in choosing between them to achieve the objectives.</p>
What BRV looks for	<ul style="list-style-type: none"> • Clear problem diagnosis, consideration of underlying causes, impacts and other relevant factors that may mitigate the problem • clear understanding and presentation of stakeholder views of the problem • proportionate analysis, drawing on relevant evidence • for sunseting regulations, evaluation of the effectiveness of the current regulations • for fee setting, consistency with the Department of Treasury and Finance’s Pricing for Value Guide.
Resources	<p>Toolkit: Problem Analysis</p>

Well-developed problem analysis is the starting point for a high-quality impact assessment. It is critical to invest adequate time and resources in problem definition. A strong understanding of the problem leads to well specified objectives and helps you design options that reduce harm from the problem and benefit the community, the economy and the Government.

Requirements for impact assessment

An impact assessment needs to clearly define the nature, extent and underlying causes of policy problems. In some cases, the Government may have policy objectives that focus on promoting improvements for the community (such as social welfare objectives), rather than reducing specific risks or harms. There may also be cases where legislation provides a framework for developing subordinate legislation to address a harm or pursue a goal.

The problem analysis is a necessary first step in an impact assessment to correctly set the objectives for a proposed statutory rule or legislative instrument (which are often specified in terms of reducing harms) and to define feasible options (which target the causes of these harms).

How to approach problem analysis

The problem analysis needs to identify the underlying causes of the problem, who is affected, and the economic, social and environmental consequences.

The goal of the problem analysis is to describe the nature, extent and effect of the problem after accounting for other factors that positively or negatively influence it. This is because potential risks may already be addressed, at least in part, by other factors (e.g. other regulations, standard business practices, or social norms). The problem analysis focuses on the residual problem that remains after these other factors have been considered.

Thinking about the residual problem helps to explore these factors and represent what the world would be like if you did not proceed with any proposal at all – this provides a reference point (called the base case) for options development and impact assessment.

To define the problem, ask yourself the following questions and draw on relevant evidence.

Describe the harm(s)	<ul style="list-style-type: none">• What is the harm(s) (type, level and extent) to the community?• Which risks would likely arise, and what would be the likely consequences?• For sunseting regulations, what is the problem today? How has the nature and extent of the problem changed since the regulations were last made?
Define who is affected	<ul style="list-style-type: none">• Who is harmed by the problem? Does anyone benefit from the problem?• Do the causes and impacts vary across different groups, and how?
Identify the source or cause	<ul style="list-style-type: none">• What is the source, or underlying cause(s) of this problem or harm?<ul style="list-style-type: none">– Which behaviours or actions are of concern?– Why are these behaviours occurring?
Consider how to 'break down' the problem	<ul style="list-style-type: none">• Is the problem best understood as an 'aggregate' issue, or should it be broken down into sub-issues or affected groups?• Is a high-level or 'macro' understanding of the issues (such as general trends of incidents, disease rates etc) sufficient for analysing the problem?• Are there different ways the problem can be analysed, considering its causes (e.g. geographic, type of stakeholder, industry sector)? Which approaches might best explain why and how the problem occurs?• How can risk assessment help you to assess the problem(s)?
Consider the effect of non-government factors	<ul style="list-style-type: none">• Are there other factors that reduce the problem? For example, are there other incentives or norms that might drive behaviour?• What changes in technology or design might we anticipate will reduce the problem going forward?

Consider the effect of existing government action	<ul style="list-style-type: none"> • Are there existing government interventions that can address the problem? • Where there are existing compliance requirements, what is the actual rate of compliance, and how is this known? • Is additional government action required? • Are there existing government controls that might be impeding potential solutions to the problem? Or are there other constraints relevant to the problem?
Fees and charges	<ul style="list-style-type: none"> • For fees and charges that recover the costs of a government service or regulatory activity, what is the appropriate level of cost recovery? What would be the efficiency and equity effects of different levels of cost recovery? Is the service or regulatory activity still necessary? <p>The Pricing for Value Guide provides guidance on pricing and cost recovery.</p>

In answering these questions, you should aim to:

- draw from varied perspectives by engaging with regulators, regulated parties and other stakeholders where possible
- apply a suitable structure to your explanation. For example, the problem may be diagnosed in terms of:
 - market failures, such as shortcomings in information, or externalities (where parties undertaking an action are not the only ones affected by it)
 - behavioural science, to explore why people might expose themselves to risks or not consider or act on information as expected
 - government or regulatory failure, where government action causes unintended consequences
 - compliance behaviours, accounting for the factors that promote or detract from compliance
 - social or equity concerns, including human rights, protecting vulnerable and disadvantaged individuals or communities, and relieving geographic and social isolation.

The Toolkit: Problem Analysis explains these frameworks and how they might be applied.

Identifying the problem: Sunsetting regulations

A RIS for sunsetting regulations needs to analyse the problem/s that would occur if the regulations were allowed to expire and were no longer in place. This enables significant changes in technology, community expectations and business practices to be considered so that the basis for analysis is the nature of the problem today, and not 10 years ago.

This can be challenging to do in practice and may be a hypothetical exercise. However, the analysis can draw on an evaluation of the existing regulations, consultation (including with regulated parties and regulators) and other research such as looking at the experience of other jurisdictions.

The analysis can help you identify other factors that influence the problem, and lessons learnt during the implementation of current regulatory arrangements. This could include looking at the implementation of current requirements and how this is experienced by businesses and other affected parties. Understanding actual (rather than assumed) compliance rates and behaviour of regulated parties will also assist in understanding and articulating the problem. Considering implementation helps you to develop better options and will help define the 'base case' for analysing the benefits and costs of these options.

Case study: Approaching a problem definition

There is a concern about injuries from manual handling in the workplace (lifting, pushing, holding, throwing and carrying objects) resulting in chronic and acute injuries.

To understand the issue, industry representatives, businesses and workplace safety experts are consulted, and injury and inspection data are examined. This information shows there are a range of causes of manual handling injuries, including:

- employers and workers being unaware of certain risks
- employers and workers underestimating risks, particularly with repetitive movements
- specific workplaces where injuries are more likely to occur, because of heavy, unstable or moving loads
- machines that vibrate when not appropriately secured
- employees choosing not to use available lower-stress supports (e.g. winches and trolleys) because of habit, convenience or workplace pressure.

The analysis shows there are already incentives for employers and workers to reduce risks of injury (e.g. insurance premiums, loss of work and productivity, personal impacts of injury) that can have a positive influence. However, the analysis shows these are not wholly effective across all industries and types of small businesses - particularly smaller businesses - because of cost pressures and limited understanding of these risks.

The problem is defined as some employers and workers lacking understanding of the risks of injury from manual handling. This problem definition helps to develop options that are more likely to address the causes of manual handling injuries as well as providing useful insights into how to target future analysis and consultation.

Draw on relevant evidence

Providing relevant evidence plays an important part in supporting and explaining your problem analysis. The following approaches are worth considering.

<p>Use a hypothesis-led approach</p>	<p>Form clear hypotheses about each of the important aspects of the problem. For example, ‘injuries from machinery happen because people ignore safety messages’.</p> <p>Think about the evidence you would need to test these hypotheses. Consider drawing on combinations of qualitative and quantitative evidence. You may need to test multiple hypotheses in response to what the evidence suggests.</p>
<p>Draw on and build on existing data and evidence</p>	<p>Use data and evidence from a range of sources to develop an understanding of the problem. Data and evidence might be a mix of information on the nature and cause of the problem. For sunseting regulations, draw on the evidence base provided through an evaluation of the regulation’s effectiveness, including compliance and enforcement data from regulators.</p> <p>Engage with other areas of government who might hold relevant information and data, such as the relevant regulator.</p>
<p>Collect further data and evidence – higher impact proposals</p>	<p>Where options are likely to be high impact, or where there are significant gaps in knowledge, collect further data and evidence. Your approach to evidence gathering and analysis should be proportionate.</p> <ul style="list-style-type: none"> • Lower impact proposals may generally rely on existing evidence and analysis, risk assessment, and relevant examples from other jurisdictions. • Higher impact proposals generally require the collection of new data or research to enable you to estimate the incidence of harms and their effects, impact and distribution in Victoria.
<p>Use credible sources of evidence</p>	<p>Be aware of the relative strength of the evidence sources that you use. For example, an analysis that draws from a range of credible data sources would carry more weight than one that relies on subjective opinions or anecdotes.</p> <p>Be cautious about how you use assertions by interest groups or industry, promotional material, or media or public interpretations of a public risk. Seek source material (studies, operational data) where it is available, and when referencing studies or surveys consider their sample size, level of confidence, and comparability for Victoria.</p> <p>When using case studies, put these in context – taking care not to over-emphasise them to support your analysis.</p>
<p>Explain the basis for statements</p>	<p>Support the statements you make by:</p> <ul style="list-style-type: none"> • outlining your understanding of the components of the problem • stating the evidence base used to establish your conclusions • identifying areas where further analysis or research is required. <p>This helps to ensure your understanding of the components of the problem is complete. This is necessary to establish the strength of the case for action, and to identify the type of options that may be appropriate for addressing the problem.</p>

Be transparent about evidence limitations	<p>Consider the limitations of your evidence. Although it is not necessary to have complete proof of a harm in order to take action, it is important to be transparent about the limitations of your knowledge. Clearly explain:</p> <ul style="list-style-type: none"> • what you know is accurate • what you think on balance is accurate • what you do not know but assume is accurate, and why.
Consider future uncertainty	<p>Often the nature of the problem in the future will be highly uncertain. This is especially the case when facing problems associated with rapid technological change, dynamic and evolving markets, major social and demographic transitions, and/or complex systems, where different influences interact to affect the extent of the problem.</p> <p>Acknowledge these uncertainties and outline plausible future scenarios that may characterise the problem, noting the implications for identifying potential options.</p>

BRV can support you by advising on:

- how to define the nature, extent and underlying causes of problems
- how to find, analyse and determine the robustness of different sources of evidence
- how to interpret evidence cautiously when faced with uncertainty (to avoid creating unrealistic expectations of what government can achieve, and the likely effectiveness of options)
- the credibility of the conclusions you have drawn from the evidence you have used
- the type of evidence and level of analysis that would be 'proportionate', given the expected impacts of the potential options.

2. Objectives of action

Purpose of this stage	To define the specific outcome(s) the Government aims to achieve in relation to the problem defined in the previous stage (such as to reduce a harm). The approach to defining objectives will depend on the complexity of the problem and should account for other related government actions and their role.
Output of this stage	A clear description of the following: <ul style="list-style-type: none"> • The objectives of government action (e.g. improved health) – this may be described as the <i>long-term outcomes</i> sought • Where there are multiple objectives, a clear statement of the relative importance of these objectives (such as defining them as primary and secondary objectives) • Where relevant, <i>intermediate indicators</i> that help to assess whether the Government is achieving the objectives • Where relevant, the objectives of regulation, compared with objectives of other related government actions, where these work together to pursue an overall outcome.
The approach	<ul style="list-style-type: none"> • Focus on the <i>ends</i> that you aim to achieve, rather than the <i>means</i> to achieving them • Link to broader government objectives (such as increasing productivity), and be consistent with objectives of existing legislation, where relevant • Refer to your knowledge of the problem, particularly of the behaviours that exacerbate or mitigate the harms to the community • Recognise complexity and the system you are interacting with.
How the output will be used	<p>The objectives are used to identify feasible options. Choose between them in your impact analysis (i.e. how well options would meet the long-term outcomes sought).</p> <p>The objectives are the starting point for an evaluation strategy to assess the effectiveness of the preferred option in practice over time.</p>
What BRV looks for	<ul style="list-style-type: none"> • An understanding of how objectives link to the problem • Objectives that are consistent with any relevant existing policies (including the authorising legislation) and broader government objectives • Objectives specified in a form that supports you to measure results • Clear logic that links intermediate and long-term outcomes, and focuses on outcomes (ends), not activities/outputs (means) • For fee setting, consistency with the Victorian Government’s Pricing for Value Guide.

Once the problem is clearly defined, it is possible to be clear about the specific policy objectives i.e. the outcomes that the Government is seeking to achieve through action. This will enable you to identify the most appropriate option.

Requirements for impact assessment

Sections 10(1)(a) and 12H(1)(a) of the SLA require that a RIS sets out the objectives of the proposed statutory rule or legislative instrument that are consistent with the authorising legislation.

The policy objectives included in a RIS or LIA must be expressed as the desired outcomes for the community (ends rather than means). These objectives should be consistent with the Government's strategic policy aims (e.g. to support economic growth), as well as other relevant government objectives as expressed in policy statements, other official documents and relevant legislation.

The policy objectives in a RIS or LIA may differ from those in the legislation or statutory rule. Objectives included in legislation or statutory rules are sometimes expressed more narrowly, e.g. 'the purpose of the Regulations is to prescribe minimum requirements'. However, the RIS or LIA objectives should reflect the desired outcome, e.g. 'minimise the risk of injury'.

How to approach objective setting

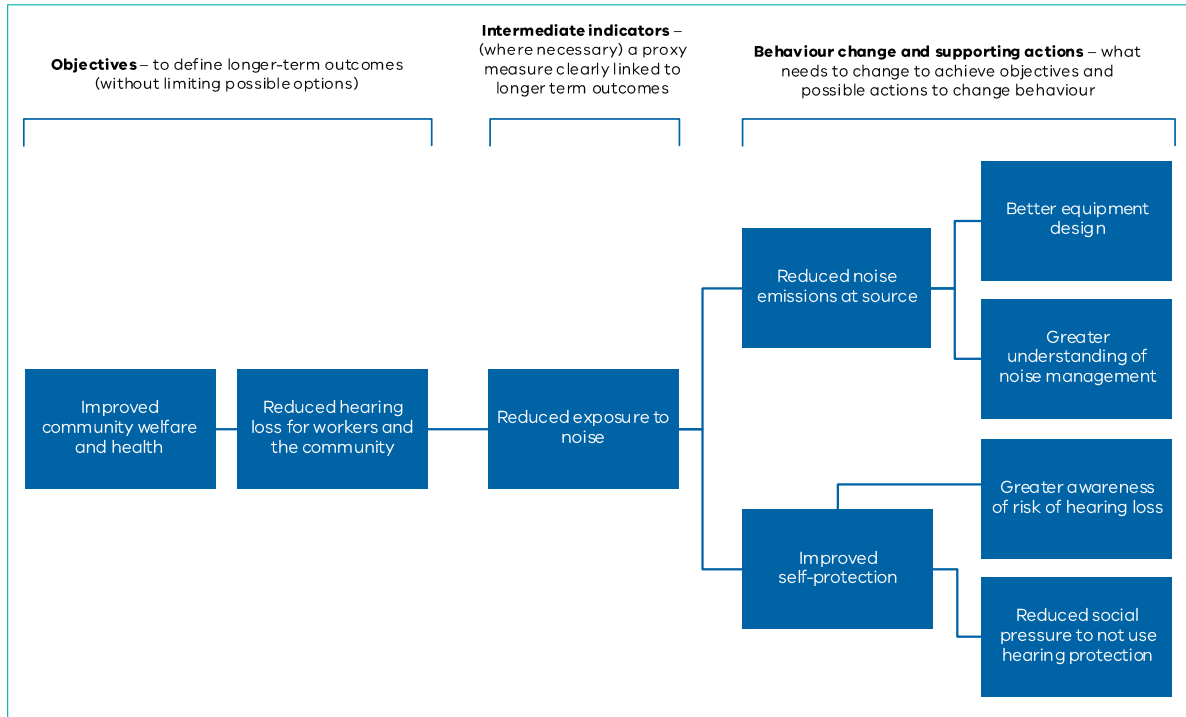
Use the following approaches to develop suitable objectives for you RIS or LIA.

Ask questions to define the Government's goals	Consider questions such as the following: <ul style="list-style-type: none">• What is the Government trying to achieve?• What is the desired change in behaviour or outcomes?• What would success look like?
Focus on the ends, not the means	State objectives in terms of the ends to achieve (the outcome) rather than the means of achieving them. This helps you avoid pre-determining a preferred approach or option or narrowing down potential approaches too early.
Define objectives at the right level	Avoid defining objectives: <ul style="list-style-type: none">• too broadly, so it may be infeasible to isolate the effectiveness or contribution of a proposal to addressing a problem (e.g. the objective is to 'improve health')• too narrowly, so they pre-determine the preferred approach (e.g. the objective is to regulate a behaviour).
Account for other related policies and programs	In complex environments, there may be multiple influences on a problem, including varied government interventions (e.g. programs, funding and regulation). Account for how your objectives complement those of other interventions and their specific contribution to addressing the problem.

<p>Consider setting intermediate indicators of progress</p>	<p>Where you cannot reliably measure the progress toward, or achievement of, the ultimate objective, you may need to use intermediate or 'proxy' indicators with a credible link to the ultimate objective (e.g. improvements in local air quality as a proxy for reduced health burden over time).</p> <p>The value and form of intermediate indicators will depend on the complexity and time-scale of the problem and ultimate objectives. However, in many cases, thinking early about these indicators can support objective setting, defining criteria for comparing the likely efficacy of options, and for building future evaluation strategies.</p> <p>An outcome is often influenced by multiple interventions, so it can be difficult to attribute an outcome to a particular intervention. You may need to note other key influences on outcomes and intermediate indicators. Doing so will inform your evaluation strategy and will ensure that expectations of the intervention are realistic.</p>
<p>Be mindful of evaluation needs</p>	<p>The objectives you set will link directly to the evaluation strategy for your preferred option. They can also inform your evaluation of the effectiveness of current regulatory arrangements in tackling the problem (e.g. for sunseting regulations).</p>
<p>Fees and charges</p>	<p>For regulations that impose fees and/or charges, the objectives should align with the Pricing Principles outlined in Victorian Government's Pricing for Value Guide.</p> <p>Typically, the objectives are to improve the efficiency, fiscal sustainability and equity of funding arrangements by ensuring that those who give rise to the need for regulation bear the costs of administering and enforcing it (through appropriate levels of cost recovery).</p>

Figure shows how intermediate outcomes can be linked to long-term outcomes. The amount of effort you put into unpacking outcomes in this way should reflect the complexity and significance of the problem.

Figure 3 – Hypothetical example of long-term outcomes and intermediate indicators



BRV can support you by advising how to:

- set objectives that can be measured and evaluated
- find the right balance and level of specificity in objectives
- integrate cost recovery and other policy objectives.

3. Identify feasible options

Purpose of this stage	To identify feasible options capable of addressing the problem. This is followed by the impact analysis, which enables you to assess the various options.
Output of this stage	A description of the broad range of possible options which address the problem. An explanation of how feasible options were selected, and why other options were considered infeasible.
The approach	Getting the most out of this stage requires: <ul style="list-style-type: none"> • a thorough understanding of the problem and its causes • thinking broadly about different ways to tackle the problem, including non-regulatory options, approaches in other jurisdictions, and improvements to existing regulatory regimes and regulatory practice • engaging with stakeholders to identify possible options • identifying potential improvements to existing regulations – particularly to onerous, complex, duplicative, redundant or ineffective requirements • considering a ‘clean slate’ approach for sunseting regulations that is not tied to the current regulations.
How the output will be used	The analysis in this section provides clear advice to the Government and stakeholders about which approaches could achieve that stated policy objectives, and why other options were considered and rejected. Feasible options will be further considered during the impact analysis stage.
What BRV looks for	<ul style="list-style-type: none"> • Options that address the underlying causes of the problem • Consideration of a range of different options, including non-regulatory options, and how these options likely interact with regulatory practice • A range of feasible options for more detailed analysis • A clear rationale for excluding infeasible options • where appropriate, evidence of involvement of key stakeholders in identifying, designing and assessing feasible options, particularly in the review of sunseting regulations.

There is usually more than one way to achieve a given objective. You should think broadly about a range of possible options and apply a consistent method to refine these into a set of the most feasible options (typically three options, although this may vary with more complex and multifaceted problems).

Requirements for impact assessment

Sections 10(1)(c) and 12H(1)(d) of the SLA require a RIS for a proposed regulation or legislative instrument to describe other practicable means of achieving the objectives, including ‘non-regulatory’ options.

Examples of ‘non-regulatory/non-legislative’ options include:

- information and education campaigns to raise awareness
- funding or delivery of grants or support services
- arrangements where industry adopts a voluntary code of conduct
- market based approaches (such as the use of tradeable permits).

For existing regulations, non-regulatory options also include changes to how regulations are administered or improved coordination with other regulatory regimes.

For sunseting regulations, you must undertake appropriate consultation (including with regulated parties) to identify non-regulatory options. You should identify at least one feasible option which reduces economic and social burden relative to the current regulations. Burden could be reduced through improving the design of rules, administration of rules or coordination of different parts of the regulatory framework.

<p>Consider how to improve the design of rules, accounting for risk</p>	<p>Reducing burden through design of rules can include:</p> <ul style="list-style-type: none"> • removing or simplifying regulatory obligations • for primary legislation, considering whether an outcomes-based or principles-based approach could reduce prescription, accounting for the nature of the risks • reducing the number of parties subject to an obligation (e.g. through changing thresholds) or exploring a lower-burden approval tool (e.g. notification or registration rather than licensing) • reducing the frequency of an obligation (e.g. how often reporting is required or how often a licence requires full renewal) • providing greater discretion for how regulators can apply requirements, such as allowing for greater streamlining or exemptions based on risk or past performance • reducing prescription or providing greater flexibility in how regulatory outcomes are met.
<p>Consider avenues to improve delivery and administration</p>	<p>Reducing burden through improved delivery and administration can include:</p> <ul style="list-style-type: none"> • changing how risks are managed (e.g. reducing 'up-front' licensing requirements and increasing use of ongoing compliance monitoring and surveillance) • making compliance more straightforward or automatic to achieve, by connecting with existing business processes or systems • improving guidance to make compliance easier to understand and more straightforward to meet, especially for smaller entities • using information technology to streamline or simplify requirements, increase transparency and predictability, and making processes more 'user-centric' • automating regulatory processes where appropriate (considering user experience and risk of harm) • increasing data and information transparency, to enable greater self-regulation, feedback and monitoring between community and businesses.
<p>Look to improve coordination of existing settings and agencies</p>	<p>Reducing burden through better coordination of existing settings can include:</p> <ul style="list-style-type: none"> • tackling issues in how regulators and other agencies coordinate and collaborate, or provide services that overlap or place cumulative impacts on regulated parties • better (re)use of information already available to government, to avoid duplication • using related regulations (e.g. obligations under other legislation or licencing processes that already interact with the risk or regulated party) to tackle the problem.

Where feasible, non-regulatory options might be pursued in addition to policy options involving legislation or regulation. BRV's Towards Best Practice guide and supporting resources provide further guidance on regulatory practice and supporting compliance.

Where options involve licensing or other permissions, the Victorian Permissions Framework can be used to inform developing and designing options. This Framework includes guidance on analysing the need for and selection of licences, permits and registrations as well as guidance on design features such as duration, exemptions, pre-screening and conditions.

Good regulatory design focuses on achieving policy objectives while minimising unnecessary regulatory burden. The impact assessment should be used to highlight any trade-offs between achieving objectives and reducing burden (including for fees regulations) and to properly account for the investments required to put these options into practice, allowing stakeholders to comment on these trade-offs and required investment.

How to approach options development

Options are developed to address the identified problem, after accounting for all the relevant factors positively or negatively influencing the problem.

You will always need to consider whether the 'base case' may address the problem. For example, if no government action was taken, would technology or market changes address the problem?

When considering possible options for government action, do not limit yourself to regulation or legislation. Be creative and explore innovative approaches. Think broadly about possible approaches, including:

- approaches that do not require legislation (such as education and support, or improved access to information or data)
- approaches that have been suggested or recommended by stakeholders or in previous reviews
- options that involve a changed stance or attitude towards specific risks, with less involvement of government
- market-based approaches (e.g., taxes, tradeable permits, and auctions)
- improving the design, implementation or enforcement of existing regulations
- approaches used for similar problems in other jurisdictions (where these are less onerous but are deemed inappropriate for Victoria, you will need to explain why it is not appropriate to adopt them in Victoria)
- 'sandboxing' where a particular group of businesses (e.g. in an emerging industry) are subject to temporary regulatory requirements. Sandboxing can support testing of new business ideas and models as well as new regulatory approaches. It also provides time for regulators to observe how an industry is evolving, assisting the development of longer-term regulatory requirements.

For legislative options, there may be variations in the overall approach (such as level of control, form of regulation), as well as other significant (sub) choices that shape what regulated parties have to do, follow, avoid or exclude. This includes adopting more outcomes or performance-based approaches (including guidance on how to comply), where these are preferable to prescriptive requirements.

In some cases, you may identify options that may be outside the scope of the current enabling or authorising framework (e.g. extending the use of a related State or local government compliance regime). Where these options have significant potential value, or have been raised by stakeholders, they should be included. If there are opportunities to increase use of another regime these should be explored. Where these are not viable, your analysis should explain what legislative or institutional changes would be required to make them viable in future.

Your aim should always be to provide a clear narrative about possible options available, and how these have been refined to arrive at a narrower set of feasible options which will be subjected to detailed analysis. This includes reference to the *objectives* and any other important policy criteria that may affect choices and explaining how options were assessed against these criteria.

Consider the following approaches to help you generate ideas for options and consider how options might change or influence behaviours and other factors affecting the problem.

<p>Make the most of existing influences and regimes</p>	<p>Consider whether the Government could:</p> <ul style="list-style-type: none"> • enhance the effect of existing incentives to reduce the problem (e.g. improving information transparency about performance to motivate businesses to act for reputational or competitive reasons) • modify approaches in existing regulatory regimes that may already affect the problem, rather than creating new regulatory requirements • better coordinate existing regulatory regimes (including related state or local government regulation) to target the issue • deliver more effective guidance and information through existing regulatory regimes (reducing the need for additional regulation) • increase the resources and priority given to the issue, such as through regulator funding, increased attention in compliance monitoring, or industry partnership programs
<p>Explore opportunities to improve market design</p>	<p>Consider whether objectives could be delivered by making markets work more effectively or by using market-based mechanisms that alter the incentives for affected groups (rather than 'command and control' requirements). For example, explore options such as tradeable permits, auctions, deposit refund systems, levies, subsidies, or property rights.</p>
<p>Define the overall regulatory approach</p>	<p>Examples include:</p> <ul style="list-style-type: none"> • the scope of the risks you are choosing to tackle, manage or accept • degree of self-regulation or direct government regulation • form of regulation, such as: <ul style="list-style-type: none"> – prescriptive (specifying design standards for compliance) – outcome-based (setting performance standards, with flexibility on achieving these), or process-based (defining risk management methods) – duties or principles-based (e.g. creating a general duty to minimise risks, guidance on how far this can be done) <p>The appropriate regulatory approach will depend on the nature of the risks and harms you are seeking to mitigate. Capability and compliance posture of regulated parties, as well as any legal constraints will also factor in the choice of the specific form of regulation. More flexible approaches may be considered if these are feasible, and do not significantly impact on risk management goals.</p>

<p>Consider the approach to setting direction through primary legislation and other measures</p>	<p>When developing primary legislation that enables obligations to be set through subordinate legislation or by regulators, you will need to consider the level of direction provided or the constraints imposed by the primary legislation. This includes the potential scope of subordinate legislation, as well as the level of discretion provided to regulators to make statutory decisions or use their powers.</p> <p>Account for the complexity of the problem being addressed and the potential for it to change over time. In general, more complex or uncertain problems will require greater reliance on subordinate legislation and regulator discretion. The Subordinate Legislation Act Guidelines discuss what matters should be covered by primary and subordinate legislation. Consult with OCPC if you are unsure.</p> <p>When considering how to best guide future policy or regulatory decisions, account for the full range of measures available to the Government, as these may be broader than direction set through legislation alone.</p> <p>Measures can include providing guidance on the policy intent through the second reading speech or explanatory memorandum, governance mechanisms applying to regulators, Statements of Expectations applying to regulators, and reporting obligations on regulators.</p>
<p>Define how requirements would be set</p>	<p>Examples include:</p> <ul style="list-style-type: none"> • introducing or changing licensing, registration, or permitting regimes • introducing information keeping, reporting and disclosure obligations (whether directly or within a permission) • how obligations are formalised, including through regulation, guidance, licences, incorporated standards and other instruments • differentiating approaches (such as the level of control or review) according to risk, or the capability and performance of regulated parties • for sunseting regulations, consider possible options that would reduce regulatory burden, relative to the current regulations
<p>Broadly consider delivery</p>	<p>Issues to consider include:</p> <ul style="list-style-type: none"> • the 'level' at which decision-making should occur (e.g Minister, department, regulator, or local community decision-making) • which body is best suited to regulate (considering the principle of subsidiarity, the balance between consistency and flexible local approaches, and the capacity/skills of different bodies) • scope of discretion for the regulator to adjust approach according to risk • the general approach to compliance or education programs (including choices about the level and focus of monitoring and compliance) • the interaction between design and delivery – the delivery of regulation is not a separate consideration to the design of regulation.
<p>Account for the operation of permissions</p>	<p>Permissions (licences, permits, and registrations) and notifications are a common regulatory tool. There is often scope for considerable variation in how permissions are applied. Impact analysis should go beyond determining whether a permission is warranted, and analyse which type of permission is most appropriate and how the permission would work in practice. Agencies are encouraged to apply the Permissions Framework and supporting guides.</p>

Consider opportunities to enable greater self-determination

Where regulation has specific impacts on First Nations peoples or organisations, it is important to consider whether regulatory settings can better enable self-determination. For example, by transferring power and resources to First Nations communities or organisations to make decisions about how regulatory objectives are met.

Options should be developed in consultation, and may include:

- providing scope for discretion in how rules are applied, considering the knowledge and expertise that Aboriginal Victorians hold about what is best for themselves, their families and their communities
- creating flexibility for regulators to recognise alternative approaches to delivering on intended outcomes
- improvements to how regulation is designed and delivered to account for Aboriginal experiences of government compliance and enforcement activities
- designing specific mechanisms in law to facilitate consultation and partnerships with First Nations people and organisations, around the application of regulation to their specific contexts.

Developing options will involve making conscious decisions about providing greater autonomy, and who, when and how this applied. These decisions should be shaped by appropriate consultation and should account for the nature of the risks being regulated.

Design fees and pricing (where applicable)

You should consider:

- the need to deliver the activity
- the scope to alter the level of government service provision or regulatory activity that is funded through fees and charges (e.g. remove discretionary activity, move to online systems, outsource processes)
- variations in the fee structure such as flat versus variable fees based on the size of an organisation, and more innovative approaches such as time of use pricing, which can help manage peak demand for a service or network
- applying the Pricing for Value Guide to review or set fees and charges (discussed in more detail below)

The Pricing for Value Guide

The Standing Directions under the *Financial Management Act 1994* require agencies to apply the Pricing for Value Guide (the Guide) in the setting of fees and charges for government services (including regulatory services). The Guide contains 12 Pricing Principles and sets out a methodology for undertaking pricing reviews. Cost recovery is one of these principles.

The Guide also requires that pricing arrangements be monitored annually and reviewed periodically, and for any proposed new prices or price changes that will have a revenue impact exceeding \$500 000 a year (indexed over time), agencies will require the Treasurer's approval. Further information about the Guide can be found on the Department of Treasury and Finance's website.

Testing and filtering to identify the most feasible options

The following approaches may be adopted to identify the most feasible options:

- Start with broad possible choices about different approaches (e.g. decisions to regulate or not, and the type of regulatory tool), before moving to narrower design choices and providing an explanation of this hierarchy of choices in the impact assessment document.
- Identify options that are meaningfully different in their effect on regulated parties or on outcomes. Avoid excessive effort to develop and compare options that represent only minor variations to one approach.
- Briefly explain why certain options are infeasible due to policy or legislative constraints. This may include identifying which changes would be required for options that would otherwise be preferred.
- Only discard options if they are infeasible, unviable or impractical - not simply because considering them in further detail (e.g. impact analysis with assessment of costs and benefits) would be complicated or time consuming.

The following questions will help you consider the practicalities of implementing options and identify potential impediments that may affect their feasibility. These are provided as a general guide, and not all of these will be relevant to every problem. You should briefly document the process and decision-making criteria used.

Account for the decision-making context in describing options. For example, with primary legislation there may be existing policy commitments or Cabinet decisions that narrow the scope of feasible options. In such cases, while alternative options would be identified, the priority for impact analysis in a LIA may be on the preferred option, recognising that impact analysis of other options will often be useful context for Cabinet decisions.

Consider efficacy of options	<ul style="list-style-type: none">• How well would the option change or influence behaviour and other causes of the problem?• How well would the option promote the Government's objectives?• How does the option address reasons for non-compliance?• What are potential gaps and shortcomings, and what might fill these?• What are the possible unintended consequences?• Is it sufficiently flexible to respond to changes in the problem over time? (Refer below to considering uncertainty and adaptability of options)
Consider legal or other constraints	<ul style="list-style-type: none">• What legal head of power is required to do this? Is it available?• What other factors apply, such as government policy?• What is the desired range of discretion or flexibility in decision-making for the regulator and does the legislation provide for this?

<p>Broadly consider the practicalities of options</p>	<ul style="list-style-type: none"> • What specific measures and actions would business or the community need to take as a result of this option (e.g. administrative tasks, planning for and developing compliance requirements)? • What effects will the options have on different groups (e.g. how might it affect small business, community groups, regional industry, or local governments? Is there an additional burden on these groups)? <ul style="list-style-type: none"> – For small business, consider whether the lack of economies of scale or other factors (for example, the absence of dedicated legal support) may affect their ability to understand or comply with different options. – If so, consider whether flexible options may be appropriate given the stated objectives. For example, specific requirements (that are easy to understand) and/or flexibility to comply may be appropriate for small businesses, while performance-based standards may be appropriate for larger businesses)? • How might the options affect competition, such as by creating barriers to entry or restricting market participation? <ul style="list-style-type: none"> – Where an option would restrict competition, consider whether this is necessary to achieve the objectives. Could other feasible options achieve the objectives without significantly affecting competition? • Could the options affect human rights, such as freedom of movement, freedom of expression, privacy and reputation, property rights, rights to fair hearing and fair criminal proceedings?
<p>Consider how compliance and enforcement would affect the feasibility of options</p>	<ul style="list-style-type: none"> • How would regulation and its implementation interact? Implementation issues can affect the feasibility of some options. • What is the nature of the current compliance monitoring framework? Are there existing shortcomings in monitoring and enforcement that need attention? • Would monitoring and compliance require new programs, or changing priorities? What relative priority (e.g. in inspections or complaint response) would it have? • Does local government have a role, and have you consulted appropriately? (The Victorian State-Local Government Agreement requires consultation with local government on proposals which involve them). • How might people attempt to evade or work around obligations? What would the consequences be?
<p>Consider regulatory duplication</p>	<ul style="list-style-type: none"> • Does this option duplicate existing obligations under other laws and regulations? • How would this option interact with other laws and regulations? Could another (existing) regulator address the problem (either with or without additional regulation)? • Is there a risk of cumulative burden or duplication, and a need for harmonisation? • Are there examples of data requests or reporting in other regimes that are duplicative and could be streamlined or harmonised through data sharing or agreement of regulated parties?

Consider uncertainty and adaptability of options

Where there is significant future uncertainty, 'stress test' options to assess how they would perform given key trends and challenges and identify implementation considerations.

- How flexible is the option to changes in technology, business models, demographics, community expectations or other trends?
- How would the option perform if the assumed behaviours and responses did not occur? Would it still address the problem?
- What scope does the option have for discretion, variation and adaptation by the regulator? What scope is appropriate (for example, to develop instruments or vary compliance)?
- How would discretion be managed? Are governance, policies and processes and appeal provisions sufficient?
- Are there opportunities for regulators to collaborate to better manage uncertainty, for example, through sharing information.

Structuring options

For more complex proposals, a range of complementary options (e.g. non-regulatory and regulatory) might be considered, addressing different parts of the problem. For example, guidance and increased education might be used to increase overall compliance, and specific regulatory or permit requirements might be used for a subset of compliance issues or parties. How options complement each other should be explained.

In cases where there are several key problems to be addressed, you can analyse options either *sequentially* or *concurrently*. Consider the following:

Sequential analysis involves analysing options for each problem separately

- Sequential analysis is where a set of options is analysed for each key problem
- For example, where there are three key problems (1, 2 and 3) and you analyse three options (labelled A, B and C) for each problem, this would lead to nine options in total (1A, 1B, 1C ... 3C)
- Sequential analysis can help avoid analysing every combination of options across different problem areas.

Concurrent analysis involves analysing options for each problem at the same time

- Concurrent analysis is where one set of options is analysed in a logical 'package' to avoid unnecessary complexity and to simplify the policy narrative
- In this approach, each option covers the key problems and is essentially a package of sub-options
- For example, option A could be a 'light touch' regulatory approach, option B the status quo and option C a more onerous approach.

The suitable approach depends on how the problems and options interact

- A sequential approach is likely to be more appropriate if problems and the options to address them are more distinct, or if there is a logical order in which decisions should be made (e.g. starting with the most fundamental decision).
- A concurrent approach is likely to be more appropriate if problems are less distinct (more interrelated) or where options address multiple problems at once.
- A concurrent approach is also likely to be more appropriate where it does not make sense to consider every combination of options. For example, it may only make sense to introduce new standards if you are also introducing a new duty-based model
- A concurrent approach can help to simplify analysis and the policy narrative, but can obscure how the options impact on a specific problem.

Feasible options for impact analysis

As a guide, all impact assessments should analyse at least three feasible - and substantively different - options (or 'sets' of options). For higher impact issues, the impact assessment should analyse four feasible options. If it is challenging to achieve this goal, BRV can advise on how make options analysis valuable and relevant.

For sunseting regulations, the impact assessment should generally include an option that is substantively different to the current regulations and/or reduces economic and social burden relative to the existing regulations.

BRV can support you by advising on:

- potential approaches to identified problems; approaches used in other jurisdictions or regulatory areas; the suitability of different approaches; and potential unintended effects and risks of options.

Consult with BRV before you narrow your options.

4. Impact analysis

Purpose of this stage	<p>To identify the anticipated impacts of the feasible options and to provide a clear explanation of how this was done.</p> <p>To determine the preferred option, after accounting for all the costs and benefits.</p> <p>To provide clear advice to the Government on the potential effects of options, for informed final decisions.</p>
Output of this stage	<p>A description of the expected costs and benefits of the feasible options (economic, social and environmental), including possible unintended effects.</p> <p>An objective, transparent and consistent comparison of options, using the problem analysis as the starting point.</p>
The approach	<p>Draw on relevant evidence and data, and use quantitative and qualitative approaches to estimate the likely effects of the feasible options, in terms of:</p> <ul style="list-style-type: none"> • who will be affected (groups/populations) and the actions people/organisations will take (time and resources) • the size and value of benefits in terms of reduced harms, or improved outcomes • potential indirect and flow-on effects of actions taken (e.g. businesses may pass on costs to customers or reduce their services). <p>Use the most appropriate decision-making tool (such as cost-benefit analysis) to compare options and determine their net benefit. Where a fully quantified cost-benefit analysis is not possible, the judgements used to compare options need to be clearly stated.</p>
How the output will be used	<p>Impact analysis allows you to identify the likely effects of each option, and to compare options objectively using an appropriate decision tool (or mix of decision tools where relevant).</p> <p>This analysis leads to the identification of a preferred option. This should be the option with the highest net benefits that maximises community wellbeing.</p>
What BRV looks for	<ul style="list-style-type: none"> • A clear and logical qualitative explanation of how each option may lead to particular behaviours or outcomes, and the overall impacts of these • A transparent description of the evidence used, and assumptions made, to determine how parties are expected to respond to each option (behaviours, practices, rate of compliance, etc.) • Quantitative analysis of the costs and benefits associated with the effects of each option, where possible • Greater depth and precision of quantitative analysis in line with the size of the expected impacts (proportionality principle) • An appropriate tool for comparing options that draws on all the evidence.
Resources	<p>Toolkit: Problem Analysis</p>

By considering and estimating the likely effects of the most feasible options, you can develop a credible, transparent and objective way to decide on the 'preferred option' (your proposal). Doing this well involves drawing on both qualitative and quantitative analysis of the likely positive and negative effects of each option (the 'costs and benefits') and comparing options using an objective decision-making tool.

The analysis documented in an impact assessment should focus on factors relevant to comparing options - not analysis for its own sake because information is available. Most of this can usually be done in-house by policymakers. For more complex analysis, support from technical experts may be needed.

Requirements for impact assessment

Sections 10(1)(d, e) and 12H(1)(e, f) of the SLA require a RIS to assess the costs and benefits of the proposed regulation or legislative instrument, and the other feasible options to achieve policy objectives, and that the RIS state why the (not preferred) feasible options are not appropriate.

Sections 10(2) and 12H(2) require the assessment of the costs and benefits include the economic, environmental and social impacts, and the likely administration and compliance costs, including resource allocation costs.

How to approach impact analysis

Impact analysis draws on the previous stages. In the problem analysis stage, you described the 'base case' (what the world would be like if you did not proceed with any option). In the identify feasible options stage, you identified several feasible options for further analysis using the base case as a point of comparison. The purpose of analysing options against the base case is to try to isolate the effects of the options.

In the impact analysis stage, you should:

- identify the likely effects (costs and benefits) of each feasible option
- estimate the effects of each feasible option (quantifying them and valuing them where practicable and proportionate to the problem)
- determine the preferred option by comparing options using the same decision-making tool.

In general, the base case is used as a point of comparison. You should:

Account for future effects in the base case

- Remember that the base case is a forward-looking concept – the state of the world without any of the options you are analysing, including changes in technology and the structure of the market
 - Set an appropriate timeframe for analysis (usually 10 years)
 - Draw on your problem analysis to consider how the problem would change over time in the base case.
-

<p>Consider all government actions likely to be in place</p>	<p>Considering the timeframe for analysis, the base case includes the following:</p> <ul style="list-style-type: none"> • Other parts of the regulatory framework such as primary legislation, subordinate legislation, codes of practice and guidance material. • General commitments to improve implementation and delivery, such as operational improvements identified through the review of sunseting regulations and the problem. • Committed or planned actions by regulators such as education campaigns, guidance program and enforcement programs.
<p>Engage with BRV when the base case is difficult to use as a point of comparison</p>	<ul style="list-style-type: none"> • For sunseting regulations, the base case involves the regulations expiring and not being remade. It can be challenging to analyse the nature of the problem and how the broader regulatory framework would function in the base case. • Consider whether a 'reference case' with minimal regulations might need to be established as a point of comparison. In these cases, engage with BRV early about your approach to comparing options, the appropriate reference case, and how to focus analytical effort to support decision making.

Using the base case as a point of comparison

Establishing an alternative point of comparison

It may be particularly challenging to infer the likely state of the problem in the base case for sunseting regulations.

In some cases, the regulatory framework might not function if regulations were not remade. In these cases, a 'reference case' with minimal regulations might need to be established to provide a point of comparison for options.

For example, if an occupational licensing scheme was an integral part of a regulatory framework and details of the scheme were set in regulations, it is likely to be infeasible to allow the regulations to expire. A 'reference case' with minimal licensing requirements such as providing proof of identity is likely to provide a more useful point of comparison for analysing options than that base case.

In these situations, engage BRV early about your approach to comparing options, the appropriate reference case, and how to focus analytical effort to support decision making.

Identify the likely effects of each feasible option

All impact assessments explain the likely effects of the feasible options. Effects include economic, social, and environmental changes that may occur by implementing each option, and cover:

- likely benefits or positive effects, such as reductions in injury, higher environmental quality, better product safety, reduced prices
- likely costs or negative effects, such as administration, compliance, training, and authorisation costs, reduced choice and lower safety or environmental quality.

The following checklist will help you consider the likely effects.

<p>Consider how actions will change as a result of the option</p>	<p>Consider and describe:</p> <ul style="list-style-type: none"> • who will change behaviours or practices (where relevant, breaking down the various groups by sector, location, size, capacity or other relevant characteristic, e.g. small business, regional organisations) • what they will do (the specific actions and measures taken, and the flow-on consequences of these actions in terms of subsequent steps, actions forgone, alternative actions taken, market competition, and so on) • how the above will change outcomes and produce benefits (e.g. reduced risks or harms, consumer protection, better health, environmental quality and so on).
<p>Describe the expected costs</p>	<p>Describe likely costs, including:</p> <ul style="list-style-type: none"> • understanding regulatory requirements including determining the scope of regulations, finding guidance from regulators and seeking expert advice • administration costs (such as demonstrating compliance, reporting requirements and record keeping) • compliance costs (works carried out, equipment purchased, management costs, training, consultancy, legal or audit and inspection fees, etc.) • market costs associated with lower productivity, delays to production or getting goods to market, more expensive or lower quality supplies, etc. • other opportunity costs, such as lost 'enjoyment' due to certain activities being constrained or prohibited • where relevant, one-off transition or implementation costs • government costs (such as administering licence/permit processes, education, and enforcement activities), which may be recovered through fees and charges on regulated parties.
<p>For regulatory options, document your assumptions about compliance</p>	<p>Consider demonstrated or likely compliance rates.</p> <ul style="list-style-type: none"> • Will those subject to regulations comply with the rules? Why/why not? To what extent does this compromise outcomes? • Will they comply with all parts of the regulations? Why/why not? • What will influence compliance? Relevant factors could include social norms, understanding of specific obligations, threat of detection and punishment and reputation? • What is the current level of compliance with existing regulations designed to address the problem? If current compliance is low, how will additional regulations be designed so that compliance increases?

Consider direct and indirect effects	In addition to analysing the expected direct or immediate effects of options, where practical, consider the possible indirect effects including transfers of costs and what is likely to happen next as a consequence (will businesses bear the costs themselves, or pass on the costs through higher prices?).
Test your understanding of likely effects with stakeholders	<p>Businesses and other regulated groups may hold extensive knowledge about the potential effects of options. You should seek to establish and validate these.</p> <p>Where analysis illustrates that the effects vary across stakeholder groups (for example, small and large business, different local governments), investigate these differences through more detailed analysis, testing and stakeholder consultation. Ensure that you consult with a range of stakeholders. Some stakeholders, such as small businesses, might be more difficult to identify and engage with.</p> <p>For a RIS (or LIA released for consultation), where your analysis relies on assumptions that were not possible to validate and test during initial consultation, highlight these and seek to confirm your understanding through specific questions for consultation.</p>
Consider effects of enabling legislation	<p>It can be challenging to consider the effects of primary legislation which enable subordinate legislation to be made. In LIAs for enabling legislation, it can be useful to consider how subordinate legislation is likely to be developed when analysing effects of proposed legislation.</p> <p>For example, enabling legislation might allow a regulator to license a certain activity. An LIA could consider the effect of licensing by making some broad assumptions about the key features of the licensing scheme. Depending on the magnitude of effects, detailed analysis (including economic modelling) may be appropriate.</p> <p>It is also important to consider how enabling legislation is communicated and how to give direction about how subordinate legislation is likely to be developed (e.g. through the explanatory memorandum).</p>

Estimate the effects

Estimating the effects helps you objectively assess and compare options and demonstrate transparency and rigour in your decision making. Quantifying effects involves estimating the number of business or individuals affected by an option, the time taken to comply and other quantities. Valuing effects involves expressing effects in a common unit of measurement (usually dollars), which enables easier comparison of options. For example, if it took one hour for a business to comply with a specific option, this time could be valued using the appropriate hourly wage.

You can build a credible estimate of effects by explaining any assumptions and uncertainties about the size of effects, and the potential ranges, including upper and lower bounds. Where the size of effects differs across groups, disaggregation of effects by groups may be needed.

Factors relevant to estimating effects include the following:

<p>Estimating benefits: all proposals</p>	<p>Impact assessments:</p> <ul style="list-style-type: none"> • must qualitatively describe benefits • should include quantitative estimates of benefits where it is practical and proportionate to do so (considering the availability of data, the level of uncertainty, the nature of the problem, and the available measurement methods). <p>At a minimum:</p> <ul style="list-style-type: none"> • explain the likely size of benefits (e.g. small, medium and large), so that you can better compare these • provide counts/numbers of units of estimated benefits (e.g. the number of people affected, area of land protected, and number of incidents of harms avoided).
<p>Estimating benefits: higher impact proposals</p>	<p>Impact assessments involving higher impact options or problems are also required to:</p> <ul style="list-style-type: none"> • specify benefits in monetary terms wherever data are available, or data collection is practicable • include sensitivity analysis where data/assumptions are uncertain. <p>Seek technical expertise on relevant analytical techniques ('valuation methods'), where this would add sufficient value to understanding the benefits of options. Estimating benefits of higher impact proposal might include economic modelling.</p>
<p>Estimating costs: all proposals</p>	<p>Impact assessments:</p> <ul style="list-style-type: none"> • are required to qualitatively describe costs • are required to estimate likely costs to the Victorian Government, drawing on actual cost data • should estimate direct costs to others, drawing on available cost data, stakeholder testing, validation and feedback, and published studies • should disaggregate costs, where these differ across groups • should acknowledge and discuss indirect costs (e.g. reductions in the choice or availability of goods and services).
<p>Estimating costs: higher impact proposals</p>	<p>Impact assessments involving higher impact options or problems are also required to estimate indirect costs. This may require additional data collection. Estimating benefits of higher impact proposals might include economic modelling.</p>

Using economic modelling in impact assessments

Economic modelling can be useful for analysing the costs and benefits of higher impact proposals. Models are most useful when:

- used for complex problems with many variables and relationships between variables. A model can illustrate the breadth and depth of likely impacts
- most impacts can be quantified and valued using high-quality data and rigorous assumptions. Departments should ensure that they are using consistent data and assumptions across impact assessment projects
- the rigour and complexity of the model is proportionate to the problem (unnecessarily complex models can obscure analysis).

It is critical that an economic model its results are explained clearly and appropriately to support determining the preferred option.

The writeup of the modelling must explain:

- the modelling approach and key relationships in the model
- the limitations of the model. Most impact assessments with modelling will require supportive qualitative analysis of impacts that cannot be meaningfully analysed in the model
- the drivers of results, including key inputs and assumptions, and how sensitive results are to changes in inputs and assumptions.

The Commissioner's role is to ensure that modelling is used appropriately in impact assessments rather than undertake a detailed peer review of the model. BRV can support departments and agencies to develop an economic model for an impact assessment but will not lead on developing or running the model. Departments and agencies should engage with BRV early to ensure they use modelling appropriately.

Determine the 'preferred option'

By using an objective decision-making tool, you can use the information and data analysed through the steps above, to identify the 'preferred option' and to demonstrate why it is superior to alternative options.

Ideally, the impact analysis should be a full cost-benefit analysis, to account for all the benefits and costs, and to work out which option has the highest 'net benefit'. However, where there are justifiable gaps in knowledge and data (e.g. data do not exist, or gathering data would require disproportionate effort), it may be appropriate to use other decision-making tools. BRV can help you develop a suitable approach to gathering and using data.

In some situations, different decision-making tools may be appropriate for different elements of a proposal, depending on the information available. BRV can help you to find a suitable approach.

Using different decision tools example – storing dangerous chemicals

The Government is concerned about the storage of a dangerous chemical, where the combination of large volumes of hazardous material and poor management practices mean some sites can pose significant risk of catching fire. Such fires produce noxious gasses and are extremely difficult to extinguish.

The options identification process explored a range of regulatory and non-regulatory approaches to address risks. Voluntary and educative approaches were considered alongside different options for a licensing and approvals regime.

The costs of regulation are quantified by considering which sites would be licensed, and the specific obligations to be imposed and the time it would take to comply (including the time to apply for a licence, changes to management practices, and the installation of new equipment and potential diversion of chemicals to illegal landfills).

These costs are then valued using average wage data. The benefits of these options depend on the extent to which they reduce the risk of a fire starting and assist in containing and extinguishing a fire. However, there is limited data to reliably estimate the reduction in the risk and or consequences of a fire as these are generally low-probability, high-consequence events.

This makes a full cost-benefit analysis infeasible. The analysis therefore quantifies and values costs of each option, then considers whether any of the options would 'break even' (i.e. whether risk would sufficiently be reduced for the benefits to at least equal the costs). Then a multi-criteria analysis is used to determine the preferred option using criteria including reduction in likelihood/consequence of fire, regulatory costs, and likely diversion of dangerous chemicals to illegal landfills.

Figure 4 – Choosing a decision-making tool

If...	and...	then use...	Limitations
Most costs, including the most important, are known and can be quantified and their value estimated	Most benefits are known and can be quantified and estimated.	Cost–Benefit Analysis (CBA) , to compare different options, supported by qualitative explanation.	Requires key costs and benefits to be estimated, which may not be practicable in all cases.
	Most benefits cannot be quantified, but the value of a unit of benefit can be estimated (e.g. it may not be possible to determine number of injuries avoided through the proposal, but the dollar cost of an injury avoided is known).	Break Even Analysis (BEA) , to establish how effective an option needs to be to offset its costs. Provide supporting reasoning and evidence to explain whether the proposal will likely deliver or exceed the 'break even' point.	Requires units of benefit to be estimated. Does not allow the relative effectiveness of different options to be compared.
	Most benefits can be quantified but cannot be estimated in monetary terms (e.g. the likely area of habitat preserved by the proposal, may be known but not the dollar value of the benefits of preserving that habitat).	Cost Effectiveness Analysis (CEA) , to compare different options and identify which option delivers the outcome at lowest cost 'per unit of outcome'.	Considers only the least cost option needed to achieve a given outcome, not whether the outcome itself is optimal.
It is not possible to quantitatively estimate the effects of many or most of the impacts of an option. However, you are able to define the objectives and their relative importance, as a basis for comparing options.		Multi Criteria Analysis (MCA) , to assign and aggregate scores to decision criteria and compare across options. Use transparent criteria and weightings that are consistent with the policy objectives.	Requires clearly defined criteria to be weighted based on their relative importance, and a credible explanation of the allocation of scores to compare different options.
You are working with a complex proposal that involves a range of parts, each with different data limitations and characteristics.		The most rigorous tool available to compare within choices, estimating overall costs and benefits to the extent feasible.	

BRV can support you by advising on:

- the level of quantification expected in your impact analysis
- methods for data collection, analysis and estimation
- the appropriate decision-making tool to use
- targeted use of experts such as consultants, and scoping tenders to support and build on your qualitative analysis.

5. Summarise the preferred option

<p>Purpose of this stage</p>	<p>To ensure that the Government and stakeholders are given sufficient summary information about the preferred option to understand what it will mean in practice.</p> <p>For some simple proposals, this section of the impact assessment document may not be required, because all relevant information can be covered in the impact analysis section and executive summary.</p>
<p>Output of this stage</p>	<p>This section summarises the key features of the preferred option and how it will function in practice. It differs from the previous identify feasible options and impact analysis sections in that it may:</p> <ul style="list-style-type: none"> • provide more detail on specific design issues for the preferred option • compare the preferred option with the status quo • link to the drafting instructions (legislation) or exposure draft (proposed regulations or legislative instruments) • provide a summary for stakeholders who may not read the impact analysis. <p>It will include a summary of the analysis of small business impact (for an LIA, and for a RIS where identified as relevant) and the competition effects (for all proposals).</p> <p>For a RIS analysing fees and charges, there must be a table listing proposed (and current, if applicable) fees expressed in both dollar and fee unit terms and the percentage change in proposed fees relative to current fees (where these exist).</p>
<p>The approach</p>	<p>No new analysis is required, but you should include what stakeholders would need to know about the preferred option and how it would affect them (if they had not read the preceding sections). Consider the knowledge, expectations and needs of affected stakeholders when drafting.</p>
<p>How the output will be used</p>	<p>This summary helps stakeholders to understand the exposure draft regulations or legislative drafting instructions. It can be read alongside the implementation section to provide a fuller picture of policy and practice.</p>
<p>What BRV looks for</p>	<ul style="list-style-type: none"> • Clear writing that is suitable for the audience. • An executive summary that highlights key features of the preferred option, including impacts on specific groups such as small business. • Sufficient content to complement the exposure draft or drafting instructions. • For an LIA, a copy of the drafting instructions. For a RIS, a copy of the proposed statutory rules or legislative instrument.

The preceding sections of this guide provided guidance on the data and analysis needed to demonstrate the choice of the preferred option. These sections may not:

- have explained all aspects of the preferred option (e.g. if there were aspects where the impacts were very small, and it was disproportionate or unnecessary to include these in the impact analysis)
- be of interest to all stakeholders, such as those who are principally concerned only with the impacts and implementation of the preferred option.

The description of the preferred option in this section, therefore, provides a comprehensive overview of all its elements. For large or complex proposals, the impact assessment may need to be supplemented by other information for stakeholders.

If you have documented logical and transparent analysis in the preceding sections, the focus in this section should be on summarising the proposal in a way that is meaningful to all stakeholders, including non-specialists.

If there are notable impacts on specific groups, or important characteristics of the impacts (such as large or concentrated transition costs or capability challenges), it is important that these are highlighted in the preferred option section and not buried in more detailed impact analysis. This also applies to the executive summary, which should clearly identify notable impacts.

Requirements for impact assessment

Sections 10(1)(b) and 12H(1)(b) of the SLA require a RIS to include a description of the preferred option, while for changes to fees, sections 10(1)(ba) and 12H(1)(c) require a comparison of existing and proposed fees (including the percentage change).

To ensure that the impacts of legislation and regulation on small business are appropriately examined, LIAs are required to include a specific assessment of the impacts on small business section. It is not mandatory for a RIS to include an assessment of the impacts on small business, but it is highly desirable and good practice to do so.

Victoria is a party to the Competition Principles Agreement, which requires that any new primary or subordinate legislation should not restrict competition unless it can be demonstrated that the Government's objectives can only be achieved by restricting competition and that the benefits of the restriction outweigh the costs. This requirement is met by including a 'competition assessment' in an LIA or RIS.

Key components

This section generally describes:

- key elements of the preferred option (including those that may not have been covered earlier), although minor details and lists of changes can be presented in accompanying appendices
- where these elements are reflected in exposure draft regulations or legislative drafting instructions
- whether the proposal refers to existing standards, guidelines or rules (such as Australian Standards), which will be 'incorporated by reference' into Victorian legislation, and how to access this material
- how the preferred option will function in practice
- whether the proposed measures are new, or replace, update or consolidate existing regulations, highlighting key differences from current regulations and the reasons for these
- where there will likely be a difference in the approach to compliance and enforcement from the status quo, such as increased enforcement or application of existing rules

- where applicable, how the preferred option:
 - interacts with other legislation, including the cumulative effect on the affected groups from recent changes to legislation/regulation
 - is consistent with Victorian Government policy
 - relates to intergovernmental agreements.
- for a RIS, the specific sections of legislation that authorise making the regulations.

In addition, this section will include, where applicable:

- a summary of the analysis of the small business impact
- a statement on competition effects
- for fees, statements on the level of cost recovery and/or any cross-subsidisation between different fee-payers, as well as a comparison of the proposed fees to any existing fees.

Describe competition and small business impacts

The **identify feasible options** and **impact analysis** stages should have accounted for the effects on specific groups, including groups that may be disproportionately affected by regulatory requirements (due to financial costs, capability challenges, social or other impacts).

Nonetheless, there are Victorian Government requirements to consider specifically the impacts on small businesses (mandatory for an LIA, and good practice for a RIS) and to apply a competition test. Although considered and explored in earlier sections, these results should also be summarised in this section.

Small business

Small businesses may experience disproportionate effects from regulatory requirements for a range of reasons, including limited resources to interpret compliance requirements, or to keep pace with regulatory changes and the cumulative effect of different requirements. For these reasons, this section of the impact assessment document should document explicitly how the preferred option will affect small business, and link to how it is planned to address these issues under the implementation plan.

Likely impacts on competition

In some cases, regulation can affect competition by preventing or limiting the ability of businesses and individuals to enter and compete within particular markets. Where this occurs, there are likely to be adverse effects for consumers (through reduced choice of products and/or higher prices) and the broader economy (through reduced opportunities or incentives for businesses to invest and innovate, leading to lower productivity and employment growth).

Given these potential effects, the Competition Principles Agreement requires that the analysis of all regulatory proposals consider whether the preferred option will restrict competition. If so, the analysis must demonstrate that the Government's objectives can only be achieved by restricting competition and that the benefits of the restriction outweigh the costs.

To assess competition impacts it may be useful to consider whether your proposal will:

- limit the number or range of suppliers
- limit the ability of suppliers to compete
- reduce the incentive of suppliers to compete
- limit the choices and information available to customers.

BRV can support you by advising on:

- whether a separate preferred option section is required for your proposal
- which aspects of the proposal need to be highlighted specifically in this section.

6. Implementation plan

<p>Purpose of this stage</p>	<p>To set out a clear, practical strategy for implementing the preferred option, by outlining:</p> <ul style="list-style-type: none"> • what needs to be done • who will be doing it • when it will be done • who will monitor implementation (including identification and management of implementation risks). <p>The implementation plan should account for activities to put the preferred option into place, such as supporting regulated parties to understand regulatory requirements, and longer-term activities, such as ongoing support, compliance monitoring and enforcement.</p>
<p>Output of this stage</p>	<p>This section will set out responsibilities for, and approach to:</p> <ul style="list-style-type: none"> • implementation planning, including transitional arrangements, communications and compliance • how any capability and resourcing issues will be addressed • delivery oversight, feedback and review needs.
<p>The approach</p>	<p>Draw on the analysis from options development about likely implementation issues and collaborate with those who will implement the preferred option (regulators and regulated parties) to address these in the implementation plan. This will be easier when affected parties, delivery agencies, and regulators are involved early in the impact assessment.</p> <p>Document the Government's roles and resource requirements at a sufficient level to ensure accountability and to govern delivery and performance over time. It is important that implementation is sufficiently resourced to ensure the preferred option is effective.</p>
<p>How the output will be used</p>	<p>This section will provide a reference for setting up the design and oversight of delivery of the preferred option. It may need to be built into departmental and regulator annual plans and compliance programs.</p>
<p>What BRV looks for</p>	<ul style="list-style-type: none"> • Evidence that delivery agencies and regulators were involved in the development of the implementation plan. • An explanation of the timeframes and any special arrangements needed for transition. • Consideration of how different groups may have different implementation needs. • Consideration of how government processes and systems may be affected. • A realistic understanding of how compliance will be achieved, including an outline of the approaches required to give effect to the preferred option. • Firm commitments to taking actions in the implementation plan.

Understanding and explaining how the preferred option will work in practice is a key part of regulatory design. A well-considered implementation plan increases the likelihood that the preferred option will deliver its expected outcomes in practice.

The implementation plan is most effective when developed with those who will implement, administer and enforce the proposal (such as regulators and local government) and with those who will be subject to the requirements. Genuine consultation on the implementation plan is critical, especially for new or substantially changed regulatory regimes.

How to approach implementation planning

The level of effort and planning for implementation will need to reflect the:

- complexity of the preferred option (such as whether it is managed through routine processes, or requires adaptive management by regulators)
- significance of the obligations imposed by the preferred option
- extent of change from current approaches.

Include sufficient detail to identify key timing, skill and resource requirements for effective implementation, consultation and communication. Although plans may sometimes need to recognise that those responsible for implementation will address details later, the implementation plan in the LIA or RIS should identify and account for the type of work required and its timing.

Renewal of sunseting regulations

Where you are remaking sunseting regulations, and the proposed regulations are substantively the same as the current requirements and the regulatory approach will also not change, you can acknowledge this, and a detailed implementation plan may not be required.

However, this section should still outline how implementation and enforcement will be undertaken – and highlight if there will be any change in compliance monitoring and enforcement practices that may affect the experience and costs of regulations for businesses and other regulated parties even if the substance of rules has not changed.

The following questions can prompt design of your implementation plan.

<p>Understand what regulators need to deliver</p>	<ul style="list-style-type: none"> • How will support, compliance monitoring and enforcement be delivered? • Are additional powers, policies, processes or systems required? • How will information (e.g., on risks) be gathered and managed? • What relative priority (e.g., in rating risks and allocating resources) does this have, in the context of other activities by the regulator?
<p>Understand what regulated parties will need to do</p>	<ul style="list-style-type: none"> • What are regulated parties' attitudes to compliance? What is their capacity (considering skills, resources, and current knowledge) to comply? How will you address these issues? • How do these requirements fit in with existing contact with the regulator, such as education and compliance programs? • What significant constraints or impediments might they face, and how might this vary across affected groups? • What will be the impacts of changing practices when the proposal is introduced? How complex and difficult will it be for people and organisations to change? What does this mean for existing assets they hold?

Next, identify in summary form (with the level of detail proportionate to the compliance needs) how the proposal will be delivered, key risks to achieving compliance, and which supporting regulatory approaches and capacities may be required.

The implementation plan establishes a reference point for designing ongoing delivery, monitoring outcomes, and accountability over the life of the preferred option. It also helps to promote an integrated outlook, clear accountabilities and collaboration between policy-makers and regulators.

<p>Establish clear accountabilities</p>	<ul style="list-style-type: none"> • Establish a clear chain of accountability and line of communication between parties responsible for implementing and monitoring. • Indicate the resource, training and assistance needs of those implementing the preferred option, and how these will be provided • Describe governance and feedback systems, for monitoring performance, delivery against objectives, addressing unforeseen issues as they arise, and promoting continuous improvement.
<p>Develop and resource a consultation and communication strategy</p>	<p>Develop the consultation and communication approach in partnership with those who would implement the preferred option. This involves:</p> <ul style="list-style-type: none"> • identifying the key parties to contact before any regulations take effect • deciding which communication tool(s) to use (such as guidance documents, training, information sessions, support services), and explaining why you have selected these • establishing who is best placed to deliver these communication tools (for example, are policy-makers best placed to prepare guidance material, and who should engage with regulated parties?) • assigning accountabilities for communicating the changes. <p>Be aware that implementing consultation strategies often requires specific resources and skills. If consultation is handled poorly, this can undermine the effectiveness of implementation. The transition to implementation is the key stage to address this risk.</p>

Consider transitional arrangements where appropriate

Bearing in mind possible competition effects, consider whether a mixture of the following may be required:

- setting a delayed commencement date, or staged commencement dates
- setting a transitional period (for example, staggered implementation or phased compliance and enforcement).

For statutory rules and legislative instruments, you may need to consider whether the authorising legislation enables transitional measures to be adopted.

BRV can support you by advising on:

- the level of detail that needs to be included in the implementation plan
- specific issues for which special transitional arrangements might need to be considered
- whether particular attention should be paid to specific groups or elements of the proposal in developing the plan.

7. Evaluation strategy

Purpose of this stage	To put in place mechanisms that will enable the Government to explain how, and how well, the preferred option has worked in practice, and to drive continuous improvement of regulatory arrangements over time.
Output of this stage	<p>A clear strategy, or method, for evaluating the actual effects of the preferred option. The evaluation strategy will explain:</p> <ul style="list-style-type: none"> • what will be evaluated • how it will be done • who will do it • when it will be done.
The approach	<ul style="list-style-type: none"> • Consider the information and data you already collect, and important areas about which information and data are lacking. • Work with regulators/delivery agencies to determine the evidence needed to assess effectiveness of the preferred option, considering: <ul style="list-style-type: none"> – the long-term objectives and outcomes sought (such as reduced harms) – intermediate outcomes (such as the awareness and behaviours of regulated parties) – implementation of the preferred option (both establishing and ongoing), including regulator activities, outputs and immediate outcomes. • Document an evaluation strategy that uses key evaluation questions to prioritise future assessments, and confirms roles and responsibilities for evidence gathering, monitoring and evaluation.
How the output will be used	<p>The evaluation strategy is a starting point for future activities by all agencies involved in designing and delivering/implementing the preferred option.</p> <p>For a RIS (or published LIA), stakeholders have an opportunity to comment on the suitability of the proposed evaluation strategy and to suggest improvements.</p>
What BRV looks for	<ul style="list-style-type: none"> • A proportionate evaluation strategy that: <ul style="list-style-type: none"> – establishes baseline and progress indicators to measure success – can be built into the corporate planning and ongoing management of agencies responsible for policy and implementation – places specific emphasis on significant areas where there are substantial information or data gaps – reflects the level of uncertainty about the preferred option's effects. • A clear understanding of how the interests and activities of regulators (measuring delivery) and policy advisors (evaluating regulations) interact. • Commitments to data collection and evidence review that are clear and accountable and reflect the proportionality principle. • Provision for feedback and adjusting evaluation, implementation and policy approaches, if relevant (such as for uncertain or dynamic issues). • Planning for mid-term evaluation (required for higher impact proposals).
Resources	<ul style="list-style-type: none"> • Toolkit: Evaluation

Consistent with the Victorian Government's commitment to better regulation and a culture of continuous improvement, agencies must evaluate all regulations.

Evaluation involves more than just measuring the actual effects of a regulation - it involves improving knowledge about the problem to improve regulatory effectiveness over time. A mature evaluation framework can also enhance the partnerships between Ministers, departments and regulators, through agreement on common goals and meaningful measures of effort.

Monitoring and evaluation should form a cycle of continuous improvement, with feedback on indicators and evaluation results informing regulatory practice and, if necessary, the (re)design of policy settings and regulation.

Requirements for impact assessment

The Government requires that all LIAs and RISs include an evaluation strategy for the preferred option. The methodology and data to be collected through the evaluation strategy should be proportionate to the impacts of the preferred option.

Consistent with the evaluation strategy in an LIA or RIS, an evaluation must be undertaken for all legislation and regulation. Some legislation and regulation require a mid-term evaluation (see below for more detail on requirements).

BRV monitors a schedule of upcoming evaluations and liaises with the relevant departments and agencies as appropriate.

How to approach the evaluation strategy

Evaluation design should be considered throughout your overall approach to impact assessment, starting with the long-term and intermediate outcomes you developed when defining the objectives of action, through to considering the set of evidence sources you will need to assess the effectiveness of the preferred option. Building on this, the evaluation strategy:

- sets up a clear and considered approach for delivering assessments of the effectiveness of the preferred option and forms the basis for the next steps in data gathering and analysis
- specifies monitoring and evaluation roles for the agency developing the regulations, and for the agencies or regulators that will implement them.

Evaluation strategies should generally be formed around key evaluation questions to understand how the problem may have changed and how effective the preferred option has been in practice. Evaluation questions should prioritise addressing the most important:

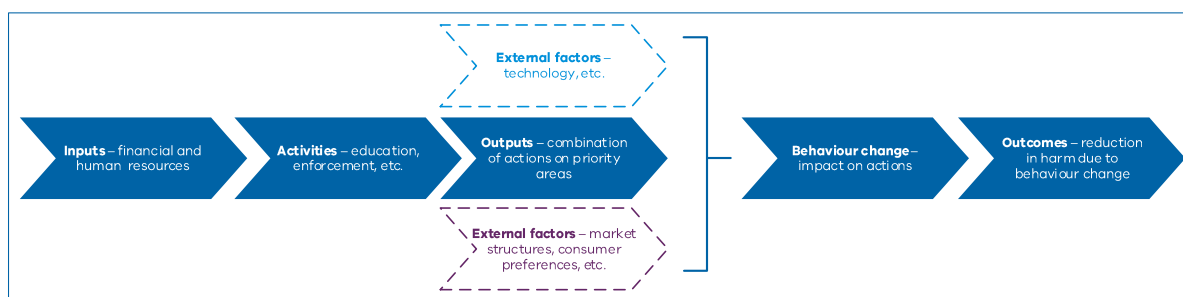
- gaps in knowledge, as recognised when defining the problem
- areas of uncertainty around the nature of the problem or the preferred option
- areas of likely change, such as technological change
- attributes of the policy problem, e.g. those that are most material to understand better over time for ongoing improvement in policy and regulatory practice
- provisions of the policy, e.g. those with greatest burden or impact
- resourcing commitments, whether for establishing the preferred option or its ongoing delivery, such as compliance monitoring and enforcement.

Evaluation strategies often benefit from an organising framework, such as a program logic model that includes:

- an intervention logic explaining how the preferred option, and related activities, are expected to bring about desired changes in behaviours, and how these changed behaviours help achieve the Government’s objectives
- a defined set of measurement indicators, and the forms of evidence, that will be used in combination to track the actual impacts and performance of the preferred option over time.

A program logic is most suited to situations where there are a range of related actions involved in addressing the problem, including actions by regulators.

Figure 5 – Elements of a regulatory program logic model



One of the main reasons for developing the evaluation strategy before the preferred option is implemented is that the evaluation will require information and data collection to be embedded in general regulatory or program activity. This generally means:

- immediately establishing baseline measures, as a reference for tracking effectiveness and monitoring the problem over time
- that mechanisms for ongoing evaluation should be in place no later than three years into the life of the preferred option
- preparing for mid-term or ‘year five’ review of regulations/legislative instruments (or primary legislation, where relevant) as part of agency and regulator forward planning.

Requirements for evaluation strategies

Following the proportionality principle, the evaluation approach should reflect the scale and significance of the expected impacts of the preferred option:

<p>Minimum requirements</p>	<p>All evaluation strategies must:</p> <ul style="list-style-type: none"> • clearly and simply describe the objectives of the evaluation • establish key evaluation questions • set up an appropriate framework for the evaluation linking the elements evaluated to the outcomes sought ('intervention logic') • outline the key information that will be collected (e.g. relevant indicators and types of evidence, and the quantitative and/or qualitative methods that will be used) to assess progress against delivering objectives • describe how data and information will be gathered, including the processes and datasets that will be used, improved or established • explain how the chosen evaluation methods are appropriate and proportionate to the preferred option's expected impacts • identify the department/agency or team(s) responsible for collecting, analysing and reporting on data and information, and outline a method for ensuring these activities occur • outline a consultation plan for stakeholder input into developing an effective evaluation strategy and for completing evaluations • specify when evaluations will occur, and how often.
<p>Mid-term evaluation may also be required</p>	<p>A mid-term evaluation is required 3–5 years from initial implementation where:</p> <ul style="list-style-type: none"> • the preferred option has a high impact (expected costs of at least \$8 million per year) • there are complex implementation and delivery issues (such as coordination between multiple agencies / parties) • where the problem analysis stage revealed significant gaps in knowledge, understanding or evidence (including those identified in evaluating the effects of existing regulatory arrangements) • where there is significant uncertainty about the expected benefits and costs of the preferred option. <p>Where the timing for a mid-term evaluation coincides with the sunseting of the regulations, the evaluation can be undertaken as part of a RIS prepared to 're-make' the regulations. A mid-term evaluation can also be undertaken as part of a broader review of the regulatory framework.</p>
<p>The evaluation should be proportionate</p>	<p>The effort applied to design and undertake the evaluation should be proportionate to the significance of the problem, the level of uncertainty, the expected burden or costs imposed by the regulation and the scale of regulatory effort.</p> <p>An evaluation should focus on analysing how effective the regulations have been and how the problem has changed over time.</p>
<p>The evaluation plan should state who is accountable</p>	<p>An evaluation plan should be clear about the nature of evaluation tasks, the framework for evaluation, and who will conduct it. This includes accounting for the timeframes and costs of an evaluation such as key investments in technology.</p> <p>It should set out the key elements of the plan, who will be accountable for them.</p>

Principles for evaluation strategies

The following principles should guide the design of your evaluation strategy.

Evaluation is a core part of government delivery	<p>Evaluation is not an afterthought. It is built into how agencies develop objectives, refine options and design implementation and consultation.</p> <p>Arrangements ensure that evaluation occurs during delivery and management as a matter of course. Ongoing program and project assessments allow and require organisations to deliver long-term reviews of regulation effectiveness.</p>
Evaluation relies on a strong evidence base	<p>A regulatory evaluation will ideally build from existing baseline data and long-term evidence gathering. While this is not always possible, policymakers should endeavour to collect data early, before the policy takes effect, and use the policy lifecycle to create long-term, quality evidence for the future.</p>
Evaluation should improve government understanding of the problem	<p>The evaluation should not just review the regulatory intervention – it should help to understand the nature of the regulatory problem and how it has changed over time. This includes filling identified gaps in knowledge.</p>
Evaluation should support continuous improvement in policy-making	<p>Outcomes of evaluations contribute to improvements in knowledge and guide adaptive regulatory approaches over time. The lessons learnt from an evaluation may be useful more broadly for similar policy problems, programs or interventions. Evaluations should therefore be made available and useable for others.</p>
Evaluation recognises complexity	<p>Evaluations should acknowledge the level of complexity around the policy problem.</p> <p>Where the problem is straightforward, it can be reasonable to expect that government actions (such as the effect of rules, and compliance monitoring) may have a direct effect on the problem.</p> <p>However, in a complex environment with many external factors influencing the problem, there may be a high level of uncertainty about policy effects. In these situations, it can be more important to monitor how the issue develops over time, than to attribute specific interventions to achieving long-term outcomes alone.</p>

Developing your methodology

When developing the methodology for your evaluation, consider the following approaches.

Use objectives to guide evaluation design and delivery	<p>The objectives developed for your RIS or LIA guide the design of the evaluation strategy. It can do this by setting out measures of long-term success (such as improved outcomes or reduction in harm) and intermediate measures that are linked to achieving the objectives.</p> <p>An integrated approach to evaluation will consider investment to deliver regulatory activities, the outputs of these activities, the influence on actions and behaviours, and ultimately changes to long-term outcomes.</p>
Track a range of measures, not only specific targets	<p>Effective evaluation strategies contain a suite of performance measures to help examine how regulatory actions influence outcomes. This is preferred to setting narrow, predefined targets (such as goals for number of inspections delivered).</p> <p>For example, narrow goals such as activity targets for a regulator can result in perverse outcomes (high-volume, low-quality activity) that may or may not link directly to promoting the underlying policy objectives.</p>
Seek to examine cause and effect	<p>The evaluation should be designed to help policymakers understand how the preferred option impacted on the objectives, and any unintended consequences. This includes the economic and social costs and benefits of the preferred option.</p>
Draw on diverse information sources	<p>Evaluation design should aim to build a comprehensive picture by collecting information (even if partial) from a broad range of sources. For example, social research, regulator operational data, audits, consultation, and literature. This should include an appropriate mixture of 'hard' (such as data) and 'soft' (such as stakeholder views) evidence.</p>
Draw on existing data and plan to fill data gaps	<p>Policymakers should actively seek to access and use data available to government, regulators, and industry. This includes tackling barriers to accessing data held by other parties, and ensuring existing data sources are used before creating additional reporting requirements.</p> <p>Where a policy interacts with other planned programs such as service delivery or funding, the evaluation should draw on planned monitoring of these.</p> <p>The Evaluation Toolkit provides further guidance on developing your methodology, undertaking evaluation and writing it up.</p>

Review of evaluation

The Commissioner monitors the implementation of evaluation strategies, including mid-term evaluations. The Commissioner performs this role by notifying departments of required evaluations, providing support to departments and agencies undertaking evaluations and reviewing evaluation reports. Departments should engage early with BRV (i.e. when they commence an evaluation project) and regularly during the project.

BRV can support you by advising on:

- developing key evaluation questions
- scoping the evaluation and developing a proportionate approach
- the priority areas for future data collection
- performance indicators, data that should be gathered, and the possible methods for obtaining these
- who should be involved in and consulted as part of the evaluation
- timing considerations, including whether some areas should be reviewed earlier than others.

Finalising the impact assessment

Once you have asked, answered and documented the seven key questions in your impact assessment, you will generally need to include a consultation section and executive summary.

Consultation

Consultation and engagement should align with the Victorian Government's Public Engagement Framework.

Early consultation is required for the development of all proposals –to inform the impact assessment and policy design and to ensure that other requirements for the development and implementation of legislation are met. This includes consultation with:

- any sector of the public (businesses, community groups, not-for-profits) that may face a significant economic or social burden from the proposal
- Ministers, departments and agencies that may be affected, or who have related responsibilities and regulatory regimes
- other departments and agencies involved in the development and review of legislation, particularly the Department of Justice and Community Safety (for human rights, offences, penalties, infringements and powers of inspection matters) and the Office of Chief Parliamentary Counsel (on drafting legislation).

Public consultation on the final analysis and preferred option provides additional opportunities to:

- acknowledge and seek to fill gaps in knowledge
- test assumptions and conclusions
- reach a broader range of stakeholders
- pick up on issues that may have been missed
- validate and improve on implementation planning and on the design of the evaluation strategy.

See Toolkit: Consultation and Engagement for further details.

Requirements for impact assessment

Sections 6, 11 and 12 (for statutory rules) and sections 12C, 12I and 12J (for legislative instruments) of the SLA set minimum requirements for public consultation before and after a RIS is completed. These include draft regulations settled by the Office of the Chief Parliamentary Counsel, the notice of a RIS release, consideration of submissions, and a notice of the final decision. The SLA Guidelines provide more detail about these requirements.

As the purpose of LIAs is to inform Cabinet deliberations, the information in it is treated as Cabinet in Confidence and can only be released to the public with the agreement of the Premier and responsible Minister or through Cabinet. However, although legal requirements for RIS consultation do not apply, credible legislative proposals often rely on early consultation with affected stakeholders and should be undertaken wherever possible.

Although it may not be possible to release an LIA for consultation, the impact assessment framework provides a logical way to frame early engagement materials (such as discussion papers, research) before writing the LIA document itself.

Consultation in an LIA or RIS

Where consultation with stakeholders has been undertaken during initial policy development and analysis, this should be reflected in the relevant sections of the impact assessment.

In addition, the consultation section of an LIA (where relevant) or RIS needs to include:

- who has been consulted to date, and how their views have been reflected in the impact assessment
- the planned public consultation process following the public release of an LIA or RIS.

Notice of RIS and exposure draft regulations

Agencies must publish a notice that the RIS has been released through specified channels:

- the Government Gazette
- the Victorian Public Notices website or a daily newspaper circulating throughout Victoria.

Agencies may advertise in trade publications if it is useful. This notice of the RIS must provide context on the proposal and the contents of the RIS and seek public comment on the RIS.

A RIS must be made available in electronic form on a website (which could be via Engage Victoria, the Victorian Government's consultation platform) and be available in hard copy form on request. A RIS must be made available alongside exposure draft regulations. Departments are encouraged to publish the Commissioner's letter of assessment alongside the RIS.

The minimum public consultation period is 28 days. However, Victorian Government policy is that, wherever feasible, consultation should be for at least 60 days. This gives stakeholders additional time to assess the RIS and to prepare a more considered response.

Delivering effective consultation

The public consultation requirements outlined above are the minimum for a RIS. They may be sufficient to test the proposal, and secure public input, only if there has already been extensive early consultation with all affected groups, and if these groups are notified of the RIS release.

Going beyond these minimum requirements will often be necessary for a RIS (or an LIA, where this has been released), especially for proposals that are complex or affect multiple groups in different ways, that are substantively different from current arrangements, and where there has been varying levels of early consultation.

Key issues to consider for effective consultation include:

- defining your consultation goals (is the goal to understand a topic or to test ideas?)
- identifying relevant stakeholders (who may have an interest or role) and the appropriate level of engagement
- selecting the most appropriate consultation tools, which could include the use of information sessions, discussion papers, existing government communication channels, direct communications, and social media.

The Toolkit: Consultation and Engagement provides frameworks and advice on consultation methods.

After formal consultation

Requirement to consider public submissions

On behalf of the responsible Minister, agencies must consider all public submissions and comments received on the RIS and must provide reasons for the direction taken in the final regulations, broadly addressing any general issues raised in the submissions.

In addition, the Scrutiny of Acts and Regulations Committee (SARC) of Parliament examines whether consultation is adequate and whether appropriate organisations have been consulted (SARC 2021, *Annual Review 2021*, p.5). This should include agencies responding to submissions on RISs.

The transparency and thoroughness reflected in your department or agency's response to public comments and submissions is important. The effort of providing detailed explanations for proceeding in a particular direction (and rejecting specific suggestions) can result in greater community acceptance of the final regulations.

Your response should clearly demonstrate that matters raised in public submissions have been appropriately considered. If there are many submissions, a general letter with an attachment covering the various issues raised, and documenting how each issue has been addressed, can be used. Preparing and documenting your agency's response in this way contributes to promoting transparency of the regulatory process. It also demonstrates to stakeholders that they have been heard, which will make them more likely to engage in future.

Notice of final decision

Agencies must publish notices (in the *Government Gazette*, as well as the Victorian Public Notices website or a daily newspaper circulating throughout Victoria) of the responsible Minister's decision to make, or not make, the proposal after considering public comments and submissions.

You will need to prepare a statement explaining how the general issues raised in the public comments/submissions have been addressed. This 'statement of reasons' must be published on the same website used to consult on the RIS and be made available in hard copy on request.

More detail on the process for preparing and making legislation and regulations is available in the SLA Guidelines and guidance material from the Office of the Chief Parliamentary Counsel.

BRV can support you by advising on:

- how to define your consultation objectives
- how to broadly consider possible stakeholders
- the methods and timing for effective consultation.

