



COMMISSIONER FOR
BETTER REGULATION

Hints and tips for preparing a Regulatory Impact Statement for sunseting regulations

The following information provides guidance on key considerations for sunseting regulations and the requirements for preparing a Regulatory Impact Statement (RIS). Further information is contained in the *Victorian Guide to Regulation* (and supporting toolkits) and the *Subordinate Legislation Act 1994 Guidelines*.

The purpose of a RIS is to ensure that regulation is only implemented when there is a justified need; only the most efficient forms of regulation are adopted; and there is an adequate level of public consultation in the development of regulatory measures.

PURPOSE OF A SUNSETTING PROVISION

The objective of a mandated ten-year sunseting provision is to ensure that regulations are regularly reviewed. This review process should address whether the regulation is still required and, if it is, how it might be improved to better achieve the desired benefits and/or reduce the cost it imposes.

WHETHER A RIS NEEDS TO BE PREPARED

A Regulatory Impact Statement (RIS) needs to be prepared where a proposed statutory rule imposes a 'significant burden' (cost) on any sector of the public.

In considering whether a proposed statutory rule imposes a significant burden, the following questions must be considered:

- Will business, community groups or individuals have to spend funds or devote time to compliance activities, change current practices or seek external advice?
- Does it impose significant penalties for non-compliance?
- Does it impact of individual rights and liberties?

Departments then need to determine whether the size of the burden is likely to be significant to advise the responsible Minister who ultimately determines whether the proposal requires a RIS. The Office of the Commissioner for Better Regulation (OCBR) can provide advice to help you to advise your Minister on the need to prepare a RIS.

WHAT IS THE PROCESS?

The Commissioner for Better Regulation – supported by a small Office - independently assesses the analysis in the RIS against the requirements in the *Subordinate Legislation Act 1994* and *Victorian Guide to Regulation*. For a RIS to be adequate it needs to present analysis that is logical, draws on relevant evidence and data, is transparent about any assumptions or judgements made and the proportionate to the issues being considered

Typically, before it can be assessed as adequate, a RIS goes through 3-4 draft iterations. Please allow up to 10 business days for the OCBR to provide an assessment for each draft of a RIS.

It can take around 2-6 months — or longer for complex, higher impact proposals — to draft a RIS and have it assessed by the Commissioner as adequate.

The Subordinate Legislation Act requires that the final RIS and regulations are released for a minimum of 28 days public consultation or ideally 60 days for public consultation (*Victorian Guide to Regulation*, page 37).

Further information on key timing considerations is contained in the attachment and in section 1.5.6 of the *Victorian Guide to Regulation – Toolkit 3: requirements and processes for making subordinate legislation*.

WHEN TO START?

The best time to start thinking about a RIS, and to engage with the OCBR, is at the start of the policy development process, before the department, agency or Minister has determined a preferred policy solution.

If you are likely to need to prepare a RIS, contact the OCBR as early as possible to discuss the process and the proposal. The OCBR can help departments to define the problem, identify possible options, assess the impacts of different options, and the depth of analysis required.

WHO SHOULD PREPARE A RIS?

Policy officers with detailed knowledge of the relevant issues should generally be able to prepare a RIS, although specialist assistance in estimating the costs and benefits from within your department or externally may be useful. If a department chooses to engage a consultant to help develop a RIS, the OCBR can provide general advice on how to select a suitable consultant and provide a list of consultants who have previously prepared a RIS.

IDENTIFY CHANGES SINCE THE CURRENT REGULATIONS WERE MADE

The nature of the policy problem that requires the regulation often changes over time. The RIS needs to identify the specific problem(s) that the proposed regulations are intended to address, taking into account changes in market structure, technology and community expectations. By considering these effects on the nature and extent of the problem, it is easier to identify feasible options to address the current problem.

A RIS for sunseting regulations should contain sufficient information to allow a decision to be made about whether the existing regulatory measure is still required, should be modified, or whether other options are more appropriate.

GATHERING EVIDENCE

The RIS needs to establish that there is an ongoing problem that is sufficiently large to justify government intervention. Given that the existing regulations may have been in place for some time, it could be difficult to quantify the extent of the problem in the absence of regulation.

In order to quantify and evaluate the extent of the problem in the absence of regulation, the RIS should focus on:

- **evaluating existing regulation** – comprehensively review the effectiveness of the existing regulations in addressing the original problem. An evaluation should establish whether the existing regulations are achieving the specified objectives, including providing quantitative information, where relevant.
- **consulting with stakeholders** – what would happen without the regulations as part of normal business practices or other regulatory requirements?
- **examining academic research** – existing research may assist in evaluating regulatory effectiveness and contain cross-jurisdictional comparisons.

- **other jurisdictions** – consider approaches taken to address similar problems in other states, territories and comparable countries. The *Victorian Guide to Regulation* requires that less onerous approaches in other jurisdictions be considered in the RIS.

THE OCBR CAN ASSIST AGENCIES AND DEPARTMENTS BY PROVIDING:

- Advice to help inform your Minister on the need to prepare a RIS
- Examples of previous RISs for similar proposals
- Training on the preparation of RISs
- Advice on defining the problem, identifying possible options, and undertaking a cost-benefit analysis
- Written feedback on early drafts

ANALYSIS COMMENSURATE WITH IMPACT

The OCBR assesses the adequacy of the analysis in a RIS according to the impact of a proposal. When the proposed regulations have a low impact or are relatively simple, they generally require less analysis than where the proposal imposes a large burden, or is more complex. As a guide, a simple RIS could be around 30-50 pages, whereas a more complex RIS could be around 50-70 pages in length.

USEFUL GUIDANCE MATERIAL WHEN PREPARING A RIS

- Victorian Government – *Victorian Guide to Regulation*(2014) and supporting toolkits¹
- Department of Treasury and Finance – *Cost Recovery Guidelines* (2013)²
- Department of Treasury and Finance – *Economic Evaluation for Business Cases* (2013)³

REDUCING THE REGULATORY BURDEN

The preparation of a RIS for sunseting regulations presents an opportunity for departments to consider options to reduce the regulatory burden of regulations. Similarly, policy officers considering changes to sunseting regulations should be conscious of whether there are incremental regulatory burdens imposed.

The *Victorian Guide to Regulation* (pages 44-46) requires that each RIS prepared for sunseting regulations include an option that reduces the regulatory burden on business, not-for-profits and/or individuals. The burden reducing option may not be the preferred option, but including it enables greater scrutiny of opportunities to reduce regulatory burdens and seek stakeholder views on potential trade-offs between burden reduction and community outcomes.

¹ <http://www.dtf.vic.gov.au/Publications/Victoria-Economy-publications/Victorian-guide-to-regulation>

² <http://www.dtf.vic.gov.au/files/81dd6af0-3922-41c8-964d-a1cd00c7ea34/Cost-Recovery-Guidelines-Jan2013.pdf>

³ <http://www.dtf.vic.gov.au/files/bad1e4dd-01e5-4cbe-99f0-a1e000de5f26/Economic-Evaluation-Technical-Guide.pdf>

RIS Timing Considerations

