

Introduction

All new regulatory proposals will need to demonstrate that the better regulation principles have been applied. The process for demonstrating compliance is illustrated in Figure 2.

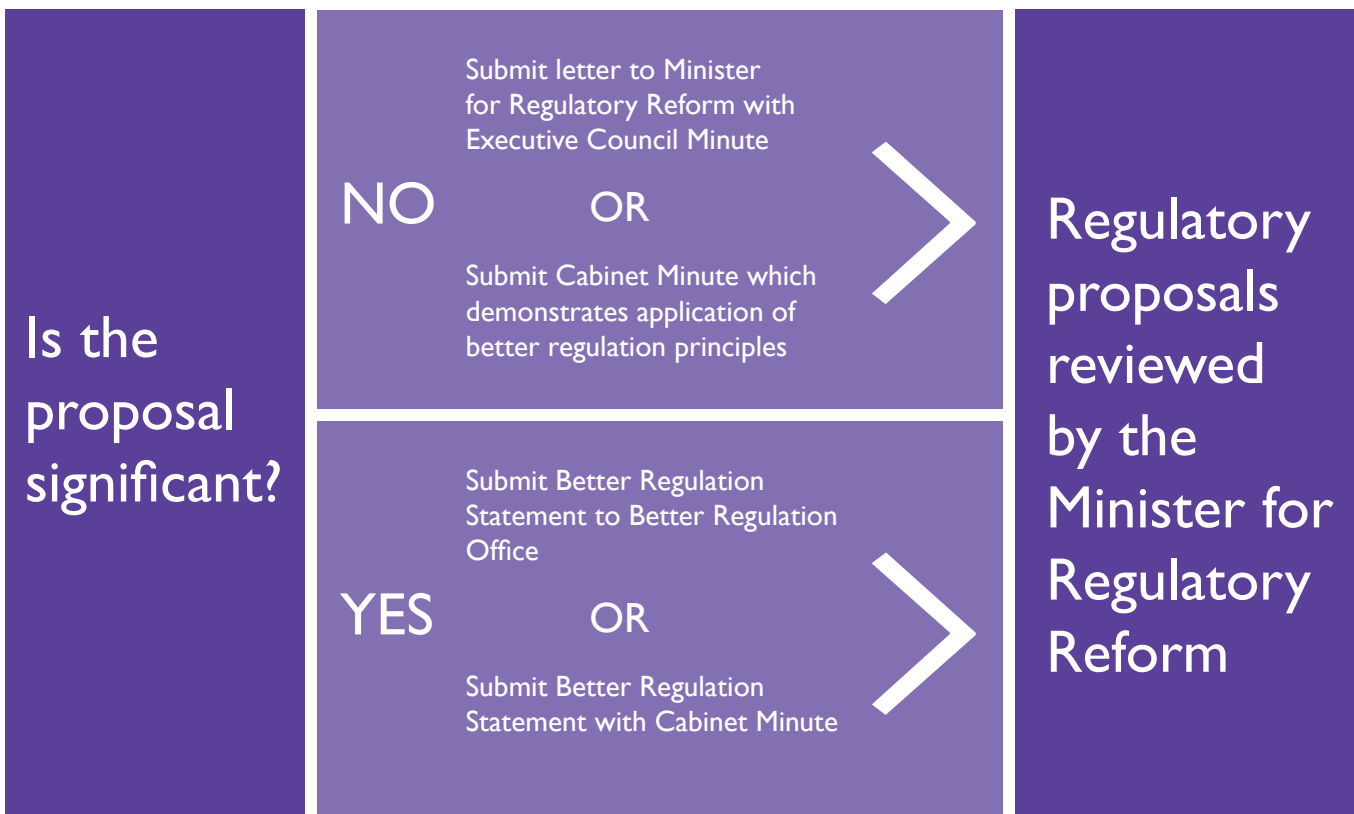
For significant new and amending proposals, a Better Regulation Statement will be required and will need to be certified by the Minister for Regulatory Reform. Details of how to prepare a Better Regulation Statement are provided below.

For non-significant proposals, Portfolio Ministers will need to demonstrate that the better regulation principles have been applied through the following processes:

- If a Bill is being submitted to Cabinet for approval, evidence of the application of the principles should be provided in the Cabinet Minute.
- If a Regulation or other Statutory Instrument is being put to the Executive Council, a statement that the principles have been applied will need to be provided in a letter to the Minister for Regulatory Reform, submitted with the Executive Council Minute. From time to time the Better Regulation Office may request additional information about the proposal, including for its annual report.

Figure 2: Demonstrating Compliance with the Better Regulation Principles

All regulatory proposals must demonstrate compliance with the better regulation principles



The Minister for Regulatory Reform will provide advice to the Premier on whether the principles have been applied and whether the regulatory burden being proposed is justified. If the Minister for Regulatory Reform has concerns about the proposal, the Minister may ask the Premier to defer consideration of the Regulation or a Statutory Instrument by the Executive Council until the concern is resolved.

When is a Regulatory Proposal Significant?

Significant new and amending regulation will require a Better Regulation Statement. The Portfolio Minister is responsible for determining whether a Bill or a Regulation is significant. This will need to be determined on a case by case basis but, in general, Bills and Regulations are considered significant if they would:

- introduce a major new regulatory initiative
- have a significant impact on individuals, the community, or a sector of the community
- have a significant impact on business, including by imposing significant compliance costs
- impose a material restriction on competition, or
- impose a significant administrative cost to government.

The decision of the Portfolio Minister is subject to the views of the Premier and Cabinet, informed by the Minister for Regulatory Reform.

Better Regulation Statements will not be required for regulation that is related to police powers and general criminal laws, the administration of justice (such as rules of court and sentencing legislation), electoral rules or the management of the public sector. Excluded instruments under Schedule 4 of the *Subordinate Legislation Act 1989* are also exempt.

In some cases, regulatory proposals will implement decisions taken through external processes such as Ministerial Council decisions, decisions of the Council of Australian Governments (COAG), or processes undertaken on behalf of government by independent bodies such as IPART or the Productivity Commission. Where these processes demonstrate the elements of good quality regulatory development (including impact assessment and consultation) it is not necessary to duplicate this work when seeking approval at a NSW level.

Subordinate Legislation Act Requirements

The *Subordinate Legislation Act 1989* continues to require the preparation of a regulatory impact statement for all new statutory rules in NSW.

Where new regulations are significant, the regulatory impact statement should address the better regulation principles as well as be consistent with the requirements under the *Subordinate Legislation Act*. In these cases the regulatory impact statement will replace the need for a separate Better Regulation Statement.

Agencies must also ensure the other legislative requirements under Section 5 of the *Subordinate Legislation Act* are met. These include advertising in the *Gazette* and another daily newspaper circulating throughout NSW as well as providing a copy of the regulatory impact statement and all written comments and submissions received to the Legislation Review Committee within 14 days after the regulation is published in the *Gazette*.

How to Prepare a Better Regulation Statement

A Better Regulation Statement must be prepared for *significant* regulatory proposals.

The purpose of a Better Regulation Statement is to provide decision makers, that is Portfolio Ministers, the Premier and the Cabinet, with sufficient information to enable them to make an informed decision about whether to approve the proposal.

The Better Regulation Statement demonstrates that a significant regulatory proposal is justified and better than alternative ways of addressing the problem, and that sound regulatory development and consultation processes were followed in developing the proposal.

A Better Regulation Statement also provides information to business and the community about decision making, ensuring transparency and accountability in the regulatory development process.

A Better Regulation Statement should be a succinct document so it can be readily assessed by decision makers. Depending on the nature of the regulatory proposal, it might only be 10 pages long, for example. Other cases may require more detail, but as a general rule, Better Regulation Statements should be no longer than 30 pages.

Guidance on how to prepare a Better Regulation Statement is provided below. The preparation of this document should not require external consultants, but rather document the analysis undertaken to apply the better regulation principles and to ensure the regulatory proposal is required, reasonable and responsive.

A Ready Reckoner to assist agencies to determine whether they have addressed the principles is provided in Appendix D. Agencies may also wish to contact the Better Regulation Office for further guidance.

How to Lodge a Better Regulation Statement

If a Better Regulation Statement is required for a Bill, it should be lodged with a Cabinet Minute which seeks approval to draft a Bill or introduce a Bill into the Parliament.

For Regulations, a Better Regulation Statement should be lodged with Executive Council papers.

The timetables for lodgment with Cabinet Secretariat remain the same for Cabinet Minutes (10 days before the Cabinet Meeting) and Executive Council papers (noon on the Friday before the Executive Council Meeting). However, agencies are encouraged to consult the Better Regulation Office early if they are developing significant Bills and Regulations to avoid delay.

Certification Process for Better Regulation Statements

The Minister for Regulatory Reform certifies that Better Regulation Statements are adequate.

The Better Regulation Office will advise the Minister on whether Better Regulation Statements should be certified. The Office will assess whether the Better Regulation Statement demonstrates the better regulation principles have been applied in the development of the regulatory proposal.

If a Better Regulation Statement does not demonstrate compliance with the better regulation principles, the Minister for Regulatory Reform may refuse to certify it. In such cases, the Minister will advise the Premier the matter should not proceed to Cabinet or to the Executive Council.

If the Premier agrees with this advice, the proposal will be deferred until compliance can be demonstrated. This may involve amending the Better Regulation Statement to provide additional information or going back to undertake additional analysis or consultation to ensure the option which has been chosen can be justified or to consider an alternative option.

Publishing Better Regulation Statements

Better Regulation Statements are to be made publicly available, except in limited cases determined by Cabinet.

Better Regulation Statements should be made available on agency web sites after a Bill is introduced into Parliament or after a Regulation is published in the *Gazette*.

Better Regulation Statement Template

The Better Regulation Statement should demonstrate that the regulatory proposal is required, reasonable and responsive by demonstrating that it meets the better regulation principles. An important element is to demonstrate that the impacts of the proposal, including compliance costs, are well understood. The structure of a Better Regulation Statement should be as follows.

1. Executive Summary

Provide a summary of the proposal and a short justification for why the preferred option is recommended.

- Demonstrate that the proposed regulatory approach is proportionate to the policy problem.
- Outline the consultation approach adopted and provide a brief summary of stakeholder views of the proposal.
- Demonstrate that the preferred option provides the greatest net benefit or least cost to the community.

2. Need for Government Action

Demonstrate that government intervention is justified.

- Clearly identify and provide evidence of the policy problem.
- Advise whether consultation was used to help identify the problem.
- Explain the actual or potential impacts of not taking action and summarise the outcome of any risk analysis.

3. Objective of Government Action

Demonstrate that the objectives of government action are well understood.

- Clearly describe the objectives of the proposal.
- Ensure the objectives are consistent with existing government policies.

4. Consideration of Options

Outline the various options that were considered in developing the proposal.

- Ensure the status quo is considered as an option.
- Consider non-regulatory alternatives.
- Show opportunities to simplify, repeal, reform or consolidate existing regulation have been considered and acted on.
- Show any opportunities for national or cross border uniformity or harmonisation have been pursued.
- Outline if stakeholders have been consulted in the development of options.

5. Costs and Benefits of Options

This section is a very important part of the Better Regulation Statement and must be comprehensive. The aim of this section is to demonstrate that the potential impacts of the proposal are understood. While it is useful to quantify costs and benefits, this will depend on the availability of data. In some cases qualitative assessment may be justified although quantitative assessment is preferred. An appropriate method of assessment should be chosen which reflects the significance of the proposal and likely impacts.

While every proposal is different, it is recommended that the following topics be addressed in this section:

Compliance costs

- Identify the potential costs of the regulation on business.
- Outline the compliance issues raised during consultation.

- Costs should include resources, time and financial costs likely to be incurred by business⁸.
- Identify any particular impacts on small business.

Administrative costs

- Identify potential costs on government that will be incurred from implementing the options.
- Identify time constraints on government.

Competition impacts

- Identify potential competition restrictions that may result from each option.
- Identify potential impacts on innovation.

Other costs

- Identify direct and indirect costs and benefits.
- Identify any social costs or impacts on community.
- Identify any environmental impacts.
- Identify any distributional impacts across regions.
- Identify any cumulative impacts of the regulatory options.

Implementation and compliance

- Demonstrate how the preferred option will be implemented and enforced.
- Identify roles and responsibilities for implementation and compliance.
- Outline compliance strategies and penalties.

6. Consultation

Demonstrate that consultation was conducted in a way which informed the development of the options considered, as well as the determination of the final regulatory proposal.

- Show how consultation helped to identify the problem, understand the impacts of the options and inform the selection of the preferred option.
- Provide information on which stakeholders were consulted, when consultation occurred, matters on which input was sought and the time period for comment⁹.
- Describe the central themes arising during consultation and key areas of support and dispute.

7. Preferred Option

- Identify the preferred option.
- Justify the preferred option based on its ability to meet the objectives and achieve the greatest net benefit or least cost to the community.

8. Evaluation and Review

- Identify the monitoring strategy for the performance of the regulatory proposal and show why this strategy is appropriate.
- State when a review of the policy objectives will be undertaken, and explain any divergence from a review period of five years.
- Where relevant, given the likely impact and complexity of the regulation and the impact on stakeholders, report on whether the regulation should be reviewed with other instruments, and whether any specific elements should be reviewed at an earlier time.

⁸ *It is not expected that all impacts will be reported in financial terms. This should be done where sensible and appropriate to the regulation being proposed. For example, it would be appropriate to estimate the dollar costs where a new regulatory requirement requires a specific capital investment. Where new operational requirements or reporting processes are proposed, it may be more sensible to estimate the number of additional staff or work hours required to comply with the regulation.*

⁹ *A minimum consultation period of 28 days is required.*