

# Introduction

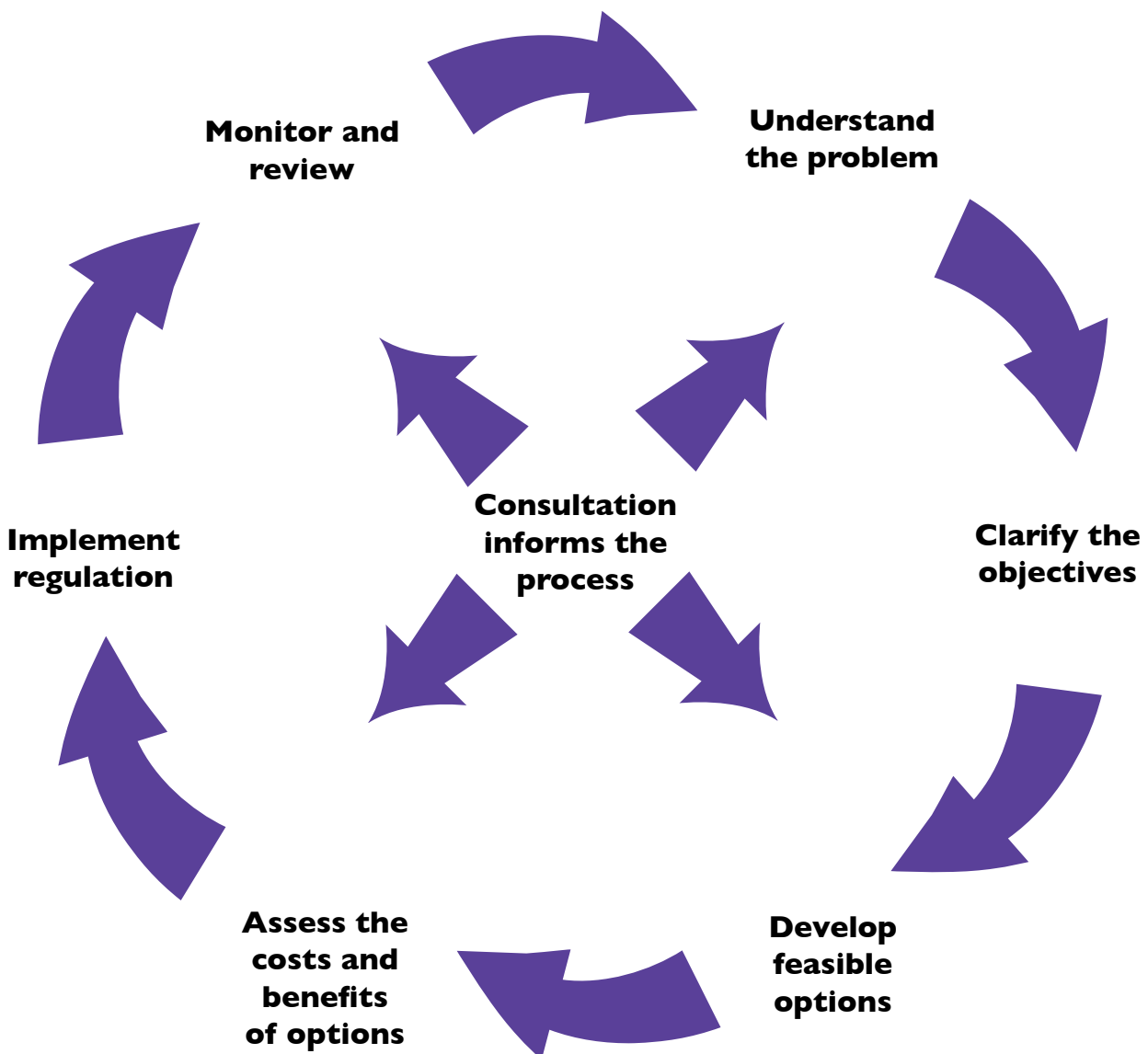
Effective consultation is at the heart of better regulation. It helps to improve the quality of policy outcomes by ensuring that regulation is well informed, technically viable and will work in practice. Effective consultation will ensure that regulation is responsive to the knowledge, experience and opinions of stakeholders.

If undertaken at the right time, in the right way, and with the right people, consultation will lead to better outcomes. It will help to identify problems that require new regulatory responses and existing regulations that need to be reformed. It will help the Government to better understand the impact of existing and proposed regulations on business and the community. The central role of consultation in the regulatory development process is illustrated in Figure 3.

Effective consultation will also engender support by businesses and the community for the chosen regulatory or non-regulatory approach – although both government and stakeholders should understand that consultation will not necessarily lead to consensus.

This consultation policy sets out guidelines to encourage consistent consultation practices and set a benchmark for good practice, while providing flexibility to consult in a way that is appropriate and proportionate to the problems being addressed.

**Figure 3: The Regulatory Development Process**



# What is Effective Consultation?

Consultation describes the broad range of communications between government and community and business stakeholders with an interest in decision making. Consultative approaches range from one way information delivery through to interactive discussions and participation by stakeholders in the decision making process.

Consultation strategies should create an environment in which the Government and the community can openly exchange views, ideas and information. They should also provide the public with a better understanding of regulatory options, as well as government responsibilities and constraints. Consultation should try to maximise the potential for reaching common ground and avoid unproductive conflict.

Effective consultation processes will commonly have the following features:

- **Proportional**  
The effort and resources spent on consultation should be commensurate with the magnitude and complexity of the problem, the nature and impact of the proposal and the level of stakeholder concern.
- **Timely**  
Consultation should occur early enough in the process to influence regulatory development. Stakeholders should be given sufficient time to properly consider the issues and submit their views.
- **Accessible and representative**  
Consultation should involve all relevant stakeholders, including members of the public, likely to be affected by the proposal. It is important that all stakeholders are able to participate in the process, including those with special needs. The consultation process should be publicised and participation encouraged by involving industry peak bodies and community organisations.
- **Focused**  
The objectives of the consultation and the particular issues on which views are sought should be clearly stated. As far as possible, no feasible options should be excluded from consideration. Any particular constraints on options, such as prior commitments or decisions, should also be clearly stated.
- **Transparent**  
Stakeholders should be given sufficient information to enable them to understand the policy problem and proposed response. Documents should be written in simple language and their purpose should be clear. Submissions received as part of a consultation process should be made publicly available, except where a stakeholder specifically requests that a submission be treated as private or confidential.
- **Flexible**  
The consultation method should be chosen on a case by case basis. A comprehensive consultation strategy may be appropriate in some cases, whereas in others, more informal consultation may suffice.
- **Responsive**  
Outcomes of consultation processes should be communicated to stakeholders. Feedback should also be given to participants about how their input was considered and the reasons for any divergence between their input and the outcomes.
- **Evaluated**  
The success of the consultation process should be evaluated, and lessons incorporated into future consultation strategies.

# How to Conduct Effective Consultation

Principle 5 of the better regulation principles states that consultation should inform regulatory development. The Government has made a commitment to adequate and timely consultation on all regulatory proposals, in a manner which is proportionate to their significance and to the degree of stakeholder interest.

In line with this commitment, the minimum consultation period for new regulatory proposals has been extended to 28 days<sup>10</sup>. This does not prevent longer consultation periods being employed for more significant or complex proposals, or where otherwise appropriate to the stakeholders or issues concerned.

The consultation process will vary according to the circumstances which call for the use of regulation. The information below provides guidance on how to ensure that consultation is effective.

## I When should you consult?

Consultation should occur throughout the regulatory development process, where possible, so that stakeholders have an opportunity to genuinely influence the process. It is important that stakeholders have sufficient time to properly consider the issues and submit their views. Ideally, consultation will help identify the problem, develop the options, assess the costs and benefits of options and determine the preferred approach.

While early and open consultation is recognised as good practice, it is important to be aware of a number of factors, discussed below.

### I.1 Cabinet processes

It is essential consultation processes recognise and maintain the Cabinet conventions of confidentiality and collective ministerial responsibility. Maintenance of these conventions supports better decision making by ensuring Cabinet can freely debate and consider the full range of policy options.

Ministers and agencies are not entitled to make statements of Government policy unless they have been approved by Cabinet, committees of Cabinet or the Premier. This includes new proposals for policy, legislation, significant regulation, cross-portfolio issues, intergovernmental agreements and a range of other matters.

These requirements also extend to discussion papers, including issues papers, green papers and white papers. When developing documents to be used as the basis for stakeholder consultation, it is important the material is not presented in such a way as to commit the Government to a particular course of action, or to indicate a particular Minister's preferred or proposed position. To do so may constrain full and frank discussion of new policy proposals by the Government.

More information on Cabinet conventions can be found in Premier's Memoranda 2006-06 and 2006-08, and in the document *Cabinet Conventions: NSW Practice*, which is available from the Department of Premier and Cabinet website<sup>11</sup>. The Department of Premier and Cabinet can provide advice on which specific matters ought to be considered by Cabinet.

<sup>10</sup> See Premier's Memorandum 2006-17 *Improving the Regulation Making Process*, 15 December 2006.

<sup>11</sup> [http://www.dpc.nsw.gov.au/publications/memos\\_and\\_circulars](http://www.dpc.nsw.gov.au/publications/memos_and_circulars)

## 1.2 Signalling intent

In some cases consultation can raise expectations that the Government will act in a particular way. This can constrain the Government's consideration of all feasible options. It can also alter the behaviour of stakeholders.

For example, during the development of restrictions on the breeding and sale of particular breeds of dog under the *Companion Animals Act 1998*, concerns were raised that breeders would be encouraged to accelerate breeding programs and on-sell as many dogs as possible in the lead up to the commencement of the restrictions. In this case, the intention to reduce the availability of dangerous breeds would coincide with an increase in the numbers of such dogs in the community.

## 1.3 Avoiding consultation fatigue

Consultation fatigue can occur where particular groups in a community are consulted on a multitude of issues over time. This can become burdensome when conducted through a number of different processes. Consultation fatigue is often exacerbated if stakeholders provide input to decision making processes but do not see evidence that it has been taken into account.

Agencies should recognise that consultation can be time consuming and resource intensive for stakeholders. Efforts should be made to avoid consultation fatigue by:

- integrating consultation with other processes where possible to avoid duplication
- encouraging stakeholder participation on issues where feedback is needed most and is likely to be taken into account
- informing stakeholders of the decision making process and providing an explanation if their input is not reflected in the regulatory outcome, and
- considering simple methods to collect information, for example, through the use of online surveys.

## 2 Who should you consult?

Stakeholders likely to be affected by a proposal from the community, business and within government should be consulted. It may be necessary to identify sub-groups of stakeholders if broader groups are not homogenous in their views.

Once stakeholders have been identified, an analysis of stakeholders may assist to design an effective consultation strategy. Relevant matters to consider include:

- the number of stakeholders
- stakeholders' expectations from the consultation process – these may need to be managed as part of the consultation strategy
- the potential for collaboration or conflict between stakeholders, and
- the level of interest in the issues and the degree of power to influence outcomes – whether this is through financial control, reputation or authority within an industry.

It may be useful to also approach industry associations and business groups. However, care should be taken to ensure that the views of a diverse group of businesses are represented.

Some peak bodies may represent community views on particular issues. However, if these groups do not represent the views of all stakeholders, broader consultation may be required.

It is important to consult with other government agencies to ensure that regulatory proposals are consistent with, and do not duplicate, existing requirements, that the proposals are feasible, and to properly understand their cost implications.

It may be necessary to tailor consultation processes and activities to enable some communities or individuals to

fully participate. Groups that may need special consideration for developing consultation processes include:

- Indigenous communities
- people from non-English speaking backgrounds
- people with disabilities
- young people
- older Australians, and
- socio-economically disadvantaged groups.

Stakeholder responses to consultation should be considered in a balanced manner, recognising that some stakeholders are able to devote more resources than others to consultation.

### 3 How should you consult?

The way consultation is undertaken will affect the extent of participation. Whatever method is used, consultation should be undertaken in a transparent, concise and accessible manner. The objectives and desired outcomes of consultation should be clearly stated so that stakeholders understand the scope and aims of the process.

It is important to ensure that the method of consultation is appropriate and proportional to the problem being addressed, the number and interest of stakeholders and the available time and resources.

Consultation can be through formal means such as publicly releasing a consultation paper for written comment, or it may be done informally such as through meetings or discussions. To be effective, a combination of different methods of consultation may be needed.

The following factors should be taken into account when selecting consultation methods.

- How sensitive, complex or controversial is the regulatory issue under consideration?
- How many stakeholders or stakeholder groups are affected by the options?
- Are stakeholders represented by a cohesive industry body or dispersed?
- Are there community or representative peak groups that should be consulted?
- What is the capacity of stakeholders to participate in consultation?
- What type of input is needed from stakeholders?
- What time and resources are available for the consultation process?
- What risks are associated with consultation (ie delays or consultation fatigue) and can the risks be managed?

#### 3.1 Written consultation paper with submissions

This approach involves the distribution of a discussion document inviting stakeholder comment. Participants most often respond in writing but may also provide verbal input. There are several types of consultation paper that can be used, depending on the stage of the process and the scope of input required.

Strengths of this approach are:

- it allows in-depth consideration by stakeholders
- if the discussion document is publicly released, wide participation is possible which may solicit a broad range of views, and
- it is inexpensive.

Weaknesses of this approach are:

- it requires considerable lead time, for preparation of both the discussion document and the responses
- if used in isolation it is not interactive, which can limit clarification of, or building on, the points raised
- overly complex questions can intimidate the participants, or lead to distorted answers, and
- accessibility can be limited by language – people from non-English speaking backgrounds or cultures not based on the written word may be excluded.

### Green paper / white paper

A green paper is usually an open-ended discussion document setting out a preliminary proposal without any commitment to action. The purpose of a green paper is to stimulate public debate and launch a process of consultation on a particular topic. A green paper usually presents a range of ideas and invites interested individuals or organisations to contribute views and information. It is produced early in the policy making process, while proposals are still being formulated.

A green paper may be followed by a white paper. White papers are documents setting out government policy or proposed actions in an area of concern. Although a white paper may form part of the consultation process, it does signify a clear intention on the part of a government to take a particular course of action.

This approach is usually used where widespread input or formal consultation is required, particularly for a new policy issue. Where there are disparate ideological positions among stakeholders, the green paper/white paper method can present a range of concerns to promote balanced debate.

### Issues paper

In contrast to a green paper, an issues paper usually poses specific questions or issues that need to be addressed. In some cases it may be appropriate to ensure confidentiality of responses to encourage frank views from participants.

This approach is usually used where widespread input or formal consultation is required. It is most successful when the discussion paper is simple, accessible and brief; questions are well-defined; participants have sufficient time to respond; and consultation is supplemented with other methods.

### **Example of an issues paper – IPART consultation on water price regulation**

The Independent Pricing and Regulatory Tribunal (IPART) is responsible for setting prices for water and sewerage for the major metropolitan water agencies in NSW. IPART's role and functions are established by legislation.

Price setting is a complex process that affects a large number of people, the water agencies and businesses. There are usually specific areas that must be addressed relating to expenditure, price structure and service provision.

For these reasons IPART releases an Issues Paper for public comment. The Issues Paper defines the parameters of the review and seeks input on specific questions. Stakeholders are invited to make submissions on those questions as well as on any other matters they wish to canvass.

This approach allows IPART to provide information to a large number of stakeholders, target the consultation to relevant areas and to receive formal submissions on complex issues.

## **3.2 Public forums**

Public forums allow regulatory issues to be raised with a large group in one location. This is often done in a conference format, using a combination of presentations, small group discussions, and question and answer sessions to elicit responses on issues.

Strengths of using public forums for consultation are:

- a larger number of groups and individuals can provide input
- the interaction and discussion between regulators and participants allow ideas to evolve more quickly and a range of perspectives to be canvassed, and
- it is transparent – all participants witness the discussion.

Weaknesses of this approach are:

- it can be expensive, depending on the size of the group and the formality of the meeting
- the participation in the meeting shapes the outcome of the consultation
- there is a higher risk that specific issues or groups can dominate the agenda
- considerable lead time is required to prepare for the forum, and
- discussion can very easily remain at a superficial level, particularly if issues being addressed are complex or sensitive.

This approach is most effective when looking at broad issues and questions. Participants will generally require good background information and sound facilitation is often needed to ensure the discussion stays on track. It may be important to have a mix of participants with a diversity of opinions and backgrounds, but with common objectives.

### 3.3 Small group consultations

This approach involves convening small groups of up to 25 people for face-to-face discussions that can take the form of once-off focus group sessions, expert working groups or round table workshops. This type of consultation tends to be focused on a specific set of issues, or on a sector or region.

Strengths of small group consultations are:

- they enable focused discussion among participants and with regulators
- they enable in-depth discussion of an issue
- they provide an opportunity to better understand the concerns of key stakeholders, businesses or community groups, and
- they can involve stakeholders with specific expertise.

Weaknesses include:

- selection of participants can be sensitive
- there may be a tendency to involve 'the same people as always' or 'experts', which can exclude new points of view
- it can be time consuming, and
- there is a risk of negative responses if broader consultation is not undertaken in conjunction with the small group approach.

This method is most appropriate when a targeted group of participants has the required knowledge and expertise. It is most effective where the purpose of the consultation is clear and specific; where participants have approximately equal levels of expertise and bring a range of views; or where it is combined with another consultation method (eg circulating a brief questionnaire to a larger number of groups or conducting a quick telephone survey) to validate the results.

Small group consultation can be particularly effective where earlier consultation has identified a number of unresolved issues and stakeholder groups have disparate views. Releasing a background paper that outlines key issues and policy options may focus discussions, assisting all parties to gain a better appreciation of the views of others.

### 3.4 Surveys and questionnaires

This method involves preparing a short description of the policy issues and a brief questionnaire or survey to solicit input from stakeholders. The questionnaire or survey can be circulated to a large number of groups and individuals. Respondents can also be contacted by telephone or can complete the questionnaire or survey in a face-to-face situation.

Advantages of this method are:

- it can be undertaken within a relatively short time frame
- it is very focused
- wide participation is possible
- participants can self-select instead of being invited
- it is inexpensive, and
- it can be repeated to collect time series data and examine trends in views of groups.

Disadvantages of this type of consultation are:

- it is not interactive, which makes it difficult to clarify or build on responses
- it tends not to solicit in-depth responses, and
- it is very dependent on the quality of the questionnaire and background information, which can influence results.

The questionnaire method is usually used when the issues being addressed are new or generate a lot of interest, the topic is focused or time is short. It is most effective when the issues can be described accurately and briefly, and meaningful input can be obtained with few questions.

### 3.5 Internet forum / web site

It is recommended that the internet be used to notify stakeholders that consultation is occurring on a particular issue. It can also be used to ask key questions and to initiate discussion. This approach can be useful where a proposal will affect a large number of stakeholders or stakeholders that are geographically dispersed.

Advantages of using the internet as a consultation tool are:

- wide participation is possible, within the limits of access to the internet
- participants self-select, rather than being chosen
- it can be interactive, allowing participants to exchange views with each other, and regulators can probe further if a response is unclear or particularly interesting
- it allows a rapid response time
- it is inexpensive, for both regulators and participants, and
- it is easy to update and add information.

Disadvantages include:

- participation is limited to those with access to the internet and who are aware of the web site
- responses may tend to be informal and brief
- responses may be received from participants not usually considered stakeholders of a particular regulatory area (although consultation can be targeted by limiting participation to subscribers of a web site), and
- if responses are anonymous, accountability and transparency of participation are limited.

### 3.6 Information contacts

This approach involves establishing an official liaison person for the public and the media during the consultation process. Having a single point of contact can help stakeholders find information quickly and effectively.

It is important that information contacts have comprehensive knowledge of the project, that they know the key stakeholders and stakeholder groups and are able to answer questions quickly with a high level of accuracy and authority.

This approach is most useful when a consultation process is intensive and widespread and it is used in conjunction with other consultation methods.

## 4 How to plan and review consultation?

When the approach to consultation has been determined, it is necessary to identify the resources needed to undertake consultation and to schedule consultation activities. Some consultation activities need to be undertaken in a particular order (for example, releasing an issues paper for public comment may be followed by stakeholder group meetings). Other activities are most useful when they take place together (for example, a conference and a media release).

Evaluation and review is a fundamental part of the consultation process. It forms the basis of feedback on outcomes to stakeholders. It also ensures that any lessons learned from the consultation process are well understood so they can be considered in future consultation strategies.

Planning for evaluation and review of the consultation process should begin at an early stage of the regulatory development process. Evaluation questions should be formulated in advance. Decide how the 'success' of the consultation will be measured. Consider how feedback will be provided to stakeholders.

## 5 How long should you consult for?

Time frames for consultation should be realistic and allow adequate time for stakeholders to provide a considered response. At the same time, consultation processes should not create red tape or unnecessarily delay proposals proceeding in the public interest.

Stakeholders should be given at least 28 days to comment on a draft regulatory instrument. More complex or significant proposals may require a longer consultation period. Consultation periods longer than 28 days may be appropriate where:

- introduction of a particularly complex or lengthy Bill or Regulation is proposed
- the matter at hand is a highly contentious regulatory proposal, or
- a regulatory proposal would have significant impacts on groups whose participation in consultation requires additional efforts to facilitate.

Where consultation occurs throughout the regulatory process, rather than on a specific regulatory instrument, there is no mandated minimum consultation period. Agencies should endeavour to consult for at least 28 days where submissions or other written comment from stakeholders is sought.

### Quick reference guide

- Will all stakeholders that may be affected by the options be consulted?
- Is consultation planned to occur throughout the regulatory development process?
- Does the consultation period allow stakeholders adequate time to prepare responses?
- Is the approach to consultation commensurate with the size of the problem to be addressed, the significance of the impacts of the proposal and the stakeholder concern about the policy issue?