Guidance Note

Understanding small business impacts

For regulation to be justified, it needs to effectively target material policy problems and provide benefits that exceed both its direct (compliance) and indirect costs.

Regulation has a significant impact on small businesses. Small businesses can sometimes face disproportionate costs in fulfilling regulatory obligations compared to larger businesses. For example, as many costs are fixed, achieving compliance can have a greater impact on small businesses due to their size and lack of specialised staff to handle regulatory matters.

The cumulative impact of regulation can also affect smaller businesses more than larger firms. This may not only affect businesses, but also consumers through higher prices and reduced choice or quality (where it acts as barriers to small businesses entering or remaining in a market) and reduces competition.

As a result, it is important to ensure that regulation is fit-for-purpose, flexible and efficiently administered, and does not unnecessarily impede business employment and productivity and investment decisions.

The impact of new regulatory proposals

Regulatory impact analysis (RIA) aims to ensure that regulation is needed, the best tool for the job, and designed to avoid imposing unnecessary costs on business and the broader community.

Under the Queensland Government Better Regulation Policy (the Policy), agencies are required to critically assess the impacts of proposed regulatory policy options, including identifying the specific groups or sectors likely to be affected by each option. The level of analysis, degree of quantification required and extent of consultation undertaken will vary depending on the significance of the problem and the size of the potential impacts.

Identifying potential impacts

It can be useful to ask, in identifying potential impacts on small businesses, whether a regulatory proposal will:

- establish a licence, permit or authorisation process as a requirement of operation
- limit the ability of some types of suppliers to provide a good or a service
- significantly raise cost of entry or exit by a supplier
- set standards for product quality that provide an advantage to some suppliers over others
- significantly raise costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)
- exempt the activity of a particular industry or group of suppliers from the operation of general competition law
- limit the ability of consumers to decide from whom they can purchase goods and services
- have a disproportionate impact on small business.

Significant impacts on small business

Under the Policy, an Impact Analysis Statement (IAS) must be prepared for all regulatory proposals.

If impacts (including on small businesses) are likely to be significant, an IAS must report on the direct and indirect costs and benefits of a regulatory proposal and be released for consultation. The IAS should also assess any implementation issues or risks that may arise for different stakeholders and state the guidance or compliance support that may offered to address them.

Further information is available in the Policy and guidance material. The OBPR can also provide further guidance to agencies to assist in determining significance.

In determining impacts on the community, inclusive of business and competition impacts, agencies should also consider how a proposed regulation may interact with other legislation and that it is not inconsistent or duplicative. For example, while individual regulations may, on their own, represent a low regulatory burden, the cumulative burden of these regulations on a particular industry may be significant.

Engagement and consultation with small businesses, including relevant industry stakeholders, can ensure that the potential effectiveness and impacts of regulatory proposals are properly understood before a regulation is made. Agencies are also encouraged to consult with the Department of Customer Services, Open Data and Small and Family Business and the Office of the Small Business Commissioner for advice on the potential small business impacts of proposed regulation.

Estimating impacts

The direct costs calculator tool should be used to estimate the direct regulatory compliance costs on business.[1] Compliance costs for business can include:

- resources required to comply with new regulations (for example, increased staff numbers / time, training expenses, licence fees and technical equipment)
- additional costs associated with new compliance activities (for example, reporting, record keeping and audits)

Estimation of these compliance costs must be reported in the IAS template and may also assist agencies in identifying whether the impacts of prospective regulatory options are likely to vary across different types and size of businesses.

IASs should also consider the potential efficiency costs of a proposal, including the costs of distortions to businesses' production processes or changes in the type, quantity and prices of goods and services produced.[2]

Further consultation with industry stakeholders may assist agencies in determining or testing the magnitude and distribution of impacts of the regulatory proposal on small businesses.

Reducing the impact of existing regulations

The volume and complexity of regulation, applying to business across all levels of government, can increase over time—to the point where it becomes a major barrier to business flexibility, investment, employment and innovation. As noted, this cumulative burden of regulation can be particularly felt by small businesses.

A regulation may also no longer be fit for purpose due to changes in technology, preferences and industry and market conditions. Evaluation of the existing 'stock' of regulation, can therefore ensure that it continues to be relevant and effective.

Additionally, a one-size fits all approach to regulation and its administration may overlook that risks may vary across different businesses based on their size.

Agencies should therefore also carefully consider ways to reduce the compliance cost burden on small business from existing regulations. Consultation with affected entities can provide feedback to regulators on the performance of regulations to better inform policy.

In reviewing regulation, agencies should assess whether the regulation achieves its objectives at least cost. Agencies should also:

- assess whether there are any variations in the costs and benefits and risks across different types and size of businesses
- identify whether alternative regulatory and non-regulatory options could better achieve objectives at lower cost.[3]

Improving regulator practice

How regulation is administered and enforced can also affect the regulatory experiences of small businesses.

The Queensland Government Regulator Performance Framework seeks to achieve positive regulatory outcomes in Queensland through effective and efficient regulatory practice.[4] This includes improving how regulators administer regulation in order to produce better outcomes for the community and reduce unnecessary compliance costs.

[1] The direct costs calculator is available at qpc.qld.gov.au/best-practice-regulation

[2] Further information on assessing these impacts, including on competition, is provided in the Better Regulation Policy

[3] For further information, please refer to our guidance note on Alternatives to traditional regulation

[4] Further information on the Framework is available at qpc.qld.gov.au/rpf

The Framework has five model practices that support the achievement of policy objectives through better interactions between regulators and their stakeholders (including small businesses) resulting in reduced burden/costs for all parties.

Regulator Model Practices

1. Ensure Regulatory activity is Proportionate to Risk and Minimises Unnecessary Burden
2. Consult and Engage Meaningfully with Stakeholders
3. Provide Appropriate Information and Support to Assist Compliance
4. Commit to Continuous Improvement
5. Be Transparent and Accountable in Actions

Consultation with affected entities can provide feedback to regulators on regulatory administration to ensure it is appropriately risk based and remains the best approach to achieving the policy outcomes.

For further information or assistance in relation to regulatory impact analysis and review please contact the Office of Best Practice Regulation (OBPR) via obpr@qpc.qld.gov.au

More information on the OBPR can be found at: qpc.qld.gov.au/best-practice-regulation