

Guidance Note: Fees RISs

October 2021

Better Regulation Victoria (BRV) maintains a series of guidance notes to support Victorian departments and agencies prepare Regulatory Impact Statements (RISs) and Legislative Impact Assessments (LIAs).

These guidance notes supplement formal guidance by providing more detailed advice on specific issues as they emerge, and as BRV's understanding of best-practice regulatory design and analysis evolves.

Formal guidance on "adequacy" is available through the Subordinate Legislation Act 1994 (the SL Act), the Subordinate Legislation Act Guidelines (the SLA Guidelines, also known as the Premier's Guidelines), and the Victorian Guide to Regulation (the Guide).

This guidance note provides advice on preparing RISs for regulations that set fees for government licences, services and other activities (referred to in this note as "fees RISs"). Fees can be set through stand-alone regulations or broader regulations, of which fees are one component. This note applies to both types of fees regulations. This note is designed to complement the Guide and explain interactions with the Pricing for Value Guide (published by the Department of Treasury and Finance), and help departments and agencies meet the requirements of both. Although the requirements for fees RISs and other RISs under the SL Act are broadly the same, there are some specific requirements for fees RISs.

LIAs, which are prepared for primary legislation, are not discussed in this note because primary legislation does not typically prescribe fee structures and amounts. Primary legislation tends to provide heads of power for Regulations or legislative instruments to prescribe such fees.



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For further information about any of these matters or how they relate to your particular regulatory project or RIS / LIA, please visit www.betterregulation.vic.gov.au or call our office on 03 7005 9772.

1. Overview

Under the SL Act, a RIS must be prepared for proposed subordinate legislation (statutory rules or legislative instruments) unless the proposal does not impose a “significant economic or social burden on a sector of the public” or another exemption applies.

Fees RISs can be useful for developing regulations that set fees for government services and activities. The analysis contained in a fees RISs can help to:

- set fees that support the achievement of policy objectives;
- consider the efficient cost of delivering government processes and programs;
- achieve an appropriate level of cost recovery;
- make any subsidies between different users of government services transparent;
- demonstrate that any proposed fees (or fee increases) are warranted; and
- demonstrate that ‘sunsetting’ (expiring) fees remain appropriate.

This note is intended to provide guidance on preparing a fees RIS but is not exhaustive. Please contact BRV if you would like further assistance.



2. The Pricing for Value Guide

The Pricing for Value Guide (Pricing Guide) interacts with the RIS process. The Pricing Guide is intended to improve consistency and capability in setting fees and charges across government¹. It sets out 12 Pricing Principles and a practical methodology for undertaking pricing reviews. The Pricing Guide replaced the former Cost Recovery Guidelines on 1 July 2021.

Agencies are required to apply the Pricing Guide under the Standing Directions issued by the Assistant Treasurer under the Financial Management Act 1994. The Pricing Guide will help agencies to assess the need for a pricing review and, when a review is needed, determine the scale and scope of the review. Key triggers for a pricing review include when fee regulations are approaching expiry or earlier if there have been significant changes in circumstances (such as changes in demand, technology and/or work practices).

Pricing Reviews and RISs

If a pricing review is undertaken, it is best practice to also prepare a RIS. It is also likely that a RIS will be required under the SL Act as recommendations from the review will likely involve amending regulations and impose a significant burden. Agencies should begin planning for a RIS during a pricing review.

In a fees RIS, agencies should discuss whether a pricing review was undertaken and, if so, discuss the review briefly. Agencies should draw on the Pricing Guide when preparing a fees RIS. Much of the analysis in a pricing review can be reused in a RIS. The Pricing Guide does not change formal requirements for a RIS.

A further important matter to consider in fees RISs are the Pricing Principles, which include the following:

1. Agencies should aim to recover the full costs of service provision to promote efficient consumption
2. The cost of service provision should be borne by those who benefit from the service
3. Services creating broad benefits for the community should be priced to support efficient consumption
4. The cost of interagency services should be borne by the user agency
5. The price of services should not limit access to those with a lower ability to pay
6. Users should pay for differentiated service based on the value created by that differentiation

¹www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties



7. The public should share in the value generated by pricing based on user differentiation
8. Pricing should support positive behaviours
9. Pricing should ensure sustainable usage of public services and reflect the value of natural resources
10. Where services are in competition with the private sector, pricing should be relative to market prices
11. Pricing structures should be easy to understand and simple to administer
12. Pricing arrangements should be monitored annually and reviewed periodically.

The principles will be useful in developing objectives and formulating options (discussed later in this guidance note). For further information about the Pricing Guide, please contact DTF (website: dtf.vic.gov.au – email: pricing@dtf.vic.gov.au – phone: 03 9651 5111).

3. Requirements for a Fees RIS

RISs, including fees RISs, must address the seven key questions outlined in the Guide:

1. Why is the Government considering action? (problem analysis)
2. Which 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 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)

This note provides advice on how to address these seven key questions in a fees RIS and outlines some specific requirements for fees RISs related to these questions.



The Pricing Principles have different rationales and support fees at different levels of cost recovery. In examining fees, agencies will need to determine which principle is most appropriate to each individual service or activity. This may involve considering competing rationales and the trade-offs between them. This will be informed by the agency's objectives as well as any relevant policy frameworks. Policy officers preparing a fees RIS should consult the Pricing Guide.

As discussed above, a fees RIS is required for regulatory proposals involving fees that impose a "significant economic or social burden on a sector of the public" unless an exemption applies. Victorian Government bodies (within the meaning of the Public Administration Act 2004) are not considered to be sectors of the public. Local government is considered a sector of the public.

Burden is a broad concept covering a range of costs. Whether a burden is significant should be assessed using the ordinary English-language meaning of the word. An indicative threshold (gross costs of \$2 million per year) can be used to assess significance, which includes readily quantifiable impacts as well as difficult to quantify or unquantifiable impacts. It is also important to consider whether a regulatory proposal has 'concentrated effects' on particular groups in the community.

The burden of fees should be assessed against a base case. The base case for sunseting fees regulations is zero fees. This means that a significant burden can be imposed even if regulations are remade with the same fees. For example, if a fee for a particular licence is unchanged in replacement regulations but it raises \$2 million in total per year then there is likely to be a significant burden. The base case for amendments to fees regulations is current fees. For example, if a fee for a particular licence is increased and is expected to raise \$3 million instead of \$2 million in total per year then the additional burden is \$1 million, and a significant burden is unlikely to be imposed. Non-fee burdens of regulatory proposals and indirect costs of fees should also be considered in assessing significance.

There are several exemptions from preparing RISs for regulatory proposals outlined in section 8 of the SL Act. There is one specific exemption related to amending fees regulations, that is, if the proposed statutory rule or legislative instrument:

... only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer in relation to the State Budget for the purposes of this section.

s. 8(1)(d) and s. 12F(1)(c)



If a regulatory proposal includes a 'basket of fees' (multiple fees), then the total increase in fee revenue across the basket is relevant for determining whether this exemption applies rather than individual fee changes.

This exemption can be applied if the proposal imposes a significant burden. If this exemption cannot be applied, then an exemption may apply because the proposal does not impose a significant burden (s. 8(1)(a) and s. 12F(1)(a)).

There are restrictions on applying this exemption multiple times within a financial year. This exemption cannot be applied if there are multiple increase in fees collected for substantially the same purpose within one financial year (for example, quarterly fee amendments) if the aggregate increase across the year is greater than the Treasurer's annual rate.

The Treasurer's annual rate is published each year on the Department of Treasury and Finance website².

3.1. Problem Analysis and Objectives

The problem section of a fees RIS is generally more limited in scope than for other RISs. In fees RISs, this section should explain why the Government does (and should) provide a service or undertake an activity (e.g. require licences for a particular occupation), whether the current level of service or activity is appropriate and why fees should be charged.

In a broader RIS, where fees are one component, the first two issues would already be discussed in the background and problem sections.

As with all RISs, the objectives in a fees RIS should be linked closely with the identified problem/s. The Pricing Principles should be considered when developing objectives. Some of the Principles will be suitable as objectives and some will not be. Typical objectives of fees regulations relate to efficiency, effectiveness, equity, and simplicity, as described below:

- **Efficiency** relates to the extent to which fees reflect the costs of the service or activity and whether this sends a price signal about the value of these activities.
- **Effectiveness** relates to the degree to which fees influence the underlying policy objectives of regulating this specific area. This can be a concern if, for example, high fees might discourage people from using a service or complying with the Regulations (e.g. seeking a permit or registration), which could compromise policy objectives, such as health and safety.

² www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties



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- **Equity** can be considered in terms of:
 - **horizontal equity** — people who consume the same (amount of a) service, and or give rise to the same level of regulatory costs, pay the same fee; and
 - **vertical equity** — people pay according to their ability to pay. This might be especially relevant if there are concerns that ‘high’ fees could limit the ability of people or organisations with limited capacity to pay to access a particular service or activity.
 - **Simplicity** means a fee structure that is easy for regulated parties to understand, and/or the government to administer. This could mean, for example, having a limited number of fee categories.

Objectives should be about ends and not means. For example, “collecting fees” should not be an objective as this is the means to achieving underlying policy objectives such as efficiency and equity. Objectives should be written clearly and succinctly. An objectives section need not be more than a page and can be as short as a paragraph.

The objectives from the Supreme Court (Fees) Regulations 2018 RIS and the County Court (Fees) Regulations 2018 RIS were both described briefly, in terms of ends (rather than means), and with clear links to the problem analyses from earlier in those RISs:

Objectives in the Supreme Court (Fees) Regulations 2018 RIS

The Proposed Regulations aim to set fees that:

- *encourage the optimal use of court services;*
- *are based on efficient and transparent costs;*
- *do not impede access to justice; and*
- *introduce fees and fee structures that are easier for users to understand, and for the Supreme Court to administer.*

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Objectives in the County Court (Fees) Regulations 2018 RIS

The Proposed Regulations aim to set fees that:

- *encourage the optimal use of court services;*
- *are based on efficient and transparent costs;*
- *promote access to justice; and*
- *are easy for users to understand and for the Court to administer.*

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There can often be tensions between the achievement of objectives. The impact analysis section of the RIS will need to explain clearly how these trade-offs have been considered (for more on this, see section 2.4 below).

3.2. Cost Analysis

Because fees are generally set with regard to costs, analysing the costs to the Government of providing a service or undertaking an activity (such as licensing an occupation or activity) is critical in a fees RIS. This involves three broad steps.

1. Identify the specific services provided and/or processes undertaken by the department or agency.
2. Allocate costs to the service or activity discussed in the RIS. This needs to consider direct (e.g. wages) and indirect (e.g. corporate services) costs and, where relevant, capital costs.
 - a. Consider which costs should be included in the cost base. Collection and enforcement costs should generally be included. Costs associated with providing general policy advice should not be included.
 - b. Ideally, an 'activity-based costing' (ABC) ('bottom-up') approach should be used to allocate costs, where costs are allocated to specific activities, but a 'top down' approach might be more proportionate (and feasible) in some cases. The higher the proposed fees, the more important it is to undertake an ABC, at least for key (high-cost and/or high-volume) services/activities/processes.
 - c. It is typically more difficult to allocate indirect costs. Two common methods for allocating indirect costs are ABC and pro-rata costing, where indirect costs are allocated proportionally based on the share of direct costs, staff costs, budgeted costs or another measure.



3. Assess whether the estimated full cost of the activity or service is efficient. This is not straightforward. Methods include benchmarking the government body charging fees for a service or activity with similar government bodies, consultation with stakeholders, and previous audits/reviews of the body.

Although the Cost Recovery Guidelines have been replaced, they contain useful material on how to estimate costs, including efficient costs, in detail³. These Guidelines explain how to undertake a cost analysis and can be useful when preparing a fees RIS. The depth of analysis in estimating costs of a service or activity should be proportionate with these costs (i.e. there should be more rigorous analysis for fees that relate to high-cost services and activities).

3.3. Identifying Feasible Options

The set of feasible options in a fees RIS is generally narrower than for other RISs. This is because, typically, the primary legislation outlines the services or activities for which fees can be prescribed, and may even constrain the structure of fees.

In general, at least three feasible options for setting fees should be examined in detail, in addition to the base case. For sunseting and new Regulations, the base case is having no fees; for amending Regulations, the base case is the status quo (current fees).

The exact number and types of options that it is appropriate to consider will depend on factors including the magnitude of the fees and any legislative constraints on the power to charge fees.

Full cost recovery must be included as an option (where the preferred option deviates from full cost recovery, this must be justified in the RIS). It is good practice to also include existing fee arrangements (the status quo) as an option and to discuss how feasible options differ from existing arrangements. This helps stakeholders to understand the impacts of fee changes on them. The base case should be included as a reference point for comparing options.

³ www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties



The Pricing Guide and previous fees RISs are useful sources for exploring and developing options. Possible types of options that can be considered for fees include the following:

- Different fees for different modes of services. For example, fees could be lower for accessing services online than for in-person services, to reflect the generally lower cost of providing services online.
- Different fees for different types of users. This might be done to meet equity objectives, for example, and could involve setting different fees for different categories of user based on ability to pay. This approach has been adopted by Victorian Courts, which have separate corporate, standard and concession fee categories, as well as allowing discretionary fee waivers.
- Risk-based fees, where higher-risk individuals and businesses are charged higher fees. For example, businesses that have previously been found non-compliant might be assessed as higher risk and be charged higher licence fees than other businesses in the same industry. Higher risk businesses are likely to be more costly to regulate;
- Different levels of cost recovery depending on whether a service or activity has predominantly private or public benefits.
- Time-based pricing, where users pay more in times of peak demand and less in times of low demand. For example, some public transport fares are lower in off-peak times.
- Fees to encourage certain behaviour. For example, rebates for early payments and penalties for late payments and incomplete applications.

In designing fees options there is often a trade-off between simpler fee structures that are easy to understand and administer and more complex fee structures that designed to achieve other objectives. For example, where costs differ for different activities or users, there is usually a trade off between achieving full cost-recovery for each activity or group of users and keeping the fee structure simple.

Other important considerations in designing fees options include the following.

- **Unintended consequences** — will fees discourage positive behaviours, such as accessing health services, or encourage negative behaviours, such as avoiding occupational licensing, accreditation or training?
- **Collection and enforcement issues** — will fees be costly to collect and will it be difficult to enforce payment?
- **Competitive neutrality policy** — where government services are in competition with the private sector.



3.4. Impact Analysis

As with all RISs, fees RISs must include an analysis of the costs and benefits of the feasible options, including readily quantifiable impacts and difficult to quantify or unquantifiable impacts.

Fees regulations generally have difficult to quantify or unquantifiable effects, such as equity. For this reason, a multi-criteria analysis (MCA) is usually the most appropriate decision-making tool to compare options in fees RISs. MCA involves:

- establishing criteria and weighting these criteria, which should be consistent with the objectives in the RIS;
- scoring the feasible options against each criterion; and
- weighting scores for each criterion to determine the preferred option (the option with the highest score).

MCAs were used in several recent fees RISs (listed below). BRV has separate guidance material on MCAs.

Transfers between different groups should be considered in impact analysis but typically these transfers have offsetting impacts. For example, fees are a cost to regulated businesses and fee revenue is a benefit to the Government (or regulators if fee revenue is retained).

3.5. Summarising the Preferred Option

A fees RIS must include a table listing proposed fees (i.e. fees under the preferred option) expressed in both dollar and fee unit terms, and (where applicable) the current fees and the percentage change in proposed fees relative to current fees. Examples of these tables can be found in recent RISs (listed below).

Expected fee revenue for the preferred option must be estimated. Fee revenue can be estimated using proposed fee structures (price) and estimates of usage (volume). For example, if the Government charges \$100 for a licence, and it is expected that 10 people will obtain this licence per year, then estimated revenue is \$1,000 per annum. If fees are being introduced or increased, then demand for and volume of a government service or activity might fall. This effect should be discussed in the RIS. If this effect is difficult to quantify then it should be analysed qualitatively.

As for all RISs, the preferred option section of a fees RIS must discuss the key features of the preferred option and any competition impacts. It is best practice to also discuss small business impacts.



3.6. Implementation and Evaluation

As with all RISs, an implementation plan and evaluation strategy must be discussed in a fees RIS.

It is important to outline what needs to be done to implement the preferred fee option, who will be responsible, when will the option be implemented and who will monitor implementation. It is important that the agency that will collect fees is involved in developing the implementation plan.

It is important that fees are evaluated to ensure they continue to achieve objectives. This is particularly the case when the costs to Government of providing a service or undertaking an activity change over time. Costs can change dramatically with new systems and approaches. Fee structures and levels should be reviewed when costs change so that the level of cost recovery remains appropriate. For some fees, it is important that they are reviewed before the relevant fees regulations are due to sunset. A mid-term evaluation must be conducted for all high-impact proposals (burden of more than \$8 million per year).

If implementation and evaluation were analysed as part of a pricing review, then this analysis should be drawn upon in the RIS.

4. Further Material

BRV regularly reviews fees RIS. Since 2017-18, BRV has reviewed RISs for proposals including:

- Marine Safety (Fees) Regulations 2021
- Births, Deaths and Marriages Registration (Fees) Regulations 2019
- County Court Fees Regulations 2018
- Estate Agent (Fees) Regulations 2018
- Motor Car Traders Fees Regulations 2018
- Supreme Court Fees Regulations 2018
- Fisheries (Fees, Royalties and Levies) Regulations 2017
- Legal Profession Uniform Law Application (Practising Certificate Fees) Regulations 2017

These RISs are available at the BRV website⁴. These past fees RISs could be useful for policy officers preparing fees RISs, particularly for developing options.

⁴ www.betterregulation.vic.gov.au