

PUBLIC CONSULTATION GUIDELINES

Purpose

Public consultation is integral to policy development and efficient regulatory design. Government has limited and incomplete knowledge of economic, social and environmental problems and needs the input of a wide range of stakeholders to ensure a compelling case has been made for government intervention into the market, and to ensure that the proposed regulation provides a net benefit to society.

The public consultation guidelines are designed to assist government officials identify, plan and execute public consultation with affected stakeholders.

The Guidelines comprise the following chapters:

1. Introduction
2. Stakeholder Analysis and Mapping
3. Methods of public consultation
4. Public Consultation Approaches during the Policy Cycle
5. Case Study
6. Consultation Plan
7. Stakeholder Engagement
8. Evaluation
9. Checklist for Effective and Efficient Public Consultation

Chapters 1 to 4 provide background information on designing a public consultation process. Chapter 5 provides a case study on the principles and processes outlined in chapters 1 to 4.

Chapters 6 to 8 provide information on executing public consultation. Chapter 9 provides a checklist that covers the key points raised in all of the chapters.

1. Introduction

What is public consultation?

Public consultation involves seeking the input of a wide range of stakeholders who can make a valuable contribution to Government in fully understanding economic, social and environmental problems, to assessing the costs and benefits of proposed regulation and alternatives, regulatory implementation and post-implementation evaluation.

Public consultation can involve stakeholders:

- Providing expert advice on policy problems;
- Contributing to providing advice on possible regulatory and non-regulatory solutions to a policy problem;
- Critiquing Government policy analysis of a problem
- Scrutinizing draft regulation
- Providing feedback on the effectiveness of regulation
- Providing feedback on compliance costs

Public consultation should not just seek the views of stakeholders of a proposed regulation with the publication of a regulatory impact analysis. Government should already know or anticipate the views of affected stakeholders in terms of whether they support or oppose the introduction of a proposed regulation. Hence, this passive form of public consultation is unlikely to make a valuable contribution to policy development and/or bring together opposing views.

Most stakeholders have a position (support/oppose) on any given policy issue that is based on their principles and their limited knowledge. A comprehensive regulatory impact analysis should provide a compelling case that enables some stakeholders to reconsider their previously held views and positions. With new information, a key stakeholder is likely to change its initial position (support/opposition) to a proposed regulation.

Accordingly, public consultation should encourage stakeholder ownership and buy-in to the policy development process by seeking assistance with data and information collection, analyses and the identification of other persons, businesses, institutes and other organizations that may have valuable data or information.

Where active stakeholder engagement is not undertaken, the quality of the regulatory impact analysis is likely to be poor and result in key affected stakeholders maintaining their views and positions.

Why is public consultation important?

Government is not normally involved in the production and consumption of goods and services in the market (other than state-owned enterprises that provide essential services). Accordingly, government has limited or incomplete

information about the nature and extent of a specific economic, social or environmental problem to determine whether there is a justification and a role for government intervention into the market by way of regulation. Similarly, once government has decided it has a role, it has limited and incomplete information on the costs and benefits of the proposed regulation and alternative approaches. This is a classic case of a market characterized by imperfect information and if not addressed can lead to regulatory failure.

This can be alleviated if producers, consumers, institutions, relevant subject experts and the wider community share their knowledge and information with government to help it to determine whether there is a role for government, and if so, the most effective and efficient option that will deliver a net benefit to the community.

In most cases, each stakeholder has limited information about the problem and the costs and benefits of the various solutions. Government has a role in bringing together the information, data and ideas from all stakeholders to present a balanced assessment of the problem and the costs and benefits of the various alternatives to ensure the best possible outcome is achieved at the minimum cost to society.

Regulation can benefit some groups at the expense of other groups, particularly where it specifically restricts competition. Regulations that impose obligations, costs, burdens, limit choice and freedom need to be justified. It is important that the regulation-making process is transparent and government is accountable for its decision-making. Accountability involves government demonstrating that the benefits of regulation will outweigh the costs arising from the obligations and restrictions imposed on affected individuals and groups, that it has not unduly conferred preferential treatment on specific individuals or groups.

Who are the stakeholders?

Stakeholders are persons who are directly and indirectly affected by a regulation. Stakeholders can include:

- Business entities;
- Business, professional, employee and community associations;
- Consumers;
- Government;
- Academic and research institutions; and
- General public

Who to consult?

Prior to undertaking consultation, it is important to identify the stakeholders that are likely to contribute useful information and data in respect to the specific problem and the policy development stage.

There are three main types of regulation:

- Economy-wide;
- Industry specific; and,
- Generic

Economy wide regulation

Economy-wide regulation impacts on most business entities such as corporations regulation, competition regulation, occupational health and safety regulation and environmental protection regulation.

For example, key stakeholders in relation to Corporations regulation would include major industry federations, legal and accounting professional associations, Ministry of Commerce, academic and international experts

Key stakeholders in relation to occupational health and safety would include industry federations, medical profession associations, hospitals, academic and international experts

Industry specific or profession/occupation regulation

Industry specific regulation impacts a sole industry in most cases. For example, the taxi industry, the electricity industry, the pharmacy industry, timber industry, liquor industry. Profession regulation impacts specific professions such as doctors, dentists, accountants etc and occupational regulation such as builders, electricians and security guards.

Key stakeholders in relation to industry specific and profession/occupation regulation comprise the business entities and employees in a specific industry sector and their customers (suppliers, wholesalers, distributors, customers and third parties that represent these groups such as lawyers and accountants).

It is usually easier to identify the key affected stakeholders particularly for the regulated industry, profession and occupation. It is not always easy to identify customer stakeholders, particularly consumers, unless a consumer organization is actively involved in the specific policy and regulatory area.

Generic regulation

Generic regulation applies to most citizens. For example, road safety regulation. These regulations affect the behavior of individuals within the general public.

Key stakeholders for road safety regulation would likely to be the motoring and motorcycle organizations, the Thailand Accident Research Center, a public transport users group, local communities, hospitals, universities that specialize in road safety research

When to consult?

Consultation should occur early before government has made a decision. This allows government and affected stakeholders to keep an open mind about the need for government regulation and other possible solutions to the problem.

Consultation should occur across the policy cycle for new, amending and periodic review of regulations at the:

- Policy Development stage;
- Regulatory Impact Assessment stage; and
- Post Implementation Evaluation stage

Guiding Principles for Public Consultation

The OECD has produced guiding principles for public consultation as shown in Box 1 below.

Box 1: OECD Guiding Principles for Public Consultation

1. **Commitment:** Leadership and strong commitment to information, consultation and active participation on policy-making is needed at all levels, from politicians, senior managers and public officials.
2. **Rights:** Citizen's rights to access information, provide feedback, be consulted and actively participate in policy-making must be firmly grounded in law or policy. Government obligations to respond to citizens when exercising their rights must also be clearly stated. Independent authorities for oversight, or their equivalent, are essential to enforcing these rights.
3. **Clarity:** Objectives for, and limits to, information, consultation and active participation during policy-making should be well defined from the outset. The respective roles and responsibilities of citizens (in providing input) and government (in making decisions for which they are accountable) must be clear to all.
4. **Time:** Public consultation and active participation should be undertaken as early in the policy process as possible. This allows a greater range of policy solutions to emerge. It also raises the chances of successful implementation. Adequate time must be available for consultation and participation to be effective. Information is needed at all stages of the policy cycle.

5. Inclusions (Objectivity): All citizens should have equal opportunities and multiple channels to access information, be consulted and participate. Every reasonable effort should be made to engage with as wide a variety of people as possible.
6. Resources: Adequate financial, human and technical resources are needed if public information, consultation and active participation in policy-making are to be effective. Government officials must have access to appropriate skills, guidance and training. An organizational culture that supports their efforts is highly important.
7. Co-ordination: Initiatives to inform citizens, request feedback from and consult them should be co-ordinated across government. This enhances knowledge management, ensures policy coherence and avoids duplication. It also reduces the risk of 'consultation fatigue' – negative reactions because too much overlapping or poorly done consultation – among citizens and civil society organizations. Co-ordination efforts should not reduce the capacity of government units to ensure innovation and flexibility.
8. Accountability: Governments have an obligation to account for the use they make of citizen's inputs received – be it through feedback, public consultation or active participation. To increase this accountability, governments need to ensure an open and transparent policy-making process amenable to external scrutiny and review.
9. Evaluation: Evaluation is essential in order to adapt to new requirements and changing conditions for policy-making. Governments need tools, information and capacity to evaluate their performance in strengthening their relationships with citizens.
10. Active citizenship: Governments benefit from active citizens and a dynamic civil society. They can take concrete actions to facilitate citizen's access to information and participation, raise awareness, and strengthen civic education and skills. They can support capacity building among civil society organizations.

Source: OECD Handbook on Information, Consultation and Public Participation in Policy-Making.

2. Stakeholder Analysis and Mapping

The public consultation strategy needs to be designed with due consideration to the extent of the impact of a regulation and the type of regulation and the size of the impact.

Regulation that has a general impact on the community such as consumer protection is likely to need consultation with a wide group of business associations, consumer organizations, legal associations, government ministries and the general public. A significant amendment would require considerable interactive consultation with these groups whereas a minor administrative amendment with minimal impact may only require notification and invitation to comment.

Industry specific regulation by definition has a narrower range of affected stakeholders but depending on the design of the regulation may impact a wide range of stakeholders. For example, a significant amendment to taxi regulation that would affect competitiveness, price, customer service and so forth is likely to generate interest from not only the taxi industry but also from taxi users. In this case, business associations and consumer organizations, government ministries and the general public will want to be consulted.

By contrast, an amendment to taxi regulation that requires taxis to keep specific type of business records is unlikely to generate much interest other than from the taxi industry.

Stakeholder Analysis

It is useful to undertake the following analysis of the regulation that is to be subject to a regulatory impact analysis (RIA).

What is the nature of the proposed regulations?

Identify clauses that impose obligations on specific persons or groups (including government and state owned enterprises)

Rank the impact of regulatory obligations as high, medium and low.

Identify clauses that are administrative, machinery and declaratory in nature (in some cases, stakeholders may be interested in administrative matters, for example, the establishment of a new tribunal and the associated powers and functions.

Do the proposed regulations primarily impact on the directly affected group? (e.g compliance obligations such as frequency of audit, record-keeping etc)

Do the proposed regulations impact other stakeholders?

(e.g restrictions on competition such as barriers to entry by other players (including private sector participation that is predominately controlled by a state owned enterprise)

Do the proposed regulations impact end users?

(e.g licensing, price control and compliance obligations imposed on the affected group is likely to increase the cost or quality of service provided to consumers

Do the proposed regulations impact the wider community?

(e.g environmental standards such as the regulatory requirements to obtain a permit to discharge waste or road traffic controls to prevent traffic fatalities and injuries)

This analysis will help to identify the key affected stakeholders to consult with at the commencement of the regulatory review. It is not uncommon for the list of stakeholders to grow throughout the course of the regulatory review. Early consultation with key stakeholders will invariably result in these stakeholders identifying other stakeholders that should be consulted.

The following impact/stakeholder analysis is undertaken for the Motor Car Traders Regulations 2008 (State of Victoria, Australia) to demonstrate how to undertake stakeholder analysis and mapping. Each box on a specific regulation provides opening commentary and the reasons the regulation (in italics) is low, medium or high impact and which stakeholder is likely to be interested in being consulted.

Box 2: Example of Low Impact

This regulatory form prescribes the details and information that a motor car trader must record for each motor vehicle purchased. The regulation is considered low impact on the basis that businesses would record most of this information anyway for stock control purposes. However, the purpose of the dealings book is to provide traceability of the motor vehicle and the previous owner, the security held on the motor vehicle etc. The regulation is of minor interest to motor car traders but of significant interest to police as the dealings book provides a link in the detection of stolen motor vehicles.

Form 2 - DEALINGS BOOK

ACQUISITION DETAILS

Registration Number or, if unregistered, Trader's Stock Number

Make/model

Type of vehicle

Built date if it appears on the vehicle

Compliance date

Vehicle identification no (if the vehicle identification no is not available, other number capable of identifying the vehicle)

Date of acquisition

Odometer reading

**Name and address of person from whom vehicle acquired*

**Name and address of auction business from which vehicle acquired or received*

Security interest (if any) held by

Security interest (if any) amount paid out in discharge

Date security interest paid (if any)

**Signature of person from whom vehicle acquired*

**Signature of person authorised to sign on behalf of the auction business from which vehicle acquired or received*

**(delete whichever is inapplicable)*

Box 3: Example of Low Impact

Regulation 24A below seeks transparency of all matters in an agreement and would be considered a minor impact and not of great interest to motor car traders and consumers, although consumers would be interested if regulation 24A did not exist.

Regulation 24A Display of Information—Agreements and warranties

A motor car trader who enters into an agreement for the sale of a used motor car under section 41 or the sale of a new motor car under section 42 must ensure that any text included in the agreement is printed, typed or written in a clear and legible manner.

Box 4: Example of Medium Impact

The motor car trader compensation fund is funded from motor car trader licence fees and setting a cap on the maximum payment for a claim is intended to ensure the financial viability of the compensation fund. An uncapped payment on claims could lead in the future to higher motor car trader licence fees. Clearly, this regulation will be of interest to motor car traders but also consumers who may consider the prescribed maximum amount is too low to cover the cost of all types of motor vehicles.

Regulation 25 Maximum payment on a claim

For the purposes of section 77(4), the prescribed amount is \$40 000.

Box 5: Example of Low Impact

As can be seen below, the retention of records for six years directly affects motor car traders in the type of documents prescribed for retention and the time period for retention. This would be of direct interest to primarily motor car traders. The regulation is considered low impact as most businesses would keep these documents anyway.

Regulation 26 Retention of records

For the purposes of section 83A, the documents to be retained for at least 6 years by motor car traders are—

(a) agreement for sale of a used motor car;

(b) agreement for sale of a new motor car;

(c) agreement for exchange of motor car;

(d) extended warranty documents;

(e) police checks given to the trader by persons employed in a customer service capacity;

Box 6: Example of Low Impact

This regulation shows that motor car traders must give copies of the agreement to their customer. This regulation will be of interest to motor car traders and consumers. The regulation is considered low impact on the basis that businesses would provide copies of these documents to their customers.

Regulation 27 Copies of Agreements

For the purposes of section 83C(1), copies of all documents listed in regulation 26 which are relevant to the transaction must be given to the person who buys, sells or exchanges a motor car.

Box 7: High Impact

As can be seen below, motor car traders must refund most of the purchase price to a buyer of a motor vehicle (according to the prescribed formula) if a buyer terminates the contract within the 3 business day cooling off period. Where the buyer exercises his/her cooling-off rights, the motor car trader has incurred a lost sale until as such time the vehicle is purchased by another buyer. The regulation is considered high impact due to the amount of the refund together with the lost sale. This regulation will be of interest to motor car traders and also consumer interest groups that may consider the residual amount kept by the motor car trader to be excessive.

**Schedule 4 - PARTICULARS FOR SALE OF NEW MOTOR CAR
IMPORTANT INFORMATION—YOUR RIGHT TO COOL OFF**

*Under section 43 of the **Motor Car Traders Act 1986**, if none of the exceptions listed below applies to you, you may end this contract within 3 clear business days of the day that you sign the contract. To end the contract within this time, you must give the motor car trader or the motor car trader's agent **written** notice that you are terminating the contract.*

If you end the contract in this way, you are entitled to a refund of all the money you paid EXCEPT—

- \$400 or 2 per cent of the purchase price (whichever is greater) where this is not an off-trade premises sale; or
- \$100 or 1 per cent of the purchase price (whichever is greater) where this is an off-trade premises sale. An "off-trade- premises" sale is one in which you agree to purchase the car while you are at home or at your workplace and you did not ask for the agreement to be signed at your home or workplace.

EXCEPTIONS—the 3-day cooling-off period does not apply if—

- the vehicle being sold is a commercial vehicle; or
- you are a motor car trader; or
- you are a body corporate; or
- you accept delivery of the vehicle within the cooling-off period.

IF YOU CHOOSE TO ACCEPT DELIVERY OF THIS VEHICLE WITHIN THE COOLING-OFF PERIOD, YOU WILL AUTOMATICALLY LOSE YOUR RIGHT TO COOL OFF

Table 1 below provides a summary of the analyses undertaken in boxes 2-7 in terms of the impact ranking and the affected stakeholders for each regulatory clause.

Table 1: Summary of Impact Analysis and Stakeholder Mapping

Regulation clauses	Impact	Affected Stakeholders
3 day cooling-off period for buyers	High	Motor car traders/consumers
Compensation fund maximum payment to buyer	Medium	Motor car traders/consumers
Dealings book	Low	Police
Information in Sale Agreement to be legible or printed	Low	Nil
Copies of Sale Agreement provided to buyer	Low	Consumers
Retention of Records	Low	Motor car traders

3. Methods of Public Consultation

There is a range of different ways for Government to consult with stakeholders:

- Stakeholder meetings;
- One –to-one interviews;
- Roundtable discussions;
- Public meetings;
- Focus groups;
- Seminars/workshops
- Public surveys;
- Written submissions
- Public hearings;
- Web forums

Stakeholder meetings, one-to-one interviews, roundtable discussions, public meetings, focus groups and public hearings can be characterized as active methods of public consultation where there is an interactive personal exchange of thoughts and ideas, data and information, advice and expertise between Government officials and stakeholders and also between stakeholders in roundtable discussions, public meetings and focus groups.

Public surveys, written submissions and web forums can be characterized as passive methods of public consultation where Government publishes information on a policy issue or regulation and invites responses from stakeholders.

In most cases, it is likely that more than one method of consultation will be undertaken. The type of method selected will depend on the stage of the policy cycle and the level of knowledge the responsible Government agency has in respect to the policy issue and/or regulation.

At a minimum, advertising in a newspaper seeking written submissions in response to a regulatory impact analysis would be undertaken. In most cases, it is expected the following methods are applied: stakeholder meetings and advertising for written submissions.

The adoption of the other methods will depend on the Government's level of knowledge of a specific policy issue, the level of impact of a regulation and the Government's strategy.

Government officials need to ensure that public consultation is effective and efficient. In determining effectiveness, Government officials need to design a consultation plan using some of the above methods that will adequately meet the objectives of the consultation and to be accountable in ensuring that some consultation methods are not used that provide little value to the policy development and regulation-making process.

Public consultation involves a financial and resource investment and it is incumbent on Government officials to ensure the selection of consultation methods can be justified on effectiveness and efficiency grounds.

The advantages and disadvantages of each of these consultation methods are discussed below to help Government officials to identify the appropriate adoption of consultation methods for their specific policy development and regulation-making process.

Stakeholder meetings

At a minimum, stakeholder meetings are undertaken with the key affected stakeholders. That is, those stakeholders that are obligated to comply with the regulations and stakeholders likely to benefit from the regulations. In most cases, this will involve meetings with organizations that represent the affected businesses that will need to comply and other organizations whose constituency are likely to benefit from regulation.

Dependant on the level of impact, further stakeholder meetings may be held with individual firms and persons affected

Stakeholder meetings are held between government officials and each stakeholder in private. This allows each stakeholder to speak freely without interruption from other stakeholders.

Advantages

- Each stakeholder is able to speak freely in private.

Disadvantages

- Normally limits consultation to organizations representing those persons and businesses affected by the regulation and/or a small representative sample of persons and businesses affected by the regulation.
- An organization will either present the general experience of its members, or may be prone to exaggerating individual member cases as the normal experience of its members, or may not have a detailed knowledge of its members' issues.

One-to-one interviews

Stakeholder meetings are normally conducted in a manner where Government officials explain the purpose of the policy review or proposed regulation and seek views and feedback from the stakeholder. However, this process requires Government officials to take on face value the issues raised by the stakeholder.

A good way to verify the validity of issues is to conduct one-to-one interviews with affected stakeholders. One-to-one interviews do not have to be conducted in a formal way in a meeting room.

It requires Government officials to be well prepared in terms of the questions that they will ask and to be able to ask them in an informal and unstructured setting. For example, Government may want to understand the compliance costs of weights and measures regulation on the food industry. Government officials request meetings with a sample of small, medium and large food manufacturers. These food manufacturers walk the Government officials around the processing plant and explain the type of quality assurance system they use to comply with the weights and measures regulation. The Government officials use this demonstration to ask their questions such as:

- who would undertake the compliance role,
- how long does it take,
- how often is it undertaken.

The food manufacturer may also volunteer other information that has not been asked such as the costs associated with training staff, the cost to modify software measurement program, management systems established for product recall in the event that a non-compliant product was found in a retail outlet.

The outcome of the consultation may reveal a greater number of factors involved in the compliance cost than the Government officials first considered prior to the consultation. The Government officials will need to determine whether some of these factors are 'business as usual' costs (i.e costs that would occur in the absence of regulation). The consultation may also reveal that large and some medium sized food manufacturers use software measurement programs whereas small food manufacturers use paper-based measurement systems. The Government officials may not of been aware of software based measurement systems and will need to contact the software developers to ascertain what would be the likely cost to food manufacturers to make a modification to the software program.

In this example, several benefits of the consultation are apparent. The government officials have learnt about the true extent of the compliance costs and identified additional stakeholders to consult. They have underestimated the compliance costs when conducting a desk-top review. The food manufacturers were able to contribute to a better understanding of the compliance costs.

Roundtable discussions

Roundtable discussions are particularly useful for complex policies and regulations where there are strong competing views amongst the key affected stakeholders.

A roundtable discussion is convened and moderated by Government. In some cases where the key affected stakeholders have a strong distrust of the

Government's position, it may be better to engage an independent person to moderate the discussion.

The objective of a roundtable discussion is to identify the policy and regulatory issues of difference between the key affected stakeholders. This then allows the discussion to focus on the key points of difference.

An experienced moderator will seek to secure evidence from each stakeholder and to obtain multiple perspectives on a particular policy issue or regulation – invited persons share their opinions, expertise, identifying the extent of a problem, the causes and effects of a problem, suggest ideas and strategies to resolving the problem.

Provided the discussion is well-moderated, it gives each stakeholder at the roundtable discussion equal time to make a presentation.

To be effective and efficient, a roundtable discussion needs to be confined to the key affected parties represented by their organizations.

Advantages

- Enables Government to bring together the representatives of the key affected stakeholders at a single meeting and to understand their concerns.
- May generate mutual understanding of a problem, define feasible options to resolving the problem and raise potential implementation issues that may need to be considered.
- Some stakeholders may reconsider their position on the policy issue or regulation after learning from other stakeholders about specific issues, feasibility of options, costs, benefits, policy/regulatory effectiveness.

Disadvantages

- Effective roundtable discussions limit the participation of interested parties.

Public meetings

Public meetings are by definition open to any person interested in the policy issue and/or regulation and provide the clearest demonstration of openness and transparency in the policy development and regulation-making process.

Public meetings are particularly useful where the Government has little information about the extent of the problem, where business in the affected industry sector are not represented by an industry association, or the potential high impact of a regulation warrants consultation with a wider group of stakeholders.

Public meetings are resource intensive and require considerable planning in terms of organizing venues across a range of locations, finding and inviting individuals and businesses, managing the public meeting and recording the outcomes.

Advantages

- Provides Government with a list of issues to undertake further investigation;
- Provides Government with a list of affected stakeholders who may in turn provide additional contacts. These stakeholders may prove useful to assisting Government analyze specific policy issues and/or provide data for the assessment of costs and benefits;
- Provides a forum for affected stakeholders to be heard by Government (particularly relevant where an industry sector has lost faith and trust in Government);
- Provides a forum for affected stakeholders who do not feel comfortable preparing a written submission.

Disadvantages

- The issues raised are anecdotal based on personal experiences and will require Government to investigate further to verify the validity of the issues;
- Some of the issues raised may not be relevant to the scope of the regulatory review;
- Some attendees may not express their honest and personal opinions about the policy issue and/or the regulation. They may be hesitant to express their thoughts, especially when their thoughts oppose the views of another attendee.
- Government may lose control of the meeting if individuals with their own agenda attempt to politically hijack the proceedings by discussing unrelated matters.

Public surveys

Surveys provide a means of measuring a population's characteristics, self-reported and observed behavior, awareness of programs, attitudes or opinions, and needs. Public surveys can be conducted on-line, face-to-face interview, by phone or self-completed and returned by post. When determining the need for a survey, government agencies should first check that the required information is not already available (e.g National Statistical Office or an industry federation).

Advantages

- Can be developed in less time compared with other data-collection methods;
- Capable of collecting data from a large number of respondents;
- Survey software can be used to undertake statistical analysis.

Disadvantages

- Respondents may not provide accurate and honest answers (particularly in respect to financial matters);
- Answer options may be interpreted differently by respondents and result in unclear data outcomes.

Focus groups

Focus groups tend to involve small groups and can be useful to investigate causes for a particular problem, measure the reactions to a proposed regulation, or to receive feedback on compliance issues.

Advantages

- Lower cost to conduct compared with individual stakeholder meetings and one-on-one interviews;
- Allows stakeholders who cannot read or write to participate in discussions.

Disadvantages

- Some members may not express their honest and personal opinions about the policy issue and/or the regulation. They may be hesitant to express their thoughts, especially when their thoughts oppose the views of another participant.
- Likely to produce opinions/views that are not evidence-based

Seminars and Workshops

Once Government has collected a significant amount of data, information, ideas and advice from stakeholders from meetings, one-on-one interviews, roundtable discussions and possibly other consultation methods such as public surveys etc, it may be opportune to invite the key affected stakeholders to a seminar/workshop and present these initial findings and consideration of possible options.

Advantages

- Enables Government to receive feedback and validation from key affected stakeholders on the research and analysis it has undertaken to date prior to publication and wider public consultation.
- Enables Government to make adjustments to, or undertake further, research and analyses where key affected stakeholders have not been convinced that the quality of the research and analysis is robust enough.

Disadvantages

- There is a risk that some stakeholders opposed to the proposed policy or regulation may selectively leak some of the results of the preliminary findings and possible options to the media in a bid to undermine the process and to pressure the Government to not go ahead with the proposed policy or regulation.

Public hearings

Public hearings complement the consultation method of written submissions. Public hearings tend to be undertaken for complex policy issues and regulations that have a high impact across the economy or society, and involve many competing views across a wide range of stakeholders.

Normally, a regulatory impact analysis is published seeking written submissions. A public hearing is convened after written submissions have been lodged, read and assessed. Some submissions will raise material matters that could influence the policy development and/or regulation making decision but need to be further explored with the person or organization that has prepared the submission. A public hearing ensures transparency of this consultative process provided a transcript is recorded for each presentation and the interaction between the public hearing panel and the presenters.

Advantages

- Provides invited stakeholders with the opportunity to clarify issues in their submissions;
- Provides Government with the opportunity to make further inquiries, explore issues, clarify points that have been made in written submissions by affected stakeholders;
- A published transcript of each stakeholder's presentation ensures transparency.

Disadvantages

- Public hearings tend to limit the number of presentations to those that have lodged written submissions.

Written submissions

A standard form of public consultation involves Government making a public notice seeking public comments about a specific policy issue and/or regulation by the way of a written submission.

This form of consultation normally permits any person to make a written submission from 30 to 90 days from the date of the public notification calling for written comments on a policy issue and/or regulation. Complex policy issues and/or policy issues that are likely to attract a wide range of stakeholders generally require longer periods up to 90 days to enable affected stakeholders to gather appropriate evidence to present in a written submission. Box 8 below provides a common template for requesting comments at the commencement of a regulatory impact analysis document.

Box 8: Public Consultation – Request for Comments

A regulatory impact analysis document should have a section at the beginning of the document entitled, “Public Consultation” and provide the following information:

Public comments are invited on the regulatory impact analysis and accompanying Regulations. Copies may be obtained from the department’s webpage at.....

or by email:or by telephone:

Written submissions will be received up topm on2015 at the following address:

.....
.....
.....

or by email to:

All submissions will be treated as public documents.

Written submissions can be called for at any stage of the policy cycle. If written submissions are called for at the commencement of policy development, it is standard practice for Government to publish an Issues paper to provide guidance to stakeholders about the type of issues it is seeking comment. If written comments are called for during the policy development process, it is standard practice for Government to publish a Discussion paper, Draft report or a consultation regulatory impact analysis to provide information and guidance to stakeholders. Similarly, written comments are called for at the end of the policy development process with the publication of a final report or a regulatory impact analysis for decision.

This is an iterative process that enables stakeholders to be involved throughout the policy development process: allowing them to comment on the nature and extent of the problem and whether there is case for government intervention, on the possible options that could address the problem including the costs and benefits, and on the approach recommended by Government before it makes a final decision.

Advantages

- Enables affected stakeholders and any interested person from the public to make a written submission;
- Enables stakeholders to prepare a considered submission with supporting evidence.

Disadvantages

- Some stakeholders may not be able to present their concerns, issues and other matters in a coherent manner;
- Requires time and effort for most stakeholders to prepare a written submission.

Web forums

Web forums and other social media are being increasingly used by government agencies as a communication tool to its constituents. Care needs to be taken before adopting web forums for policy and regulatory reviews. Government agencies should ask the question whether a web forum or other social media tool can facilitate evidence-based data and information or is it going to produce a plethora of opinions (not always relevant to the subject) that will require significant resources to manage.

Advantages

- Enables stakeholders to participate who are unable to attend formal consultation, or are uncomfortable preparing a written submission or speaking in public;
- Web forums provide 24/7 access to a wider group of stakeholders than traditional consultative approaches;

Disadvantages

- Irrelevant issues may be raised and gain currency in further discussion amongst on-line participants that the review team may not be able to control;

- Tends to encourage opinions rather than evidence-based information;
- Can be resource-intensive and costly to identify useful information

4. Public Consultation Approaches during the Policy Cycle

There are three broad stages of public consultation. The first two stages involve targeted consultation and the third stage involves wide consultation with the community.

First stage: Understand the nature and size of the problem.

Second stage: Verify the costs and benefits of the various options to address the problem.

Third stage: Seek wider input from the public.

Fourth stage: Understand implementation issues

Fifth stage: Evaluate the effectiveness of the regulation (post-implementation)

The stage of consultation should not be viewed as the number of time consultation is undertaken. There may be instances due to the size of the impact of the proposed regulation and the extent of the impact across most groups within the community, that the third stage is undertaken twice. That is, a consultation RIA is prepared and open to wide public consultation and a final for decision RIA is prepared and open to wide public consultation prior to the government making a formal decision.

Each stage has distinct objectives. The objective of the first stage is to fully understand the nature and extent of the problem to determine whether there is a role for government intervention into the market.

The objective of the second stage is to determine whether the identified options are feasible, and the type of costs and benefits that are likely to be incurred from each of the feasible options.

The objective of the third stage is to discover any other issues that have not been identified from other persons and organizations that have not been involved in the targeted consultation stages. Importantly, wide public consultation demonstrates to the community the transparency of the government's regulation-making process. As part of this process, government needs to acknowledge written submissions and provide a response to the issues raised and the reasons for adoption or non-adoption of the issues and positions canvassed by persons in its final decision. The government also needs to formally notify the public with its decision and its reasons for any amendment to its original proposed regulation.

The objective of the fourth stage is to identify any implementation issues, particularly the proposed timing of when the regulations are to become effective. In some cases, affected stakeholders that will need to comply may need sufficient time to make changes to production and/or software management systems.

The objective of the fifth stage is to evaluate the effectiveness of the regulations post implementation. The evaluation should be undertaken about five years after the introduction of the regulation and involve consultation with the key affected

stakeholders, and where appropriate, subject experts from universities and institutes.

5. Case Study

The case study relates to the problem of road traffic fatalities and injuries in Thailand; specifically the government decision to ban children less than six years of age from being transported on a motorcycle. This is the same case study used in the RIA Guidelines and this should be read in conjunction with that case study. This case study primarily focuses on the stakeholder analysis and mapping undertaken for this proposed regulation across the policy cycle.

The responsible government agency for the regulation is the Office of Consumer Protection (OCP).

The first stage of public consultation

The first stage of public consultation focuses on understanding the nature and extent of the problem. A number of organizations have campaigned to save children from being killed and injured whilst being transported on a motorcycle. Some of these organizations claim several thousand fatalities associated with this activity. It is important to verify the extent of the problem. The OCP needs to know how many children less than six years of age transported on a motorcycle are killed or injured, the associated costs, the causes, the risks to children, and whether any regulation currently exists to address the problem.

A key constraint is that those directly affected by the problem are not easily identifiable. That is, the families that have experienced child fatalities and injuries on motorcycles.

Stakeholder analysis and mapping needs to be undertaken to identify stakeholders that could assist the OCP with developing a better understanding of the nature and extent of the problem.

The OCP needs to identify appropriate stakeholders to provide data on road fatalities and injuries. Who keeps road fatality and injury data? Basic internet research will quickly reveal that the Royal Thai Police maintain road fatality and injury data. Government agencies tend to provide high-level data on their websites so it would be advisable to contact the Royal Thai Police to find out whether it has unpublished data that may assist with estimating the extent of the problem.

Basic internet research also reveals the following organizations in Thailand that publish data on road fatalities and injuries:

- Save the Children Thailand
- Asia Injury Prevention Institute
- Thailand Accident Research Center
- Department of Transport

- National Statistical Office
-

Meetings with representatives from these organizations should be organized to find out whether they have any unpublished data or can provide contacts in road safety research at universities or hospitals.

Internet research also reveals road safety reports produced by international government agencies such as the:

- World Health Organization
- World Bank
- Asia Development Bank
- APEC
- ASEAN
- OECD

Many of these reports discuss and analyze child road accidents. It is sometimes useful to contact the authors of these reports by email to discuss methodologies, data limitations, findings of their research and to discover other research work being undertaken. The bibliography of these reports can sometimes provide a useful list of references and potential contacts to make further enquiries to identify other data research. Internet research can also be undertaken for academic research. Basic internet research reveals several Thailand universities and hospitals have been involved in road safety research (including for child fatalities and injuries).

- Khon Kaen Regional Hospital
- Ramathibodi Hospital
- Prince of Songkla University

The public consultation method applied would be direct face-to-face stakeholder meetings with the aforementioned stakeholders based in Thailand and email/phone meetings with international agencies and/or road safety experts.

The OCP would analyze the different data sets from the aforementioned stakeholders and reach a preliminary conclusion on the best estimate with low and high range estimates) of the extent of the problem.

It would be useful to conduct a workshop and present the analysis and findings of the nature and extent of the problem to the Thailand stakeholders that contributed in the first stage of public consultation. This is particularly pertinent where there are significant differences in the extent of the problem as is the case with child fatalities and injuries. The objective of the workshop is to gain acceptance from the contributing stakeholders about the extent of the problem and to discuss potential solutions.

Second stage of public consultation

The second stage of public consultation requires stakeholder analysis and mapping of stakeholders that will be affected by the proposed regulation to ascertain the cost to these stakeholders.

A ban would have a direct impact on families with young children where their primary mode of transport is the motorcycle. The OCP could identify and have meetings with a sample of pre-school centres and kindergartens to discuss the best method of collecting data from affected families about the cost to them in finding alternative transport options.

Unintended consequences of the proposed ban include low socio-economic families in areas without access to alternative public transport options particularly where they send their children to pre-school centres. To estimate the number of families and pre-school children that could be affected by the ban, several government departments would need to be consulted to collect data on the number of pre-schools without access to limited or no public transport options. The OCP would need to meet with:

- Department of Transport
- Department of Education

A ban would also have a direct impact on motorcycle taxi operators and the following affected stakeholders would need to be consulted:

- Motorcycle Taxi Association
- Motorcycle taxi operators

Motorcycle and alternative transport operating costs would need to be quantified. Several stakeholders may have the expertise to provide reasonable cost estimations. The following organizations would need to be consulted:

- Thailand Motorcycle Enterprises Association
- Department of Transport
- Universities/research experts that specialize in transport economics

An estimation of the expected level of compliance and enforcement effort will also provide an indication of the potential benefits of the proposed ban. The OCP should consult with:

- A sample of affected families
- Royal Thai Police
- Department of Transport

Third stage of consultation

The third stage of consultation requires feedback and confirmation of the costs and benefits of the proposed regulation and alternative. At a minimum, the OCP

would publish the consultation regulatory impact assessment on its website and advertise in major daily newspapers seeking written comments on the proposed regulation.

Depending on the public reaction to the proposal, the OCP may also want to conduct public meetings to allow a wider range of affected families and also motorcycle taxi operators to present their concerns.

Fourth stage of consultation

The OCP would publish a decision regulatory impact assessment including a summary of the issues raised in submissions from the third stage of consultation and the reasons for the government's decision to proceed with the proposed regulation. The OCP would seek final written comments.

Fifth stage of consultation

Subject to the government decision to proceed with making the proposed regulation, a fifth stage of consultation would be required to assist with implementation. This may require consultation with regard to timing. Affected stakeholders would include:

- Motorcycle Taxi Association and other associations representing alternative transport operators
- Department of Transport
- Royal Thai Police

Sixth stage of consultation

Several years after the introduction of the proposed regulation, the OCP should undertake an evaluation to ascertain whether the regulation has achieved the policy objective of preventing child fatalities and injuries incurred on motorcycles. This consultation will require extensive consultation with the stakeholders involved in the policy development process (stages 1 to 4).

6. Consultation Plan

Following stakeholder analysis and mapping, and the selection of the consultation methods, a consultation plan should be documented that outlines the following information:

- The government official who has approved the public consultation plan;
- A public consultation committee (particularly for large reviews and wide range of stakeholders) to discuss and recommend changes to the plan;
- The government officer responsible for project management of the public consultation process on a day-to-day basis;
- Identification of the likely key policy issues;
- Identification of the affected stakeholders;
- Risk assessment of the identified stakeholders that might jeopardize the review;
- Assessment and justification of proposed consultation method(s);
- Budget and resources required;
- Date/time and duration of each consultation method;
- Planning arrangements (locations, venues, equipment requirements);
- List of stakeholders to be invited to each consultation;
- Number and identity of attendees at meetings; and
- Follow-up actions arising from consultation

A GANNT chart could be developed to assist with project management particularly for large reviews involving many stakeholder groups and meetings with key milestones that need to be delivered prior to the consultation method used. For example, the date notices need to be submitted and advertized in newspapers, the date invitations need to be sent, the date documents and/or speaking notes for a moderator need to be prepared, the deadlines for organizing various logistic arrangements (booking venues, equipment, catering etc), dates for internal approval to conduct various aspects of the consultation and so forth. In addition, the GANNT chart would identify the government officer responsible for each task.

The consultation plan is a live document during a review and should be updated or amended where strategic or logistical changes occur or where additional consultations are undertaken.

7. Stakeholder Engagement

Government communication with stakeholders is critical to ensuring their attendance and participation in the public consultation process.

To ensure transparency of the policy development and regulation-making process, departments should establish a consultation section on their websites and provide at a minimum:

- summary of the review process including the number of consultation stages prior to decision;
- relevant downloadable documents such as an issues paper, draft reports, consultation regulatory impact analysis;
- information on consultation meetings (purpose/date/time/venue);
- information on how to make a written submission;
- the timeframe for lodging written submissions;
- publication of all written submissions; and,
- contact person for enquiries with their email address/phone number.

Invitations for public consultation

Send invitations to stakeholders by email or post and seek written confirmation of their acceptance by requesting RSVP by a specific date. Invitations should be sent out at least 2 weeks and preferably 4 weeks for consultation meetings such as public meetings and roundtable discussions that involve many stakeholders. This provides stakeholders with the opportunity to make arrangements to attend the meeting. Email provides traceability that an invitation has been sent to and received by a stakeholder, and provides evidence that Government has invited a specific stakeholder. This is important to deflect any public criticism that Government has not attempted to consult with affected stakeholders.

Public meetings and the call for public comments by way of written submissions will require notification. The responsible department should provide notification of the public meeting and public comments on its website.

Record consultation outcomes

Record and document the key points raised by a stakeholder and any follow-up actions arising from the discussion.

Response to written submissions

Receipt of written submissions should be acknowledged. A short standard letter should be sent by email or post by the department to all persons and organizations that have lodged a submission advising them that the department has received their submission.

Provide a written response to each person, business and organization that made a written submission after the Government's final decision has been made and

the reasons for accepting or not accepting the points of concern in the submission.

8. Evaluation

Evaluation of the public consultation process provides an opportunity to assess the value of stakeholder contribution to the policy development and implementation process, whether stakeholder participation resulted in changes to regulatory design, to assess the effectiveness and efficiency of the project management and to learn from mistakes and improve future public consultation strategies and practices.

An evaluation requires internal and external review given that government officials/officers and external stakeholders were involved in the public consultation process.

Internal review

Value of stakeholder participation

Where appropriate, identify the stakeholders and their contribution that led to an amendment to the original regulatory design prior to public consultation.

Identify the stakeholders that value-added to the policy development and the type of contribution (data, information, advice) they made to better understanding the nature and extent of the problem, the costs and benefits, and identification of alternatives.

Identify the stakeholders that assisted with improving the government agency's network of stakeholders, facilitated meetings with specific affected stakeholders and assisted with organizing and/or convening consultation meetings.

Project Management

Assess whether the public consultation process was executed in accordance with the consultation plan in terms of consulting with the identified stakeholders on time and within budget.

Identify the tasks or aspects of the consultation plan that were not undertaken or completed, and the reasons.

Identify any stakeholders listed in the consultation plan that did not participate and the reasons for their non-participation.

Consider future strategies that could engage a stakeholder who refused to participate in the consultation process.

External review

The key affected stakeholders and other stakeholders that contributed to policy development should be surveyed to obtain their feedback about the quality of the review, the public consultation process and suggestions for improvements. For key affected stakeholders, it might be better to have face-to-face meetings in recognition of the time and effort that these stakeholders may have contributed during the policy development and implementation.

9 Checklist for Effective and Efficient Public Consultation

Checklist for Effective and Efficient Public Consultation

Analysis of the policy issue and regulation

1. Analyze the type and impact of the policy issue and regulation and categorize the likely affected groups.
2. Undertake stakeholder analysis and mapping

Planning

3. Analyze the extent of the Government's knowledge on the policy issue or costs and benefits of the regulation and select the most appropriate consultation methods.
4. Prepare a consultation plan with a timescale of when each consultation method will be undertaken, the planning arrangements (locations, venues, equipment requirements), and the list of stakeholders to be invited to each consultation.

Conduct Consultations

5. Make a record of the Government officials, persons and organizations that attended consultations with the date/time and location of the meeting. Document the material issues raised and the outcomes of the meeting.
6. Update the consultation plan where additional consultations are undertaken post development of the consultation plan.
7. Provide written acknowledgement upon receipt of written submissions.
8. Publish written submissions (other than those that may contain commercially sensitive information) on the government's website.
9. Provide a written response to each person and organization that made a written submission after the Government's final decision has been made, and the reasons for accepting or not accepting the points of concern in the submission.

Evaluation

10. Undertake an evaluation post the policy review or regulation-making process on the effectiveness and efficiency of each consultation method used and the lessons learnt.