**1. Problem Analysis**

The purpose of this stage is to clearly set out the case for considering government action. The ‘problem’ could be a harm or risk that the government wishes to address or reduce. The output should be a clear, succinct, and evidence-based description of:

* the harms
* their significance or potential significance
* their causes
* who is affected.

To define the problem, ask the following questions and draw on relevant evidence.

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| **Describe the harm(s)**  | * What is the harm(s) (type, level and extent) to the community?
* What risks would likely arise, and what would be the likely consequences, if there were no government action?
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| **Define who is affected** | * Who is affected by the problem?
* Do the causes and impacts vary across different groups, and how?
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| **Identify the source or cause** | * What is the source, or underlying cause(s) of this problem or harm?
	+ Which behaviours or actions are of concern?
	+ Why are these behaviours occurring?
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| **Consider how to ‘break down’ the problem** | * Is the problem best understood as an ‘aggregate’ issue, or should it be ‘broken down’ by groups or clusters of sub-issues?
* What different ways can the problem be analysed, considering its causes? E.g. geographic, type of actor, industry sector? Which approaches might best explain why and how the problem occurs?
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| **Consider the effect of non-government factors** | * Are there other factors that mitigate the harms of the problem? For example, are there other incentives or norms that might drive behaviours?
* What changes in technology or design might we anticipate that will mitigate the problem going forward?
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| **Consider the effect of existing government obligations** | * Are there existing government interventions that can address the problem? Why is additional government action required?
* Are there existing government controls that might be impeding potential solutions to the problem? Or are there other constraints relevant to the problem?
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Support the statements that you make by:

* explaining how confident you are about your understanding of the components of the problem
* stating the evidence base used to establish your conclusions
* identifying areas where further analysis or research is required.

This helps ensure your understanding of the components of the problem is credible and convincing. This is required to establish the strength of the case for action, and to identify the type of options that may be appropriate for addressing the problem.

**2. Objectives of action**

The purpose of this stage is to clearly define the specific outcome(s) the Government aims to achieve in relation to the problem defined in the previous stage (e.g. to reduce a harm). The objectives as used as the reference point for you to assess the suitability of ***options.*** The output should be a clear description of:

* the primary objective of government action (e.g. reduced incidents, or improved health) – this may be described as *long term outcome* sought
* relevant *intermediate outcomes* that contribute to achieving the primary objective – typically changed behaviours or actions (such as increased awareness or precautions taken).

Use the following approaches to develop suitable objectives.

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| **Ask questions to define the Government’s goals** | Consider questions such as:* what is the Government trying to achieve?
* what is the desired change in behaviour or outcomes?
* what would success look like?
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| **Focus on the ends, not the means** | State objectives in terms of the ends to achieve (the outcome) rather than the means of achieving them. This helps you avoid pre-justification of approaches or options, or narrowing down potential approaches too early. |
| **Define objectives at the right level** | Avoid defining objectives:* too broadly, so that it may be infeasible to measure the effectiveness or contribution of a proposal to addressing a problem (e.g., the objective is to ‘reduce population mortality from diet-related illness’).
* too narrowly, so that the objective set for government action pre-determines the approach (e.g., the objective is to drive uptake of a program or to regulate).
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**3. Identify possible options**

The purpose of this stage is io develop a set of feasible options capable of addressing the problem. This sets up subsequent assessment, so that you can demonstrate what is the preferred option, with greatest net benefit for the community. The output should be:

* A description of the broad range of possible options to tackle the residual problem.
* An explanation of how feasible options were refined. These will be taken to **impact analysis**.
* An explanation of why other options were rejected.

Consider the following to help you generate ideas for options.

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| **Make the most of existing influences and regimes**  | Consider whether the Government could:* enhance the effect of existing incentives that would reduce the problem (e.g. businesses acting for improved reputation or competitive advantage)
* modify approaches in existing regulatory regimes that already may affect the problem, rather than creating new regulatory requirements
* better coordinate existing regulatory regimes (including related state or local government regulation) to target the issue
* deliver guidance, information and monitoring through existing regulatory regimes (meaning less need for additional regulation).
 |
| **Explore market-based approaches** | * consider whether objectives could be delivered through the regulation of markets (rather than ‘command and control’ requirements).
* explore options such as tradable permits, auctions, reverse auctions, deposit-refund systems, levies, subsidies, or economic property rights.
 |
| **Define the design and approach of requirements** | Examples include:* how much of the problem would be subject to government action, which risks can be accepted or reduced rather than eliminated
* regulatory approach, including degree of self-regulation or direct government regulation
* form of regulation, e.g. prescriptive (specifying design standards for compliance), outcome-based (setting performance standards, with flexibility on achieving these) or process-based (defining risk management methods)
* introducing or changing licensing, registration, or permitting regimes, or information keeping, reporting and disclosure obligations
* how obligations are formalised, including through regulation, guidance, licences, incorporated standards and other instruments
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| **Broadly consider delivery**  | Issues to consider include:* the ‘level’ where decision-making should occur (e.g. Minister, department, regulator, or local community decision-making)
* scope of discretion for the regulator to adjust approach according to risk
* which body is best suited to regulate (considering the principle of subsidiarity, need for consistency or for flexible local approaches, skills)
* the general approach to compliance or education programs (including choices about the level and focus of monitoring and compliance)
* the interaction between design and delivery – the delivery of regulation is not a separate topic to the design of regulation
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The following questions help you to consider the practicalities of implementing options, and to identify potential impediments that may affect their viability. These are provided as a general resource, although not all of these will be relevant to every problem.

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| **Consider efficacy of options** | * how well would the option change or influence the behaviours and other causes of the problem?
* how well would the option promote the Government’s objectives?
* how does the option address reasons for non-compliance?
* what are potential gaps and shortcomings, and what might fill these?
* what possible unintended consequences may occur?
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| **Broadly consider the practicalities of options** | * what specific measures and actions would business or the community need to do as a result of this option (e.g. administrative tasks, working out compliance requirements, substantive compliance works, etc.)?
* what effects will the option have on different groups? e.g. how might it affect small business, community groups, regional industry, or local governments? Is there an additional burden on these groups?
* does the form of regulation meet the needs of regulated groups? For example, small business may seek prescriptive measures, and larger businesses may prefer flexible, performance based standards
* how might the option impact on competition, such as by creating barriers to entry or restricting market participation?
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| **Consider how compliance and enforcement would affect the viability of options** | * how would regulation and its delivery interact? do not treat regulator delivery as a separate topic to options development
* would monitoring and compliance require new programs, or changing priorities? What relative priority (e.g. in inspections or complaint response) would it have?
* does local government have a role and have you consulted appropriately? (the Victorian State-Local Government Agreement requires that you consult with local government)
* does the option introduce an infringement against an offence, review an infringement, or increase the infringement penalty?
* how might people attempt to evade or work around obligations? what would these consequences be?
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| **Consider regulatory duplication** | * how does this differ from or repeat existing obligations, including under other regimes?
* how would this option interact with other laws and regulations?
* is there a risk of cumulative burden and a need for harmonisation?
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**4. Impact analysis *(provided for context only)***

The purpose of this stage is to identify the anticipated impacts of the most feasible options and to provide a clear explanation of how this was done. This helps to determine what is the preferred option, after accounting for all the impacts (costs and benefits). In the ***problem analysis*** stage, you described the *residual problem —* what the world would be like if you did not proceed with any proposal*.* This can be understood as the *base case* — the ‘reference point’ you should use for comparing options, to establish their net effect after accounting for all of their likely benefits and costs.

Using this reference point, you ultimately determine which option is preferred, by:

* considering the likely positive and negative effects of implementing each option (who will be affected, what they will do, and how this will change outcomes)
* measuring these effects, by categorising and counting them
* estimating the costs and benefits (using monetary values as a method), where feasible
* comparing options using an objective decision-making tool, or tools.

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| **Consider how actions will change as a result of the option** | Consider and describe:* *who* will change behaviours or practices (where relevant, breaking down the various groups by sector, location, size, capacity or other relevant characteristic — e.g. small business, regional organisations)
* *what* they will do (the specific actions and measures taken, and the flow on consequences of these actions in terms of subsequent steps, actions forgone, alternative actions taken, market competition, etc.)
* *how* the above will change outcomes and produce benefits (e.g. reduced risks or harms, consumer protection, better health, environmental quality etc.)
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| **Describe the expected costs** | Qualitatively describe likely costs: * administration costs (e.g. finding guidance materials, working out and demonstrating compliance, paperwork reporting and record keeping)
* financial costs, such as fees and charges
* compliance costs (works carried out, equipment purchased, management costs, consultancy, legal or audit and inspection fees, etc.)
* market costs associated with lower productivity, delays to production or getting goods to market, more expensive or lower quality supplies, etc.
* lost ‘enjoyment’ due to constrained behaviour.
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| **For regulatory options, document your assumptions about compliance**  | Consider demonstrated or likely compliance / compliance rates.* Will all comply with the rules? Why/why not? To what extent does this compromise the expected outcomes?
* Will they comply in all areas? Why/why not?
* What will influence compliance? Willingness, capacity, threat of detection and punishment, ability to access support, competitive pressures?
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