Guidelines for the review of legislation
# Commissioner’s foreword

How to use these guidelines

<table>
<thead>
<tr>
<th>Stages of the review process</th>
</tr>
</thead>
<tbody>
<tr>
<td>................................</td>
</tr>
</tbody>
</table>

1. Planning

<table>
<thead>
<tr>
<th>Key consideration 1: governance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key consideration 2: independence</td>
</tr>
<tr>
<td>Key consideration 3: terms of reference</td>
</tr>
<tr>
<td>Key consideration 4: project management</td>
</tr>
<tr>
<td>Summary questions</td>
</tr>
</tbody>
</table>

2. Research

| Key consideration 5: identify your assumptions |
| Key consideration 6: identify legislation objectives |
| Key consideration 7: identify issues |
| Key consideration 8: identify stakeholders |
| Key consideration 9: examine other jurisdictions |
| Summary questions |

3. Consultation

| Key consideration 10: plan consultation |
| Key consideration 11: stakeholder engagement |
| Key consideration 12: stakeholder relationship management |
| Summary questions |

4. Analysis

| Key consideration 13: identify value judgments |
| Key consideration 14: form guiding principles |
| Key consideration 15: consider all relevant information |
| Key consideration 16: make findings |
| Key consideration 17: formulate recommendations |
| Summary questions |

5. Conclusion

| Key consideration 18: draft the review report |

Guidelines for the review of legislation
Key consideration 19: gain approval ................................................................. 31
Key consideration 20: communicate findings and recommendations .............. 31
Summary questions ....................................................................................... 32

6. Evaluation .................................................................................................. 33
   Key consideration 21: lessons learnt.......................................................... 33
   Key consideration 22: feedback .................................................................. 34
   Summary questions ..................................................................................... 34

7. Post-review ............................................................................................... 35
   Key consideration 23: Regulatory Impact Assessment .................................. 35
   Key consideration 24: legislation ............................................................... 35
   Summary questions ..................................................................................... 36

Acknowledgements ...................................................................................... 37
Comments and suggestions ......................................................................... 38
Glossary ......................................................................................................... 39
Bibliography and resources .......................................................................... 41

List of appendixes

I  Governance models

II  Examples of terms of reference and advertisements
Commissioner’s foreword

Reviewing legislation is an important task that most WA public sector agencies must undertake at some point. Reviews have the potential to be of great benefit to both the community and the public sector. They provide an opportunity to examine the relevance of legislation, assess whether it addresses stakeholder needs, and how it is applied in practice.

Parliament frequently includes a clause in many Acts requiring a review after five years or at regular intervals. Reviews may also be initiated by the minister responsible for the Act, which can result in a broad examination and evaluation of current public policy.

Consequently, reviewing legislation can be a resource-intensive and complex undertaking. As Public Sector Commissioner, it is part of my function to advise agencies of management practices which improve the efficiency and effectiveness of their operations, and that of the public sector as a whole. Therefore, these guidelines provide information for the planning and undertaking of a review of legislation.

The guidelines include some of the experiences of agencies, which have recently undertaken reviews, for the purpose of encouraging discussion about the most appropriate approach for undertaking reviews. I hope that they will form the basis for the exchange of information across the sector, and I encourage you to share your own agency’s ‘lessons learnt’.

I am confident that these guidelines will prove a useful resource for public sector agencies in undertaking the important task of reviewing legislation.

M C Wauchope
PUBLIC SECTOR COMMISSIONER

July 2013
These guidelines are intended for individuals who will be involved in a review of legislation, which may also involve the reviewing of subsidiary legislation. They outline the stages likely to be covered by most reviews, although each review will be unique in its context and requirements.

Each chapter identifies a number of key considerations for anyone involved in a review, whether it be an individual reviewer or members of a review’s governing body and project team (for a definition of terms, please see the Glossary). There is no single standard or right approach that must be adopted. The process for undertaking a review of legislation needs to take into account the prevailing circumstances, scope and timeframes.

Reviews may be undertaken by individuals either in or outside the public sector. Individuals may be chosen because of their particular expertise. Some reviews may require a number of people to be involved and more structured governance arrangements. However, all reviews should follow a basic process. These guidelines are not an exhaustive ‘how-to’ manual; rather, they raise important matters which should be considered in light of potential complexities of each review.

**Stages of the review process**

The typical life cycle of a review moves through three broad ‘phases’, with each consisting of two overlapping activities or ‘stages’, as shown in Figure 1. For example, Phase II contains both the consultation and analysis stages; however, both of these stages are connected to the preceding and following phases.
Figure 1: The typical life cycle of a review of legislation process

- **Phase I: Initiate**
  - Stage 1: includes setting up a review’s governance arrangements and creating a project plan
  - Stage 2: includes identifying the issues and stakeholders, and researching other jurisdictions

- **Phase II: Engage**
  - Stage 3: includes creating a consultation plan and engaging with stakeholders
  - Stage 4: includes making findings and recommendations based on the evidence gathered during the research and consultation stages

- **Phase III: Finalise**
  - Stage 5: includes report writing and communicating outcomes
  - Stage 6: includes identifying the lessons learnt during the review process

The guidelines will address each stage individually (chapters 1-6). Some post-review considerations will also be discussed briefly (chapter 7).
Effective planning enables the efficient use of agency resources such as funding and staff, and will contribute significantly towards achieving the review’s objectives. The following considerations highlight important issues which should be taken into account during the planning stage. While they appear in a certain order here, they may not necessarily have to be considered in this order during every review.

**Key consideration 1: governance**

**Governance** arrangements should be established to maximise the efficiency, effectiveness and credibility of the review. This includes overseeing the review process, formalising decision-making powers, as well as outlining reporting relationships and integrity principles.

A sound governance framework is essential for an effective review. Roles and responsibilities of those involved should be clearly defined to avoid potential ambiguity and confusion in the decision-making process. Similarly, principles and processes for managing potential, perceived or real conflicts of interest should be established. Resources such as the WA public sector *Code of Ethics* and the Integrity Coordinating Group’s *Conflict of Interest guidelines* can be used as a basis for these processes, as can the agency’s code of conduct.

The governance arrangements will depend largely on the context of the review and its intended outcomes. For example, some reviews can be undertaken by an officer reporting directly to their CEO, who in turn reports to their minister. It is not uncommon for reviews to be undertaken by a parliamentary secretary or some other person reporting directly to a minister or, in some cases, Parliament. The scope and nature of the legislation in terms of how it impacts on stakeholders are factors in determining what governance arrangements are appropriate.

If the legislation deals with highly technical matters, a single reviewer with relevant technical expertise may be appropriate. Some reviews may require establishing a more structured governance model that could involve officers from other agencies and people outside the sector to comprise a review governing body or steering committee. If this is
the case, the size of the review’s governing body and the composition of its members needs to be carefully considered against the requirements of the review’s terms of reference. A governing body that is too large may make it difficult to arrange regular meetings and may also make the decision-making process unnecessarily complex. Balance between the views of the group’s members needs to be maintained to ensure that discussions do not become skewed towards a single viewpoint.

Figure 2 shows a generic review governance model, illustrating the potential reporting relationships between the entities involved, although variations and exceptions will exist depending on individual circumstances. This model reflects the governance arrangements of a highly structured review, which may not be necessary in all situations. Examples of other governance models are shown in Appendix I.

It is important to distinguish stakeholder consultation (see Chapter 3) from the governance of the review. Some previous reviews have included representatives of key stakeholders in a governance body (e.g. as review committee members). In such cases there may be sound reasons for doing so and stakeholders may provide a greater level of support and cooperation to the review. However, these stakeholders may also expect greater influence in decision-making, which could lead to disengagement or even hostility if this expectation is not met.

An important function of governance is to maintain good record-keeping practices. Executive support should be made available to ensure that accurate records of all important meetings relevant to the review are made, including significant decisions. Sound governance should also provide for regular communication with the review’s receiving authority to ensure that any potential issues or changes of direction are identified early and managed appropriately.
Figure 2: Generic governance model for a highly structured review (broken lines denote optional elements)
Key consideration 2: independence

Determine if it is appropriate for the review to be conducted by an independent person or body rather than by an officer at the agency principally assisting the minister administering the Act.

It is important to clarify early in the planning stage if it is necessary for the review to be conducted by an independent person or body as opposed to an officer in the agency that principally assists the portfolio minister in the administration of the Act. The intentions of the minister and desired outcomes need to be considered in making this decision.

In some cases, the agency may be best placed to conduct the review. For example, the agency may have strong connections with many of the key stakeholders or its staff may have a high level of relevant technical expertise. The receiving authority may also specifically direct the agency to carry out the review.

However, in other cases, an independent person may be beneficial to the review. For example, a review may require assessing the operations and viability of a statutory body. In such cases, it may not be appropriate for the body itself to conduct the review because of the obvious conflict of interest.

There may also be strongly held divergent stakeholders’ views regarding the legislation under review, or about the agency’s role in administering it. In such cases, engaging someone who is independent of the agency to conduct the review may allay any stakeholders’ concerns and enhance the credibility of the review.

An independent officer may be sourced from another government agency, or can be an academic or industry expert. If a decision is made to appoint an independent officer from outside government, current procurement guidelines must be followed. See Premier's Circular 2009/08 Contracts for Professional Services for more information.

If a decision has been made to contract a non-government independent officer, the criteria for selecting someone should be carefully considered. Expert knowledge alone may not be sufficient to lead a review. Other important attributes to consider in the selection process are experience in executive management, relationship management skills, and an understanding of government processes.
Guidelines for the review of legislation

Key consideration 3: terms of reference

Terms of reference should be established to clearly outline the scope of the review.

The terms of reference determine what the review will and will not do. They can be either broad or specific, depending on the prevailing issues and the time and resources available. Statutory reviews will generally use the review clause of the Act as the basis for the terms of reference. Examples are provided in Appendix II.

In some instances, the review’s governing body may be asked to draft the terms of reference. In this case, some initial research and legal advice may be required to ensure that important issues are included. Depending on the sensitivity or scale of the issues to be discussed by the review, the political or fiscal environment may also need to be taken into consideration when drafting the terms of reference.

For large-scale reviews or reviews which seek to specifically address stakeholder concerns, asking important stakeholders for feedback on the proposed terms of reference can ensure that all relevant issues fall within the scope. It can also generate additional support for the review, although there are risks associated with being consultative at this early stage. For example, the discussion on the terms of reference can be mistaken for discussion of the actual issues which should take place later on in the review. Also, depending on the sensitivity of the issues, a discussion on what to include in the terms of reference may polarise stakeholders and threaten the success of the review.

Terms of reference can also include a date by which the review should be completed. It is important to manage the expectations of the review’s receiving authority in the setting

Case study 1

The Western Australian Land Information Authority (Landgate) recently concluded the inaugural review of the Land Information Authority Act 2006. The Act creates Landgate as a statutory body; therefore, the responsible minister decided that it was appropriate that an independent party be appointed to chair the review’s governing committee.

An independent chairperson provided a level of impartiality that was beneficial to Landgate.
of a completion date. If the timeframes for conducting the review are not proportional to the issues to be examined, its potential effectiveness can be impacted from the outset.

**Key consideration 4: project management**

*Project management principles and practices* should be applied throughout the review process.

Sound project management skills should be used to ensure that the review proceeds smoothly and achieves its goals. Strong project management skills should be one of the primary capabilities available in the review’s governance group and project team.

Consider creating a project plan which formalises the high-level priorities and outcomes of the review. This will serve as a framework for subsequent, more detailed planning for each individual stage. Timeframes and important milestones should be established early (and outlined in the project plan) to create clarity for all staff and stakeholders involved in the review.

If the review chooses to publish a consultation document (see Chapter 3 and the Glossary for more information), ensure that enough time is allocated for drafting, obtaining approval, and printing (if necessary). Enough time should also be allocated for stakeholders to read and respond to the document. Similarly, the project plan should include gaining approval for the structure of the final report well before drafting begins. If more than one author will work on the report, consideration may need to be given to engaging a professional editor, although this will require more time and funds.

A communications plan should be created to outline what information will be communicated to whom at what time, both while the review is in progress and after it has been completed. This can include raising awareness that the review is taking place, ensuring that regular progress reports are made to the receiving authority and the agency’s CEO, and how the final report will be disseminated once the review has concluded.

A review does not take place in isolation—it exists within the current social and political context and can be influenced by a large number of internal and external factors. Planning should therefore incorporate a certain degree of flexibility. A well-developed risk management plan can increase the likelihood of responding appropriately to changes. Regular engagement with the review’s receiving authority is also essential and can reduce the likelihood of large-scale alterations having to be made in the later stages of the review.
### Summary questions

Table 1: Questions relating to the planning stage

<table>
<thead>
<tr>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does the review have a sound governance structure, with clearly defined roles and responsibilities?</td>
</tr>
<tr>
<td>2. Does the review need to be conducted by an independent person?</td>
</tr>
<tr>
<td>3. Have terms of reference been established for the review?</td>
</tr>
<tr>
<td>4. Have project management practices been applied and documented (e.g. in a project plan)?</td>
</tr>
<tr>
<td>5. Is the project plan realistic and achievable, and does it allow for potential delays and changes?</td>
</tr>
</tbody>
</table>
Well-conducted research is essential for identifying the issues and stakeholders of a review. It can also provide useful information for the consultation and analysis stages. This chapter outlines some key considerations for conducting research in a legislative review setting.

For a comprehensive guide on current research methodologies, refer to *Introducing Research Methodology: A Beginner’s Guide to Doing a Research Project* and *The Australian Policy Handbook*.

**Key consideration 5: identify your assumptions**

Be wary of statements such as ‘we know what the issues are’ or ‘we know who our stakeholders are’. **Consider the validity of assumptions** and whether they should be tested through research.

Existing assumptions can be difficult to identify; however, if they are not identified they can pose a risk to the success of the review. Some assumptions may turn out to be supported by the research. Others may turn out to be false or misleading. For example, an agency may deal with many of the key issues on a daily basis, but may not be aware of other critical issues which lie outside its normal sphere of operation.

Christian Bason, who is a member of the Danish cross-ministerial innovation unit *Mindlab*, suggests the following for overcoming assumptions in a public policy environment:

- a genuine desire to understand the issues
- an awareness that reality is often more complex than we think
Key consideration 6: identify legislation objectives

Identify the intended **objectives** of the legislation being reviewed.

A good starting point for research is to examine the intended objectives of the Act being reviewed. These objectives are often outlined in the Bill's Explanatory Memorandum, the second reading speech and in Hansard records of the relevant parliamentary debates. Current government policies and the agency's strategic objectives can also be useful sources of information. It is also important to identify any overlapping or related legislation which impacts on the legislation being reviewed, and which in turn could be impacted by any potential changes recommended by the review.

Some legal advice can be helpful to clarify the intent or application of the sections of the legislation relevant to the issues being examined by the review, and can ensure that all participants of the review have a common understanding of the current legislation. This may be especially valuable if the Act has been amended several times, or was written some time ago. Older legislation can vary markedly from modern legislation, and its interpretation can shift over time.

Legislative reviews should assess the legislation against its intended objectives, and this is best achieved through a sound evaluation methodology (for more information on contemporary evaluation methodologies, see *The Australian Policy Handbook*). Any evaluation should also consider if the legislation has had any unintended consequences and if the intended objectives at the time of drafting are still relevant at the time of the review.

---

Key consideration 7: identify issues

*Identify the issues* and examine the current situation through an environmental scan.

Issues can be identified by accessing many different information sources, such as:

- ministerial correspondence
- ministerial media statements
- parliamentary reports, debates and questions
- reports from central agencies (e.g. the Office of the Auditor General, the Office of the Ombudman)
- complaints databases
- experts in the field
- legal opinion databases
- academic research
- emerging knowledge
- media reports
- front-line operational units that administer the legislation.

The terms of reference will be the primary guide for deciding which issues should be included or excluded in the review. If a significant issue falls outside the scope, the review’s receiving authority should be consulted for a potential reassessment of the terms of reference. Alternatively, the review can make a recommendation for a future review that would deal with the identified issue.
Case study 2

In the review of the laws of homicide in Western Australia, the Law Reform Commission of Western Australia specifically excluded euthanasia from its terms of reference as the issue was considered “…far too complicated and controversial to be properly examined in a reference which addresses the general law in relation to homicide.”

Despite this exclusion, the review received a number of submissions on the issue. In their final report, the Commissioners listed the submissions and noted that it is an important issue which merits further examination. They subsequently made a recommendation that the Attorney General establish a separate inquiry into euthanasia and related matters.

Key consideration 8: identify stakeholders

Identify the stakeholders of the review.

Successfully identifying stakeholders is a critical part of a review. Previous reviews have failed on some occasions in the implementation phase because important stakeholders were not identified and consulted. This is a significant risk and must be carefully managed.

Stakeholders can be broadly classified into three groups by assessing the level of interest they are likely to have in the review and its outcomes. Their levels of interest will usually be determined by the levels of impact the legislation has on them.

**Primary stakeholders** are those individuals or groups directly impacted by the legislation and, therefore, are likely to have a strong interest in the outcomes of the review.

**Secondary stakeholders** are those individuals or groups indirectly impacted by the legislation and, therefore, could have a moderate level of interest in the outcomes of the review.

**Tertiary stakeholders** are those individuals or groups that are not directly impacted by the legislation yet may have an interest because of their relationships with primary or secondary stakeholders. Media organisations, advocacy groups and even other
government agencies may sometimes fall into this category, although in some cases they could also be primary or secondary stakeholders depending on the legislation.

It is important to identify all stakeholders in the research stage, if possible, so that a comprehensive consultation plan can be designed (see Chapter 3). However, additional stakeholders may be identified while consultation is in progress and, therefore, some flexibility may be required.

It is also important to engage with other government agencies (central as well as line-agencies) and include these in stakeholder consultation where appropriate. Similarly, the agency’s own staff should be identified as stakeholders and given the opportunity to give feedback, especially if it is likely that they will be asked to implement potential outcomes of the review.

Key consideration 9: examine other jurisdictions

Examine other jurisdictions for similar legislation, similar issues or similar reviews.

An examination of other Australian and international jurisdictions can provide examples of similar legislation or reviews. These can be a valuable source of information and insight into how other jurisdictions have dealt with the same or similar policy issues.

Case study 3

In their 2010 review of the Fish Resources Management Act 1994, the Department of Fisheries drew on the experiences of the New Zealand fisheries department in implementing a new WA quota management system. By having identified similar legislation in another jurisdiction, The Department were able to draw on useful advice and hands-on experience for their review.
Summary questions

Table 2: Questions relating to the research stage

<table>
<thead>
<tr>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Have any assumptions been challenged?</td>
</tr>
<tr>
<td>2. Have the objectives of the legislation been identified?</td>
</tr>
<tr>
<td>3. Have the relevant issues been identified?</td>
</tr>
<tr>
<td>4. Have all the review’s stakeholders been identified?</td>
</tr>
<tr>
<td>5. Have other jurisdictions dealt with similar issues, completed similar reviews, or have similar legislation?</td>
</tr>
</tbody>
</table>
3. Consultation

Consultation will often be the most resource-intensive stage of a review. If done well, it can generate valuable feedback for the review, as well as goodwill among stakeholders. Stakeholders are more likely to support a review if they feel their concerns were heard, even if they do not agree with the final recommendations.

Detailed information on designing a consultation process is also contained in *The Australian Policy Handbook*.

**Key consideration 10: plan consultation**

Clarify the **desired outcomes** from consultation and the breadth and depth required to achieve the outcomes. Develop a **consultation plan** to determine appropriate communication strategies and methods for each stakeholder group.

The consultation process can occur one or more phases or ‘rounds’. Each round can be formed around a dialogue in which information is sought from stakeholders.

A review process should include a reasonable and appropriate timeframe for stakeholders to provide their views on the legislation. This timeframe will vary with each review and will depend on many variables. However, it is important to note that stakeholders expect consultation to end when they feel their views have been heard and understood. An appropriate timeframe and a well-managed consultation plan can ensure that this is the case.

Terms such as background paper or discussion paper are commonly used to describe a review’s consultation documents; however, there is diversity in the meanings that individual agencies attribute to each term, depending on the context and the intended function (see the Glossary for more information).

The desired outcomes of consultation will influence the type of consultation document used (if such a document is actually used). For example, if a review is seeking stakeholder feedback on a proposed regulatory model, it may choose to invest time and
effort into internal research and then publish a highly detailed discussion paper to gather specific feedback on the model. Alternatively, if an agency is seeking general feedback on the legislation before making any proposals, it may choose to publish a less detailed issues paper to encourage stakeholders to consider the issues and raise potential new ones.

The Regulatory Impact Assessment process

If it is likely that the review will recommend regulatory proposals or legislative changes, reviewers should familiarise themselves with the Regulatory Impact Assessment (RIA) process, administered by the Regulatory Gatekeeping Unit (RGU). It is recommended to the RGU be engaged early in the review process so that any uncertainty regarding the RIA process can be resolved and expectations are clarified.

The 2010 *Regulatory Impact Assessment Guidelines* provide specific guidance on what an agency must do to satisfy compliance requirements, including criteria for Consultation and Decision Regulatory Impact Statements (RIS). See also *Premier’s Circular 2009/06 – Regulatory Impact Assessment Guidelines for Western Australia* for more information.

Some regulatory proposals may fall within an exemption category, in which case a RIA process will not be required.

It is possible to minimise the time and effort required to comply with the RIA process if the requirements have already been addressed in the review’s consultation strategy and publications (e.g. discussion paper). For example, a discussion paper may qualify as a Consultation RIS.

**Case study 4**

In 2009, the Tenure Committee, in conjunction with Landgate, conducted a review of the *Strata Titles Act 1985*. The review recommended extensive changes to the existing strata management system, and made proposals for the amendment of the Act.

The review team contacted the RGU early in the process. This enabled RIA methodologies to be incorporated into the consultation documents and final report that helped to expedite the assessment process and ultimately saved a significant amount of time.

In this particular case, the RIA process was able to operate in parallel to the consultation, analysis and conclusion stages of the review, which alleviated the need to engage with the RGU again in the post-review phase.
Key consideration 11: stakeholder engagement

Use an appropriate consultation method to engage each stakeholder.

An effective consultation plan balances the review’s available resources, desired outcomes from consultation, and stakeholders’ needs. All stakeholders of the review should be given a chance to contribute their views in a manner that is accessible to them. The following three questions can be used as a starting point for designing an appropriate consultation plan:

- Are stakeholders aware of the review and the desired outcomes of the consultation?
- Do some stakeholder groups have special needs (i.e. physical, geographic, temporal etc.) that must be met to allow them to participate?
- What information do stakeholders need to meaningfully contribute to the review?

At the beginning of the review, stakeholders will need to be informed that the review is taking place so they can participate. Some awareness-raising methods which could be used include: newspaper articles and advertisements; a website; information leaflets; letters to key stakeholders; and media engagements (e.g. radio or television interviews).

Once consultation has commenced, feedback is often required in the form of written submissions in response to a consultation document. However, written submissions can favour some stakeholders over others (i.e. it is not guaranteed that all stakeholders will have the time, resources and ability to draft a submission). Therefore, it is important to also consider using other more accessible methods, such as:

- workshops
- focus groups
- community meetings
- one-on-one interviews
- surveys
- social media

If time permits, pilot the proposed method (particularly surveys, focus groups, and workshops) with a small group of selected stakeholders or agency staff. This can provide important feedback on the format and can improve the quality of information gathered later on. Regardless of the consultation method employed, consider using open-ended questions where possible as this will allow a broader scope of possible responses.

Some stakeholders may wish their views to be anonymous or remain confidential. It is possible to honour this wish in the review’s publications. However, stakeholders need to
be made aware that any information submitted may still be subject to the Freedom of Information Act 1992 (FOI Act).

**Case study 5**

In the 2011 review of the Heritage of Western Australia Act 1990, the State Heritage Office used a variety of different methods to invite stakeholders to participate, including: formal letters to all WA members of parliament and local councils; postcards mailed to all registered owners of heritage buildings; an online survey hosted on the agency’s website; and articles published in metropolitan and regional newspapers.

The review also used a professional facilitator to conduct a number of stakeholder workshops and collate the feedback. This proved to be more cost-effective when compared to using agency staff and gave reviewers the opportunity to observe the discussions without being directly involved.

**Key consideration 12: stakeholder relationship management**

Clearly **define and manage the relationships** with stakeholders.

Good relationship management increases the likelihood that stakeholders will feel included and participate in consultation. Staying in control of the consultation process is essential to ensure stakeholders remain engaged.

If a stakeholder reference group is formed, it is important that all members are aware of their roles and what kind of decision-making powers they have, if any. This is particularly relevant for stakeholders who are closely involved with the review. If their roles are not clearly established from the onset, false expectations may develop which can threaten the success of the review.

If experts are invited to present information, it should be established beforehand if they will be invited to take part in the subsequent discussion and decision-making process.

The order in which stakeholders are consulted can be important, especially if there are strongly divergent views. Also consider if there are any other sensitivities between different stakeholders which require special management. For example, in some cases it
may not be appropriate for strongly conflicting stakeholders to be brought together (e.g. in a workshop) to discuss their views.

Summary questions

Table 3: Questions relating to the consultation stage

<table>
<thead>
<tr>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What are the desired outcomes from consultation?</td>
</tr>
<tr>
<td>2. Have the RGU’s guidelines been considered in the development of the consultation plan?</td>
</tr>
<tr>
<td>3. Are the consultation methods appropriate for each stakeholder?</td>
</tr>
<tr>
<td>4. How will stakeholders be informed that their submissions will be subject to the FOI Act?</td>
</tr>
<tr>
<td>5. If the review has a stakeholder reference group, are its members aware of their roles and decision-making powers (if any)?</td>
</tr>
<tr>
<td>6. How will potential sensitivities between stakeholders be managed?</td>
</tr>
</tbody>
</table>
Analysis of the information gathered during the research and consultation phases should be the basis for the findings and recommendations made in the review’s final report. Analysis can be aided by a set of guiding principles to ‘test’ proposals.

In some cases, a review may have been initiated to identify new policy proposals to update or supersede the legislation being reviewed. If new policy proposals are one of the desired outcomes of the review refer to *The Australian Policy Handbook* because it provides useful information and checklists for the creation and implementation of policies and for managing the policy development process.

**Key consideration 13: identify value judgments**

Be aware of **value judgments** which may impact on an impartial and unbiased analysis.

Value judgments are in themselves neither inherently negative nor positive—they are a natural and a necessary part of decision-making. Nevertheless, it is important to be aware of their influence and to strive to consider objectively the information gathered. For a definition of the term ‘value judgement’, see the Glossary.

**Key consideration 14: form guiding principles**

Consider forming a set of **guiding principles** by which to shape and rationalise potential recommendations.
Guiding principles can be derived from the review’s terms of reference, from information gathered during research, or from stakeholder feedback. Their role is to provide a clear and transparent rationale for decision-making and to ensure a review’s recommendations are aligned with its objectives. They can assist reviewers to examine the issues identified during the review, particularly if they are sensitive or complex.

**Case Study 7**

The Law Reform Commission of Western Australia creates guiding principles for most of its reviews. For example, the Review of Coronial Practice in Western Australia (completed in 2012) used seven guiding principles known as ‘objectives for reform’ that were formed during consultation. They include:

- “Strengthen and support the prevention role of the coroner” (Principle One)
- “Reduce delay in the coronial process” (Principle Three)
- “Promote equality of access to coronial services for regional Western Australians” (Principle Eight).

As noted in the introduction to the final report, “…the eight objectives of reform, which reflected concerns raised during the Commission’s consultations and which, in turn, informed the final recommendations in this Report.”

**Key consideration 15: consider all relevant information**

*All relevant information* gathered during research and consultation should be considered.

It can have negative consequences for the review if analysis does not adequately address all relevant research and stakeholders’ views. Stakeholders’ views that are contrary to the majority or not aligned with the proposals of the review especially need to be considered. Similarly, all relevant research should be considered in analysis, regardless of whether it correlates or differs with other information.
Case study 6

In the review of the *Community Protection (Offender Reporting) Act 2004*, the Law Reform Commission of Western Australia received a large amount of stakeholder support for their proposal of introducing judiciary discretion to the current scheme of mandatory registration for all child sex offenders. However, the Commission also received a submission from one important stakeholder arguing strongly against the proposal.

In the final review report, the Commission directly addressed the arguments made by the key stakeholder against the proposal. This demonstrated that their view was given serious consideration.

Key consideration 16: make findings

Analysis should result in **findings** based on the evidence gathered during research and consultation.

Findings are the conclusions formed after having analysed all the available evidence. How the analysis is undertaken will be determined by the nature and quantity of the information. For example, a large volume of numerical survey data will lend itself to statistical analysis whereas text-based data will require a qualitative thematic analysis.

The findings are a precursor to forming recommendations.

Key consideration 17: formulate recommendations

Recommendations should **flow logically** from the findings.

Recommendations should be well-balanced, practical, measured and realistic in the eyes of the review’s stakeholders and the receiving authority. They should take into account the objectives of the legislation, its application in practice, its impact on stakeholders, and the wider public interest.
For example, if the recommendations will require a large funding investment in an environment where there are strict constraints on budgets, rather than abandoning the recommendations they could instead be prioritised for a phased implementation.

If recommendations call for a change to current practices, consider if the changes could be achieved through policy mechanisms rather than by amending legislation or proposing new legislation.

Summary questions

Table 4: Questions relating to the analysis stage

<table>
<thead>
<tr>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Has all relevant information been considered in the analysis?</td>
</tr>
<tr>
<td>2. Has the evidence been examined objectively?</td>
</tr>
<tr>
<td>3. Do the findings flow from the evidence gathered during research and consultation?</td>
</tr>
<tr>
<td>4. Have guiding principles been used to test the recommendations against the review’s objectives?</td>
</tr>
<tr>
<td>5. Are the recommendations well-balanced, practical, measured and realistic?</td>
</tr>
<tr>
<td>6. Can recommended changes be achieved through policy mechanisms rather than through amending or creating new legislation?</td>
</tr>
</tbody>
</table>
5. Conclusion

Most reviews will require a final report to conclude the process. In some cases it may be necessary or desirable for the report to be tabled in Parliament. This chapter outlines some important issues to consider during the concluding stage of a review.

Key consideration 18: draft the review report

The review report should communicate the key messages in an appropriate manner by taking into account the target audience.

The report should clearly outline why the review was conducted; the terms of reference; how it was conducted (i.e. the methodology followed); the findings and recommendations.

It can be helpful for the drafting process if the report structure is agreed by the review’s governing body before drafting begins. Details of previous review reports published by other agencies can be found in the Bibliography. A helpful guide for creating and reviewing the structure of a large document is given in Writing at Work: How to write clearly, effectively and professionally. Once drafting is underway, ensure that the style and tone are consistent with the agency’s style guide (if one exists).

The final report should take into consideration the needs and expectations of the target audience, especially the review’s stakeholders. Some stakeholders may have different needs to others—where possible these needs should be catered for by additional methods of communication. For example, a detailed formal report may be appropriate for some, but unlikely to be read by others. In such cases, an additional short summary report or information leaflet could be more appropriate.
Key consideration 19: gain approval

Allow sufficient time for the draft report to pass through the required approval stages.

It is important to be aware that the review report may need to pass through multiple approval stages, including the review’s own governing body, the agency’s executive and CEO, and the review’s receiving authority. The approval process may require lengthy consideration, especially if the review is extensive or covers sensitive issues.

Statutory reviews may require the final report to be tabled in Parliament. Even if this is not a legal requirement, the governing authority may decide to table the report as a courtesy to Parliament.

Key consideration 20: communicate findings and recommendations

Communicate the review’s findings and recommendations to stakeholders.

Once the review report has been approved for publication, it is important to raise awareness of the review’s findings and recommendations. It is courteous and prudent to contact the stakeholders who took part in consultation directly, as they will likely have a high level of interest in the final report.

The communication plan (prepared as part of project planning, see Chapter 1) should guide the publication and dissemination of the report, as well as related communication activities (e.g. media statements, information seminars etc.).

Copies of the report will also need to be deposited with the State Library of Western Australia and the National Library of Australia. See Premier’s Circular 2003/17 – Requirements for Western Australian Government Publications and Library Collections for more information.
Summary questions

Table 5: Questions relating to the conclude stage

<table>
<thead>
<tr>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does the report follow the structure approved by the review’s governing body?</td>
</tr>
<tr>
<td>2. Is the report consistent with agency’s style guide, and does it outline the review’s rationale, methodology and terms of reference?</td>
</tr>
<tr>
<td>3. If the report is to be tabled in Parliament, is it important that Parliament is actually sitting when this is done?</td>
</tr>
<tr>
<td>4. What communication strategies will be used to raise awareness of the review’s findings and recommendations?</td>
</tr>
<tr>
<td>5. Have copies of the report been deposited with the State Library of Western Australia and the National Library of Australia?</td>
</tr>
</tbody>
</table>
6. Evaluation

Evaluation is part of good project management practice. As reviews are often cyclical, it is especially important to ensure that the lessons learnt are documented and available to future review teams.

Key consideration 21: lessons learnt

An evaluation should be conducted after the review is concluded to identify the 'lessons learnt'.

Evaluation does not need to be time-consuming or complex. A simple evaluation can be conducted by seeking feedback from the project team and the members of the governing body. Responses can be summarised in a report or documented individually.

Some questions to gather useful information include:

- What worked well?
- What didn’t work well?
- Is there anything you would do differently?
- How were the resources of the review managed? Were they sufficient?
- Were there any significant impediments, and if yes, how were they overcome?
- What knowledge sources (i.e. publications or people) were helpful during the review?
Key consideration 22: feedback

Communicate the evaluation findings to the review team and other agency staff.

Sharing the evaluation findings with other agency staff will help build corporate knowledge on conducting reviews. This will assist agencies to retain the experiences of staff which may otherwise be lost. This is particularly important for agencies which may be required to review an Act on a regular basis.

In addition, agencies may wish to share their experiences with the Public Sector Commission because illustrative experiences can be included in future editions of these guidelines. For contact information, refer to the Comments and Suggestions section at the back of these guidelines.

Case study 8

After Landgate concluded its review of the *Land Information Authority Act 2006*, an evaluation of the process was conducted. This resulted in the creation of Landgate’s own ‘in-house’ guidelines for conducting future reviews every five years, as required by the Act’s review clause.

Summary questions

Table 6: Questions relating to the evaluation stage

<table>
<thead>
<tr>
<th>Questions</th>
<th>1. How will the evaluation be conducted and who will participate?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2. Does the agency’s executive and the review’s receiving authority need to be advised of the evaluation findings?</td>
</tr>
<tr>
<td></td>
<td>3. How will the evaluation findings be communicated to the review team and other agency staff?</td>
</tr>
</tbody>
</table>
Implementation of any recommendations is not, strictly speaking, part of the review process as it takes place after the review has concluded. However, if the review’s recommendations are to be implemented, the following points should be considered.

**Key consideration 23: Regulatory Impact Assessment**

If the review makes regulatory proposals, a Regulatory Impact Assessment (RIA) process must be completed through the **Regulatory Gatekeeping Unit (RGU)**.

The RIA process is administered by the Department of Finance’s RGU. It requires all regulatory proposals to be analysed for their impact on business, consumers and the economy. *The Regulatory Impact Assessment Guidelines for Western Australia* (2010) are available from the Department of Finance’s website.

Ideally, a review should seek to engage with the RGU early during the review process, as they may be able to provide assistance and clarify the RIA requirements. This can save significant time and effort in the post-review stage. In some cases, a RIA process may even run parallel to a review’s consultation, analysis and concluding stages.

For further information about early engagement with the RGU during the review process, see ‘The Regulatory Impact Assessment process’ under Key consideration 10: plan consultation.

**Key consideration 24: legislation**

If the review’s outcomes require drafting or amending of legislation, the Parliamentary Counsel’s Office **guidelines for drafting and enacting legislation** should be consulted.

Any recommended legislative amendments that repeal obsolete legislation, or that correct minor errors and do not change an existing policy, may be facilitated through an ‘Omnibus Bill’. See *Premier’s Circular 2010/01 – Statutes (Repeals and Minor Amendments) Bill* for more information.

**Summary questions**

**Table 7: Questions relating to the post-review phase**

<table>
<thead>
<tr>
<th>Questions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Has the RIA process been initiated for any recommended regulatory proposals?</td>
<td></td>
</tr>
<tr>
<td>2. Have Parliamentary Counsel’s guidelines been consulted for amending or drafting legislation?</td>
<td></td>
</tr>
</tbody>
</table>
Acknowledgements

The Public Sector Commission wishes to thank senior staff at the following agencies who agreed to share their experiences in reviewing legislation:

- Department of Commerce
- Department of Finance (Regulatory Gatekeeping Unit)
- Department of Fisheries
- Department of Treasury
- Law Reform Commission of Western Australia
- State Heritage Office
- Western Australian Land Information Authority (Landgate)
- WorkCover WA.

We also wish to thank Mr Walter Munyard, Parliamentary Counsel, for providing an insight to legislative review clauses.
Comments and suggestions

We welcome any comments or suggestions regarding the information in this publication. If you would like to provide any feedback, please contact us:

Public Sector Commission
Dumas House, 2 Havelock Street, West Perth 6005
Locked Bag 3002, West Perth WA 6872
Telephone: (08) 6552 8500 Fax: (08) 6552 8710
Email: app@psc.wa.gov.au
Website: www.publicsector.wa.gov.au
### Glossary

**Table 8: Definitions of common review terminology**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Discussion paper</strong></td>
<td>A document that outlines the issues relating to a review and generally includes specific proposals for discussion. It should provide sufficient information to enable stakeholders to respond. Commonly calls for broad, general feedback on the issues raised, and sometimes for ideas and/or proposals.</td>
</tr>
<tr>
<td>Also known as:</td>
<td></td>
</tr>
<tr>
<td>• Issues paper</td>
<td></td>
</tr>
<tr>
<td>• Consultation paper</td>
<td></td>
</tr>
<tr>
<td><strong>Final report</strong></td>
<td>A document that outlines the findings and recommendations stemming from the review. Generally it does not call for feedback as it signals the conclusion of the review. The review report should be submitted to the receiving authority who initiated the review.</td>
</tr>
<tr>
<td>Also known as:</td>
<td></td>
</tr>
<tr>
<td>• Review report</td>
<td></td>
</tr>
<tr>
<td><strong>Project team</strong></td>
<td>The group of people that undertakes the review tasks under the direction of the review’s governing body.</td>
</tr>
<tr>
<td><strong>Receiving authority</strong></td>
<td>The person or entity which initiates the review and receives the final report, e.g. the minister responsible for the Act.</td>
</tr>
<tr>
<td><strong>Review governing body</strong></td>
<td>An entity which directs the review and reports to the receiving authority. For possible structures of governance bodies, see Appendix I.</td>
</tr>
<tr>
<td><strong>Stakeholder reference group</strong></td>
<td>A group which advises the review governing body. A good method of managing a large number of important stakeholders. However, not all reviews choose to have a stakeholder reference group.</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Submission guide</strong></td>
<td>A publication that outlines important questions which stakeholders should address in their submissions. Can also include the review’s terms of reference and some brief background information.</td>
</tr>
<tr>
<td>Also known as:</td>
<td></td>
</tr>
<tr>
<td>• Background paper</td>
<td></td>
</tr>
<tr>
<td><strong>Terms of reference</strong></td>
<td>A governance document which determines what the review will and will not do. Generally set by the receiving authority and can be either broad or specific. For statutory reviews, the terms of reference are usually based on the Act’s review clause.</td>
</tr>
<tr>
<td><strong>Value judgement</strong></td>
<td>An important element in political and other forms of decision-making which deals with factors that cannot be measured objectively. Value judgments often depend on the decision-maker’s personal background and priorities, including social, political, religious and philosophical values.</td>
</tr>
</tbody>
</table>
Bibliography and resources


The Integrity Coordinating Group, June 2011. *Conflicts of Interests: Guidelines for the Western Australian Public Sector*, Perth: s.n.

The Integrity Coordinating Group, June 2011. *Integrity in Decision Making*, Perth: s.n.


Appendix I: Governance models

The following diagrams illustrate some common review governance models (broken lines denote optional elements). These can be varied or adapted as necessary.

Table 9: Common review governance models

<table>
<thead>
<tr>
<th>Structure</th>
<th>Description</th>
</tr>
</thead>
</table>
| **Review committee:** | - decisions are made by review chairperson in consultation with committee members  
- committee members can include senior agency officers, technical experts, and independent officers  
- chairperson can be independent or a senior agency officer. |
| **Single reviewer:** | - single reviewer is responsible for decision-making  
- can be supported by an internal agency ‘think-tank’ to make proposals or provide technical advice  
- can be used for reviews with a single independent reviewer. |
Equal reviewers:

- multiple reviewers make decisions by consensus
- can call upon technical experts or academics to present information
- commonly used by the Law Reform Commission of Western Australia.

Guidelines for the review of legislation
Appendix II: Examples of terms of reference and advertisements

Terms of Reference

On 1 January 2007 the Western Australian Land Information Authority, a statutory authority with commercial powers trading as Landgate (the ‘Authority’), was established under its enabling legislation, the Land Information Authority Act 2006 (the ‘Act’).

Under Section 93 of the Act, the Minister for Lands is required to undertake a review of all matters relating to the operation and effectiveness of the Act.

The relevant section states that:

1. The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after every fifth anniversary of the commencement of this section and in the course of each review the Minister is to consider and have regard to —
   (a) the effectiveness of the operations of the Authority; and
   (b) the need for the continuation of the functions of the Authority; and
   (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

Example 1: The terms of reference cited in the final report for the review of the Land Information Authority Act 2006

Terms of reference

35. The terms of reference for the review were approved by the Minister following consultation with WorkCover WA and the SRQ. The terms of reference for the review were:

1) Create an improved structure for the Act, to enhance the readability and consistency of the legislation.
2) Improve the efficiency of the legislation to respond to changing circumstances.
3) Address anomalies which have been identified through past experience in the operation of the Act, including matters raised in the evaluation of the 2005 reforms or by stakeholders.
4) Address specific policy issues, such as age discrimination, as identified by stakeholders.

36. It should be noted the review did not involve a broad ranging examination of benefits and entitlements, or other fundamental aspects of the design of the scheme.

Example 2: The terms of reference cited in the final report of the review of the Workers’ Compensation and Injury Management Act 1981
1. Review of the Heritage Act 2011

In April 2011, the Hon. John Castrilli MLA, Minister for Local Government; Heritage; Citizenship and Multicultural Interests launched the State Cultural Heritage Policy - the first heritage policy formally adopted by the Western Australian Government. The policy outlines objectives in four key areas: to **recognise**, **protect**, **promote and partner**; and sets out a number of strategies under each theme.

Under the policy to recognise, a key objective is to:

*Ensure that heritage legislation is open, transparent, simple to operate and understand, and able to reflect best practice in the recognition and protection of heritage places.*

---

**Has the Heritage of Western Australia Act 1990 delivered on the intentions of its legislators?**

---

**Example 3: The terms of reference cited in the consultation paper for the review of the Heritage of Western Australia Act 1990**

---

---

A Review of Coronal Practice in Western Australia

I, Jim McGinty, Attorney General for the State of Western Australia, HAVING REGARD TO s.57 of the Coroners Act 1996 (WA), hereby refer the following matter to the Law Reform Commission of Western Australia.

The Law Reform Commission of Western Australia is to review and report on the jurisdiction and practices of the coronial system in Western Australia, including the operation of the Coroners Act 1996 (WA) ("the Act").

In carrying out its review, the Commission should consider:

(a) any areas where the Act can be improved;

(b) any desirable changes to jurisdiction, practices and procedures of the Coroner and the office that would better serve the needs of the community;

(c) any improvements to be made in the provision of support for the families, friends and others associated with a deceased person who is the subject of a coronial inquiry, including but not limited to, issues regarding autopsies; cultural and spiritual beliefs and practices; and counselling services, etc;

(d) the provision of investigative, forensic and other services in support of the coronial function; and

(e) any other related matter.

Jim McGinty MLA

4.11.07

**Example 4: The terms of reference endorsed by the Attorney General for the review of the Coroners Act 1996**
Terms of reference

At the request of the Attorney General, the Public Sector Commission will conduct a review of the operation and effectiveness of the Commissioner for Children and Young People Act 2006 (the Act). To this end the review will:

1. Examine the operation and effectiveness of the Act
2. Report on the extent to which the purpose of the Act, including the advocacy, promotion and monitoring of the wellbeing of children and young people, is being achieved (specifically but not limited to section 19 of the Act)
3. Examine what amendments to the Act are necessary to enable the Commissioner for Children and Young People to operate as a 'one-stop shop' for any complaint concerning child abuse regardless of the public sector agency that the matter relates to, as per recommendation 2 of the Inquiry into St Andrew’s Hostel
4. Examine what amendments to the Act are necessary to facilitate recommended changes resulting from the review of the Working with Children (Criminal Record Checking) Act 2004 and any other relevant recommendations from legislative reviews or reports

The review report will be provided to the Attorney General by 10 May 2013.

Example 5: The terms of reference for the review of the Commissioner for Children and Young People Act 2006
Example 1: Advert published for the review of coronial laws in Western Australia

Example 2: Advert published for the review of the Fish Resources Management Act 1994
Guidelines for the review of legislation: examples

Example 3: Advert published for the review of the Commissioner for Children and Young People Act 2006

Example 4: Advert published for the review of the Heritage of Western Australia 1990 Act
Guidelines for the review of legislation: examples

Example 5: Advert published for the review of the Residential Parks (Long-stay Tenants) Act 2006