



ABCBC

ABCBC Protocol for the development of National Construction Code referenced documents

Nationwide House Energy Rating Scheme
(NatHERS) Supplement

April 2023



ABCB Protocol for the development of National Construction Code referenced documents

Nationwide House Energy Rating Scheme (NatHERS) Supplement

The Australian Building Codes Board

The Australian Building Codes Board (ABCB) is a joint initiative of all levels of government in Australia, together with the building industry. Its mission is to oversee issues relating to health, safety, amenity and sustainability in building. The ABCB promotes efficiency in the design, construction and performance of buildings through the National Construction Code, and the development of effective regulatory and non-regulatory approaches. The Board aims to establish effective and proportional codes, standards and regulatory systems that are consistent between states and territories.

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Purpose

The *ABCB Protocol for the development of National Construction Code referenced documents – April 2018* (the Protocol) outlines the process for revising documents proposed for referencing in the National Construction Code (NCC). The Protocol ensures referenced documents remain appropriate for regulatory use, and any revisions undergo a consistent and transparent process.

Software accredited in 'regulatory mode'¹ under the Nationwide House Energy Rating Scheme (NatHERS) is referenced in the NCC as an option for achieving compliance with specific minimum Deemed-to-Satisfy Provisions. Although NatHERS software is not a referenced document per se, it has the same status and plays a similar role to referenced documents.

The purpose of this supplement is to outline the processes for applying the Protocol to NatHERS software. This reflects the processes applied to other standards referenced in the NCC.

As per section 4 of the Protocol, the objective of this supplement is to facilitate the acceptance of proposed changes to NatHERS software by the ABCB by ensuring that:

- NatHERS software remains suitable for referencing in the NCC; and
- the ABCB and its stakeholders are fully informed about the progress of the development of any changes to NatHERS software, including any regulatory impacts associated with the changes; and
- consistent and transparent development processes are used.

This supplement should be read in conjunction with the Protocol and the relevant NCC provisions.

This supplement does not cover the NatHERS Administrator's internal processes for managing changes to NatHERS software.

Scope

This supplement applies to all changes related to software accredited under NatHERS for compliance with the NCC's Deemed-to-Satisfy Provisions which refer to *house energy rating software*. It covers changes to the software itself and the relevant NatHERS certificates.

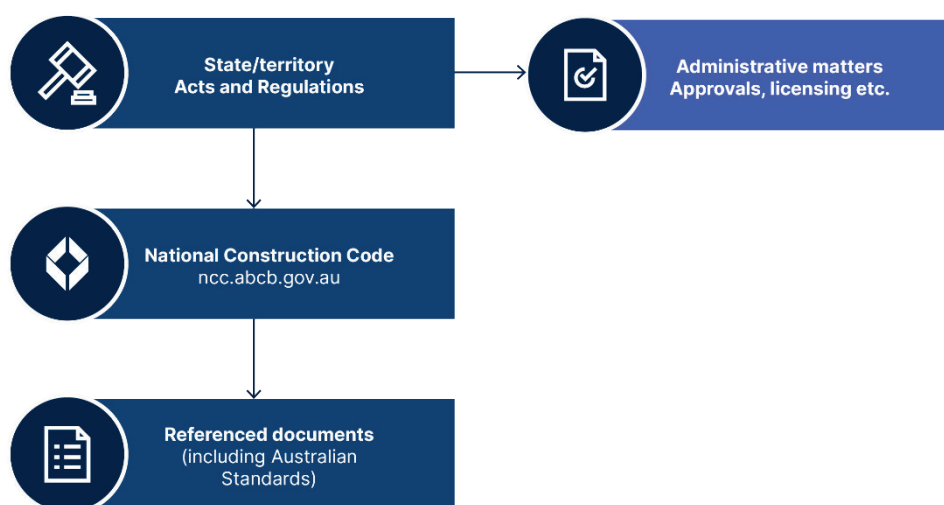
¹ 'Regulatory mode' is the mode of accredited NatHERS software for meeting the regulatory requirements of the NCC.

NatHERS and the Building Regulatory Framework

The NCC is given legal effect by relevant building legislation in each State and Territory. This means the NCC references to NatHERS software form part of the minimum regulatory requirements for new building work in each State and Territory. Consequently, changes to NatHERS software may have regulatory impacts.

The building regulatory framework is shown in the diagram below (See Figure 1).

Figure 1: Building regulatory framework



NatHERS software is specifically referenced in the NCC’s residential energy efficiency Deemed-to-Satisfy Provisions. However, its use for NCC compliance draws in a broader range of provisions, including:

- the governing requirements for documentation and building classification
- the residential energy efficiency Performance Requirements
- certain residential energy efficiency Deemed-to-Satisfy elemental provisions
- structural provisions for the installation of rooftop photovoltaics
- the condensation management provisions
- the heated water provisions in the Plumbing Code of Australia; and
- certain abbreviations, symbols and terms within the glossary.

Changes to NatHERS software must be considered in terms of the effect on all relevant NCC provisions.

Responsibilities

In addition to the stated responsibilities of the ABCB in the Protocol, this supplement acknowledges the particular responsibilities between the ABCB and NatHERS Administrator.

The ABCB is responsible for engaging the NatHERS Administrator on any proposed changes to the NCC's Deemed-to-Satisfy Provisions which refer to *house energy rating software*.

The NatHERS Administrator is responsible for aligning NatHERS software change with the NCC amendment cycle, particularly when accrediting new versions of software with the potential to materially alter the outputs from Software Tools, except where prior input and agreement with the ABCB has been reached.

Levels of NatHERS software change

The process for obtaining acceptance of NatHERS software changes varies depending on the level of change being proposed.

Table 1 describes the two different levels of NatHERS software changes (i.e. minor and major) and summarises the corresponding level of ABCB engagement and regulation impact analysis required.

The Office of Impact Analysis (previously known as Office of Best Practice Regulation) Guidance Note has granted a carve-out for minor changes to NatHERS software. The carve-out offers an exemption from the Preliminary Impact Analysis that would otherwise be required before a minor change is carried out. OIA's carve-out applies to changes that are minor or machinery in nature, or likely to occur on a regular basis without substantially altering existing regulatory arrangements. More specific detail and examples are in Table 1.

OIA should be consulted if there is uncertainty about the whether the level of change is minor or whether it is major.

Table 1: NatHERS software changes – required ABCB engagement and regulation impact analysis

LEVEL OF CHANGE	DESCRIPTION	EXAMPLES	ABCB ENGAGEMENT	REGULATION IMPACT ANALYSIS
Minor change	<p>Regular and administrative changes, software enhancements and bug fixes.</p> <p>The change must not result in a rating difference exceeding:</p> <ul style="list-style-type: none"> • ± 1 star in 100% of simulations; and • ± 0.2 stars in 99% of simulations. 	<ul style="list-style-type: none"> • Coding errors, including: <ul style="list-style-type: none"> – calculation errors in an existing simulation process; – interruption or impediment to the generation or calculation of a rating; and – providing consistency to software functionality for different modelling scenarios. • Enhancements or improvements, including improvements to simulation functionality and accuracy, routine window library updates, postcode updates and addition of new materials. 	<p>Details of the minor change are to be provided to the ABCB Office for information 5 days prior to implementation² in accordance with the section below on ‘minor changes’.</p>	<p>As per OBPR’s Carve-Out Guidance Note (refer Attachment A)</p>
Major change	<p>This applies to all other changes that do not fall within the above descriptions for a minor change.</p>	<ul style="list-style-type: none"> • Changes to the Chenath Engine. • Changes likely to substantially alter the regulatory arrangements for business, relevant organisations or individuals. • Changes inconsistent with the Deemed-to-Satisfy Provisions or the purpose for which NatHERS software has been referenced. 	<p>Engagement with the ABCB is to be carried out in accordance with the four stages outlined below under ‘Major change process’.</p>	<p>A Preliminary Impact Analysis (PIA)³ will initially be required. If the PIA identifies major and adverse impacts, a Regulation Impact Statement (RIS) will be required.⁴</p>

² In circumstances where a minor change needs to be implemented immediately, the ABCB is to be notified as early as possible.

³ A PIA is an ABCB standardised, early-stage analysis of the impacts of a proposed regulatory change.

⁴ Based on the PIA, the ABCB will determine if a RIS is required in consultation with the OIA.

Minor Changes

The following information is to be provided to the ABCB in relation to minor changes:

- a) A brief description of the change
- b) The affected software and version number
- c) Date the change is to be implemented
- d) The basis upon which the change is a minor change (as per Table 1)
- e) Reason for the change
- f) Confirmation the NatHERS Administrator:
 - i) has reviewed and is satisfied with any necessary testing carried out to confirm the change is a minor change; and
 - ii) supports the minor change
 - iii) has conducted appropriate analysis in accordance with OIA's Carve-Out Guidance Note.

Major change process

Consistent with section 4 of the Protocol, there are four stages to the major change process. The requirements of each stage are detailed below and are illustrated in Figures 1 and 2

1. Proposal stage

The purpose of this stage is to obtain initial ABCB endorsement of the proposed change to NatHERS software. This requires a proposal to be provided to the ABCB with the following information:

- a) The problem(s)
- b) Evidence of the problem(s)
- c) How stakeholders are affected by the problem(s)
- d) How the proposed change(s) will solve the problem(s)
- e) A scope of work, i.e. what will and won't be included in the change(s)

- f) Timeframes for the work to be completed
- g) Who was consulted as part of the development of the proposal

A period of up to 4 weeks is required for the ABCB to consider and respond to the proposal. During this time, the ABCB may consult with the Building Codes Committee (BCC) and Plumbing Code Committee (PCC).

2. Development Stage

The purpose of this stage is for the necessary regulation impact analysis and associated NatHERS changes to be produced for stakeholder consultation.

To commence this process, the NatHERS Administrator is required to produce a PIA using the pro forma in Appendix A of the Protocol. The pro forma includes some guiding questions and gives an indication of the kind of language and detail required. The ABCB will provide further clarification and assistance if required.

A period of up to 2 weeks is required for the ABCB to consider whether the PIA is suitable for consultation. Where major impacts are identified in the PIA, the ABCB will consult with the OIA to determine whether further analysis is required in the PIA or if a RIS is required. The NatHERS Administrator will be included in these discussions with OIA.

If a RIS is required, the ABCB will take responsibility for its management, subject to prioritisation by the Board. A period of up to 6 months may be required to develop a RIS for consultation (Consultation RIS), which will require clearance from the Board and OIA prior to release.

Funding arrangements for the RIS are to be separately agreed between the NatHERS Administrator and the ABCB prior to commencement.

3. Consultation stage

The purpose of this stage is to seek stakeholder comment on the consultation material produced in the development stage.

Where a PIA has been produced for consultation, the ABCB should be consulted on the method(s) used for seeking comment from NatHERS stakeholders. The ABCB will seek comment from the BCC and/or PCC.

Where a Consultation RIS has been produced by the ABCB, the ABCB will undertake full public consultation on its online platform.

Regardless of whether a PIA or Consultation RIS has been produced, the consultation period should be a minimum of 8 weeks, or a minimum of 12 weeks where the consultation period coincides with the Christmas/New Year period. The consultation period may be reduced under particular circumstances with the prior agreement of the ABCB.

Where possible, the consultation period should align with the ABCB's consultation on other NCC changes.

4. Finalisation stage

The purpose of this stage is to finalise the regulation impact analysis and obtain ABCB endorsement of the proposed NatHERS software changes.

Where only a PIA is required, the NatHERS Administrator is to provide the ABCB Office with the following:

- a) A record of the stakeholder comments received and the actions taken in response to each comment
- b) Updated details of the proposed software changes and the timeframes for implementation
- c) An updated PIA that aligns with the final software changes and incorporates stakeholder comments

A period of up to 6 weeks is required for the ABCB to consider the updated PIA and endorse the final software changes. The ABCB may undertake further consultation with the BCC and PCC and seek further refinement of the PIA and proposed software changes.

Where a RIS is required, the ABCB will produce a Decision RIS in consideration of all the stakeholder comments received. The Decision RIS will require endorsement by OIA prior to the proposed changes being considered by the Board. The development of a Decision RIS and its consideration by OIA and the Board may take up to 6 months.

Once endorsed, the proposed NatHERS changes must be implemented by the NatHERS Administrator within the timeframes specified by the ABCB. This is likely to align with the adoption of the next version of the NCC.

Figure 2: Flowchart of the PIA process

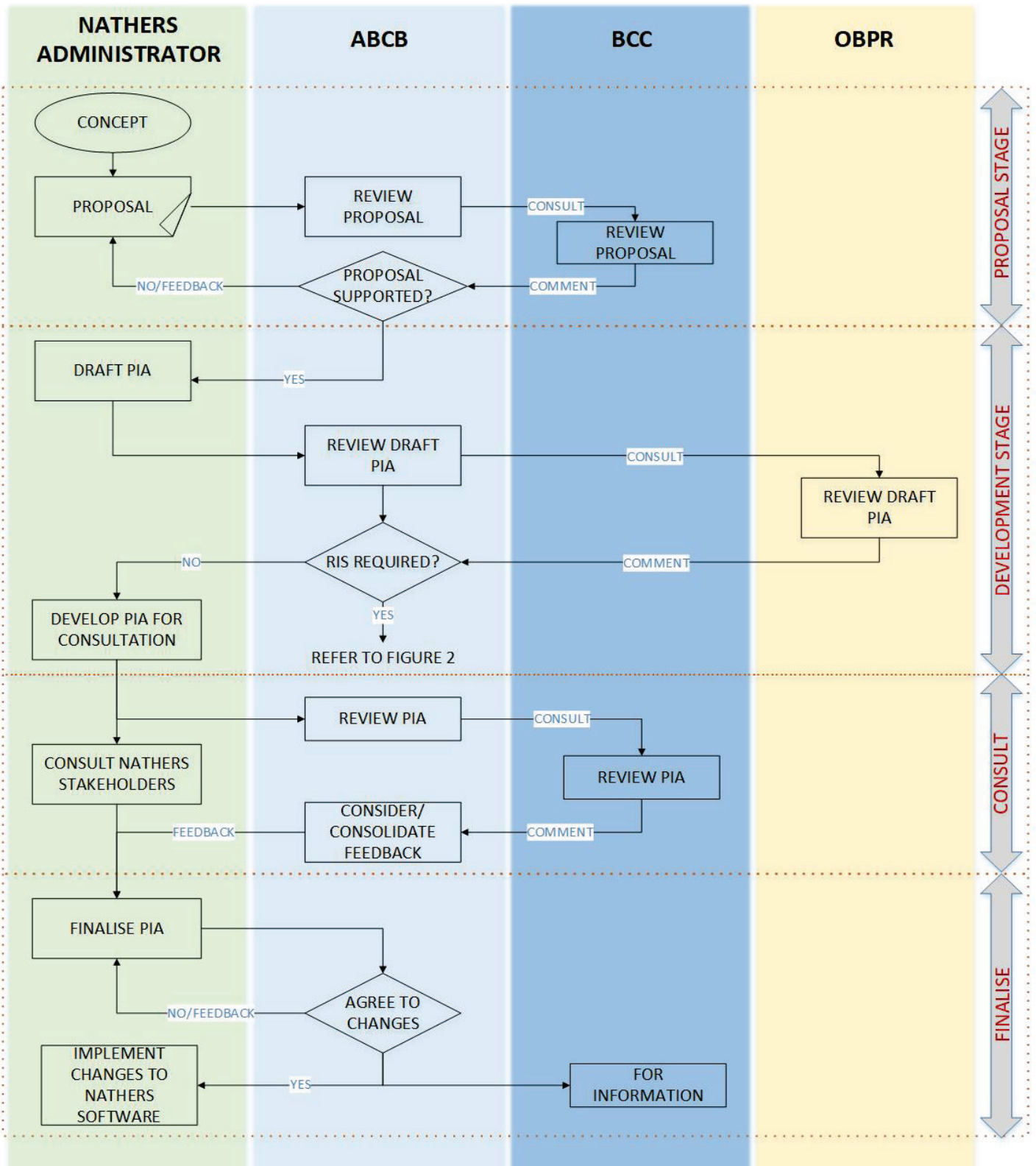
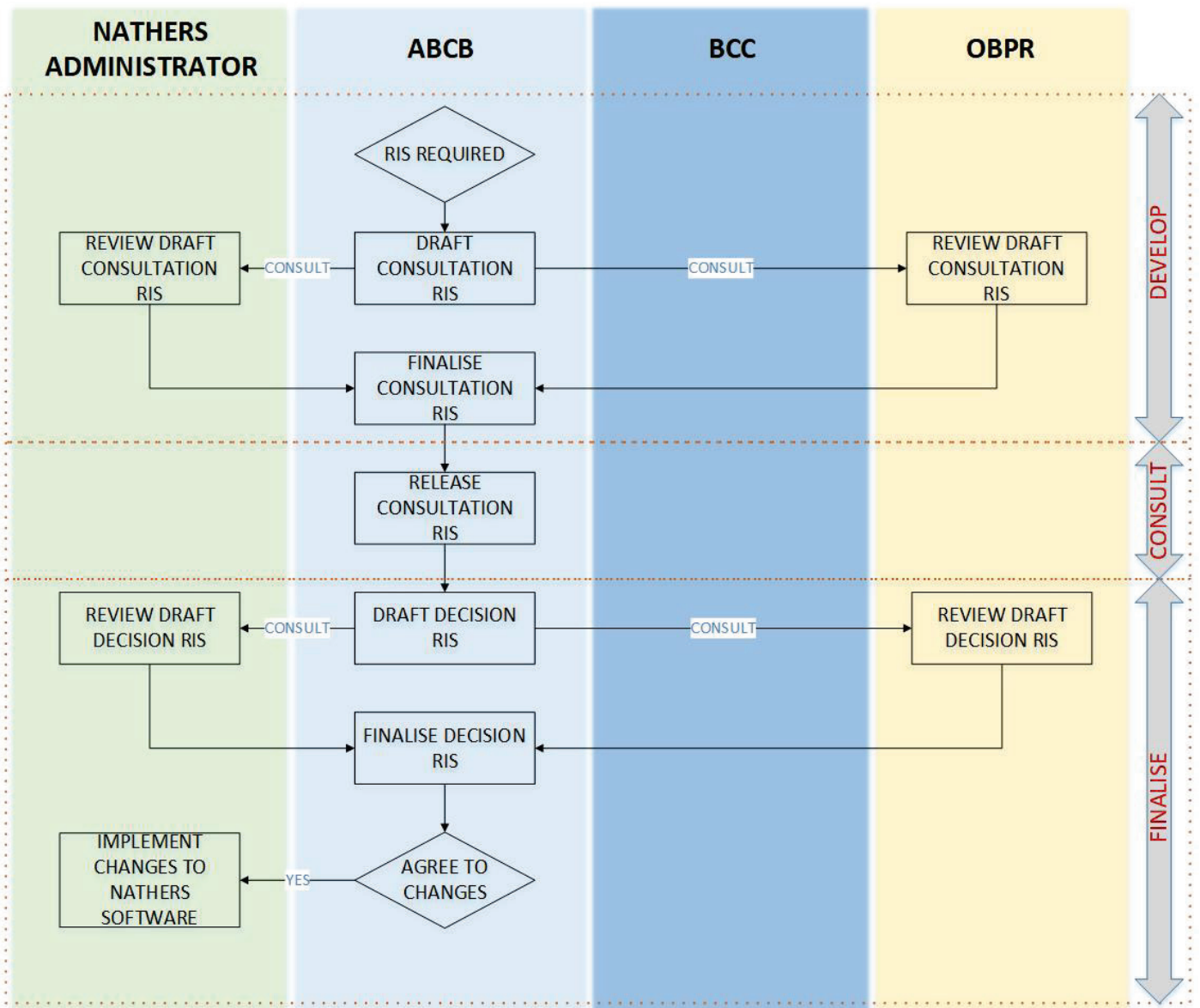


Figure 3: Flowchart of the RIS process





Attachment A

Carve-outs

October 2022

Introduction

The Government has introduced the Australian Government Guide to Regulatory Impact Analysis, which outlines the process for developing a regulatory proposal, including a Regulation Impact Statement (RIS).

The *Guide to Regulatory Impact Analysis* describes some special cases in the RIS process, one of which relates to carve-outs. A carve-out is a standing agreement between the Office of Best Practice Regulation (OBPR) and a department, removing the need for a Preliminary Assessment to be sent to OBPR for certain types of regulatory change.

A carve-out can be used when anticipated regulatory changes are minor or machinery in nature or likely to occur on a regular basis. A change is minor if it does not substantially alter the existing regulatory arrangements for businesses, community organisations or individuals. Machinery changes are changes that are consequential to, and required as a result of, a substantive regulatory decision, and for which there is limited discretion available to the decision maker.

Carve-outs cannot be applied to proposals where Cabinet is the decision maker.

This guidance note gives further information about carve-outs, explains how to obtain one, and lists the carve-outs currently in place.

If a carve-out is granted, you are still required to quantify the regulatory costs imposed on businesses, community organisations and individuals using the Regulatory Burden Measurement (RBM) framework.

Objectives

Carve-outs aim to improve the efficiency of the Preliminary Assessment process by reducing the workload for both parties (the department and OBPR) while ensuring consistent advice from OBPR.



Risks

Key risks include inappropriate carving out of regulatory proposals and misinterpretation of the standing agreement (for example, using the carve-out to cover regulatory proposals that have a greater impact than the proposal was originally intended for). To manage this risk, the agreement must:

- be phrased succinctly and avoid ambiguity in the proposals to be carved out
- state that carve-outs are not an opportunity for broader departmental self-assessment
- be clear that you need to continue to consult OBPR on matters not covered by the carve-out, or where there is uncertainty about where the carve-out applies
- be subject to a periodic review.

Completed carve-outs are listed in Table 1 at the end of this guidance note.

Criteria

A carve-out can be used for regulatory changes that occur on a regular basis and are minor or machinery in nature, but not for proposals where Cabinet is the decision maker. Potential carve-outs should take into account future expectations about relevant Preliminary Assessments sent to OBPR. If there is a low likelihood of receiving further Preliminary Assessments on a given topic, it may not be worth issuing a carve-out.

Possible categories of carve-outs include indexation, regular, routine administrative and machinery changes. The following examples are from Table 1 at the end of this guidance note.

Indexation changes

Routine indexation changes use a well-established formula, such as:

- routine indexation of aged care subsidies in line with increases in the Consumer Price Index.

Regular changes

Regular changes are those about which OBPR is consulted regularly and which are consistently assessed as minor or machinery in nature. OBPR is often consulted on instruments that regularly update information that is considered machinery. For example:

- the Australian Communications and Media Authority regularly contacts OBPR about variations in established licence area plans, factsheets for consumers and other issues.



Routine administrative changes

Routine administrative changes follow a regular process that has been identified as minor or machinery. They are generally done in accordance with existing legislation and can often be approved by a departmental delegate. They do not require a RIS for further changes. These changes tend to involve legislative instruments, but where an Act is amended it would tend to affect only a schedule or a clause of the legislation. For example:

- the Department of Health regularly updates the listing and price of medicines available under the Pharmaceutical Benefits Scheme.

Machinery changes

Machinery changes to legislation that do not constitute a new regulatory burden are appropriate for carving out. For example:

- the Attorney-General's Department is required to alter Substituted References Orders because they need to reflect changes contained in Administrative Arrangements Orders or changes in the titles of ministers or departments.

Carve-out process

OBPR officers assess newly received Preliminary Assessments in order to identify suitable proposals to be carved out. They will inform you when they consider that a series of proposals should be carved out. However, it can be useful for you to recommend potential carve-outs.

The steps in the carve-out process are as follows:

1. You should review Preliminary Assessments previously sent to OBPR. Identify policy areas that meet the criteria for minor or machinery changes made by non-Cabinet decision makers. Consider the likelihood of future Preliminary Assessments arising in those areas.
2. Obtain Executive Level 2 (EL2) clearance for the proposal to carve-out. Email OBPR with a suggestion to consider the carving-out proposal.
3. OBPR will check the appropriateness of the proposed carve -outs.
4. If OBPR concurs, the office will send you a letter confirming that a carve-out has been granted and the proposals that it applies to.

Approval

The carve-out can be approved between OBPR and the department at the EL2 level and will be periodically published in updates of this note.



Australian Government

Department of the Prime Minister and Cabinet
Office of Best Practice Regulation

Further information

For further information on carve-outs, OBPR can be contacted on:

Email: helpdesk-OBPR@pmc.gov.au

Phone: 02 6271 6270

Table 1: Approved carve-outs

Department	Proposal	Why is the proposed change an indexation, routine administrative or minor or machinery change?	OBPR reference number	Comments / limits on carve-out
Department of the Environment and Energy	Minor changes or bug fixes to software tools accredited under the Nationwide House Energy Rating Scheme (NatHERS)	Minor: Minor changes or bug fixes to NatHERS-accredited software programs are unlikely to have significant impacts on businesses, community organisations or individuals.	21938	<p>Carve-out applies to:</p> <p>Software bug fixes: defined as a coding error fix to existing software to generate an energy rating that does not affect ratings.</p> <p>Minor changes to software: defined as a coding error fix that may have a minor impact on NatHERS rating outcomes; or an enhancement/improvement to the existing software to generate or accurately calculate a NatHERS energy rating that may have a minor impact on rating outcomes.</p>

