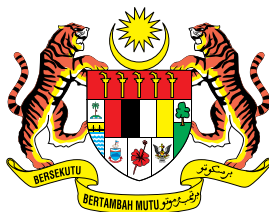


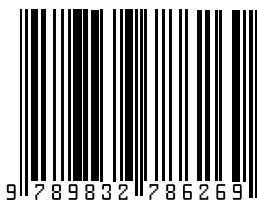
# GUIDELINE ON **PUBLIC CONSULTATION PROCEDURES**

Transformation · Innovation · Partnership



## **GUIDELINE ON PUBLIC CONSULTATION PROCEDURES**

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## Message from the Chief Secretary to the Government of Malaysia



The Government is committed to a more open and transparent process in regulatory development and implementation. The publication of the Best Practice Regulation Handbook, a reference for implementing the National Policy on the Development and Implementation of Regulations launched in July 2013, is a testimony of this commitment.

As Malaysia approaches 2020 and its goal of being a high-income, developed nation, public engagement in policy making and regulatory development becomes the order of the day. The National Policy on the Development and Implementation of Regulations has clearly prescribed public consultation as a pre-requisite for regulatory development. Recognising the importance of contribution from all stakeholders in nation building, the Government is committed to effective consultation with stakeholders and other interested parties. Effective consultation provides valuable information which can be used to design effective regulation or other non-regulatory solutions. Effective consultation allows the Government to make informed decisions on matters of policy and improve the accountability of the public service.

I congratulate Malaysia Productivity Corporation (MPC) on the publication of this 'Guideline on Public Consultation Procedures' which put forward guiding principles for implementing effective consultation. These principles will contribute towards improving transparency, responsiveness, accountability and accessibility of consultations which eventually will reduce unnecessary regulatory burdens in the country. I expect ministries and agencies to adopt these principles when engaging stakeholders in regulatory development and decisions.

As part of our commitment to effective consultation, we will continue to monitor the implementation of NPDIR and welcome any feedback for further improvements.

A black ink signature of Tan Sri Dr. Ali Hamsa, written in a stylized, cursive script. The signature is contained within a white rectangular box.

**Tan Sri Dr. Ali Hamsa**  
Chief Secretary to the Government of Malaysia

# Foreword



In July 2013, the Chief Secretary to the Government launched the National Policy for the Development and Implementation of Regulations (NPDIR) and the Best Practice Regulation Handbook (BPRH). These documents have been developed to support the improvement of our regulatory regime. The policy aims at promoting a regulatory process that is effective, efficient and accountable, as well as to achieve greater regulatory and policy coherence across ministries and agencies.

Public consultation is a core element in the development and implementation of good regulations. It enables the authorities to engage stakeholders, interested parties and the general public in policy decisions, thus reflecting the Government's commitment to transparency and accountability.

This guideline serves as reference for Ministries and Agencies in implementing public consultations. It also clarifies the roles of the stakeholders involved in the consultation process and provides the public with better understanding of the processes involved in developing regulations that will affect them.

The publication of this guideline is part of the on-going process in the implementation of the NPDIR. I would like to thank the Chief Secretary to the Government of Malaysia for his continuous support of this initiative. On a special note I thank Malaysia Productivity Corporation for the work on this document. Last but not least, I would like to thank all the respondents who have contributed towards this publication.

A handwritten signature in blue ink, appearing to read 'Rebecca Fatima Sta Maria'.

**Datuk Dr. Rebecca Fatima Sta Maria**  
Secretary General  
Ministry of International Trade and Industry (MITI)



Abbreviation	
AGC	Attorney General Chambers
BPRH	Best Practice Regulation Handbook
CC	Cabinet Committee
CSD	Consumer Standard Division
DDGLM	Department of Director General of Land and Mines
FAQ	Frequently Asked Questions
FMM	Federation of Malaysian Manufacturers
GRP	Good Regulatory Practice
HMG	Her Majesty Government (United Kingdom)
ISO	International Standards Organisation
LC	Legal Committee
MDTCC	Ministry of Domestic Trade, Co-operatives and Consumerism
MIDA	Malaysian Investment Development Authority
MITI	Ministry of International Trade and Industry Malaysia
MPC	Malaysia Productivity Corporation
NDPC	National Development Planning Committee
NGO	Non-governmental Organisations
NPDIR	National Policy for the Development and Implementation of Regulations
NRE	Ministry of Natural Resources and Environment
OECD	Organisation for Economic Co-operation and Development
PC	Policy Paper
PEMANDU	Performance Management Delivery Unit
PEMUDAH	Special Taskforce to Facilitate Business
PwC	PricewaterhouseCoopers Advisory Services Sdn. Bhd.
QMS	Quality Management System
RC	Regulatory Coordinators
RIA	Regulatory Impact Analysis
RIS	Regulatory Impact Statement
RTD	Round Table Discussion
SEDA	Sustainable Energy Development Authority Malaysia
SOP	Standard Operating Procedure
TC	Technical Committee
UK	United Kingdom

Glossary	
Authorities	Government Ministries and regulating agencies.
Best Practice Regulation	Regulation that is developed with systematic RIA with adequate public consultation.
Citizens jury	The Citizens Jury process is a comprehensive tool that allows decision-makers and the public to hear thoughtful citizen input. The jury of citizens, usually consisting of 18–24 individuals, serves as a microcosm of the public.
Consultation	The process of engaging with the stakeholders and other interested parties to gather their inputs, exchange views, achieve common understanding of the issues in the RIA process.
Consultees	Stakeholders, interested parties and the general public who are being consulted during the process of the development of the regulation.
Green paper	A Green Paper is a government publication that details specific issues, and then points out possible courses of action in terms of policy and legislation. It is a preliminary report of government proposals meant to stimulate discussion.
Guideline	A statement by which to determine a course of action with the aim to streamline the public consultation according to a set of guiding principles.
Guiding principles	Value-based statements to guide the authorities in their actions and decisions when planning and executing the public consultation.
Regulators	See Authorities
Regulatory Impact Analysis	A systematic and comprehensive cost-benefit analysis on the potential impact of proposed regulatory or non-regulatory options.
Regulatory Impact Statement	A formal report on RIA that prepared by the authority to be submitted to the decision makers for their information and decision.
Stakeholders	Individuals or groups on whom the proposed regulatory action has direct or consequential impact or those who have interest in the effect and outcome of the regulation as identified through the stakeholder analysis.
Third sector organisations	This is a term used to describe the range of organisations that are neither public sector nor private sector. It includes voluntary and community organisations (both registered charities and other organisations such as associations, self-help groups and community groups), social enterprises, mutuals and co-operatives.

# Preface

The Guideline on Public Consultation Procedures has been developed through collaboration between the Performance Management and Delivery Unit (PEMANDU), Ministry of International Trade and Industry (MITI) and Malaysia Productivity Corporation (MPC). The publication of this guideline is part of MPC efforts to facilitate the implementation of the National Policy for the Development and Implementation of Regulations (NPDIR). This guideline supplements the Best Practice Regulations Handbook (BPRH) that was published and launched in 2013.

As public consultation is a core component in conducting the Regulatory Impact Analysis (RIA) for public policy decision, this publication will provide useful information for ministries and agencies that are embarking on RIA and preparation of the Regulatory Impact Statement (RIS). A well conducted public consultation will not only demonstrate a transparent and democratic process in the development of regulation, it will also achieve a higher degree of acceptance and ownership of the regulation by the stakeholders.

For ministries and agencies which have limited experience in the public consultation process, this guideline will be a useful reference to develop the procedures and processes for a more effective public consultation exercise. For those with more experience in public consultation, the guideline will provide useful information for reviewing existing protocols for further improvement.

The guideline is arranged into four parts. Part 1 provides an overview on what is public consultation, why consult, who to consult and when to undertake consultation. Part 2 introduces the guiding principles for public consultation and how these principles can be put into practice. Part 3 provides information on the requirements for implementing the public consultation exercise. This part has four important sections covering the preparation of the consultation paper, planning of the consultation exercise, accessibility to the consultation exercise, and stakeholder analysis. Part 4 introduces the process approach to the public consultation exercise. The process approach will ease the integration of the public consultation process into the existing quality regulatory management system in practice. The draft of the guidelines was subjected to consultation with key government and public stakeholders. This guideline are broad and generic and drawn from the publications and experiences of other governments. Agency using them should draw up its plan for successful implementation of NPDIR and the practice of public consultation taking into account its management policy, systems and processes without sacrificing the important guiding principles. Users of this guideline should also consider practices that have been successfully used by agencies of other countries. Some of these are given in the references.

MPC wishes to acknowledge the contributions of ideas, statements and suggestions from the references cited. Some of these ideas have been tailored to suit local application. The draft was also reviewed by OECD expert on regulatory reform and the valuable inputs were incorporated into this guideline.

# How to Use This Guideline

This guideline is designed to be used as an advisory and reference tool. As such, users could use the guidelines as reference to customise their own policy documents on public consultation.

The guideline provides overview information, guiding principles, key requirements and case study examples for planning and implementing public consultation exercises.

The guideline can be used as an introductory guide for individuals and organisations wishing to learn more about public consultation in Regulatory Impact Analysis or used as a reference document for establishing their own public consultation guidelines. The guideline is a supplement to the Best Practice Regulation Handbook which seeks to improve the design of regulatory systems and strategies, through greater stakeholders involvement in regulatory design.

The guideline features:

- An overview of public consultation.
- The guiding principles for public consultation.
- Key requirements for public consultation.
- Examples of element of good practices.
- References
- Frequently Asked Questions.

The draft of the guideline had been subjected to public consultations on MPC Website. Formal Round Table Discussions (RTDs) have been held with ministries and government agencies to solicit their comments and concerns. Engagements were also made with business stakeholders and other interested parties for their inputs. Relevant concerns raised on this guideline are addressed as Frequently Asked Questions (FAQ).

This guideline shall be reviewed after five years or earlier if the need arises to take into account lessons learnt.

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# Part 1: An Introduction to Public Consultation

The Government established the policy on Good Regulatory Practice (GRP) with the launching of the National Policy on the Development and Implementation of Regulations (NPDIR) on 15 July 2013 by the Chief Secretary to the Government. To facilitate regulatory authorities with the development and implementation of regulations, MPC has developed the Best Practice Regulation Handbook (BPRH) to support the implementation of the NPDIR.

A core component of the BPRH is the public consultation process. Public consultation ensures informed decision-making and transparency and accountability of Government in the development of regulations. Undertaking public consultation process enhances stakeholders' confidence in regulatory development and contributes towards greater success in its implementation. This guideline sets out guiding principles and the pre-requisites for undertaking successful public consultation.

## What is Public Consultation?

Consultation is a two-way process through which the government seeks and receives the views of stakeholders such as business and the general public on proposed changes in policy or regulations that affect them directly or in which they may have a significant interest. It is a process which provides an opportunity for groups and individuals to give comments and inputs and to encourage and promote stakeholders' involvement in the policy or regulatory development process. This allows the government to obtain feedback from and work directly with affected members of the society throughout the regulatory development process to ensure that their issues and concerns are understood and considered. As such, consultation should begin at the earliest possible time when proposed regulations are being formulated. Box 1 illustrates the different levels of public consultation.

Public consultation generates inputs to supplements the procedures and analysis of the authorities especially at the identification and conceptualising stage of regulation development. It helps to improve the quality of regulation and helps regulators in developing regulations that are technically viable, informed and implementable.

Government sponsored consultations may, among others, take the form of public meetings, community workshops, focus groups and surveys as well as interactive websites.

### Box 1: Different Levels of Consultation

Consultation may involve different levels of stakeholders' participation.

- i. At the lowest level it is just to inform and educate the public on the regulations. It is to provide balanced and objective information to support understanding by the stakeholders.
- ii. Consultation can take on a higher level of listening to and acknowledging the stakeholders' concerns. The objective here is to obtain feedback on analysis, the options and/or decisions.
- iii. The next level consultation is more a dialogue, a two-way conversation with the stakeholders to exchange information, ideas and concerns. The objective is to work with the public to ensure concerns and aspirations are understood and considered.
- iv. Better still is at the level on which to have multi-groups engagement to seek advice and innovations from and amongst various stakeholder parties. Such engagement is to facilitate discussions and agreements between stakeholder parties to identify common ground for action and solutions.
- v. The highest level is to work in partnership with stakeholders and the public to implement agreed-upon decisions or regulation. Here, a governance structure is created to delegate decision-making and/or work directly with stakeholders and the public.

Source: Office of the Auditor General of British Columbia

### Why Public Consultation?

The second principle in the NPDIR 2013 states that, "Stakeholders are effectively consulted and they have an opportunity to participate in the regulatory development process". The public sector needs to be more facilitative by fostering increased collaboration to find innovative approaches to resolving national issues. Collaboration within government and with the wider society will allow the nation as a whole to combine competencies, resources and capabilities in tackling our many development challenges.

This guideline on public consultation requires Government bodies to engage meaningfully with stakeholders when developing regulations that may affect doing business and the national or local population. This is in line with the NPDIR that authorities proposing new regulations or changes in existing regulations must carry out timely and thorough consultations with affected and interested parties.



Public consultation will enable the government to;

- i. develop better and more practical regulations;
- ii. identify the full range of affected parties;
- iii. minimise the risk of unexpected consequences; and
- iv. identify better implementation methods.

By involving interested parties in regulation development it is also effective in increasing trust and engagement with stakeholders. This is because consultation:

- i. promotes transparency and accountability;
- ii. improves awareness and understanding of the policy area and addresses assumptions made; and
- iii. encourages public ownership of the policy, thereby increasing public commitment to its implementation.

### **Who to Consult?**

Good consultation is characterised by systematic and active participation as well as effective gathering of relevant inputs of stakeholders such as business community, employees, interest groups, professional organisations and individuals into the design and/or review of regulation. For business regulation the stakeholders are those that are affected directly or indirectly by intent and implementation of the regulation.

Stakeholder analysis provides the basis for identifying those persons, groups and organisations that have significant and legitimate interests in a specific issue or policy area. While Government remains the key decision maker, there are many stakeholders that may influence implementation and should be facilitated to participate in the regulation's development. These include the business community, employees, non-governmental organisations (NGOs), interest groups, community-based organisations and individual citizens.

Stakeholder analysis is therefore a critical component of the consultation process as it allows for the building of more effective stakeholders involvement, where needed, in order to achieve ownership and buy-in. The analysis must be inclusive and ensure that the minority groups and the 'hard-to-reach' groups are not left out. Ministries and agencies should establish registers of stakeholders through stakeholder analysis and maintained such registers. Different subject matters will have different set of stakeholders. All registers should be reviewed and updated prior to any consultation process.

Stakeholders are those persons who:

- benefit from a proposed policy or regulation;
- will be directly or indirectly affected by a proposed policy or regulation;
- have interests that may be negatively affected by a proposed policy or regulation; and
- possess information, resources and expertise needed for strategy formulation and implementation related to a regulation

## Who are the Stakeholders?

- Primarily, these will be the business entities for which the proposed regulation will directly impact on. These are entities which are legally registered with the authorities such as the Company Commission of Malaysia and the Malaysia Co-operative Societies Commission. These entities legally referred as body corporate are in the form of private limited liability companies or public-listed limited liability corporations. There are also other forms of business incorporation such sole proprietorship, partnership and limited liability partnership. In such cases, the people to consult will be the owners of the business or their representatives.
- Business entities may also have legitimate groups representing their interests. These non-governmental groups are the business associations, chambers of commerce, societies, institutions or federations established at federal, state and community level. These bodies are usually registered with the Registrar of Societies Malaysia.
- Professional businesses need not be a body corporate as they can be formed through their respective regulations. These businesses are formed at the individual level through their registration with their boards, councils, associations or institutions. For example, the legal service can be formalised through the Bar Council. These businesses entities are represented by their professional bodies.
- Regulation will have consequential impact on the suppliers and customers of the directly-impacted businesses. The value-chain or supply-chain analysis will help to identify these potential impacted parties.
- At the end of the supply chain is the final consumers. These may be the specific users of the products or services or the general public as the case may be. Consultation should be opened to these stakeholders. The consumers may be represented by civil societies such as the consumer associations and other registered interest groups.
- Another set of stakeholders are the employees of the businesses who are generally represented by the employees associations, their professional bodies or the unions. Although the consultation is open to all, it is more important to consult with their represented bodies.
- Finally, consultation should include other interested parties: the academia; business consultants; research institutions; and the general public. This identification cannot be exhaustive until a formal stakeholder analysis is carried out.

## When to Consult?

*"Formal consultation should take place at a stage when there is scope to influence the policy outcome."*

Whenever a RIA is conducted to prepare a RIS, consultation must be an integral part of the process. Consultation should begin as early as possible in the RIA process. It will often be necessary to engage in an informal dialogue with stakeholders prior to a more formal consultation to obtain initial feedback and to gain an understanding of the issues that will need to be raised in the formal consultation.

At this early stage of impact assessment, a sample of key stakeholders and individuals who are knowledgeable on the issue of interest should be consulted to gather their inputs and to identify regulatory and non-regulatory options. This informal dialogue facilitates the preparation of the "Green" paper for the formal consultation in the preparation of the RIS. This stage may take as long as is practicable for the issue of concern until an adequate green paper is prepared for the formal consultation. Although the emphasis of this guideline is to carry out public consultation at the policy formation stage, consultation should be carried out at various stages of the policy making process as and when relevant.

The formal consultation will usually take 12 weeks but may take longer depending on the complexity of the issue and the number of stakeholders involved (*refer to Surat Pekeliling Am Bilangan 2 Tahun 2012*). Allowing at least 12 weeks will help enhance the quality of the responses. Organisations will want to consult the people they represent or work with before drafting a response to Government. The process may be iterative until a satisfactory conclusion is reached based on some established evaluation criteria.

When planning a consultation exercise, it is important to take steps to raise awareness of the exercise among those who are likely to be impacted or have interests. In particular, departments should consider ways to publicise consultations at the time of, or before, the launch-date so that consultees can take advantage of the full consultation period to prepare considered responses.

## Online Public Consultation

With the advances in ICT tools - Internet and the ubiquitous social media - the use of ICT for online dissemination, communication and solicitation of information has become an unavoidable feature in public consultation. Online application allows the consultation to reach those who may have been missed out in the stakeholder analysis. It also allows the general public who may want to have a say in the issue to contribute their input.

Information delivered online is easily accessible almost instantly and at very low delivery cost. Online platforms operate 24/7 with low probability of interruption. Ministries and agencies should make mandatory use of online public consultation through their official websites. However, this online publication has to be complemented with good publicity on the consultation exercise to ensure stakeholders and public are aware of it.

The main ICT tools use for online information dissemination, communication and feedback includes:

- **Websites:** Today all government departments have their own web site, and some with multiple portals.
- **Portals:** Some governments establish portals as front doors for entry to all other government departments and agencies, for example GOV. UK. They provide a single access point to various parts of the central government as well as to other departments and agencies.
- **Search engines, clear site structures and links:** These tools help users to quickly find the information they seek. Web design with clear site structures and links to other sites containing relevant information makes navigation easier. Search engines allow users to search documents with simple and free keyword entries, providing them with a list of links and direct access to the documents identified. Government web sites may also offer several layers of search engines, making it easier to focus the search.
- **Electronic kiosks:** Governments can offer access to online public information through electronic kiosks and computer terminals located in public buildings that are free for citizens to use.

<sup>1</sup>Note that although this Circular expired in April 2014, however the requirement on public consultation is still relevant under the NPDIR / Circular dated 15 July 2013.

## Part 2: The Guiding Principles for Public Consultation

This guideline proposes a set of six guiding principles for successful public consultation in the development of regulations. They represent the essential elements of good practice in the development and implementation of regulations as aspired in the NPDIR. Having acknowledged their importance, the next step is to put them into practice. This section will explain the principles and how they are put in practice.

### Principle No. 1: Transparency with Accessibility

*The authorities should ensure that stakeholders and the public that are affected understand the scope of the regulation development process and procedures, and that any constraints on the authorities are made known. Consultation exercises should be designed to be accessible to, and clearly targeted at people the consultation is intended to reach.*

To apply this principle, the authority should consider implementing the following:

- *Set standards* for public information services and products and enforce the standards through internal audit, management review and monitoring. Establish clear procedures for public consultation, provide guidelines and training (e.g. on policy and codes of conduct) for public officials and consider alternatives (e.g. appointing an independent facilitator to assist in consultation).
- *Provide full information* on where to find relevant background materials (from government or non-governmental sources), on how to submit comments (e.g. orally at dialogues, forums, meetings and in writing, by e-mail), on what the process is (such as deadlines, events, main contact persons) as well as on what are the steps for decision-making.
- *Ensure ease of accessibility* by using multiple channels for information (brochures, television, advertising, internet, etc.) and consultation (e.g. written and oral). Provide information in clear and straightforward language. Adapt consultation and participation procedures to stakeholders' needs (e.g. hearings held after office hours).

### Principle No. 2: Accountability

*Government have an obligation to account for the use of stakeholders' resources and inputs received through the public consultation. To demonstrate this accountability, government need to ensure an open and transparent policy-making process.*

*The results and outcomes should be consistent with the commitment to the guiding principles of public consultation.*

To apply this principle, the authority should consider the following actions:

- *Provide clear indication* on the timetable for the regulation development process and how stakeholders and interested parties can provide their views, comments and suggestions. This can be done through information brochures, online notification and advertorials. In addition, stakeholders



- should be informed how their inputs will be assessed and considered in the decision-making process. (e.g. published summary report or final briefing session).
- *Clarify responsibilities* and assign specific tasks to individual units or senior officers (e.g. for the preparation of information, or for reporting). Ensure that these responsibilities are publicly known (for instance by providing contact e-mail addresses on the Internet site).
- *Acknowledging responses* is important to demonstrate accountability. All responses should be acknowledged even if they do not relate to the consultation objective. Respondents should be encouraged to provide evidences in support of their responses. This will reinforce the understanding that regulatory development are undertaken in the interest of the stakeholders in particular and the people in general.

### **Principle No. 3: Commitment**

*Leadership and strong commitment to information, consultation and active participation in regulation development are needed at all levels, from ministers, secretary generals, director-generals, and senior officers. Appropriate time and resources must be provided to ensure their involvement in a meaningful way.*

To apply this principle, the authority should consider the following activities:

- *Raise awareness among politicians and heads of departments* on their role in promoting open, transparent and accountable policy-making. For instance, provide examples of good practice from other countries; organise exhibitions; publicise successful initiatives and etc.
- *Provide opportunities for information exchange among senior administrators* for instance through holding regular meetings, peer reviews, and through applying tools for performance evaluation and knowledge management.
- *Provide targeted support to public officials* through training, codes of conduct, standards and general awareness. Special initiatives, such as award schemes, advisory programmes can support this.

### **Principle No. 4: Inclusiveness that is Equitable**

*The authorities should make every reasonable effort to include all the stakeholder groups and the interested individuals affected by the proposed regulation. Access to consultation processes and ability to participate is to be ensured despite race, ethnicity, religion, political affiliation, gender, disability status or any other possible basis for discrimination.*

To apply this principle, the authority should consider implementing the following:

- *Ensure stakeholders'/citizens' rights*: The authority should establish the policy for the rights to access information, provide feedback, be consulted and actively participate in the regulation development process. The authority obligations to respond to citizens when exercising their rights must be clearly stated.

- *Ensure that public officials know and implement the policy:* Providing support (e.g. leadership, training, sources on good practices) and advice (e.g. expert's facilitation, central help-line) can help. Use independent authorities for oversight, or their equivalent, to enforce the policy.
- *Establish and uphold rights of appeal* by introducing and publicising options for stakeholders and the public to enforce their rights of access to information, consultation and participation. These include complaint procedures, judicial reviews and interventions by the special committees (e.g. PEMUDAH, NDPC).

### **Principle No. 5: Timely and Informative**

*Engagement with stakeholders shall be within reasonable timeframes to collect stakeholders' feedback and disseminate the information in time to inform on the regulation development.*

*Information is needed at all stages of the regulation development. Increased interest and motivation to participate occur by diffusing simple and understandable information to the affected and interested public.*

In applying this principle, the authority should consider the following actions:

- *Timeframe:* The consultation process should be structured to consider the time that some groups/individuals require to become informed, reflect on issues, and develop a considered response. Public consultation and active participation should be undertaken as early in the regulation development as possible. This allows a greater range of policy options to emerge and raises the chances of successful implementation. Adequate time must be available for consultation and participation to be effective.
- *Set priorities* and allocate sufficient resources to design and conduct the exercise, including human (e.g. internal staff time, external experts), financial (e.g. publication costs, events costs and fees) and technical resources (e.g. video conferencing).
- *Strengthen co-ordination capacities:* The Internet is a crucial means of online communication with public officials and employees in order to keep them in the loop on information, consultation and participation activities that are underway within the agency at any given moment. Guidelines and briefings can help to ensure that all external stakeholders experience the same standards when they interact with different parts of the administration.
- *Build networks* of public officials and in particular, the Regulatory Coordinators (RC) responsible for information, consultation and participation activities within the administration. A basis for this is regular meetings. Networks can pool skills (for instance with on-line database of names and fields of expertise) and enable sharing lessons (such as lessons from local government or other countries).
- *Collect and analyse* data on key aspects of the information, consultation and participation initiatives (e.g. complaints received) and plan for data collection from the outset (e.g. periodic public opinion surveys, number of participants in public hearings).



## Principle No. 6: Integrity with Mutual Respect

- *The authorities shall engage stakeholders and the affected public in an honest and forthright way. The process of engagement shall be open, transparent and accountable.*
- *There will be recognition of diversity among and between all stakeholders with the willingness to discuss and deliberate towards common understanding. This will mean giving regard for difference of perspectives, objectives, values and needs among groups and individuals.*

In applying this principle, the authority should consider the following actions:

- *Avoid creating false expectations: From the start, and as much as practicable, define and communicate the objectives (such as to know policy priorities or to develop jointly policy solutions). Specify commitments (e.g. to publish survey results) and the relative importance given to the inputs.*
- *Invest in civic education for adults and youth (for instance through schools, special events, awareness-raising campaigns). Support initiatives undertaken by others with the same goal (e.g. sponsorship of civil society organisations' events).*
- *Foster civil society by developing a supportive legal framework (with rights of association, tax incentives, etc.), providing assistance (with grants and training), developing partnerships (with joint projects, delegated service delivery, etc.) and providing regular opportunities for dialogue -for instance under a jointly defined framework for government-civil society interactions.*
- *Promote values of government-stakeholders relations throughout the administration by publicising them (e.g. in the form of charters) and leading by example (e.g. through direct participation for senior officials and politicians).*

These six principles provide a comprehensive guidance on critical aspects of public consultation. Many authorities have formulated their own guiding principles to suit their respective cultural and operating environment. The six principles set out in this publication is a synthesis of the rich experiences found elsewhere.

The OECD has formulated 10 guiding principles for public consultation while that of The City of Calgary, British Columbia has adopted five guiding principles (see Boxes 2 & 3)



## Box 2: OECD Guiding Principles for Public Consultation

1. **Commitment:** Leadership and strong commitment to information, consultation and active participation in policy-making is needed at all levels, from politicians, senior managers and public officials.
2. **Rights:** Citizens' rights to access information, provide feedback, be consulted and actively participate in policy-making must be firmly grounded in law or policy. Government obligations to respond to citizens when exercising their rights must also be clearly stated. Independent authorities for oversight, or their equivalent, are essential to enforcing these rights.
3. **Clarity:** Objectives for, and limits to, information, consultation and active participation during policy-making should be well defined from the outset. The respective roles and responsibilities of citizens (in providing input) and government (in making decisions for which they are accountable) must be clear to all.
4. **Time:** Public consultation and active participation should be undertaken as early in the policy process as possible. This allows a greater range of policy solutions to emerge. It also raises the chances of successful implementation. Adequate time must be available for consultation and participation to be effective. Information is needed at all stages of the policy cycle.
5. **Inclusions (Objectivity):** All citizens should have equal opportunities and multiple channel to access information, be consulted and participate. Every reasonable effort should be made to engage with as wide a variety of people as possible.
6. **Resources:** Adequate financial, human and technical resources are needed if public information, consultation and active participation in policy-making are to be effective. Government officials must have access to appropriate skills, guidance and training. An organisational culture that supports their efforts is highly important.
7. **Co-ordination:** Initiatives to inform citizens, request feedback from and consult them should be coordinated across government. This enhances knowledge management, ensures policy coherence, and avoids duplication. It also reduces the risk of "consultation fatigue" - negative reactions because of too much overlapping or poorly done consultation - among citizens and civil society organisations. Co-ordination efforts should not reduce the capacity of government units to ensure innovation and flexibility.
8. **Accountability:** Governments have an obligation to account for the use they make of citizens' inputs received - be it through feedback, public consultation or active participation. To increase this accountability, governments need to ensure an open and transparent policy-making process amenable to external scrutiny and review.

9. **Evaluation:** Evaluation is essential in order to adapt to new requirements and changing conditions for policy-making. Governments need tools, information and capacity to evaluate their performance in strengthening their relations with citizens.
10. **Active citizenship:** Governments benefit from active citizens and a dynamic civil society. They can take concrete actions to facilitate citizen's access to information and participation, raise awareness, and strengthen civic education and skills. They can support capacity building among civil society organisations.

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

### Box 3: Case Example: The City of Calgary's Five "Engagement Cornerstones"

Many governments across Canada have established varying degrees of internal guidance as to when and how to participate with the public. Guidance typically includes policies and sometimes protocols that help determine when public participation is desirable and when it is necessary. Although there is variance in the level of detail provided by different governments, a list of guiding principles is a consistent element. The City of Calgary's five "engagement cornerstones" is an example of the most common principles guiding many public participation programs in Canada.

Engagement Cornerstones				
Accountability	Inclusiveness	Transparency	Commitment	Responsiveness
Demonstrating that results and outcomes are consistent with promises.	Reaching and hearing the voices of those interested or affected.	Ensuring decision processes and procedures, and constraints are understood, known and followed.	Leading and resourcing appropriately for effective engagement.	Being accessible to address stakeholder concerns.

Source reference: British Columbia 2008

## Part 3: Requirements for Public Consultation

**Consultation Paper (Issue Paper): Clarity of scope and impact** (refer to the reference *Her Majesty Government, 2008, Code of Practice on Consultation*)

*Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.*

The document should make clear about the consultation process, e.g., what has taken place in the development of the proposed regulation prior to the consultation exercise, how the consultation exercise will be run and, as far as is possible, what can be expected after the consultation exercise has formally closed. The scope of the consultation should be clearly spelt out; setting out where there is room to influence regulation development and what has already been decided, and so is not in the scope of the consultation.

### Box 4: Preparing the Consultation Documents

#### Consultation Documents

1. Preparation for consultation should include the preparation of consultation documents that are clear, concise and focused.
2. A list of questions for affected parties at the beginning could be included to:
  - Check if the benefits and costs are complete;
  - Confirm if the assessment of competition effects is appropriate;
  - Seek a response on enforcement methods proposed; and
  - Check for unintended consequences.
3. Ensure that submissions on potential costs are supported by evidence. This will prevent respondents from overstating costs in order to deter the department or agency from pursuing a particular line.
4. Seek responses on:
  - Validity of key assumptions;
  - Options that are available (regulatory and alternatives to legislation);
  - Implementation issues (including guidance and timing); and
  - The preliminary findings on the issue

Source: *Best Practice Regulation Handbook, MPC*

A "Consultation Stage Impact Assessment", sometimes in the form of a consultation or issue paper, is normally prepared and published for the formal consultation, with questions on its contents included. An Impact Assessment should be carried out for most regulatory decisions. Consultation of interested parties on the Impact Assessment and on equality assessments can bring greater transparency to the regulation development process and should lead to authorities having more robust evidence on which to base decisions. Estimates of the costs and benefits of the regulatory options under consideration should form an integral part of consultation/issue paper, setting out the authorities' current understanding of these costs and benefits. Box 4 illustrates the list of requirements for the preparation of the consultation paper.

As far as is possible, consultation documents should be easy to understand: they should be concise, self-contained and free of jargon. This will also help reduce the burden of consultation. While consultation exercises on technical details may need to seek input from experts, simpler documents should be produced when the views of non-experts are also required.

Consideration should also be given to asking questions about which groups or sectors would be affected by the regulation in question and about any groups or sectors (e.g. small businesses or third sector organisations) that may be disproportionately affected by the proposals as presented in the consultation document. Consultation exercises can be used to seek views on the coverage of new regulations, ideas of how specific groups or sectors might be exempted from new requirements, or used to seek views on approaches to specific groups or sectors that would ensure proportionate implementation.

The subject matter, any assumptions the authorities have made, and the questions in the consultation should all be as clear as possible. A mixture of open and closed questions will often be desirable, and consideration should be given to offering stakeholders/participants the opportunity to express views on related issues not specifically addressed in the questions. Box 5 is a checklist for preparing an adequate consultation paper.





**Box 5: Consultation Paper Checklist****Checklist on the consultation paper**

- *Does this section explain how affected parties were consulted?*
- *Does the section clarify which groups of stakeholders were consulted? Have their views been summarised?*
- *If required, does RIS ensure that the confidentiality of specific stakeholder comments has been protected?*
- *Have outstanding issues been addressed? If not, why?*
- *If comments were received, does this section detail what measures were taken to address them? Has the authority(s) responsible been clearly identified and their roles defined?*
- *Has a compliance and enforcement strategy been developed and explained?*
- *Have any issues and possible barriers to compliance been clearly assessed?*
- *If constraints with compliance exist, are mechanisms to overcome them described?*
- *Has the methodology that will be used to review and evaluate the regulatory activity been summarised?*

The RIS requires a brief on the consultation plan and process and the summary of the responses captured. The outcomes of consultation are used as inputs and to support the analysis of the issue. It is important that the RIS should demonstrate that the consultation process was balanced and not unduly influenced by the views of one particular group.

Source: Best Practice Regulation Handbook, MPC

An example of a good consultation paper is in Box 6. This paper is prepared for a public consultation exercise on the Review of the National Land Code 1965 by the Department of Director General of Land and Mines (DDGLM) in 2012.

**Box 6: Case Example of a Consultation Paper****Introduction**

An important requirement for good public consultation is a good consultation paper. Preparing a good consultation paper requires great research efforts and demand extensive knowledge resources and inputs. Base on good benchmarking practice principle of "knowing yourself first and thoroughly" the consultation paper is about detailing out the current issues and practices within the regulator's existing administration. An example of a good consultation paper is illustrated in this case example:

### **Preparing the Consultation Paper for Review of the National Land Code 1965**

The National Land Code 1965 (NLC1965) established the requirements for the process of regulating land and property development, and the use and conservation of the land, the gathering of revenues from the land through sales, leasing, and taxation, and the resolving of conflicts concerning the ownership and use of the land. The current land code is the National Land Code - Act 56 of 1965 (NLC) enforced since 1966.

The NLC comes under the purview of the Department of the Director General of Land and Mines (DDGLM) which reports to the Ministry of Natural Resources and Environment (NRE). The main function of the DDGLM is national land administration and management and this involve among others the amendment or improvement of any provision of land law and legislation regarding land administration.

The responsibility for preparing the paper was given to the Research and Development Section (RDS) of DDGLM. The RDS engaged a local research house, the IUM Entrepreneurship and Consultation Sdn. Bhd. to study the NLC1965 and its administration and management. The researcher carried out literature reviews, sought local expertise inputs and carried out in-house consultations with the land administrators from across the Peninsular Malaysia.

The objective and scope of the research were clearly defined and the study was guided by seven principles established for the purpose. These principles are important because they form the assessment criteria for the research outcome. The study looks at the current systems of practices and the problems or issues experienced. Based on the established principles, the researcher formulated options and made the recommendations on the review.

### **The Review of NLC1965 Consultation Paper**

This consultation paper was prepared for a public consultation carried out by the DDGLM in 2012. Some of the key features in the paper are important learning points.

1. The title of the review was well formulated as it encapsulates the intention and the scope of the review clearly. This is important as this will capture the attention of key stakeholders.
2. The official period of the review is clearly stated in the paper, in this case over a period of 16 weeks.
3. The acknowledgement section is informative as it acknowledges the researchers, both in-house and external. This information allows the external stakeholders to gauge the roles and the



- credibility of the researchers and also the accessibility to them.
4. The paper also spells out the objectives and the background of the review. These two short sections set out the intention and expectation of the review.
  5. The section on the approach of the consultation, in two parts, is useful. In the first part, it details out the internal stakeholders consultations in the preparation of the consultation paper. In the second, it details out the type of stakeholders and the expectation from them in the public consultation.
  6. One clever feature of this paper is the formulation of a series of questions posed to the stakeholders and are summarized in the section on “*How to Respond*”. These questions are consolidated together with the issues and proposals in the main section of the paper. The “*How to Respond*” section illustrates that the regulator has thought through what inputs are required from the stakeholders thereby focusing the stakeholders to the intention of the review.

These six learning points are important to preparing a good public consultation paper on a complex review. Readers can access the DDGLM website at <http://www.kptg.gov.my/> to access this paper for reference.

Source: DDGLM Website: [www.kptg.gov.my.my](http://www.kptg.gov.my.my)

### **Planning the Consultation Exercise**

*Consultations should normally last for at least 12 weeks with consideration given to longer timeframe where required and feasible.*

Consultation is an important element of the RIS process. In general, any proposed new regulation or change to regulation, should involve consultation with relevant stakeholders. Consultation helps to ensure that the full range of impacts are taken into account when assessing how best to solve a problem and the transparency it fosters helps to build trust in the policy making process.

The extent of consultations undertaken should be influenced by the significance and impact of the proposed regulation. Sufficient time should be allowed for the consultation exercise. Under normal circumstances, consultations should last for a minimum of 12 weeks. This should be factored into plans for the regulation development. Allowing sufficient time will help enhance the quality of the responses. Organisations will want to consult the people they represent or work with before drafting a response to Government and to do so will take time.

If a consultation exercise is to take place over a period when consultees are less able to respond, e.g. over festival break such as the Ramadhan month, Chinese New Year holiday, or if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation.

When timing is tight, for example when dealing with emergency measures, or international, legally-binding deadlines, or when the consultation needs to fit into fixed timetables such as the budget cycle, consideration should be given to whether a formal, written, public consultation is the best way of seeking views. Where a formal consultation exercise is considered appropriate and there are good reasons to justify a shorter consultation period, the consultation document should be clear as to the reasons for the shortened consultation period and ministerial clearance (or equivalent, e.g. in non-Ministerial departments) for the shorter timeframe should be sought. In such circumstances it is important to consider the provision of additional means through which people can express their views.

When planning a consultation, it is important to take steps to raise awareness of the exercise among those who are likely to be interested. In particular, departments should consider ways to publicise consultations at the time of or, if possible, before the launch-date so that consultees can take advantage of the full consultation period to prepare considered responses. Box 7 details the key elements for planning the public consultation.

### Box 7: Planning for Public Consultation

#### Key Elements of a Consultation Exercise

**Plan:** Decide on who is being consulted, about what questions, in what timescale and for what purpose.

Use the most appropriate approach. Written consultation is not always sufficient to canvas views on a new regulation, but must always be included alongside other methods. Other methods include:

- Meetings with interested parties;
- Seminars;
- Web forums;
- Public surveys; and
- Focus groups.

**Accessibility:** Consultation should be easy to respond to, for example by using electronic means or a separate questionnaire. Put all consultation documents and their accompanying RIS on the department or agency website in a clear and accessible form. Include details of where to send responses when you put a consultation document on the website. Make sure that consultation documents are easy to access from the website - for example, via a link on the home page.

**Proactive approach:** send emails to affected parties with a hyperlink to the consultation document. Placing a consultation document on the website and leaving it up to people to find out about it for themselves is inadequate.

**Publish a summary** of the consultation document, containing an overview of the proposals, as well as the full length version. This will help affected parties decide whether they need to read and digest the full version, saving them time. Make sure your overview contains details of all the proposals, so that the overall effect or impact is not diluted.

Source: *Best Practice Regulation Handbook*, MPC

## Accessibility of Consultation Exercises

*Consultation exercises should be designed to be accessible to, and clearly targeted at those people the exercise is intended to reach.*

It is essential that interested parties are identified early in the process so that consultation exercises can be designed and targeted accordingly (see Stakeholders Analysis). When consultation exercises need to reach a diverse audience, several approaches may be required. In the consultation document it should be stated what ways are available for people to participate, how exactly to get involved, and why any supplementary channels have been chosen. Over-reliance on standard lists of consultees to disseminate consultation papers can mean that key groups are excluded and others receive consultation documents that are not relevant to them.

It is vital to be proactive in disseminating consultation documents. Careful consideration should be given to how to alert potential consultees to the consultation exercise and how to get views from relevant sectors of the community and the economy. While many interested parties can usually be contacted directly, there will often be other interested parties not known to Government or who can only be reached through intermediary bodies. Working with appropriate trade, community or third sector organisations can help the Government to hear from those who would otherwise go unheard. Using specialist media or events can also help promote consultation exercises among interested groups. The popularity of social media provides additional opportunity to reach out to interested parties and should be exploited for the public consultation.

Thought should also be given to alternative versions of consultation documents which could be used to reach a wider audience, and to alternative methods of consultation. Guidance on methods to support formal consultation exercises to help reach specific groups and sectors (regional, public meetings, online tools, focus groups, etc.) is available in the references.

It is important that the public can decide quickly whether a consultation exercise is relevant to them. For this reason, a standard format of basic information should be used for all consultation exercises produced by any public body. This will mean that all the key information is readily accessible when potential consultees are first presented with a new consultation document and that the public will become familiar with the format.

## Stakeholder Analysis

Stakeholders are persons or organisations who have vested interest or may be impacted in the policy/regulation being considered. These "interested parties" can be grouped into different categories such as international, public, national political, commercial/private, non-governmental organisation (NGO)/civil society, labour, and users/consumers.

Therefore, stakeholder analysis is a process of systematically gathering and analysing qualitative information to determine whose interests should be taken into account when developing and/or implementing a policy/regulation. The process will analyse the characteristics such as knowledge of the policy, interests related to the policy, position for or against the policy, potential alliances with other stakeholders, and ability to affect the policy process through their power and leadership.

Understanding these characteristics of stakeholders will enable policy makers to interact more effectively with key stakeholders and increase the support for a given policy. By carrying such an analysis, policy makers will be more prepared to detect and act to prevent potential misunderstandings and/or obstacles to the implementation of the policy.

There are different variations of stakeholder analysis process. Schmeer 1999 recommended the following steps:

1. Planning the process
2. Selecting and defining a policy
3. Identifying key stakeholders
4. Adapting the tools
5. Collecting and recording the information
6. Filling in the stakeholder table
7. Analysing the stakeholder table
8. Using the information.

The reader can refer to the details of the guidelines by Schmeer, 1999 in the reference below.

A simpler process, the Stakeholder Matrix, is used by the Department of Environment and Primary Industries of the State Government of Victoria, Australia is summarized in the Box 8.

#### Box 8: Stakeholder Analysis

##### Method:

1. Make a list of all stakeholders.
2. Write the name of each stakeholder on a post-it note or index card.
3. Rank the stakeholders on a scale of one to five, according to one of the criteria on the matrix, such as 'interest in the project outcomes' or 'interest in the subject'.
4. Keeping this ranking for one of the criteria, plot the stakeholders against the other criteria of the matrix. This is where using post-it notes or removable cards are useful.
5. Ask the following questions:
  - Are there any surprises?
  - Which stakeholders do we have the most/least contact with?
  - Which stakeholders might we have to make special efforts to ensure engagement?

##### Stakeholder Matrix

A common method of stakeholder analysis is a Stakeholder Matrix. This is where stakeholders are plotted against two variables. These variables might be plotting the level of 'stake' in the outcomes of the project against 'resources' of the stakeholder. Another is the 'importance' of the stakeholder against the 'influence' of the stakeholder. The concept is the same, though the emphasis is slightly different.

Influence of Stakeholder	Imported of Stakeholders				
		Unknown	Little / No Importance	Some Importance	Significant Importance
	Significant Influence	C		A	
	Somewhat Influential				
	Little / No Influence	D		B	
	Unknown				

Boxes A, B and C are the key stakeholders of the project. The implications of each box is summarised below:

#### Box A

These are stakeholders appearing to have a high degree of influence on the project, who are also of high importance for its success. This implies that the implementing organisation will need to construct good working relationships with these stakeholders, to ensure an effective coalition of support for the project. Examples might be the senior officials and politicians or trade unions.

#### Box B

These are stakeholders of high importance to the success of the project, but with low influence. This implies that they will require special initiatives if their interests are to be protected. An example may be traditionally marginalised groups (e.g. Indigenous people, youth, seniors), who might be beneficiaries of a new service, but who have little 'voice' in its development.

#### Box C

These are stakeholders with high influence, who can therefore affect the project outcomes, but whose interests are not necessarily aligned with the overall goals of the project. They might be financial administrators, who can exercise considerable discretion over funding disbursements. This conclusion implies that these stakeholders may be a source of significant risk, and they will need careful monitoring and management.

#### Box D

The stakeholders in this box, with low influence on, or importance to the project objectives, may require limited monitoring or evaluation, but are of low priority.

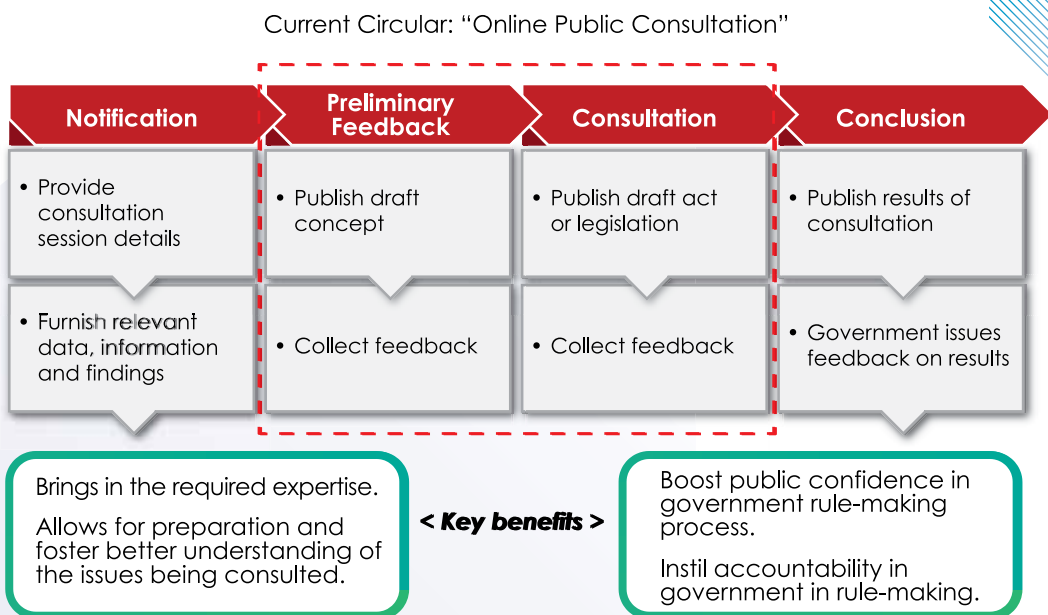
Source: Department of Environment and Primary Industries, State of Victoria, Australia

## Part 4: Public Consultation Process

This section provides practical guidance on putting the consultation exercise into operation using the process approach. The process approach is of particular relevance as it provides ease of integration into the agencies' existing Quality Management System (QMS), normally an ISO 9000 accredited QMS, that is already in place.

The PwC Report 2013 recommends a four-stage public consultation process as in Figure 1 below. The current public service consultation process from the Public Service Circular 2012 on covers only two stages as shown in Figure 1. The additional stages of Notification and Conclusion are important to ensure effective and inclusive consultation process, taking into account the six guiding principles in Part 2 of this guideline.

**Figure 1: An Overview of the Public Consultation Process**



Source: PwC Report 2013

Based on the above four-stage process, the following questions should guide the implementation:

1. Decide WHO to consult with
2. Decide WHAT to consult on
3. Decide HOW to ask them
4. START the consultation
5. EVALUATE and use the results

In this context public consultation is part of the RIS process.



The notification and the preliminary feedback are the preparatory stages towards a formal public consultation. The preparation of the consultation paper is guided by the first three generic questions of 'Who', 'What' and 'How'. Once the management has decided on the RIS, the RC should start the planning process for public consultation. The RC should formulate the quality plan for the public consultation exercise. The plan should include a communication plan, plan for preparing the consultation paper, and establish a protocol for report release.

The communication plan gives early announcement on the agency's initiative on its website or announces the initiative through its other communication channels such as its official newsletter, minister's speech, media statement. RC should utilise the expertise of the agency's media officer or its public relation officer for this.

To prepare the consultation paper, RC has to identify key stakeholders, in particular, the industry players and expertise resources and inputs. This is an important exercise because of information asymmetry - government officials do not have good real-time market information. The information is out there and as such this preliminary consultation with key stakeholders and experts is necessary to clarify the issues of concern and to formulate feasible options. Background study and literature reviews are necessary inputs to this. Crucial information required includes:

- Scope and parameters
- Listing of decision makers
- Estimated length of consultation period
- Factors that may guide decisions
- Industry data, previous studies, relevant findings and calculations
- Comparison of new law and current law (for revision or amendment)

Once the consultation paper is prepared, the established protocol for report release should come into play. The protocol is to ensure that key internal stakeholders do not have any objection to the report release or be surprised by its publication. To do this, the RC should bring to attention any parts or contents of the report that may be perceived as sensitive to the internal stakeholders.

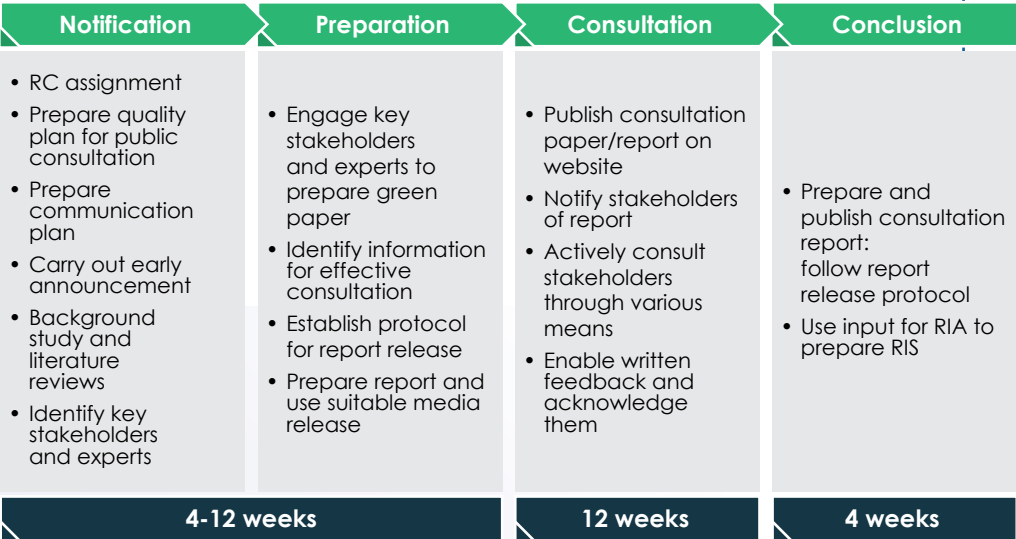
Once the report or consultation paper has been approved for release the consultation process can begin. An adequate consultation exercise should take at least 12 weeks. A proper announcement of the report release should be made and the report should be easily accessible to all, e.g. via the official website. Key stakeholders should be notified formally or through emails. Stakeholders should be given sufficient time to review the report before responding, normally 30 days would be adequate. Formal public consultation can take different forms and the agency itself is the best judge of means to do this. Public consultation can take many forms, such as:

- Stakeholder meetings
- Public meetings
- One-to-one interviews
- Public surveys
- Focus groups
- Round table discussions
- Web forums

The last stage of the public consultation process is the use and analysis of the data and information collected and recorded from the exercise. The agency should publish the results of the consultation and respond to all participants of the exercise. The release of the consultation report should follow the report release protocol. This should be done within reasonable timeframe, normally 30 days after the official ending of the exercise. The relevant inputs from the consultation should be used for the RIA in the preparation of the RIS as this is the intention of the exercise.

Figure 2 provides an example of the key activities involved in the proposed consultation process as found in the PwC report.

**Figure 2: Key activities for public planning the consultation exercise**



A generic template for implementing public consultation is in Annex.

Case Examples

The Table 1 describes some key practices for an effective public consultation exercise by the OECD countries. This provides useful comparison with the recommendations of this guideline.

**Table 1: Key Practices for Public Consultation in OECD countries**

Interaction	Approach
Notification	<p>It is a one-way process of communicating information to the public. Members of the public play a passive role as a consumer of government information. It is not, in itself constitute consultation but it is the initial step in educating the public and allowing them to prepare for the upcoming consultations.</p> <p>The US has successfully created a very transparent and predictable public consultation exercise through its Administrative Procedure Act (APA) which established a legal right for the public to participate in rule-making activities of the federal government. The APA specifies the minimum that an agency must undertake in order to provide proper notification to the public.</p>
Preliminary feedback	<p>It is a process of gathering initial feedback on the proposed consultation exercise. Public may suggest additional information to be presented during consultation exercise to improve their understanding. This stage also serves as a measurement on the understanding and receptiveness by the public on the consulted issues.</p>
Consultation	<p>It is a two-way process of information flow between the regulatory agency and the stakeholders. During consultation process, the agency is expected to actively seek opinions and comments from the stakeholders.</p> <p>There are two common instruments in public consultation:</p> <p><b>i. Public notice and comment</b></p> <p>This is a more structured and formal method of consultation. This is among the most widely used form of consultation in OECD countries as it is relatively inexpensive and is fairly flexible in terms of timing, scope and method of responses. Such consultation may be conducted online. The advantage of written feedback is that it allows the stakeholders to perform the necessary research and informed judgement prior to submitting respond. It is more inclusive in the sense that it allows the public, not just relevant stakeholders to contribute.</p> <p><i>MPC is currently conducting online public consultation on reducing unnecessary regulatory burden in setting up private hospitals. The consultation gave sufficient notice and time to the public. It also included sufficient data and defined clear objectives. The study suggests this process be formalised and adopted across the government.</i></p>

	<p><b>ii. Seminar</b></p> <p>This is a public meeting where the stakeholders and the public are able to provide feedback and comment in person. It provides face-to-face dialogue between the regulators and attendees and thus allowing concerns to be immediately raised and discussed. In the United States, public hearing is usually done together with public notice and comment procedure. It acts as an additional procedure to further improve the whole consultation exercise.</p> <p><i>As an example, SEDA has been actively conducting seminars and dialogue sessions to make announcement and consult with industry players on various issues. SEDA could strengthen its consultation exercise by including the Notification and Conclusion stages.</i></p>
Conclusion	<p>It is the final process in concluding the findings and discussion from the consultation process. The conclusion should include:</p> <ul style="list-style-type: none"> <li>i. Details on the consultation process such as mechanism used, consultation period, and the consultation results.</li> <li>ii. Documenting how the views of stakeholders were considered during consultation.</li> <li>iii. Documenting what is the government feedback on the consultation results.</li> </ul>

Source: OECD, *Background Information on Public Consultation* (extracted from PwC Report 2013)

Regulators should establish the standard operating procedure (SOP) to carry out an adequate public consultation when developing or review regulation. A SOP is a necessary document to ensure that there is consistency in carrying out an effective consultation exercise. The case example in Box 9 illustrates the SOP used by the Consumer Standards Division (CSD) of the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC).

### Box 9: Case Example of SOP Key Elements for Public Consultation Process

#### Introduction

It is the rights of consumer to demand safe goods and services. As such, it is the first responsibility of manufacturers and/or suppliers to ensure that all products and services they produce or supply meet with adequate safety requirements. The *Consumer Protection Act 1999 (Act 599)* and the *Trade Descriptions Act 2011 (Act 730)* provide for such protection for the Malaysian consumers.

Act 599 comes under the purview of the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC). One of the core divisions for consumerism of the MDTCC is the Consumer Standards Division (CSD) which has the functional objectives:

1. To enhance consumer protection pertaining the safety aspects of goods and services through clear legal provision.
2. To assist in developing Standards in collaboration with relevant agencies.
3. To raise awareness by applying a culture of Standards and the importance of issues.

CSD main regulatory function is to develop and introduce mandatory product standards to ensure that consumers are adequately protected from poor quality and unsafe goods and services.

#### SOP for the Introduction of Consumer Protection Regulation

The CDS has an established Standard Operating Procedure (SOP) for developing and introducing the mandatory product standard as a means to ensure product quality and safety. The SOP is titled as "*Proses Penyediaan Peraturan*". The key elements of this SOP are as follows:

1. The development process starts with the identification of the product that needs to be regulated. Here the CSD will identify and study the issues relating to a product or complaints from consumers or non-governmental consumer organisations or the industry suppliers or manufacturers on the necessity for regulation. From this initial study the CDS will propose the regulatory measure to resolve the issue. For this initial study CDS will source inputs from different agencies, notably Customs on importers, MITI, FMM and MIDA on the local manufacturers, SIRIM on product testing facilities and any information of existing regulations relating to the product.
2. The CDS will determine whether there are existing Malaysian Standards (MS) of international standards (e.g. ISO) for the product. If there isn't one, the Ministry will request the Department of Standards Malaysia to develop such a standard.

3. If such a product standard exists a Technical Committee (TC) will be formed involving all the relevant agencies to come up with the draft policy paper for public consultation. The TC will meet frequently and it usually would take a year or so to develop the proposal.
4. Once the policy paper is ready, a public announcement will be made on the CDS website, the My Standard Portal, <http://mystandard.kpdnkk.gov.my>. The announcement is the invitation to stakeholders and interested parties to the public consultation. Those interested in participating in the public consultation will need to formally indicate their interest in the Reply Form to the Ministry.
5. CDS will then arrange the public consultation meeting with these interested parties to discuss the draft policy paper and to obtain views and inputs from the participants. The draft policy paper will be revised based on the inputs of the public consultation. The public consultation may be held a few times until an acceptable final draft policy paper is produced.
6. The My Standard Portal also provide for online engagement with the stakeholders.
7. Once the final draft policy paper is ready, it will be submitted to the Policy Committee (PC) for review. Should the final draft is deemed inadequate it will be returned to CDS for further improvement. Further public consultation will be carried out to improve the draft policy paper.
8. Once the PC has approved the final draft policy paper, CDS will proceed to drafting the regulation for implementation. The draft regulation will then be subjected to the same public consultation process as the draft policy paper.
9. Once the draft regulation is finalised it will be reviewed by the Legal Committee (LC) for review. If the draft regulation is not adequate, it will be returned for revision. Once the draft regulation has been approved by the LC, the Cabinet Committee (CC) will be informed through a Memorandum to the CC or a Cabinet paper.
10. If there is no object from the CC, the draft regulation will be submitted to the Attorney General Chambers (AGC) for final review. The draft regulation will also be submitted to the World Trade Organisation for comments and in accordance to the TBT Agreement.
11. Once the AGC has approved the draft regulation, the final endorsed will be made by the Minister of MDTCC before the gazettal of the regulation.
12. After the gazette of the regulation, various advocacy sessions will be held with the industry players to promote the introduction of the new regulation.
13. Enforcement of the regulation will follow these promotional sessions.



14. Advocacy sessions will then be held for consumers groups on the implementation of the new regulation.
15. The Ministry will collect statistical data to monitor the enforcement of the new regulation. Any adverse consequences arising from the new regulation will be reported to the LC for review and improvement to the regulation.

There are three levels of consultation in the regulation development process.

The first consultation process is to develop the policy paper for the public consultation. This involves various key agencies such as SIRIM, Depart of Standards, Customs, MITI and some Trade associations who can provide inputs for the policy paper.

The second level is the actual public consultation with business stakeholders and the public. This process is to develop the draft regulation. This process is intensive and may involve a number of interactions with the stakeholders.

This draft regulation is then subjected to a final online public consultation to get any further views from the stakeholders. The final draft regulation is then submitted to the AGC for final review and endorsement.

Source: Consumer Standards Division, Ministry of Domestic Trade, Co-operatives and Consumerism

### **Case Example: Queensland Government Online Public Consultation**

Another good example of public consultation is the Queensland Government portal for engaging Queenslanders; <https://www.getinvolved.qld.gov.au/>. Readers are advised to visit this portal observe the best practice of online public consultation.

The Queensland Government has well developed guidelines to facilitate both the regulators and the citizen in public consultation. The contents of the guideline "*Engaging Queenslanders: Community engagement in the business of government*" by the Department of Communities in Box 10 below illustrate the practice of transparency by the State of Queensland. The guideline outlined the guiding principles, practices and the roles and responsibilities to be upheld by the regulator. Such guideline is important to build confidence in the public and also ensure that the regulator conformed to expectation.

### Box 10: An Example of a Published Guideline of the Department of Communities

#### The purpose of this resource

1. Putting principles into practice
  - i. Introduction
  - ii. Guiding principles
  - iii. Critical success factors
  - iv. Managing expectations
2. Examining current agency practice
  - i. Assessing agency engagement practice
  - ii. Improving engagement skills and knowledge
3. Identifying opportunities for improvement
  - i. Building engagement capacity
  - ii. Cultural change
  - iii. Agency community engagement improvement checklist
4. Engagement in government policy
  - i. Engagement and policy making
  - ii. Engagement in the policy cycle
5. Engagement in strategic planning
  - i. Opportunities and benefits
6. Engagement in service and program planning
  - i. Opportunities and benefits
  - ii. Community engagement planning checklist
7. New approaches to engagement
  - i. Methods of engagement
  - ii. Joined-up engagement
  - iii. Online engagement in government
8. References and further resources
  - i. Role of the Department of Communities
  - ii. Community engagement resources

Source: Queensland Government 2011

Another guideline “*Engaging Queenslanders – A guide to community engagement methods and techniques*” provide further information on how the regulator will engage the public and stakeholders in the public consultation. The publication of such guidelines will ensure that public consultations are carried out effectively and efficiently and in a **transparent and accountable** manner.

## Useful References

Readers should explore the websites of other countries that engage their citizens in public consultation. One such source is the Queensland Government as illustrated in the case example.

Another website of interest is the UK Government website (GOV.UK: [www.gov.uk](http://www.gov.uk)). Readers and interested parties should explore the *Get Involved* portal (<https://www.gov.uk/government/get-involved>) here to look at the UK Government's effort in engaging its citizens in consultation.

Below are some of the references used in the development of this guideline. Readers ought to read them to gain further insights on public consultation.

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2. British Columbia 2008, *Public Participation: Principles and Best Practices for British Columbia*, Office of the Auditor General, [www.bcauditor.com](http://www.bcauditor.com)
3. DDGLM 2012, *Review of National Land Code 1965 - Consultation Paper*, Ministry of Natural Resources and Environment Malaysia (NRE) <http://www.kptg.gov.my/>
4. Government of Malaysia 2013a, *Best Practice Regulation Handbook*, Malaysia Productivity Corporation, [www.mpc.gov.my](http://www.mpc.gov.my)
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6. H.M. Government 2008, *Code of Practice on Consultation*, Better Regulation Executive Department for Business, Enterprise and Regulatory Reform, [www.bre.berr.gov.uk](http://www.bre.berr.gov.uk)
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8. Malaysia Public Service Circular, 25 April 2012, *Online Public Consultation*, Surat Pekeliling Am Bilangan 2 Tahun 2012, PM(t) 10766/7
9. Manningham City Council, *Community Consultation and Engagement Policy*, [www.manningham.vic.gov.au](http://www.manningham.vic.gov.au)
10. Melton Borough Council 2011, *Community Consultation Strategy*, [www.melton.gov.uk/](http://www.melton.gov.uk/)
11. My Standard Portal, Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) Malaysia, <http://mystandard.kpdankk.gov.my>
12. OECD 2001, *Citizens as Partners, OECD Handbook on Information, Consultation and Public Participation in Policy making*, OECD Publication Services.

13. PwC Report 2013 (unpublished report), *Study on Domestic Regulations to Enhance the Competitiveness of Malaysia's Services Sector*, Ministry of International Trade and Industry (MITI)
14. Schmeer K. 1999, *Guidelines for conducting Stakeholders Analysis, Health Reform Tools Series*, Partnerships for Health Reform, Abt Associates Inc., [www.eestum.eu/voorbeelden/Stakeholders\\_analysis\\_guidelines.pdf](http://www.eestum.eu/voorbeelden/Stakeholders_analysis_guidelines.pdf)
15. State Government of Victoria 2014, *Stakeholder Analysis (Stakeholder Matrix)*, Department of Environment and Primary Industries, State of Victoria, <http://www.dse.vic.gov.au/>
16. The Cabinet Office, Jamaica 2005, *Consultation Code of Practice for Public Sector*, [www.cabinet.gov.jm/psru](http://www.cabinet.gov.jm/psru)
17. Queensland Government 2011a, *Engaging Queenslanders: Community engagement in the business of government*, Department of Communities <http://www.qld.gov.au/web/community-engagement/guides-factsheets/business-government/>
18. Queensland Government 2011b, *Engaging Queenslanders - A guide to community engagement methods and techniques*, <http://www.qld.gov.au/web/community-engagement/guides-factsheets/methods-techniques/>
19. Her Majesty Government, GOV.UK at [www.gov.uk](http://www.gov.uk) Policy, [www.manningham.vic.gov.au](http://www.manningham.vic.gov.au)
20. PSC 2010, *Template for Developing Guidelines on Public Participation*, Public Service Commission, Republic of South Africa

## Frequently Asked Questions

The guideline draft was subjected to public consultation with key stakeholders (ministries and agencies) and also the public at large. The consultation exercise was carried out with six sessions of round table discussions (RTD) to deliberate on the proposed guideline. The objective is to capture the concerns relating to implementing public consultation in regulation development and implementation as per NPDIR. The concerns are addressed here as frequently asked questions (FAQ).

### **FAQ No. 1: How do we avoid or prevent the inadvertent publication of confidential or sensitive information in the consultation paper?**

Agencies should establish a protocol for report release to ensure that internal key stakeholders are satisfied that the report is suitable for release. The RC should bring to the attention of the internal stakeholders any information or contents of the report that may be deemed sensitive for their consideration. The report can then be released upon the endorsement of the key internal stakeholders.

With regards to the *Official Secret Acts 1972 (Act 88)*, agencies should consult with their legal officers on matters relating to compliance with the Act. As the Act 88 is under the purview of the Chief Government Security Office, agencies can also consult with the Ministry on the handling of confidential documents.

### **FAQ No. 2: We have so many stakeholders, how do we approach them all?**

A stakeholder analysis is required to identify key stakeholders according to their importance to the regulatory issue. The objective is to reach all stakeholders and interested parties including those hard-to-reach ones. It is important that adequate representations of stakeholders are consulted. As the stakeholder analysis is a qualitative analysis, it is possible that some important stakeholders might be missed. As such, the online consultation with adequate publicity is crucial to ensure that interested parties have the opportunity to participate in the consultation.

### **FAQ No. 3: Can we have a standard template for public consultation?**

There are different objectives for consultation and there are different levels of engagement. There are also different methods or tools for carrying out public consultation. Consultation may have to reach different and varied stakeholders. To provide a standard template will only limit the creativity of agencies to formulate better approach to public consultation. This guideline is a useful reference for agencies to creatively establish their own public consultation practice.

### **FAQ No. 4: Is online consultation mandatory?**

The Internet is the technology of the day to disseminate information and ideas. It provides the means for government agencies to demonstrate transparency and accountability. It allows agencies to reach anyone - those hard-to-reach parties and those who may have been missed out. It is a necessary vehicle for public consultation. At the moment there is no official circular to make online consultation mandatory. Since internet is widely used, agencies should make online consultation mandatory in their policy on public engagement.

**FAQ No. 5: How long should the consultation exercise take to be considered adequate?**

The guideline proposed that the consultation exercise should be at least 12 weeks. Public consultation is a learning exercise for public officials to learn what is happening out there on a particular issue. Information asymmetry means that public officials do not have the required information on issues out there and therefore need to listen to the stakeholders. The 12 weeks is considered adequate for anyone to be reached and for them to think through the policy issue. It is more important that the agency pro-actively engage the stakeholders as many are passive and will remain silent until the implementation effects are felt.

**FAQ No. 6: How many engagements should be made in the consultation exercise?**

There are a few considerations here. Firstly, it will depend on the number, types and characteristics of the stakeholders. Some are pro-active and some are passive. Many stakeholders mean the need to have more engagement activities. The next consideration is the methods or means of engagement. Malaysians are not used to online consultation yet and frequently few will respond to online consultation. Other means of face-to-face engagement will require a lot of resources and therefore depend on the capacity of the agency to manage it. Most important consideration is whether the consultation has reached some saturation point. This is the point in time when no more new information is obtained from further engagement.

**FAQ No. 7: How do we deal with disagreements or objections to the contents or proposals of the report?**

The intention of public consultation is to gather inputs from the stakeholders or respondents, to listen to them, to get their comments and to capture their concerns on the issues being discussed. The consultation paper provides the background study and some proposed options for discussion. Disagreements or objections to the proposed options should be expected as they present new views for evaluations. The public consultation exercise is not meant to push for acceptance of any proposed options as its intention is for formulating better options. The main purpose is to gather views and information for informed decision by the decision maker.

**FAQ No. 8: What do we do if there is no or poor response to online consultation?**

Malaysians are still unfamiliar with online public consultation and some may fear putting their thoughts or opinions in writing, particularly to the authorities. There is the need for agencies to promote and educate the public on public consultation. The culture of openness in public consultation will require time to take root. As such, it is pertinent that government agencies and in particular, those with regulatory roles, take pro-active initiatives to promote public engagement without fear.

**FAQ No. 9: Who will monitor that the authorities will actually follow or comply with the guidelines?**

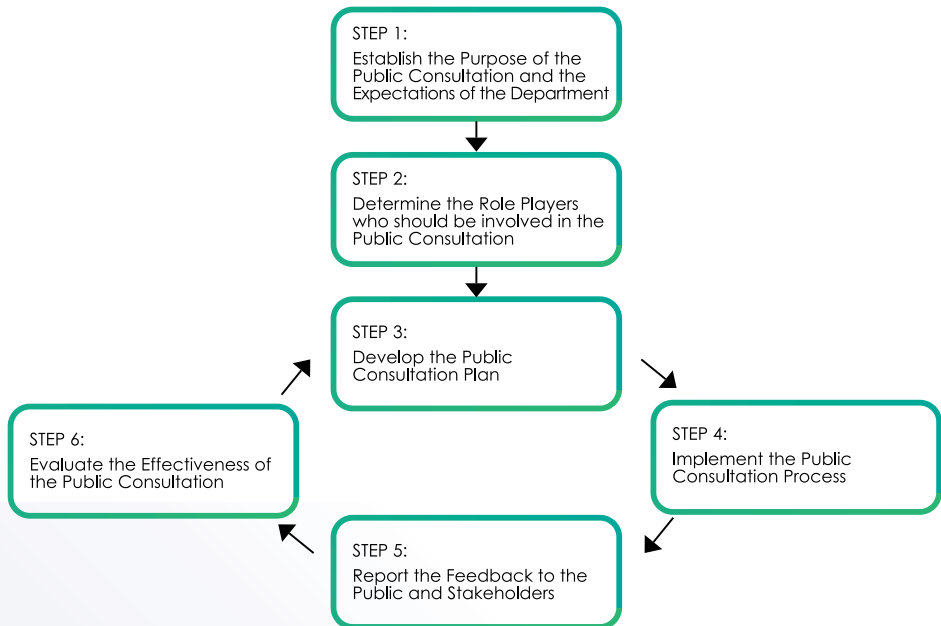
Although the guidelines is not mandatory authorities are strongly encourage to adopt the guidelines. There should be strong reason for not implementing the guidelines. Nonetheless implementation of NPDIR is mandatory. The MPC has been mandated in the NPDIR to monitor and evaluate all the RIS projects carried out by the authorities. As a good RIS requires effective public consultation, monitoring the RIS projects will cover the monitoring of the public consultation.



## Annex: Template for Implementing Public Consultation

Putting it all together is a six-step generic template for implementing public consultation. This is summarised in Figure 3 below.

Figure 3: Generic Template for Public Consultation



### STEP 1: Establish the Purpose of Public Consultation and the Expectations of the Department

*Public consultation may be fraught with challenges. Unless there is a shared understanding in a department regarding the purpose of public consultation, it becomes difficult to sustain momentum for such exercise.*

### STEP 2: Determine the Role Players who should be involved in the Public Consultation

*Knowing the stakeholders to be involved in public consultation assists the Department to choose the most appropriate approach to ensure maximum impact - e.g. knowing what language to use and the level of information that should be provided to stakeholders on the issues under discussion.*

*A proper stakeholder analysis makes it easier to divide the stakeholders into groups to ensure more focused discussions where stakeholders attending a specific intervention are on the same level in terms of background on the issue.*

*Providing all appropriate information beforehand will ensure that stakeholders can participate meaningfully in the session.*

### **STEP 3: Develop the Public Consultation Plan**

*This step provides baseline information such as duration of consultation, venues, stakeholders, issues and feedbacks to enable monitoring and evaluating the Department's efforts in practicing public consultation. It will assist the Department in deciding on resources, capabilities and responsibilities - which officials of appropriate level to use for the process, or where the officials do not have the necessary skills, how such skills can be acquired.*

*The costing of activities will assist in developing a comprehensive budget for the planned process.*

### **STEP 4: Implement the Public Consultation Process**

*This step attempts to provide direction on conducting the actual public consultation session to ensure that the action plan is properly carried out for accountability reasons. Activities are also proposed that will ensure that possible conflict is mediated and misunderstandings addressed. Credibility of the process is further ensured by providing stakeholders with the necessary information throughout the process.*

### **STEP 5: Report the Feedback to the Public and Stakeholders**

*Providing stakeholders with feedback on the incorporation of their inputs in policy decisions ensures openness and transparency of the public consultation process and ensures credibility of the process.*

*It will ensure that stakeholders are more committed in future to become involved in the Department's public consultation processes.*

*Stakeholders will feel that their opinions are taken into account and it is therefore unlikely that they will enter into disrupting behaviour during implementation or in future consultation.*

### **STEP 6: Evaluate the Effectiveness of the Public Consultation**

*Regular review of the public consultation process and or initiatives is necessary to address challenges and constraints experienced in the process and to ensure effectiveness of the Department's public consultation processes and initiatives.*

*The instruments used to carry out the evaluation of the process should be appropriate in terms of the specific purpose of the evaluation-surveys will be used to get feedback from stakeholders while reviews will be used to evaluate the action plan, the specific initiative or the public consultation process.*

*The identification of what hampered the completion of the process according to plan will assist in devising alternative solutions based on the lessons learnt and in refining the process or plans.*

### Contact Details:

Ministries and agencies through their appointed RC could seek further guidance on public consultation from the MPC in the early stage of their policy development process. This would facilitate the use of this guideline.

This guideline can be downloaded in .pdf format from: [www.mpc.gov.my](http://www.mpc.gov.my)

For further information on this guideline, the reader can contact:

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