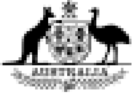

Regulation and its Review 1999-2000

PRODUCTIVITY COMMISSION

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ISBN 1 74037 023 6

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An appropriate citation for this paper is:

Productivity Commission 2000, *Regulation and its Review 1999-2000*, AusInfo, Canberra.

The Productivity Commission

The Productivity Commission, an independent Commonwealth agency, is the Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

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Information on the Productivity Commission, its publications and its current work program can be found on the World Wide Web at www.pc.gov.au or by contacting Media and Publications on (03) 9653 2244.

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Abbreviations

ABA	Australian Broadcasting Authority
ABS	Australian Bureau of Statistics
ACA	Australian Communications Authority
ACS	Australian Customs Service
ACCC	Australian Competition and Consumer Commission
AFFA	Agriculture, Fisheries and Forestry — Australia (Department of)
A-Gs	Attorney-General's Department
AMSA	Australian Maritime Safety Authority
ANZFA	Australia New Zealand Food Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BAS	Business Activity Statement
CASA	Civil Aviation Safety Authority
CGT	Capital Gains Tax
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
DEH	Department of Environment and Heritage
DEWRSB	Department of Employment, Workplace Relations and Small Business
DHAC	Department of Health and Aged Care
DIMA	Department of Immigration and Multicultural Affairs
DISR	Department of Industry, Science and Resources
DoCITA	Department of Communications, Information Technology and the Arts
DTRS	Department of Transport and Regional Services

EU	European Union
GST	Goods and Services Tax
IC	Industry Commission
LRS	Legislation Review Schedule
NCA	National Capital Authority
NCP	National Competition Policy
OECD	Organisation for Economic Cooperation and Development
ORR	Office of Regulation Review
PAYG	Pay As You Go
PC	Productivity Commission
RIS	Regulation/Regulatory Impact Statement
SDTV	Standard Definition Television
SSCRO	Senate Standing Committee on Regulation and Ordinances
ToR	Terms of Reference
TPA	Trade Practices Act

Overview

This report meets the Productivity Commission's obligation to report annually on compliance with the Government's requirements for Regulation Impact Statements (RISs).

Commonwealth departments and agencies must ensure that RISs of an adequate standard are prepared, in consultation with the Commission's Office of Regulation Review (ORR), for regulatory proposals that affect business or restrict competition. These RISs are intended to provide government decision makers with an even-handed description and assessment of all the viable options (including non-regulatory options) for dealing with identified policy issues and their likely impacts. In 1997, the Government directed that adequate RISs must be made available to the decision makers and, later, be tabled in Parliament with the relevant Bill or disallowable instrument. The Government also directed that regulatory proposals in the form of non-disallowable instruments, quasi-regulation and treaties should also be analysed using the RIS process.

Aggregate compliance results for 1999-2000

Of those regulatory proposals tabled in Parliament or made in 1999-2000, 207 required the preparation of RISs for decision makers. The requirement was met in 180 cases, with 169 of those containing analysis judged to be of an adequate standard. The compliance rate was accordingly 82 per cent, as indicated in the following table.

Table 1 **Aggregate RIS compliance at decision-making stage: 1999-2000 and 1998-1999**

	1999-2000				*1998-1999*
	Number of RISs			*%*	*%*
Proposals introduced via	*required*	*prepared*	*adequate*	*compliance*	*compliance*
Primary legislation (Bills)	74	65	59	80	61
Disallowable instruments	84	67	62	73	85
Non-disallowable instruments	22	21	21	95	96
Quasi-regulation	24	24	24	100	86
Treaties	3	3	3	100	100
Total	**207**	**180**	**169**	**82**	**78**

Source: ORR estimates.

While the total compliance result in 1999-2000 is only a little higher than for the previous year, it fails to reflect two developments that suggest a greater underlying improvement in compliance. Firstly, in 1998-99 when disaggregated compliance results were compiled for the first time, departments and agencies were often given the benefit of the doubt in cases where their compliance reports differed from the ORR's records. In contrast, in 1999-2000, departments and agencies were asked to substantiate any compliance claims that differed from the ORR's records. It is evident that had this procedure been applied in 1998-99, compliance in that year would have been lower than the 78 per cent shown in table 1. Secondly, the ORR has adopted a strategy whereby a relatively low RIS adequacy standard was applied in 1997-98 (the first year in which RIS preparation was mandatory) and this has been increased progressively as officials became more familiar and experienced with the analytical approach.

These factors are particularly relevant to the drop in the recorded compliance rate for disallowable instruments, from 85 per cent in 1998-99 to 73 per cent in 1999-2000.

Another important aspect in interpreting compliance results is the large differences among regulatory proposals in terms of their potential economic impact. For example, the regulatory framework for digital television could be expected to have substantial impacts on government, the entertainment and information industries, and consumers. In contrast, conditions imposed on certain commercial activities at airports are likely to affect very few and have a relatively small economic impact.

In order to gauge how compliance might vary with the significance of proposals, the ORR classified each of the more than 200 regulatory proposals to one of four 'significance' rankings. The compliance rate for measures in the two highest rankings, which accounted for one sixth of all the measures, was 74 per cent compared with 83 per cent for the two lowest rankings. It would have been more appropriate if relatively high rates of compliance had been achieved for the most significant proposals. The results raise important questions for departments and agencies as to whether more analytical resources should be applied to significant proposals, and about policy development processes more generally.

Compliance results by portfolio

In its previous report, *Regulation and its Review 1998-99*, the Commission recorded compliance results by portfolio only in broad terms. That was an advance on the first year's reporting, when aggregate Commonwealth results were presented, with no portfolio information. It has been a deliberate strategy to publish a little more compliance information each year, in working towards the Government's intention

that 'regular reporting is essential in assessing the effectiveness of these … arrangements' (Prime Minister 1997, p. 69).

The logical next step, taken in this report, is to publish compliance results by department and agency for individual instruments. Details are provided in chapter 2.

Those departments and agencies that fully complied with RIS requirements at the important decision-making stage were:

- Attorney-General's Department
- Australian Broadcasting Authority
- Australian Communications Authority
- Australian Competition and Consumer Commission
- Australian Securities and Investments Commission
- Civil Aviation Safety Authority
- Department of Employment, Workplace Relations and Small Business
- Department of Immigration and Multicultural Affairs

Those with better than average compliance rates were:

- Treasury and the Australian Taxation Office (tax matters)
- Department of Environment and Heritage
- Treasury (non-tax matters)

Those with overall compliance rates at about the average were:

- Department of Communications, Information Technology and the Arts
- National Capital Authority

Below-average compliance rates were obtained from:

- Department of Transport and Regional Services
- Department of Agriculture, Fisheries and Forestry — Australia
- Department of Industry, Science and Resources
- Department of Health and Aged Care

Such rankings, which are in terms of percentage compliance at the policy approval or decision-making stage, tell only part of the story. In terms of the overall *volume* of RISs, Communications and Health issues accounted for half of all non-compliance at the decision-making stage. In terms of the *significance* of

proposals for which the Government's requirements were not met, Communications and Health also stand out.

Factors in determining compliance

Compliance is reported on the basis of whether or not a RIS is prepared and is 'adequate' at both the decision-making and tabling stages (although the results above are just for the more important decision-making stage). In assessing adequacy, the ORR applies the principle that the detail and depth of analysis needs to be commensurate with the magnitude of the issue.

Given the very wide range of regulatory proposals developed each year, those assessments are made on a case-by-case basis, typically during interaction between officials and the ORR in the development of individual RISs. The main factors taken into account in determining an appropriate level of analysis are:

- the nature and magnitude of the problem;
- the nature and extent of the options for addressing that problem;
- the size and scope of the impacts of those options;
- the extent to which well-informed decision-making can be based on qualitative information alone, or also some degree of quantitative data; and
- the stage of development of the proposal — whether it is broad strategy, options for implementation, or the detailed regulations needed to put into effect an option previously chosen by the Government.

In applying these tests on a case-by-case basis, the ORR started with a relatively lenient standard in 1997 when the requirements were new. As officials in departments and agencies have become more familiar and experienced with the requirements, it has been necessary to raise the standard progressively in order to attain the Government's objectives for the RIS process.

The Commission is of the view, based on the experience in 1999-2000, that further improvement in the standard of analysis in RISs, and in use of the process more generally, is necessary before the Government's requirements can be fully met. In particular, some departments and agencies have been treating the RIS requirements as an 'add on', undertaken too late to make any useful contribution. They need to embed RIS-type analysis in their policy development processes, especially prior to seeking policy approval from the Government.

1 Compliance with RIS requirements

Overall, regulatory activity and rates of compliance with the Commonwealth Government's RIS requirements in 1999-2000 remained similar to those in 1998-99. The Commonwealth Government made about 2000 regulations in 1999-2000. Roughly 10 per cent of these either had some impact on business or restricted competition and so required a RIS. Overall compliance was 82 per cent at the decision-making stage and 91 per cent at the tabling stage. Compliance with the RIS requirements for legislative Bills increased in 1999-2000 whereas for disallowable instruments it decreased.

This chapter focuses on reporting compliance with the Commonwealth RIS requirements by type of regulation. Also included is a brief overview of compliance with the Council of Australian Governments (COAG) RIS requirements that apply to Ministerial Councils and national standard-setting bodies. Compliance results for individual Commonwealth departments and agencies are provided in chapter 2. The Commission is not obliged to report on the Commonwealth's legislative review program, but an outline of the status of these reviews is presented in appendix A.

1.1 Assessment of compliance

When making its assessment of compliance for those proposals that 'triggered' the Commonwealth RIS requirements, the ORR considers whether:

- a RIS was prepared to inform the decision maker (the policy-approval or decision-making stage);
- the analysis contained in a RIS prepared for the decision maker was adequate;
- a RIS was tabled in Parliament or otherwise made public (the tabling or transparency stage); and
- the analysis contained in a RIS at the tabling stage was adequate.

A portfolio, department or agency is considered to be fully compliant with the requirements only if it meets all the requirements listed above (see box 1.1 for more details on the RIS requirements). However, if a RIS is inadequate at the decision-

making stage, a department or agency has some scope to modify the RIS to improve the standard of analysis before tabling or making it public.

The ORR uses a number of criteria to determine whether the analysis contained in a RIS is adequate (see chapter 3 for details). It has adopted a strategy whereby a relatively low RIS adequacy standard was applied in 1997-98 (the first year in which their preparation was mandatory) and this has been progressively increased as officials become more familiar and experienced with the analytical approach required in RISs.

Box 1.1 **The RIS requirements**

A RIS provides a consistent, systematic and transparent process of assessing alternative policy approaches to problems. It includes an assessment of the impacts of the proposed regulation, and alternatives, on different groups and the community as a whole. The primary role of a RIS is to improve government decision-making processes by ensuring that all relevant information is presented to the decision maker. In addition, after the decision is made, the RIS is tabled in Parliament or may be published elsewhere, providing an open and transparent account of that decision.

Since March 1997, it has been mandatory to prepare a RIS for all reviews of existing regulation, proposed new or amended regulation and proposed treaties involving regulation which will directly or indirectly affect business, or restrict competition. A limited range of exceptions apply (see the Guide, pp. A3–4 for details).

The RIS requirements apply to all government departments, agencies, statutory authorities and boards that review or make regulations, including agencies or boards with administrative or statutory independence.

A RIS should be developed, in consultation with the ORR, once an administrative decision is made that regulation may be necessary, but before a Government or its delegated official makes its policy decision to regulate. After receiving advice from the ORR that a draft RIS complies with the Government's requirements and contains an adequate level of analysis, it should be attached to the proposals to be considered by the decision maker — Cabinet, the Prime Minister, Minister(s) or board.

A RIS should be tabled with explanatory statements/memoranda or (in the case of non-disallowable instruments and quasi-regulation) made public in some other way — for example, on the Internet. In the case of treaties, a RIS is prepared when approval to commence negotiations is sought. It is updated when approval is sought to sign the final text of a treaty, and is made public when the treaty is tabled in Parliament. (The Commonwealth Government must table proposed treaty actions in both Houses of Parliament at least 15 sitting days prior to taking binding action.)

Source: The Guide (ORR 1998, *A Guide to Regulation*).

The Government requires the ORR to monitor compliance with the requirements and the Commission to report annually on the outcome for primary legislation and

other forms of regulation. The ORR has progressively improved its monitoring techniques and record keeping and has been more active in ensuring that departments and agencies prepare RISs for the decision-maker. In 1999-2000, departments and agencies were asked to substantiate any compliance claims that differed from the ORR's records, whereas in the previous year they were often given the benefit of the doubt in cases where compliance records differed.

The ORR assessed around 2000 regulations made by the Commonwealth Government in 1999-2000. Only 207 regulatory proposals introduced via these regulations had an impact on business or restricted competition and therefore required RISs for the decision-making stage (see table 1.1). Departments and agencies prepared 169 RISs of an adequate standard, resulting in a compliance rate of 82 per cent, broadly similar to the outcome for 1998-99.

Table 1.1 **Total RIS compliance, 1998-1999 and 1999-2000**

	1998-1999	*1999-2000*
Decision-making stage	204/260 (78%)	169/207 (82%)
Tabling stage	202/228 (89%)	163/179 (91%)

Source: ORR estimates.

There is typically a difference between the number of proposals requiring a RIS at the decision-making and tabling stages. First, RISs for Bills, disallowable instruments and treaties are required to be tabled; there is no such requirement for the other two types — non-disallowable instruments and quasi-regulation. Second, draft legislation may be altered between decision and tabling to add or delete regulatory proposals. For some proposals, such as emergency airworthiness directives, it is not mandatory to prepare a RIS at the decision-making stage, although it is mandatory to prepare a RIS for tabling in Parliament. Third, the decision may have occurred prior to the introduction of mandatory RIS requirements in 1997, but tabling occurred after that time.

In most cases, a RIS that was considered adequate at the decision-making stage would be adequate for public release. However, departments and agencies sometimes need to change the RIS substantially prior to tabling, particularly if the decision maker selects an option other than the preferred option in the original RIS or if there are new developments affecting the regulatory options and impacts.

On a few occasions, departments and agencies and Ministerial offices have removed information from a RIS between the decision-making and tabling stages. This can be appropriate when material is highly sensitive (for example, commercial-in-

confidence). In other cases, it may affect the adequacy of the tabled RIS. The ORR assesses any RIS altered under such circumstances on a case-by-case basis.

In 1999-2000, 179 regulatory proposals tabled (Bills, disallowable instruments and treaties) required a RIS at the tabling stage. The ORR assessed 163 of those RISs as containing an adequate level of analysis, resulting in a compliance rate of 91 per cent, also similar to the 1998-99 result.

Detailed compliance results by type of regulation are provided in table 1.2.

Table 1.2 **RIS compliance at decision-making and tabling, 1999-2000**

	Decision-making			*Tabling*		
Regulatory proposals introduced via	*prepared*	*adequate*		*prepared*	*adequate*	
	ratio	ratio	%	ratio	ratio	%
Primary legislation (Bills)	65/74	59/74	80	80/80	76/80	95
Disallowable instruments	67/84	62/84	73	82/90	78/90	86
Non-disallowable instruments	21/22	21/22	95	19/22[a]	19/22[a]	86
Quasi-regulation	24/24	24/24	100	21/24[a]	21/24[a]	88
Treaties	3/3	3/3	100	9/9	9/9	100
Total	**180/207**	**169/207**	**82**	**171/179[b]**	**163/179[b]**	**91**

[a] RISs made public. While RISs should be made available to affected groups and individuals, there is no requirement to table or otherwise make public RISs for non-disallowable instruments and quasi-regulations.
[b] Excludes the 46 non-disallowable instruments and quasi-regulations that required a RIS.
Source: ORR estimates.

1.2 Primary legislation

The Commonwealth Government introduced 159 Bills into Parliament in 1999-2000. These Bills included 205 policy proposals (regulatory and non-regulatory in nature). Nearly two thirds of these did not require preparation of a RIS because there was no impact on business or proposed changes satisfied one of several minor exceptions to the RIS process (see the Guide, pp. A3–4).

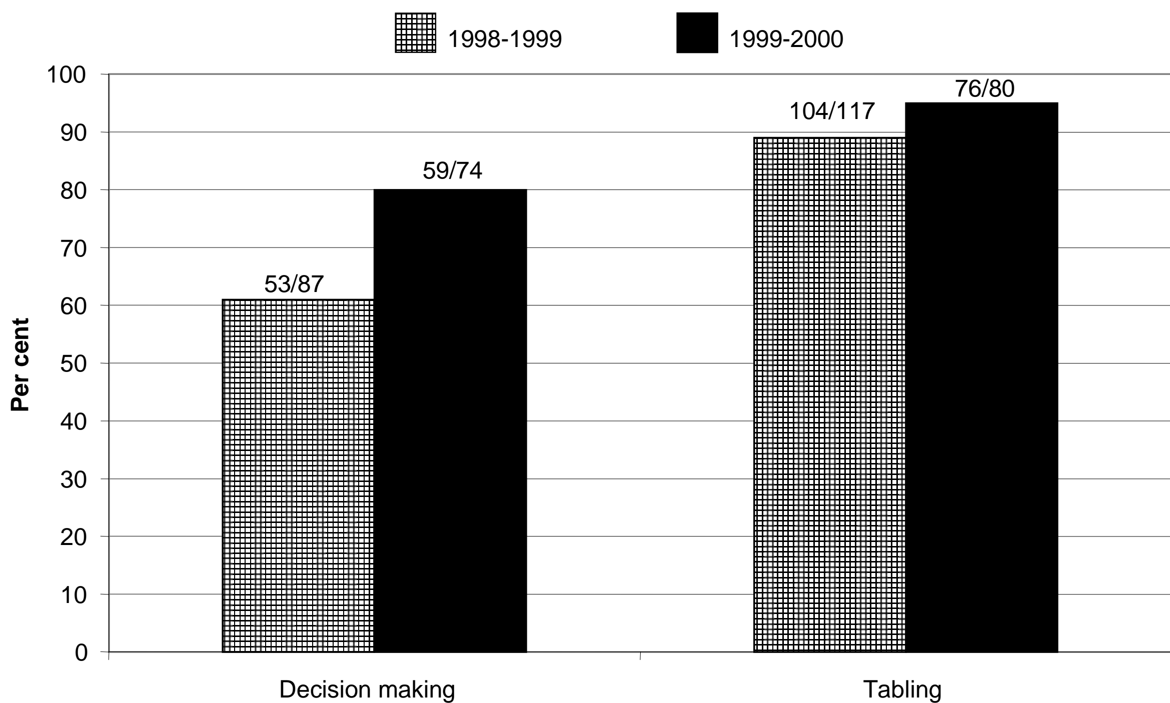
The ORR considered that 80 policy proposals introduced into Parliament via Bills in 1999-2000 required RISs. In 70 cases this was because proposed regulation had a direct impact on business. In six cases it was because the proposal had a significant indirect impact on business. In the remaining four cases the proposals restricted competition.

All but six of these 80 regulatory proposals in Bills required a RIS at the decision-making stage. Of these, the ORR assessed 80 per cent as containing an adequate level of analysis at the decision-making stage, which compares with a compliance

rate of 61 per cent at the same stage in 1998-99 (figure 1.1). Simple comparison of the figures may, however, understate the degree of improvement. In 1999-2000, the ORR applied a higher adequacy standard and was stricter in its compliance monitoring. Nevertheless, some major legislative proposals in 1999-2000 were not accompanied by adequate RISs at the decision-making stage (see chapter 2).

There was also improvement in compliance for proposals that, after the decision, were progressed via Bills tabled in Parliament — from 89 per cent in 1998-99 to 95 per cent in 1999-2000.

Figure 1.1 **RIS compliance for proposals introduced via Bills, 1998-1999 and 1999-2000**



Data source: ORR estimates.

1.3 Delegated legislation

Delegated (or subordinate) legislation comprises all rules or instruments that have the force of law and have been made by an authority to which Parliament has delegated part of its legislative power. It may take the form of:

- disallowable instruments — including statutory rules approved by the Governor-General in Federal Executive Council and instruments made mainly by Ministers or government agencies, which are tabled in Parliament and are

subject to review by the Senate Standing Committee on Regulations and Ordinances (SSCRO); and

- non-disallowable instruments — which include other delegated legislation that is not subject to parliamentary scrutiny and is therefore not disallowable. These instruments may be gazetted and/or tabled.

In 1999-2000, the ORR assessed 1863 regulatory proposals contained in delegated legislation, of which 94 per cent were in disallowable instruments. Of the RISs required for delegated legislation, around 78 per cent were adequate at the decision-making stage.

Disallowable instruments

Based on information obtained from SSCRO (2000, 1999) and information reported by departments and agencies, it is estimated that 1832 Commonwealth disallowable instruments were made and tabled in 1999-2000. Of the 1758 reported to the ORR:

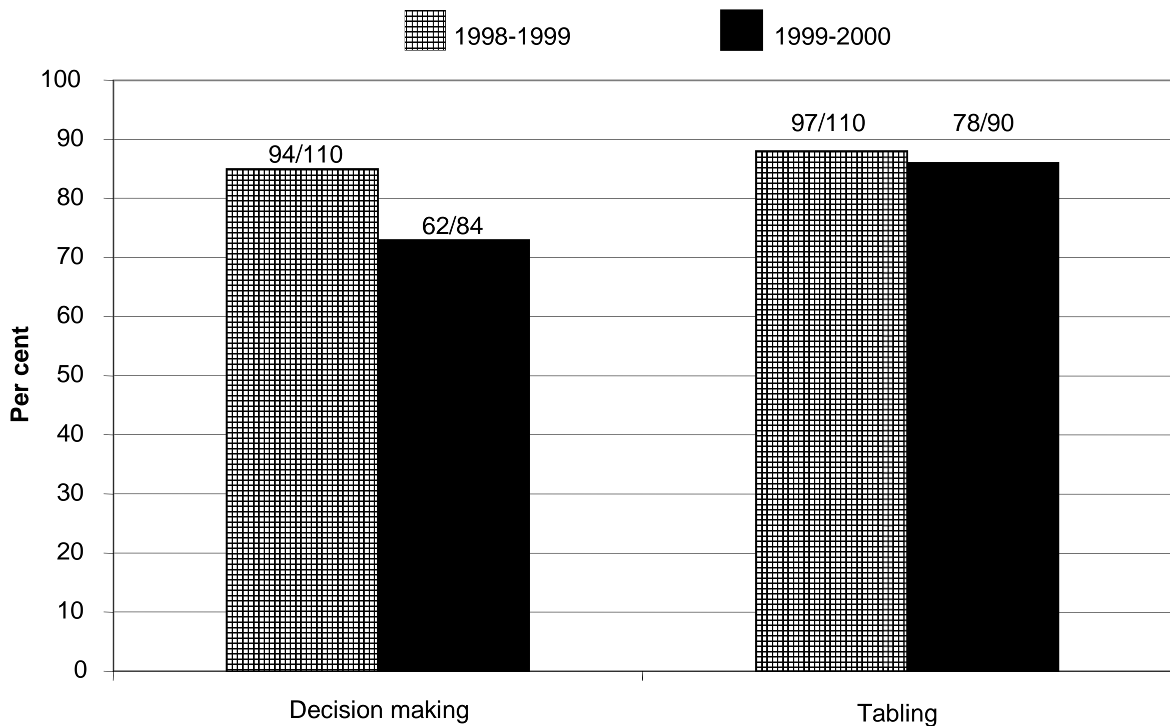
- 591 had no impact on business;
- 1068 affected business, but it was not mandatory to prepare a RIS. A common reason being that the proposals were relatively minor and did not substantially alter existing arrangements; and
- 9 were not assessed.

This left 90 regulatory proposals made and tabled via disallowable instruments that required RISs. This pattern of regulatory activity was similar to last year.

Six regulatory proposals made via disallowable instruments in 1999-2000 did not require a RIS at the decision-making stage. Three related to emergency airworthiness directives issued by the Civil Aviation Safety Authority. Two tax matters were initially assessed by the ORR to be minor, but became more substantial as a result of the decision and therefore required a RIS for tabling. The decision on the other matter ocurred prior to the introduction of mandatory RIS requirements. Of the 84 proposals that required RISs, the ORR assessed 62 to be adequate at the decision-making stage, a compliance rate of 73 per cent (figure 1.2). This is lower than the 85 per cent compliance rate in the previous year. In that year, however, departments and agencies were given the benefit of the doubt in cases where their compliance reports differed from the ORR's records. For 1999-2000, departments and agencies were required to provide documented support in cases where they disagreed with the ORR.

At the tabling stage, 78 proposals were assessed as adequate from a total of 90, resulting in a compliance rate of 86 per cent — this compares with 88 per cent in 1998-99.

Figure 1.2 **RIS compliance for proposal introduced via disallowable instruments, 1998-1999 and 1999-2000**



Data source: ORR estimates.

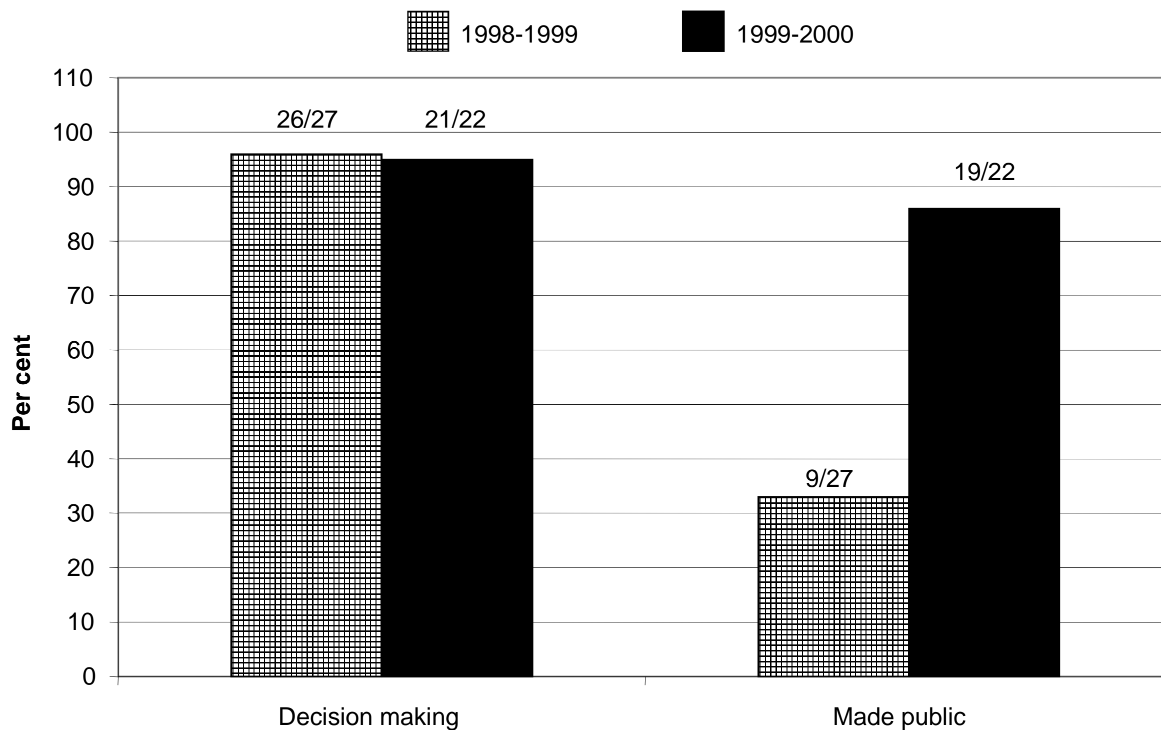
Non-disallowable instruments

The ORR relies largely on self-reporting to estimate the number of non-disallowable instruments made each year. In 1999-2000, departments and agencies reported that 105 regulatory proposals were made via non-disallowable instruments. Of these instruments, 22 triggered the RIS requirements because the impacts directly affected business or had a substantial indirect impact on business. One example is the Prices Exploitation and the New Tax System guidelines, which provide information on when pricing practices allied to introduction of the GST might be regarded as contravening the Trade Practices Act.

In 1999-2000, RISs were prepared for 21 of the 22 regulatory proposals affecting business. All of these were assessed as adequate, giving a compliance result of 95 per cent at the decision-making stage (figure 1.3). This was similar to the compliance result for non-disallowable instruments in the previous two reporting

years. However, 19 of the RISs (or equivalent analysis) prepared in 1999-2000 were subsequently published, which was a significant improvement on previous years.

Figure 1.3 **RIS compliance for proposals introduced via non-disallowable instruments, 1998-1999 and 1999-2000**[a]



[a] In 1999-2000 some RIS, which contained material of commercial-in-confidence nature were not published, but supporting analytical material was made publicly available.

Data source: ORR estimates.

1.4 Quasi-regulation

Quasi-regulation refers to those rules, instruments and standards where government influences businesses to comply, but which do not form part of explicit regulation. The need for a RIS depends on the significance of the proposal and whether formal approval is required for government involvement (eg from a Minister or Board). An example was a policy statement issued by the Australian Securities and Investments Commission concerning offers of securities made over the Internet.

In 1999-2000, departments and agencies reported 79 quasi-regulations — the same level of activity reported in 1998-99 (table 1.3). RISs were required and prepared for 24 of these quasi-regulatory proposals. All were assessed to be adequate and 21 were published.

Table 1.3 **RIS compliance for quasi-regulation, 1997-1998 to 1999-2000**

	1997-1998	*1998-1999*	*1999-2000*
Number of quasi-regulations reported	30	79	79
Number of proposals requiring a RIS	22	35	24
RISs prepared for the decision maker	2	30	24
RISs published	2	29	21
RISs containing an adequate level of analysis	2	30	24

Source: ORR estimates.

1.5 Treaties

Treaty making occurs much less frequently then other forms of regulation. It can be an involved process taking many years. Consequently, the ORR does not report comparative figures on treaties.

In 1999-2000, there were 15 regulatory proposals introduced via treaties reported to the ORR. Nine affected business and required a RIS. In the case of six bilateral tax treaties, the negotiation and decision-making phase was completed prior to the introduction of mandatory RIS requirements. The three remaining treaties were assessed as adequate at the decision-making stage. RISs for all nine treaties were tabled and assessed to be adequate by the ORR.

1.6 National regulation making

Since 1995, Ministerial Councils and national standard-setting bodies have been required to undertake regulatory impact assessment in cases where their decisions could affect the activities of businesses or individuals. In November 1997, the COAG Guidelines were amended to require Ministerial Councils and national standard-setting bodies to provide draft RISs to the ORR for comment before undertaking public consultation. In April 2000, the Guidelines were further revised to make clear that the ORR should also assess the RIS that most closely accords with the version for final decision by the Ministerial Council.

One example of a Ministerial Council decision that required a RIS was that by the Agriculture and Resources Management Council of Australia and New Zealand to adopt the National Beef Cattle Feedlot Environmental Code of Practice. This co-regulatory code comprises comprehensive industry environmental management standards.

In 1999-2000, all 35 regulatory decisions made by Ministerial Councils had a RIS prepared for the decision makers (table 1.4). The ORR assessed those RISs and found one not to be adequate, resulting in a compliance rate of 97 per cent.

Table 1.4 **RIS prepared by Ministerial Councils, 1997-1998 to 1999-2000**

	1997-1998	*1998-1999*	*1999-2000*
Number of proposals requiring a RIS	**na**	28	35
RISs prepared for Ministerial Council decision-making	29	24	35
RISs commented on by the ORR	11	19	28
RISs containing an adequate level of analysis	**na**	19	34

na Data not available.

Source: ORR estimates.

National standard-setting bodies reported to the ORR that they prepared three RISs in 1999-2000. This number excludes the RISs prepared by national standard-setting bodies for decisions subsequently made by Ministerial Councils. Of the RISs prepared, the ORR assessed all as adequate prior to the decision. A further decision during the year by a national standard-setting body required a RIS, but it was not prepared due to lack of awareness of COAG's Guidelines.

2 Compliance by portfolio

In 1999-2000, both among and within portfolios, compliance with the RIS requirements varied significantly. While a substantial number of departments and agencies complied fully, others have some way to go to achieve best practice. Overall, the RIS process is facilitating more open and transparent policy development.

This chapter reports in detail on the 18 departments and agencies that made regulations in 1999-2000, for which RISs were required. It shows the extent to which RISs were prepared and contained an adequate standard of analysis at each of the decision-making and tabling stages. The emphasis is on compliance at the critical decision-making stage. However, for a department or agency to be considered fully compliant with the RIS requirements, it must have met all the requirements at both the decision-making and tabling stages (see chapter 1 for details).

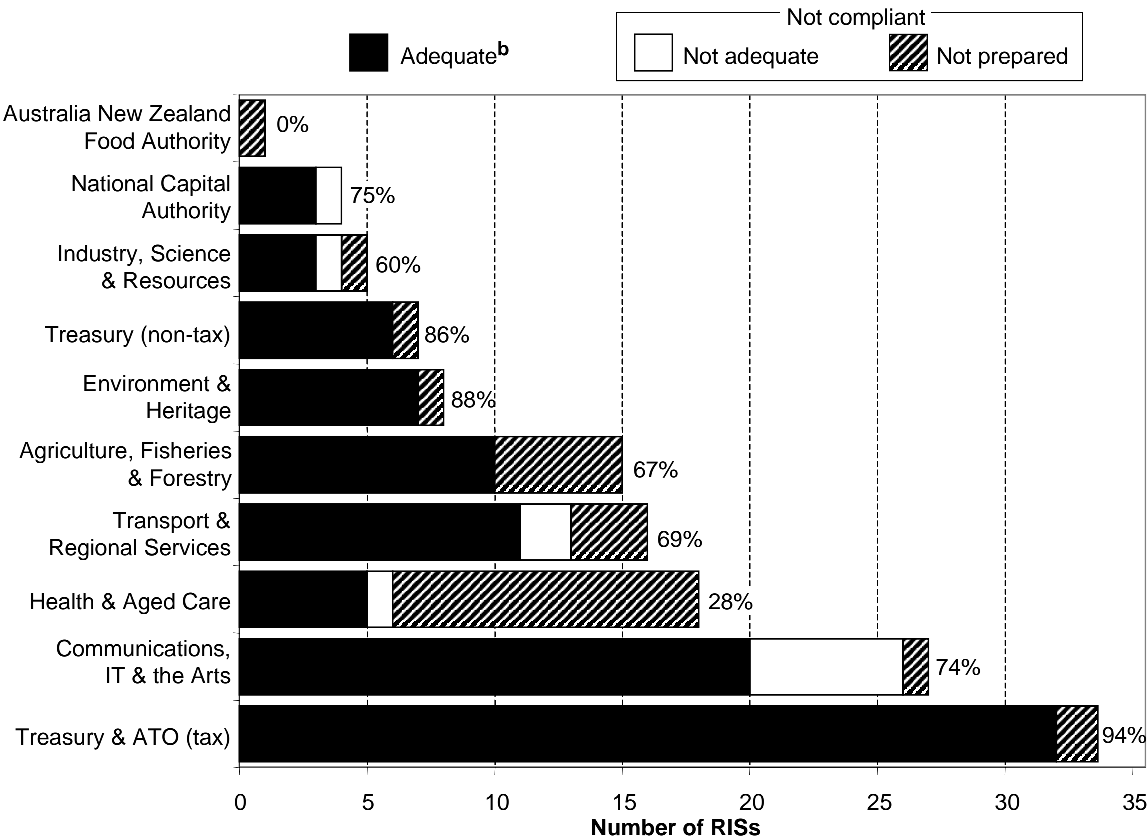
Eight departments and agencies complied with the RIS requirements for all relevant regulatory activity at the decision-making stage. They were:

1. Attorney-General's Department (5 RISs);
2. Department of Immigration and Multicultural Affairs (1 RIS)
3. Department of Employment, Workplace Relations and Small Business (2 RISs);
4. Civil Aviation Safety Authority (5 RISs);
5. Australian Competition and Consumer Commission (1 RIS);
6. Australian Securities and Investments Commission (15 RISs);
7. Australian Broadcasting Authority (15 RISs); and
8. Australian Communications Authority (28 RISs).

The first six departments and agencies fully complied with the requirements. They achieved a compliance rate of 100 per cent on all aspects of the process and for all types of regulation (from primary through to quasi-regulation) at both the decision-making and tabling stages. The remaining two complied with all requirements at the decision-making stage, but did not comply with all aspects of the process at the tabling stage.

The bar chart shows the aggregate results for the other ten departments and agencies that did not fully comply with the RIS requirements for all types of regulatory activity at the decision-making stage (figure 2.1). The total length of each bar indicates the number of RISs a department or agency was required to prepare at the decision-making stage. The black segment shows how many of those RISs were assessed to be adequate. The white and hatched segments show the RISs that were not compliant, either because the ORR assessed the RISs as not adequate or because RISs were not prepared. The compliance rate, as a percentage of the number of RISs required, is shown for each department and agency.

Figure 2.1 **Compliance with RIS requirements at the decision-making stage, 1999-2000[a]**



[a] The figure does not include departments and agencies that fully complied with the RIS requirements at the decision-making stage — ABA, ACCC, ACA, A-Gs, ASIC, CASA, DEWRSB and DIMA. [b] Percentages indicate the compliance rate.

Data source: ORR estimates.

Detailed results for departments and agencies follow, together with brief descriptions of selected RISs to illustrate how the RIS process is working. The examples underline the importance of undertaking analysis in the early phases of the policy process and presenting the decision maker with an informative discussion of possible alternatives. This is particularly important for more significant

regulatory matters. The examples, which include both compliant and non-compliant RISs, also indicate that the RIS process is facilitating more open and transparent policy making.

2.1 Agriculture, Fisheries and Forestry

In 1999-2000, the Department of Agriculture, Fisheries and Forestry — Australia (AFFA) prepared ten of the 15 RISs required at the decision-making stage (table 2.1). The ORR assessed all ten RISs prepared as adequate, resulting in a compliance rate for AFFA of 67 per cent. AFFA complied with the requirements for all instruments at the tabling stage.

Table 2.1 **AFFA: RIS compliance by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	2/2	2/2	2/2	2/2
Disallowable instruments	7/11	7/11	11/11	11/11
Non-disallowable instruments	1/2[a]	1/2[a]	..	..
Quasi-regulation	-	-	..	..
Treaties	-	-	-	-
Total	10/15	10/15	13/13	13/13
Percentage	67%	67%	100%	100%

[a] Policy responsibility for the one RIS that was not prepared resided with the Australian Dairy Corporation. .. Not applicable.

Source: ORR estimates.

One of the five RISs not prepared related to the Meat and Livestock Industry (Lamb Export to the United States of America) Orders 1, 2 and 3. These resulted from a petition filed in late 1998 against Australian and New Zealand lamb imports into the USA. The United States International Trade Commission found that the imports posed a threat of serious injury to the US lamb industry, and recommended remedial action as provided for under the World Trade Organization Agreement on Safeguards. On 7 July 1999, the US Government announced that it would impose a tariff rate quota for three years, scheduled to come into force on 22 July 1999. Due to this short timeframe, a RIS was not prepared until after the Commonwealth Government's decision to establish a quota administration scheme. However, the RIS tabled with the regulations adequately reflected the analysis of options considered by the Government; for example, whether or not quota should be allocated, methods for allocations, who it should be allocated to, and whether any quota should be reserved.

Another RIS prepared by AFFA within a short timeframe that met the Government's best practice requirements at the decision-making stage, was the analysis of Export Meat Amendment Order 1999 (No. 2). This RIS was prepared in the three months following the European Commission's review of Australia's Hormonal Growth Promotant control scheme in 1999. The European Commission advised the Australian Government that Australian beef and buffalo meat would no longer be accepted into the European Union (EU) market, unless there was a major overhaul of the Hormonal Growth Promotant control scheme.

Importantly, the RIS analysed the cost and commercial implications of five options to determine whether or not Australia should make a major overhaul of the scheme to ensure continued access to the EU market. This included the somewhat 'blunt' option of banning Hormonal Growth Promotant in Australia. Applying an identification system to all cattle and buffalo, as preferred by the EU, was considered and rejected for the less costly system of applying it to cattle and buffalo intended for the EU only. Australia offered this latter option in a package of assurances, which the EU accepted.

AFFA also had policy responsibility for RISs on two relatively significant regulatory proposals introduced via Bills (table 2.2). AFFA fully complied with the RIS requirements for these Bills.

Table 2.2 **AFFA: RIS compliance for Bills, 1999-2000**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Fisheries Legislation Amendment Bill (No. 1) 1999				
Decision to ratify UN Fish Stocks Agreement	Yes	Yes	Yes	Yes
Dairy Industry Adjustment Bill 2000 and associated excise, customs and general Levy Bills				
Dairy Industry Adjustment Program, which provides for dairy structural adjustment payments and dairy exit payments	Yes	Yes	Yes	Yes
Total	2/2	2/2	2/2	2/2
Percentage	100%	100%	100%	100%

Source: ORR estimates.

2.2 Attorney-General's

In 1999-2000, Attorney-General's Department (A-Gs) fully complied with the RIS requirements for the five RISs it was required to prepare. It achieved a compliance rate of 100 per cent at both the decision-making and tabling stages (table 2.3).

Table 2.3 **A-Gs: RIS compliance for Bills, 1999-2000**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 1999				
To ban X-rated videos and introduce NVE classification	Yes	Yes	Yes	Yes
To restrict content of X-rated videos				
Copyright Amendment (Digital Agenda) Bill 1999				
To establish a legal framework to protect copyright material in the online environment	Yes	Yes	Yes	Yes
Family Law Amendment Bill 1999				
To compel couples getting divorced to obtain independent financial or legal advice when making financial agreements	Yes	Yes	Yes	Yes
Family Law Legislation Amendment (Superannuation) Bill 2000				
To enable superannuation to be taken into account in the division of property on breakdown of a marriage	Yes	Yes	Yes	Yes
Privacy Amendment (Private Sector) Bill 2000				
To implement the 'National Principles for the Fair Handling of Personal Information' which set minimum standards for collection, use, disclosure and secure storage of personal information.	Yes	Yes	Yes	Yes
Total	5/5	5/5	5/5	5/5
Percentage	100%	100%	100%	100%

Source: ORR estimates.

All A-Gs RISs were of a good quality, including the analysis of the Privacy Amendment (Private Sector) Bill 2000. This Bill was introduced following a review

of the privacy protection provided to the private sector by self-regulatory voluntary codes. The RIS examined three options:

- retaining voluntary codes;
- extending public sector rules to the private sector; and
- the preferred option, registering privacy codes developed by industry in accordance with new national privacy principles or relying on the principles where codes are not developed.

The RIS sought to balance key issues in the examination of the options including consumer certainty and protection and the potential to create barriers to trade. The relative merits of individual States or Territories implementing privacy legislation in favour of a nationally (and internationally) consistent approach were also thoroughly examined. While the analysis in the RIS was largely qualitative, compliance costs were considered. For example, the RIS proposed exemptions to the standards in cases where the compliance burden imposed on small businesses was likely to be disproportionately high and not commensurate with the likely benefits from privacy protection.

2.3 Communications, Information Technology and the Arts

The Communications, Information Technology and the Arts portfolio includes the Department, the Australian Broadcasting Authority (ABA) and the Australian Communications Authority (ACA).

Department of Communications, Information Technology and the Arts

In 1999-2000, the Department of Communications, Information Technology and the Arts (DoCITA) prepared 26 of the 27 RISs required at the decision-making stage (table 2.4). The ORR assessed the RISs prepared and found six not to be adequate, resulting in a compliance rate for DoCITA of 74 per cent. DoCITA’s compliance rate was 96 per cent at the tabling stage.

Table 2.4 **DoCITA: RIS compliance by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	10/10	5/10	10/10	10/10
Disallowable instruments	11/12	10/12	11/12	11/12
Non-disallowable instruments	3/3	3/3	..	..
Quasi-regulation	-	-	..	..
Treaties	2/2	2/2	2/2	2/2
Total	26/27	20/27	23/24	23/24
Percentage	96%	74%	96%	96%

.. Not applicable.

Source: ORR estimates.

Among the RISs assessed by the ORR as not adequate at the decision-making stage were RISs on five significant proposals under the Broadcasting Services Amendment (Digital TV and Datacasting) Bill 2000 — see table 2.5. These proposals set down specific regulatory arrangements for digital TV, ready for its commencement in 2001. Two of the issues — in particular the regulation of datacasting and enhanced programming, and the regulation of the transmission of HDTV and standard digital television (SDTV) — involved regulation controlling standards, the timing of services and the technology to be used. While the Department had drafted material and consulted with the ORR, it did not allow enough time to develop RISs containing a sufficient level of analysis on these important matters.

Table 2.5 DoCITA: RIS compliance for Bills, 1999-2000

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Broadcasting Services Amendment Bill (No. 3) 1999				
To regulate Australian content on subscription television	Yes	Yes	Yes	Yes
To ensure Australian content requirements are consistent with the CER Agreement with NZ	Yes	Yes	Yes	Yes
Postal Services Legislation Amendment Bill 2000				
To reduce the scope of the postal services reserved to Australia Post	Yes	Yes	Yes	Yes
To establish an access regime for the postal industry	Yes	Yes	Yes	Yes
Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000				
Datacasting Charge (Imposition) Amendment Bill 2000				
To regulate datacasting and enhanced programming	Yes	No	Yes	Yes
To regulate the transmission of SDTV and HDTV	Yes	No	Yes	Yes
To mandate a standard for captioning of digital and analogue television programs	Yes	No	Yes	Yes
To encourage the provision of new services in underserved regional licence areas	Yes	No	Yes	Yes
To allow the ABA to determine which surplus broadcasting channels broadcasters hand back at the end of the simulcast period	Yes	No	Yes	Yes
Telecommunications (Consumer Protection and Service Standards) Amendment Bills (Nos 1-2) 2000				
Telecommunications (Universal Service Levy) Amendment Bill 2000				
To reform the telecommunications universal service obligation	Yes	Yes	Yes	Yes
Total	10/10	5/10	10/10	10/10
Percentage	100%	50%	100%	100%

Source: ORR estimates.

Australian Broadcasting Authority

In 1999-2000, the Australian Broadcasting Authority (ABA) prepared all 15 RISs required at the decision-making stage, resulting in a 100 per cent compliance rate (table 2.6). One RIS was, inadvertently, not tabled in Parliament, but was made public via the ABA website.

Table 2.6 **ABA: RIS compliance by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	-	-	-	-
Disallowable instruments	1/1	1/1	0/1	0/1
Non-disallowable instruments	11/11	11/11	..	..
Quasi-regulation	3/3	3/3	..	..
Treaties	-	-	-	-
Total	15/15	15/15	0/1	0/1
Percentage	100%	100%	0%	0%

.. Not applicable.

Source: ORR estimates.

Australian Communications Authority

In 1999-2000, the Australian Communications Authority (ACA) prepared all 28 RISs required at the decision-making stage. The ORR assessed these to be adequate, resulting in a 100 per cent compliance rate (table 2.7). Four RISs were not tabled in Parliament with the regulations. The ACA stated that this was an oversight.

Table 2.7 **ACA: RIS compliance by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	-	-	-	-
Disallowable instruments	20/20	20/20	16/20	16/20
Non-disallowable instruments	4/4	4/4	..	..
Quasi-regulation	4/4	4/4	..	..
Treaties	-	-	-	-
Total	28/28	28/28	16/20	16/20
Percentage	100%	100%	80%	80%

.. Not applicable.

Source: ORR estimates.

2.5 Employment, Workplace Relations and Small Business

In 1999-2000, the Department of Employment, Workplace Relations and Small Business (DEWRSB) prepared the two RISs required, which were found to be adequate at both the decision-making and tabling stages (table 2.8). It fully complied with the requirements.

Table 2.8 **DEWRSB: RIS compliance for Bills, 1999-2000**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Coal Mining Legislation Amendment (Oakdale Collieries) Bill 1999				
To meet all outstanding entitlements of the employees of Oakdale Collieries Pty Ltd	Yes	Yes	Yes	Yes
Equal Opportunity for Women in the Workplace Amendment Bill 1999				
To streamline the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* to promote equal opportunity while minimising compliance costs for business	Yes	Yes	Yes	Yes
Total	2/2	2/2	2/2	2/2
Percentage	100%	100%	100%	100%

Source: ORR estimates.

2.6 Environment and Heritage

In 1999-2000, the Department of Environment and Heritage (DEH) prepared seven of the eight RISs required at the decision-making stage (table 2.9). The ORR judged the RISs prepared to be adequate, resulting in a compliance rate for DEH of 88 per cent at the decision-making stage.

The ORR was not consulted until after policy approval was obtained for the Great Barrier Reef Region (Prohibition of Mining) Regulations 1999. This proposal largely formalised existing arrangements, so that the potential impact of the proposal was small. A RIS was prepared for tabling, which the ORR assessed as adequate. The Department was compliant at the tabling stage.

Table 2.9 **DEH: RIS compliance by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	2/2	2/2	2/2	2/2
Disallowable instruments	3/4	3/4	4/4	4/4
Non-disallowable instruments	1/1	1/1	..	..
Quasi-regulation	1/1	1/1	..	..
Treaties	-	-	-	-
Total	7/8	7/8	6/6	6/6
Percentage	88%	88%	100%	100%

.. Not applicable.

Source: ORR estimates.

The RIS process helped improve the analysis of some contentious environmental issues. For example, one RIS prepared by DEH was for a measure announced in November 1997, in the Prime Minister's statement *Safeguarding the Future: Australia's Response to Climate Change*. It foreshadowed a legal requirement for electricity retailers and other large electricity buyers to obtain an additional two per cent of their electricity purchases from renewable or specified waste-product energy sources by 2010. They currently obtain around 11 per cent of their purchases from renewable sources.

The proposal, introduced via the Renewable Energy (Electricity) Bills, is expected to lead to increased investment in the renewables sector and reduced greenhouse gas emissions of around 7 million tonnes each year (table 2.10). But it may increase the price of electricity in the short to medium term.

The Department prepared a RIS for final policy approval, which the ORR assessed to be adequate. This RIS was subsequently tabled in Parliament.

Table 2.10 **DEH: RIS compliance for Bills, 1999-2000**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Product Stewardship (Oil) Bill 2000 and associated customs and consequential Amendments Bills				
To ensure environmentally sustainable management and re-refining of waste oil and its re-use	Yes	Yes	Yes	Yes
Renewable Energy (Electricity) Bill 2000				
Renewable Energy (Electricity) (Charge) Bill 2000				
To introduce a mandatory target for the uptake of renewable energy by electricity suppliers	Yes	Yes	Yes	Yes
Total	2/2	2/2	2/2	2/2
Percentage	100%	100%	100%	100%

Source: ORR estimates.

2.7 Health and Aged Care

The Department and the Australia New Zealand Food Authority within the Health and Aged Care portfolio were required to prepare 19 RISs in 1999-2000.

Department of Health and Aged Care

In 1999-2000, the Department of Health and Aged Care (DHAC) prepared only six of the 18 RISs required at the decision-making stage (table 2.11). The ORR assessed the RISs prepared and found one not to be adequate, resulting in a compliance rate for DHAC of 28 per cent at the decision-making stage. At the tabling stage, 13 of the 16 RISs prepared were assessed to be of an adequate standard.

Table 2.11 **DHAC: RIS compliance by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	4/10	4/10	10/10	8/10
Disallowable instruments	2/8	1/8	6/8	5/8
Non-disallowable instruments	-	-	..	..
Quasi-regulation	-	-	..	..
Treaties	-	-	-	-
Total	6/18	5/18	16/18	13/18
Percentage	33%	28%	89%	72%

.. Not applicable.

Source: ORR estimates.

Compliance details for the 10 regulatory proposals that were in Bills are provided in table 2.12. The Department failed to prepare RISs for the decision-maker for six Bills.

It did work with the ORR on a draft RIS relating to the Gene Technology Bill, but could not get it to an adequate standard. The RIS on the Gene Technology (Consequential Amendments) Bill was assessed to be adequate by the ORR, but was not provided to the decision-maker.

Apart from the issue of whether RISs are of an adequate standard, it is important that they be prepared in sufficient time for the analysis to contribute effectively to well-informed decisions. In the case of the National Health Amendment Bill (No. 1) 2000 implementing the Third Community Pharmacy Agreement — which sets out negotiated provisions applying to pharmacy services under the Pharmaceutical Benefits Scheme, including controls on the opening of new pharmacies and where they can be situated — the four RISs were not ready until the Government had made its final decision to accept the Agreement.

Table 2.12 **DHAC: RIS compliance for Bills, 1999-2000**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Health Legislation Amendment Bill (No. 4) 1999				
To set new accreditation arrangements for pathology specimen collection centres	No	No	Yes	Yes
Taxation Laws Amendment Bill (No. 6) 2000				
To alter the Medicare Levy Surcharge exemptions	No	No	Yes	Yes
Health Legislation Amendment (Gap Cover Schemes) Bill 2000				
To enable registered health benefits organisations to provide no gap and/or known gap private health insurance without the need for contracts	No	No	Yes	Yes
Health Legislation Amendment Bill (No. 3) 2000				
To allow private health industry to fund outreach services as a substitute for in-hospital care	No	No	Yes	Yes
National Health Amendment Bill (No. 1) 2000				
Third Community Pharmacy Agreement				
- Pharmacy Remuneration	Yes	Yes	Yes	No
- Pharmacy Location and Entry Controls	Yes	Yes	Yes	Yes
- Pharmacy Quality Assurance and Infrastructure	Yes	Yes	Yes	Yes
- Rural Access to Pharmacy and Specialised Service Measures	Yes	Yes	Yes	Yes
Gene Technology Bill 2000				
To establish a Gene Technology Regulator responsible for overseeing GMOs in Australia	No	No	Yes	No
Gene Technology (Consequential Amendments) Bill 2000				
To ensure access to advice on genetic safety	No	No	Yes	Yes
Total	4/10	4/10	10/10	8/10
Percentage	40%	40%	100%	80%

Source: ORR estimates.

Australia New Zealand Food Authority

The Australia New Zealand Food Authority (ANZFA) was required to prepare one RIS on the National Food Authority Amendment Regulations 2000 (No. 1) Statutory Rules 2000 No. 122, which prescribes various charges for the processing of applications. While ANZFA had commenced preparing a RIS, it was not completed in time for the RIS to accompany the proposal to the decision maker. Thus, ANZFA did not comply with the RIS requirements at the decision-making stage (see figure 2.1). An adequate RIS was included in the Explanatory Statement tabled for these regulations.

2.8 Immigration and Multicultural Affairs

The Department of Immigration and Multicultural Affairs (DIMA) fully complied with the best practice requirements for the Migration Legislation Amendment (Migration Agents) Bill 1999, which was the only Bill it introduced into Parliament in 1999-2000 that required a RIS. Tabled with it was an example of a good quality RIS. This is one of a set of examples that has been made available on the ORR web site (see appendix D for details). The proposal resulted from a review of the statutory self-regulation scheme for migration agents and considered issues with a view to moving the industry to a voluntary scheme.

The RIS provided a clear explanation of the problem that led to the regulatory arrangements under review and the role for government. It discussed the objectives of the original scheme and examined the impacts of the options of moving to a voluntary self-regulatory approach or retaining the statutory scheme. The review had found that statutory self-regulation had achieved its main objective of maintaining and improving consumer protection and ethical standards, but identified some problems with the conduct of a small segment of the migration advice industry. While data were somewhat limited because the scheme had operated for only a little over a year, the evidence indicated that compliance costs did not unduly restrict entry to the industry or adversely affect competition. The review and RIS recommended the existing regulatory framework be extended for three years and enhanced, including in relation to standards of professional conduct and complaints handling and registration procedures. The Government has accepted this and agreed to conduct another review prior to the expiration of the legislation. This is expected to allow sufficient time for the industry to mature and for data to be collected for a more comprehensive assessment.

2.9 Industry, Science and Resources

In 1999-2000, the Department of Industry, Science and Resources (DISR) prepared four of the five RISs required at the decision-making stage (tables 2.12-2.13). The ORR assessed the RISs prepared and found one not to be adequate, resulting in a compliance rate for DISR of 60 per cent. DISR's compliance rate was 100 per cent at the tabling stage.

Table 2.13 **DISR: RIS compliance by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
*Regulatory proposals introduced vi*a	*prepared*	*adequate*	*prepared*	*adequate*
Bills	4/4	3/4	4/4	4/4
Disallowable instruments	0/1	0/1	2/2	2/2
Non-disallowable instruments	-	-	..	..
Quasi-regulation	-	-	..	..
Treaties	-	-	-	-
Total	4/5	3/5	6/6	6/6
Percentage	80%	60%	100%	100%

.. Not applicable.
Source: ORR estimates.

Table 2.14 **DISR: RIS compliance for Bills, 1999-2000**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Pooled Development Funds Amendment Bill 1999				
To make the PDF program more effective and PDF investments more commercially attractive	Yes	Yes	Yes	Yes
Tradex Scheme Bill 1999 including the Customs , Excise and General Amendment Bills				
To allow for the duty-free entry of goods that are subsequently exported or are incorporated in goods that are subsequently exported	Yes	No	Yes	Yes
Patents Amendment (Innovation Patents) Bill 2000				
To repeal the petty patent system and introduce an 'innovation' patent system	Yes	Yes	Yes	Yes
Customs Tariff Amendment Bill (No. 3) 2000				
To remove nuisance tariffs	Yes	Yes	Yes	Yes
Total	4/4	3/4	4/4	4/4
Percentage	100%	75%	100%	100%

Source: ORR estimates.

2.10 Transport and Regional Services

Within the Transport and Regional Services portfolio, the Department, the Civil Aviation Safety Authority (CASA) and the National Capital Authority (NCA) were required to prepare 25 RISs at the decision-making stage.

In addition, the Australian Maritime Safety Authority (AMSA) made nine Marine Orders in 1999-2000 and prepared eight RISs. These RISs were not assessed due to a misunderstanding between AMSA and the ORR. Consequently, AMSA's compliance results are excluded from this year's report.

Department of Transport and Regional Services

In 1999-2000, the Department of Transport and Regional Services (DTRS) prepared 13 of the 16 RISs required at the decision-making stage (tables 2.14-2.15). The ORR found two of those RISs not to be adequate, resulting in a compliance rate for DTRS of 69 per cent. DTRS tabled 16 RISs, one of which the ORR assessed as not adequate.

Table 2.15 **DTRS: RIS compliance by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	6/7	6/7	7/7	7/7
Disallowable instruments	6/8	4/8	8/8	7/8
Non-disallowable instruments	-	-	..	..
Quasi-regulation	-	-	..	..
Treaties	1/1	1/1	1/1	1/1
Total	13/16	11/16	16/16	15/16
Percentage	81%	69%	100%	94%

.. Not applicable.

Source: ORR estimates.

One RIS, which failed the adequacy test at both the decision-making and tabling stages, related to the Customs (Prohibited Imports) Amendment Regulations 1999 (No. 9). This proposal implemented one of the tax reform measures announced in *Measures for a Better Environment* released in 1999. It would have prevented the importation of second-hand diesel engines designed for use in road vehicles unless the engines complied with the current Australian motor vehicle emission standards. Similar restrictions were not placed on the sale of engines sourced locally.

The Department had worked cooperatively with the ORR to improve the analysis in the RIS and to ensure that issues were discussed in a transparent manner. At the end of the process the ORR, while advising that the quality of the analysis was good, assessed the RIS not to be adequate because it could not satisfy the *Competition Principles Agreement* requirements that:

- the benefits of the restriction outweighed the costs; and
- the Government's objective could only be achieved by restricting competition.

The proposed regulations proved contentious and ultimately were disallowed in both the House of Representatives and the Senate. The Government has indicated its intention to 'introduce a more appropriate regulation … which meets the environmental objectives of the regulation whilst reducing the unintended impacts on industry' (Australia, Senate 2000, p. 15220).

One example of a RIS that met the Government's best practice requirements, prepared by the Department jointly with Treasury, related to the Trade Practices (International Liner Cargo Shipping) Amendment Bill. This Bill implemented the Government's response to the Productivity Commission review under the *Competition Principles Agreement* of Part X of the *Trade Practices Act 1974* (TPA).

Part X is an industry-specific, legislated industry code which exempts liner shipping conferences from some general provisions of the TPA, provided they meet certain obligations to Australian exporters and do not misuse any market power. The Commission found that the existing regulatory approach had promoted the national interest because Part X allows coordination efficiencies in conference arrangements, while letting competition from non-conference lines and the countervailing power of Australian exporters constrain their potential market power. The Government accepted the Commission's threshold recommendation to retain Part X, with some relatively minor amendments, but also proposed a number of other changes to improve the application of competition policy to international liner shipping.

The RIS provided an appropriate level of analysis of the impacts of the proposals, including the costs and benefits of those additional changes that were not included in the Commission's recommendations. It represents a good example of how the RIS process should work and how it can add value when examining an issue that has been the subject of an extensive public inquiry. See appendix D for information on how this and other RISs can be obtained.

Table 2.16 **DTRS: RIS compliance for Bills,1999-2000**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Road Transport Charges (Australian Capital Territory) Amendment Bill 2000				
To implement updated nationally consistent heavy vehicle registration charges in the ACT	Yes	Yes	Yes	Yes
Interstate Road Transport Charge Amendment Bill 2000				
Interstate Road Transport Amendment Bill 2000				
To implement updated nationally consistent heavy vehicle registration charges	Yes	Yes	Yes	Yes
Aviation Legislation Amendment Bill (No. 1) 2000				
To relax the restrictions on foreign airline holdings to the limit that might be reasonably permitted by Australia's bilateral partners	Yes	Yes	Yes	Yes
Aviation Legislation Amendment Bill (No. 2) 2000				
To create a head of power to develop and promulgate future maintenance rules	Yes	Yes	Yes	Yes
To give CASA power to accept written undertakings from people in relation to compliance with CASR	Yes	Yes	Yes	Yes
Trade Practices (International Liner Cargo Shipping) Amendment Bill[a]				
To amend Part X of the *Trade Practices Act 1974*	Yes	Yes	Yes	Yes
Protection of the Sea (Civil Liability) Amendment Bill 2000				
To require ships of 400 gross tons or more entering or leaving Australian ports to have insurance to cover the costs of a clean-up resulting from the spillage of bunker fuel or other oil	No	No	Yes	Yes
Total	6/7	6/7	7/7	7/7
Percentage	86%	86%	100%	100%

a At the decision-making stage, Treasury also shared responsibility for the proposal.

Source: ORR estimates.

Civil Aviation Safety Authority

CASA fully complied with the RIS requirements at both the decision-making and tabling stages (table 2.16). At the decision-making stage, it was required to prepare five RISs. An additional three were required for tabling. These related to emergency issues, for which exceptions from the RIS requirements apply at the decision-making stage. One example was an Airworthiness Directive that imposed stricter fuel requirements on certain aircraft flying to remote islands, following incidents where pilots had to make emergency landings because of insufficient fuel.

It should also be noted that CASA tabled about nine other proposals relating to emergency safety issues in 1999-2000. For example, seven disallowable instruments were tabled that dealt with the fuel contamination crisis. CASA is in the process of preparing RISs for those regulations. They will be included in CASA's compliance report for 2000-01 when the RIS process has been completed.

Table 2.17 **CASA: RIS compliance by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	-	-	-	-
Disallowable instruments[a]	4/4	4/4	7/7	7/7
Non-disallowable instruments	-	-	..	..
Quasi-regulation	1/1	1/1	..	..
Treaties	-	-	-	-
Total	5/5	5/5	7/7	7/7
Percentage	100%	100%	100%	100%

[a] Three regulatory proposals were subject to an emergency exception at the decision-making stage. .. Not applicable.

Source: ORR estimates.

National Capital Authority

In 1999-2000, the NCA prepared the four RISs that were required. The ORR assessed one not to be adequate, at both the decision-making and tabling stages, resulting in a compliance rate for the NCA of 75 per cent.

2.11 Treasury

The Treasury portfolio includes the Department, the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investments Commission (ASIC) and the Australian Tax Office (ATO). For taxation matters, policy responsibility is shared between the ATO and the Treasury.

Department of the Treasury — non-tax regulations

For non-tax matters, Treasury prepared six of the seven RISs required in 1999-2000 (tables 2.17 and 2.18). The ORR assessed the RISs prepared to be adequate, resulting in a compliance rate of 86 per cent. An additional RIS was later prepared for tabling, which the ORR assessed to be adequate, making Treasury compliant with the RIS requirements on non-tax matters at this stage.

Table 2.18 **Treasury: RIS compliance for non-tax matters, by type of regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	4/4	4/4	4/4	4/4
Disallowable instruments	2/3	2/3	3/3	3/3
Non-disallowable instruments	-	-	..	..
Quasi-regulation	-	-	..	..
Treaties	-	-	-	-
Total	6/7	6/7	7/7	7/7
Percentage	86%	86%	100%	100%

.. Not applicable.

Source: ORR estimates.

Table 2.19 **RIS compliance for non-tax Bills for the Department of the Treasury**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Choice of Superannuation Funds (Consumer Protection) Bill 1999				
To introduce consumer protection initiatives for the life insurance industry	Yes	Yes	Yes	Yes
Superannuation Legislation Amendment Bill (No. 4) 1999				
To determine the way small super funds invest in arm's length commercial arrangements	Yes	Yes	Yes	Yes
Financial Sector Legislation Amendment Bill (No. 1) 2000				
To allow the Treasurer to attach conditions when granting his or her consent for banks and related bodies to restructure their balance sheets, merge or takeover another business	Yes	Yes	Yes	Yes
Trade Practices Amendment Bill (No. 1) 2000				
To improve the enforcement aspects of the regulatory regime and address shortcomings in present legal remedies	Yes	Yes	Yes	Yes
Total	4/4	4/4	4/4	4/4
Percentage	100%	100%	100%	100%

Source: ORR estimates.

Australian Competition and Consumer Commission

The ACCC made one set of guidelines in 1999-2000, to prevent price exploitation during the introduction of the GST, for which a RIS was required. The ORR assessed the RIS prepared to be adequate at the decision-making stage and suitable for publication. The ACCC was accordingly fully compliant with the Government's RIS requirements.

Australian Securities and Investments Commission

ASIC made 15 quasi-regulations in 1999-2000 that required a RIS. The ORR assessed the 15 RISs prepared as adequate at the decision-making stage and suitable for publication. ASIC was accordingly fully compliant with the Government's RIS requirements.

Treasury and the Australian Taxation Office — taxation regulations

Taxation proposals fall under the joint responsibility of the Department of the Treasury and the ATO. In 1999-2000, tax RISs were prepared for 32 of the 34 required at the decision-making stage, resulting in a compliance rate of 94 per cent (table 2.20). Fourteen additional RISs were required at the tabling stage, for two main reasons:

- six of the proposals had been set out in quite precise terms in the Government's 1998 *Plan for a New Tax System* (Treasurer 1998), thereby becoming specific election commitments. In establishing the RIS requirements in 1997, the Government excluded such specific commitments. While these six proposals thus have been excluded from the total at the decision stage, RISs were prepared when the relevant Bills were tabled; and
- Australia had decided to enter into six treaties prior to the RIS requirements becoming mandatory, and they were tabled with RISs in 1999-2000.

At the tabling stage, 48 RISs were prepared and the ORR assessed three not to be adequate, resulting in a compliance rate of 94 per cent.

Table 2.20 **Treasury and ATO: RIS compliance by type of taxation regulation, 1999-2000**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	25/27	25/27	33/33	31/33
Disallowable instruments	7/7	7/7	9/9	8/9
Non-disallowable instruments	-	-	..	..
Quasi regulation	-	-	..	..
Treaties[a,b]	-	-	6/6	6/6
Total	32/34	32/34	48/48	45/48
Percentage	94%	94%	100%	94%

[a] Treaty negotiations and decision making occurred prior to the RIS requirements becoming mandatory. [b] The Bills implementing these treaties are listed in table 2.21, but have been excluded from the Bills total in order to avoid double-counting. **..** Not applicable.

Source: ORR estimates.

Because of the limited scope of taxation RISs — essentially, they examine only the implementation options for attaining a specified policy objective — the main value comes from analysis of the likely impacts. Consequently, the ORR places considerable importance on having detailed and objective analysis which includes, if possible, quantification of the effects of tax proposals.

The need for such analysis to facilitate good outcomes is not confined to the decision-making stage, but extends importantly to the tabling stage. In 1999-2000, there were two tax measures for which adequate RISs were prepared for the decision stage, but for which the tabled versions were not adequate (see table 2.21).

A good example of a tax RIS, in terms of demonstrating an appropriate level of analysis, was the one prepared for a New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No. 3). These regulations reversed an unintended adverse cash flow impact from the original GST legislation for businesses purchasing imported goods. Importers would have been required to pay GST when they took possession of the goods rather than at the time of payment, as would typically occur when goods are bought domestically. This anomaly was corrected by permitting certain importers to defer GST for a period.

The RIS was of a high standard. Most aspects of the impacts, including the impact on particular groups, were quantified. Those aspects that were not quantified were described in adequate detail to explain the relative importance of the costs.

Table 2.21 **Treasury and ATO: RIS compliance for taxation Bills, 1999-2000**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
A New Tax System (Tax Administration) Bill 1999				
To introduce generic collection and recovery rules for tax related liabilities and charges	a	a	Yes	Yes
To endorse deductible gift recipients and tax exempt charities	a	a	Yes	Yes
To administer Business Activity Statement obligations	Yes	Yes	Yes	Yes
A New Tax System (Tax Administration) Bill (No. 2) 1999				
To establish FBT instalments	a	a	Yes	Yes
International Tax Agreement Amendment Bill 1999[b]				
To establish a Double Tax Agreement with South Africa	..	..	..	..
To amend a Protocol to the Double Tax Agreement with Malaysia	..	..	..	..
To establish a Double Tax Agreement with the Slovak Republic	..	..	..	..
To establish a Double Tax Agreement with Argentina	..	..	..	..
New Business Tax System (Capital Allowances) Bill 1999				
To remove depreciable assets from the CGT Regime and to replace accelerated depreciation with effective life depreciation	Yes	Yes	Yes	No
New Business Tax System (Capital Gains Tax) Bill 1999				
- To provide small business relief from CGT and establish other CGT measures	Yes	Yes	Yes	Yes

Continued on the next page

[a] These measures were specific elements or integral parts of the ANTS (A New Tax System) proposal made public just prior to the 1998 election. Because they were specific election commitments (see The Guide, p. A4), they were not subject to the RIS requirements at the decision stage. [b] These Bills are the result of international treaties, for which RISs were prepared, and have been excluded from the Bills total to avoid double-counting (see table 2.20). **..** Not applicable.

Table 2.21 **(continued)**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
New Business Tax System (Integrity and Other Measures) Bill 1999 **New Business Tax System (Former Subsidiary Tax Imposition) Bill 1999**				
To introduce various integrity measures such as: - disposal of leases and leased plant; - value shifting through debt forgiveness; - preventing a deduction and a capital loss arising from a single economic loss; - transfer of losses within wholly-owned groups of companies	Yes	Yes	Yes	No
To reform Capital Gains Tax by: - limiting indexation of cost bases; - extending concessions to individuals and some other entities	Yes	Yes	Yes	Yes
New Business Tax System (Income Tax Rates) Bill (No. 2) 1999				
To remove Capital Gains Tax averaging	Yes	Yes	Yes	Yes
New Business Tax System (Miscellaneous) Bill 1999				
New Business Tax System (Venture Capital Deficit Tax) Bill 1999				
To convert franking rebates into imputation credits and remove the inter-corporate dividend rebate on unfranked dividends To exempt capital gains on venture capital investments made by pooled development funds exempt from tax	Yes	Yes	Yes	Yes
Customs Tariff Amendment Bill (No. 1) 2000 **Excise Tariff Amendment Bill (No. 1) 2000**				
To introduce 'per stick' customs duties on tobacco	a	a	Yes	Yes
Taxation Laws Amendment Bill (No. 10) 1999				
To confine the amount of capital expenditure which is allowable as a deduction	Yes	Yes	Yes	Yes
A New Tax System (Fringe Benefits) Bill 2000				
To enhance the fairness of the taxation system through various amendments to FBT and its interaction with GST.	a	a	Yes	Yes

Continued on the next page

Table 2.25 **(continued)**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
International Tax Agreements Amendment Bill (No. 1) 2000[b]				
To establish a Double Tax Agreement with Romania	..	..	..	..
To amend the Protocol to the Double Tax Agreement with Finland	..	..	..	..
New Business Tax System (Alienation of Personal Services Income) Bill 2000 including Tax Imposition Bills Nos 1-2				
To address the threat posed to the tax base by the alienation of personal services income	Yes	Yes	Yes	Yes
New Business Tax System (Integrity Measures) Bill 2000				
To limit the extent to which non-commercial losses can be used to reduce other income	Yes	Yes	Yes	Yes
To target investors in tax shelter schemes by preventing immediate deductions for work to be carried out over the next 13 months	Yes	Yes	Yes	Yes
New Business Tax System (Miscellaneous) Bill (No. 2) 2000				
To prevent multiple recognition of losses by a company	Yes	Yes	Yes	Yes
To broaden the tax base for life insurers	Yes	Yes	Yes	Yes
To amend the imputation system to take account of PAYG instalments and to amend the imputation treatment of life assurance companies	Yes	Yes	Yes	Yes
To amend the CGT cost base adjustment provisions applying to capital payments made to a beneficiary for an interest in a trust	Yes	Yes	Yes	Yes
To introduce a general anti-avoidance rule for the PAYG system	Yes	Yes	Yes	Yes
Taxation Laws Amendment Bill (No. 5) 2000				
To introduce an alternative method (public offer price) for determining the market value of shares acquired by employees	Yes	Yes	Yes	Yes

Continued on the next page

Table 2.25 **(continued)**

Bill Title	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Sales Tax (Customs) (Industrial Safety Equipment) Bill 2000 and related customs, excise and transitional provisions Bills				
To clarify the sales tax exemptions on 'industrial safety equipment'.	No	No	Yes	Yes
Indirect Tax Legislation Amendment Bill 2000				
– To provide an exemption from Wine Equalisation Tax (WET) payable for cellar door and mail order sales	Yes	Yes	Yes	Yes
– GST treatment of supplies (of goods & services) involving non-residents	Yes	Yes	Yes	Yes
– GST arrangements for financial supplies	Yes	Yes	Yes	Yes
– GST treatment option for agents	Yes	Yes	Yes	Yes
– Definition of gambling turnover for GST purposes	Yes	Yes	Yes	Yes
– Transitional GST arrangements for alcoholic beverages held on 30 June 2000	Yes	Yes	Yes	Yes
A New Tax System (Tax Administration) Bill (No. 2) 2000				
To introduce a uniform administrative penalty regime	Yes	Yes	Yes	Yes
To allow for the provision of BAS services by people other than registered tax agents	No	No	Yes	Yes
Excise Amendment (Compliance Improvement) Bill 2000				
To change compliance arrangements for tobacco excise regime	a	a	Yes	Yes
Taxation Laws Amendment Bill (No. 7) 2000				
To simplify how beneficiaries of trusts determine investment income	Yes	Yes	Yes	Yes
Total	25/27	25/27	33/33	31/33
Percentage	93%	93%	100%	94%

[a] These measures were specific elements or integral parts of the ANTS (A New Tax System) proposal made public just prior to the 1998 election. Because they were specific election commitments (see The Guide, p. A4), they were not subject to the RIS requirements at the decision stage. [b] These Bills are the result of international treaties, for which RISs were prepared, and have been excluded from the Bills total to avoid double-counting (see table 2.20). **..** Not applicable.

Source: ORR estimates.

3 Adequacy and quality of regulation impact statements

The question of whether an agency has complied with the Government's requirements often depends on whether the RIS was of an adequate standard. This chapter sets out some key factors in how the Office of Regulation Review makes such assessments. It also points to areas needing attention by some departments and agencies if they are to meet the Government's requirements.

The Prime Minister's March 1997 statement *More Time for Business* specified that 'the ORR will be responsible for examining and advising on compliance with the regulation impact statement requirements and whether the level of analysis is adequate' (p. 67). Further, the Government requested the Productivity Commission to report annually on compliance.

3.1 Adequacy criteria

What basis does the ORR have for assessing whether RISs are of an 'adequate' standard? Are there any objective criteria that help guide officials as to the range and depth of analysis that would be appropriate?

Based on the experience of assisting in the development of hundreds of RISs over recent years, the ORR is of the view that an assessment of adequacy is best done on a case-by-case basis. A principal reason for this is the wide range, in both nature and scope, of different regulatory proposals, as the following examples reveal.

- Australian Competition and Consumer Commission's guidelines *Price Exploitation and the New Tax System* — these guidelines, published in July 1999 and revised in March 2000, provided general principles and information on when pricing practices allied to the introduction of the GST might be regarded as contravening the Trade Practices Act.
- Permission for health funds to offer loyalty bonus schemes — this removed a restriction on how these (mostly) private sector funds treat their customers.
- Radio licence area plan for Nowra — takes account of local physical conditions, population and other relevant matters in order to plan best use of the available radio frequency spectrum.

- Privacy Amendment (Private Sector) Bill 2000 — sets out minimum standards on how private sector organisations should collect, secure, use and disclose personal information.

Such diverse regulatory proposals are not amenable to tightly defined assessment criteria. Consequently, in practice, RISs are assessed on a case-by-case basis against the general adequacy criteria set out in box 3.1.

Box 3.1 **Adequacy criteria for regulation impact statements (RISs)**

1. Is it clearly stated in the RIS what is the fundamental problem being addressed? Is a case made for why government action is needed?
2. Is there a clear articulation of the objectives, outcomes, goals or targets sought by government action?
3. Is a range of viable options assessed including, as appropriate, non-regulatory options?
4. Are the groups in the community likely to be affected identified, and the impacts on them specified? There must be explicit assessment of the impact on small businesses, where appropriate. Both costs and benefits for each viable option must be set out, making use of quantitative information where possible.
5. What was the form of consultation? Have the views of those consulted been articulated, including substantial disagreements. If no consultation was undertaken, why not?
6. Is there a clear statement as to which is the preferred option and why?
7. Is information provided on how the preferred option would be implemented, and on the review arrangements after it has been in place for some time?

Relevant to all seven criteria (which correspond to the seven sections of a RIS) is an overriding requirement that the degree of detail and depth of analysis must be commensurate with the magnitude of the problem and with the size of the potential impact of the proposals.

Finally, for proposals which maintain or establish restrictions on competition (such as barriers to entry for new businesses or restrictions on the quality of goods and services available), it must be established that:

- the benefits to the community outweigh the costs; and
- the Government's objective can be achieved only by restricting competition;

both of which are requirements under the *Competition Principles Agreement*.

Source: The Guide.

Those criteria are essentially a checklist of each of the seven elements of a RIS. While the third criterion, for example, asks if a range of viable options has been assessed, questions remain as to how wide the range of options should be, and what depth of analysis is required. Similar questions apply to the other criteria. Thus, this

chapter discusses the common underlying issue of what is an adequate level of analysis overall in a RIS for any regulatory proposal.

Before a RIS reaches the stage of finally being assessed against adequacy criteria, the ORR typically would have provided advice on several occasions. When a department or agency initially approaches the ORR seeking advice as to whether a RIS is necessary, some guidance is provided as to any particular issues requiring attention. The ORR comments in detail on the first draft RIS provided, and an iterative process proceeds. The officials responsible for preparing the RIS are given every opportunity to comply with the Government's requirements.

3.2 Analysis commensurate with the issue

The key to assessing adequacy resides with the simple principle, specified in box 3.1, that the detail and depth of analysis needs to be commensurate with the magnitude of both the problem and of the potential impact of the proposal for addressing it. (Indeed, the Government does not require those regulatory proposals having only minor effects on business to be subject to the RIS processes.)

An important first step, therefore, is a clear articulation of the nature and magnitude of the problem. Knowing how many people or businesses would be affected, how often, and to what extent provides a useful indication both of the type of regulation (such as flexible, in-principle regulation or prescriptive law) that might be most suitable and the degree of analysis that would be appropriate in the RIS.

That may not be possible in some cases. For example, the ACCC pricing guidelines for introduction of the GST were aimed at preventing a perceived or potential problem — price exploitation — so that only a broad indication of the magnitude of the potential problem could be given.

Proposed regulatory approaches differ substantially in the extent to which they intervene in markets and affect individuals' behaviour. The most restrictive are bans on participating in certain activities, and controls over entering into various markets. Such interventions, which tend to have substantial, long-term, structural effects, must meet particularly demanding requirements under the *Competition Principles Agreement* (see box 3.1). Thus, a higher standard of adequacy applies to such proposals than for other less interventionist options.

Another group of proposals for which a relatively high standard of RIS would be appropriate are those that establish an entirely new regulatory regime. Some recent examples include the introduction of the GST, regulation of digital television and of internet services, the imposition of privacy information safeguards, and the

regulation of gene technology. Many such areas are characterised by rapid growth based on new technology so that inappropriate regulation could be particularly harmful — a good quality RIS would assist in a balanced choice between limited government control and extracting the maximum benefits for the community from these developments.

Many regulatory proposals are more benign, consisting of relatively minor amendments to existing regulations, often to streamline them or improve their targeting, and low-key influences on how businesses should operate. In cases where the potential impact of such regulation tends to be relatively small, the standard of RISs is adjusted accordingly.

Further, when gauging the adequacy of a RIS, the ORR takes into account the magnitude and scope of the impacts that a regulatory proposal might have. For example, in May 2000 the Australian Securities and Investments Commission issued a policy statement on minor changes to the regulation of time-sharing schemes for which the impact would be relatively small and narrowly based. In contrast, the Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000 has potentially large impacts on the broadcasting industry, on internet service providers and on the community. Clearly, the larger the impact, the greater degree of analysis that regulatory options should undergo.

Thus, the three key indicators used by the ORR in gauging an appropriate standard of RIS adequacy are:

- the nature and magnitude of the problem being addressed;
- the nature and extent of the viable options for addressing the problem; and
- the size and scope of the impacts of those options.

The ORR has been conducting trials in ranking RISs based on combinations of those indicators and has allocated each 1999-2000 measure to one of four rankings. The highest rank relates to substantial regulatory measures with wide and significant impacts. The lowest rank consists of measures that are relatively benign in nature and have quite narrowly based or small impacts. A tentative distribution of the regulatory measures made in 1999-2000, among these four levels, shows that relatively few measures warrant the highest level of analysis (see table 3.1).

Table 3.1 **Number of RISs ranked by significance**

Ranking of economic and/or social significance	*Number of RISs*
A – highly significant	9
B – significant	25
C – moderately significant	90
D – low significance	83
Total	**207**

Source: ORR estimates.

An examination of the compliance rates for these groupings is revealing. Taking Ranks A and B together, non-compliance at the decision-making stage was 26 per cent. This was nine percentage points higher than for C and D together.

The relatively high failure to comply for significant proposals may reflect the ORR having set higher RIS standards for them (as explained above). But it also applied more resources to assist with the development of those RISs and encouraged the responsible agencies to do the same, with the overall objective of ensuring compliance.

A key contributing factor in non-compliance, suggested by the examples discussed in chapter 2, is the general tendency for departments and agencies to draft a RIS too late in the evolution of policy. Indeed, in some cases the RIS has been treated as an 'add on', rather than being embedded in the policy development process. This is evident when a RIS is drafted just before the formal decision-making stage rather than earlier when the substantial policy development occurred. For the more significant issues in terms of economic impact, which also tend to be the most complex, insufficient time before decision can make development of an adequate RIS problematic, regardless of the effort made. For simpler issues, such time constraints can be more readily managed.

The ORR will continue to advise departments and agencies as early as possible in cases where it ranks regulatory proposals as highly significant. This helps both the ORR and the agencies to better allocate staff and analytical resources, and provides a timely indication of an appropriate standard of analysis.

3.3 Use of quantitative analysis

One criticism that can be made of RISs cleared as adequate by the ORR is that they contain insufficient quantitative information in support of the preferred option. Criterion 4 in box 3.1 specifies that 'costs and benefits for each viable option must

be set out, making use of quantitative information where possible'. The purpose of this section is to outline the factors taken into account by the ORR in making judgements about how much quantitative analysis in necessary for the RIS to be deemed adequate. There is no doubt that the information content of many RISs could be considerably improved if better use were made of basic statistics about the size of the problem and the extent to which the proposal is likely to rectify it. There is also scope for more useful, quantitative comparisons of the costs and benefits of each option.

The ORR's experience is that for a significant proportion of RISs little quantitative information is needed to assist decision making. This is primarily because the nature of the problem and the allied proposal are, in many cases, not amenable to statistical or numerical analysis. Examples include:

- the Family Law Amendment Bill 1999 which compels couples being divorced to obtain independent financial or legal advice when making financial agreements;
- the International Tax Agreement Bill 1999 which covers double taxation agreements between Australia and each of South Africa, Malaysia, Argentina and the Slovak Republic; and
- the Electronic Transactions Bill 1999, the objective of which was to remove impediments in the law in order to facilitate the development of e-commerce.

For issues such as these, it is generally sufficient for the RIS to set out the extent to which different groups will be affected, in general qualitative terms. The RIS tabled in Parliament for the last of these examples presents a quite convincing case without any quantitative data. (It can be accessed on the ORR's website — see appendix D.)

In contrast, some regulatory proposals lend themselves to useful quantitative analysis. Such examples are often characterised by the regulation of tangible, physical attributes for which there are readily available data. Examples of such RISs tabled in Parliament during 1999-2000 were:

- the Fisheries Legislation Amendment Bill (No. 1) 1999; and
- the Renewable Energy (Electricity) Bill 2000.

The first of these concerns the long-term conservation and sustainable use of straddling fish stocks and highly migratory species through cooperative regulation of high seas fishing. Such fish stocks and species are of particular interest to the Australian fishing industry as current over-fishing on the 'high seas' reduces catches within Australia's 200 mile exclusive economic zone. This RIS provided a qualitative assessment of four different options which pointed to a preferred option for which quite comprehensive costs estimates, allocated to both government and the fishing industry, were then documented.

The second example was a Commonwealth initiative to reduce greenhouse gas emissions through increasing, by the year 2010, from 10.5 per cent to 12.5 per cent the share of Australian electricity generation from renewable means (hydro electricity, wind generators, solar forms etc). This RIS draws on a wide range of engineering and cost data to estimate the capital and generating costs of the proposal, and the estimated contribution to Australia's greenhouse gas reduction targets. Proper quantitative assessment of such environmental proposals is essential to ensure that they are implemented on a sound basis. This RIS also can be accessed on the ORR's website.

There is a general principle that the effectiveness of a regulatory change should be reviewed some years after it has been in place. Quantitative estimates of its impact, made at the time it was proposed, can provide an important input to such an assessment.

While the ORR promotes the use of quantitative analysis, it recognises that in many cases it would not assist the decision-making process, or simply cannot be done because essential data are not available. Even in cases where quantitative analysis has the potential to enhance the overall assessment, it can also have some dangers.

Firstly, there is an inherent asymmetry in quantitative information because it tends to be more readily available for costs than for benefits. The previous example of increasing the share of electricity generated by renewable sources illustrates the point. The capital and generation costs of wind and solar power can be estimated, but the savings are mainly in terms of reductions in greenhouse gas emissions and there are considerable differences of opinion as to how they should be valued. Another example to illustrate the asymmetry is the introduction of Australian Business Numbers, which is an essential part of the GST. While the initial compliance costs to businesses and government of obtaining an Australian Business Number could be estimated, the benefits to business are long-term in nature and quite diffuse. The problem then lies in having to compare an explicit dollar cost estimate with qualitative descriptions of the benefits; such comparisons tend to put undue emphasis on the costs.

A second danger in placing too much reliance on quantitative estimates in RISs is the scope for 'cooking the books'. The ORR has seen instances where early drafts of RISs contain estimates which imply substantial net costs for certain proposals, but subsequent drafts show signs that cost and benefit assumptions and calculations have been 're-engineered' to demonstrate that the proposals confer a net benefit. For complex proposals with long-term implications, it is often problematical to gauge the reliability of the estimates.

In summary, the ORR judges on a case-by-case basis how much quantitative information is appropriate in each RIS. Statistics must be used judiciously. That said, there is considerable reticence by many agencies to make use of available quantitative information when it would be appropriate to do so.

3.4 Other factors affecting the quality of RISs

Raising the adequacy hurdle

The RIS requirements were made mandatory in 1997. The ORR has provided training and worked continuously with agencies to assist them in meeting these obligations. While a relatively lenient approach was appropriate when the requirements were new, it has been necessary to raise the standard over time to ensure that the Government's objectives for the RIS process are more fully met. Thus, what might have been adequate in 1997 might not be so in the year 2000. It follows that, by gradually raising the hurdle in this way, the results for any year (as summarised in chapter 1) are not strictly comparable with those for other years.

The ORR judges that the quality of RISs overall could, and should, be improved further.

Different stages of policy development

The RIS process mirrors an 'ideal' policy development process where options are carefully analysed and compared, and is best suited to a single readily identifiable time and context where a policy decision is made. In practice, policy often evolves by stages. At first a range of broad strategic approaches to a problem might be assessed, that process being assisted by preparation of a RIS. When a policy decision is made on strategy, fairly specific approaches may then be weighed up, again drawing on the RIS framework. A later, third, stage of policy development may well compare detailed implementation options. Clearly, the degree of detail and analysis appropriate in three such RISs will depend on which stage of the policy development process is being addressed. The last (detailed) RIS in isolation may appear to be of inadequate quality, but a proper assessment in the wider context may lead to a different conclusion. Box 3.2 provides an example.

Box 3.2 Assessing a RIS in a wider context

The New Business Tax System (Capital Gains Tax) Bill 1999 provides some relief on CGT for small businesses and implements other CGT reforms. The measures in this Bill are just some of those resulting from the wide-ranging Ralph review of business taxation. The review included a comprehensive consultation program on options for reforming business taxes. Four substantial papers were published, including *A Platform for Consultation* (840 pages) and *Reforming Australia's Business Taxation* (809 pages).

The RIS tabled with this Bill was of only five pages. It provides cross-references to relevant parts of the comprehensive published documents that together covered all the essential features of a RIS — problem, objective, options, consultation etc. Against that background, the ORR assessed the RIS as having satisfied the adequacy standards.

Regulation also is often incremental in nature, with modifications being made to improve or refine existing law. If the regulatory base is fundamentally flawed, a RIS analysing minor changes may be judged adequate simply because the proposal would be an improvement, even though it may well be far from the best possible outcome. In such cases, the RIS process imposes quality control on the change, not on the existing law. It is important, therefore, that governments occasionally institute complete reviews of related sections of existing law, as the Commonwealth undertook with corporations law in recent years, and that such reviews utilise a systematic framework such as that provided in a RIS.

RISs prepared too late

A key obstacle faced by the ORR in ensuring that RISs are of an adequate standard, is that the responsible department or agency prepares the RIS too late, and/or consults with the ORR too late, in the policy development process. For example, on numerous occasions during 1999-2000, officials contacted the ORR for the first time, seeking advice as to whether or not a RIS needed to be prepared, when a Cabinet submission had already been drafted. In such situations, the RIS becomes no more than a rationalisation for the preferred option, in contrast to its intended role of setting out an even-handed description and assessment of all the viable options and their likely impacts in order to inform decision makers. In these cases, the RIS process as a whole is not utilised as was intended, even though the RIS document may meet the adequacy requirements.

Sometimes RISs are prepared so close to the deadline for a decision that the responsible officials do not have time to remedy any inadequacies. For less important regulatory proposals, rather than impede decision-making, the ORR may draw attention to those inadequate aspects in, for example, its comments to Cabinet.

Analytical capabilities

The quality of RISs can reflect the fact that departments and regulatory agencies sometimes do not assign sufficiently skilled staff to prepare RISs. The ORR assists by training staff and providing advice and detailed feedback as agencies prepare particular RISs. That is not always successful because Commonwealth officials making regulations have widely different backgrounds in fields such as engineering, environmental sciences, food nutrition, pharmaceutical chemistry and the law. Some officials have experienced difficulty working with the analytical processes embodied in a RIS, though they typically are highly skilled in their own fields. In particular, the identification and assessment of the likely costs and benefits of different regulatory options have posed problems.

Consultants are sometimes engaged to assist officials with the analytical content of RISs. While that can work well, in the ORR's view the quality of some of this work is doubtful and sometimes it is not vetted adequately by the responsible officials. Importantly, reliance on consultants does little to address the important objective of *embedding* RIS-type analysis into agencies' policy development processes.

The RIS process amounts to little more than formalising and documenting sound policy development practices. The related analytical skills constitute core competencies for the staff of any department or agency involved in developing and implementing regulatory options. It may be that compliance for some could be improved by addressing these skills issues.

3.5 Conclusion

The ORR's task is to assist departments and agencies in the preparation of RISs of an adequate standard, in order to better inform decision making and to provide public and transparent accounts of factors underlying the decisions.

In carrying out this task, the ORR applies a cost-effectiveness approach of obtaining simple, brief RIS analysis for less significant issues, and progressively more comprehensive analysis for more substantial proposals. What is 'adequate', therefore, differs between proposals. The ORR provides guidance to agencies on a case-by-case basis, supplemented by selected examples of RISs for a range of different regulatory issues now available on its website (see appendix D).

The standard of adequacy has been steadily increased over time as officials have become more experienced with the process. Further improvement seems appropriate in order to fully meet the Government's requirements, particularly for major regulatory proposals with wide-ranging implications.

Some departments and agencies still need to embody RIS-type analysis into their existing policy development processes, and to do so earlier. This is the best way of ensuring that the Government's requirements will be met.

A Commonwealth legislation reviews

1999-2000 was to have been the final year of the national four-year program of review of existing legislation agreed to in 1995 by COAG as part of the *Competition Principles Agreement* (CPA)[1]. Under the CPA, all governments made a commitment to review and reform legislation that restricts competition, by the end of 2000[2]. The Commonwealth's legislative review program is broader than required by the CPA. In addition to legislation which potentially restricts competition, it includes legislation that may impose costs or confer benefits on business.

The ORR provides guidance to departments and regulatory agencies on appropriate terms of reference and the composition of review bodies in relation to reviews under the Commonwealth legislation review program. The Government requires the ORR to advise the Minister for Financial Services and Regulation and the responsible portfolio Minister as to whether terms of reference meet the CPA requirements and the Commonwealth's legislation review requirements.

Allowing for variations made to the Commonwealth's schedule of reviews, the ORR cleared terms of reference for 15 of the 24 reviews that were to have commenced in 1999-2000. All terms of reference cleared met relevant CPA and Commonwealth legislation review requirements.

A.1 Status of reviews

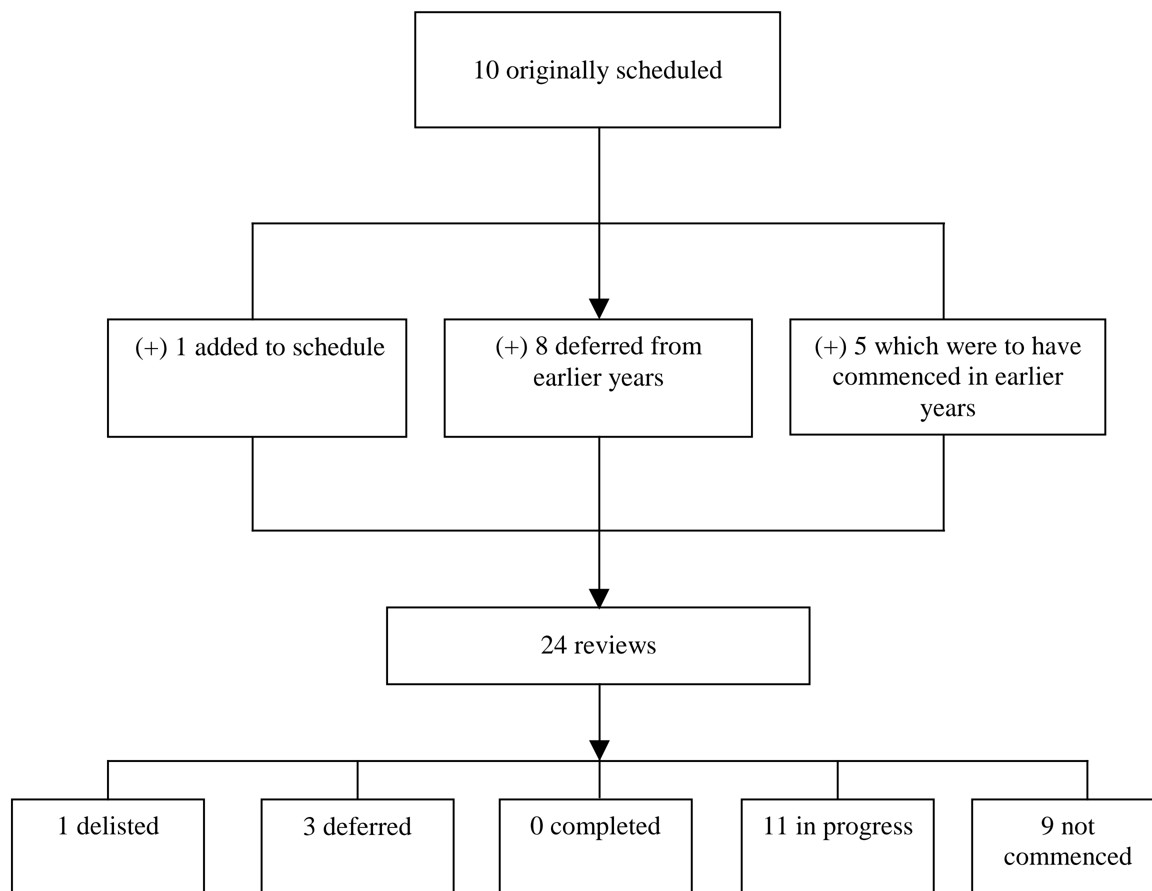
Figure A.1 provides an overview of the status of reviews. It shows that some ten reviews were originally scheduled to commence during the year, but a number of approved variations were made, adding 14 reviews to the schedule for commencement in 1999-2000.

The ORR cleared terms of reference for 15 of the 24 reviews scheduled, although at 30 June 2000 only 11 of these reviews were in progress and none had been completed.

[1] *Regulation and its Review 1996-97* (IC 1997) detailed the origins of the review program and preparation of the Commonwealth's Legislation Review Schedule.

[2] COAG, at its meeting on 3 November 2000, decided that this deadline would be extended to 30 June 2002.

Figure A.1 **Status of 1999-2000 Commonwealth legislative reviews**



As illustrated in figure A.1, three reviews were deferred and one, the review of the access provisions of the *Moomba-Sydney Pipeline System Sales Act 1994*, was delisted. Nine reviews did not commence as scheduled and the appropriate approval for delay had not been sought before 30 June 2000. These reviews are indicated with a cross in the first two columns of table A.1.

A.2 Clearance of terms of reference

Officials responsible for reviews are to consult with the ORR on the terms of reference at least three months prior to the commencement of the review to allow sufficient time to resolve any concerns. This occurred for 11 of the 15 reviews for which the ORR cleared terms of reference. While consultation occurred later than desirable for the remaining four reviews, satisfactory terms of reference were developed. The three month consultation period has contributed to good outcomes (see table A.1).

Adequacy of terms of reference

The terms of reference must:

- recognise the guiding principle under the CPA; and
- have an analytical framework centred around cost-benefit analysis, such as provided by the RIS guidelines or clause 5(9) of the CPA.

Other desirable features in terms of reference include mention of the intention to publish a report, reporting dates for review bodies and processes for a response by government.

In most cases, the ORR's template terms of reference (see PC 1999, p. 49) was used. Where the template was not used, or where the guiding principle was not specifically recognised, the terms of reference noted that the CPA requirements would need to be met.

A reporting date or period was included in all 15 of the terms of reference cleared in 1999-2000. Fourteen included a government response process and an intention to make the report publicly available.

A.3 Composition of review bodies

While the ORR does not have a formal clearance role on the composition of review bodies, it is often consulted by departments.

In setting up the Legislation Review Schedule, the Government identified eight types of review modality, ranging from an independent committee for major reviews to an intradepartmental committee for minor reviews. The Government acknowledged that it would not be cost effective to expect the same standard of review for all legislation.

For 1999-2000 reviews, there were some changes to the review body from that originally specified by Government; however, in all cases the Government approved of the variation.

Table A.1 **Status of reviews for 1999-2000 and terms of reference cleared**

Review	Review preparation					
	Review commenced as scheduled	*Review in progress at 30 June 2000*	*ORR consulted 3 months prior to start*	*ToR met CPA and LRS require-ments*	*Review body as specified in LRS*	*TOR included reporting date or period*
42 Review of market based reforms & the Spectrum Management Agency	×	×	×	✓	✓	✓
49 *Anti-dumping Authority Act 1988* & *Customs Act 1901* Pt XVB & *Customs Tariff (Anti-dumping) Act 1975*	×	×				
60 Export Control Unprocessed Wood Regulations under the *Export Control Act 1982*	✓	✓	✓	✓	✓	✓
63 Superannuation Acts	×	×	✓	✓	✓	✓
66 *Insurance (Agents and Brokers) Act 1984*	Deferral approved					
69 *Financial Transactions Reports Act 1988* & Regulations	(×)	✓	✓	✓	✓	✓
74 *Hazardous Waste (Regulation of Imports & Exports) Act 1989*, Hazardous Waste (Regulations of Imports & Exports) Amendment Bill 1995	✓	✓	✓	✓	✓	✓
75b Food Standards Code	×	✓	×	✓	✓[a]	✓
76 *Export Finance & Insurance Corporation Act 1991& Export Finance & Insurance Corporation (Transitional Provisions & Consequential Amendments) Act 1991*	Deferral approved					
80 Dried Vine Fruit Legislation	Deferral to 2nd half of 1999-2000 approved					
87 *Prices Surveillance Act 1983*	✓	✓	✓	✓	✓	✓
89 *Defence Act 1903* (Army and Airforce Canteen Services Regulations)	×	×				

Continued on the next page

Table A.1 **(continued)**

Review	Review preparation					
	Review commenced as scheduled	*Review in progress at 30 June 2000*	*ORR consulted 3 months prior to start*	*ToR met CPA and LRS require-ments*	*Review body as specified in LRS*	*TOR included reporting date or period*
90 *Ozone Protection Act 1989 & Ozone Protection (Amendment) Act 1995*	✓	✓	✓	✓	✓	✓
91 *Home and Community Care Act 1985*	×	×				
92 *Petroleum (Submerged Lands) Act 1967*	✓	✓	✓	✓	✓	✓
93 *Wheat Marketing Act 1989*	✓	✓	✓	✓	✓	✓
94 *Native Title Act 1993 &* regulations	×	×				
95 Part IIIA (access regime) of the *Trade Practices Act 1974* (including exemptions)	×	×	✓	✓	✓	✓
96 Part 6 (access provisions) of the *Moomba-Sydney Pipeline System Sales Act 1994*	Delisted					
97 2D exemptions (local government activities) of the *Trade Practices Act 1974*	×	×	✓	✓	✓	✓
98 Fees charged under the *Trade Practices Act 1974*	✓	(✓)	✓	✓	✓	✓
99 *Health Insurance Act 1973* Part IIA	×	✓	×	✓	✓	✓
100 *Marine Insurance Act 1989*	✓	✓	×	✓	✓	✓
101 *Disability Discrimination Act 1992*	×[b]	×				

The symbols used generally have the following interpretation. ✓ Affirmative. (✓) Question not able to be fully answered in the affirmative, but the outcome generally satisfied the requirements. (×) Negative to a very limited extent and/or the outcome largely failed to satisfy the requirements. × Negative. [a] The review modality was, in consultation with the ORR and the Treasury, changed to a consultant overseen by an interdepartmental steering committee. [b] Informal discussions about deferring the review until 2000-01 have taken place, but, at 30 June 2000, A-Gs had not sought formal approval for the delay.

B ORR activities and performance

The Office of Regulation Review is located within the Productivity Commission and reports to its Chairman. The Office has significant autonomy, with its activities being quite separate from the other activities of the Commission.

The objective of the ORR's regulation review activities is to promote processes that, from an economywide perspective, improve the effectiveness and efficiency of legislation and regulations developed and administered by Commonwealth departments and regulatory agencies. The ORR aims to assess RISs and undertake associated activities to a high standard, with advice that is timely and useful to government.

This appendix briefly outlines activities undertaken by the ORR in 1999-2000 and then discusses its performance in terms of quality, timeliness and usefulness.

B.1 Activities in 1999-2000

The range of activities that the ORR is required to undertake is set down in its charter. Ranked in order of priority, the seven principal activities involve:

- advising on quality control mechanisms for regulation making and review;
- examining and advising on Regulation Impact Statements (RISs) prepared by Commonwealth departments and agencies;
- providing training and guidance to officials;
- reporting annually on compliance with the Commonwealth Government's RIS requirements;
- advising Ministerial Councils and national standard-setting bodies on regulation making;
- lodging submissions and publishing reports on regulatory issues; and
- monitoring regulatory reform developments in the States and Territories, and in other countries.

The ORR, together with the Treasury, advises the Assistant Treasurer in his role as the Minister responsible for regulatory best practice, and the Minister for Financial Services and Regulation on legislative review matters.

In advising on quality control mechanisms for making and reviewing regulation, in 1999-2000 the ORR:

- provided guidance to Commonwealth Government departments and agencies on appropriate terms of reference for 15 legislation reviews undertaken as part of a four-year Australia-wide program under the *Competition Principles Agreement* to review and reform all legislation which restricts competition;
- continued to work with, and provide assistance to, the Office of Small Business in relation to the development of the regulatory plans and regulatory performance indicators (RPIs); and
- gave a presentation on the RIS process to the Task Force on Industry Self-regulation in Australia, convened by the Minister for Financial Services and Regulation, and attended meetings of the special advisory group to the Task Force.

In the process of examining RISs and advising Commonwealth departments and agencies, the ORR gave advice on over 200 different regulatory issues, of which around 50 concerned amendments to taxation arrangements.

During the year, the ORR conducted 15 general training sessions in 8 different departments or regulatory agencies attended by some 284 Commonwealth officials.

The ORR examined and provided advice on 28 RISs for Ministerial Councils and a further three for national standard-setting bodies.

The ORR's annual report — *Regulation and its Review 1998-99* — was released in November 1999. It expanded reporting on compliance with the Government's regulation review requirements to a portfolio basis for the first time.

In monitoring regulatory reform developments around Australia and internationally this year, the ORR:

- convened a meeting with State and Territory officials to discuss regulatory best practice in Australian jurisdictions;
- met with five members of the Victorian Parliament's Scrutiny of Acts Committee, as part of the Committee's review of the effectiveness of Victoria's *Subordinate Legislation Act 1994*;

- met with a representative from the Brisbane City Council, to discuss incorporating RIS requirements into the Council's regulatory development processes;
- participated in several meetings of the COAG Committee on Regulatory Reform;
- represented Australia at an OECD meeting on regulatory reform, which included reviews of reforms in Greece and Italy;
- received a visit from the Legislation Coordinator of the New Zealand Cabinet Office, and exchanged information of mutual interest; and
- hosted, for one week, three officials from Japan's Economic Planning Agency who were in Australia to study the regulatory reform system.

B.2 Performance of the ORR

The ORR relies in part on feedback from, and surveys of, its 'clients' (see box B.1) to gauge its performance — in terms of quality, timeliness and usefulness. Other means of assessing its performance include training evaluations and other formal and informal feedback.

Box B.1 **ORR client feedback survey**

In May 2000, the Commission conducted a survey that asked questions pertinent to assessing the quality, timeliness and usefulness of the ORR's work. Most questions offered a rating along a five point scale and survey participants were provided with an opportunity to comment on issues being surveyed. While the respondents were classified according to the areas — legal, policy, other, legal/policy — of departments and agencies in which they worked, the Commission undertook not to identify individuals. In order to maintain confidentiality, the ABS was contracted to collate the results.

The feedback survey was delivered to 243 Commonwealth department and agency officials who had worked with the ORR on RISs during 1999-2000. In total, 132 responses were received from officials in 28 different departments and agencies, an overall response rate of 54 per cent. Most respondents worked in a policy area and had consulted the ORR on RIS-related matters on more than one occasion during the year.

Quality indicators

Reporting on quality indicators for the ORR is limited by the confidential nature of the advice it provides to Commonwealth departments and agencies, to the Assistant Treasurer, to the Minister for Financial Services and Regulation and to Cabinet. Its

major activities in advising on RISs and legislative reviews typically involve interaction and iteration with sponsoring departments and agencies. Willing participation in the RIS process and favourable feedback from these sponsoring agencies is the ORR's strongest direct evidence as to the quality of its work.

For the ORR to properly assess a RIS, it must be able to understand the issues being considered and be able to clearly articulate its advice on the adequacy and quality of the RIS. Not only should the advice be of a high standard, staff must conduct themselves in a professional and competent manner. It is also important for ORR staff to develop ongoing and effective working relationships so that any problems can be resolved quickly and in a cooperative manner. The survey sought to test these aspects of the ORR's performance.

The results of the survey indicate that the ORR is providing a high quality service. Seventy per cent or more rated the ORR's performance as either good or excellent in terms of staff's ability to understand regulatory issues with which they were dealing, clarity of advice provided, overall competence and quality of the working relationship (table B.1). Further, 95 per cent of respondents reported that ORR staff were courteous and willing to listen. The bulk of comments received reflected these generally favourable assessments of the ORR's performance. One respondent indicated that 'preparing RISs is not easy, but ORR certainly adds value'.

Table B.1 **Quality indicators**

	Excellent	*Good*	*Average*	*Poor*	*Total*[a]
	%	%	%	%	%
Ability to understand regulatory issues[b]	24	45	25	5	100
Clarity of ORR advice provided	32	51	14	3	100
Overall competence of ORR staff[c]	22	57	15	2	100
Working relationship	33	58	8	1	100
	Always	*Usually*	*Sometimes*	*Not stated*	*Total*
Courteous and willing to listen	73	21	4	2	100

[a] Total includes 'Can't assess' and 'Not stated'. [b] Respondents were asked to rate the ORR staff's ability to understand the regulatory issues being dealt with, given the time frame in which they were working. [c] Respondents were asked to rate the overall competence of ORR staff compared with those of other Commonwealth agencies with whom they have contact.

However, there remains room for improvement as indicated by those respondents providing less favourable responses to the survey. Up to 30 per cent respondents were of the view that aspects of the quality of the ORR's work were average or poor. Some stated that its advice was naïve and at times insensitive to political issues.

Timeliness

The demand for RIS assessments is externally driven and timing is often determined by Cabinet and Parliamentary processes, as well as the resource priorities of departments and agencies. The ORR does its best to accommodate these demands. As a general rule, officials preparing a RIS are asked to allow around 2 to 3 weeks for several rounds of consulting with the ORR and redrafting the RIS so it can be cleared as of an adequate standard. But it is often possible to complete the process in less than a week. For more complex issues, such as the development of terms of reference for reviews, the suggested time for consultation is much longer — a minimum of three months.

In 1999-2000, six respondents to the survey (5 per cent) indicated that they typically allowed less than a day to consult the ORR for advice. Around half allowed two to five days and a third allowed five to ten working days. The remaining 14 respondents (11 per cent) allowed more than two weeks for consultation with the ORR (table B.2).

Table B.2 **Timeliness**[a]

Timeliness of advice	*Time typically allowed for the ORR to respond*				
	1 day or less	*2-5 days*	*5-10 days*	*more than 2 weeks*	*Total*
	%	%	%	%	%
Excellent	2	20	15	2	39
Good	2	28	12	6	48
Average	-	4	5	2	11
Poor	-	-	-	-	-
Total	**5**	**52**	**33**	**11**	**100**

[a] All figures have been rounded to the nearest whole number.

Most respondents to the survey were happy with the overall timeliness of the ORR's advice. Some 39 per cent rated the ORR's performance as excellent and a further 48 per cent assessed it to be good. A small share, around 11 per cent, considered the timeliness of the ORR's advice to be average.

All comments received about the timeliness of the ORR's advice were positive. This applied to those respondents who expected a rapid turnaround and others working to longer timeframes.

Indicators of usefulness

The usefulness of the Commission's regulation review activities in contributing to better regulatory outcomes, generating greater understanding within agencies of the Government's 'best practice' regulatory requirements and enhancing community understanding of regulatory issues is demonstrated by a range of indicators.

- Some regulatory proposals have been changed as a result of analysis undertaken during the RIS process. For example, in a few cases the ORR suggested new options, which were subsequently recommended to the decision-maker. More often, proposals were altered to reduce the compliance burden or costs imposed on business or other parties affected by the proposal.
- Regulation Impact Statements tabled with Explanatory Statements and Memoranda have provided greater transparency of the reasoning behind regulatory decisions so that the Parliament and the community are better informed. Parliamentarians have drawn on the Statements in debate.
- ORR reports are widely distributed and read:
  - 1265 copies of *Regulation and its Review 1998-99* were distributed in 1999-2000. The report was accessed more than 800 times on the Commission's web site in the period to July 2000.
  - 840 copies of the second edition of *A Guide to Regulation* have been distributed for use by policy and regulatory officers in all Commonwealth Government departments, agencies, statutory authorities and boards and to other people interested in regulatory reform. The Guide was accessed more than 1800 times on the Commission's web site during 1999-2000. About three-quarters of respondents to the ORR feedback survey found the Guide to be useful or very useful (see table B.3). Some constructive suggestions were made as to how the Guide could be improved, particularly by the inclusion of some examples or template RISs.

Table B.3 **Usefulness of *A Guide to Regulation***

Usefulness of Guide	*Number of responses*	*Per cent*
Very useful	37	28
Fairly useful	65	49
A little useful	14	11
Not at all useful	2	2
Total[a]	**132**	**100**

[a] Includes responses 'not stated'.

In 1999-2000, the ORR provided RIS training for 284 officials, including 100 Civil Aviation Safety Authority officials. Training evaluation forms were received from 125 people. Their views indicated that RIS training has been well received, with almost two-thirds rating training as good or very good. A further 16 per cent considered their RIS training to be excellent (table B.4). Thirteen per cent and four per cent of training participants considered the training to be satisfactory or fair/unsatisfactory, respectively.

Table B.4 **RIS training evaluation in 1999-2000**

Evaluation	*Number of responses*	*Per cent*
Excellent	20	16
Good/very good	81	65
Satisfactory/up to expectations	16	13
Unsatisfactory/fair	5	4
Total[a]	**125**	**100**

[a] Includes responses 'not stated'.

C Regulatory reform in the States and Territories

This appendix outlines existing mechanisms and developments in regulation review in the States and Territories during 1999-2000. A table at the end of the appendix summarises regulatory review mechanisms in place in each jurisdiction.

C.1 New South Wales

Responsibility for streamlining and simplifying New South Wales' regulatory environment rests with the Inter-governmental and Regulatory Reform Branch of the New South Wales Cabinet Office.

Existing mechanisms for regulation review

Review mechanisms that operate in New South Wales include the following.

Regulatory Impact Statement requirements — The *Subordinate Legislation Act 1989* requires the preparation of a RIS for all new principal statutory rules. The RIS must include a statement of objectives, an identification of options by which those objectives can be achieved, an assessment of the costs and benefits of options, and a consultation statement. The RIS, along with written comments and submissions received, is forwarded to the Regulation Review Committee of the New South Wales Parliament within 14 days of a statutory rule being published in the Gazette. The RIS is tabled in Parliament when notice is given of the making of a new regulation, or as soon as possible thereafter.

Staged repeal of statutory rules — Section 10 of the *Subordinate Legislation Act 1989* provides for the automatic repeal of statutory rules after five years.

Best practice guidelines — The New South Wales Government issues 'best practice' guidelines with which all agencies must comply when proposing regulatory measures. The guidelines are contained in the publication *From Red Tape to Results*. The guidelines prompt regulators to regulate ends not means and use commercial incentives rather than command and control rules.

Cabinet minutes — All Cabinet minutes that propose new (or amended) regulatory controls must demonstrate that the 'best practice' approach has been applied in assessing the regulatory impact of the proposal.

Regulatory plans and reports — A Premier's Memorandum requires Ministers to provide the Premier with an annual 'regulatory plan' and report for each department and agency within their portfolio. However, compliance with this requirement is low. The New South Wales Government is reviewing this arrangement.

Legislation reviews — The New South Wales Government is reviewing some 171 statutes pursuant to National Competition Policy. As at 30 June 2000, reviews of 63 Acts were complete and 100 were in progress. The other eight are yet to commence.

Developments in regulation review

In June 2000, the New South Wales Parliament passed legislation that established competitive neutrality complaints, investigation and reporting roles for the Independent Pricing and Regulatory Tribunal and the State Contract Control Board. The Tribunal has been given responsibilities for all complaints that are applicable to public authorities, except those that relate to tender bids, which are covered by the Board. Usually the investigation and reports are to be completed within ten weeks of receiving the complaint and the report is to be publicly available.

C.2 Victoria

The Victorian Office of Regulation Reform (VORR), which is located within the Department of State and Regional Development, provides assistance to both government and industry in the development of efficient regulation.

Existing mechanisms for regulation review

The institutional arrangements in place for regulation reform are described briefly below.

RIS requirements for new regulations — RIS requirements apply to all regulations that impose an 'appreciable' economic or social burden on any sector of the public. The *Subordinate Legislation Act 1994* requires that independent advice be sought to confirm that RISs adequately meet the requirements contained in section 10(1).

RIS requirements for existing regulations — Under the Subordinate Legislation Act, regulations are automatically repealed after ten years. This encourages appropriate

review of regulation to assess whether it is still needed. RIS requirements apply to all reviews of sunsetting regulations that impose an 'appreciable' economic or social burden on any sector of the public.

Cabinet requirements for proposed legislation — The Victorian Cabinet Handbook requires agencies preparing Cabinet submissions to justify the use of legislation as the most appropriate means of implementing the proposal, including consideration of whether the policy can be implemented by non-legislative means. Where the proposal may have a major impact, agencies are required in their submission to identify the costs and benefits for both the government and the community.

Annual Regulation Alert — Essentially a regulatory plan that provides information to business and the general public on those regulations due to sunset and details on new regulations proposed for the coming financial year.

In recent years, the VORR has enhanced its research and benchmarking role with a focus on industry sector reviews. The industry sector review approach has been designed to ensure that Victorian industries are served by efficient regulation and administration. Reviews of the tourism, aquaculture, and cut flowers and nurseries industries were the first undertaken. The next series of reviews is being planned and a review of the textiles, clothing, footwear and leather industries has commenced.

The VORR's website can be found at http://www.dsd.vic.gov.au/regreform. The site is tailored to the needs of business, industry associations and government agencies and offers:

- improved access to up-to-date information on current reform initiatives;
- publications on benchmarking of best practice regulation across a wide range of sectors;
- the full suite of Office publications for improving regulatory quality; and
- links to key sites covering a range of regulatory issues in Victoria, Australia and overseas.

Legislation reviews — In 1996, Victoria published a timetable for legislation reviews containing some 400 Acts, regulations and other forms of legislation. Some of these were aggregated into 100 reviews over the life of the program. In 1999-2000, significant progress was made, including deregulation of farm gate price controls in the dairy industry that were accompanied by an adjustment package for dairy farmers and concessions on stamp duty from the Victorian Government. Victoria has also emphasised a broad and rigorous public interest test, which includes extensive opportunities for input from the community.

Developments in regulation review

The VORR has broadened its role in providing advice and assistance to agencies throughout the policy development process rather than waiting until the end of the process. Avenues it uses to do this include:

- participation in interdepartmental working groups;
- providing advice and assistance in the preparation of RISs;
- National Competition Policy legislation reviews; and
- Cabinet.

A review of the eight per cent limit on liquor license holdings in the *Liquor Control Reform Act 1998* was conducted by the VORR in response to the National Competition Council's second tranche assessment of the review of the Act.

As part of its wider role, the VORR and the Department of Justice prepared a joint paper on 'Multi-Disciplinary Practices and the Incorporation of Legal Practices' on behalf of the Attorney General. In addition, further joint work has been undertaken with the Department of Treasury and Finance in relation to the development of regulatory management systems to improve the policy-making and decision-making process for regulatory proposals.

Research was undertaken into regulation governing business, recreational and community access to the Yarra River and regulation impacting on the government's e-commerce capability with the general public. This research forms part of the reviews into these issues.

With greater involvement in the policy development of principal legislation, the VORR provided advice and assistance on many proposals; notably on food safety, tobacco and legionnaires' disease.

The Victorian Scrutiny of Acts and Regulations Committee has been asked to inquire into the *Subordinate Legislation Act 1994*. The Committee has appointed a subcommittee of five members called the Regulation Review Subcommittee to perform this task. It is due to report by 31 December 2000.

C.3 Queensland

It is the role of the Business Regulation Reform Unit to instill change across government in relation to legislative intervention by working with government and industry to improve the regulatory environment and the business/government regulatory interface. The Unit is part of the Department of State Development.

The Business Regulation Reform Unit undertakes research into regulation reform issues, provides assistance and advice to government agencies on regulatory proposals in relation to the RIS requirements under the Queensland *Statutory Instruments Act 1992*, provides training to agencies in areas relating to regulation review and the RIS process, and develops policy and provides advice to government on improving the regulatory environment. The Business Regulation Reform Unit also administers the *Retail Shop Leases Act 1994*, which provides low cost, informal and formal dispute resolution services for retail tenants and landlords.

Existing mechanisms for regulation review

Specific regulatory review mechanisms that operate in Queensland are listed below.

The Statutory Instruments Act 1992 — This Act was amended in 1995 to require the preparation of a RIS for all new or amended subordinate legislation that is likely to impose an ‘appreciable’ cost on business and/or the community in general. The Act provides that a RIS must include a statement of objectives, options for achieving the objectives and a cost-benefit analysis of each option. The Act also requires that the RIS be made available for consultation for a period of no less than 28 days.

RIS guidelines and software — Software has been developed to help agencies prepare RISs. The software incorporates the requirements of the RIS and is used in conjunction with the RIS Guidelines.

Staged automatic expiry of subordinate legislation — In order to reduce the regulatory burden and ensure that subordinate legislation is relevant to current economic and social circumstances, subordinate legislation automatically expires after ten years.

Legislation reviews — There are a total of 131 reviews to be done under the Queensland legislation review program. Half of these reviews have been completed or the relevant legislation repealed, 48 of the reviews are under way, 11 are at the stage of determining the scope of the review, and seven are yet to begin.

Developments in regulation review

The business licence rationalisation program has progressed towards the target of a 50 per cent reduction in the number of business licences (from 520 to 270) and a total of 112 business licences are being extended in term. The nominal reduction in business licences is being achieved by ‘rolling up’ similar licences into one licence and abolishing other unnecessary licences. The extension in term will offer longer licence terms to business as an option. These initiatives will reduce compliance

costs to business. To date, approximately half of licence rationalisation reforms have been achieved.

Guidelines on Alternatives to Prescriptive Regulation (Department of State Development 2000a) were published and distributed to government and business agencies. The aim is to improve regulations and create a more flexible regulatory environment for business. The guidelines will encourage agencies to introduce and promote non-regulatory means of achieving their objectives.

Guidelines for Improving Service Delivery in Government Agencies (Department of State Development 2000b) were published and distributed to all government departments to provide a framework to improve service for business clients of regulatory agencies. The guidelines encourage agencies to identify the needs of business and improve service, including flexible and efficient regulatory systems.

Following on from a consultancy study, an interdepartmental working group has been established to improve the consistency and quality of government dispute resolution processes.

The Red Tape Reduction Task Force has been re-established. The Task Force comprises representatives of business and industry and reports to the Minister for State Development on ways to reduce red tape for business, in particular, small business.

A Red Tape Reduction Stock Take was published to promote progress made by government agencies and units in reducing the regulatory burden on business.

The Government is considering the merits of developing a regulatory communication system to alert business to the regulatory intentions of government agencies and allow business more opportunity to engage in consultation.

C.4 South Australia

Regulatory reform in South Australia is the primary responsibility of the Economic Reform Branch located in the Department of Premier and Cabinet. The Department of Industry and Trade oversees regulatory reform that focuses on small business.

Existing mechanisms for regulation review

Regulatory review mechanisms that operate in South Australia include the following.

Ten year sunset program — In 1987, South Australia introduced a requirement for ten year sunset clauses for existing and all new regulations (*Subordinate Legislation Act 1978*, Part 3A). Since then, agencies have reviewed existing regulations, updated those for which a need remained and allowed others to lapse. In addition, all by-laws made under the *Local Government Act 1999* sunset after seven years.

Parliamentary scrutiny — Regulations made by the South Australian Government and by-laws made under the *Local Government Act 1999* are subject to scrutiny and possible disallowance by the Legislative Review Committee.

Cabinet requirements for proposed legislation — The *Cabinet Handbook* gives effect to the Treasurer's Instruction that requires agencies preparing Cabinet submissions to justify the use of legislation as the most appropriate means of implementing the proposal, including consideration of whether the policy can be implemented by non-legislative means. Where the proposal may have a major impact, agencies are required in their submissions to identify the costs and benefits for both the government and the community.

Consultation requirements — The South Australian *Cabinet Handbook* requires that for all Cabinet submissions, relevant Ministers are responsible for ensuring that their agencies consult with those who are likely to be affected by the proposal.

Business Licence Information System — Licences and forms are now accessible via the Internet through the Business Channel project that is managed by the Business Centre in the Department of Industry and Trade. The fully integrated Commonwealth, State and Local Government Business Licence Information System was officially launched in October 1997.

Legislation reviews — Under the *Competition Principles Agreement*, South Australia undertook to review and, where appropriate, reform 178 Acts that contain restrictions on competition. As at June 2000, approximately two thirds of the reviews were complete, and the remainder were underway.

Developments in regulation review

The *Trans-Tasman Mutual Recognition (South Australia) Act 1999* came into operation in September 1999.

All codes of practice referenced in South Australian legislation have been added to the national Business Information Service.

A Small Business Government Network has been formed comprising representatives from government agencies at all levels, which have a role in

working to assist small business operators. A key role for the Network is to identify, at an early stage, new legislation and regulation that might have an impact on small business.

A decision has been made to keep the Office of the Small Business Advocate for another three years. The office acts as a mediator between government and business and is the first point of contact for business if they are having difficulties with government processes.

C.5 Western Australia

The Federal and Constitutional Affairs Division of the Ministry of Premier and Cabinet is responsible for coordinating and overseeing regulatory reforms on a whole-of-government basis.

Each Minister and government agency is responsible for ensuring that reviews of legislation within their portfolios are conducted in an open and transparent manner, including allowing a suitable period for public consultation.

The Competition Policy Unit of the Department of the Treasury is responsible for ensuring that the objectives of the National Competition Policy are carried out by state and local government agencies responsible for legislation and local laws. The Unit also advises and assists agencies to undertake reviews of existing and proposed legislation that potentially restrict competition.

Existing mechanisms for regulation review

Review initiatives in Western Australia are outlined below.

Regulation Review Panel — The Small Business Development Corporation and the Regulation Review Panel maintain a watching brief over legislation and policies that impact on small business. The Corporation and the Panel submit comments and make recommendations to the Minister for Small Business on any proposed, or existing, legislation that is considered to have an adverse impact on small business.

Red tape forums — These forums were introduced by the Small Business Development Corporation to assist small business operators to present their concerns to government about business regulation and compliance. To date, forums have been held on: regulation in the tourism and food industries; local government; employee relations; and the building industry. Forums are also conducted in regional areas in order to identify the ‘red tape’ concerns of regional small business.

Business impact requirements and explanatory memoranda — Subordinate legislation going before Parliament or the Joint Standing Committee on Delegated Legislation requires an explanatory memorandum outlining the purpose of the law, its justification and the consultation undertaken. Departments are also required to consider the impact on small business of legislative proposals put to Cabinet.

Legislation reviews — Legislation Review Guidelines were prepared in 1996 to explain and support the process of review of new and existing legislation in accord with the *Competition Principles Agreement*. The conduct of a review is the responsibility of the relevant Minister who, on completion of the review report, forwards it to the Government Cabinet Management Standing Committee for its decision and recommendation to Cabinet. WA Treasury's Competition Policy Unit is responsible for providing support to reviewers and providing an independent report to the Government Cabinet Management Standing Committee on the quality and conduct of the review when the relevant Minister submits it for approval.

Developments in regulation review

Local Laws Management and Review System — This system is a software tool designed to assist local governments in managing their local laws and regulations. It also provides small business with the opportunity to be advised of, and involved in, regulation review and development processes that impact on the operation of a small business. The new system is now operational and training is being provided to local governments in its use.

Business Licence and Information System — The software for the system has been extensively redeveloped to accommodate, for the first time, business licence information from all 144 local governments in Western Australia. This is in addition to the Commonwealth and State business licence information currently on the system.

An Internet facility is also being developed to further enhance the system. When the system goes online in late 2000, clients will be able to conduct their own on-line business licence searches and download information via the Internet.

C.6 Tasmania

The Regulation Review Unit is located within the Department of Treasury and Finance and is responsible for administering Tasmania's regulation review system. This system comprises two elements, namely the *Subordinate Legislation Act 1992* and the Legislation Review Program.

These two review mechanisms share a common objective — to ensure that the State's legislative framework does not unnecessarily impede or restrict overall economic activity and that businesses are only subject to well-targeted and appropriately justified legislation.

The Legislation Review Program principally covers primary legislation, incorporating both a review mechanism for existing legislation and 'gatekeeper' arrangements for new legislation. The Subordinate Legislation Act, as its name suggests, covers new subordinate legislation and has sunsetting arrangements for existing subordinate legislation.

Existing Mechanisms for Regulation Review

The Subordinate Legislation Act

The key review mechanisms contained in the Subordinate Legislation Act are listed below.

RIS requirements — The Act requires that a RIS be prepared for all new subordinate legislation imposing a significant cost, burden or disadvantage on any sector of the public. In these circumstances, the relevant agency submits a RIS to the Regulation Review Unit for consideration and endorsement prior to being publicly released for a mandatory 21 day period. Following this process, the proposed subordinate legislation is submitted to the Governor for approval.

Staged repeal — The Act establishes a timetable for the staged automatic repeal of all existing subordinate legislation and provides for all subordinate legislation made on, or after the commencement of the Act (13 March 1995) to be automatically repealed on its tenth anniversary.

Guidelines for making subordinate legislation — These guidelines require regulators to consider alternative options for achieving the Government's objectives and to examine the impact of proposed subordinate legislation on competition.

The Legislation Review Program

The Legislation Review Program was introduced in 1996 and meets Tasmania's legislation review obligations under National Competition Policy. The Legislation Review Program outlines both a timetable for the review of all existing legislation that imposes a restriction on competition and a process to ensure that all new

legislative proposals that restrict competition or significantly impact on business are appropriately justified as being in the public interest.

Assessment of new legislation — All proposed legislation is assessed by the Regulation Review Unit. Where it is considered that proposed legislation contains a major restriction on competition which has economy-wide implications or significantly affects a sector of the economy, a RIS must be prepared and public consultation undertaken. More than 400 legislative proposals have been considered under this 'gatekeeper' provision of the Legislation Review Program since its inception in 1996.

Reviews of existing legislation — Where it is considered by the Regulation Review Unit that existing legislation contains major restrictions on competition, review bodies are required by their terms of reference to prepare a RIS in relation to those restrictions and undertake a mandatory public consultation process. The RIS will assist in identifying whether the benefits to the public of the restriction outweigh the costs. Where a restriction is considered to be minor, review bodies are only required to conduct a brief assessment of the costs and benefits of the restriction. While public consultation is encouraged, it is not mandatory for minor reviews. In conducting reviews of legislation, any subordinate legislation that accompanies the primary legislation must also be considered in the review.

Some 253 Acts were identified as restricting competition in some form (out of a total of 712) and placed on the initial schedule for review. Of those 253 Acts, 77 were, or have been, subsequently repealed and a further 35 removed from the schedule. The current status of the remaining 141 Acts is shown in table C.1.

Table C.1 **Current status of the Tasmanian Legislation Review Program**

Status	*Number of reviews*
Yet to commence	3
Underway	18
Complete	54
Complete (but yet to go to Cabinet)	11
National	12
Legislation expected to be repealed	43
Total	**141**

Source: Tasmanian Government estimates.

C.7 Australian Capital Territory

The Micro-economic Reform Section in the Department of Treasury and Infrastructure is responsible for the policy, coordination and implementation of regulatory reform in the ACT. The Business Support and Employment Unit in the Chief Minister's Department is responsible for business-related reforms and programs.

Existing mechanisms for regulation review

Regulatory reform — The Government requires that a RIS accompany each regulatory proposal. A *Guide to Regulation in the ACT* provides guidelines on preparing RISs. The Micro-economic Reform Section also provides advice. The RIS brings together a Red Tape Task Force strategy and National Competition Policy requirements.

Agency regulatory plans — The plans provide information on the regulatory proposals to be considered during the year. In addition, agencies provide information on achievements against the objectives published for the previous year. In September each year, the Government publishes the consolidated report *ACT Government – Agency Regulatory Plans*.

Independent Competition and Regulatory Commission — The Independent Pricing and Regulatory Commission Act 1997 gives the Commission powers in the areas of pricing and access. *The Independent Competition and Regulatory Commission Amendment Act 2000*, gazetted on 23 March 2000, extended the Commission's role by including regulatory investigation functions covering competitive neutrality complaints and government-regulated activities.

Business Advisory and Regulatory Review Team — This team is drawn from the private sector and industry bodies to advise the Government on matters relating to small business. It also provides a mechanism for ongoing dialogue between the public and private sectors. Specifically, the team provides an important link to the business community and, in particular, assists the Government by providing feedback on government business initiatives. It consults with a range of business individuals, groups and associations on an ad hoc basis and coordinates business community responses. In addition, the team advises the Government, when requested, on regulatory reform and red tape issues in general, and specific regulatory proposals and issues as appropriate.

Legislation reviews — In the ACT, responsibility for conducting reviews has been devolved to agencies. The Micro-economic Reform Section oversights the

timeliness, rigour and robustness of the reviews and any subsequent reforms and delivers the review program.

Developments in regulation review

ACT Business Gateway — The Gateway was launched in July 1999. It provides a contact point for ACT business information that can be accessed through the Internet or telephone. It includes the *Business Licence Information Service* which is a one stop shop for obtaining information on Commonwealth and ACT licences, permits and registrations required for operating a business in the ACT.

C.8 Northern Territory

The Department of Industries and Business provides a regulatory review role within the Northern Territory.

Existing mechanisms for regulation review

The Department of Industries and Business scrutinises any proposed regulation and its accompanying explanatory memorandum. Regulations that are complex or those that have wide ranging impacts on government and non-government agencies are referred to the Coordination Committee, which includes the Chief Executive Officers of all departments and government agencies, for consideration.

The Department of Industries and Business works in partnership with the Chief Minister's Cabinet Office to ensure that, when prospective regulations are being sponsored by an agency, there is wide consultation with business and the relevant industry bodies. This aims to ensure that the impact on business of proposed regulations is, where possible, minimal.

Legislation reviews — In the Northern Territory, each Department and Agency is responsible for conducting reviews of the legislation they administer. The Northern Territory has 84 reviews on its legislation review program. As at 31 December 1999, relevant legislation for approximately ten reviews had been repealed, 12 reviews had finished, 43 were underway, 14 were yet to begin, one had been removed from the program and four were part of a national review.

Developments in regulation review

The Department of Industries and Business distributed to government agencies copies of the Small Business Ministerial Council's 2000 publications *Giving Small Business a Voice – Developing Strategies for Informing Business about Regulation* and *Giving Small Business a Voice – Achieving Best Practice Consultation with Small Business.* This should assist in the development and amendment of regulation impacting on the small business environment. It also provides guidance on how to conduct industry consultation.

* * *

Regulation review mechanisms within State and Territory governments are summarised in table C.2.

Table C.2 **State and Territory regulation review mechanisms**

Jurisdiction	*RIS requirements for* Bills	*RIS requirements for* subordinate instruments	*Sunset clauses*	*RIS guidelines*	*RIS adequacy criteria*	*Regulatory plans*
New South Wales	a	✓	✓	✓	✓	
Victoria		✓b	✓	✓	✓	✓
Queensland		✓c	✓	✓		
South Australia	d	d	✓	✓		
Western Australia	e	e				
Tasmania	✓f	✓g	✓	✓	✓	
Australian Capital Territory	✓h	✓i		✓	✓	✓
Northern Territory	j	j				

[a] Cabinet submissions for new Bills must meet best practice requirements.
[b] For proposals that impose an appreciable economic or social burden.
[c] For proposals likely to impose an appreciable cost on business and/or the community.
[d] Agencies preparing Cabinet submissions must justify the use of legislation and identify costs and benefits for proposals that have a major impact.
[e] The Small Business Development Corporation publishes a watching brief on legislation and policies that adversely impact on small business. Cabinet submissions must indicate whether a proposal impacts on small business and the extent of any impact must be explained.
[f] For new Bills assessed by the Regulation Review Unit to contain a major restriction on competition.
[g] For new subordinate instruments imposing a significant cost, burden or disadvantage on any sector of the public.
[h] Exceptions apply for Bills that are mechanical or administrative in nature.
[i] For proposals the Micro-economic Reform Section considers to be major.
[j] The Department of Industries and Business scrutinises proposed regulations and accompanying explanatory memoranda.

Source: Correspondence from the States and Territories.

D Example RISs

In preparing a RIS, officials often find it helpful to examine past examples which the ORR has assessed as of an adequate standard. The following examples have been made available on the ORR website (http://www.pc.gov.au/orr/index.html) for that purpose. They have been chosen to illustrate RISs for different types of regulatory proposals as well as different degrees of analysis.

All of these RISs have been tabled in Parliament and are thus public documents. They form part of the Explanatory Memorandum which is published for each Bill tabled in Parliament, and part of the Explanatory Statement for each disallowable instrument tabled; copies can be obtained from Ausinfo. Once tabled, many RISs may be accessed electronically via the website of the Attorney-General's Department on http://scaleplus.law.gov.au.

Electronic Transactions Bill 1999

- to facilitate the development of e-commerce by removing impediments in the law that may prevent a person using electronic means to satisfy obligations under Commonwealth law.
- the RIS provides a sound case based on a qualitative assessment of costs and benefits — no useful quantitative data are available.

Renewable Energy (Electricity) Bill 2000

- to reduce greenhouse gas emissions through increasing, by the year 2010, the share of Australian electricity generated by renewable means (wind, solar) from 10.5 per cent to 12.5 per cent.
- draws on a wide range of engineering and cost data.

A New Tax System (Goods and Services Tax) Bill 1998

- to introduce a goods and services tax to take effect from 1 July 2000
- this RIS provided a broad overview of what groups would be affected and to what extent.

Migration Legislation Amendment (Migration Agents) Bill 1999

- to extend for three years a scheme of statutory self-regulation of those providing advisory services to migrants.
- an example of government regulatory backing for what is essentially an industry self-regulation scheme.

Fisheries Legislation Amendment Bill (No. 1) 1999

- to regulate fishing on the ‘high seas’, outside Australia’s 200 nautical mile zone.
- an example of a RIS on the implementation, via Australian law, of an international treaty signed by Australia.

Trade Practices (International Liner Cargo Shipping) Amendment Bill 2000

- to modify arrangements whereby liner shipping conferences are exempted from certain provisions (misuse of market power) of the Trade Practices Act.
- an example of a RIS covering proposals consequent on a wide-ranging public inquiry process and published report.

Postal Services Legislation Amendment Bill 2000

- to implement an access regime whereby private sector mail services would be able to utilise parts of the Australia Post distribution network.
- this RIS provides a good example of assessing various options taking into account the promotion of further competition, allowing commercial negotiations to settle issues as much as possible, and keeping compliance costs to reasonable levels.

New Business Tax System (Alienation of Personal Services Income) Bill 2000

- to address a growing threat to the income tax base whereby income from personal services is being directed to an interposed entity rather than to the person providing the services, thereby avoiding rates of income tax that should apply to individuals.
- this RIS is an example covering the implementation of recommendations made by the Ralph review of business taxation which addressed all the essential features of a RIS — problem, objective, options. It should be noted that RISs on tax matters are subject to lesser requirements than RISs in general (see The Guide 1998, p. B9).

Fuel Quality Standards Bill 2000

- to regulate the quality of fuel in order to reduce air pollution and to facilitate the adoption of improved engine and emission control technologies.

- this RIS is a good example of a combination of quite complex technological, environmental and health issues with substantial investment cost implications for the refining industry. Reflecting that, the RIS is some 40 pages long. It sets out in detail seven different options. It provides estimates of the costs and benefits of the preferred option, including valuations of the avoided health care costs resulting from reductions in air pollution.

Accreditation Grant Principles 1999

- this was a disallowable instrument tabled in Parliament in September 1999. It set down the legal framework for the accreditation of aged care facilities, entailing a move from passive monitoring of standards to an active audited regime of continuous improvement.
- this RIS demonstrates how the consultation process can provide valuable information which helps in the design of better regulation.

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