Regulation and its Review 2000-01

PRODUCTIVITY COMMISSION

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Publications Inquiries:
Media and Publications
Productivity Commission
Locked Bag 2 Collins Street East
Melbourne VIC 8003

Tel: (03) 9653 2244
Fax: (03) 9653 2303
Email: maps@pc.gov.au

General Inquiries:
Tel: (03) 9653 2100 or (02) 6240 3200

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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.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

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.

Foreword

The Productivity Commission is required to report annually on compliance by Commonwealth departments and agencies with the Government's Regulation Impact Statement requirements. The Commission also reports on two Council of Australian Government programs: reviews of existing Commonwealth legislation which restricts competition; and proposals being considered by Ministerial Councils and standard-setting bodies. These processes aim to achieve best practice regulatory outcomes.

This is the third such report. It forms part of the Productivity Commission's annual report series of publications for 2000-01.

The Commission's Office of Regulation Review provides training and advice to all departments and agencies on the best practice requirements, and monitors compliance. This edition of *Regulation and its Review* provides for the first time aggregate data on compliance classified according to the significance of the proposal and whether Regulation Impact Statements have been prepared early enough in the policy development process to have contributed to an assessment of alternatives. As in last year's edition, compliance information for individual agencies is also provided.

The Commission is grateful for the cooperation of Commonwealth departments and agencies, Ministerial Councils and standard-setting bodies, in providing information to the Office of Regulation Review on their regulatory activity throughout the year.

Gary Banks
Chairman

Contents

Foreword III

Abbreviations X

Key messages XII

Overview XIII

1 Compliance with RIS requirements **1**

1.1 Assessment of compliance 1
1.2 Primary legislation 9
1.3 Disallowable instruments 10
1.4 Non-disallowable instruments and quasi-regulations 11
1.5 Treaties 12
1.6 National regulation making 13

2 Compliance by portfolio **17**

2.1 Agriculture, Fisheries and Forestry 19
2.2 Attorney-General's 20
2.3 Communications, Information Technology and the Arts 21
2.4 Education, Training and Youth Affairs 25
2.5 Employment, Workplace Relations and Small Business 25
2.6 Environment and Heritage 26
2.7 Family and Community Services 26
2.8 Foreign Affairs and Trade 27
2.9 Health and Aged Care 27
2.10 Immigration and Multicultural Affairs 30
2.11 Industry, Science and Resources 30
2.12 Industry, Science and Resources/Transport and Regional Services 31
2.13 Transport and Regional Services 31
2.14 Treasury 33

3 Better integration of the RIS process 39
3.1 Agency management 40
3.2 Compliance reporting 43
3.3 Legislation reviews 43
3.4 Training policy officers 44
3.5 Regulatory plans 45
3.6 Agency commitment 46
3.7 Ecologically Sustainable Development 48
3.8 Cost recovery 48
3.9 Examples from States/Territories and OECD 49
3.10 Agency self-assessment trial 50
3.11 Conclusion 50

A Monitoring quasi-regulation 53

B Compliance with COAG RIS requirements 63

C Commonwealth legislation reviews 75

D ORR activities and performance 81

E Regulatory reform in States and Territories 89

F Integration of the RIS process — international experience 101

References 107

BOXES

1.1 The Commonwealth Government's RIS requirements 2
1.2 Adequacy criteria for Regulation Impact Statements (RISs) 4
1.3 Classifying the significance of proposals 7
3.1 Phases of the commitment cycle 47
A.1 Some examples of quasi-regulation reported in 2000-01 56
C.1 The template terms of reference 78
D.1 Charter of the Office of Regulation Review 82
D.2 Database measures: reporting on ORR performance 85
E.1 Questionnaire for *Regulation and its Review 2000-01* 90

FIGURES

1	RIS compliance at decision-making stage, 2000-01	XVI
1.1	RIS compliance for proposals introduced via Bills, 1998-99 to 2000-01	9
1.2	RIS compliance for proposals introduced via disallowable instruments, 1998-99 to 2000-01	10
1.3	RIS compliance for proposals introduced via non-disallowable instruments and quasi-regulations, 1998-99 to 2000-01	11
2.1	Compliance with RIS requirements at the decision-making stage, 2000-01	18
3.1	Commitment cycle for the Government's RIS requirements	46

TABLES

1	Aggregate RIS compliance at decision-making stage, 2000-01 and 1999-2000	XIV
2	RIS compliance at decision-making stage, by significance and timeliness, 2000-01	XV
1.1	Total RIS compliance, 1997-98 to 2000-01	5
1.2	RIS compliance, by type of regulation, 2000-01	5
1.3	Compliance by significance and timeliness, 2000-01	8
1.4	COAG RIS compliance for regulatory decisions made by Ministerial Councils and SSBs, 1998-99 to 2000-01	15
2.1	AFFA: RIS compliance by type of regulation, 2000-01	19
2.2	A-G's: RIS compliance by type of regulation, 2000-01	21
2.3	DoCITA: RIS compliance by type of regulation, 2000-01	22
2.4	DoCITA: RIS compliance for significant proposals, 2000-01	23
2.5	ABA: RIS compliance by type of regulation, 2000-01	24
2.6	ACA: RIS compliance by type of regulation, 2000-01	25
2.7	DEWRSB: RIS compliance by type of regulation, 2000-01	26
2.8	DEH: RIS compliance by type of regulation, 2000-01	26
2.9	DHAC: RIS compliance by type of regulation, 2000-01	28
2.10	DHAC: RIS compliance for significant proposals, 2000-01	28
2.11	DISR: RIS compliance by type of regulation, 2000-01	31
2.12	DTRS: RIS compliance by type of regulation, 2000-01	32
2.13	Treasury: RIS compliance for (non-tax) significant proposals, 2000-01	34

2.14 Treasury and ATO: RIS compliance by type of taxation regulation, 2000-01 36
2.15 Treasury and ATO: RIS compliance for significant (taxation) proposals, 2000-01 36
A.1 Types and examples of quasi-regulation 54
C.1 Overview of Commonwealth's Legislation Review Program as at 30 June 2001 75
C.2 Reviews Outstanding as at 30 June 2001 76
D.1 RIS training evaluation in 2000-01 88

Abbreviations

ABA	Australian Broadcasting Authority
ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ACIF	Australian Communications Industry Forum
ACS	Australian Customs Service
ACT	Australian Capital Territory
AFFA	Agriculture, Fisheries and Forestry — Australia (Department of)
A-Gs	Attorney-General's Department
ALR	Australian Law Report
AMSA	Australian Maritime Safety Authority
ANZFA	Australia New Zealand Food Authority
ANZFSC	Australia New Zealand Food Standards Council
ANZMEC	Australia New Zealand Minerals and Energy Council
APEC	Asia-Pacific Economic Cooperation
APRA	Australian Prudential Regulation Authority
AQIS	Australian Quarantine Inspection Service
ASIC	Australian Securities and Investments Commission
ATC	Australian Transport Council
ATM	automatic teller machine
ATO	Australian Taxation Office
BAS	Business Activity Statement
BRRU	Business Regulation Reform Unit (Queensland)
CASA	Civil Aviation Safety Authority
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
DIRN	defined interstate rail network
DISR	Department of Industry, Science and Resources
DNA	deoxyribonucleic acid
DoCITA	Department of Communications, Information Technology and the Arts
DTRS	Department of Transport and Regional Services
DVA	Department of Veterans' Affairs
EFT	electronic funds transfer
EFTPOS	electronic funds transfer at point of sale
EPBC	Environment Protection and Biodiversity Conservation (Act 1999)
ESD	ecologically sustainable development
GHz	gigahertz
GMOs	genetically modified organisms
GST	goods and services tax
HDTV	high definition digital television
IUCN	International Union for the Conservation of Nature
MHz	megahertz
NCC	National Competition Council
NCP	National Competition Policy
NOIE	National Office for the Information Economy
NRTC	National Road Transport Commission
OECD	Organisation for Economic Cooperation and Development
ORR	Office of Regulation Review
PC	Productivity Commission
PM&C	Prime Minister and Cabinet
PS	Policy Statement

Key messages

- Overall, compliance with the Commonwealth Government's Regulation Impact Statement (RIS) requirements by departments and agencies in 2000-01 was broadly comparable to the previous year.
  - Some 157 regulatory proposals affected business or restricted competition and required the preparation of a RIS.
  - Adequate RISs were prepared for the policy approval/decision-making stage for 82 per cent of those proposals.
  - The compliance rate was considerably lower for those proposals assessed as having a significant impact — with only around 60 per cent assessed as adequate.
- The relatively short time frames in which RISs were prepared for some significant proposals suggest that the potential for the RIS process to contribute to policy development is not being fully realised.
- Compliance with the Government's RIS requirements varied significantly both among and within portfolios. While 12 agencies achieved compliance rates of 100 per cent, the (weighted) average compliance rate for the remaining 12 was 74 per cent.
- While various departments and agencies have integrated the RIS process into their policy development process, some still treat it as an 'add-on'. Practical measures that agencies can adopt to better integrate the Government's RIS requirements include:
  - preparing a Regulatory Plan in consultation with the Office of Regulation Review;
  - establishing 'gate-keepers' within agencies to ensure that RIS requirements are met;
  - preparing an 'early' RIS for consultation; and
  - publishing RIS compliance information in annual reports.
- Regulation making also occurs at a national level among a wide range of Commonwealth/State/Territory Ministerial Councils and some standard-setting bodies. In 2000-01, the rate of compliance with the *Principles and Guidelines* agreed to by the Council of Australian Governments was 76 per cent.

Overview

Regulation Impact Statements (RISs) are intended to assist government policy makers by identifying and assessing all viable options (including non-regulatory measures) for achieving government policy objectives. They are required for all regulatory proposals (including proposals in the form of non-disallowable instruments, quasi-regulation and treaties) that affect business or restrict competition.

Since 1997, the Commonwealth Government has required that RISs be presented to decision makers and later be made public. One of the functions of the Office of Regulation Review (ORR) is to advise on whether the Government's RIS process requirements have been met, including whether the RIS provides an adequate level of analysis. In turn, the Productivity Commission has an obligation to report annually on compliance with these requirements across Commonwealth departments and agencies.

Aggregate compliance results for 2000-01

Of those regulatory proposals tabled in Parliament or made in 2000-01, 157 required the preparation of a RIS for decision makers. This requirement was met in 133 cases, with 129 of those RISs containing analysis judged to be of an adequate standard. Accordingly, the compliance rate was 82 per cent (table 1). This is the same rate as that achieved in 1999-2000, but somewhat higher than in 1998-99.

The second requirement, that adequate RISs be tabled in Parliament (with the explanatory material for the Bill or legislative instrument) or otherwise be made public, was satisfied in 89 per cent of cases in 2000-01. This was a little below the nominal compliance rate achieved in the previous year.

As in previous years, in 2000-01 the ORR continued to raise the standard of analysis required for a RIS to be deemed 'adequate', in keeping with the Government's aim of improving the regulatory decision-making process. This implies that the compliance rate reported for 2000-01 is likely to have been slightly higher if assessed against the standards of the previous year.

Table 1 **Aggregate RIS compliance at decision-making stage, 2000-01 and 1999-2000**

				2000-01[a]	*1999-2000*
	Number of RISs				
Proposals introduced via	*required*	*prepared*	*adequate*	*compliance*	*compliance*
				%	*%*
Primary legislation (Bills)	55	44	40	73	80
Disallowable instruments	66	56	56	85	73
Non-disallowable instruments	19	18	18	95	95
Quasi-regulation	15	13	13	87	100
Treaties	2	2	2	100	100
Total	**157**	**133**	**129**	**82**	**82**

[a] Only those proposals that were made or tabled during 2000-01 are reported. The data exclude RISs prepared for the decision-making stage for many other proposals developed in 2000-01, but not made or tabled prior to 30 June 2001.

Source: ORR estimates.

How well are the RIS requirements being met?

It is pertinent to question whether the Government's objectives when introducing RIS requirements in March 1997 have been met. At that time, the Prime Minister stated that 'the purpose of the [regulation impact] statement is to ensure that departments and agencies fully consider the costs and benefits of all viable alternatives, with a view to choosing the alternative with the maximum positive impact' (CoA 1997).

The compliance data shown above sheds some light on this question at an aggregate level. However, the ORR has also been monitoring two particular aspects of compliance — first, whether compliance varies with the significance of the proposals and, second, whether RISs have been prepared early enough in the policy development process to have contributed to a meaningful assessment of alternatives, as is the Government's intent.

To gauge whether compliance differed with the significance of regulatory proposals, the ORR classified each of the 157 proposals to one of four 'significance' rankings — reflecting judgements about the nature and magnitude of the proposal and the scope of its impact. Compliance at the decision-making stage for the two highest rankings, that accounted for about one-fifth of all proposals in 2000-01, was only 60 per cent, compared with 87 per cent for the two lesser rankings (table 2).

Table 2 **RIS compliance at decision-making stage, by significance and timeliness, 2000-01**

Significance rating	*Required*	*Adequate*	*Compliance*	*Average elapsed time*
	no.	no.	%	weeks[a]
More significant	30	18	60	2
Less significant	127	111	87	9.5
Total	**157**	**129**	**82**	

[a] Measured as the time from receipt of the first draft in the ORR up to when the ORR advises whether the RIS requirements have been met at the decision-making stage.

Source: ORR estimates.

With regard to timeliness, it is typically the case that a first draft of a RIS presented to the ORR is deficient in at least some aspects. This triggers an interactive process whereby the ORR provides comments and the responsible agency progressively improves the document with the objective of obtaining ORR clearance of an 'adequate' document by the time papers are assembled for the decision maker (Cabinet, the Prime Minister, another Minister, a board, etc). To gauge the timeliness of the preparation of RISs, the ORR has been measuring the elapsed time between when a first draft is received and when the ORR advises whether the RIS requirements have been met at the decision-making stage. For regulatory proposals finalised in 2000-01, the average elapsed time for the more significant one-fifth of proposals was only two weeks, compared with more than nine weeks for the less significant proposals.

Compliance by departments and agencies

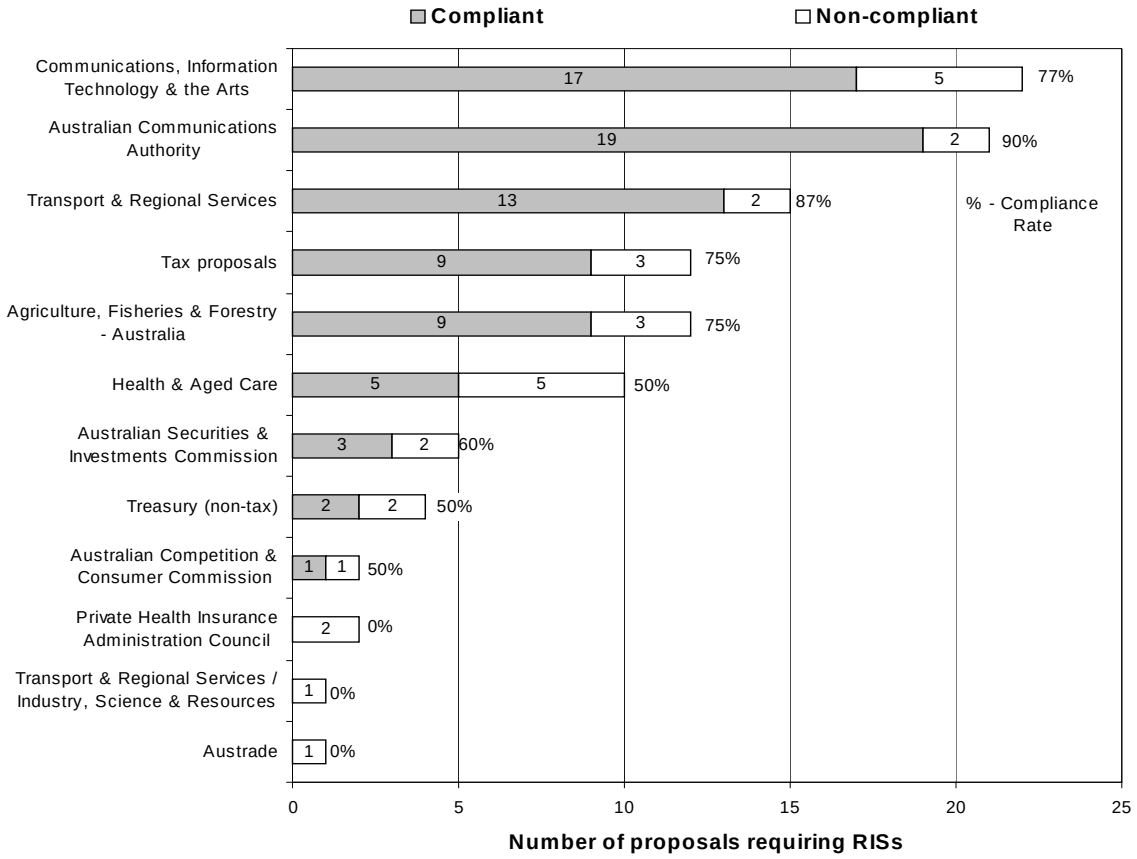
Those departments and agencies that were required to prepare RISs during 2000-01 and fully complied with the requirements at the decision-making stage were:

- Attorney-General's Department (3 RISs);
- Australian Broadcasting Authority (11 RISs);
- Australian Customs Service (4 RISs);
- Australian Prudential Regulation Authority (1 RIS);
- Civil Aviation Safety Authority (4 RISs);
- Department of Education, Training and Youth Affairs (5 RISs);
- Department of Employment, Workplace Relations and Small Business (8 RISs);
- Department of the Environment and Heritage (9 RISs);
- Department of Family and Community Services (1 RIS);

- Department of Immigration and Multicultural Affairs (1 RIS);
- Department of Industry, Science and Resources (5 RISs); and
- National Capital Authority (1 RIS).

The results for agencies that did not comply fully are shown in figure 1. It indicates, for example, that 17 of the 22 RISs that the Department of Communications, Information Technology and the Arts was required to prepare were assessed as containing an adequate standard of analysis — a 77 per cent compliance rate.

Figure 1 **RIS compliance at decision-making stage, 2000-01**



Note: Excludes the 12 departments and agencies that fully complied with the RIS requirements at the decision-making stage.

Source: ORR estimates.

National regulation making: compliance results

The results reported above cover the regulatory activities of Commonwealth departments and agencies. Regulation making also occurs at a national or interjurisdictional level among a wide range of Commonwealth/State/Territory Ministerial Councils and some standard-setting bodies. In 1995, the Council of

Australian Governments (COAG) agreed on principles and guidelines for such activities, the major element of which is the preparation of a Regulatory Impact Statement to serve as one input to the decision-making process (COAG 1997). The ORR is required to assess whether such RISs contain an adequate standard of analysis given the significance of the issue, and also to monitor and report on whether COAG's RIS requirements have been met.

In 2000-01, the ORR identified 25 matters that it assessed as being subject to the COAG *Principles and Guidelines* (COAG 1997*)*. Six of those did not meet the RIS requirements, implying an overall compliance rate of 76 per cent. Details are provided in chapter 1 and appendix B.

Improving performance

Preparation of a Regulation Impact Statement is a central feature of good regulation making, primarily because it formalises and provides evidence of the steps that should be taken in policy formulation. It helps to ensure that options to address a perceived policy problem are canvassed in a systematic, objective and transparent manner, with options ranked according to their net economic and social benefits.

While overall compliance with the Government's RIS requirements appears satisfactory, the disaggregated information raises some concerns. It suggests that:

- there is significantly lower than average compliance for the more important regulatory proposals; and
- there is a tendency for the RIS process on substantial proposals to be undertaken in compressed time frames, raising doubts about the extent to which it contributes to the policy development process.

These findings suggest that some agencies are giving relatively low priority to the requirements and treating them as an 'add on' task after a course of action has already been agreed, if not formally decided. (Also see Banks 2001.) While meeting the prescribed RIS requirements, such an approach is not consistent with the spirit of the Government's intent and may preclude the full realisation of the benefits available from the RIS process.

Improving regulatory outcomes

Action that has been taken by the ORR to promote genuine compliance with the requirements includes formal notifications to those agencies where it is evident that there are systemic failures in meeting the Government's requirements. However, there is a range of measures, outlined below, that agencies themselves can adopt to

help them meet both the form and the spirit of the Government's requirements and to benefit from the RIS process. Some additional measures that can further enhance the Government's objectives are also identified.

First, there needs to be an adequate early warning system of pending regulatory changes. Reflecting concerns that affected parties be given ample opportunity to participate in consultation processes, the Government decided in 1998 that each department and agency would publish early in each financial year the regulatory changes planned for that year. The Commission understands that, by the latter half of 2001, some Commonwealth agencies had not met this commitment. It is important for agencies that have not yet done so to publish regulatory plans on their websites as soon as possible.

Second, in recent years some agencies have taken the opportunity to review their policy development processes and to embed the RIS requirements into those processes. This helps ensure that the RIS analysis is done relatively early and thereby increases the prospects that it can make a useful contribution to the development and assessment of policy options. However, the evidence presented above on the short time frames allied to some quite substantial regulatory proposals confirms the anecdotal impression that some regulatory proposals are developed with scant analysis of the relative merits of different options or of their impacts on affected parties.

Third, tangible ways of encouraging greater commitment to the RIS process, thereby tapping into its potential to improve legislative and regulatory outcomes, include:

- departments and agencies publishing their compliance record in their annual reports; and
- agencies with compliance performances consistently below the average nominating a senior official with responsibility for remedying the situation.

Finally, analytical resources committed to the RIS process need to be concentrated where they can be most effective. In the case of proposals having relatively minor significance, consideration could be given to a self-regulatory approach whereby responsible agencies would meet the requirements without ORR input, but with the ORR auditing those RISs after the process has concluded and continuing to publish annual compliance results. This would enable the ORR to give greater attention to those proposals with substantial impacts where compliance has been unsatisfactory.

1 Compliance with RIS requirements

Rates of compliance with the Commonwealth Government's RIS requirements in 2000-01 were similar in aggregate to those in previous years. Compliance at the decision-making stage was around 80 per cent, and around 90 per cent at the tabling stage. Compliance for Bills at the decision-making stage was lower in 2000-01 than in 1999-2000, whereas compliance for disallowable instruments improved.

This chapter reports compliance with the Commonwealth Government's Regulation Impact Statement (RIS) requirements by type of regulation. Only those proposals that were subsequently made or tabled in each financial year are reported. Thus, the data exclude RISs prepared for the decision-making stage for many other proposals developed in 2000-01, but not made or tabled prior to 30 June 2001.

Also included is a brief overview of compliance with the Council of Australian Governments' (COAG) RIS requirements that apply to Ministerial Councils and standard-setting bodies. Results for individual Commonwealth departments and agencies are provided in chapter 2.

1.1 Assessment of compliance

The Government requires the Office of Regulation Review (ORR) to monitor compliance with the Government's requirements and the Productivity Commission to report annually on the outcome for primary legislation (Bills) and other forms of regulation. 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 Government's RIS requirements).

Box 1.1 **The Commonwealth Government's RIS requirements**

A Regulation Impact Statement (RIS) provides a consistent, systematic and transparent process for 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, quasi-regulation and proposed treaties involving regulation, which will directly or indirectly affect business, or restrict competition. A limited range of exceptions apply (see *A Guide to Regulation* 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 the Government or its delegated official makes its policy decision to regulate. If there are any doubts as to whether or not a regulatory review or proposed regulation qualifies for an exemption/exception from RIS requirements, the matter should be referred to the ORR at the earliest opportunity. It is important to note that it is the ORR — not individual departments, agencies, statutory authorities or boards — that decides whether a RIS should be prepared.

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 material. In the case of treaties, a RIS should be prepared when approval to commence negotiations is sought. It should be updated when approval is sought to sign the final text of a treaty, and 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: A Guide to Regulation.

The ORR uses a number of criteria to determine whether the analysis contained in a RIS is adequate (box 1.2). 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). This standard has been progressively increased as officials have become more familiar and experienced with the analytical approach required in RISs. This progressive increase in the adequacy standard means that compliance data are not strictly comparable between years. More specifically, the compliance rate reported for 2000-01 would be slightly higher if assessed against the standards of the previous year.

The ORR has also progressively improved its monitoring techniques and has been more active in ensuring that departments and agencies prepare RISs for the decision maker. In 1999-2000, and again in 2000-01, departments and agencies were asked to substantiate any compliance claims that differed from the ORR's records. In contrast, in 1998-99, they were given the benefit of the doubt in cases where compliance records differed.

Trends in compliance

The annual downward trend in the number of new or amended regulations affecting business continued in 2000-01. Of the 1600 Bills, disallowable instruments and other regulations introduced by the Commonwealth Government, only 157 associated regulatory proposals had a more than minor impact on business or restricted competition and therefore required RISs for the decision-making stage (table 1.1). Departments and agencies prepared 129 RISs of an adequate standard, resulting in a compliance rate of 82 per cent, broadly similar to the outcomes for 1998-99 and 1999-2000.

As shown in table 1.1, the total number of RISs required at the decision-making and tabling stages differs within each reporting period. This difference occurs because there is a formal requirement that RISs be tabled with Bills, disallowable instruments and treaties, and that they be of a standard suitable for publication in explanatory material. RISs for other types of regulation — non-disallowable instruments and quasi-regulation — may be tabled or made public in other ways, but are not subject to formal assessment for this purpose by the ORR.

Box 1.2 **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.

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*.

Finally, apart from the seven criteria outlined above, timing and the extent of consultation with the ORR is also taken into consideration when assessing compliance with the Government's RIS requirements.

Source: A Guide to Regulation.

Table 1.1 **Total RIS compliance, 1997-98 to 2000-01**

	1997-98 [a]	*1998-99*	*1999-00*	*2000-01*
Decision-making stage	137/287	204/260	169/207	129/157
	(37%)	*(78%)*	*(82%)*	*(82%)*
Tabling stage[b]	156/234	202/228	163/179	118/133
	(65%)	*(89%)*	*(91%)*	*(89%)*

[a] Data for 1997-98 differ from that previously published. The differences arise from changes in the methodology used to calculate regulatory activity introduced in 1998-99 (PC 1999a). [b] Compliance for Bills, treaties and disallowable instruments which are subject to formal assessment for this stage by the ORR.

Source: ORR estimates.

In 2000-01, 133 RISs were required at the tabling stage. Of these, six were not prepared. Of the remainder, the ORR assessed 118 as containing an adequate level of analysis, resulting in a compliance rate of 89 per cent — a similar rate to that achieved in 1998-99 and 1999-2000.

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

Table 1.2 **RIS compliance, by type of regulation, 2000-01**

Regulatory proposals introduced via	*Decision-making*			*Tabling*		
	prepared	*adequate*		*prepared*	*adequate*	
	ratio	*ratio*	*%*	*ratio*	*ratio*	*%*
Primary legislation (Bills)	44/55	40/55	73	56/56	49/56	88
Disallowable instruments	56/66	56/66	85	69/75	67/75	89
Non-disallowable instruments	18/19	18/19	95	..	..	..
Quasi-regulation	13/15	13/15	87	..	..	..
Treaties	2/2	2/2	100	2/2	2/2	100
Total	**133/157**	**129/157**	**82**	**127/133[a]**	**118/133[a]**	**89**

.. Not applicable. [a] Compliance for Bills, treaties and disallowable instruments subject to formal assessment for this stage by the ORR. Excludes 15 of 18 RISs prepared for regulatory proposals introduced via non-disallowable instruments that were made public and five of 15 RISs prepared for quasi-regulations that were made public in 2000-01.

Source: ORR estimates.

As in previous years, the number of RISs required at the decision-making and tabling stages for primary legislation (Bills) and disallowable instruments varied. These differences occur for two reasons. First, RISs are not mandatory at the decision-making stage for emergency situations — threats to public health and safety — where there is an urgent need for government action. These situations are

rare, and a RIS still needs to be prepared *after* the decision is made. In 2000-01, several emergency airworthiness directives met this exemption. Second, the decision may have occurred prior to the introduction of mandatory RIS requirements in 1997, but tabling occurred after that time. In 2000-01, one proposal was exempt on these grounds.

On occasion, a RIS prepared for a decision may be modified after the decision is made to remove highly sensitive material, to strengthen the impact analysis, or to align it with the draft legislation it will accompany. In some cases, the changes can affect the adequacy of the RIS. The ORR assesses all RISs altered after the decision-making stage on a case-by-case basis. However, a RIS assessed by the ORR as inadequate for tabling may still be tabled without such indication to the reader. To help overcome this shortcoming, and as part of a further evolution of the Commission's role in reporting on regulatory developments, it is proposed that any RIS tabled in Parliament (as part of Explanatory Memoranda or Explanatory Statements) that does not satisfy the Government's requirements be recorded as such on the Commission's website.

Significance of proposals

The ORR has classified each regulatory proposal that requires a RIS in terms of its economic significance or its potential impact. This is intended to:

- provide a better basis on which to apply the 'proportionality rule' that the extent of RIS analysis needs to be commensurate with the magnitude of the problem; and
- facilitate interpretation of compliance data.

The approach used by the ORR to classify regulatory proposals by significance is outlined in box 1.3.

Compliance by significance

Of the 157 proposals that triggered the Commonwealth Government's RIS requirements in 2000-01, 30 (or 19 per cent) were classified as having substantial impact or significance (that is, significance category A or B). Significance categories have been combined to avoid misleading results associated with a small number of proposals in category A.

In 2000-01, the RIS compliance score for significance categories A and B combined was only 60 per cent — 27 percentage points lower than compliance for the less significant categories C and D combined (table 1.3). This result is cause for some

concern — it suggests that departments and agencies may not be concentrating resources on proposals where the potential payoffs from the RIS process are highest.

Box 1.3 **Classifying the significance of proposals**

A simple approach to classifying the significance of a regulatory proposal is to consider, first, the nature and magnitude of the proposal (and the problem) and second, its impacts on affected parties. The following examples illustrate this approach.

In terms of the nature and magnitude of proposals, a ban on, say, popular or widespread activities or some other significantly anti-competitive proposal would generally be regarded as 'large'. Placing conditions on activities, such as requiring licences or specific standards typically could be regarded as intervention of a 'medium' nature. Examples of less significant 'small' interventions might be periodic reporting requirements for businesses. Specific examples in 2000-01 include the removal of restrictions on the parallel importing of computer software, which was regarded as 'large', and changes to long stay temporary business visa requirements which were considered 'small'.

Impacts can be viewed from an economy-wide perspective, having regard to both their scope and intensity. The ORR classification involves just two categories — broad and narrow.

An increase in the rate of excise on petrol would, for example, be considered quite broad in its impact. On the other hand, a late night curfew on flights into, say, Coolangatta airport would be relatively narrow in terms of its impacts. A third example might be deregulation of the dairy industry. On the supply side, there might be a relatively narrow industry based impact but, on the demand side, there might be a widely dispersed impact on consumers, which could result in the proposal being classified as 'broad'.

While clearly somewhat subjective, this broad approach is employed to categorise proposals into one of four significance categories — A, B, C or D.

Source: ORR.

Table 1.3 **Compliance by significance and timeliness, 2000-01**
RISs at the decision-making stage

Significance rating	*Required*	*Adequate*	*Compliance*	*Average elapsed time*
	no.	*no.*	*%*	*Weeks*[a]
More significant (A & B)	30	18	60	2
Less significant (C & D)	127	111	87	9.5
Total	**157**	**129**	**82**	

[a] From receipt by the ORR of the first draft of the RIS up to when the ORR formally advised on its adequacy at the decision-making stage. These averages exclude a small number of cases where the elapsed time was exceptionally long.

Source: ORR estimates.

Timeliness

The Government has stated that the purpose of its RIS requirements is 'to ensure that departments and agencies fully consider the costs and benefits of all viable alternatives, with a view to choosing the alternative with the maximum positive impact' (CoA 1997, p. 66). With that in mind, last year's report noted that some departments and agencies had been preparing RISs too late for them to make an effective contribution to policy development.

To gather more information on this matter, the ORR has been tracking elapsed times between receipt of the first draft of the RIS in the ORR and when the ORR advises whether the RIS requirements have been met for the decision making stage. As the first draft of a RIS is typically deficient in at least some aspects, it normally triggers an iterative process whereby the ORR provides comments and the responsible department or agency progressively improves the document. The department or agency's obligation is to present a RIS (cleared as 'adequate' by the ORR) to the decision maker when policy approval is sought.

The ORR's analysis of timeliness suggests that departments and agencies are spending, on average, relatively less time (but not necessarily employing fewer resources) preparing RISs (for the decision-making stage) for proposals of high impact or significance (table 1.3) than those of lower significance. For proposals with high significance, the average elapsed time was around two weeks. This compares with over nine weeks for less significant proposals.

The analysis supports other evidence suggesting that the RIS process could be better integrated into the policy development process of departments and agencies. Achieving better integration of the RIS process is the theme of chapter 3.

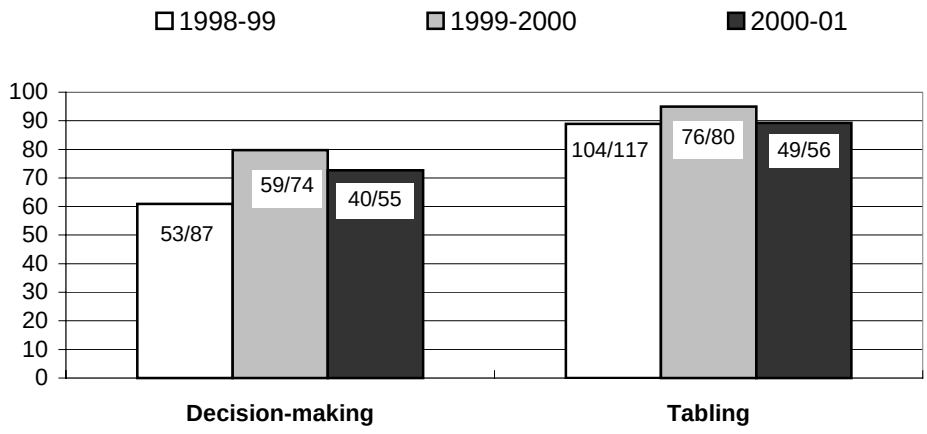
1.2 Primary legislation

The Commonwealth Government introduced 148 policy proposals (regulatory and non-regulatory in nature) via 169 Bills into Parliament in 2000-01.[1] Just over 60 per cent of these did not require preparation of a RIS because there was no impact on business or the proposed changes accorded with specified circumstances where a RIS is not required (see *A Guide to Regulation*, pp. A3-A4).

Of the 56 proposals that required RISs, most had a direct impact on business, while some had a significant indirect impact on business or restricted competition. All but one required a RIS at the decision-making stage. Of these, the ORR assessed 73 per cent as containing an adequate level of analysis at the decision-making stage, compared with a compliance rate of 80 per cent at the same stage in 1999-2000 (figure 1.1). As noted above, the ORR continued to increase the adequacy standard in 2000-01, implying that the decline in compliance is likely to be a slight overstatement. Nonetheless, it is significant that some major legislative proposals in 2000-01 were not accompanied by adequate RISs at the decision-making stage (see chapter 2).

Figure 1.1 **RIS compliance for proposals introduced via Bills, 1998-99 to 2000-01**

Per cent



Source: ORR estimates.

Compliance at the tabling stage was 88 per cent in 2000-01 — compared with 89 per cent in 1998-99 and 95 per cent in 1999-2000.

[1] A Bill is a draft of proposed law presented to Parliament and does not become law (an Act) until passed in identical form by both Houses of Parliament and assented to by the Governor-General.

1.3 Disallowable instruments

Disallowable instruments include statutory rules approved by the Governor-General in Federal Executive Council and legislative 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).

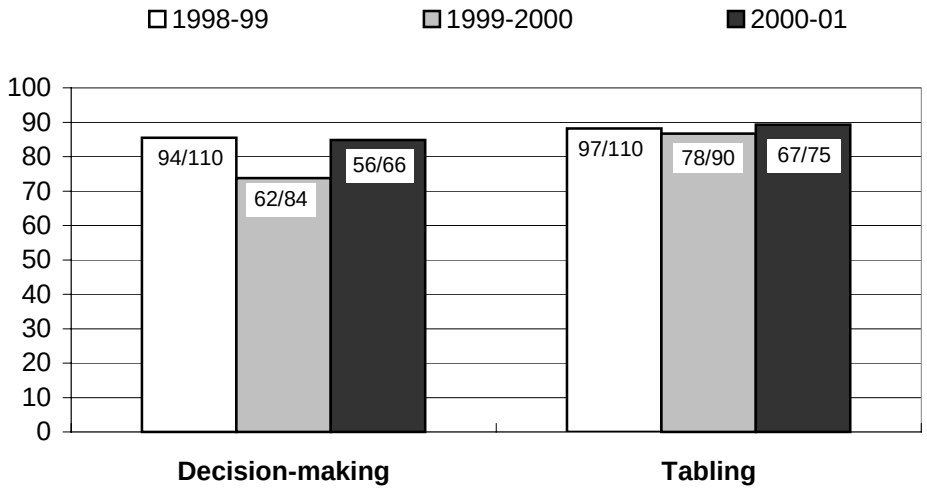
Based on information obtained from SSCRO (2000, 2001) and information reported by departments and agencies, it is estimated that 1438 Commonwealth disallowable instruments were made and tabled in 2000-01. Of these, around 94 per cent either were not likely to have a direct, or a substantial indirect, effect on business and were not likely to restrict competition, or were of a minor or machinery nature and did not substantially alter existing arrangements.

The remaining 75 regulatory proposals (or 6 per cent) made and tabled via disallowable instruments required RISs. This pattern of regulatory activity was similar to previous years, where RISs were required for between 5 and 7 per cent of disallowable instruments made.

Of the 75 proposals requiring a RIS, nine did not require a RIS at the decision-making stage. (Seven of these related to emergency airworthiness directives issued by the Civil Aviation Safety Authority.) Of the 66 proposals that required RISs at the decision-making stage, the ORR assessed 56 to be adequate — a compliance rate of 85 per cent (figure 1.2). This is higher than the 74 per cent compliance rate in the previous year.

Figure 1.2 **RIS compliance for proposals introduced via disallowable instruments, 1998-99 to 2000-01**

Per cent



Source: ORR estimates.

At the tabling stage, 67 of the 75 proposals were assessed as adequate, resulting in a compliance rate of 89 per cent. This compares with 86 per cent compliance in 1999-2000.

1.4 Non-disallowable instruments and quasi-regulations

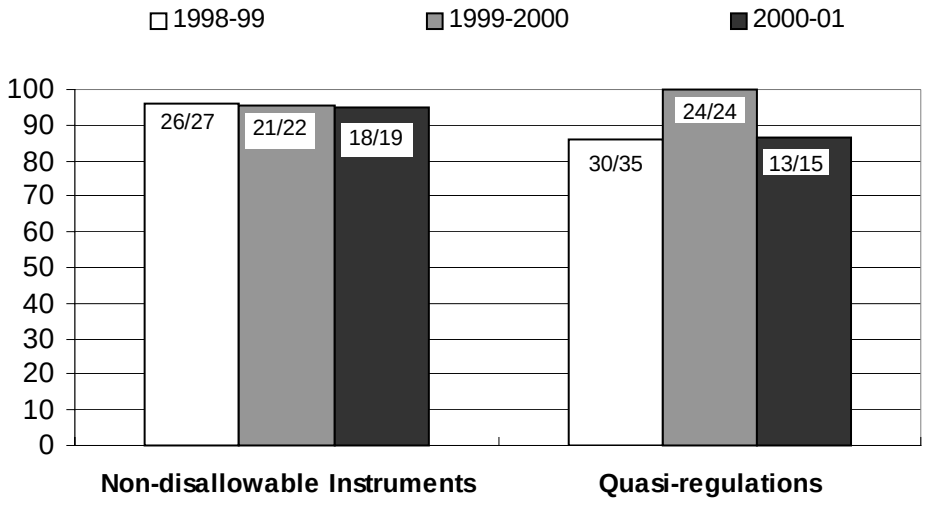
Non-disallowable instruments include legislation that is not subject to parliamentary disallowance. These instruments may be gazetted and/or tabled. Quasi-regulation refers to those rules, instruments and standards where government influences businesses to comply, but which do not form part of explicit regulation.

Because it is difficult to verify the making of non-disallowable instruments and quasi-regulations, the ORR relies largely on self-reporting to estimate the number of non-disallowable instruments and quasi-regulations made each year.

In 2000-01, departments and agencies reported 19 regulatory proposals made via non-disallowable instruments that required a RIS at the decision-making stage. One example is the Radiocommunications (Spectrum Licence Limits — 2 GHz Band) Direction No. 2 of 2000, which imposed restrictions on some potential bidders for radio frequency spectrum in the 2GHz band. RISs were prepared, and cleared as adequate by the ORR, for 18 of the 19 required (a compliance rate of 95 per cent) (figure 1.3).

Figure 1.3 **RIS compliance for proposals introduced via non-disallowable instruments and quasi-regulations, 1998-99 to 2000-01**

Per cent



Source: ORR estimates.

Of the 26 quasi-regulations reported to the ORR in 2000-01, 15 required the preparation of a RIS. RISs were prepared, and cleared as adequate by the ORR, for 13 (a compliance rate of 87 per cent). This outcome compares with compliance rates of 86 per cent in 1998-99 and 100 per cent in 1999-2000 (figure 1.3).

Although encouraged by the ORR, there is no formal requirement that RISs prepared for non-disallowable instruments and quasi-regulations be made public. In 2000-01, 85 per cent of RISs relating to non-disallowable instruments were made public (comparable with 1999-2000). However, only one-third of RISs prepared for quasi-regulations were made public (down from 83 per cent in 1998-99 and 88 per cent in 1999-2000).

While anecdotal evidence suggests that quasi-regulatory activity is more widespread than is reported by departments and agencies, there is no systematic way that the ORR can ensure that the Government's RIS requirements have been met for quasi-regulation. Consequently, the ORR proposes to establish, in cooperation with departments and agencies, 'a listing' for quasi-regulation. Appendix A provides more detail.

1.5 Treaties

The ORR does not report comparative figures on treaties because the treaty-making process occurs much less frequently than other forms of regulation and it can be an involved process taking many years. Under the Commonwealth Government's RIS requirements, a RIS should be prepared at three stages of the treaty making process — entry into negotiations, signing and tabling.

Two treaties were tabled in Parliament in 2000-01. In both cases, adequate RISs were prepared, and cleared by the ORR, at each of the three stages (100 per cent compliance).

Considerable effort has been made by the ORR to improve policy officers' awareness of the Government's RIS requirements at the early stage of the treaty-making process. However, in the case of a number of treaties that have not yet been tabled, compliance at the 'entry into negotiations' stage in 2000-01 was poor. Reasons for poor compliance include a lack of understanding by policy officers of the Government's RIS requirements in regard to treaty-making, difficulties in determining when negotiations commence, and the nature of, and uncertainties in, the treaty-making process.

In many instances there is considerable uncertainty early in the treaty-making process. The early RIS should reflect these uncertainties. For example, the early RIS

might include only the *Problem* and *Objectives* associated with the treaty (box 1.3). The RIS can then evolve, in line with the treaty making process, reflecting the content and implications of the treaty as they become clearer.

For some treaties, the early negotiations and discussion stages pre-dated mandatory RIS requirements. Consequently, no RIS was prepared when negotiations commenced. In these cases, the ORR has advised departments that a RIS should be prepared for the next significant decision-making stage — which typically would be well before endorsement (signing). This may be when the matter goes to Cabinet, the Prime Minister or other Minister for approval to proceed with subsequent stages of negotiations.

1.6 National regulation making

National regulatory decisions are made by some 40 Ministerial Councils and a small number of standard-setting bodies. Some of these decisions are implemented by the passage of Commonwealth/State/Territory primary legislation and/or regulations. Others take the form of national regulations and quasi-regulations.

In April 1995, prompted by concerns that standards should be the minimum necessary and not impose excessive requirements on businesses, the Council of Australian Governments (COAG) agreed that regulatory proposals put to Ministerial Councils and standard-setting bodies should be subject to a nationally consistent assessment process. This process was set out in the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (COAG 1997 as amended).

The major element of the process is the completion of Regulatory Impact Statements (RISs). For purposes of applying these requirements, COAG (1997, p. 4) took a very wide view of regulation as:

> … the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as those voluntary codes and advisory instruments … for which there is a reasonable expectation of widespread compliance.

The ORR's role in monitoring compliance with the COAG *Principles and Guidelines* is to assess RISs prepared for Ministerial Councils and standard-setting bodies. These RISs are assessed at two stages: before they are distributed for

consultation with parties affected by the regulatory proposal; and before a decision is to be made by the responsible body.[2] The ORR must assess:

- whether the *Regulatory Impact Statement* guidelines have been followed;
- whether the type and level of analysis is adequate and commensurate with the potential economic and social impacts of the proposal; and
- whether alternatives to regulation have been adequately considered.

The ORR is then required to advise the relevant Ministerial Council or standard-setting body of its assessment.

The ORR also reports annually to COAG's Committee on Regulatory Reform on overall compliance with the guidelines.

As with its Commonwealth responsibility, it is not the ORR's role to advise on policy aspects of options under consideration, but rather to advise on the assessment of the benefits and costs of these options and to determine if the analysis is adequate. The assessment of the policy proposal remains the responsibility of the relevant Ministerial Council.

The issue of satisfying COAG RIS requirements has recently taken on greater significance. The *Agreement to Implement the National Competition Policy and Related Reforms* (COAG 1995) sets down the amounts and conditions of related competition payments from the Commonwealth to the States and Territories. For the Third Tranche of competition payments, to commence in 2001-02, factors to be taken into consideration by the National Competition Council (which makes recommendations to the Treasurer on the level of payments) include advice from the ORR on which decisions were compliant with COAG's regulatory best practice requirements and which were not.

In 2000-01, 25 regulatory decisions made by Ministerial Councils and standard-setting bodies required RISs. Of these, 20 RISs were prepared, and 17 were commented on by the ORR prior to the final decision. Only one of the 17 RISs commented on was considered inadequate. Three RISs, that were not examined by the ORR until after the decision was made, were considered to meet the COAG requirements, giving an overall compliance rate of 76 per cent (table 1.4). This compares with a compliance rate of 68 per cent in 1998-99 and 97 per cent in

[2] In November 1997, the COAG Guidelines were amended to require Ministerial Councils and standard-setting bodies to provide draft RISs to the ORR for comment before undertaking public consultation (COAG 1997). In December 1999, the Prime Minister wrote to Australian heads of government seeking agreement to amend the Guidelines to clarify that the ORR should also assess the RIS that most closely accords with the version for final decision by the Ministerial Council. Such agreement was subsequently obtained.

1999-2000. Further details are provided in appendix B which reproduces the ORR's report to the National Competition Council.

Table 1.4 **COAG RIS compliance for regulatory decisions made by Ministerial Councils and SSBs, 1998-99 to 2000-01[a]**

	1998-99	*1999-00*	*2000-01*
Decision-making stage — all proposals	19/28 (68%)	34/35 (97%)	19/25 (76%)

a The 2000-01 data do not include decisions of a minor/administrative nature. Of the 25 decisions made in 2000-01, ten were regarded as significant by the ORR. Compliance for these decisions was 60 per cent.

Source: ORR estimates.

2 Compliance by portfolio

In 2000-01, compliance with the Government's RIS requirements varied significantly both among and within portfolios. A substantial number of departments and agencies fully complied with the requirements. However, many departments and agencies have some way to go to meet the Government's regulatory best practice requirements.

This chapter reports in detail on the 22 departments and agencies that developed regulations in 2000-01 for which Regulation Impact Statements (RISs) were required. It shows the number of RISs that were prepared to an adequate standard of analysis at both the decision-making and tabling stages, and includes brief descriptions of selected RISs to illustrate aspects of the RIS process. The emphasis is on compliance at the (more critical) decision-making stage. However, for a department or agency to be considered fully compliant with the RIS requirements, it must prepare an adequate RIS (see chapter 1), provide it to the decision-maker before the decision is made and, for Bills, treaties and disallowable instruments, table the RIS with the explanatory material accompanying the instrument.

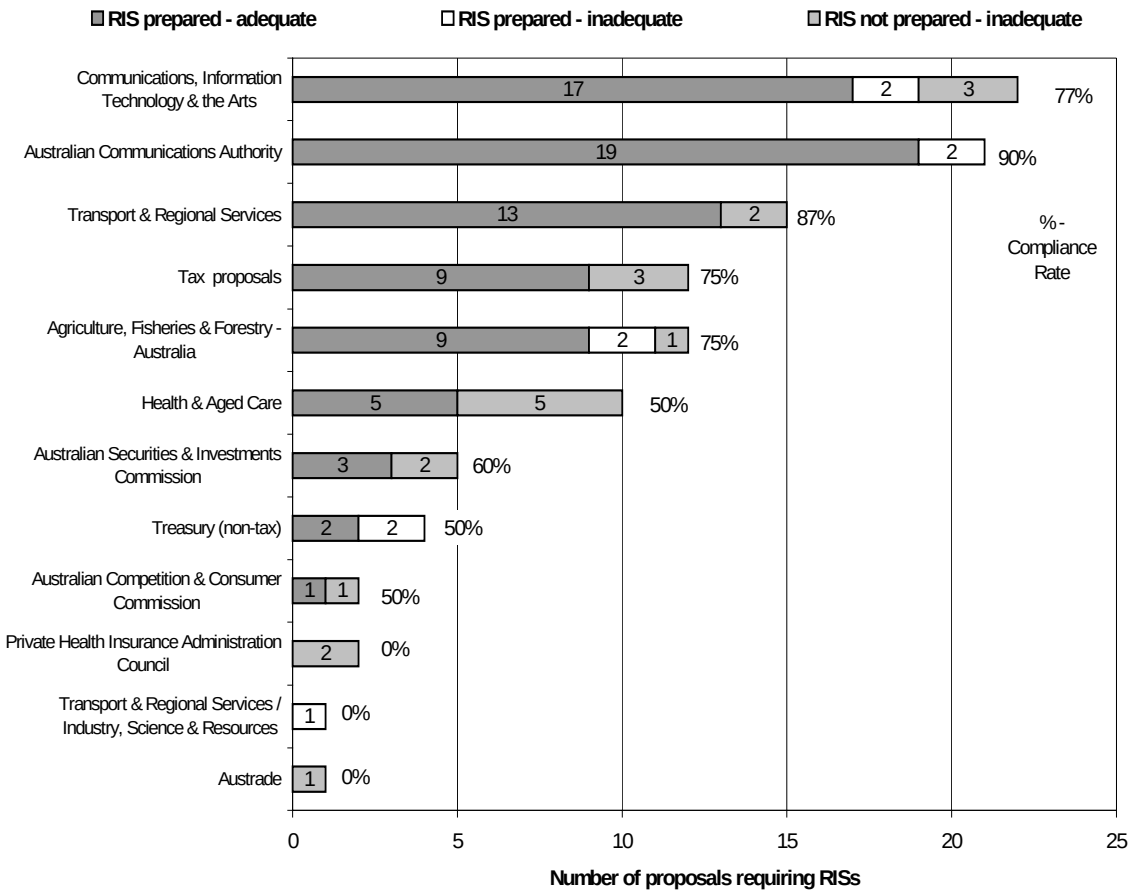
Twelve departments and agencies complied with the RIS requirements for all relevant regulatory activity at the decision-making stage. These were:

1. Attorney-General's Department (3 RISs);
2. Australian Broadcasting Authority (11 RISs);
3. Australian Customs Service (4 RISs);
4. Australian Prudential Regulation Authority (1 RIS);
5. Civil Aviation Safety Authority (4 RISs);
6. Department of Education, Training & Youth Affairs (5 RISs);
7. Department of Employment, Workplace Relations & Small Business (8 RISs);
8. Department of Environment & Heritage (9 RISs);
9. Department of Family & Community Services (1 RIS);
10. Department of Immigration & Multicultural Affairs (1 RIS);
11. Department of Industry, Science & Resources (5 RISs); and
12. National Capital Authority (1 RIS).

Nine of these twelve departments and agencies were also fully compliant at the decision-making stage last year.

The bar chart shows the aggregate results for those departments and agencies that did not fully comply with the Government's RIS requirements at the decision-making stage (figure 2.1).

Figure 2.1 **Compliance with RIS requirements at the decision-making stage, 2000-01**



Note: The figure does not include the 12 departments and agencies that fully complied with the RIS requirements at the decision-making stage.

Source: ORR estimates.

The total length of each bar indicates the number of RISs required to be prepared at the decision-making stage. The dark grey segment shows how many of those RISs were assessed to be adequate. The white and light grey segments show the number of RISs that were not compliant, either because the ORR assessed the RISs as not adequate or because RISs were not prepared. The compliance rate for each department and agency, as a percentage of the number of RISs required, is shown at

the end of each bar. The weighted average compliance rate for those departments and agencies was 74 per cent.

Detailed results for departments and agencies follow. As mentioned earlier, this year's report focuses on significant proposals. The examples of significant proposals described 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.

2.1 Agriculture, Fisheries and Forestry

In 2000-01, the Department of Agriculture, Fisheries and Forestry — Australia (AFFA) prepared 11 of the 12 RISs required at the decision-making stage (table 2.1). The ORR assessed nine RISs as adequate, resulting in a compliance rate of 75 per cent. AFFA tabled 12 RISs, of which 11 were considered adequate by the ORR (a compliance rate of 92 per cent).

Table 2.1 **AFFA: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	1/2	0/2	2/2	1/2
Disallowable instruments	9/9	9/9	10/10	10/10
Non-disallowable instruments	1/1	0/1	..	..
Total	**11/12**	**9/12**	**12/12**	**11/12**
Percentage	*92*	*75*	*100*	*92*

.. Not applicable.

Source: ORR estimates.

In December 2000, the National Competition Policy (NCP) Review of the *Wheat Marketing Act 1989* recommended (among other things) that: the system of administering non-Australian Wheat Board International exports be simplified; the Wheat Export Authority introduce a simplified export control system for a three year trial period; and that the 'single desk' export monopoly be retained until a review in 2004, *but* that the purpose of that review be changed to provide one final opportunity to demonstrate the net public benefit of a single desk. If in 2004 no compelling case could be made that the single desk delivers a net public benefit, the NCP Review recommended that the single desk be discontinued; if a compelling case can be made, the Review recommended that the single desk continue, but with regular reviews and a further NCP Review in 2010.

The Government did not adopt the recommendations relating to the single desk export monopoly, although it announced some minor changes to the export consent system, to be implemented through non-legislative means. Since these changes were not assessed as part of the NCP Review, another RIS was prepared for the decision stage in accordance with the Competition Principles Agreement (CPA). This RIS was assessed as inadequate by the ORR. Since the changes were introduced through non-legislative means, there was no tabling stage, and consequently no final RIS was prepared. This matter has been recorded as non-compliant at the decision stage.

The *Horticultural Marketing and Research and Development Bill 2000* transferred the export control powers from the former Australian Horticultural Corporation and the Australian Dried Fruits Corporation to a new horticultural industry services company. For matters such as a single desk restriction on exports, the adequacy of the RIS is assessed against the criteria in the CPA, and must demonstrate a clear net benefit to the community and that the stated objectives can only be achieved through maintaining a restriction on competition. Although a RIS was prepared, it was assessed as inadequate by the ORR at the decision-making and tabling stages.

2.2 Attorney-General's

Attorney-General's Department

In 2000-01, the Attorney-General's Department (A-G's) fully complied with the RIS requirements for the three RISs it was required to prepare at the decision-making stage (table 2.2). Compliance at the tabling stage was only 50 per cent. Four RISs were required to be tabled. Of these, three adequate RISs were prepared. However, one RIS was inadvertently not tabled, although it has been subsequently placed on A-G's website. In the fourth instance, the Department did not prepare a RIS for tabling (having received an emergency exception for the decision-making stage).

The *Copyright Amendment (Parallel Importation) Bill 2001* removed controls on the parallel importing of new release books. These controls, implemented in 1991, allowed Australian publishers and distributors to retain exclusive import rights to new release books if copies of those books were made available in Australia within 30 days of their first publication overseas. An adequate RIS, assessing the impacts on Australian authors, publishers, printers and consumers was prepared for the decision-making stage and was tabled with the amending legislation.

Table 2.2 **A-G's: RIS compliance by type of regulation, 2000-01**

	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	1/1	1/1	0/2	0/2
Total	**3/3**	**3/3**	**2/4**	**2/4**
Percentage	*100*	*100*	*50*	*50*

Source: ORR estimates.

Australian Customs Service

The Australian Customs Service (ACS) prepared RISs for four proposals at the decision-making stage in 2000-01. The ORR assessed all four as adequate. These RISs were tabled with the *Customs Amendment (International Trade Modernisation) Bill 2000* and associated legislation.

2.3 Communications, Information Technology and the Arts

The Communications, Information Technology and the Arts portfolio includes the Department of Communications, Information Technology and the Arts,[1] the Australian Broadcasting Authority and the Australian Communications Authority.

Department of Communications, Information Technology and the Arts

In 2000-01, the Department of Communications, Information Technology and the Arts (DoCITA) prepared 19 of the 22 RISs required at the decision-making stage (table 2.3). The ORR assessed 17 RISs as adequate, resulting in a compliance rate of 77 per cent. Fifteen RISs were required at the tabling stage. Of the 13 prepared by the Department, 10 were cleared as adequate by the ORR (a compliance rate of 67 per cent). Following discussions between the Department and the ORR on compliance issues, compliance improved significantly in the second half of the year.

[1] The National Office for the Information Economy (NOIE) was made an Executive Agency during the reporting period. RIS compliance information for NOIE will be reported separately in the future.

Table 2.3 **DoCITA: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	4/4	2/4	4/4	2/4
Disallowable instruments	7/10	7/10	8/10	7/10
Non-disallowable instruments	7/7	7/7	..	..
Treaties	1/1	1/1	1/1	1/1
Total	**19/22**	**17/22**	**13/15**	**10/15**
Percentage	*86*	*77*	*87*	*67*

.. Not applicable.

Source: ORR estimates.

The Department was responsible for several significant proposals in 2000-01 (table 2.4). The RIS for the *Radiocommunications (Spectrum Re-Allocation) Declaration Nos. 2 and 3 of 2000* adequately examined, at both the decision-making and tabling stages, the issues concerning the re-allocation of spectrum for the provision of third generation mobile services (2 GHz Band and 800 MHz Band). These included defining the spectrum to be made available for re-allocation, the treatment of those already using the spectrum, the time frame for the re-allocation process (how long incumbents had to relocate to other spectrum) and appropriate licensing arrangements for the re-allocated spectrum.

The *Broadcasting Services (Digital Television Format Standards) Regulations 2000* require broadcasters to comply with an audio digital standard for the delivery of standard definition digital television (SDTV). While the regulations allow the additional use of an alternative audio digital standard, broadcasters who choose to do so will have to transmit SDTV through both audio streams. The mandated standard was not the preferred choice of all the broadcasters, with some indicating that the ability to choose between the two standards for the delivery of high definition digital television (HDTV) should also be available for SDTV. A RIS was not prepared for the decision-making stage and the RIS prepared at the tabling stage was assessed as inadequate as it did not adequately examine the costs or benefits to either industry or consumers in providing for the mandated standard.

Table 2.4 DoCITA: RIS compliance for significant proposals, 2000-01

Title of instrument	RIS for decision		RIS for tabling	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
3G Auction				
Radiocommunications (Spectrum Re-Allocation) Declaration No. 2 and No. 3 of 2000 Decision to reallocate 2 GHz and 800 MHz spectrum	Yes	Yes	Yes	Yes
Australian Communications Authority (Allocation of 2 GHz and 800 MHz Spectrum) Direction No. 1 of 2000 Direction to the ACA under s12 of the ACA Act regarding configuration of spectrum lots for the allocation of the 2 GHz bands	Yes	Yes	..	..
Radiocommunications (Spectrum Licence Limits – 2 GHz Band) Direction No. 2 of 2000 Direction to the ACA to impose competition limits on the auction of the 2 GHz and 800 MHz bands	Yes	Yes	..	..
3.4 GHz Auction				
Radiocommunications (Spectrum Licence Limits – 3.4 GHz Band) Direction No. 1 of 2000 Direction to the ACA to impose competition limits on the auction of the 3.4 GHz Band	Yes	Yes	..	..
Copyright Amendment (Parallel Importation) Bill 2001				
Repeal of prohibition of the parallel importation of computer software	Yes	Yes	Yes	Yes
Broadcasting Services (Digital Television Format Standards) Regulations 2000				
Mandates an Australian Audio Standard for Delivery of Digital Standard Definition TV	No	No	Yes	No
Interactive Gambling (Moratorium) Bill 2000				
Moratorium on new licences to offer interactive gambling services in Australia	Yes	No	Yes	No
Interactive Gambling Bill 2001				
Ban on certain interactive gambling services in Australia	Yes	No	Yes	No
Radiocommunications (Datacasting Transmitter Licence Limits) Direction No. 1 of 2001				
Direction to the ACA to impose competition limits on the auction of datacasting transmitter licences	Yes	Yes	..	..
Total	**8/9**	**6/9**	**5/5**	**2/5**
Percentage	*89*	*67*	*100*	*40*

.. Not applicable.

Source: ORR estimates.

The National Office of Information Economy was responsible for two regulatory proposals introduced in 2000-01. The *Interactive Gambling (Moratorium) Bill 2000* and the *Interactive Gambling Bill 2001* provided for a moratorium and for a subsequent ban on interactive gambling respectively. RISs were prepared at the decision-making and tabling stages and, although social benefits were discussed, the RISs did not demonstrate that the Government's objectives could only be met by restricting competition. In addition, they did not demonstrate a net benefit to the community from restricting competition, in accordance with the CPA. Consultation on a broad range of options was limited for both RISs.

For significant proposals, overall compliance for the Department at the decision-making stage was 67 per cent, and 40 per cent at the tabling stage.

Australian Broadcasting Authority

In 2000-01, the Australian Broadcasting Authority (ABA) prepared all 11 RISs required at the decision-making stage, resulting in a 100 per cent compliance rate (table 2.5). One proposal, the setting of standards for commercial radio, was classified as 'significant'.

Table 2.5 **ABA: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Non-disallowable instruments	8/8	8/8	..	..
Quasi-regulation	3/3	3/3	..	..
Total	**11/11**	**11/11**	**..**	**..**
Percentage	*100*	*100*	..	..

.. Not applicable.

Source: ORR estimates.

Australian Communications Authority

In 2000-01, the Australian Communications Authority (ACA) prepared and supplied to the decision maker 19 of the 21 RISs required at that stage. The ORR assessed all of those RISs as adequate, resulting in a compliance rate of 90 per cent at the decision-making stage (table 2.6). The Authority did not table two RISs, however one was made available on its website (a compliance rate of 92 per cent at the tabling stage).

One significant regulatory proposal administered by the ACA was the setting of procedures for the re-allocation of spectrum in the 3.4 GHz band. This re-allocation allows for the introduction of wireless local loop telecommunications technology, as well as high speed Internet services. The proceeds from the re-allocation amounted to more than $112 million. The RIS, which contained an adequate level of analysis at both the decision-making and tabling stages, examined issues such as the method of allocation of the licences (for example, auction and auction type), length of the licences, the size of spectrum lots to be made available within the various licence areas and management of interference.

Table 2.6 **ACA: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments[a]	10/12	10/12	11/12	11/12
Non-disallowable instruments	3/3	3/3	..	..
Quasi-regulation	6/6	6/6	..	..
Total	**19/21**	**19/21**	**11/12**	**11/12**
Percentage	*90*	*90*	*92*	*92*

.. Not applicable. **a** Includes two proposals (for the re-allocation of spectrum) that were introduced via a combination of disallowable and non-disallowable instruments.

Source: ORR estimates.

2.4 Education, Training and Youth Affairs

In 2000-01, the Department of Education, Training and Youth Affairs was fully compliant with the Government's RIS requirements, preparing, with the Department of Immigration and Multicultural Affairs, a RIS for five proposals for the decision-making stage. Assessed as adequate by the ORR, the RIS was tabled in Parliament with the *Education Services for Overseas Students Bill 2000*.

2.5 Employment, Workplace Relations and Small Business

In 2000-01, the Department of Employment, Workplace Relations and Small Business (DEWRSB) was fully compliant with the Government's RIS requirements, preparing to an adequate standard eight out of the eight RISs required at the decision-making stage (table 2.7) and tabling seven out of seven RISs.

Table 2.7 **DEWRSB: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	7/7	7/7	7/7	7/7
Quasi-regulation	1/1	1/1	..	..
Total	**8/8**	**8/8**	**7/7**	**7/7**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable.

Source: ORR estimates.

2.6 Environment and Heritage

In 2000-01, the Department of Environment and Heritage (DEH) fully complied with the Government's RIS requirements (table 2.8). The ORR assessed the nine RISs prepared to be adequate at both the decision-making and tabling stages.

The *Fuel Quality Standards Bill 2000* introduced a head of power to specify minimum fuel quality standards for petrol, diesel and other significant transport fuels sold in Australia. The Department was fully compliant with the Government's RIS requirements.

Table 2.8 **DEH: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	5/5	5/5	5/5	5/5
Disallowable instruments	4/4	4/4	4/4	4/4
Total	**9/9**	**9/9**	**9/9**	**9/9**
Percentage	*100*	*100*	*100*	*100*

Source: ORR estimates.

2.7 Family and Community Services

In 2000-01, the Department of Family and Community Services fully complied with the Government's RIS requirements, preparing a RIS for the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2001 (No. 1).*

Close to 300 child care schemes will be required to be Quality Assurance (QA) accredited under the new arrangements, and around 14 000 carers will be required to comply with quality principles (for parents to continue to receive Commonwealth fee relief). The RIS compared the costs and benefits of extending accreditation to carers as well as schemes, and of introducing a higher accreditation standard for schemes, on a voluntary basis, as well as a mandatory minimum level of accreditation. The chosen option, which will increase costs across the sector by around 3 per cent a year, had the lowest compliance costs of the three QA options considered.

2.8 Foreign Affairs and Trade

Australian Trade Commission

The Australian Trade Commission, a statutory authority within the Foreign Affairs and Trade portfolio, did not prepare a RIS at the decision-making stage for the *Export Market Development Grants Amendment Bill 2000*. A RIS was prepared for the tabling stage, but it was assessed as inadequate by the ORR.

2.9 Health and Aged Care

Within the Health and Aged Care portfolio, the Department of Health and Aged Care and the Private Health Insurance Administration Council were required to prepare 12 RISs in 2000-01.

Department of Health and Aged Care

In 2000-01, the Department of Health and Aged Care (DHAC) prepared five of the ten RISs required at the decision-making stage (table 2.9). The ORR assessed the five RISs as adequate (a compliance rate for DHAC of 50 per cent at the decision-making stage). At the tabling stage, adequate RISs were prepared in seven of the ten cases. In a further two cases, the RISs prepared for the decision were not tabled.

Three of the ten proposals were considered significant by the ORR. Compliance for these was 33 per cent at the decision-making stage and 67 per cent at the tabling stage (table 2.10).

Table 2.9 **DHAC: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	1/5	1/5	5/5	3/5
Disallowable instruments	4/5	4/5	5/5	4/5
Total	**5/10**	**5/10**	**10/10**	**7/10**
Percentage	*50*	*50*	*100*	*70*

Source: ORR estimates.

Table 2.10 **DHAC: RIS compliance for significant proposals, 2000-01**

Title of instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Health Legislation Amendment Bill (No. 1) 2001				
Enables the Minister to disallow private health insurance premium increases on the grounds of the public interest	No	No	Yes	No
Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Bill 2001				
Continues restrictions on Medicare subsidies for recently graduated doctors to those with post-graduate qualifications, or undertaking prescribed training or rural service	No	No	Yes	Yes
Gene Technology Regulations 2001				
Defines categories of genetically modified organisms for the purposes of regulation and prescribes the information required by applicants for a licence to deal with a genetically modified organism.	Yes	Yes	Yes	Yes
Total	**1/3**	**1/3**	**3/3**	**2/3**
Percentage	*33*	*33*	*100*	*67*

Source: ORR estimates.

The *Health Legislation Amendment Bill (No. 1) 2001* was amended by the Government in March 2001 to include a provision to enable the Minister for Health to disallow increases in private health insurance premiums on public interest grounds. The Government's decision to include this measure in the draft legislation was made without the involvement of officials, and a RIS was not prepared at the decision-making stage. The Government's RIS requirements include such amendments. A RIS was prepared for tabling, but did not include any statement on

consultation, or reasons why it was not possible to consult with affected groups. As such, the measure was only partly compliant at the tabling stage.

The *Health Legislation Amendment (Medical Practitioner's Qualifications and Other Measures) Bill 2001* included the removal of the sunset provision, due to come into effect in January 2002, on the 'provider number legislation'. This legislation restricts access to Medicare subsidies to patients of doctors who graduated before November 1996, or who have postgraduate specialist qualifications or are in a prescribed training course or program, including rural service.

The sunset clause was a significant feature of the original legislation — its removal therefore represented a change to existing arrangements and so triggered the RIS requirements. An adequate RIS was not prepared until after the decision to remove the sunset provision was made. Its assessment of the impacts drew on the monitoring and review of the original legislation which had been ongoing since its introduction. Around 6000 doctors are currently subject to the qualification requirements. Removal of the sunset provision is estimated to save around $250 million a year in outlays.

The *Gene Technology Regulations 2001* are illustrative of subordinate legislation for which there are options that will affect industry differently, or restrict competition to different degrees. The Regulations were developed under the *Gene Technology Act 2000*, which created a national regulatory system for the control of genetically modified organisms (GMOs) and the use of gene technology in Australia.

The Regulations classify certain dealings with GMOs on the basis of their risk to public health and safety and to the environment, and prescribe information requirements in relation to those dealings. They cover an extensive range of activities including dealings that have been assessed over time as presenting minimal biosafety risk, and higher risk dealings that may or may not involve the intentional release of a GMO into the environment. The Regulations also include time limits for the regulator's consideration of applications for a licence to deal with GMOs.

A draft RIS was prepared at the public consultation stage. The further development of the RIS, for the decision and for tabling (with the ORR's involvement), assisted the development of the regulation.

Private Health Insurance Administration Council

The Private Health Insurance Administration Council made two significant disallowable instruments in 2000-01 that triggered the Government's RIS requirements. The *Health Benefits Organisations — Solvency Standard 2000* and the *Health Benefits Organisations — Capital Adequacy Standard 2000* established prudential requirements specifically tailored to private health funds, in recognition of differences in some of the risks applicable to this sector compared to those applicable to general and life insurance. A RIS was not prepared for the decision to adopt these standards. However, an adequate RIS was prepared for their tabling.

Within the overall requirement for health funds to meet these standards, there is considerable flexibility for organisations to structure their assets in appropriate ways. A review of the standards, to assess whether separate standards for this sector remain justified, is planned five years after their commencement.

2.10 Immigration and Multicultural Affairs

The Department of Immigration and Multicultural Affairs fully complied with the Government's regulatory best practice requirements. One RIS was required, and prepared by the Department, for the *Migration Amendment Regulations 2001 (No. 5)* which affected long-stay business visa holders. The ORR assessed the RIS as adequate at the decision-making stage and for tabling. During the year, the Department consulted the ORR concerning numerous regulatory proposals to ensure it complied with the Government's RIS requirements.

2.11 Industry, Science and Resources

In 2000-01, the Department of Industry, Science and Resources (DISR) prepared RISs for four regulatory proposals that are likely to have impacts on business.[2] All were cleared as adequate by the ORR for the decision-making stage, and were subsequently tabled in Parliament (table 2.11). The Department was also fully compliant for one treaty tabled in Parliament in 2000-01, preparing and clearing through the ORR RISs at the three stages required: entry into negotiations, signature and ratification.

[2] Two of the four proposals were co-sponsored by the Department of the Treasury and one was co-sponsored by the Department of Transport and Regional Services at the decision-making stage. A fifth proposal was co-sponsored by the Department of Transport and Regional Services — compliance for that is reported in section 2.12. A sixth was tabled by the Australian Taxation Office. See section 2.14.

Table 2.11 **DISR: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	3/3	3/3	3/3	3/3
Disallowable instruments	1/1	1/1	1/1	1/1
Treaties	1/1	1/1	1/1	1/1
Total	**5/5**	**5/5**	**5/5**	**5/5**
Percentage	*100*	*100*	*100*	*100*

Source: ORR estimates.

2.12 Industry, Science and Resources/Transport and Regional Services

In 2000-01, the Government agreed to:

- restrict the importation (under the Low Volume Scheme) of used vehicles (except used motorcycles) to 'specialist' and 'enthusiast' vehicles and prevent the importation of what are effectively standard vehicles;
- introduce a scheme to regulate registered automotive workshops; and
- require imported used vehicles to be modified and inspected by registered automotive workshops, on a vehicle by vehicle basis, to ensure each vehicle's compliance with the appropriate national standards.

This proposal was jointly sponsored by DISR and the Department of Transport and Regional Services (DTRS) at the decision-making stage. A RIS was prepared by DISR for the decision, but was considered inadequate by the ORR. Whilst DTRS, which was responsible for the RIS at the tabling stage, considerably improved the RIS from the one prepared at the decision-making stage, the RIS tabled with the *Motor Vehicle Standards Amendment Bill 2001* was still not considered by the ORR to satisfy the Government's requirements.

2.13 Transport and Regional Services

Within the Transport and Regional Services portfolio, the Department, the Civil Aviation Safety Authority and the National Capital Authority were required to prepare RISs in 2000-01.

Department of Transport and Regional Services

In 2000-01, the Department of Transport and Regional Services (DTRS) prepared RISs at the decision-making stage for 13 of 15 regulatory proposals that are likely to have impacts on business (table 2.12).[3] The ORR assessed each as adequate, resulting in a compliance rate of 87 per cent.

A RIS containing an adequate level of analysis was prepared for tabling with a fourteenth proposal, giving the Department a compliance rating at the tabling stage of 93 per cent.

The ORR was not consulted, and a RIS was not prepared, before the decision-making stage for the fifteenth proposal: a package of amendments to the slot management scheme at Sydney airport. The amendments which included the capping of the number of regional slots allocated in peak periods at the current level and the establishment of a minimum aircraft seat limit for new slot allocations were introduced via the *Slot Management Scheme Amendment Determination 2001*.

Table 2.12 **DTRS: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	1/1	1/1	1/1	1/1
Disallowable instruments[a]	12/14	12/14	13/14	13/14
Total	**13/15**	**13/15**	**14/15**	**14/15**
Percentage	*87*	*87*	*93*	*93*

[a] Two instruments implemented COAG decisions from previous years.

Source: ORR estimates.

Civil Aviation Safety Authority

The Civil Aviation Safety Authority (CASA) fully complied with the Government's RIS requirements at both the decision-making and tabling stages in 2000-01. CASA was required to prepare four RISs at the decision-making stage. An additional seven were required for tabling. The additional RISs 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

[3] Two proposals were co-sponsored by the Department of Industry, Science and Resources. One is reported in table 2.12. The other is reported in section 2.12.

requirements on certain aircraft flying to remote islands following incidents where pilots had to make emergency landings because of insufficient fuel.

National Capital Authority

In 2000-01, the National Capital Authority was fully compliant with the Government's RIS requirements, preparing one RIS at the decision-making and tabling stages for *Amendment 30 (Canberra Airport)* to the *National Capital Plan*.

2.14 Treasury

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

Department of the Treasury — non-tax regulations

The Department of the Treasury was responsible for four non-tax regulatory proposals introduced via primary legislation in 2000-01 that triggered the Government's RIS requirements. The Treasury prepared two of the four RISs required at the decision-making stage. The ORR assessed these RISs to be adequate, resulting in a compliance rate at the decision-making stage of 50 per cent. The Department was fully compliant at the tabling stage. For two proposals deemed significant by the ORR, the compliance rate was 50 per cent at the decision-making stage and 100 per cent at the tabling stage (table 2.13).

The *Financial Services Reform Bill 2001* contained reforms affecting the entire Australian financial services sector. As at 30 June 2000, the consolidated total financial assets on the books of financial institutions was $1389 billion. The main thrust of the reforms was the introduction of consistent rules and obligations and a single financial licence, covering all financial services and financial service providers. The Bill was initially approved in 1997. The ORR was not consulted at this stage and a RIS was not prepared. An adequate RIS was prepared for tabling. While generally the level of consultation with interested parties was adequate, there was only limited consultation on the telephone monitoring proposal.

The *General Insurance Reform Bill 2001* contained reforms to the prudential regulatory framework for general insurance involving $53 billion in assets, or 4.1 per cent of the total capitalisation of the Australian financial system. The

regulatory framework for general insurance had remained relatively unchanged for 28 years. The reforms included raising the minimum level of capital required from $2 million to $5 million and provision for the Australian Prudential Regulation Authority (APRA) to make standards, as disallowable instruments. Also, consultation with industry in the development or variation of the standards has been made mandatory. The ORR was consulted before the decision-making stage, and an adequate RIS was prepared and tabled.

Table 2.13 **Treasury: RIS compliance for (non-tax) significant proposals, 2000-01**

Title of instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
Financial Services Reform Bill 2000				
To implement further reforms from the Wallis inquiry	No	No	Yes	Yes
General Insurance Reform Bill 2001				
To increase capital requirements and provide a standards-making power to APRA under the *General Insurance Act 1973*	Yes	Yes	Yes	Yes
Total	**1/2**	**1/2**	**2/2**	**2/2**
Percentage	*50*	*50*	*100*	*100*

Source: ORR estimates.

Australian Competition and Consumer Commission

Two RISs were required for two proposals introduced via non-disallowable instruments by the Australian Competition and Consumer Commission (ACCC) in 2000-01. One RIS was prepared for the ACCC's record keeping rules for telecommunications companies. It was cleared as adequate by the ORR, giving a compliance rate of 50 per cent. This RIS was subsequently made public.

In November 2000, the ACCC issued the *Telecommunications (Number Portability) Directions 2000*. Given the importance that number portability has for effective competition in the telecommunications industry — especially in the mobile phone market — these directions were of a significant nature. They instructed the ACA to facilitate number portability between carriers. Under the directions, the ACA had to amend the numbering plan to allow portability and to allow the ACA to set the date of implementation. With respect to mobile phone number portability, the ACA had to set an implementation date at the earliest possible time, in consultation with the ACCC. Since these directions are a non-disallowable instrument that affects

business, a RIS was required. The ACCC did not contact the ORR and an adequate RIS was not prepared.

Australian Securities and Investments Commission

The Australian Securities and Investments Commission made 5 quasi-regulations in 2000-01 that required RISs. The ORR assessed the 3 RISs prepared as adequate at the decision-making stage and suitable for publication (a compliance rate of 60 per cent).

The *Electronic Funds Transfer (EFT) Code of Conduct*, jointly developed by Government, industry and consumers, is a voluntary code designed to protect consumers when funds are transferred electronically. The Code ensures that members have appropriate dispute handling mechanisms, enables consumers to track transactions and establishes procedures to protect consumers' privacy. The *EFT Code of Conduct* is used in *A Guide to Regulation* as an example of quasi-regulation. The Code was revised in April this year under the auspices of ASIC. The revision extends protection to the Internet, computer and telephone banking, and stored value facilities (including smart cards). The Code is a clear example of quasi-regulation. However, the ORR was not contacted and a RIS was not prepared for the decision-making stage or for publication.

Taxation Proposals

Taxation proposals fall under the joint responsibility of the Department of the Treasury and the Australian Taxation Office (ATO). In 2000-01, tax RISs were prepared at the decision-making stage for 9 of the 12 proposals that triggered the Government's requirements, resulting in a compliance rate of 75 per cent (tables 2.14 and 2.15). The Department and the ATO were fully compliant at the tabling stage, tabling 13 RISs (including one for a proposal that did not require a RIS at the decision-making stage) of an adequate standard in 2000-01.

There were four significant tax proposals introduced via primary legislation in 2000-01. RISs were prepared, and cleared as adequate by the ORR, for three of the four proposals at the decision-making stage (a compliance rate of 75 per cent). A RIS was prepared for the fourth proposal, after the decision was made, and was cleared by the ORR for tabling (table 2.15).

Table 2.14 **Treasury and ATO: RIS compliance by type of taxation regulation, 2000-01**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	8/11	8/11	12/12	12/12
Disallowable instruments	1/1	1/1	1/1	1/1
Total	**9/12**	**9/12**	**13/13**	**13/13**
Percentage	*75*	*75*	*100*	*100*

Source: ORR estimates.

Table 2.15 **Treasury and ATO: RIS compliance for significant (taxation) proposals, 2000-01**

Title of instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
New Business Tax System (Capital Allowances) Bill 2001				
Introduce a uniform capital allowances regime	Yes	Yes	Yes	Yes
Taxation Laws Amendment Bill (No. 3) 2001				
Streamline GST reporting and revise the Business Activity Statement (BAS) requirements	No	No	Yes	Yes
New Business Tax System (Thin Capitalisation) Bill 2001				
Introduce a new thin capitalisation regime to ensure that multinational entities do not allocate an excessive amount of debt to their Australian operations	Yes	Yes	Yes	Yes
Taxation Laws Amendment (Research and Development) Bill 2001				
Enhance the research & development tax concession arising from the Innovation Action Plan 'Backing Australia's Ability'	Yes	Yes	Yes	Yes
Total	**3/4**	**3/4**	**4/4**	**4/4**
Percentage	*75*	*75*	*100*	*100*

Source: ORR estimates.

The *Taxation Laws Amendment Bill (No. 3) 2001* introduced proposals designed to simplify the GST return and lodgment system and to modify the conditions for lodgment of quarterly business activity statements. While a RIS was prepared for the introduction of the GST, one was not prepared for the original GST return and lodgment system. Neither was a RIS prepared for the simplified system at the

decision-making stage. However, a RIS was prepared for tabling. This RIS examined, in detail, the impacts of the proposals on compliance costs for business (especially small business) and was assessed as adequate.

Through the *Taxation Laws Amendment (Research and Development) Bill 2001*, the Government proposed four reforms to the tax concession for research and development:

- the introduction of a premium 175 per cent concession for additional R&D;
- the introduction of a refundable R&D tax offset for small companies;
- changes to the eligibility requirements applicable to R&D plant; and
- tightening of the definition of R&D activities.

A RIS prepared by the Department of Industry, Science and Resources for the decision-making stage was assessed as adequate by the ORR. The RIS, which focused on ways to improve certainty, reduce complexity and minimise compliance costs for Australian businesses seeking to avail themselves of the assistance provided, was then further developed by the ATO before being tabled with the *Taxation Laws Amendment (Research and Development) Bill 2001*.

3 Better integration of the RIS process

While some departments and agencies have incorporated the RIS process into their policy development, some appear to still treat it as an 'add-on'. This chapter discusses the benefits to agencies of better integrating the RIS process into decision-making. Initiatives introduced by some agencies are used to highlight 'best practice'.

While much regulation is necessary and beneficial, this is not always the case. In some circumstances, regulation may not be the most efficient means for achieving relevant policy objectives. And, in many cases where regulation is needed, there will be a number of options with different features and effects from which to choose. The Regulation Impact Statement (RIS) process seeks to assist departments and agencies to move towards 'best practice' in policy design and implementation.

Preparation of a RIS formalises and provides evidence of the steps that should be taken in policy formulation. It helps to ensure that options to address a perceived policy problem are canvassed in a systematic, objective and transparent manner, with options ranked according to their net economic and social benefits.

The Prime Minister's statement (*More Time for Business*) highlighted the importance of the RIS process and not just the RIS document itself.

> The purpose of the [regulation impact] statement is to ensure that departments and agencies fully consider the costs and benefits of all viable alternatives, with a view to choosing the alternative with the maximum positive impact (CoA 1997, p. 66).

The Prime Minister also stated that 'Departments and agencies are required to consult with the Office of Regulation Review (ORR) *at an early stage* in the policy development process'.

While there has been an improvement over recent years in aggregate compliance with the Government's RIS requirements, there are still some deficiencies, including: a wide variation in compliance performance across agencies, relatively low compliance for significant regulatory proposals and a lack of timeliness in preparing RISs. These deficiencies suggest a lack of commitment to integrate the RIS process (Banks 2001). The following sections discuss a range of factors relating to the integration of the Government's RIS process into the policy development process.

3.1 Agency management

The ORR's primary role is to advise and assist departments and agencies to meet the Government's RIS requirements. Commitment to the RIS process should therefore come from the department or agency. If best practice regulatory processes are already in place, little extra work is involved in formally complying with the Government's RIS requirements.

Agencies that have integrated the preparation of RISs into their existing processes typically incorporate some of the elements of a RIS into their 'discussion' or 'issues' papers. This might include, for example, information on the problem being addressed (and the need for government action), objectives, options (regulatory and non-regulatory) and identification of the main groups affected by the proposed regulation. Undertaking these elements before public consultation occurs is important to effective policy formulation. It is also an effective means of integrating the RIS process into policy development.

Some agencies have introduced 'gate-keeper' roles by adopting a centralised or coordinated approach to manage the preparation of RISs. A check list, managed by the Cabinet liaison area within the agency, is one simple way to implement the arrangement. The check list might include questions such as: 'Has the ORR been consulted about the proposal?'; 'Is a RIS required?'; 'What is the ORR's RIS identification number for this matter?'.

An example: RIS management in AQIS

Since the Government's RIS requirements became mandatory in 1997, the Australian Quarantine and Inspection Service (AQIS) has had a good record on RIS compliance. AQIS cites two reasons why the RIS process is becoming part of their culture.

The first stems from the importance AQIS places on the consultative process. All regulatory proposals in relation to operational matters are developed in consultation with industry through a series of consultative committees. In other words, an important part of the RIS process — developing options in relation to an identified problem — begins a long time before policy approval is sought from the Minister.

The second reason is that AQIS has a unit tasked with managing the legislative process; this includes ensuring compliance with the Government's RIS requirements. The unit manages the legislative process from the development of the RIS right through to the making of the legislation and subsequent implementation.

Members of the unit explain the RIS process to AQIS officers, assist in the preparation of RISs, conduct training and liaise with the ORR as required.

An example: Management Plans for Commonwealth Marine Reserves

Under previous legislation (the *National Parks and Wildlife Conservation Act 1975*), the use of a Commonwealth marine reserve was regulated under a Plan of Management. Under the Plan, International Union for the Conservation of Nature (IUCN) Classifications were usually assigned, although this was not a statutory requirement. These plans were disallowable instruments and ran for finite terms — usually five years. Two years before their expiry, work commenced on drafting a new Plan of Management. At this point, the ORR would be consulted on the need for a RIS. As Plans were disallowable instruments with finite lives and had the potential to affect businesses (for example, fishing and tourism), the position taken by the ORR was that each new Plan required a RIS, because the default option was not to regulate use.

The introduction of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act) led to a change in the process for regulating the use of Commonwealth reserves. Now, when an area is declared a Commonwealth reserve, it is always assigned an IUCN Classification. That classification determines the type of activities that can and cannot be conducted within the reserve. The IUCN categories range from Strict Nature Reserve (IUCN category Ia), where the management focus is to preserve the natural conditions of the ecosystems and dependent species, to Managed Resource Protected Area (IUCN category VI), where consideration is given to balancing the long-term protection and maintenance of biological diversity and the sustainable use of the reserve's natural products and services.

After discussing the issue, the Marine Protected Areas section of Environment Australia and the ORR found a way to better integrate the RIS process. Under the new arrangements, it is intended that a RIS will be prepared for the decision to make the declaration and assign the IUCN category. (At the tabling stage, Environment Australia will make the RIS available to the public through its website.) A Management Plan is also prepared for the reserve, but a RIS is not required as the Plan is largely determined by the assignment of the IUCN classification and, as a result, will be 'machinery of government' in nature.

When a Management Plan (under the EPBC Act) ceases to take effect after seven years, a RIS is required only if the new Management Plan proposes amending the IUCN category for all or part of the Commonwealth Reserve.

These mutually agreed arrangements provide greater certainty for the Department and the ORR as to when a RIS will be required, leading to a more consistent application of the Government's regulatory best practice requirements and administrative savings for both agencies.

Agency-specific RIS guidelines

The Government's RIS requirements can be integrated into existing policy development processes by developing agency-specific guidelines. The Australian Taxation Office adopted this approach in 1998 with its *Guidelines for the preparation of Regulation Impact Statements* (ATO 1998).

Similarly, COAG RIS requirements can be integrated into existing policy development processes. In 2000-01, the National Road Transport Commission released *Guidelines for the Preparation of Regulatory Impact Statements* which were endorsed by the Australian Transport Council (ATC) (NRTC 2001). The guidelines set out the requirements and procedures that must be followed in developing and finalising RISs in relation to proposals for regulatory change submitted to the ATC. The guidelines, developed in consultation with the ORR, place the COAG RIS requirements in the context of the NRTC's own regulatory development process. They aim to ensure that the NRTC's development of regulatory reforms conforms fully with the COAG *Principles and Guidelines* (COAG 1997) and the requirements for impact analysis in the NRTC's own legislation. As far as practicable, the guidelines also seek to harmonize the NRTC's RIS standards and policy development processes with those of the Commonwealth, States and Territories to avoid unnecessary delay or duplication of effort.

A feature of the NRTC guidelines is the emphasis on addressing the RIS requirements as early as possible in the policy development process. The guidelines recommend that the ORR be consulted at the policy options stage and that, as far as possible, issues papers and other documents that guide initial public consultation incorporate the key elements of a RIS. The process is described as an 'incremental one' in which the final RIS document (for submission to the ATC) develops progressively as additional elements are added and the level of analytical sophistication increases.

3.2 Compliance reporting

A key function of the ORR is to monitor compliance with the Government's RIS guidelines. Compliance assessment is undertaken by the ORR in conjunction with departments and agencies on a six monthly basis, and involves information collection, appraisal and feedback. As explained below, the monitoring process can assist agencies to better integrate the RIS process into their policy development framework.

For departments and agencies that exhibit poor compliance over the six months, the ORR provides direct feedback to the relevant department or agency head. The purpose of this feedback is threefold. First, to check that compliance information is correct. Second, senior management can use the information to send a signal to their staff that the Government's RIS requirements need to be met. Third, some feedback is provided as a matter of courtesy to ensure that there are 'no surprises' when the Commission reports on compliance in *Regulation and its Review*.

The ORR has sought over time to develop more refined indicators of compliance to promote the Government's objective of effective and efficient legislation and regulation, while giving agencies time to become accustomed to the RIS process. In *Regulation and its Review 1997-98*, aggregate Commonwealth results were presented, with no portfolio information (PC 1998). In 1998-99, the Commission recorded compliance results by portfolio, but only in broad terms (PC 1999b). In 1999-2000, compliance results were presented by department and agency for individual instruments (PC 2000). This year, indicators of significance and timeliness are included at an aggregate level. Next year the intention is to report on these indicators by department and agency. The provision of greater detail in compliance reporting should increase the incentive for departments and agencies to satisfy the Government's RIS requirements by better integrating the RIS process into policy development.

3.3 Legislation reviews

The Commonwealth Legislation Review program is part of a national program of review of existing legislation agreed to in 1995 by COAG as part of the *Competition Principles Agreement* (CPA). Under the CPA, all Australian governments made a commitment to review and reform legislation that restricts competition.

The Commonwealth Legislation Review program began in 1996-97. Unlike the programs of other jurisdictions, the Commonwealth's program includes not only

legislation that potentially restricts competition, but also legislation that may otherwise impose costs or confer benefits on business.

To date, around 64 Commonwealth reviews across 14 departments have been completed and 11 reviews across 5 departments are in progress. The review of the stock of legislation has helped to build a critical mass of 'RIS aware' policy officers across departments and agencies sooner than would have been the case had only the flow of new and amended regulation that triggered the Government's RIS requirements been examined. In turn, this has helped to integrate the RIS process into policy development.

The ORR's role in relation to the Commonwealth Legislation Review Schedule is to provide guidance to departments and agencies on appropriate terms of reference and the composition of review bodies. More detail is provided in appendix C.

3.4 Training policy officers

Ongoing training and guidance to policy officers is fundamental if departments and agencies are to meet the Government's RIS requirements. Best practice policy development processes can only be achieved if there is a sound framework in place and capable staff to apply it. Given staff turnover, training in RIS requirements will continue to be a priority for the ORR. Appendix D provides more detail.

Training takes many forms, from providing advice over the phone, by email or at meetings, to formal training sessions. Manuals on RIS requirements are on the Commission's website (www.pc.gov.au/orr) and are available in hard copy from the ORR. *A Guide to Regulation* is the manual applying to Commonwealth RIS requirements and *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (COAG 1997) covers the COAG RIS requirements.

In preparing a RIS, officials often find it helpful to examine past examples that the ORR has assessed as being of an adequate standard. Examples have been published on the Commission's

website for that purpose. They have been chosen to illustrate RISs for different types of regulatory proposals, as well as different forms of analysis.

3.5 Regulatory plans

The Government's 1998 small business election policy *A Small Business Agenda for the New Millennium* included a commitment that departments and agencies would publish annual regulatory plans.

The plans focus on regulation and reviews of legislation which potentially require a RIS. Each regulatory plan contains information on recent regulatory changes for the year just ended, and activities that could lead to regulatory change in the year ahead. For proposed regulatory activities, the plan includes a description of the issue, information about consultation opportunities and an expected timetable. In relation to the expected timetable, major stages and milestones are identified in the development of the regulation, including the preparation of RISs.

The Office of Small Business (in the Department of Employment, Workplace Relations and Small Business), in consultation with regulatory departments and agencies, has developed a strategy to implement the Government's commitment. Each department and agency responsible for business regulation was required to publish a regulatory plan on their website by August 2001. However, some agencies have yet to publish their plans. The Department of Employment, Workplace Relations and Small Business proposes to provide a central entry point at www.dewrsb.gov.au.

Regulatory plans can provide business and the community with ready access to information about past and planned changes to Commonwealth regulation and make it easier for business to participate in the development of regulation that affects them. In principle, the plans should: help to improve the way in which regulators approach the task of developing and administering regulation; encourage strategic planning of regulatory activity; and make it easier for agencies to monitor relevant developments in other areas of government.

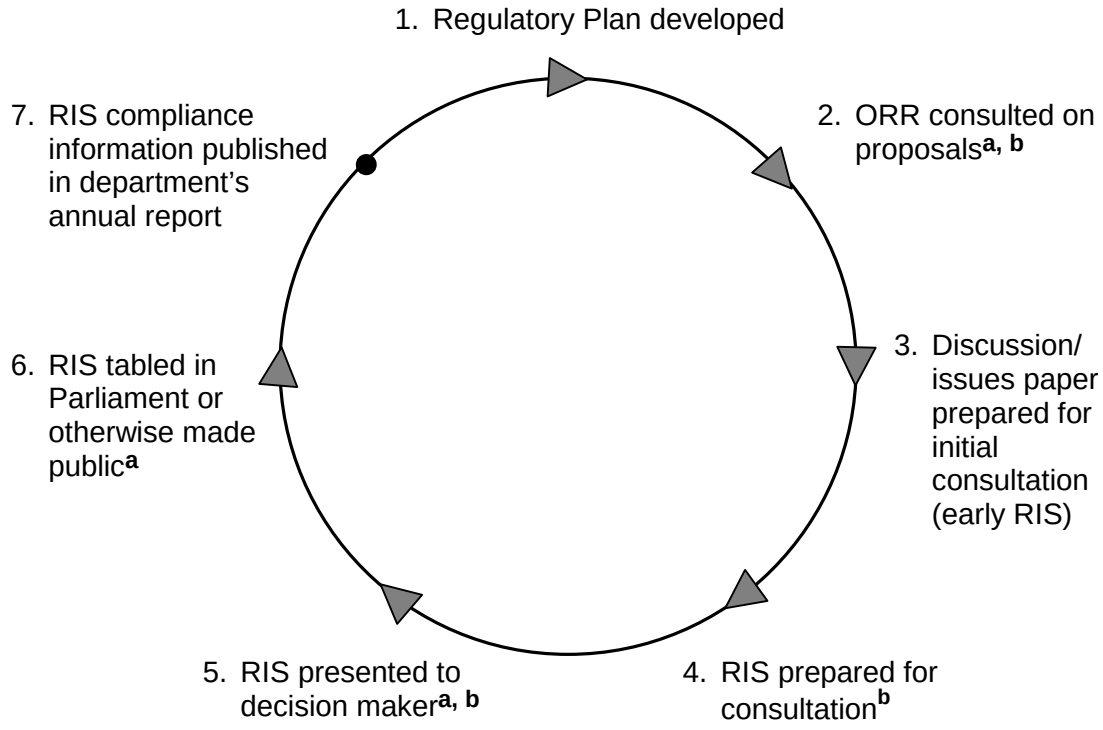
Developing regulatory plans should also help agencies to achieve best practice in their policy formulation processes. More specifically, identifying at a very early stage of the development of regulation whether proposed regulatory activity will require a RIS should prompt agencies to plan how to integrate the RIS process into their policy development process. In addition, the development of regulatory plans should improve contact between agencies and the ORR in the early stages of policy development.

3.6 Agency commitment

Another way to integrate the RIS process better would be for departments and agencies to publish RIS compliance information as part of a set of performance indicators in their annual reports. This would demonstrate their commitment to the Government's RIS requirements, and so complete the 'commitment cycle'. Figure 3.1 presents a stylised representation of what is involved.

The main phases of the RIS commitment cycle (shown in figure 3.1) are outlined in box 3.1. *A Guide to Regulation* provides more detail.

Figure 3.1 **Commitment cycle for the Government's RIS requirements**



a Minimum Commonwealth RIS requirement. **b** Minimum COAG RIS requirement.

Source: ORR.

Box 3.1 **Phases of the commitment cycle**

All the phases in the cycle may not be appropriate for every regulation. For example, more complex proposals, where regulation evolves over time, may require greater consultation and feedback between phases 2, 3 and 4. However, figure 3.1 indicates the important milestones in the RIS process. It also highlights the need to consult the ORR early in policy development and the iterative nature (between the ORR and the agency developing the policy) of the process to achieve regulatory best practice.

1. The Regulatory Plan for each Commonwealth department or agency is developed — it is suggested that agencies seek advice from the ORR at this phase. The Regulatory Plan is published on the agency's website.
2. Departments and agencies confer with the ORR at an early stage in the policy development process. (Some matters may arise that were not anticipated in the Regulatory Plan.) *A Guide to Regulation* (p. A4) states that:

   > If there are any doubts as to whether or not a regulatory review or proposed regulation qualifies for an exemption/exception from RIS requirements, the matter should be referred at the earliest opportunity to the ORR. It is important to note that it is the ORR — not individual departments, agencies, statutory authorities or boards — that decides whether a RIS should be prepared.

   If a RIS is not required for a regulation, notification from the ORR confirming such advice should be obtained.
3. It is suggested that a discussion/issues paper (an 'early RIS') be prepared for initial consultation. Ideally, the paper would include some elements of a RIS (box 1.2). For example, it might include information on the problem, objectives, some options (regulatory and non-regulatory) and identify the main groups affected by the regulation. It is suggested that the ORR be consulted in the preparation of the paper.
4. A RIS is prepared for consultation. It contains most of the elements of a RIS, including a preliminary impact analysis. For COAG matters, it is a requirement that the RIS be cleared by the ORR. For Commonwealth matters, it is suggested that agencies seek advice from the ORR.
5. The RIS is presented to the decision maker, which may be Cabinet, the Prime Minister, Minister(s), Ministerial Council, board or agency head. For both COAG and Commonwealth matters, it is a requirement that the RIS be assessed by the ORR for adequacy. Adequacy criteria for Commonwealth RISs are presented in box 1.2.
6. After a decision is made, the RIS (cleared by the ORR) is tabled in Parliament or otherwise made public.
7. It is suggested that Commonwealth RIS compliance information be published (after seeking advice from the ORR) in the department's or agency's annual report.

Source: ORR.

3.7 Ecologically Sustainable Development

To progress the National Strategy for Ecologically Sustainable Development (NSESD), in June 2001 the Government decided to amend *A Guide to Regulation* to specifically refer to the need for RISs to include an assessment of ESD impacts.

The Strategy, which was endorsed by all Australian governments in 1992, states that ecologically sustainable development (ESD) '… aims to meet the needs of Australians today, while conserving our ecosystems for the benefit of future generations' (CoA 1992, p. 6).

An inquiry into the implementation of ESD by Commonwealth Government agencies (PC 1999b) noted the broad scope of the policy agenda associated with ESD implementation. There is a wide variation in both the significance for policy and the complexity of the problem for policy makers. For some departments and agencies, ESD is a core policy concern, and decision-making is relatively complex. Decisions may involve scientific uncertainty and difficulties in balancing objectives in the short and long term. However, as noted in the Commission's report, ESD implementation is not always complex (PC 1999b). In general, the degree of detail and depth of analysis should be commensurate with the magnitude of the problem and with the size of the potential impact of the proposals. Better integration of the RIS process into policy development should lead to a more thorough consideration of ESD impacts.

3.8 Cost recovery

Over time, government agencies have turned increasingly to cost recovery arrangements to recoup some or all of the costs of certain activities: for example, the provision of some statistical information by the Australian Bureau of Statistics, the assessment of new drugs by the Therapeutic Goods Administration and the provision of aviation safety services by the Civil Aviation Safety Authority.

In a recent draft report on the inquiry into cost recovery arrangements by the Commonwealth Government, the Commission recommended that cost recovery matters be covered specifically in the RIS process (PC 2001). The Commission stated that, notwithstanding the increased significance of cost recovery, present practice lacks the attributes of good policy — clear rationale, accountability, transparency, performance assessment and review.

The inquiry found that the absence of cost recovery guidelines has led agencies to rely on outdated publications, ad hoc reviews and consultants' advice (PC 2001, p. xviii). The inquiry also found that, while the RIS is a valuable tool for assessing proposed regulation, it has not dealt directly with many cost recovery proposals.

The Commission proposed that the RIS process be clarified to make it explicit that, where a regulation under review includes a cost recovery element, the RIS should address cost recovery by applying the guidelines proposed by the inquiry. The inclusion of cost recovery policy would broaden the scope of RISs and help to integrate the RIS process further into policy development processes.

3.9 Examples from States/Territories and OECD

The Commonwealth Government's RIS requirements differ from those in Australian states and territories. One of the major differences is the requirement in some states and territories for the preparation of a RIS at the consultation stage of the policy development process. A discussion of when a RIS should be prepared and other aspects of RIS requirements in states and territories is included in appendix E.

Arrangements to ensure the RIS is commenced early in the policy development process are in place in a number of OECD countries, most notably in the United Kingdom, Canada and the United States. Appendix F contains a discussion of RIS requirements in these countries.

An independent review of New Zealand's RIS regime found a number of areas for potential improvement (Tasman Economics 2001). Of most interest to Australian regulators is the finding that the overall effectiveness of the New Zealand RIS regime is being reduced significantly by the lack of incentive for officials to work on the development of the RIS throughout the process of policy development.

The New Zealand Government is considering ways to improve the design of its RIS regime. This encompasses a requirement that a RIS be developed throughout the process of policy formulation. The changes — which go further than the Commonwealth Government's current RIS requirements — would require officials to prepare:

- an *initial* RIS at a very early stage, when officials first consider a regulatory proposal, unless a specified exemption applies; and
- a *partial* RIS, which would accompany reports to Ministers and Cabinet seeking approval to commence work on the development of regulatory proposals and would be released with any public discussion paper.

These RISs would complement the current requirement for a *full* RIS at the decision-making stage and a *final* RIS at the tabling stage.

The ORR encourages agencies to consider setting 'milestones' for the development of the RIS throughout the policy development process as it is regarded as a highly effective means of integrating the RIS process, particularly for more significant regulatory proposals.

3.10 Agency self-assessment trial

Better integration of the Government's RIS requirements might also be achieved through some form of self-assessment of the RIS process.

Self-assessment could involve an agency or area (section or branch) within an agency determining whether it met the Government's RIS requirements. The responsible area would still notify the ORR at an early stage of the policy development process that the RIS requirements were triggered. It would also provide a copy of the final RIS to the ORR at the decision and tabling stages, but would not seek the ORR's explicit assessment. Submitting the RIS would provide a means for the ORR to monitor how well self-assessment is working.

For an area or agency to qualify for RIS self-assessment, it would need to demonstrate a commitment to the Government's RIS process. Initially, self-assessment could be limited to areas that typically deal with regulation of lower levels of significance.

The Marine Protected Areas section of the Marine Conservation branch in Environment Australia meets these criteria to trial RIS self-assessment. The section has agreed to begin a self-assessment trial for the declaration or variations to IUCN Classifications involving marine reserves from the end of 2001.

While certain regulatory areas would benefit from greater responsibility and recognition of their effort to comply with the Government's RIS requirements, there would be a wider benefit in the ORR being able to devote more effort to areas of poor RIS compliance, as well as to the more significant regulatory proposals.

3.11 Conclusion

Integrating the RIS process more closely into policy development, rather than treating it as an 'add-on', will lead to better regulation. The examples and suggestions made in this chapter illustrate how agencies can better achieve this.

Ultimately, understanding and commitment from within departments and agencies are the key ingredients needed to ensure the adoption of a best practice regulatory process.

Departments and agencies are encouraged to consult with the ORR and explore specific options to better integrate the Government's RIS process into their policy development.

A Monitoring quasi-regulation

The term 'quasi-regulation' refers to the range of rules, instruments and standards governments use to influence businesses' behaviour, but which do not form part of explicit government regulations. Quasi-regulation can take many forms such as codes of practice, advisory notes, guidelines and rules of conduct, issued by either non-government or government bodies.

The Small Business Deregulation Task Force (SBDTF 1996) recognised that such regulation could have just as large impacts on businesses and other groups as formal Acts of Parliament. It therefore recommended that, as is the case for new or amended government regulation, quasi-regulatory arrangements should be subject to cost-benefit analysis — which forms the core of the Regulation Impact Statement (RIS) process — to help ensure they are effective and efficient.

The Government agreed in part, but directed an interdepartmental committee to investigate further the nature and impact of quasi-regulation; it reported in *Grey-Letter Law* (IDC 1997). The broad range of quasi-regulatory instruments were set out in *Grey-Letter Law* (table A.1).

The Government's response to the committee's report was embedded in a revised edition of *A Guide to Regulation*, confirming that regulations to which the RIS requirements apply include quasi-regulation.

Accordingly, as part of the ORR's RIS compliance monitoring and reporting, all Commonwealth departments and agencies are required to report (every six months) on quasi-regulation that has been implemented or amended, as well as Bills and treaties that have been tabled, and delegated legislation made. Quasi-regulatory activity is also addressed in the Council of Australian Governments' (COAG) *Principles and Guidelines* which apply to Ministerial Councils and national standard-setting bodies (COAG 1997).

The ORR considers that quasi-regulatory activity is more widespread than is being reported. The under-reporting may be partly because there is some confusion as to what may constitute quasi-regulation.

Table A.1 **Types and examples of quasi-regulation**

Types of quasi-regulation	*Examples*
1. Industry based code with endorsement by a government agency	Supermarket (checkout) scanning code is industry formulated and enforced, and has TPC/ACCC endorsement.
2. Industry based code or standard developed in response to actual or perceived threat by government to regulate	Master Builders' Code acknowledges the need to change from within the industry 'or suffer the consequences of government regulation'.
3. Substantial government involvement in the development and subsequent monitoring of a code or standard	Code of Banking Practice was developed by a committee of officials, is implemented by the banks, but reported on annually by the Australian Payments System Council (a government body).
4. Industry code or standard required by legislation, but developed and implemented by industry, with reserve enforcement powers given to a regulatory authority	New telecommunications legislation provides for industry codes of practice, including for billing and customer complaints. Compliance will be voluntary, but the Australian Communications Authority has the power to direct any particular company to comply.
5. Agreements negotiated between industry and government	In April 1997, the Australian and New Zealand Environment and Conservation Council (ANZECC) signed new voluntary waste reduction agreements with the newsprint, paper packaging, steel can and high density polyethylene industries.
6. Government guidelines to assist business meet legislative requirements by suggesting actions not specified in law	Human Rights and Equal Opportunity Commission has published advisory notes on access to premises for disabled persons — the Disability Discrimination Act makes it unlawful to discriminate against a person with a disability. Adherence to these notes is said to assist in defending a complaint if one were lodged.
7. Standards and codes established by government, with compliance being achieved because it is a pre-condition for other benefits	Quality Improvement Accreditation System (QIAS) — a child must attend a day care centre which meets QIAS standards in order for the parents to qualify for financial assistance under the Commonwealth's Childcare Assistance Program.
8. Use by the courts of voluntary standards and codes in determining what is reasonable in, for example, negligence cases	In *Anne Christina Benton v Tea Tree Plaza Nominees* (1995 64 SASR 494), Duggan J. used non-compliance with a voluntary Australian Standard for kerb height as a factor in determining negligence. In *Paul Maurice Nagle v Rottnest Island Authority* (1993 112 ALR 393), the High Court found the defendant failed to provide appropriate warning of dangerous swimming conditions, referring to Australian Standard 2416.

Source: IDC 1997, p. xiii.

Also, there is no common mechanism by which agencies record or 'register' quasi-regulatory arrangements, so that the ORR has no systematic way to assess whether the Government's RIS requirements have been met.

For 2000-01, a total of only 15 quasi-regulatory matters affecting businesses were reported by Commonwealth departments and agencies, of which six were attributed to the Australian Communications Authority and five to the Australian Securities and Investment Commission. The other four were reported by the Australian Broadcasting Authority and the Department of Employment, Workplace Relations and Small Business. Some examples, including one example from a Ministerial Council, are listed in box A.1. The examples may help agencies identify other quasi-regulation.

To further help Commonwealth departments and agencies identify likely quasi-regulatory arrangements, and thereby ultimately improve compliance with the Government's requirements, the ORR has commenced construction of a list or register to monitor quasi-regulation. It is hoped that departments and agencies will suggest additions to the register which will be maintained on the Commission's website. (Additions or changes to the register may be emailed to the ORR (orr@pc.gov.au)). As a first step, the ORR has selected nine agencies that appear to make substantial use of various forms of quasi-regulation. They are:

- Australian Broadcasting Authority;
- Australian Communications Authority;
- Australian Competition and Consumer Commission;
- Australian Prudential Regulation Authority;
- Australian Securities and Investments Commission;
- Department of Health and Aged Care;
- Department of Industry, Science and Resources;
- Human Rights and Equal Opportunity Commission; and
- Therapeutic Goods Administration.

In addition to examining quasi-regulation reported by these agencies, the ORR has searched annual reports, websites and other sources, and has selected a limited number of instruments that *appear* to be quasi-regulatory. These are detailed below in what should be regarded as a preliminary list. However, before discussing the particular regulatory arrangements, it is important to make several qualifications.

Box A.1 **Some examples of quasi-regulation reported in 2000-01**

Australian Communications Authority (ACA)

Six industry codes were reported. Upon registration of an Australian Communications Industry Forum (ACIF) code, under section 117 of the *Telecommunications Act 1997*, the ACA may warn or direct participants, in the relevant section of industry covered by the code, to comply with the code provisions. Failure to comply with an ACA direction may result in pecuniary penalties as determined by the Federal Court.

ACIF C521: August 2000 — Industry Code — Customer Information on Prices, Terms and Conditions. Outlines the minimum standards of information that must be provided to customers by telecommunications carriers, carriage service providers and internet and content service providers.

ACIF C542: June 2000 — Industry Code — Billing. Deals with content and presentation of bills, billing verification and timeliness.

ACIF C522: April 2000 — Industry Code — Calling Number Display. Deals with the privacy issues which arise in the provision of Calling Number Display services to telecommunications customers.

ACIF C547: June 2000 — Industry Code — Complaint Handling. Deals with the complaint handling processes provided by telecommunications carriers and carriage and content service providers to enable their customers to express concern with aspects of service.

ACIF C541: June 2000 — Industry Code — Credit Management. Deals with the credit assessment and management arrangements between suppliers (carriers, carriage service providers and content service providers) and their customers.

ACIF C546: April 2001 — Industry Code — Customer Transfer. Deals with the selling practices and processes used by telecommunications carriers and carriage service providers to protect consumers against unauthorised transfer of their telecommunications services from one supplier to another.

Australian Broadcasting Authority (ABA)

Three individual licensing arrangements were recorded as quasi-regulation. However, the ORR and the Authority have since agreed that these arrangements are of an administrative nature and, in future, these will not be recorded or reported.

Australian Securities and Investment Commission (ASIC)

The *Electronic Funds Transfer Code of Conduct* provides protection to consumers arising from all forms of electronic banking, including Internet banking. It is a voluntary code which was jointly developed by Government, industry and consumers. The Code was revised in April 2001 under the auspices of ASIC.

(Continued next page)

Box A.1 **(continued)**

Policy Statements are issued by ASIC as formal advice, indicating how it will administer *the Corporations* Law and other legislation for which ASIC is responsible. In 2000-01, ASIC issued four new or substantially revised policy statements. They covered issues such as, Internet discussion sites, the use of electronic applications for life insurance and superannuation products, mutuality and, for s621 of *the Corporations Law,* the minimum bid price principle.

Department of Workplace Relations and Small Business

The *Retail Grocery Industry Code of Conduct* is a voluntary code developed in response to the 30 August 1999 Report of the Joint Select Committee on the Retailing Sector, *Fair Market or Market Failure?.* The Code shows some common features of quasi-regulation. It was developed with government support, including choosing the members of the development committee and contributing to secretariat support, and it has been backed by the threat of introducing a mandatory code if participation was determined to be unsatisfactory.

Australian Transport Commission (ATC)

The *Rail Code of Practice (Volumes 1-3)* is a voluntary code, endorsed by the ATC and applicable to rail operators on the Defined Interstate Rail Network (DIRN). The code is designed to address some of the operating anomalies that have hindered the efficiency of the DIRN. Adoption of the code is voluntary, although for organisations to say that they comply with any individual module of the Code they will have to demonstrate that they have implemented the mandatory requirements of that module. Whilst there are no penalties for non-compliance, there is expected to be a high degree of pressure from within the rail industry for organisations managing or operating on the DIRN to comply. The Commonwealth Government has also foreshadowed the possibility of a mandatory code being introduced at a later date, if deemed necessary following a review of the success of the voluntary requirements.

Source: ORR.

First, regulation often has a tiered structure with: an Act of Parliament setting out some quite general principles and a framework; delegated legislation providing more specific regulatory detail; and a third tier of guidelines and policy statements and the like which serve to 'operationalise' the regulations. In terms of getting the best out of the RIS process, there is always the question of whether it should be applied to just the first two tiers, or whether the third tier is also important, as often only then does the real impact on businesses become evident.

Second, there are difficulties identifying quasi-regulation from similar, but non-regulatory instruments. The inclusion of any arrangement in the list does not indicate that it is definitively a form of quasi-regulation, rather that it exhibits characteristics that may be considered quasi-regulatory in nature.

Finally, the important point is to ensure that all regulation, no matter what its type, is identified so that it may be assessed through the RIS process. As is the case with primary or delegated legislation and with treaties, if a quasi-regulatory arrangement does not impact on business or restrict competition, then it does not trigger the RIS requirements. Where the RIS requirements are triggered, quasi-regulation may be excepted, on the grounds that apply uniformly to all forms of regulation (see *A Guide to Regulation*). Consequently, the inclusion of any regulatory arrangement within the list does not imply that a RIS was required for that matter.

In the context of these qualifications, the ORR considers it useful to publish this tentative list of possible quasi-regulation and to use it as a basis for discussions with agencies — with the aim of gradually building up a list or register of quasi-regulatory arrangements.

As the list is refined and expanded to other departments and agencies, it is intended that it be available for use (through the Commission's website) by officials when assessing whether amending an existing or making a new arrangement that is not part of explicit government regulation, but that does affect business, may be quasi-regulatory and therefore possibly require preparation of a RIS.

Quasi-regulation

Australian Broadcasting Authority

1. *Digital Television Broadcasting Planning Handbook*

   - Details the technical standards and specifications which form the basis of ABA decisions on digital channel allocations and delivery requirements.

2. *Digital Channel Plan*

   - A plan for the allocation of additional channels in a geographic area to enable television broadcasting in both analogue and digital forms.

The ABA has reported the Handbook and individual plans as quasi-regulation.

Australian Communications Authority

1. Industry Code (ACIF C525) on the *Handling of Life Threatening and Unwelcome Calls*

   - The code provides a standard procedure for carriers and carriage service providers for the co-operative handling of such calls, including call tracing.

2. Industry Code (ACIF C523) on the *Protection of Personal Information of Customers of Telecommunications Providers*

The ACA reports all industry codes registered under the *Telecommunications Act 1997* as quasi-regulation.

Australian Competition and Consumer Commission

1. Pricing Principles

- Pricing Principles provides information about the Commission's approach to the parties of an access pricing dispute. There are several different pricing models available when assessing pricing disputes. The Pricing Principles indicate which model, in the Commission's opinion, is generally most appropriate. The Commission uses this model to assess the dispute.

Australian Prudential Regulation Authority

1. *General Insurance Circular G1/2000 (November 2000)*

- Applies to all general insurers and approved auditors providing guidelines for the use of investment managers.

There are 23 similar general insurance circulars on the Authority's website.

2. *Superannuation Circular I.C.1 Minimum Benefits Standards (December 1998)*

- Provides guidance on minimum benefits which trustees of regulated superannuation funds and approved deposit funds must identify and maintain. While this circular could be characterised as simply explaining general provisions set down in the *Superannuation Industry (Supervision) Act 1993,* it may also be perceived as providing specific regulatory detail not suited to the Act and therefore as having a clear quasi-regulatory character.

There are 29 similar superannuation circulars listed on the Authority's website.

3. Cross Industry Circular No. 1, Custodian Requirements for APRA Supervised Entities (November 2000)

- The custodian requirements are directed at insurance companies and superannuation entities and provide guidance as to how these entities should fulfil their duties to policy holders and fund members.

The Authority also issues Guidance Notes to supplement the prudential standards issued for the Authorised Deposit-taking Institutions, general insurance, superannuation and life insurance industries, and friendly societies.

Australian Securities and Investments Commission

1. *Electronic Funds Transfer (EFT) Code of Conduct*

   - This voluntary industry code was introduced in 1986. The latest revisions in April 2001 extended its coverage from ATM and EFTPOS transactions to all forms of EFT. Because there is active involvement by ASIC in monitoring, reviewing and progressing any changes to the code, it clearly is quasi-regulatory. Indeed, it is used as an example of this form of regulation both in *A Guide to Regulation* and in *Grey-Letter Law*.

2. ASIC makes extensive use of policy statements that are formal declarations of its policies and indicates the way it will administer the Corporations Law and other legislation for which it is responsible. The ASIC website lists around 140 policy statements, some of which are quasi-regulatory and for which RISs have been prepared. These have accounted for a substantial proportion of all Commonwealth quasi-regulatory matters reported to date by the ORR. Examples are:

- PS138 Investment advisory services — personal competencies for licensees; and,
- PS163 Takeovers — minimum bid price principle.

Department of Health and Aged Care

1. *Aged Care — Documentation and Accountability Manual*
   - Intended for use by all care staff employed in residential aged care facilities.
2. *Standards and Guidelines for Residential Aged Care Services Manual*
   - Assists providers to comply with their obligations under the *Aged Care Act 1997.*

Department of Industry, Science and Resources

1. *National accreditation scheme for the tourism industry*

   - This is a voluntary scheme established and operated by the industry for the purposes of quality certification. The scheme is endorsed by the Commonwealth Government, which provides funding to help administration.

2. *Guidelines for Australian Inbound Tour Operators — Approved Destination Status: A Tourism Arrangement between Australia and the People's Republic of China*

   - These guidelines outline the responsibilities of inbound tourism operators in meeting immigration requirements and industry standards.

3. *Export Tourism Code of Conduct*

   - This code, being developed by the Australian Tourism Export Council, has a wide range of objectives including setting specific standards, delivering industry self-regulation supported by State legislation and setting entry criteria for new participants in the industry.

4. *National Electricity Market Management Company*

   - In December 1999, a limited liability arrangement was implemented to cover any event for which the Company is found to be negligent in its operations.

Human Rights and Equal Opportunity Commission

1. *The Sexual Harassment Code of Practice*

   - It provides employers with practical guidance on implementing policies and procedures aimed at eliminating sexual harassment at work.

Therapeutic Goods Administration

1. *Uniform Recall Procedure for Therapeutic Goods — 2001*

   - This is an agreement between the therapeutic goods industry and the Commonwealth and State/Territory health authorities.
   - Its purpose is to define the action to be taken when therapeutic goods are to be removed from supply or use, or subject to corrective action, for reasons of quality, safety or efficacy.
   - The Procedure is obligatory in relation to safety-related recalls of therapeutic goods.

2. *Note for Guidance on Good Clinical Practice — July 2000*

   - Good Clinical Practice is an international ethical and scientific quality standard for conducting and reporting trials using human subjects.
   - This guidance is to be followed when generating clinical trial data intended to be submitted to regulatory authorities.

B Compliance with COAG RIS requirements

This appendix contains the ORR's report to the National Competition Council (NCC) on compliance with the *Principles and Guidelines* agreed to by the Council of Australian Governments (COAG) for regulatory action by Ministerial Councils and national standard-setting bodies. The report was for the period 1 July 2000 to 31 May 2001. This appendix concludes with an assessment of COAG RIS compliance for June 2001.

Report to the NCC

In April 1995, Australian governments entered into several agreements allied to competition policy and reform. The amounts and conditions of related competition payments from the Commonwealth to the States and Territories were set down in the *Agreement to Implement the National Competition Policy and Related Reforms*. For the Third Tranche of competition payments, to commence in 2001-02, factors to be taken into consideration by the NCC are to include advice from the ORR on compliance with the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (COAG 1997*)*.

This report to the NCC provides such advice.

Role of the ORR

Commonwealth-State/Territory coordination takes place through some 40 Ministerial Councils and a few national standard-setting bodies. Agreements made by them are commonly implemented by laws and regulations. In April 1995, prompted by concerns that standards should be the minimum necessary and not impose excessive requirements on businesses, COAG agreed that proposals put to Ministerial Councils and standard-setting bodies should be subject to a nationally consistent assessment process, as set out in the *Principles and Guidelines*. The major element of the process is the completion of Regulation Impact Statements

(RISs). For purposes of applying these requirements, COAG (1997, p. 4) took a very wide view of regulation as:

> … the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as to those voluntary codes and advisory instruments … for which there is a reasonable expectation of widespread compliance.

The principal responsibility of the ORR, which is part of the Productivity Commission, is to provide advice and assistance to officials in the preparation of RISs for Commonwealth regulatory proposals that affect businesses. Around 200 Commonwealth RISs were prepared and made public in 1999-2000. The ORR also monitors and reports on compliance with the Commonwealth requirements. It plays a similar role in relation to RISs that must be prepared for Ministerial Councils and standard-setting bodies, including monitoring compliance with the COAG *Principles and Guidelines*. The ORR assesses these RISs at two stages: before they are distributed for consultation with parties affected by the proposed regulation and again at the time a decision is to be made by the responsible body. The ORR must assess:

- whether the *Regulatory Impact Statement* guidelines have been followed;
- whether the type and level of analysis is adequate and commensurate with the potential economic and social impact of the proposal; and
- whether alternatives to regulation have been adequately considered;

and must advise the relevant Ministerial Council or standard-setting body of its assessment.

It is not the ORR's role to advise on policy aspects of options under consideration, but rather to advise on the assessment of the benefits and costs of these options; and to determine if the analysis is adequate. The assessment remains the responsibility of the relevant Ministerial Council. There is a requirement that the 'Council or body should provide a statement certifying that the assessment process has been adequately undertaken and that the results justify the adoption of the regulatory measure' (COAG 1997, p. 12).

Allied to the ORR's role, the NCC has asked it to report what matters failed to meet the COAG *Principles and Guidelines* during the period 1 July 2000 — 31 May 2001, and what matters did comply. Because it is not appropriate to assess the question of compliance until a decision by the responsible body has been made, this report covers only those matters that reached the decision stage during that period. Matters that are of a minor nature or that are essentially about the application and administration of regulation have been excluded from this report. The information

in this report will assist the NCC in assessing the possible ramifications of the failures to comply.

As will be evident in this report, the ORR occasionally learns only after the event of decisions made by Ministerial Councils that should have been subject to the COAG *Principles and Guidelines.* From the ORR's perspective, there appear to be two principal reasons for this. Firstly, some Ministerial Councils may not appreciate the wide interpretation (see above) given to regulatory matters, indicating that the COAG *Principles and Guidelines* should be applied to decisions on broad plans and strategies having regulatory implications, as well to decisions on guidelines and codes of practice. There is a related mis-perception that RISs need only be prepared later when specific regulatory instruments are developed. Secondly, the rapid turnover of officials working in secretariats for some Ministerial Councils could detract from having sufficient 'institutional memory' to know about and apply the COAG *Principles and Guidelines*.

Matters for which COAG requirements were not met

The ORR has identified 21 matters that should have been subject to the COAG requirements (and reached the decision stage) between 1 July 2000 and 31 May 2001. Of these, the requirements appear not to have been met for six. Ranked in an indicative order of their importance, those six are:

- the new joint food standards code for Australia and New Zealand;
- the labelling of genetically modified foods;
- a national response to passive smoking;
- the national road safety action plan;
- extension of the Consumer Credit Code to include pay day (very short-term) loans; and
- changes to vocational and educational training arrangements.

Food standards code

On 24 November 2000, a Ministerial Council, the Australia New Zealand Food Standards Council (ANZFSC), decided to adopt a new joint food standards code, including new mandatory percentage labelling of key ingredients for food. Ministers also agreed to extend existing mandatory nutritional panels to all foods, rather than just those that make nutritional claims.

The ORR had worked with officials at the Australia New Zealand Food Authority (ANZFA) for more than a year to develop RISs on these two issues — percentage labelling and enhanced nutrition labelling. ANZFA also drew on work undertaken very late in the policy development process by Allen Consulting on the costs of the two proposals; there was no complementary analysis of the nature and degree of importance of the likely benefits.

While there was a fairly wide range of estimates as to the potential costs, they clearly are substantial. At the low end, ANZFA contended that the implementation costs of percentage labelling and more extensive nutritional labelling would be of the order of $118 million, with annual ongoing compliance costs of some $33 million. At the high end, the Australian Food and Grocery Council claimed that a KPMG report indicated implementation costs of up to $400 million and ongoing annual costs of $55 million. The benefits are likely to be mainly in the form of better information for consumers and in improved public health. While it should be acknowledged that measuring such benefits may be difficult, the COAG *Principles and Guidelines* clearly require that there must be sufficient analysis (which may be qualitative) of the benefits to demonstrate that they are likely to be greater than the estimated costs. No such analysis was undertaken. Indeed, as to the effectiveness of nutrition labelling in improving public health, there appears to be no reduction in diet related illness in the Australian community despite existing voluntary labelling on 50–70 per cent of food products.

In the ORR's assessment, the overall cost–benefit analysis was inadequate to support the joint code, and these two proposals in particular. On 15 November 2000, just before the Ministerial Council's decision, the ORR formally advised the relevant COAG officials' group — the Committee on Regulatory Reform — that the RIS did not contain adequate analysis. ANZFA officials were advised of this action.

The NCC's attention is drawn to the fact that on the day that the Council adopted, by a majority, the new food standards code, the responsible Commonwealth Minister (the Parliamentary Secretary for the Minister for Health and Aged Care) issued a media release stating that:

- 'New percentage labelling requirements … would impose an unjustified cost on industry, especially small manufacturers, and not provide useful information for consumers'

and

- 'the adoption of nutrition information panels on all packaged food and the listing of allergens, gives useful information which has an impact on public health and safety'.

The NCC should also be aware that ANZFSC agreed to a two-year implementation period to enable industry to minimise their costs. Further, Ministers set up an inter-governmental task force to report on issues such as whether very small businesses should be exempted and on strategies for practical and lowest cost implementation of the code. The report of that taskforce was to have been completed by March 2001.

Labelling of genetically modified foods

On 28 July 2000, ANZFSC decided to regulate the labelling of genetically modified food and food ingredients, specifically where novel DNA or protein is present and/or where the food has altered characteristics. ANZFA has advised the ORR that the basis of this decision was a document *Report on the costs of labelling genetically modified foods*, prepared in March 2000 by the consultant KPMG for an intergovernmental taskforce established by the Ministerial Council (ANZFSC). However, the ORR had examined that document and advised Commonwealth decision makers on 17 May 2000 that the KPMG document did not meet the Commonwealth's requirements for making regulation; accordingly, it did not meet the (similar) COAG requirements either.

It is difficult to gauge the magnitude of the impacts of this measure. On the cost side, the specific exemptions granted by the Council's decision had not been costed by KPMG. A further complication is that the existence of exemptions typically adds to the administrative and compliance costs of any regulatory arrangement. Costs will depend also on the type of compliance regime that is implemented. However, available estimates in excess of $100 million for implementation and $30 million annually in ongoing costs suggest substantial impacts.

There will be benefits in the provision of additional information to consumers, which may be difficult to quantify. Nevertheless, there was an onus on the Ministerial Council to demonstrate that the potential benefits of its decision are likely to be at least commensurate with the costs. As the KPMG report looked only at costs, and there is no evidence of any (even qualitative) analysis of the benefits having been prepared by the taskforce for ANZFSC, the ORR concludes that the COAG *Principles and Guidelines* were not satisfied.

On the day of the ANZFSC decision, the relevant Commonwealth Minister (the Parliamentary Secretary for the Minister for Health and Aged Care) issued a press release with the following comments.

- 'I am disappointed that the decision today will require industry to test and determine whether DNA is present in the areas of highly refined ingredients, processing aides, food additives and flavourings.

- The Commonwealth's position would have allowed blanket exemptions whilst still delivering world's best practice information to consumers.
- The new regulations will impose a financial cost on industry and this will be reflected in the cost of food to consumers.
- The Commonwealth will now be talking with stakeholders to assess the impact on costs and export competitiveness as a result of the new labelling regulations.'

National response to passive smoking

In November 2000, the Australian Health Ministers' Advisory Council endorsed a set of documents designed to assist the development of new legislation or the review of existing legislation concerning passive smoking. These are not regulatory instruments. But they are guidelines endorsed by an advisory council of senior Commonwealth and State officials, and they do appear to be covered by the COAG *Principles and Guidelines*. This is because the passive smoking guidelines are akin to 'agreements or decisions to be given effect through … administrative directions or other measures which … encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done.' Further, they seem to fit the COAG description of 'voluntary codes and other advisory instruments' for which the 'promotion and dissemination by standard-setting bodies or by government could be interpreted as requiring compliance' (COAG 1997, p. 4).

The ORR advised the Commonwealth Department of Health and Aged Care during the early stages of the preparation of a RIS. However, the ORR failed in its subsequent attempts between April and August 2000 to ensure that COAG requirements for the preparation of an adequate RIS were met. Furthermore, the ORR understands that no RIS was provided to the Advisory Council when it endorsed the guiding principles and core provisions for regulation of passive smoking. The ORR formally reported on these developments to the COAG Committee of Regulatory Reform on 13 February 2001.

As to the nature and magnitude of the costs and the benefits of the regulation of passive smoking, the ORR judges that both could be substantial. Such regulation is likely to impose costs or losses on a wide range of hotel, club, restaurant and entertainment industries. It has ramifications for the structure of venues and the effectiveness of air conditioning systems, and it could reduce patronage. On the other hand, both staff and patrons would benefit from a smoke-free environment and there would be reduced long-term health care costs. It is proposals with such substantial costs and benefits that the RIS process is intended to guide.

National road safety action plan

On 17 November 2000, the Australian Transport Council (ATC) released the National Road Safety Action Plan for 2001 and 2002. The Plan is in support of a national strategy to reduce the fatality rate on Australian roads by 40 per cent over the next decade. It has been presented as a menu of options from which the States and Territories may select in order to help achieve this target. While many of the options are not regulatory, the Plan contains some that clearly are regulatory and, if implemented, would *not* be optional for the States and Territories. Regulatory examples include:

- amending Australian Design Rules to prohibit speedometers from indicating a speed slower than the true speed;
- amending Australian Design Rules to require sensors and audible signals to encourage the use of seat belts;
- developing a Code of Conduct for the trucking industry; and
- developing and achieving significant adoption by business and government of a safe fleet policy.

It might be argued that the Plan is very broad in scope and therefore not amenable to the RIS process of assessment, but a case can be made that ATC should have abided by the COAG *Principles and Guidelines* before endorsing such a program.[1] In particular, there is no evidence that analysis was 'applied to the identified costs and benefits and a conclusion drawn on whether regulation is necessary and what is the most efficient regulatory approach' (COAG 1997, p. 5).

There can be little doubt about the substantial community-wide benefits of a 40 per cent reduction in road fatalities. Yet the wide range of options for the States and Territories to choose from have vastly different costs. A proper RIS analysis would have helped rank the options as to their cost effectiveness, thereby facilitating a more effective take-up of the options among the States and Territories.

[1] This example illustrates a common practice in policy development of first setting a broad strategy and then, in a staged process, developing plans and introducing specific measures, some of which are regulatory. If the analysis required by COAG is left too late, there is a risk of particular options having become preferred, despite evidence favouring more cost-effective alternatives.

The ORR was not consulted on this plan, and learned of it well after the ATC meeting.[2] Nevertheless, there remains the opportunity to undertake impact analysis before tangible action is taken on individual options.

Pay day lending and the consumer credit code

On 8 November 2000, the Ministerial Council on Consumer Affairs agreed to amend the Consumer Credit Code to include Pay Day Lenders. The Consumer Credit Code had previously not applied to loans of less than 62 days duration. Typical pay day advances have a duration of 7 to 21 days and are for relatively small amounts. The Council's decision was based on a Queensland Government document *Pay Day Lending — A Report to the Minister for Fair Trading*.

Queensland had the responsibility for drafting the proposed changes before the other States and Territories replicated the changes. The Queensland Department of State Development assessed that the proposed changes did not trigger Queensland's RIS requirements, apparently because they were regarded as closing a loophole in the Code. In contrast, the ORR interprets the COAG *Principles and Guidelines* as requiring justification of any substantial extension to the scope of existing regulation.

When the ORR became aware that the decision had been made without a RIS having been prepared, it examined the report to determine if it contained the essential elements of a RIS. The level of analysis in the document was found not to be adequate — it fails to clearly identify the costs and benefits to the stakeholders of each of the options considered. The report also fails to assess the adequacy of the existing body of law (contract law) on the behaviour of pay day lenders.

Vocational and educational training

On 17 November 2000, the Australian National Training Authority Ministerial Council made several decisions, two of which should have been subjected to the COAG requirements but for which no RIS was prepared. Firstly, the Council agreed that changes were necessary to the existing legislative framework for vocational and educational training, and that they should be implemented by adopting 'model clauses'. Secondly, it was decided to strengthen the Australian Recognition

[2] A view that strategic plans should be excluded from COAG requirements (see section 2) appears to have resulted in another, more recent, example where the ORR was not consulted. When the ATC met on 25 May 2001, it endorsed an emissions abatement package for urban transport. The ORR did not obtain any information on this matter until 31 May 2001, allowing insufficient time before completion of this report to assess whether there are regulatory implications that would have required preparation of a RIS for the ATC.

Framework for skills by, for example, introducing auditable standards and by implementing a nationally consistent set of sanctions.

Following examination of these issues, the ORR reports that they should be viewed as part of a continuous improvement process designed to simplify the vocational and educational training system, thus reducing compliance costs, and are not substantial in terms of failing to meet COAG requirements.

Now that the relevant officials are aware of the COAG requirements, a RIS is to be prepared for the Council prior to implementation of the 'model clauses'.

Cases of qualified Compliance with COAG's RIS requirements

Determining whether or not the COAG requirements have been met is not always clear cut. In order to give the NCC a clear picture of factors the ORR takes into account, two such cases are described in this section: a national standard for the storage and handling of dangerous goods, and a voluntary industry code of conduct for inbound tourism operators.

Dangerous Goods

On 1 December 2000, the Workplace Relations Ministers' Council agreed on a national standard for storage and handling of dangerous goods. A quite detailed RIS had been developed, in consultation with the ORR, prior to that time. The RIS suggested that costs of the standard are likely to be of the order of $200 million, and benefits expected also to be around $200 million.

The ORR advised that the COAG requirements had been met, but pointed out that whether a net benefit results from the standard depends heavily on achieving a 50 per cent reduction over 10 years in the number of adverse events with dangerous goods, in stark contrast with the failure of current regulations to reduce such events.

These qualifications were provided in the secretariat's briefing for the Ministerial Council and thus presumably would have been taken into account in the decision. This is a good example of what the COAG *Principles and Guidelines* are intended to achieve — that those setting national standards have before them a soundly based assessment of the likely impacts of the proposal.

Inbound tourism operators

On 26 July 2000, the Tourism Ministers' Council decided to write to the Inbound Tourism Operators' Association, giving strong support for the development and

introduction of a voluntary industry code of conduct. This was in response to concerns that some packages for foreign tourists to Australia may involve excessive or secret commissions, misleading representations of travel components or quality of accommodation, and low service quality. As explained earlier, such endorsement of a voluntary industry code of practice is intended to be covered by the COAG *Principles and Guidelines*.

In this case, no RIS was prepared. However, the Council's decision was informed by a report that was commissioned by a consultant — the Centre for International Economics. When the ORR became aware of the Council's decision, it examined the consultant's report and assessed that it included the essential elements required in a RIS. While the COAG requirements would have been more properly met had the ORR been given the opportunity to make such an assessment prior to decision, it is apparent that the Council was provided with a sound basis for its decision.

Compliant regulatory matters

The following matters were subject to the COAG *Principles and Guidelines* and reached the decision stage during 1 July 2000 — 31 May 2001. The ORR assessed that the COAG RIS requirements were satisfied for these matters.

Measure	*Body responsible*	*Date of decision*
1. New administrative arrangements for food regulation	COAG	3 November 2000
2. Uniform food legislation	COAG	3 November 2000
3. Australian Design Standard to mandate the fitting of engine immobilisers	ATC	29 December 2000
4. National Code of Practice for the Defined Interstate Rail Network Volumes 1-3	ATC	25 May 2001
5. National Standard for Commercial Vessels — Part D, Crew Competencies	ATC	25 May 2001
6. National compliance and enforcement regulatory scheme for heavy vehicle mass, dimension and load restraint.	ATC	1 November 2000

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Measure	*Body responsible*	*Date of decision*
7. Annual adjustment procedure for heavy vehicle charges	ATC	25 May 2001
8. Policy framework for performance based standards for heavy vehicle regulations	ATC	25 May 2001
9. Response to the national review of petroleum (submerged lands) legislation	Australia New Zealand Minerals and Energy Council (ANZMEC)	25 August 2000
10. Minimum energy performance standards for air conditioners	ANZMEC	Out-of-session decision process almost complete by end-May 2001[3]
11. Minimum energy performance standards for electric motors	ANZMEC	Out-of-session decision process almost complete by end-May 2001[4]
12. Model code of practice for the welfare of animals — livestock (including poultry) at slaughtering establishments	Agriculture and Resources Management Council of Australia and New Zealand	Out-of-session decision endorsed 18 August 2000
13. Food safety standards - food safety practices and general requirements - food premises and equipment	ANZFSC	28 July 2000

COAG RIS compliance, June 2001

The following matters were subject to the COAG *Principles and Guidelines* and reached the decision stage during June 2001. The ORR assessed that COAG's requirements were satisfied for these matters.

[3] All jurisdictions had agreed by mid-July 2001.

[4] All jurisdictions had agreed by mid-July 2001.

Measure	*Body responsible*	*Date of decision*
14. Amendment of ADR 80 Emission Controls for Heavy Vehicles	ATC	Out-of-session decision completed by 30 June 2001
15. In-Service Diesel Vehicle NEPM	National Environment Protection Council	29 June 2001
16. Amendment to Building Code of Australia 1996 to increase the number of toilet pans for female patrons of certain theatres/cinemas	Australian Building Codes Board	15 June 2001
17. National Approach to Firewood Collection	Australian and New Zealand Environment and Conservation Council	29 June 2001

C Commonwealth legislation reviews

In 1995, as part of the Competition Principles Agreement (CPA), the Council of Australian Governments (COAG) agreed to a program of review of existing legislation which potentially restricts competition. Jurisdictions agreed to conduct reviews and implement any required reforms over a four year period ending in the year 2000. At its meeting on 3 November 2000, COAG decided that this deadline would be extended to 30 June 2002.

The Commonwealth's legislation 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 Commonwealth's program, when announced in June 1996, identified 98 separate reviews. Further reviews were later added to the Schedule, bringing the total number of reviews listed to 101. As at 30 June 2001, 75 of the reviews on the Commonwealth's schedule had either been completed or were in progress. Table C.1 provides an overview of the status of the Commonwealth's legislation review program.

Table C.1 **Overview of Commonwealth's Legislation Review Program as at 30 June 2001**

Status of reviews	*No. of reviews*[a]
Completed reviews	60
Reviews in progress	11
Reviews subsumed into other reviews or reforms	4
Reviews deleted from the schedule	11
Deferred or delayed reviews	2
Reviews not yet commenced	14

[a] Total does not add to 101 as the Review of the *National Food Authority Act 1991* and Food Standards Code, scheduled for review in 1998-99, has been split into the reviews of: the *Australia New Zealand Food Authority Act 1991* which has been completed; and the Food Standards Code which is in progress.

Source: ORR estimates in consultation with departments and agencies.

As can be seen from the above table, some 16 reviews remain on the Commonwealth's program to be undertaken by 30 June 2002. Table C.2 contains a list of the outstanding reviews.

Table C.2 **Reviews Outstanding as at 30 June 2001**

Review No.	*Reviews still to be undertaken*	*Dept.*	*Status as at 30 June 2000*	*Status as at 30 June 2001*
16 & 42	*Radiocommunications Act 1992* & related Acts & Review of market based reforms & the Spectrum Management Agency[a]	DoCITA	ToRs signed off but review not commenced	Review still not commenced
47	*Environment Protection (Nuclear Codes) Act 1978*	DHAC	Not commenced	Seeking to delist
49	*Anti-Dumping Authority Act 1988*, *Customs Act 1901* Pt XVB & *Customs Tariff (Anti-Dumping) Act 1975*	AG's	Deferred until 1999 but did not commence	Not commenced
52	*Petroleum Retail Marketing Sites Act 1980*	DISR	Not commenced	Not commenced
53	*Petroleum Retail Marketing Franchise Act 1980*	DISR	Not commenced	Not commenced
72	*Defence Force (Home Loans Assistance) Act 1990*	Defence	Not commenced	Not commenced
76	*Export Finance & Insurance Corporation Act 1991 & EFIC (Transitional Provisions & Consequential Amendments) Act 1991*	DFAT	Deferred	Deferred
78	Dairy Industry Legislation	AFFA	Not commenced	Deferred
80	Dried Vine Fruits Legislation	AFFA	Deferred to 2nd half of 2000	Not commenced
88	Treatment Principles (under section 90 of the *Veterans' Entitlement Act 1986* (VEA))& Repatriation Private Patient Principles (under section 90A of the VEA)	DVA	Not commenced	Not commenced
89	*Defence Act 1903* (Army & Airforce Canteen Services Regulations)	Defence	Not commenced	Not commenced
91	*Home & Community Care Act 1985*	DHAC	Not commenced	Seeking to delist
94	*Native Title Act 1993* & Regulations	PM&C	Not commenced	Not commenced
97	Section 2D exemptions (local government activities) of the *Trade Practices Act 1974*[b]	Treasury	ToRs signed off but not commenced	Not commenced
101	*Disability Discrimination Act 1992*	A-G's	Not commenced	Not commenced

a The reviews of the *Radiocommunications Act 1992* (originally scheduled for review in 1996-97) and the market based reforms and activities undertaken by the Spectrum Management Agency (originally scheduled for review in 1997-98) have been merged to form one review. The review commenced on 16 July 2001.
b Commenced 2 October 2001.

Source: ORR estimates in consultation with departments and agencies

Adequacy of terms of reference

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.

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.

To assist departments to meet the Government's requirements, the ORR has developed template terms of reference which can be adapted by departments to fit the specific requirements of each review (see box C.1). The template draws together the various elements of the CPA and reflects the Government's broader review requirements.

In 2000-01, the ORR cleared only one terms of reference, for the review of the *Commerce (Trade Descriptions) Act 1905*.[1] These terms of reference met all of the requirements.

[1] This review stems from the review of the Commerce (Imports) Regulations and Customs Prohibited Imports Regulations which was listed as a review under way when the Commonwealth's program was announced. The review initially concentrated on removing redundant and superfluous regulations. The review of the *Commerce (Trade Descriptions) Act 1905* will complete this review.

Box C.1 **The template terms of reference**

1. The [legislation], and associated regulations, are referred to the [Review body] for evaluation and report by [date]. The [Review Body] is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The [Review Body] is to report on the appropriate arrangements for regulation, if any, taking into account the following:

   (a) Legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can be achieved only by restricting competition. Alternative approaches which may not restrict competition include quasi-regulation and self-regulation;

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

   (c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;

   (d) there should be explicit assessment of the suitability and impact of any standards referenced in the legislation, and justification of their retention if they remain as referenced standards; and

   (e) compliance costs and the paperwork burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the [Review Body] is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the *Competition Principles Agreement*. The report of the [Review Body] should:

   (a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the [legislation] seeks to address;

   (b) clarify the objectives of the [legislation];

   (c) identify whether, and to what extent, the [legislation] restricts competition;

   (d) identify relevant alternatives to the [legislation], including non-legislative approaches;

   (e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of [legislation] and alternatives identified in (d);

   (f) identify the different groups likely to be affected by the [legislation] and alternatives;

(Continued next page)

Box C.1 **(continued)**

(g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

(h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the [legislation] and, where it differs, the preferred option.

4. In undertaking the review, the [Review Body] is to advertise nationally, consult with key interest groups and affected parties, and publish the report.

In undertaking the review and preparing its report and associated recommendations, the [Review Body] is to note the Government's intention to announce its responses to the recommendations, after obtaining advice from [the Secretary/Minister] and, where appropriate, after consideration by Cabinet.

Source: ORR.

D ORR activities and performance

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

Activities in 2000-01

The range of activities that the ORR is required to undertake is set down in its Charter (box D.1).

In advising on quality control mechanisms for making and reviewing regulation in 2000-01, the ORR:

- analysed whether some 400 different regulatory proposals from Commonwealth departments and agencies affected business or restricted competition; 157 proposals required a RIS, 13 of which related to administrative options for amendments to taxation arrangements;
- provided advice on appropriate terms of reference for a review undertaken as part of the Competition Principles Agreement commitment 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 regulatory plans and regulatory performance indicators, and agreed to provide additional information regarding the flexibility of options under the RIS framework;
- examined RISs and provided advice in relation to 25 regulatory decisions taken by Ministerial Councils and national standard-setting bodies; and
- reported to the National Competition Council on compliance with the Council of Australian Governments' (COAG's) *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*, allied to a requirement under the Third Tranche arrangements for competition payments to be linked to regulatory reform in the Regulatory reform in the States and Territories.

Box D.1 **Charter of the Office of Regulation Review**

In 1997, the Government directed the ORR to issue a charter outlining its role and functions. Ranked in order of priority, the ORR's seven principal activities are to:

- advise on quality control mechanisms for regulation making and review;
- examine and advise on RISs prepared by Commonwealth departments and agencies;
- provide training and guidance to officials;
- report annually on compliance with the Commonwealth Government's RIS requirements;
- advise Ministerial Councils and national standard-setting bodies on regulation making;
- lodge submissions and publish reports on regulatory issues; and
- monitor 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 legislation review matters.

During the past year, the ORR provided RIS training for 240 officials, including 100 Australian Tax Office officials.

The Commission's publication, *Regulation and its Review*, fulfils the obligation to report annually on compliance with the Government's regulation review requirements. The report for 1999-2000 was released in November 2000. It continued the initiative, begun in 1998-99, of reporting in greater detail on compliance with the Government's regulation review requirements by portfolio, emphasising the importance of these requirements to good policy process and regulatory outcomes.

In monitoring regulatory reform developments around Australia and internationally during 2000-01, the ORR:

- organised, in July 2000, the annual meeting of all regulation review units, representing all States and Territories except the Northern Territory, with discussions focusing on the promotion of good regulatory practice across all jurisdictions;
- participated in several meetings of the COAG Committee on Regulatory Reform and submitted papers on key issues;

- continued to represent Australia at meetings of the OECD regulatory reform group, including analysing results from a multi-country survey of business views on regulation;
- attended the International Regulatory Reform Forum in Puebla, Mexico on the challenges of regulatory reform in OECD countries and the promotion of regulatory quality across levels of government;
- submitted a brief paper to the World Trade Organisation (WTO) Working Party on Domestic Regulation on how regulatory impact analysis is undertaken in Australia and how it has improved the transparency of government regulation making;
- represented Australia at an APEC–OECD cooperative initiative on regulatory reform, held in Singapore, where progress on regulatory reform and improvements in communication between countries on common issues were discussed; and
- assisted New Zealand officials by offering advice on how to set up an equivalent body in that country.

Performance of the ORR

The ORR attempts to ensure that its duties are carried out efficiently and effectively. To report on the ORR's output and success in meeting its responsibility, performance is assessed against the following criteria:

- the quality of ORR work;
- the timeliness of that work; and
- the overall usefulness of ORR work in promoting the objectives of good regulatory practice.

Quality indicators

While the ORR has a responsibility to report on the quality of its work, the confidentiality of RIS issues limits the extent to which specific matters can be reported. However, ORR staff must be able to understand a wide range and complexity of regulatory issues as the scope of work covers the whole of government.

Evidence of the quality of ORR work is provided by the feedback from other government bodies, both those that prepare RISs and those that use them. Client

survey results for the previous year (1999-2000) rated the ORR above average for all aspects including:

- ability to understand the regulatory issue being dealt with;
- clarity of ORR advice;
- overall competence of ORR staff relative to other departments that respondents dealt with; and
- the working relationship.

In the year 2000-01, no comparable survey was conducted. However, ad hoc feedback provided as comments to ORR staff generally indicate that departments find the ORR contribution to be constructive and positive. Further, New Zealand officials who have liased with the ORR to assist in their formation of an effective regulatory review body have reported such assistance to be particularly helpful.

Timeliness

Although timeliness is a measure of performance that is difficult to report on accurately for ORR activities, there are some indicators which can assist in this regard (box D.2).

As a general rule, officials preparing a RIS are asked to allow at least two to three weeks in case several rounds of consulting with the ORR, and possible redrafting, are necessary to ensure an adequate standard is achieved. Of the 157 RISs prepared in 2000-01, 34 per cent were assessed by the ORR within two weeks and 65 per cent within five weeks. However, this is a loose measure of ORR timeliness, as external factors — including the resource commitments of the agencies preparing the RIS — had a significant influence on the time taken for redrafting and final clearance. Furthermore, extended consultation can mean that the quality and value of a RIS is improved.

In a specific example of working to short timeframes, the ORR had less than two days to provide comments on a draft RIS of more than 100 pages, which it assessed as inadequate. Following a meeting with the relevant department, an adequately re-drafted RIS was produced for Cabinet consideration within a further four days. The ORR aims to avoid these short time frames by encouraging departments to integrate the RIS process into their policy development process and consult with the ORR at an early stage.

Box D.2 **Database measures: reporting on ORR performance**

The ORR logs all RIS issues onto confidential databases. This provides a tool to assist the ORR's staff in providing consistent, quality advice, timely service, and to record compliance details. The information recorded includes:

- the date the ORR is first contacted by a department or agency;
- the date the first draft of a RIS is received;
- the date the ORR clears the RIS as meeting an adequate standard; and
- the date that the proposal is due to go to the decision maker.

This information can be utilised to assess the timeliness of the ORR's advice. This is done by providing aggregate measures of the length of time between the ORR receiving a RIS and clearing it as 'adequate' or 'not adequate' in meeting the Government's requirements. Similarly, the time between the first draft being provided to the ORR and the provision of papers to the decision maker can give a very loose guide as to how well the RIS process has been integrated into the policy development process by the agency or department in question.

For complex proposals, such as COAG regulatory issues, the ORR should be contacted early in the process to ensure the RIS contributes as much as possible to good policy process. It is a requirement that the ORR assess the RIS at the consultation stage on COAG issues. Under the COAG *Principles and Guidelines*, the ORR is required to provide advice on draft RISs within two weeks. This was met on each occasion in 2000-01.

The ORR has additional tasks from time to time, and the successful completion of these, concurrent with the ORR's normal responsibilities, indicates a commitment to timeliness.

- The ORR prepared a report to the National Competition Council on compliance with the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. This report, which covered compliance for the 11 months to the end of May 2001, was completed on schedule.
- The ORR quickly responded to a Treasury request for a list of all Bills tabled during 1999-2000 that restricted competition.
- The ORR promptly prepared a briefing on regulation impact statements, as requested by the Department of Foreign Affairs and Trade, for the WTO Working Party on Domestic Regulation.

Indicators of usefulness

The main measures of whether the ORR is providing a useful service include:

- evidence that agencies are integrating the RIS process within their policy development processes;
- feedback and requests for advice from agencies and departments;
- improvements in the quality of RISs; and, ultimately,
- any evidence that the standard of regulation is improving over time.

One example of an integration of the RIS process with an existing policy development process concerns the Civil Aviation Safety Authority. The Authority releases three documents for most regulatory proposals — a 'discussion paper', a 'notice of proposed rule making' and a 'summary of responses'. With some modification, the ORR has agreed that these documents will satisfy the RIS requirements and will assess the analysis in these documents instead of requiring a separate RIS for each proposal.

The ORR attempts to achieve a better standard of RISs by gradually raising the adequacy hurdle over time. This can be gauged by the content, detail and quantification seen in RISs. There is some evidence of overall improvement in the period since RISs have been mandatory. For example, the ORR re-examined a sample of significant RISs across a variety of portfolios which it rated as 'adequate' three years ago. Reassessed against current standards, only half of these RISs would still be rated as 'adequate'.

To be useful and relevant, RISs should be tailored to provide the decision maker with an accurate assessment of options. Discussions between the ORR, the Department of Communications, Information Technology and the Arts and the Australian Communications Authority, for example, led to an arrangement on a complex issue where separate RISs were prepared for the Minister and the Australian Communications Authority Board for their decisions on different aspects of the issue. Another example of enhanced usefulness to decision makers was the improved analysis required by the ORR on the issue of chrysotile asbestos use. The ORR's suggestions resulted in a more useful final document.

The ORR comments on all aspects of the RIS and, in many cases, this leads to an improvement in quantifying costs and benefits and the analysis of options. There is some evidence that the RIS process has caused policy analysts to revise some proposed recommendations before the decision-making stage. This is consistent with the Government's best practice requirements for regulation which encourage

the examination and adoption of alternatives to prescriptive regulation, including self-regulation.

The RIS process can provide useful information when regulatory proposals could be perceived as being contrary to the public interest. For example, when a national competition policy review is carried out and the Government implements the recommendations, the ORR regards the review report as having satisfied the RIS requirements. However, if the implementation is not in line with the review recommendations, there may be grounds for a separate RIS to explain why the chosen option is better from a public interest perspective. If no additional RIS is carried out, or the RIS is inadequate, the ORR reports this in its annual assessment of compliance.

Where a proposal has an adequate RIS attached, it would be useful for both decision makers and, at the tabling stage, Parliament, to be fully informed that this is the case. Most regulations have the RIS attached in the explanatory statement or memorandum, but there is nothing to indicate whether a RIS complies with the Government's requirements for regulatory best practice. For example, the RISs on the proposed ban on certain interactive gambling services and single-desk marketing arrangements for horticultural products were rated inadequate by the ORR, but there is no indication of this in the tabled documents.

The publication of compliance data by portfolio is useful in monitoring the commitment to regulatory best practice within certain areas of government. This information has received national press coverage in the past, suggesting that it is information of use to the community in monitoring the performance of government agencies.

The ORR responds to many requests by departments and agencies for meetings. This enables ORR staff to understand the issue at hand and helps to promote a wider understanding of the Government's requirements for best practice. Generally the feedback is positive, although occasionally comments have been made about agency staff time being devoted to RIS work with little perceived value added for the agency concerned. Other liaison provides useful outcomes, such as the regular meetings held with Treasury, to discuss issues of mutual relevance, and ad hoc meetings to discuss RIS requirements, such as with the Reserve Bank of Australia.

The ORR facilitates the meeting of State and Territory regulatory review units, thereby enhancing the operation and communication between these units. This has proved particularly useful for jurisdictions where regulatory review arrangements are less developed.

Other indicators of the usefulness of the ORR's work follow.

- ORR reports are widely distributed and disseminated. Around 1450 copies of *Regulation and its Review 1999-2000* were distributed, with some coverage by the national press. The report was accessed around 1300 times on the Commission's website in 2000-01.
- A further 460 copies of the second edition of *A Guide to Regulation* were 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 around 2000 times on the Commission's website during 2000-01. As part of the response to respondents from a previous survey by the ORR, example RISs were made available on the website. Each of these was accessed, on average, around 400 times.
- Training evaluation forms were received from 68 of the 240 people to whom ORR staff provided RIS training in 2000-01. Their views indicated that the training was well received, with more than one-third rating their training as excellent or good (table D.1). A further 63 per cent considered their training to be satisfactory. One participant considered the standard of the training to be unsatisfactory.

Table D.1 **RIS training evaluation in 2000-01**

Evaluation	*Number of responses* [a]	*Per cent*
Excellent	17	25
Good	7	10
Satisfactory	43	63
Unsatisfactory	1	1
Total [b]	68	100

[a] Includes only those forms returned. [b] Items do not add to 100 due to rounding.

E Regulatory reform in States and Territories

In this appendix, State and Territory Regulation Impact Statement (RIS) requirements and compliance results are presented. The information in this appendix is based on the answers provided by the States and Territories to an ORR questionnaire. The questionnaire is included in box E.1.

The Commonwealth's RIS requirements differ from the various State and Territory requirements. It should also be noted that most States and Territories have specific legislation which imposes the RIS requirements, whereas the Commonwealth does not. The States and Territories mainly concentrate on subordinate legislation, whereas the Commonwealth's RIS requirements apply to both primary and subordinate legislation, quasi-regulation (for example, codes of practice) and treaties. Another substantial difference is the number of RISs reviewed each year. In 1999-2000, the ORR reviewed 180 RISs, decreasing to 133 in 2000-01. The regulatory review units in the States and Territories examined significantly fewer RISs. Another major distinction is the requirement in many States and Territories for the preparation of a RIS at the consultation stage, during the policy development process.

To obtain a more comprehensive picture of the requirements and processes in the various States and Territories, this appendix should be read in conjunction with appendix C in *Regulation and it Review 1999-2000*.

As identified in previous editions of *Regulation and its Review*, States and Territories can be categorised into two broad groups — those with formal RIS requirements and those without. This appendix discusses both groups.

Formal RIS requirements exist in New South Wales, Victoria, Queensland, Tasmania and the Australian Capital Territory (ACT). The ACT and Tasmania require RISs to be produced for both primary and subordinate legislation. RISs are required only for subordinate legislation in New South Wales, Victoria and Queensland.

While Western Australia, South Australia and the Northern Territory do not have formal RIS requirements, processes exist to ensure that legislation does not unduly

impact on any part of the community without good reason. The ORR questionnaire requested information about formal RIS requirements. Consequently, South Australia and the Northern Territory were unable to respond to these specific questions. Western Australia provided information on the role of the Small Business Development Corporation in reviewing legislation and on future regulatory review plans.

Box E.1 **Questionnaire for *Regulation and its Review 2000-01***

1. Does an independent body assess the adequacy of a Regulation Impact Statement (RIS) (or equivalent)?
   (a) Is there an independent body within Government, or do individual departments have the responsibility?
2. What is (are) the trigger(s) for the RIS requirements?
   (a) States and Territories should explain further how they interpret and apply the RIS requirements. For example, what is meant by 'appreciable economic burden'?
3. Are alternatives to regulations sought as part of the regulatory review process?
4. How is the adequacy of the analysis of the costs and benefits assessed? Are there any formal adequacy requirements?
   (a) For example, COAG requires that the level of analysis to be commensurate with the level of impacts, whereas other jurisdictions require a highly quantitative approach.
5. Is consultation mandatory?
   (a) What level of consultation is judged as adequate?
   (b) Is an effort made to consult with small business?
6. Are RISs made public? At what stage(s)?
   (a) For example, are RISs made public at the decision making stage and/or at the completion of the regulation making process?
7. Approximately how many RISs are completed annually? How well did departments and agencies comply with the RIS requirements?
   (a) Percentage figures should be included where available, but qualitative assessments will suffice, ie excellent, satisfactory or poor.
   (b) What strategies (past, present and proposed) are in place to integrate the RIS process with the policy development process of departments and agencies? For example, training, regulatory plans.
8. Is publication of the figures in (7) mandatory?

Source: ORR.

New South Wales

Regulation Impact Statement Requirements

The *Subordinate Legislation Act 1989* requires the preparation of a RIS for all new principal statutory rules. Individual departments have the responsibility for preparing a RIS for their Minister. The Minister is required to ensure that, as far as is reasonably practicable, a RIS is prepared in connection with the substantive matters to be dealt with by the proposed regulation. An initial RIS must be prepared before consultation is sought.

A RIS is not required when a regulation is directly amended; for matters of a machinery, savings or transitional nature; for matters arising under legislation that is uniform with legislation of the Commonwealth or another State or Territory; for matters involving the adoption of international or Australian standards or codes of practice; where an assessment of the costs and benefits has already been made; or for matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The Parliament of New South Wales established, under the *Regulation Review Act 1987*, the Regulation Review Committee. This Joint Committee examines all regulations in accordance with various grounds, including whether the regulation adversely impacts on business and whether there are better alternatives. It reports to Parliament on these grounds and whether there has been compliance with the requirements under the *Subordinate Legislation Act 1989*.

A RIS must consider alternative options for achieving the desired objectives — either wholly or substantially — and the option of not proceeding with any action must be considered. An evaluation must be made of the costs and benefits expected to arise from each option compared with the costs and benefits that are expected to arise from proceeding with the regulation.

The analysis of the costs and benefits must consider the costs and benefits relating to resource allocation, administration and compliance. Costs and benefits should be quantified where possible. If this is not possible, the anticipated impacts of each of the options should be stated and presented in a way that permits a comparison of the costs and benefits.

Consultation

A RIS must include a statement of the consultation program to be undertaken. The extent of the consultation must be commensurate with the impact likely to arise for

consumers, the public and any sector of industry. Comments and submissions on a proposed new regulation must be invited for a period not less than 21 days. The responsible Minister is required to ensure that the notice — and information on where a copy of the RIS can be obtained — is published in the Gazette, a daily newspaper in New South Wales and, where relevant, in professional magazines.

Ministers are required to table a copy of the RIS in the same sitting week as Parliament is given notice of the making of a new regulation, or as soon as possible thereafter.

Compliance

While exact data are not available, it is estimated that approximately 25 to 30 RISs are completed each year. Compliance with the RIS requirements has been variable. The New South Wales Government strongly encourages the integration of the RIS process at an early stage in the policy development process.

Victoria

Regulation Impact Statement Requirements

Under the *Subordinate Legislation Act 1994* (the Act), a RIS must be prepared wherever a proposed statutory rule imposes an appreciable economic or social burden on a sector of the public. In considering whether a proposed statutory rule imposes an appreciable burden, departments and agencies must consider whether it imposes significant penalties for non compliance; whether it impacts on individual rights and liberties; and whether it will impact on business. If a statutory rule does not impose appreciable burdens, under s9 of the Act, Ministers must certify, with reasons, that this is the case.

Under s10(3) of the Act, the responsible Minister must ensure that independent advice is sought to confirm the adequacy of the RIS. This advice can be provided by the Victorian Office of Regulation Reform (VORR), a consultant, or a unit within Government that has the necessary expertise and is independent from those developing the policy and the proposed statutory rules. RISs are made public prior to the making of the statutory rule.

The VORR has produced the *Regulation Impact Statement Handbook*, with which agencies need to comply. The assessment of costs and benefits must include an assessment of economic, environmental and social impacts and the likely

administration and compliance costs. A fundamental requirement is to ensure that no significant impact of the proposal is overlooked.

Consultation

Generally, consultation occurs with all identified stakeholders twice, prior to preparation and again upon publication of the RIS. Consultation is mandatory if the proposed statutory rule is likely to impose an appreciable burden on any sector of the public. A RIS must be included in the consultation process. The responsible Minister is required, under s11 of the Act, to ensure that a notice is published — in the Gazette and daily newspaper — inviting submissions or public comment within a time frame of not less than 28 days.

Compliance

In 2000-01, 40 RISs were prepared by Government Departments. Of this 40, the VORR assessed 21. The VORR noted that compliance with the RIS requirements was excellent and, generally speaking, the quality was very good. The number of RISs reviewed by the VORR is published in the Annual Budget Statements and is one of the performance indicators relating to the VORR.

The VORR releases the *Victorian Regulation Alert* on an annual basis to allow business and the general public the opportunity to know of sunsetting regulations and new regulations in advance. The publication is intended to complement the consultation requirements of the *Act*. In order to encourage compliance, the VORR has also published the *Regulatory Impact Statement Handbook* to assist agencies in interpreting the Act.

Queensland

Regulation Impact Statement Requirements

Under the *Statutory Instruments Act 1992* (the Act), RISs are required if proposed subordinate legislation is likely to impose 'appreciable costs' on the community or part of the community. Individual departments have the responsibility to produce RISs. Departments can seek advice from the Queensland Business Regulation Reform Unit (BRRU) on the necessity for a RIS and the content and level of analysis contained in a RIS. Consultation with the BRRU is not mandatory. A RIS must be prepared before, and included in, the consultation process.

The term 'cost' is defined as including burdens and disadvantages, and direct and indirect economic, environmental and social costs. The question of whether the impacts are 'appreciable' remains a matter of judgement and departments may have regard to the following:

- the legislation involves major government spending for which Cabinet approval has not previously been sought and which may flow on as indirect costs to the community;
- the legislation is likely to impose costs or burdens on the community in the vicinity of $500 000 a year or $5 million over a ten year period, in present value terms;
- the legislation affects a sensitive policy area; and
- the legislation is likely to have a significant impact on the legal rights of any particular part of the community.

The Act requires that RISs include an assessment of the costs and benefits of the proposed legislation that, if practical and appropriate, quantifies the benefits and costs and includes a comparison with the benefits and costs of any reasonable alternative. The inclusion of an alternative is recommended and, as a minimum requirement, the RIS should include an assessment of the proposed subordinate legislation against the existing arrangements. BRRU recommends that a qualitative assessment be undertaken for all proposals. The BRRU has developed both a qualitative and quantitative cost–benefit methodology that can be used for all types of legislation.

Consultation

Under the *Statutory Instruments Act 1992*, RISs must be notified in the Gazette and in a newspaper likely to be read by people particularly affected by the proposed legislation. A period of 28 days is allowed from the publication of the notice for the making of comments. If the proposed legislation is likely to have a significant impact on a particular group of people, the notice must be published so as to ensure members of that group understand the content and purpose of the notice. The *Queensland Cabinet Handbook* dictates that RISs must be submitted to Cabinet prior to gazettal.

Compliance

In 2000-01, BRRU provided advice on approximately 120 regulatory proposals. Around 15 RISs are completed annually, with the majority provided to the Unit for comment prior to release. BRRU was able to comment on, and thus improve, the

level of analysis so that the standard of RISs satisfactorily met the provisions of the Act.

BRRU runs a structured training program on the RIS process and encourages the examination and adoption of alternatives to prescriptive regulation. In 2000-01, it trained approximately 185 policy officers from various departments.

BRRU is currently in the process of developing a regulatory communication plan. This will be in both electronic and hard copy forms. It is also proposing the development of a telephone referral service to assist small business with their compliance obligations.

Tasmania

Regulation Impact Statement Requirements

Under the *Subordinate Legislation Act 1992* (the Act), a RIS is required for proposed subordinate legislation imposing a significant cost, burden or disadvantage on any sector of the public. Under the Tasmanian Legislation Review Program (LRP), a RIS is required for reviews of existing primary legislation that has at least one major restriction on competition and for new primary legislation that has at least one major restriction on competition or will impose a significant negative impact on business. RISs are prepared by agencies early in the policy development process and are assessed by the Tasmanian Regulation Review Unit (RRU) within the Department of Treasury and Finance. A RIS and the public consultation program need to be approved by the RRU before consultation is sought.

In considering the need for new legislation, agencies are required to take into account whether there are alternative methods of achieving the proposed objectives.

For all legislation requiring a RIS, the costs and benefits should be quantified where possible. When this is not possible, the anticipated impacts of the alternative approaches must be presented and stated in a way that permits a comparison of the costs and benefits.

Where required, RISs for both primary and subordinate legislation should clearly identify whether the benefits of a proposal outweigh the costs. This requires an assessment of the direct and indirect social, environmental and economic impacts. Under the LRP, this includes an examination of the effect that the restriction on competition has, or will have, on the market overall. The Act also requires that a RIS assesses the impact of a proposal on competition. The RRU recommends that it

be consulted prior to commencing this process so it can provide guidance on the various analytical techniques available.

Consultation

Consultation is mandatory for both primary and subordinate legislation where a RIS is considered necessary. Once the RIS and the overall public consultation program has been approved by the RRU, advertisements need to be placed in relevant local newspapers or other publications inviting submissions on the RIS within a minimum of 21 days. Small business is specifically consulted where it is considered appropriate. In most instances, particular interest groups are directly provided with a copy of the RIS. All submissions made on the RIS need to be fully considered and documented.

Compliance

The RRU assesses on average less than five RISs for primary legislation a year. The number of RISs required for subordinate legislation is relatively small — only two or three are prepared a year.

All agencies have complied satisfactorily with the RIS process. After the RRU was established in 1995, it embarked on a comprehensive training and educational program to inform the agencies of their obligations under the Legislation Review Program and the *Subordinate Legislation Act 1992*. This has been supplemented in subsequent years by additional explanations and presentations.

Australian Capital Territory

Regulation Impact Statement Requirements

The *ACT Cabinet Handbook* requires a RIS to be included as an attachment to Cabinet submissions for all proposals of a legislative nature with some minor exceptions, such as matters of an administrative nature. The *Subordinate Laws Amendment Act 2000* added RIS requirements to all subordinate laws that impose an 'appreciable burden on business'.

The Department of Treasury assesses the adequacy of RISs, but other departments are able to seek further analysis as part of the coordination process. Treasury follows the COAG approach, requiring the level of analysis to be commensurate with the likely impacts of the proposal. RISs must assess the cost and benefits of non-regulatory options.

Consultation

Under the *Subordinate Laws Amendment Act 2000*, RISs for subordinate laws will be tabled in the Legislative Assembly along with the Explanatory Memoranda. RISs for primary legislation are attachments to Cabinet submissions and are not tabled in the Legislative Assembly.

Agencies preparing legislative and regulatory proposals are required to consult with relevant stakeholders. The consultation report is often contained in a Cabinet Submission rather than a RIS. Community consultation processes in the ACT have recently been revised — in most cases a higher level of consultation will be required. Small business is usually consulted through the Business and Regulation Review Taskforce.

Compliance

There are no figures on the number of RISs completed in the ACT. The Department of Treasury has implemented training programs resulting in higher quality RISs.

Western Australia

While Western Australia has no formal RIS requirements, each Minister and government agency is responsible for ensuring that proposed legislation, and the review of existing legislation, is conducted in an open and transparent manner and allows for appropriate public consultation.

Departments submitting legislative proposals to Cabinet must indicate whether the proposal will impact on small business and, if so, provide an indication of the likely impacts.

The Small Business Development Corporation (SBDC) has a significant role in reviewing regulations affecting small business. Where appropriate, the SBDC makes comments or recommendations to Ministers and their departments through its independent Board of small business operators or the Minister for Small Business.

The SBDC also supports the activities of the State's Regulation Review Panel which is made up of seven private sector small business representatives. The Panel, which is convened by the SBDC, was established as a vehicle to obtain small business input on government regulations and restrictions which may unnecessarily impede business operations. The Panel seeks feedback from small business by

working with small business organisations, conducting Red Tape Forums for individual industry sectors or regions and via its Internet address.

The Department of Premier and Cabinet coordinates and oversees regulatory reforms on a whole-of-government basis, while the Competition Policy Unit of the Department of the Treasury and Finance provides support to agencies undertaking reviews of existing and proposed legislation that potentially restricts competition.

As part of its Small Business Policy, the Western Australian Government has made a commitment to establish stricter small business impact analysis provisions and enhance Cabinet reporting requirements during its first term of government.

South Australia

While South Australia (SA) does not have formal RIS requirements, regulatory reform is the primary responsibility of the Cabinet Office of the Department of Premier and Cabinet. Regulatory reform which focuses on small business is the primary responsibility of the Department of Industry and Trade.

Regulatory review mechanisms which operate in SA include the following.

- *A ten year Sunset Program.* In 1987 SA introduced sunset clauses in existing and in all new regulations (Part 3A of the *Subordinate Legislation Act 1978*). Since then agencies have reviewed all their existing regulations, updating those for which a need remains and allowing others to lapse. All updated and new regulations now have a ten year sunset clause. In addition all by-laws made under the *Local Government Act 1934* sunset after 7 years.
- *Parliamentary scrutiny*. Regulations made by the SA Government and by-laws made under the *Local Government Act 1934* are subject to scrutiny and possible disallowance by the Legislative Review Committee.
- *Cabinet Requirements for Proposed Legislation.* The *SA Cabinet Handbook* gives effect to Treasurer's Instruction number 17 which requires that all Cabinet Submissions 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, submissions are required to identify the costs and benefits for both the Government and the community. The formal requirements are similar to the cost–benefit assessments required by COAG in the Competition Principles Agreement.
- *Consultation Requirements*. The *SA Cabinet Handbook* requires that for all Cabinet Submissions, relevant Ministers ensure their agencies consult with those

who are likely to be affected. Although consultation is not mandatory, it is usual for consultation to be undertaken.

Northern Territory

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

The mechanisms for regulatory review include the Department of Industries and Business scrutinising any proposed regulation and its accompanying explanatory memorandum. Regulations which are complex or those which have wide ranging impacts on government and non-government agencies are referred to the Co-ordination Committee, which includes the Chief Executive Officers of all departments and government agencies.

The Department of Industries and Business continues to work 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 of the proposed regulation on business is, where possible, minimal.

F Integration of the RIS process — international experience

This appendix discusses the international experience of integrating the RIS process into policy development.

Several OECD countries have RIS (or Regulation Impact Assessment) requirements designed to improve the regulatory process and provide benefits to their communities. Of these, the United Kingdom, Canada and the United States have been chosen because of their similar institutional background to Australia and their approach to integrating the RIS process.

A number of aspects of the RIS process are examined including the trigger, the use of milestones, and accountability provisions. A key characteristic of the RIS requirements in each of these countries is the preparation of a RIS early in the policy development process.

United Kingdom

In 1998, the British Prime Minister announced that 'no proposal for regulation which has an impact on businesses, charities or voluntary bodies, should be considered by Ministers without a Regulatory Impact Assessment (RIA) being carried out' (Regulatory Impact Unit 1998, p. 2). Throughout the regulatory development process there are a number of milestones and UK Government agencies are encouraged to incorporate the RIA process as early as possible, beginning with the preparation of an *initial RIA* — a preliminary working assessment of the policy options using information already available.

If Ministers decide to proceed with the issue, then a *partial RIA* provides a more detailed analysis of the various policy options. Partial RIAs are used as the basis for public consultations. They include an analysis of the risks, benefits, costs and compliance issues for each option.

A *full RIA* is prepared in light of consultation. It includes detailed information on all aspects of the regulatory proposal, including addressing the views of stakeholders. The full RIA also makes a clear recommendation to the Minister(s). If a regulatory

or legislative option is chosen, there is an expectation that the benefits will almost always exceed the costs.

With regard to accountability, there is a signed declaration by the responsible minister at the end of the full RIA and the following wording is recommended *'I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs'*.

Once signed by the Minister, the *final RIA* is placed in the House libraries when the regulation/legislation is presented to Parliament. It is also the recommended practice that RIAs be made available on departmental websites in a clear and accessible manner and linked to the Regulatory Impact Unit website.

Departments are required to report progress on regulatory issues in the following ways:

- *Producing a monthly report on full regulatory impact assessments.* Any RIAs showing a cost or benefit to businesses, charities or voluntary bodies are listed on the Cabinet Office website, together with the name of a departmental contact from whom further information can be sought.
- *Preparing a biannual Command Paper which lists all full RIAs.* The Minister for the Cabinet Office presents the Command Paper to Parliament.
- *Publishing in their annual report an account of their regulatory performance.* This includes, for example, work that has been carried out to reduce unnecessary regulatory burdens throughout the previous financial year.

Canada

Canada has a broad regulatory impact analysis trigger, encompassing all forms of regulation, regardless of impacts. The Canadian Government requires that, before pursuing regulation, departments prepare a Regulatory Impact Analysis Statement (RIAS). Pursuant to the *Regulatory Policy*, the RIAS includes an identification of the problem, the need for regulation and regulatory alternatives, a cost–benefit analysis and public consultation (Government of Canada 1999).

The Canadian *Guide to the Regulatory Process* (Government of Canada 2001) notes that before drafting a regulatory proposal it may be necessary to involve the public in problem definition and solution identification. Early notice improves the regulatory process as regulations involving early and genuine consultation are more likely to be accepted than those that are not. Departments can engage in early notification by:

- developing a website and/or other information vehicles that outline their regulatory plans;
- preparing a one-year Report on Plans and Priorities to be tabled in Parliament — an opportunity to advise politicians, interested groups and individuals of forthcoming regulatory initiatives; and
- publishing a Notice of Intent in the *Canada Gazette*, thereby launching the process of public consultations.

After notification, departments are expected to produce a *draft* RIAS consistent with the requirements of the Regulatory Policy.

With regard to accountability, the Regulatory Affairs Division in the Privy Council Office then reviews the RIAS for consistency with the Regulatory Policy. If required, changes are made to the RIAS, then the Minister(s) responsible for the proposal grants his/her approval to the proposed regulation and the RIAS by signing the cover page. In circumstances where the proposal involves another organisation (such as an authority), the RIAS must be signed by the chairperson of the relevant board as well as the sponsoring Minister(s).

Once again, the Regulatory Affairs Division reviews the RIAS before writing a briefing note for the Ministers of the Special Committee of Council. The draft regulations and the RIAS are pre-published in the *Canada Gazette*, providing another opportunity for public comment and input. The RIAS is then updated to reflect information and comments received during the pre-publication period.

The RIAS serves as the sponsoring Minister(s) recommendation to colleagues on the Special Committee of Council and provides important information for their consideration and decision.

The Standing Joint Committee for the Scrutiny of Regulations monitors the exercise of regulatory power on behalf of the Parliament. Its mandate is to review regulations and other statutory instruments after they are made. The Committee checks the instruments against the criteria approved by the Senate and the House of Commons at the beginning of each session of Parliament.

When the Committee finds a problem with an instrument, it informs the regulation-making authority and suggests solutions. If a solution cannot be found, the Committee may draw the matter to the attention of both Houses of Parliament. In certain circumstances, the Committee is also authorised to propose the disallowance of the instrument, and if the motion is passed the instrument is revoked.

United States

Since 1980, the United States Government has required its agencies to prepare, biannually, a regulatory flexibility agenda containing:

- a brief description of the subject area and nature of any rule which the agency expects to propose that is likely to have a significant economic impact on a substantial number of small entities; and
- the name and telephone number of an agency official with knowledge concerning the items listed in the agenda (Office of Advocacy 2000).

Each regulatory flexibility agenda is also submitted to the Small Business Administration for comment. The agency concerned is also required to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda and to invite comments upon each subject area on the agenda.

In addition to the regulatory flexibility agenda, the agency is required to prepare and make available for public comment an *initial* Regulatory Flexibility Analysis (RFA). The analysis describes the impact of the proposed rule on small entities. This initial RFA (or summary) is published in the Federal Register and a copy is provided to the Small Business Administration.

When an agency implements a regulation, it is required to prepare a *final RFA*. The final RFA is a detailed description of all aspects of the regulatory proposal, including a summary of the significant issues raised in public comments in response to the initial RFA and a statement of any changes to the proposed rule as a result of such comments.

The agency is required to make copies of the final RFA available to members of the public and publish (at least) a summary of the analysis in the Federal Register.

To promote compliance with the RFA process, the Office of Advocacy in the Small Business Administration publishes its *Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act*. The report is an overview of the regulatory initiatives undertaken by US federal agencies in any given year and the financial savings that have resulted through use of the RFA process. Over the period 1998-2000, the Office estimated that the RFA process had saved US$20.6 billion in regulatory costs, without compromising public policy objectives (Office of Advocacy 2000, p. iv).

In 1996, Congress signed the *Small Business Regulatory Enforcement Fairness Act*, authorising the courts to review agency compliance with the RFA, whilst taking

account of the input of small businesses. This provided the RFA process with an enforcement remedy for the first time. Small entities have rarely challenged the need for regulatory solutions, but the information they provide has often challenged agency estimates as to cost and regulatory effectiveness. As a result of this process, major changes to regulatory proposals have been made (Office of Advocacy 2000).

Concluding remarks

The United Kingdom, Canada and the United States have adopted similar strategies to integrate the RIS process into policy development. Their governments require or encourage:

- early notification of the regulatory proposal to interested parties and a preliminary RIS (or equivalent);
- the development of the regulatory analysis over time, and with the benefit of public consultations; and
- accountability for the analysis (or regulation) by way of ministerial (or agency) responsibility or court enforceable reviews.

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