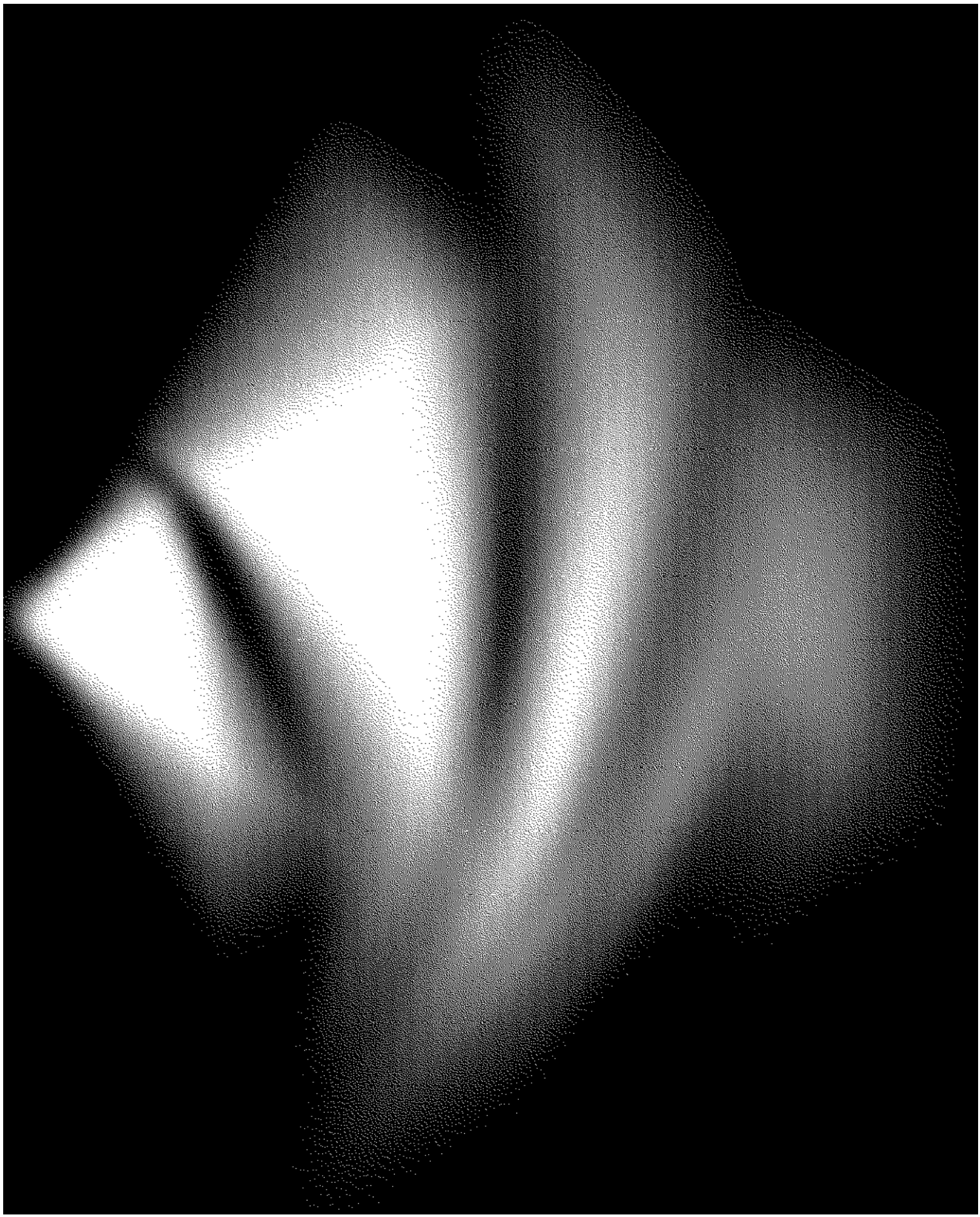
Regulation and its Review 2001-02

PRODUCTIVITY COMMISSION



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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.

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Foreword

The Productivity Commission is required to report annually on regulation review and reform issues, including compliance by Commonwealth departments and agencies with the Government's Regulation Impact Statement (RIS) requirements. The Commission also reports on National Competition Policy reviews of Commonwealth legislation which restricts competition or impacts on business; and on the adequacy of RISs for regulatory proposals considered by Ministerial Councils and national standard-setting bodies. These processes all aim to achieve best practice regulatory outcomes.

This is the fourth such report. It forms part of the Productivity Commission's annual report series of publications for 2001-02.

The Commission's Office of Regulation Review (ORR) advises, monitors and reports on compliance with the Government's RIS requirements. This edition of *Regulation and its Review* continues last year's initiative of providing RIS compliance data for each Commonwealth department and agency, as well as for significant regulatory proposals.

This edition also considers some emerging regulatory issues, including accounting for ecologically sustainable development and small businesses impacts, and regulatory compliance costs.

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

Gary Banks
Chairman

November 2002

Contents

BOXES

FIGURES

TABLES

Abbreviations and explanations

Abbreviations

ABA	Australian Broadcasting Authority
ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ACS	Australian Customs Service
ACT	Australian Capital Territory
AFFA	Agriculture, Fisheries and Forestry — Australia (Department of)
A-Gs	Attorney-General's Department
AMSA	Australian Maritime Safety Authority
ANZFA	Australia New Zealand Food Authority
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
ATO	Australian Taxation Office
BCCS	Business Cost Compliance Statement (NZ)
BRRU	Business Regulation Reform Unit (Queensland)
CASA	Civil Aviation Safety Authority
CoA	Commonwealth of Australia
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
CRIS	Cost Recovery Impact Statement
DEWR	Department of Employment and Workplace Relations

DFAT	Department of Foreign Affairs and Trade
DHA	Department of Health and Aging
DITR	Department of Industry, Tourism and Resources
DoCITA	Department of Communications, Information Technology and the Arts
DTRS	Department of Transport and Regional Services
ESD	Ecologically Sustainable Development
E&H	Environment and Heritage portfolio
GDP	Gross Domestic Product
GMOs	Genetically Modified Organisms
GST	Goods and Services Tax
HDTV	High Definition Digital Television
IAC	Industries Assistance Commission
IC	Industry Commission
NCC	National Competition Council
NCP	National Competition Policy
NOIE	National Office for the Information Economy
NRTC	National Road Transport Commission
NSSBs	National Standard Setting Bodies
OECD	Organisation for Economic Cooperation and Development
ORR	Office of Regulation Review
PC	Productivity Commission
PM&C	Department of Prime Minister and Cabinet
R&D	Research and Development
RIA	Regulation Impact Analysis
RIS	Regulation Impact Statement
RRU	Regulation Review Unit (Tasmania)
SBDTF	Small Business Deregulation Task Force (Cmth)
SBS	Small Business Service (UK)
SDTV	Standard Definition Digital Television

SME	Small and Medium Enterprises
SSCRO	Senate Standing Committee on Regulations and Ordinances (Cmth)
ToR	Terms of Reference
VORR	Victorian Office of Regulation Review

Explanations

Billion	The convention used for a billion is a thousand million (10^9).

OVERVIEW

Key points

- The review and reform of regulations involves all Australian governments and has generated significant gains for Australia. Ongoing review is required to ensure that regulations reflect changes in society and do not impose unnecessary burdens on business or the community.
- An important element of regulation review and reform is the requirement to prepare Regulation Impact Statements (RISs) for new regulatory proposals.
- Overall, RIS compliance in 2001-02 was higher than in previous years.
  - Adequate RISs were prepared for 88 per cent of 145 regulatory proposals that required the preparation of a RIS for the policy approval/decision-making stage.
  - The compliance rate remains noticeably lower, however, for proposals assessed as having a significant impact, with 7 out of 10 assessed as adequate.
- Compliance with the Government's RIS requirements varied significantly both among and within portfolios. While nine departments and agencies achieved compliance rates of 100 per cent, 11 did not comply fully with the requirements.
- Some departments and agencies have now integrated the RIS requirements into their broader policy development processes. However, others still treat it as an 'add-on' and have yet to capture the benefits of integration.
- Regulation-making also occurs at the inter-governmental level among approximately 40 Commonwealth/State/Territory Ministerial Councils and standard-setting bodies. In 2001-02, their rate of compliance with the Council of Australian Governments RIS requirements was 96 per cent.
- Current priorities are to ensure that RISs provide considered and informative advice on regulatory compliance costs and small business impacts, as well as ecologically sustainable development. Integrating the Government's cost recovery policies with the RIS process and initiatives to cooperate more closely with New Zealand are also important.

Overview

Effective and efficient regulations facilitate the achievement of a range of community objectives without creating unnecessary burdens on business or the community. However, over the last two decades, governments in Australia and other countries have found that many regulations have inhibited healthy competition, increased business costs and prices, and constrained growth in living standards. In some cases, consumers' choice of supplier and products has been unnecessarily constrained.

In response to these concerns, there has been a major reorientation of the regulatory framework in Australia. New regulations are now required to be pro-competitive and outcome focused and there is general agreement about the need to periodically review and reform regulatory arrangements to ensure that they remain appropriate.

In Australia, approximately 60 Commonwealth departments and agencies, and 40 national standard-setting bodies and Ministerial Councils have powers to prepare or administer regulations. There is ongoing concern that regulation and red tape emanating from these bodies continues to impose significant compliance costs on business and the community.

Since 1997, a major element of the Commonwealth Government's strategy for reviewing and reforming regulations has been the requirement for new or amended Commonwealth regulation to be accompanied by a Regulation Impact Statement (RIS). The RIS process is intended to improve the quality of regulations by ensuring that new and amended regulations achieve their objectives in an effective and efficient manner.

RISs are required for regulatory proposals that affect business or restrict competition. This includes regulations in the form of legislation, non-disallowable instruments, quasi-regulation and treaties. RISs are designed to assess and balance a wide range of economic, social, environmental and technological issues and impacts. They can assist policy makers by laying out the costs and benefits of all viable options (including non-regulatory measures) for achieving specified policy objectives.

The publication of final RISs (through tabling in Parliament or public release) increases transparency, thus enhancing public confidence in, and understanding of, regulations and government regulation-making processes.

The Office of Regulation Review (ORR) is part of the Productivity Commission. One of the functions of the ORR is to underpin the integrity of the RIS process by advising on whether the Government's requirements have been met, including whether the RIS provides an adequate level of analysis.

The Productivity Commission and the ORR also have an obligation to report annually on compliance with these requirements across Commonwealth departments and agencies.

Aggregate RIS compliance results for 2001-02

The Government's RIS requirements apply to approximately 60 Commonwealth departments, agencies and other decision-making bodies. Over 1900 Bills, disallowable instruments and other regulations were tabled in Parliament or otherwise implemented in 2001-02.

- Of these, 145 required the preparation of a RIS for decision-makers. This requirement was met in 130 cases, with 128 of those RISs containing analysis judged to be of an adequate standard. Accordingly, the RIS compliance rate in 2001-02 reached 88 per cent (table 1), somewhat higher than the year before.
- The second requirement, that adequate RISs be tabled in Parliament (with the explanatory material for Bills or legislative instruments), was satisfied in 94 per cent of cases in 2001-02. Again, this was higher than the previous year's compliance rate.

Consistent with the Government's aim of improving the regulatory decision-making process, the ORR has continued to raise the standard of analysis required for a RIS to be deemed 'adequate'. The compliance rates reported for 2001-02 are, therefore, likely to have been even higher if assessed against the standards of previous years.

Table 1 **RIS compliance, by type of regulation, 2001-02**

Regulatory proposals introduced via	*Decision-making*			*Tabling*		
	prepared	*adequate*		*prepared*	*adequate*	
	ratio	*ratio*	*%*	*ratio*	*ratio*	*%*
Primary legislation (Bills)	46/55	46/55	84	55/57	54/57	95
Disallowable instruments	55/61	53/61	87	61/64	60/64	94
Non-disallowable instruments	20/20	20/20	100	..	..	..
Quasi-regulation	7/7	7/7	100	..	..	..
Treaties	2/2	2/2	100	2/2	2/2	100
Total	**130/145**	**128/145**	**88**	**118/123[a]**	**116/123[a]**	**94**

.. Not applicable. **a** Compliance for Bills, treaties and disallowable instruments subject to formal assessment at this stage by the ORR. Excludes 20 RISs prepared for regulatory proposals introduced via non-disallowable instruments and seven RISs prepared for quasi-regulations as they are not tabled.

RIS compliance rates for the most significant regulatory proposals were lower than the overall compliance rate. The ORR classified each of the 145 proposals into one of four 'significance' rankings — reflecting the nature and magnitude of the proposal and the scope of its impact. RIS compliance at the decision-making stage for the 10 proposals in the two highest categories, which denote the most significant regulatory proposals, was only 70 per cent in 2001-02. This compares with 90 per cent compliance for regulations with less significant impacts (table 2).

Table 2 **Compliance by significance and timeliness, 2001-02**

Significance rating	*Required*	*Adequate*	*Compliance rate*	*Average elapsed time*
	No.	*no.*	*%*	*weeks[a]*
More significant (A & B)	10	7	70	2.9
Less significant (C & D)	135	121	90	5.3
Total	**145**	**128**	**88**	**5.1**

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 very small number of exceptional cases where external factors resulted in an exceptionally long time lapse (ie. several months or years).

The Government encourages departments and agencies to integrate the RIS into their policy development processes and consult with the ORR at an early stage in that process. A relatively long time period between the ORR receiving the first draft of a RIS and its final assessment would usually indicate that departments and agencies have been able to undertake a considered and full assessment of the likely impacts of a regulatory proposal. By contrast, where departments and agencies

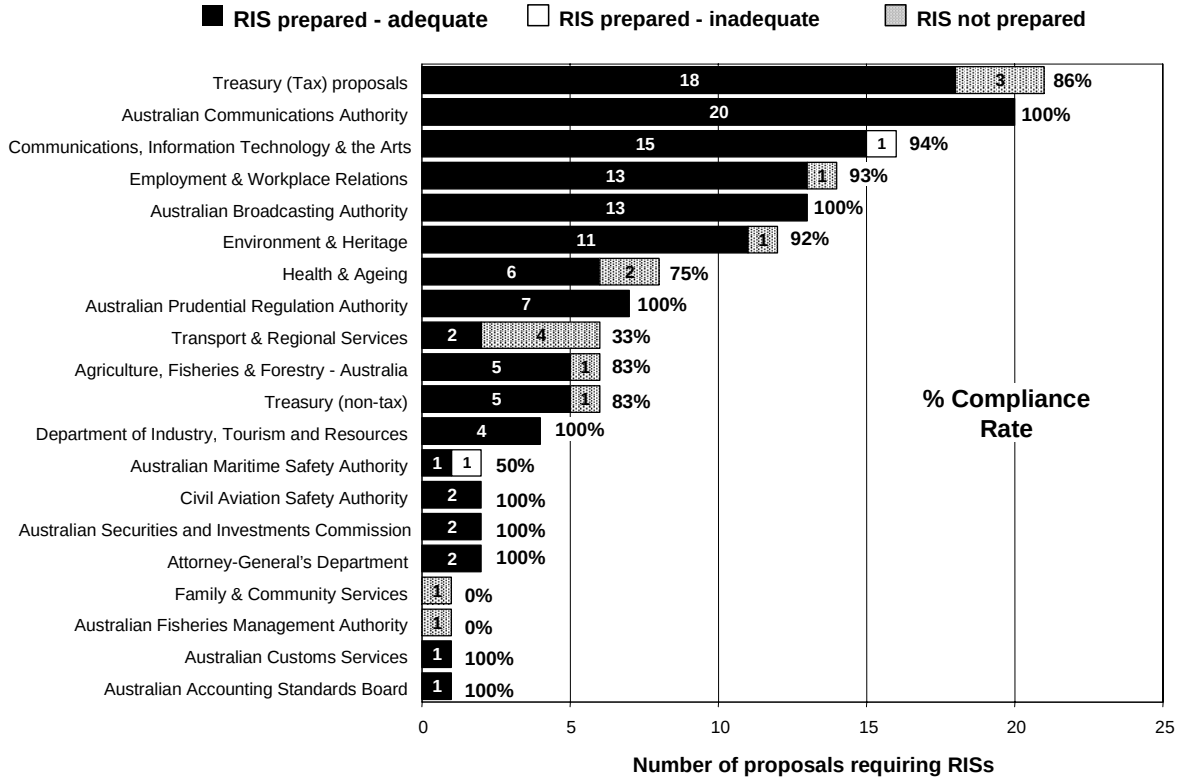
prepare RISs late in the policy development process it is less likely that a RIS will make an effective contribution.

To gauge the timeliness of the preparation of RISs, the ORR records the elapsed time between when a first draft is received and when it advises whether the RIS requirements have been met at the decision-making stage. For regulatory proposals finalised in 2001-02, the average elapsed time for more significant regulatory proposals was approximately three weeks, compared with more than five weeks for the less significant proposals (chapter 2).

Compliance by departments and agencies

In 2001-02, 20 of the Commonwealth's approximately 60 departments and agencies made regulations which required preparation of a RIS. Compliance results at the decision-making stage for these departments and agencies are shown in figure 1.

Figure 1 **Compliance with RIS requirements at the decision-making stage, 2001-02[a]**



a The Department of the Treasury is counted twice, to separately identify tax RISs which are usually prepared in consultation with the Australian Taxation Office.

The total length of each bar in figure 1 indicates the number of RISs required to be prepared at the decision-making stage. The black segment shows how many of those RISs were assessed as adequate. The other segments show the number of RISs that were not compliant, either because the ORR assessed the RISs as not adequate (white segments) or because RISs were not prepared (grey segments). 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.

National regulation-making: RIS compliance results

Regulation-making also occurs at a national or inter-jurisdictional level, where there is agreement between jurisdictions, among some 40 Commonwealth/State/Territory Ministerial Councils and 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 RIS 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. The ORR's reports on COAG RIS compliance are also considered by the National Competition Council (NCC) as part of its assessment and reporting on the compliance of Australian jurisdictions with National Competition Policy.

In 2001-02, the ORR identified 24 matters as being subject to the COAG RIS requirements. RISs of an adequate standard were prepared for all but one of these. Accordingly, the overall compliance rate was 96 per cent, significantly higher than the rate achieved in the previous year (chapters 2 and 4).

Improving performance

While compliance with the Government's RIS requirements has generally improved, disaggregated information on RIS compliance suggests that:

- there was a noticeably lower compliance rate for the more important regulatory proposals; and
- there was a tendency for RISs prepared for significant proposals to be undertaken in compressed time frames, raising doubts about the extent to which they were able to contribute to the policy development process.

These findings suggest that a number of departments and agencies are still giving relatively low priority to the requirements and with some essentially treating the RIS as an 'add on' task — after a course of action has already been agreed.

A range of measures can be implemented by departments and agencies to help achieve the Government's regulatory best practice objectives:

- There should be an effective early warning system of pending regulatory changes. To this end, in 1998 the Government decided that each department and agency would publish early in each financial year the regulatory changes planned for that year.
- Some departments and agencies could emulate the approaches of others by incorporating the RIS requirements into their policy development processes. This would help ensure that the RIS analysis is undertaken relatively early, and increase the prospect that it can make a useful contribution to the development and assessment of policy options.

Some priority issues

Compliance costs

Regulations typically impose some compliance costs on business and the community and administration costs on government. Such costs can also have a significant impact Australia's international competitiveness. According to the OECD (2001a), direct regulatory compliance costs in Australia are at about the average for OECD countries. That said, it estimated from survey responses that compliance costs in Australia exceeded $17 billion, or 2.9 per cent of GDP (OECD 2001a). At present, RISs usually contain a relatively brief, and typically qualitative, assessment of the compliance cost burden of regulatory proposals. There is scope for departments and agencies preparing RISs to provide decision-makers with a more thorough assessment and the ORR will be placing more emphasis on this aspect in assessing RIS adequacy.

Small business

The RIS requires departments and agencies to explicitly consider small business impacts and give full consideration to the objective of reducing the regulatory burden on small business. The ORR has found that many RISs identify impacts on broad groups such as business, consumers and government, but do not provide an assessment of the impacts on small business. Departments and agencies need to focus more on small business impacts by routinely considering them in RISs. At a minimum, all RISs should provide an estimate of the number of small businesses — or the size of the small business sector — likely to be affected by a regulatory proposal, whether there is likely to be a disproportionate impact on small business

and, where possible, the likely magnitude of such impacts. Without such information, RISs will not meet the test of adequacy.

Ecologically sustainable development (ESD)

To progress the implementation of the National Strategy for Ecologically Sustainable Development (ESD), the Government has decided to amend *A Guide to Regulation* (ORR 1998) to refer to the need for RISs to include an assessment of ESD impacts. This requirement reflects a number of recognised market failures associated with some sustainable development issues — such as public goods and externalities, common property issues and scientific uncertainty. The ORR is working with departments and agencies to incorporate the Government's ESD requirements into the RIS process.

Cost recovery

In March 2002, in response to a Productivity Commission report on cost recovery (PC 2001), the Government decided to adopt a formal cost recovery policy and to review existing arrangements. Among other issues, the forthcoming policy will clarify the role of the RIS process with respect to regulations containing a significant cost recovery element and address a proposal that a 'Cost Recovery Impact Statement' (CRIS) be prepared for proposals not covered by a RIS.

Monitoring and learning from developments and trends in other jurisdictions

Implementation of an effective RIS system is a long-term task. It requires continual learning and evolution of systems. An examination of RIS processes in OECD countries and Australian jurisdictions suggests that, in many respects, the Commonwealth RIS requirements have led best practice internationally. However, some features of RIS and other systems in operation elsewhere merit further consideration. Furthermore, there may be scope for Australia to learn from the experience of jurisdictions which have implemented a range of other reforms designed to improve the effectiveness and efficiency of regulations.

The ORR plans to conduct further research into developments in other jurisdictions including examining approaches for better measuring the performance of — and outcomes resulting from —regulatory quality control systems.

Trans-Tasman regulation review and reform issues

Increasingly, regulation review and reform in Australia is being undertaken in cooperation with New Zealand. Therefore, New Zealand's long standing participation in Ministerial Councils and national standard-setting bodies is an emerging strategic issue.

To build on the existing focus on compliance costs, the New Zealand Government recently decided to establish a RIS system similar to that used in Australia. As part of this initiative, during the course of the year the ORR worked closely with officials from the New Zealand Government and provided advice and training on RIS systems (appendix C). This dialogue has resulted in greater consistency in regulation-making processes in each jurisdiction, which in turn should generate better quality regulations and help reduce unnecessary impediments to trade and commerce.

1 The rationale for regulation review and reform

The review and reform of regulations involves all Australian governments and has generated significant gains for Australia, including higher growth, productivity and incomes. However, periodic review is required to ensure that regulations reflect economic, social, environmental and other changes in society.

The last two decades have seen a growing realisation that inefficient and unnecessary regulations have hindered the growth in Australian's living standards. They have inhibited healthy competition and increased business costs and prices. In some cases, consumers' choice of supplier and products has been unnecessarily constrained. However, since the 1980s, there has been a significant reorientation of the regulatory framework in Australia. Rather than seeking to shield certain industries from competition through the use of heavy-handed price and other controls, regulations are now often explicitly pro-competitive and outcome focused.

Almost every sector of the economy has been touched to some degree by regulatory reform. There is growing evidence that such reform has played a significant part in Australia's relatively strong economic performance over the last several years and contributed to rising productivity, incomes and living standards (Banks 2002; PC 1999c).

High quality regulation benefits all of society, allowing a range of community objectives to be achieved and market failures to be addressed, without creating unnecessary burdens on business. By contrast, poor quality regulation may not achieve its objectives and can impose unnecessary costs, impede innovation, or create unnecessary barriers to trade, investment and economic efficiency.

Even though the contemporary regulatory environment is considerably different to that of 15 or 20 years ago, the process of ensuring that regulations lead to appropriate economic, environmental and social outcomes is ongoing. It is now recognised that regulatory reform is not a one-off process which ceases once unnecessary or inappropriate regulations have been removed. With the pending completion of approximately 1800 legislation reviews under the National Competition Policy (NCP) (which focuses on the stock of existing legislation),

Australian governments are focusing more on quality control systems for new and amended regulations. In addition, as economic, social and environmental changes shape society, there is a need to periodically review and reform regulatory arrangements to ensure that they are effective and efficient in achieving their objectives.

There are approximately 60 Commonwealth departments and agencies and 40 Ministerial Councils and national standard-setting bodies with powers to prepare and/or administer regulations. Consequently, it is not surprising that regulation and red tape continues to impose significant compliance costs on business and the community. For example, in 2001, the Organisation for Economic Cooperation and Development (OECD) estimated from survey responses that, in 1998, taxation, employment and environmental regulations imposed over $17 billion (2.9 per cent of GDP) in direct regulatory compliance costs on small and medium sized businesses in Australia (OECD 2001a).

Australian governments have implemented a range of reforms to address such concerns. For example, in 1995, the Commonwealth, States and Territories agreed to a range of reforms under NCP. These reforms focused on reviewing, and where appropriate reforming, the stock of existing regulations. In 1997, the Commonwealth Government introduced the requirement for new or amended Commonwealth regulation to be accompanied by a Regulation Impact Statement (RIS) (CoA 1997). At that time, the Office of Regulation Review (ORR) was given a range of new functions, including administering the Commonwealth's RIS requirements. (The Commonwealth RIS requirements are outlined in the publication *A Guide to Regulation* (ORR 1998).) Furthermore, at the request of the Council of Australian Governments (COAG), the ORR monitors and reports on RIS requirements applying to Ministerial Councils and national standard-setting bodies (COAG 1997).

The ORR provides advice to decision-makers about the adequacy of analysis contained in RISs and whether they comply with the Government's regulatory best practice requirements. It is not the ORR's role to advocate particular policy options or develop regulations. Rather, it is decision-makers, government departments and agencies that are responsible for the quality of the RIS and any regulatory decisions that are made and implemented.

The RIS process is intended to improve the quality of regulations by ensuring that new and amended regulations achieve their objectives in an effective and efficient manner. It results in regulators documenting their policy development processes in a consistent and systematic manner. RISs consider, assess and, where appropriate, balance a wide range of economic, social, environmental and technological issues and impacts.

The RIS process requires regulators to identify problems, specify clear objectives and consider a range of feasible regulatory and non-regulatory options in a rigorous and informed manner. This improves government decision-making processes by ensuring that all relevant information is presented to the decision-maker. The RIS process also encourages regulators to consult with the community and stakeholders. Where possible, RISs should be part of a broader program of government consultation with the community regarding the review of particular regulations.

The publication of final RISs increases transparency, thus enhancing public confidence in — and understanding of — regulations and government regulation-making processes. For example, in 2001-02, the explanatory material for Commonwealth legislation contained 116 RISs for a wide range of Bills, including the Proceeds of Crime Bill 2002, Trade Practices Amendment (Liability for Recreational Services) Bill 2002 and the Regional Forests Agreements Bill 2002.

The publication of RISs informs the Parliament, interest groups and the community about policy development, including regulatory and non-regulatory options considered by the Government prior to a decision being made. On several occasions, Members of Parliament have referred to RISs during debates and discussions about regulatory issues. In addition, media commentary about regulatory issues has sometimes been informed by information provided in RISs. Interest groups also use information contained in RISs in submissions to the Government and in their publications.

Many States and Territories also have RIS or equivalent requirements, as do most other OECD countries (chapter 4).

2 Compliance with RIS requirements

In 2001-02, the compliance of Commonwealth departments and agencies with the Government's RIS requirements was higher in aggregate terms than in previous years. Compliance was 88 per cent at the decision-making stage and 94 per cent at the tabling stage. This chapter reports on compliance by type of organisation with the Commonwealth's RIS requirements, for different types of regulations.

Of the approximately 60 Commonwealth departments, agencies and other decision-making bodies with powers to prepare and/or administer regulations, only 20 made regulations which required preparation of a RIS in 2001-02.

Regulations impacting on business and the community can take various forms. These include primary legislation of the Commonwealth Parliament, such as Acts of Parliament. They also include subordinate legislation — such as disallowable and non-disallowable instruments — where the Parliament has delegated regulation-making powers to a Minister, board or organisation. They can also include quasi-regulation, which refers to a range of rules, codes, instruments and standards which governments use to influence business behaviour, but do not form part of explicit government regulation. Finally, international treaties can also be a form of regulation if they impact on business and generate government expectations that businesses will comply with treaty provisions.

Only details about regulatory proposals that were made or tabled in the Parliament in 2001-2 are included in this report. The data reported here do not include regulatory proposals which have been decided by the Government, but were not tabled in the year prior to 30 June 2002. Also included in this report is an overview of the compliance by some 40 Ministerial Councils and national standard-setting bodies with the Council of Australian Governments (COAG) RIS requirements. Compliance results and trends for individual Commonwealth departments and agencies are provided in chapter 3.

When making its assessment of Commonwealth proposals which require a RIS, the ORR considers whether:

- a RIS was prepared to inform the decision-maker at the policy approval stage and the analysis contained in the RIS was adequate; and

- a RIS was tabled in the Parliament or otherwise made public and the analysis was adequate.

A portfolio, department or agency is considered to be fully compliant with the Government's requirements only if it meets these requirements. The adequacy of each RIS is assessed according to criteria determined by the Government. These are described in more detail in box 2.1.

In addition, the ORR also reports on the timing and extent of consultation with it during the development of each RIS.

2.1 Assessment of RIS compliance

Trends in RIS compliance

The number of new or amended Commonwealth regulations made in 2001-02 was similar to the number made in the previous year. Of the 207 Bills, 1711 disallowable instruments and other regulations introduced by the Commonwealth Government, only 145 associated regulatory proposals impacted on business or restricted competition and required a RIS for the decision-making stage.

The trend improvement over recent years in compliance by departments and agencies with the government's RIS requirements continued in 2001-02. Of the 145 Commonwealth regulatory proposals which required a RIS at the decision-making stage, departments and agencies prepared 128 RISs of an adequate standard, resulting in a compliance rate of 88 per cent in 2001-02. This is higher than the 82 per cent compliance achieved in 1999-00 and 2000-01.

As shown in table 2.1, the total number of RISs required at the decision-making and tabling stages differs within each reporting period. These differences can occur for a number of reasons. First, RISs are sometimes not prepared for the decision-making stage, but a RIS is prepared for publication.[1] Second, some decisions may result in two or more separate pieces of legislation. Third, some decisions were made before the RIS requirements were made mandatory in 1997. Fourth, there is a formal requirement that RISs be tabled with Bills, disallowable instruments and treaties. However, RISs for other types of regulation — non-disallowable instruments and

[1] A RIS may not be prepared at the decision-making stage because of non-compliance with the Government's requirements, or because of a genuine emergency such as a threat to public health and safety, or (on rare occasions) where the Prime Minister waives the requirement to prepare a RIS.

quasi-regulation — may be made public, but are not subject to formal assessment by the ORR.

Box 2.1 **Adequacy criteria for Regulation Impact Statements (RISs)**

The Government has endorsed the following criteria which are employed by the ORR to assess whether each RIS meets the Government's regulatory best practice requirements.

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*.

The ORR also takes into account recent Government requirements for RISs to include an assessment of ecologically sustainable development (ESD), small business and international trade impacts and issues.

Source: ORR (1998).

The adequacy standard for RISs has increased incrementally over the last five years, as departments and agencies have become more familiar with the RIS requirements and in many cases integrated these requirements into their own internal policy development processes.

Table 2.1 **Total RIS compliance, 1997-98 to 2001-02**

	1997-98	*1998-99*	*1999-00*	*2000-01*	*2001-02*
Decision-making stage	137/287	204/260	169/207	129/157	128/145
	(37%)	*(78%)*	*(82%)*	*(82%)*	*(88%)*
Tabling stage[a]	156/234	202/228	163/179	118/133	116/123
	(65%)	*(89%)*	*(91%)*	*(89%)*	*(94%)*

[a] Compliance for Bills, treaties and disallowable instruments which are subject to formal assessment at this stage by the ORR.

Source: ORR estimates.

In 2001-02, 123 RISs were required at the tabling stage. Of these, five were not prepared. Of the remainder, the ORR assessed 116 as containing an adequate level of analysis, resulting in a compliance rate of 94 per cent — higher than the rate achieved in any of the previous four financial years. Detailed compliance results by type of regulation are provided in table 2.2.

Table 2.2 **RIS compliance, by type of regulation, 2001-02**

Regulatory proposals introduced via	*Decision-making*			*Tabling*		
	prepared	*adequate*		*prepared*	*adequate*	
	ratio	*ratio*	*%*	*ratio*	*ratio*	*%*
Primary legislation (Bills)	46/55	46/55	84	55/57	54/57	95
Disallowable instruments	55/61	53/61	87	61/64	60/64	94
Non-disallowable instruments	20/20	20/20	100	..	..	..
Quasi-regulation	7/7	7/7	100	..	..	..
Treaties	2/2	2/2	100	2/2	2/2	100
Total	**130/145**	**128/145**	**88**	**118/123[a]**	**116/123[a]**	**94**

.. Not applicable. [a] Compliance for Bills, treaties and disallowable instruments subject to formal assessment at this stage by the ORR. Excludes 20 RISs prepared for regulatory proposals introduced via non-disallowable instruments and seven RISs prepared for quasi-regulations as they are not tabled.

Source: ORR estimates.

Significance of regulatory proposals

The ORR has classified each regulatory proposal that requires a RIS in terms of its economic significance or its potential impact on business and the community. The approach used by the ORR to classify the significance of regulatory proposals is outlined in box 2.2.

Box 2.2 Classifying the significance of proposals

Of the 709 Commonwealth Government regulatory proposals considered by the ORR in 2001-02, 145 proposals — 20 per cent — required preparation of a RIS. Where a RIS is required to be prepared, the impacts on business and the community can vary enormously, in some cases having a major impact on the entire community, in others having only a modest impact on a particular group. For this reason, where a RIS is required, the ORR classifies the significance of each regulatory proposal according to:

- the nature and magnitude of the problem and proposal; and
- the scope (broad or narrow) and scale (level or degree) of impacts on affected parties and the community.

Consideration of the significance of regulatory proposals involves a case-by-case assessment from a nationwide perspective.

For example, in terms of the nature, magnitude and intensity, of proposals, a ban on certain activities undertaken by most businesses would be regarded as 'large'. Placing conditions on particular business activities typically could be regarded as an intervention with medium magnitude. Examples of less significant 'small' interventions might be new periodic reporting requirements for business**.**

The ORR classification of the scope of impacts involves two categories — broad and narrow. An increase in the rate of excise on petrol would, for example, be considered quite broad in scope because of its widespread impact across the community. In addition, this change could have significant and high level impacts on transport related businesses. On the other hand, a late night curfew on flights into, say, Coolangatta airport would be relatively narrow in terms of its scope and impact.

While clearly somewhat subjective, the approach is employed by the ORR to categorise proposals into one of four significance categories — A, B, C or D. Category A applies to the most significant proposals with large impacts, while category D denotes less significant proposals with narrow impacts. Nevertheless, category D proposals have sufficient impact to warrant the preparation of a RIS.

The categorisation of regulatory proposals according to their significance and impact is intended to:

- help identify the most significant regulatory initiatives;

- 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.

Compliance by significance

Of the 145 proposals that triggered the Commonwealth Government's RIS requirements in 2001-02, ten proposals were classified as having a significant impact on the community.

In 2001-02, seven of the ten significant proposals (70 per cent) complied with the Government's RIS requirements at the decision-making stage, whereas 90 per cent of less significant proposals complied with the RIS requirements (table 2.3). The 2001-02 result for significant proposals is an improvement on the 60 per cent compliance rate in 2000-01. Although a number of factors affect compliance, the difference in RIS compliance between significant and non-significant proposals suggests that, in some cases, some departments and agencies may not be concentrating resources on regulatory proposals where the potential payoffs from the RIS process are highest.

Timeliness

The Government encourages departments to integrate the RIS process into their policy development process and consult with the ORR at an early stage. Where departments and agencies consult early with the ORR and prepare a RIS, in most cases the RIS meets an adequate standard. This was shown in 2001-02 where 128 of the 130 RISs prepared for decision-makers were assessed by the ORR as being adequate.

A relatively long time period between the ORR receiving the first draft of a RIS and the assessment by the ORR of the final RIS can indicate that departments and agencies have undertaken a considered and full assessment of the likely impacts of a regulatory proposal. By contrast, where departments and agencies prepare RISs late in the policy development process it is less likely that a RIS will make an effective contribution to policy development.

For more significant regulatory proposals in 2001-02, the average elapsed time between RISs being first provided to the ORR and the provision of final ORR advice about the adequacy of such RISs was 2.9 weeks (table 2.3). This was an increase from an average elapsed time of two weeks for more significant regulatory

proposals in 2000-01. By contrast, for less significant regulatory proposals in 2001-02, the average elapsed time was 5.3 weeks (table 2.3).

Table 2.3 **Compliance by significance and timeliness, 2001-02**

Significance rating	*Required*	*Adequate*	*Compliance*	*Average elapsed time*
	no.	*no.*	*%*	*weeks*[a]
More significant (A & B)	10	7	70	2.9
Less significant (C & D)	135	121	90	5.3
Total	**145**	**128**	**88**	**5.1**

[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 very small number of exceptional cases where external factors resulted in an exceptionally long time lapse (ie. several months or years).

Source: ORR estimates.

These data imply that, on average, departments and agencies are still spending relatively less time preparing RISs for regulatory proposals with high impacts or significance. This suggests that some departments and agencies may not have adopted effective strategies to integrate the Government's RIS requirements into their policy development processes.

2.2 Primary legislation

The Commonwealth Government introduced 207 Bills into Parliament in 2001-02.[2] Of these, 150 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 (ORR 1998, pp. A3—A4).

At the decision-making stage, 55 proposals required a RIS because they had a direct impact on business, a significant indirect impact on business or restricted competition. Of these, the ORR assessed 46 RISs — 84 per cent — as containing an adequate level of analysis, compared with a compliance rate of 73 per cent at the same stage in 2000-01 (figure 2.1). Given that the ORR continues to increase the minimum adequacy standard for RISs (see chapter 4), the higher compliance rate at the decision-making stage in 2001-02 illustrates a notable improvement in RIS compliance.

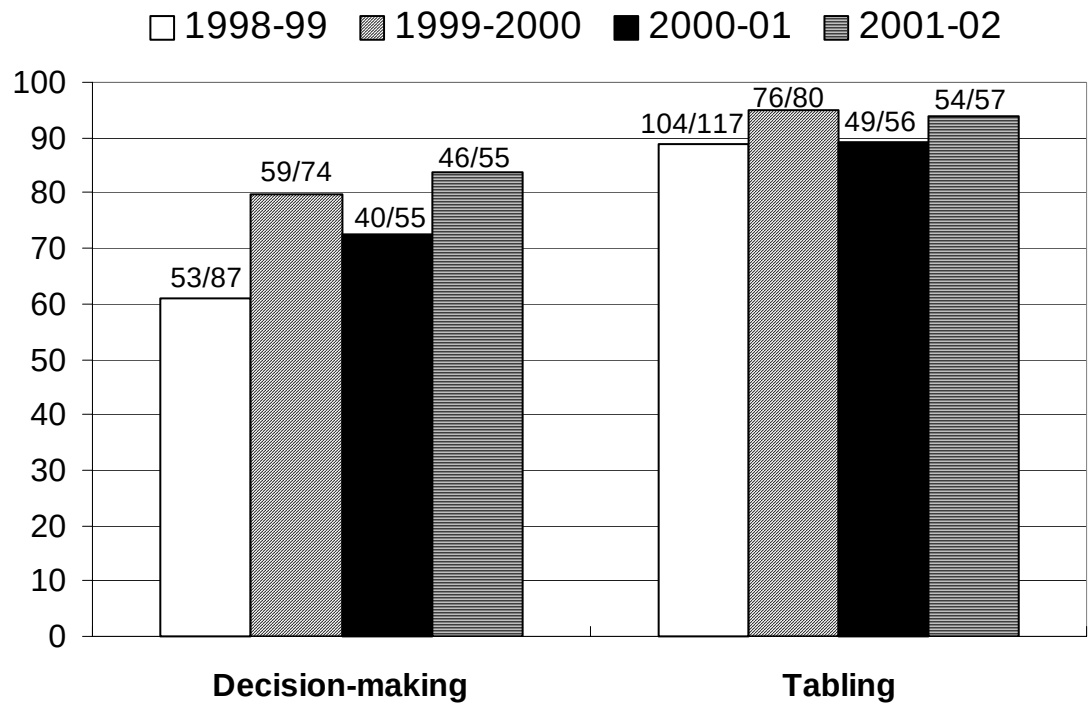
[2] A Bill is a draft of proposed law presented to Parliament and does not become law (an Act) until passed in identical form by both Houses of Parliament and assented to by the Governor-General.

At the tabling stage, 57 Bills in 2001-02 required preparation of a RIS.[3] Of these, 54 RISs — 95 per cent — contained an adequate level of analysis. This compares with 88 per cent in 2000-01 and 95 per cent in 1999-00.

It is notable that some legislative proposals in 2001-02 which had a significant regulatory impact were not accompanied by adequate RISs at the decision-making stage. These included the Air Passenger Ticket Levy (Collection) Bill 2001 and the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 (see chapter 3 for further information).

Figure 2.1 **RIS compliance for proposals introduced via Bills, 1998-99 to 2001-02**

Per cent



Source: ORR estimates.

2.3 Disallowable instruments

Disallowable instruments include statutory rules approved by the Governor-General in Federal Executive Council and legislative instruments. These are usually made by Ministers, statutory bodies or government agencies and are tabled in Parliament.

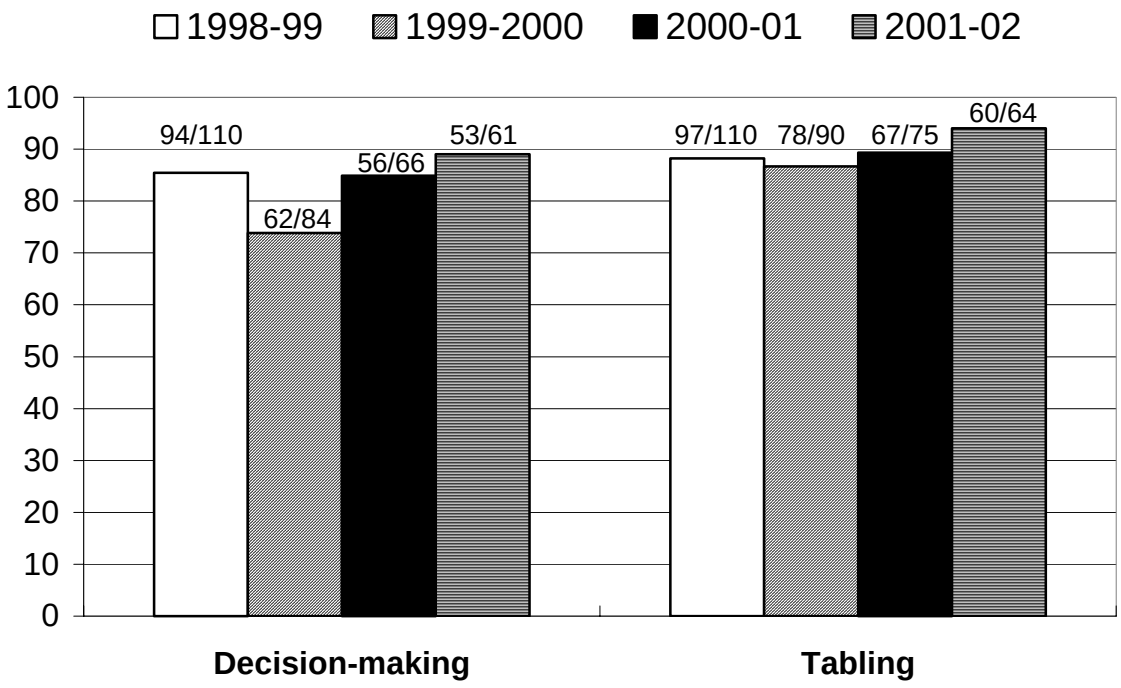
[3] Two Bills did not require a RIS at the decision-making stage. For one Bill, the decision predated the Government's RIS requirements and the other Bill implemented a specific budget decision.

They are subject to review by the Senate Standing Committee on Regulations and Ordinances (SSCRO) and disallowance by the Parliament.

It is estimated that 1711 Commonwealth disallowable instruments were made and tabled in 2001-02 (SSCRO 2002). Of these, around 96 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.[4]

Figure 2.2 **RIS compliance for proposals introduced via disallowable instruments, 1998-99 to 2001-02**

Per cent



Source: ORR estimates.

The remaining 64 regulatory proposals (or 4 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 five and seven per cent of all disallowable instruments made.

4 For example, disallowable instruments not requiring preparation of a RIS included the Immigration (Guardianship of Children) Regulations 2001 which provided certainty in relation to the immigration clearance status of non-citizen children. These regulations had no impact on business. The Civil Aviation Amendment Regulations 2001 (No. 2) changed the information requirements of aircraft data plates to harmonise with regulatory requirements in the United States. While these changes imposed additional costs on business, they were of a minor nature.

Of the 61 proposals that required a RIS at the decision-making stage in 2001-02, the ORR assessed 53 to be adequate — a compliance rate of 87 per cent (figure 2.2). This is slightly higher than the 85 per cent compliance rate recorded in the previous year.

At the tabling stage, RISs for 60 of the 64 regulatory proposals were assessed as adequate, resulting in a RIS compliance rate of 94 per cent in 2001-02. This compares with 89 per cent compliance in 2000-01.

2.4 Non-disallowable instruments and quasi-regulations

Non-disallowable instruments include all forms of delegated legislation that are not subject to Parliamentary disallowance. In most cases there is no requirement that these instruments be 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 addition, the ORR searches government websites and publications for these instruments.

In 2001-02, departments and agencies reported 20 regulatory proposals made via non-disallowable instruments that required a RIS at the decision-making stage.[5] In all cases RISs were prepared and cleared as adequate by the ORR, resulting in a compliance rate of 100 per cent (figure 2.3).

Thirteen quasi-regulations were reported to the ORR in 2001-02. Seven of these impacted on business and required preparation of a RIS.[6] In all seven cases, the RIS was assessed as adequate, resulting in a compliance rate of 100 per cent. This compares with a compliance rate of 87 per cent in 2000-01 (figure **Error! Not a valid link.**).

Although encouraged to do so by the ORR, there is no formal requirement that RISs prepared for non-disallowable instruments and quasi-regulations be made public. In some cases, RISs are made available on websites or distributed to stakeholders. In

5 For example, the Australian Prudential Regulation Authority (APRA) introduced a prudential standard on outsourcing.

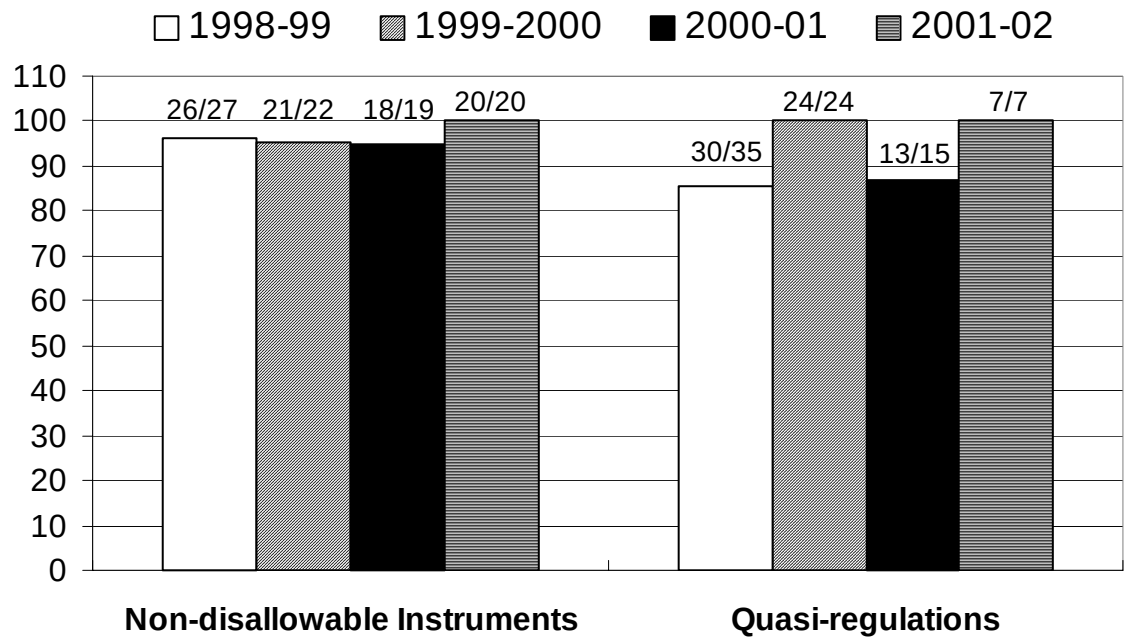
6 For example, in 2001-02, Environment Australia prepared a quasi-regulation RIS on the Cairns Area Plan of Management, which imposed limits on tour operators who provide opportunities for tourists to swim with dwarf Minke whales.

2001-02, three RISs (43 per cent) dealing with quasi-regulation were made available to the public. This compares with 33 per cent of RISs prepared for quasi-regulations being made public in 2000-01.

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.

Figure 2.3 **RIS compliance for decisions via non-disallowable instruments and quasi-regulations, 1998-99 to 2001-02**

Per cent



Source: ORR estimates.

2.5 Treaties

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. 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 often takes years to conclude a treaty.

Two treaties which required RISs were tabled in Parliament in 2001-02. In both cases, RISs were prepared and cleared by the ORR at each of the three decision-making stages (100 per cent compliance).

2.6 National regulation-making

Where there is agreement between jurisdictions, national regulatory decisions are made by Ministerial Councils and a small number of standard-setting bodies. Some of these decisions are implemented by the passage of Commonwealth or State/Territory primary legislation and/or regulations. Other decisions are implemented through national regulations or coordinated regulation making by several jurisdictions.

At the request of COAG, the ORR has a role in monitoring compliance with RISs prepared for Ministerial Councils and standard-setting bodies. These COAG RISs are assessed at two stages: before they are distributed for consultation with parties affected by the regulatory proposal; and before a decision is made by the responsible body.[7] The ORR is required by COAG to assess:

- whether the RIS 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 to COAG's Committee on Regulatory Reform, and annually to the National Competition Council (NCC), on compliance with the COAG guidelines (appendix A).

As with Commonwealth RISs, it is not the ORR's role to advise on policy aspects of options under consideration, but rather to determine if the level of analysis is adequate and meets the COAG requirements. The assessment of the merits of the policy proposal remains the responsibility of the relevant Ministerial Council or standard-setting body.

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 1998) sets down the amounts and conditions of related competition payments from the Commonwealth to the States and Territories. For

[7] 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.

the third tranche of competition payments, factors taken into consideration by the NCC (which makes recommendations to the Commonwealth Treasurer on the level of payments) include advice from the ORR on the compliance of Ministerial Councils and national standard-setting bodies with COAG's RIS requirements.

In 2001-02, 24 regulatory decisions made by Ministerial Councils and standard-setting bodies required preparation of a RIS. Of these, 17 RISs were assessed as adequate before public consultation. Some 23 RISs were assessed by the ORR as adequate prior to the final decision, thus meeting the COAG requirements. (A RIS was not prepared for a decision to prohibit the sale to minors of certain music recordings containing explicit lyrics.) In 2001-02, the COAG RIS compliance rate at the decision-making stage for Ministerial Councils and national standard-setting bodies (NSSBs) was accordingly 96 per cent (table **Error! Not a valid link.**). This compares with a compliance rate of 76 per cent in 2000-01, 97 per cent in 1999-00 and 68 per cent in 1998-99. Further details are provided in appendix A which summarises the ORR's report to the NCC.

Table 2.4 **COAG RIS compliance for regulatory decisions made by Ministerial Councils and NSSBs, 1998-99 to 2001-02**

	1998-99	*1999-00*	*2000-01*	*2001-02*
Decision-making stage — all proposals	19/28 (68%)	34/35 (97%)	19/25 (76%)	23/24 (96%)

Note: Data for 2001-02 relate to the period 1 April 2001 to 31 March 2002.

Source: ORR estimates.

3 Compliance by portfolio

In 2001-02, compliance with the Government's RIS requirements varied significantly both among and within portfolios. While nine departments and agencies fully complied, others have some way to go to meet the Government's requirements.

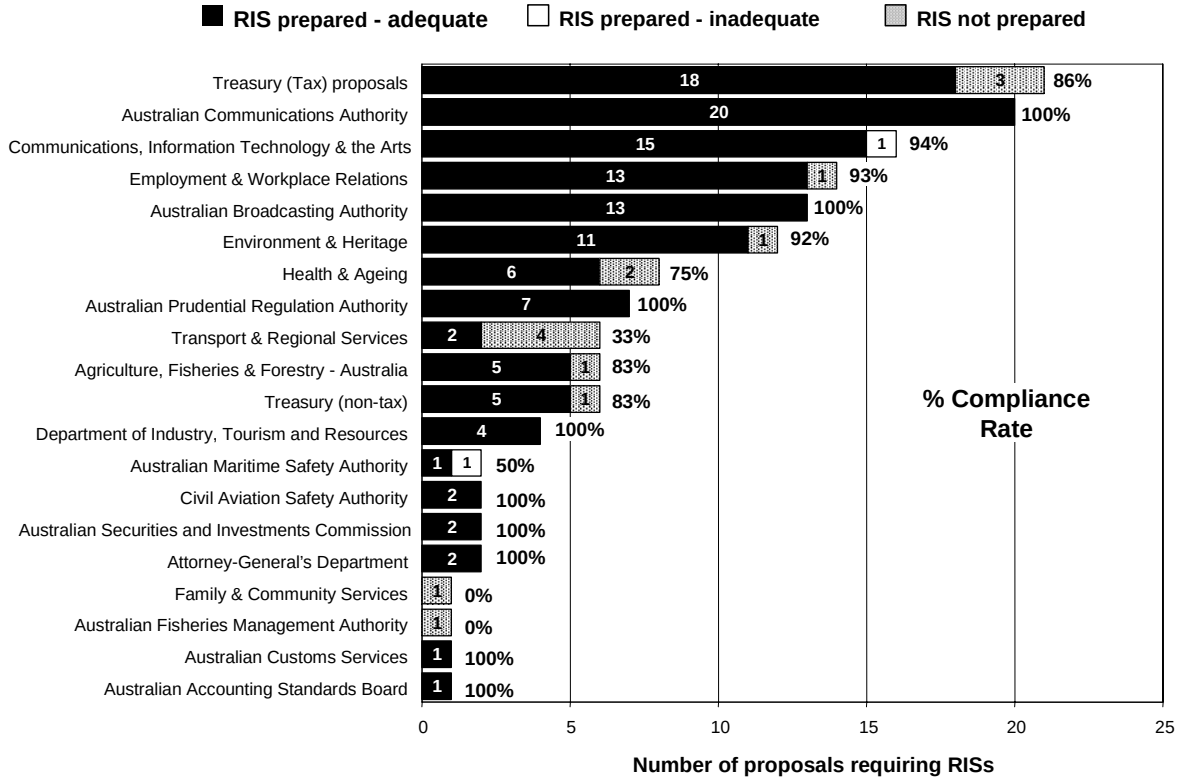
This chapter reports in detail on the 20 departments and agencies that developed regulations in 2001-02 for which Regulation Impact Statements (RISs) were required. It shows the number of RISs that were prepared to an adequate standard of analysis at both the decision-making and tabling stages, and includes brief descriptions of selected significant RISs to illustrate aspects of the RIS process. The emphasis is on compliance at the (more critical) decision-making stage.

Compliance results at the decision-making stage for the 20 departments and agencies are shown in figure 3.1. The total length of each bar indicates the number of RISs required to be prepared at the decision-making stage. The area in black illustrates that RISs were prepared and assessed as adequate by the ORR. The area in white shows cases where RISs were prepared, but were assessed as containing an inadequate level of analysis. The grey area shows cases where RISs should have been prepared, but were not. 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.

Figure 3.1 shows that in 2001-02 nine departments and agencies complied with the RIS requirements for all relevant regulatory activity at the decision-making stage. In the previous year, 12 departments and agencies were fully compliant at the decision-making stage. Eleven departments and agencies did not comply fully with the Government's RIS requirements in 2001-02, compared to 12 in 2000-01.

Of those departments and agencies that were not fully compliant in 2000-01, three (the Australian Accounting Standards Board; the Australian Communications Authority; and the Australian Securities and Investment Commission) were fully compliant this year. Two others (Communications, Information Technology and the Arts; and Treasury (non-tax)) improved their compliance rates in comparison with the previous year. However, compliance rates for some others (Environment and Heritage; Family and Community Services; Employment and Workplace Relations; and Transport and Regional Services) are lower in 2001-02 than in 2000-01.

Figure 3.1 **Compliance with RIS requirements at the decision-making stage, 2001-02[a]**



a The Department of the Treasury is counted twice, to separately identify tax RISs which are usually prepared in consultation with the Australian Taxation Office.

Source: ORR estimates.

Detailed compliance results for departments and agencies follow. A brief description of significant proposals, also provided, underline the importance of beginning the RIS process in the early phases of the policy development process and presenting the decision-maker with a considered and informative discussion of regulatory alternatives and their impacts.

As discussed in chapter 2, the ORR has begun tracking the time taken from receipt of the first draft of the RIS to clearance of the final RIS by the ORR, in order to assess how well portfolios are incorporating the RIS requirements into their policy development processes. The longer the elapsed time, the greater the likelihood that departments and agencies have undertaken a full assessment of the impacts of a regulatory proposal. By contrast, where departments and agencies prepare RISs late in the policy development process, it is less likely that a RIS will make an effective contribution to policy development.

The elapsed time between receipt of the first draft of the RIS and its final assessment by the ORR is presented for each department or agency. The average

elapsed time for all Commonwealth departments and agencies in 2001-02 was 5.1 weeks.

3.1 Agriculture, Fisheries and Forestry

The Agriculture, Fisheries and Forestry portfolio includes the Department of Agriculture, Fisheries and Forestry — Australia (AFFA) and the Australian Fisheries Management Authority (AFMA).

For this portfolio in 2001-02, the average elapsed time between receipt of the first draft RIS and assessment of the final RIS by the ORR was 5.2 weeks.

Department of Agriculture, Fisheries and Forestry — Australia

In 2001-02, AFFA prepared five of the six RISs that were required at the decision-making stage. The ORR assessed each of the five RISs as adequate, resulting in a compliance rate of 83 per cent (table 3.1).

Nine RISs were required at the tabling stage.[1] Eight of the nine RISs required were prepared by the department and assessed as adequate by the ORR (a compliance rate of 89 per cent at the tabling stage).

Table 3.1 **AFFA: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	1/1	1/1	3/3	3/3
Disallowable instruments	4/5	4/5	5/6	5/6
Total	**5/6**	**5/6**	**8/9**	**8/9**
Percentage	*83*	*83*	*89*	*89*

Source: ORR estimates.

Significant issues

In 2001-02, significant issues included the Regional Forest Agreements Bill 2002. The Bill was originally introduced in mid-1998, so for compliance purposes no RIS

[1] Three RISs of the eight tabled RISs were not required at the decision-making stage. One related to a proposal that was re-introduced. Another related to a specific Budget decision. The third predated the introduction of the Government's mandatory RIS requirements introduced in 1997.

was required at the decision-making stage. An updated RIS was prepared for tabling, and was cleared by the ORR as meeting the Government's requirements. This RIS examined the aggregate impacts of all the RFAs at a national level. The regional and local impacts of each RFA were assessed as part of the Comprehensive Regional Assessments undertaken for each RFA, and were not required to be re-examined in the RIS.

The department also implemented, via a disallowable instrument, the Government's decision to reduce the level of cost recovery required for export inspection services provided by AQIS. The RIS examined the most effective ways to achieve the target rate of cost recovery, taking into account incentive effects of different charging mechanisms for industry and AQIS. This RIS was assessed as adequate by the ORR.

Australian Fisheries Management Authority

In 2001-02, AFMA did not prepare the one RIS required at the decision-making stage. However, a RIS was prepared by the authority for tabling, and was assessed as adequate by the ORR.

3.2 Attorney-General's

The Attorney-General's portfolio includes the Attorney General's Department and the Australian Customs Service (ACS). For this portfolio in 2001-02, the average elapsed time between receipt of a first draft RIS and assessment of the final RIS by the ORR was 3.4 weeks.

Attorney-General's Department

In 2001-02, the Attorney General's Department fully complied with the RIS requirements for the two RISs it was required to prepare at both the decision-making and tabling stages (table 3.2).

Table 3.2 **Attorney General's Department: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	2/2	2/2	2/2	2/2
Total	**2/2**	**2/2**	**2/2**	**2/2**
Percentage	*100*	*100*	*100*	*100*

Source: ORR estimates.

Australian Customs Service

In 2001-02, the ACS fully complied with the RIS requirements for the one RIS it was required to prepare at both the decision-making and tabling stages.

3.3 Communications, Information Technology and the Arts

The Communications, Information Technology and the Arts portfolio includes: the Department of Communications, Information Technology and the Arts (DoCITA); the Australian Broadcasting Authority (ABA); the Australian Communications Authority (ACA); and the National Office for the Information Economy (NOIE). In 2001-02, NOIE did not develop any regulations that required a RIS.

For this portfolio in 2001-02, the average elapsed time between receipt of a first draft RIS and assessment of the final RIS by the ORR was 2.8 weeks.

Department of Communications, Information Technology and the Arts

In 2001-02, DoCITA prepared all sixteen of the RISs required at the decision-making stage (table 3.3). The ORR assessed 15 of these as adequate, resulting in a compliance rate of 94 per cent at the decision-making stage. Fifteen RISs were required at the tabling stage. All were cleared as adequate by the ORR.

Table 3.3 **DoCITA: RIS compliance by type of regulation, 2001-02**

	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	12/12	11/12	12/12	12/12
Non-disallowable instruments	1/1	1/1	..	..
Total	**16/16**	**15/16**	**15/15**	**15/15**
Percentage	*100*	*94*	*100*	*100*

.. Not applicable.

Source: ORR estimates.

Significant issues

Of the 16 RISs prepared at the decision-making stage, two significant issues included foreign ownership and cross media acquisition, and Telstra price control arrangements.

The Broadcasting Services Amendment (Media Ownership) Bill 2002 met a 2001 Government election commitment to repeal media specific restrictions on foreign entities from owning or controlling Australian media and to allow exemptions from the rules preventing cross-media acquisition. The RIS was assessed as adequate at both the decision-making and tabling stages. A further RIS will be required for the settling by the ABA of the public interest criteria to establish editorial separation and local news obligations.

The Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2002 introduced price control arrangements for Telstra, to apply between 1 July 2002 and 30 June 2005. The RIS was assessed as meeting the RIS requirements at both the decision-making and tabling stages. The RIS examined the Government's proposed response to a review conducted by the Australian Competition and Consumer Commission in relation to the price control arrangements that should apply to Telstra. This examination included an assessment of whether competition was present in the various services provided by Telstra, the corresponding requirement for price capping, and the costs and benefits of the new price capping arrangements.

Australian Broadcasting Authority

In 2001-02, the ABA prepared all 13 RISs required at the decision-making stage, all of which were assessed as adequate (table 3.4).

Table 3.4 **ABA: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Non-disallowable instruments	13/13	13/13	..	..
Total	**13/13**	**13/13**	..	..
Percentage	*100*	*100*	..	..

.. Not applicable.

Source: ORR estimates.

Australian Communications Authority

In 2001-02, the ACA prepared all twenty RISs required at the decision-making stage and thirteen RISs required for the tabling stage. The ORR assessed all of the RISs as adequate for both decision-making and tabling, a compliance rate of 100 per cent at both stages (table 3.5).

Table 3.5 **ACA: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	13/13	13/13	13/13	13/13
Non-disallowable instruments	3/3	3/3	..	..
Quasi-regulation	4/4	4/4	..	..
Total	**20/20**	**20/20**	**13/13**	**13/13**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable.

Source: ORR estimates.

3.4 Employment and Workplace Relations

In 2001-02, the Department of Employment and Workplace Relations (DEWR) prepared 13 of the 14 RISs required at the decision-making stage. Each of the 13 RISs were assessed as adequate by the ORR. A fourteenth RIS was prepared by the

department for tabling, and was cleared as adequate by the ORR. However, one of the 13 RISs cleared by the ORR for the decision-making stage was modified by the department before being tabled. The modified RIS was assessed by the ORR as not meeting the Government's RIS requirements. Hence, the department's overall compliance rating in 2001-02 was 93 per cent at both the decision-making and the tabling stages (table 3.6).

For DEWR, the average elapsed time between receipt of a first draft RIS and assessment of the final RIS by the ORR was 1.4 weeks.

Table 3.6 **DEWR: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	12/13	12/13	13/13	12/13
Disallowable Instruments	1/1	1/1	1/1	1/1
Total	**13/14**	**13/14**	**14/14**	**13/14**
Percentage	*93*	*93*	*100*	*93*

Source: ORR estimates.

Significant issues

A significant proposal introduced by the DEWR in 2001-02 was the Workplace Relations Amendment (Minimum Entitlements for Victorian Employees) Bill 2001, by which the Federal Government sought to maintain award conditions for Victorian textiles clothing and footwear outworkers. A RIS was not prepared for the decision-making stage. However, an adequate RIS was prepared for tabling with the legislation.

3.5 Environment and Heritage

In 2001-02, the Environment and Heritage portfolio (E&H) prepared eleven of the twelve RISs required at the decision-making stage. Each RIS was assessed as adequate by the ORR (a compliance rate of 92 per cent). While twelve RISs were required at the decision-making stage, only eleven RISs were required at the tabling

stage.[2] Eleven RISs were prepared for tabling, and all were cleared as adequate by the ORR (table 3.7).

For this portfolio in 2001-02, the average elapsed time between receipt of the first draft RIS and assessment of the final RIS by the ORR was 6.9 weeks.

Table 3.7 **E&H: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills [a]	2/2	2/2	2/2	2/2
Disallowable instruments	8/9	8/9	9/9	9/9
Quasi-regulation	1/1	1/1	..	..
Total	**11/12**	**11/12**	**11/11**	**11/11**
Percentage	*92*	*92*	*100*	*100*

.. Not applicable. [a] Includes one proposal that was jointly sponsored by Environment Australia and the Treasury.

Source: ORR estimates.

Significant issues

Significant proposals introduced by the Department of the Environment and Heritage in 2001-02 included environmental fuel standards for petrol and automotive diesel. The Fuel Standard (Petrol) Determination 2001 and the Fuel Standard (Diesel) Determination 2001 set standards for the key parameters (characteristics) of petrol and diesel that have a direct impact on vehicle emissions. The first set of standards — implemented on 1 January 2002 — applies to all petrol and automotive diesel supplied in Australia on or after that date. The standards will be progressively tightened from 2004 to 2006. A RIS was prepared by the department and cleared as adequate by the ORR for the decision-making stage. The RIS was tabled with the determinations.

3.6 Family and Community Services

In 2001-02, the Department of Family and Community Services did not prepare a RIS at the decision-making stage for the Disability Services Amendment (Improved

[2] The exception was a quasi-regulation placing restrictions on tour operators who advertise swimming with dwarf Minke whales under the Cairns Area Plan of Management. This RIS was, however, made public.

Quality Assurance) Bill 2001. However, the ORR assessed as adequate the RIS prepared for tabling.

3.7 Health and Ageing

In 2001-02, the Department of Health and Ageing (DHA) prepared six of the eight RISs required at the decision-making stage. The ORR assessed all six as adequate, a compliance rate of 75 per cent (table 3.8). At the tabling stage, adequate RISs were prepared in seven of the eight cases (a compliance rate of 88 per cent). The average elapsed time between receipt of the first draft RIS and assessment of the final RIS by the ORR was 2.6 weeks.

Table 3.8 **DHA: RIS compliance by type of regulation, 2000-01**

	RIS for decision		*RIS for tabling* [a]	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	0/1	0/1	1/1	1/1
Disallowable instruments	5/6	5/6	5/6	5/6
Treaties	1/1	1/1	1/1	1/1
Total	**6/8**	**6/8**	**7/8**	**7/8**
Percentage	*75*	*75*	*88*	*88*

[a] DHA reported one further Bill in this period for which a RIS was tabled, the Research Involving Embryos and Prohibition of Human Cloning Bill 2002. The RIS for this will be reported in *Regulation and its Review 2002-03* against the COAG RIS requirements.

Source: ORR estimates.

3.8 Industry, Tourism and Resources

In 2001-02, the Department of Industry, Tourism and Resources (DITR) was fully compliant at both the decision-making and tabling stages. All four RISs required at the decision-making stage were assessed as adequate by the ORR. For tabling, the decisions for two matters predated the mandatory RIS requirements. Hence, six RISs were required at the tabling stage, all of which were cleared as adequate (table 3.9). There was insufficient data to report on timeliness for DITR in 2001-02.

Table 3.9 **DITR: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills [a]	3/3	3/3	4/4	4/4
Disallowable instruments	..	..	1/1	1/1
Treaties	1/1	1/1	1/1	1/1
Total	**4/4**	**4/4**	**6/6**	**6/6**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable. [a] A RIS was not required for the decision-making stage as policy approval pre-dated mandatory RIS requirements.

Source: ORR estimates.

3.9 Transport and Regional Services

Within the Transport and Regional Services portfolio, the Department of Transport and Regional Services (DTRS), the Australian Maritime Safety Authority (AMSA), and the Civil Aviation Safety Authority (CASA) were required to prepare RISs in 2001-02. For the Transport and Regional Services portfolio in 2001-02, the average elapsed time between receipt of the first draft RIS and final assessment of the RIS by the ORR was 6.5 weeks.

Department of Transport and Regional Services

In 2001-02, DTRS prepared two of the six RISs required at the decision-making stage. Both were assessed as adequate by the ORR. Four of the six RISs required were prepared and assessed as adequate at the tabling stage (table 3.10)[3] The department's overall compliance rate in 2001-02 was 33 per cent at the decision-making stage and 66 per cent at the tabling stage.

[3] There were three further instruments in this period for which RISs were tabled. These instruments are: the Road Transport Charges (Australian Capital Territory) Amendment Regulations 2001 Statutory Rules 2001 No. 213; Determination No. 4 of 2001 of Road Vehicle (National Standards) under the *Motor Vehicle Standards Act 1989*; and Road Vehicle (National Standards) Determination No. 3 of 2001. The RISs for these instruments will be reported against the Australian Transport Council (ATC) rather than the Department, as they are COAG RIS issues which went to the ATC for decision.

Table 3.10 **DTRS: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	1/3	1/3	2/3	2/3
Disallowable instruments	1/3	1/3	2/3	2/3
Total	**2/6**	**2/6**	**4/6**	**4/6**
Percentage	*33*	*33*	*66*	*66*

Source: ORR estimates.

Significant issues

The Air Passenger Ticket Levy (Collection) Bill 2001 imposes a passenger ticket levy on all tickets for flights that originate in Australia. The proceeds of this levy are intended to fund the payment of entitlements to the former employees of companies in the Ansett group following the insolvency of Ansett Airlines. DTRS sought a RIS exemption for this proposal. The ORR advised that it could only apply the exemptions provided for in the Government endorsed *A Guide to Regulation*, none of which applied. Due to time pressures, the department was unable to prepare a RIS and, accordingly, was assessed as non-compliant.

Australian Maritime Safety Authority

AMSA introduced two regulatory proposals requiring a RIS. One was assessed as adequate by the ORR at both decision-making and tabling stages, a compliance rate of 50 per cent (table 3.11).

Table 3.11 **AMSA: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	2/2	1/2	2/2	1/2
Total	**2/2**	**1/2**	**2/2**	**1/2**
Percentage	*100*	*50*	*100*	*50*

Source: ORR estimates.

Civil Aviation Safety Authority

CASA fully complied with the Government's RIS requirements at both the decision-making and tabling stages in 2001-02, preparing adequate RISs for the two regulatory proposals requiring a RIS (table 3.12).

Table 3.12 **CASA: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	2/2	2/2	2/2	2/2
Total	**2/2**	**2/2**	**2/2**	**2/2**
Percentage	*100*	*100*	*100*	*100*

Source: ORR estimates.

3.10 Treasury

The Treasury portfolio includes: the Department of the Treasury; the Australian Accounting Standards Board (AASB); the Australian Prudential Regulation Authority (APRA); the Australian Securities and Investments Commission (ASIC); and the Australian Taxation Office (ATO). For taxation matters in 2001-02, policy responsibility was shared between the ATO and the Treasury. The Australian Competition and Consumer Commission, also part of the Treasury portfolio, did not introduce any regulations that required the preparation of a RIS in 2001-02.

For the Treasury portfolio non-tax proposals in 2000-02, the average elapsed time between receipt of the first draft RIS and assessment of the final RIS by the ORR was 14.9 weeks.

Taxation proposals are subject to unique RIS requirements, so are not included in the general portfolio estimates. In 2001-02, the existing administrative arrangements in place for tax RISs meant that the ORR was unable to provide data on timeliness for tax proposals. However, the ORR plans to report on timeliness for tax RISs from 2002-03.

Department of the Treasury — non-tax regulations

The Department of the Treasury prepared five of the six RISs required at the decision-making stage. The ORR assessed all five RISs as adequate, resulting in a compliance rate at the decision-making stage of 83 per cent. Only four RISs were

required at the tabling stage, of which three were prepared. Each was assessed as adequate (table 3.13).

Table 3.13 **Treasury (non-tax): RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills[a]	3/4	3/4	2/3	2/3
Disallowable instruments	1/1	1/1	1/1	1/1
Non-disallowable instruments	1/1	1/1	..	..
Total	**5/6**	**5/6**	**3/4**	**3/4**
Percentage	*83*	*83*	*75*	*75*

.. Not applicable. [a] One regulatory proposal was introduced into the Senate and was not included in the original Bill for the House of Representatives. The RIS was not available to be published in the Bill's Explanatory Memorandum.

Source: ORR estimates.

Significant issues

The amendments contained in the Trade Practices Amendment (Liability for Recreational Services) Bill 2002, allows people to assume the risk associated with participation in inherently risky activities. It enables them to waive their rights to sue the business providing the activity should they suffer personal injury resulting from the business failing to use 'due care and skill'.[4] While this Bill involved a significant issue, the time-frame accompanying its introduction meant that a RIS was not prepared at the decision-making stage. The Department was, therefore, non-compliant at both the decision-making and tabling stages.

Australian Accounting Standards Board

The AASB prepared a RIS for one disallowable instrument in 2001-02, which was cleared by the ORR. The disallowable instrument was not tabled.

4 As defined under section 74 of the *Trade Practices Act 1974.*

Australian Prudential Regulation Authority

In 2001-02, APRA prepared all seven RISs required at the decision-making stage, all of which were assessed as adequate. Only six RISs were required to be tabled, all of which were assessed as adequate (table 3.14).

Table 3.14 **APRA: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	6/6	6/6	6/6	6/6
Non-disallowable instruments	1/1	1/1	..	..
Total	**7/7**	**7/7**	**6/6**	**6/6**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable.

Source: ORR estimates.

Australian Securities and Investments Commission

ASIC made eight quasi-regulations in 2001-02, of which two required RISs. The ORR assessed both RISs as adequate at the decision-making stage (table 3.15). Both RISs were also made public.

Table 3.15 **ASIC: RIS compliance by type of regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Quasi regulation [a]	2/2	2/2	..	..
Total	**2/2**	**2/2**	..	..
Percentage	*100*	*100*		

.. Not applicable. [a] Eight regulatory matters were covered by two RISs.

Source: ORR estimates.

Significant issues

In late 2001, ASIC issued a set of policy statements dealing with issues arising from the implementation of the *Financial Services Reform Act 2001*. These policy statements, which play a large role in the effective management of the new financial

regulatory system, were assessed by the ORR as having a significant impact on the Australian economy. ASIC was required to produce a global RIS covering the policy statements.

ASIC contacted the ORR some ten months before the RIS was drafted. This early contact facilitated the preparation of a sound first draft of the RIS. While there was less than two weeks between the ORR receiving the first draft and final clearance, this tight turn around could be managed due to the prior ongoing contact between ASIC and the ORR.

The RIS was assessed by the ORR as being adequate at the decision-making stage and for publication. The final RIS was published on ASIC's website.

Taxation proposals

In 2001-02, taxation proposals were the joint responsibility of the Department of the Treasury and the Australian Taxation Office (ATO). Taxation proposals are subject to unique RIS requirements, so tax RISs are assessed separately from other Treasury portfolio proposals.

In 2001-02, tax RISs were prepared at the decision-making stage for 18 of the 21 proposals that required a RIS. Each RIS was assessed as adequate by the ORR, resulting in a compliance rate of 86 per cent. For these proposals, five RISs were the responsibility of the ATO, for which they were fully compliant.

Tabling of RISs for all tax proposals was completed by the ATO. Apart from the 22 tax proposals reported here, the ATO tabled four others for proposals that were initiated by other portfolios. These have been reported against the initiating portfolio.[5] The Treasury portfolio was fully compliant at the tabling stage for tax RISs, tabling 22 RISs which were all cleared as adequate (table 3.16).

[5] The proposals in question were: the provision of capital gains tax relief for landowners making land available for conservation, reported by the Department of Environment and Heritage; an assistance package for the film and television industry, reported by DoCITA; and the introduction of a new methodology to determine a gas transfer price for the Petroleum Resource Rent Tax and changes to the five year rule for carrying forward expenditures under the Petroleum Resource Rent Tax, both reported by DITR.

Table 3.16 **Treasury and ATO: RIS compliance by type of taxation regulation, 2001-02**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	18/21	18/21	21/21	21/21
Disallowable instruments[a]	..	..	1/1	1/1
Total	**18/21**	**18/21**	**22/22**	**22/22**
Percentage	*86*	*86*	*100*	*100*

.. Not applicable. [a] A RIS was not required for the decision-making stage as policy approval pre-dated mandatory RIS requirements.

Source: ORR estimates.

Significant Issues

Significant proposals introduced by the Department of the Treasury and the ATO in 2001-02 included a consolidation regime for wholly-owned groups of entities and an amending protocol to the Australia–United States of America (USA) double taxation convention. RISs were prepared, and cleared as adequate by the ORR, for both of these proposals. The consolidation regime was originally recommended by the Review of Business Taxation to provide more comprehensive and less complex rules for taxing groups of entities with common ownership. The amendments to the double taxation convention involved some substantial departures from long standing Australian tax treaty practices intended to provide a more competitive tax environment for Australian entities doing business with the USA. These RISs were tabled with the New Business Tax System (Consolidation) Bill (No. 1) 2002 and the International Tax Agreements Amendment Bill 2002.

4 Key RIS issues and developments

Ongoing regulation review and reform is needed to meet economic, social, technological, environmental and other changes. The RIS process, which is now being used in most OECD countries, works best where it is integrated into broader policy development processes and where decision-makers are provided with high quality RISs. Priorities include ensuring that RISs provide considered and informative advice on regulatory compliance costs, small business impacts and ecological sustainable development. Other emerging issues likely to impact on the RIS process over the next year include cost recovery and the growing role of New Zealand in regulation review forums in Australia.

The Commonwealth Government first implemented RIS requirements in 1986. These were reaffirmed and strengthened in 1997. By the late 1980s, the only other Australian jurisdiction with RIS requirements was NSW. By 2001-02, all jurisdictions except the Northern Territory were using RISs for some types of regulation.

In the early 1980s, only two OECD countries used RIS systems. However, by 2000, 20 of the 28 OECD countries used RISs. Fourteen of these countries — including Canada, the United Kingdom and the United States of America — employed wide ranging RIS requirements broadly similar to those employed by the Commonwealth Government. A further six countries employed RISs for some regulations or in certain circumstances.

Over the last decade, RISs have, therefore, become a more important part of government initiatives to improve regulation, throughout Australia and many other developed countries. This chapter discusses the contribution made by the Commonwealth Government's RIS process and some related issues.

4.1 The contribution of the RIS process to better regulatory outcomes

It is difficult to measure improvements in the quality of regulations and the impacts such improvements have on the economy and community generally. Furthermore,

as governments have implemented a range of reforms to regulation-making processes and to regulations, it is difficult to separately identify the contribution and impact of individual reforms.

The ORR has drawn on a range of OECD and other reports to produce a consolidated checklist to illustrate the attributes and characteristics of high quality regulatory systems and regulations (see box 4.1). While this checklist provides a useful method of assessing the quality of individual regulations, it has a number of limitations. It would need to be applied to both the stock of existing regulation and the flow of new and amended regulations to produce information on the overall quality of regulations and changes in quality over time. While some of the criteria used in this checklist are procedural and verifiable, others are subjective and difficult to measure. Furthermore, some of the criteria measure the quality of regulations, while others measure how regulations are interpreted and applied by regulators.

Assessing the quality of regulation using this comprehensive checklist of indicators would be an intensive process and it is not the role of this report to consider each existing, new and amended regulation. However, some partial measures of the quality of regulations and their impacts are used in this chapter. For example, there are a number of aspects of the RIS process which provide insights into the contribution of the RIS process to improvements in the quality of regulations. That is, a good RIS process can be an indicator of a good policy development process and, by extension, of good regulatory outcomes. The following discussion considers some of these issues.

Integration of the RIS process

An important measure of the quality of the RIS process is whether it is being progressively integrated into the broader policy development process, including community consultation. In Australia, it appears that some Commonwealth departments and agencies have not adequately incorporated the RIS process into their policy development processes. One indicator is feedback from some departments and agencies that preparing a RIS involves considerable additional work. By contrast, where the RIS process is incorporated into policy development processes, preparing RISs generally does not require much additional effort. In addition, departments and agencies sometimes have difficulty preparing RISs which meet the standards required by the Government.

Box 4.1 **Checklist for assessing regulatory quality**

Regulations that conform to best practice design standards are characterised by the following seven principles and features.

- Employ the minimum necessary to achieve objectives
  - Kept simple to avoid unnecessary restrictions
  - Targeted at the problem to achieve the objectives
  - Not imposing an unnecessary burden on those affected
- Not unduly prescriptive
  - Performance and outcomes focused
  - General rather than overly specific
- Accessible, transparent and accountable
  - Readily available to the public
  - Easy to understand
  - Fairly and consistently enforced
  - Some flexibility for dealing with special circumstances
  - Open to appeal and review
- Integrated and consistent with other laws
  - Addresses a problem not addressed by other regulations
  - Recognises existing regulations and international obligations
- Communicated effectively
  - Written in 'plain language'
  - Clear and concise
- Mindful of the compliance burden imposed
  - Proportionate to the problem
  - Set at a level that avoids unnecessary costs
- Enforceable
  - Provides the minimum incentives needed for reasonable compliance
  - Able to be monitored and policed effectively

Sources: OECD (1995); COAG (1997); ORR (1998); Cabinet Office (UK) (2000c) and Office of Regulation Reform (Vic) (2002).

RISs which fail to meet minimum standards usually display the following characteristics:

- poor definition of regulatory problems and objectives;
- inadequate consideration of feasible regulatory and non-regulatory options;

- incomplete cost/benefit assessments; and
- inadequate consultation with the community and relevant stakeholders.

Reflecting these shortcomings, in 2000-01 the ORR reported a wide variation in RIS compliance performance across departments and agencies, lower compliance for significant regulatory proposals and sometimes inadequate time allowed for RIS development. Chapters 2 and 3 in this report show much the same picture for 2001-02.

There can be legitimate reasons for a failure to prepare a RIS before the Government makes a decision, the most obvious being the need to respond to an emergency situation, such as where public health or safety are at immediate risk. An example of this was the need in 2001 to develop a quick response to the threats of bovine spongiform encephalopathy (BSE) and foot and mouth disease. In such cases, a RIS should still be prepared (and assessed by the ORR) ex post.

Where governments make a decision quickly for political or other reasons, departments and agencies again have limited scope to comply with the RIS process. However, unlike the situation for legitimate emergency decisions in which a RIS can be prepared after a decision has been made, in this case the normal RIS requirements still apply. Thus, the ORR is required to assess the department or agency as non-compliant if an adequate RIS has not been prepared prior to the decision being made. Ultimately, it is up to Cabinet and Ministers to ensure that they see an adequate RIS when making policy decisions.

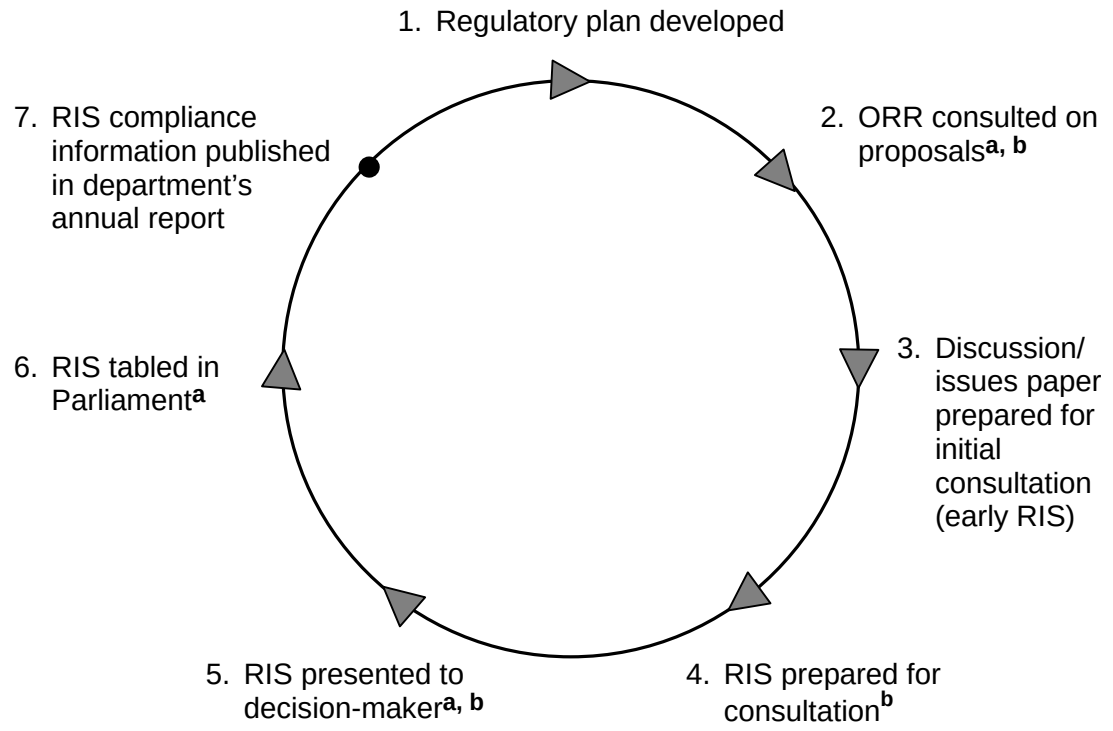
There is no single way to promote better integration of the RIS process. As discussed in last year's report (PC 2001a, p. 45), the use of regulatory plans, whereby departments and agencies publish information on proposed regulatory changes for the year ahead, may help to achieve regulatory best practice by:

- identifying at an early stage in the development of regulation whether the proposal will require a RIS;
- allowing for improved consultation with the ORR; and
- making it easier for business and other community stakeholders to participate in the development of regulation that affects them.

Another way in which Ministers, departments and agencies can better integrate the RIS process would be by publishing their RIS compliance information as part of a set of performance indicators in annual reports. This would demonstrate their commitment to the RIS process and may provide stronger incentives to follow regulatory best practice. The role of regulatory plans and the public release of

information in contributing to regulatory best practice and the RIS process is illustrated in figure 4.1.

Figure 4.1 **Commitment cycle for the Government's RIS requirements**



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

Source: PC (2001a, p. 46).

While the ORR can influence departments' incentives to comply with the RIS requirements by compiling annual compliance information for publication, ultimately the commitment has to come from the departments and agencies themselves.

One department that has made this commitment is the Department of Industry, Tourism and Resources (DITR), which has developed a range of internal processes to ensure compliance with regulatory best practice. These are described in box 4.2.

Box 4.2 **Regulatory best practice in DITR**

In 2001-02, the Department of Industry, Tourism and Resources (DITR) achieved 100 per cent compliance with the Government's RIS requirements. This result represents a significant turnaround for DITR, which in 1999-00 had a compliance rate of only 60 per cent at the decision-making stage (PC 2000a, p. 26).

The improvement can be attributed to a significant effort within DITR to increase awareness of the RIS requirements. The attention of senior managers has been drawn to the department's earlier failure to meet the RIS requirements. Best practice regulatory reform is now one of DITR's priority objectives, which ensures an ongoing focus on — and effective management of — its RIS responsibilities. Initiatives within DITR have included:

- better integrating the RIS requirements into the department's policy development process, particularly at the decision-making stage. DITR's Cabinet Liason Office (CLO), which is usually the first point of contact for officers embarking on the preparation of draft Cabinet submissions and memoranda, plays a crucial role. The CLO has become pro-active in terms of drawing to the attention of officers the Government's RIS requirements, and actively encourages officers to contact the ORR at the outset of the policy development process. DITR's Cabinet information package also clearly sets out the RIS requirements; and
- developing an internal paper *A Framework for Considering Business Regulation*. This paper draws upon *A Guide to Regulation* (ORR 1998) and other sources, and is used as an in-house reference for all officers in the development and assessment of regulation with an impact on business.

The quality of RISs

An important indicator of the effectiveness of the RIS process is the quality of the analysis within RISs. High quality RISs provide decision-makers with accurate and insightful information about regulatory objectives, options and impacts of each option, thus assisting the formulation of well informed decisions.

The ORR measures the quality of each RIS using seven criteria (see box 2.1). A RIS must be assessed as adequate against each of these criteria for it to meet the Government's regulatory best practice requirements. In addition, the level of detail required in any particular RIS depends on the magnitude of the problem and likely impact of regulatory action by government.

Over time, as departments and agencies have become more familiar with the requirements, the ORR has also raised the standard of analysis required in RISs. In order to test the extent to which minimum standards for RISs have been raised over

the last three years, in 2001-02 the ORR re-assessed nine significant RISs (that is, with a significance rating of A or B) from 1998-99.[1] All nine were cleared as adequate by the ORR at the time. However, it was found that four of these RISs would not meet the required minimum standards for such RISs in 2001-02, because they provided insufficient information about the impacts on the community of policy options considered in the RISs.

Evidence from 2001-02 indicates that there is significant scope for improvement in the level of analysis in many RISs. The ORR continues to focus its efforts, and provide training and other assistance, to departments and agencies that do not meet the Government's RIS requirements.

4.2 Emerging issues

The RIS process evolves and changes as new issues and challenges arise. Some issues that have emerged and impact on various elements of the RIS requirements are discussed below.

Regulatory compliance and paper burden costs

Regulations typically impose administration costs on governments and compliance costs on business and the community. Direct compliance costs can include the time taken to comply with regulations, the need for additional staffing, the development and implementation of new information technology and reporting systems, education, advertising, accommodation and travel costs. As well as having a direct impact on regulated businesses, compliance costs also impact on the community, such as by changing pricing and resource allocation, impacting on international trade and delaying the introduction of new products or services.

It is generally agreed that compliance costs can have a significant impact on business, the wider community and on Australia's international competitiveness (box 4.3).

[1] The RISs re-assessed by the ORR included the: GST Price Monitoring Guidelines; Third Party Access Regime for Natural Gas Pipelines; Franchising Code of Conduct; Lifetime Health Cover; Australian Workplace Agreements; Broadcasting Services (Digital Conversion) Bill; Electronic Transactions Bill; and National Environment Protection Measure for the National Pollutant Inventory.

Box 4.3 **OECD survey of business views on red tape**

Measurement of the effects of regulation on businesses and the broader community assists in focusing governments' efforts to ensure that regulation is both effective and efficient. An OECD multi-country business survey provided data on the perceptions of business in Australia and ten other OECD countries about the costs of complying with tax, employment and environmental regulations. The survey, implemented between April 1998 and March 1999, covered almost 8 000 (1170 Australian) small and medium-sized enterprises (SMEs). The OECD survey responses indicate that compliance costs are substantial for SMEs and for the economy as a whole. Some of the key findings for Australia are presented below (with equivalent averages for the other surveyed countries in brackets):

- Total Australian regulatory compliance costs reportedly associated with these areas of regulation were estimated to exceed $17 billion[a] — equivalent to 1 per cent of the annual sales turnover of SMEs (OECD 4 per cent) or 2.9 per cent of GDP (OECD 3 per cent);
- Compliance with tax regulations reportedly accounted for 36 per cent of the total compliance costs (OECD 46 per cent), employment regulations 40 per cent (OECD 35 per cent) and environmental regulations 24 per cent of total Australian compliance costs (OECD 19 per cent); and
- On average, each Australian SME was estimated to have incurred costs of $33 000 (OECD $36 300) complying with the administrative requirements of regulations in the three areas.

The survey highlighted the inverse relationship between compliance costs per employee and firm size. It also showed that compliance costs per employee were substantially higher in the professional services sector than in manufacturing.

Overall, SMEs across the OECD were critical of the quality of tax and employment regulation, but generally less critical of environmental regulation. In Australia, dissatisfaction with the quality of tax regulation was acute. Other survey findings suggested that the compliance of business with regulatory requirements was only 'moderate' and that businesses were dissatisfied with the level of consultation, the consistency of regulatory decisions and the clarity of appeals and complaints processes.

While the accuracy of the cost estimates is difficult to verify, it seems clear from the survey that governments could do more to address the needs of business, including small business, by improving the design and administration of regulations.

a All dollar values are in Australian dollars and have been converted from US dollar equivalents using a purchasing power parity adjusted exchange rate.

Source: OECD (2001a).

Appropriate regulations and regulatory systems will impose some compliance costs on business and the community. However, it is notable that a number of other OECD countries (including New Zealand) have lower regulatory compliance costs

than Australia (OECD 2001a). This suggests that there may be scope to further reduce the compliance cost burden in Australia.

The Commonwealth's RIS requirements focus on regulatory compliance costs and impacts on business. In *More Time for Business* the Prime Minister stated that:

> The ORR is set to play a major role in promoting and assisting with these reforms which will sift out unnecessary business regulation and regulation which is unnecessarily costly to business. (CoA 1997, p. 66)

This requirement was made explicit in the Government endorsed *A Guide to Regulation*, which states that:

> The Government has asked the ORR to ensure that particular effects on small businesses of proposed new and amended legislation and any other regulation are made explicit in the RIS. The RIS should also give full consideration to the Government's objective … of minimising the paperwork and regulatory burden on small business. (ORR 1998, p. A10)

RISs usually contain a relatively brief qualitative assessment of the compliance cost burden of regulatory proposals. Approximately 20 per cent of RISs considered by the ORR also contain quantitative assessments of compliance costs, including estimates of the number of business affected or the likely financial cost per business.

The ORR recognises that, in practice, it is difficult to accurately measure overall compliance costs. At this point in time there is no generally agreed way of measuring these costs, which include both one-off and ongoing costs.

However, the level of analysis of compliance costs in RISs is often not of a high standard. In many cases, departments and agencies may not have sufficient internal expertise to provide a considered and informed assessment. In other cases, there appears to be a lack of recognition of the importance of considering these costs. This contrasts with other jurisdictions, such as the United Kingdom and New Zealand, where departments and agencies are expected to include separate assessments of regulatory compliance costs in a RIS.

From 2002-03, the ORR will pay particular attention to the level of analysis of compliance costs in RISs, which sift out regulation that is unnecessary costly to business and the community.

Small business impacts

The Government endorsed publication *A Guide to Regulation* requires RISs to:

- explicitly consider the effects of new and amended regulations on small businesses; and
- give full consideration to the objective of minimising the paperwork and regulatory burden on small business, as outlined in *More Time for Business* (CoA 1997).

Many RISs identify impacts on broad groups such as business, consumers and government. However, in practice, many do not provide an assessment of impacts on small business. There are a number of reasons why small business impacts are not considered in many RISs. First, in some cases regulatory proposals do not impact disproportionately on small business. Second, there are different views about how to define small business. Different measures are sometimes used, including turnover, number of employees and value of depreciating assets. It can also be difficult to separately identify impacts on small businesses vis-à-vis all businesses, even where the regulatory burden has a disproportionately large impact on small business. Third, there is no generally agreed way to measure impacts on small business and in some cases officials are unaware of the likely impacts of proposed regulations on business, including small business.

Notwithstanding these practical impediments, the ORR considers that some departments and agencies could do a better job by following the requirements included in *A Guide to Regulation* and routinely considering small business impacts. As a minimum, all RISs should provide an estimate of the number of small businesses likely to be affected by a regulatory proposal or estimates of the size of the small business sector likely to be affected, whether there is likely to be a disproportionate impact on small business, and the likely magnitude of such impacts.

Ecologically sustainable development (ESD) and the RIS process

To progress the implementation of the National Strategy for 'Ecologically Sustainable Development' (ESD), the Government has decided to amend *A Guide to Regulation* (ORR 1998) to refer to the need, where applicable, for RISs to include an assessment of ESD impacts. The National Strategy for ESD has been endorsed by all Australian governments. It 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). The objectives and principles of the National Strategy for ESD are outlined in box 4.4. The National Strategy for ESD noted that these core objectives and guiding principles need to be considered as a package. No objective or principle takes precedence over the others.

Box 4.4 **The objectives and principles of the National Strategy for ESD**

The National Strategy for ESD articulates three core objectives:

- to enhance individual and community wellbeing and welfare by following a path of economic development that safeguards the welfare of future generations;
- to provide for equity within, and between, generations; and
- to protect biological diversity and maintain essential processes and life support systems.

The seven guiding principles of the National Strategy for ESD are:

- the need for decision-making processes to effectively integrate both long-and short-term economic, environmental, social and equity considerations;
- where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (known as the precautionary principle);
- the global dimension of environmental impacts of actions and policies should be recognised and considered;
- the need to develop a strong, growing and diversified economy which can enhance the capacity for environmental protection should be recognised;
- the need to maintain and enhance international competitiveness in an environmentally sound manner should be recognised;
- cost effective and flexible policy instruments should be adopted, such as improved valuation, pricing and incentive mechanisms; and,
- decision and actions should provide for broad community involvement on issues which affect them.

Source: CoA (1992).

Consideration of ESD impacts is required because of a number of recognised market failures associated with some sustainable development issues — such as public goods, externalities, open access resources with undefined property rights and high scientific uncertainty. Under these conditions, there is scope for governments to do more to ensure that optimal and efficient environmental and economic outcomes are achieved.

ESD issues affect all Commonwealth departments and agencies, including Environment Australia (EA), the Department of Agriculture Forestry and Fisheries — Australia (AFFA), the Department of Transport and Regional Services (DTRS), the Department of Industry, Tourism and Resources (DITR), the Department of Health and Ageing and the Department of the Treasury. However, there is a wide variation in both the significance of potential ESD impacts and the complexity of

such issues. Some decisions may involve considerable scientific uncertainty and difficulties in balancing objectives in the short-and long-term. However, ESD assessment is not always complex (PC 1999a).

Box 4.5 Some issues in the assessment of ESD impacts

Measuring ESD impacts involves attempting to measure a range of economic, social and environmental costs and benefits of a given action. ESD involves considering changes to employment, prices, or investment, and using all these values to estimate a rate of use (of a natural resource, or an environmental asset) that is sustainable over time. The 'optimal' rate of use is one which 'maximises' the combined value of both environmental and other uses of the resource.

There are well known impediments associated with the use of cost-benefit analysis for ESD issues, stemming from the difficulty in estimating market values where no market exists. In a RIS framework, the ESD impacts should be considered as part of an economic assessment framework in order to advise decision-makers of the economic and ESD impacts of a decision, as well as any trade-offs between the economic and environmental impacts. Sometimes departments and agencies have limited time available to undertake such analysis, or alternatively may have economic skills or environmental assessment skills, but not necessarily both. The ORR has thus had to consider how, in practice, to guide agencies in meeting the new RIS requirements. Some future approaches could include:

- The use of new measurement tools for non-market values. For example, the development of an environmental statistical series by the Australian Bureau of Statistics (ABS) as an attachment to the national accounts. This could be used in the development of new accounting standards for environmental values such as Triple Bottom Line accounting standards and the use of environmental indicators.
- Where ESD values cannot be measured objectively, the RIS could ask a different question, such as 'are the regulations consistent with promoting the inclusion of environmental values in the decision-making process?' That is, for a given problem (such as land clearing or pollution), does the regulatory framework provide incentives for firms to take the costs of land clearing or pollution into account in the management of their businesses; or does the regulatory framework provide them with an incentive to ignore these costs?
- Encouraging the use of alternative assessment techniques. Currently there is a focus on the use of cost-benefit analysis in most RIS assessments. However, where there are non-market values it can be difficult to realistically estimate such values. Additional assessment techniques which can be used include cost-effectiveness measures (for many environmental and social regulations) and risk analysis (for many occupational health and safety, environmental and health issues).

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 regulatory proposals. Where appropriate, both short-and long-term economic, social

and environmental impacts should be included in the assessment. This may include positive and negative environmental impacts resulting from conservation, depletion or degradation of natural assets, and impacts on biodiversity and ecosystems. Where the impacts cannot be predicted, some discussion of the various potential outcomes may be needed.

The ESD impacts which must be considered can be very different. As a result, there is no 'one size fits all' approach to incorporating ESD impacts into RIS assessments. Some of these broader issues related to assessing ESD impacts within a RIS framework are discussed in box 4.5.

In implementing government decisions on ESD, the ORR has adopted a two stage process:

1. A broad statement of the new requirements will be included in a revised edition of *A Guide to Regulation* (ORR 1998). This will provide general information on the requirements, but will not provide detailed guidance on how to assess ESD impacts.
2. The ORR is developing, in consultation with other departments and agencies, a more detailed draft guidance note to assist officials in incorporating ESD issues into a RIS.

Cost recovery impact statements (CRISs)

In 2000, the Assistant Treasurer requested the Productivity Commission to inquire into the nature and extent of cost recovery regimes across Commonwealth Government regulatory and information agencies. The report, released in March 2002 (PC 2001b), made a number of recommendations, including that:

- all cost recovery arrangements have appropriate and clear legal authority;
- the RIS process be clarified so that, where a regulation under review includes a cost recovery element, the RIS should address cost recovery by applying the guidelines proposed by this inquiry; and
- a Cost Recovery Impact Statement (CRIS) process be developed for application to all significant cost recovery proposals or amendments to existing cost recovery arrangements not covered by an enhanced RIS.

The Government has agreed in principle to adopt a formal cost recovery policy and to review existing cost recovery arrangements. It also agreed with the Commission's recommendations that all cost recovery arrangements should have clear legal authority. The Government has indicated that it will respond to other recommendations relating to, among other issues, clarifying the role of the RIS

process with respect to regulations containing a significant cost recovery element, and the proposed application of a Cost Recovery Impact Statement (CRIS) to proposals not covered by a RIS.

Regulation review and reform in other jurisdictions

One of the activities listed in the ORR's Charter is to monitor and report on key regulation review and reform developments and issues in other jurisdictions.

The Commonwealth RIS requirements in many respects have led best practice internationally. The Commonwealth is also quite advanced in its implementation of other strategies for improving regulatory quality. Nevertheless, there is a number of other practices that have been adopted in other OECD countries and Australian jurisdictions that warrant further consideration.

Strategies for improving regulatory quality are discussed in box 4.6. They include minimum standards for public consultation and use of improved measurement of regulatory compliance costs.

The RIS requirements set out in *A Guide to Regulation* have a high degree of consistency with OECD best practices for regulatory impact analysis (OECD 1997a, p. 215). The strengths of the Commonwealth's RIS process include:

- its wide scope, both in terms of the regulatory instruments and types of bodies covered;
- a cost-benefit methodology that seeks to assess all important economic, social and environmental impacts, but at the same time is flexibly applied based on the principle of proportionality;
- independent assessment of RISs by the ORR; and
- the monitoring and reporting of compliance, where Australia is well ahead of most countries.

Box 4.6 **Other strategies for improving regulatory quality**

The task of improving regulatory decision-making and ultimately the effectiveness and efficiency of new and existing regulations involves the systematic deployment of a range of complementary regulatory quality control systems and strategies. Some of these include:

- the adoption of minimum standards for public consultation (eg United Kingdom, United States of America and several Australian States and Territories) and further government-wide guidance for officials on different approaches to consultation about regulatory issues (eg United Kingdom, Western Australia and the Australian Capital Territory);
- integrating preliminary impact assessments into regulatory plans (eg Canada and the United States of America);
- a strong independent regulatory reform advocacy body — like the Business Regulation Task Force in the United Kingdom — with substantial authority to determine its own work program and priorities;
- greater guidance on alternatives to prescriptive regulation (eg Canada and Queensland), and improved evaluation and sharing of experiences with alternatives (eg Denmark, United Kingdom and United States of America);
- improved measurement of compliance costs (eg the Netherlands, Canada and the United Kingdom are amongst the most advanced in this area); and
- regular and systematic monitoring and evaluation of the results of regulation review and reform (an area the OECD has identified as a weakness in most jurisdictions, but initiatives have been introduced, for example, in Canada, United States of America, the Netherlands, Denmark and Queensland).

These and other practices could be examined more closely to assess their applicability and likely value in refining or supplementing the existing Commonwealth policy and institutional framework for regulation review and reform.

Source: Country Reviews (various) prepared by the OECD under its Regulatory Reform Program and material supplied by Australian governments in response to an ORR survey in 2002.

However, the Commonwealth can also learn from the experiences of other jurisdictions with respect to the preparation and use of RISs. Box 4.7 discusses the key features of some of the RIS systems used in other jurisdictions.

The ORR plans to conduct further research on — and develop methodologies for — better measuring the performance of existing regulation review and reform systems. The longer-term objective of this research is to provide information on the relative strengths and weaknesses of current strategies employed internationally and in Australia and to provide a framework for the evaluation of alternatives. At the same time, the ORR will continue to monitor developments in other jurisdictions and

participate in national and international forums where lessons from different systems and approaches are identified and discussed.

Box 4.7 **Regulation impact analysis in other jurisdictions**

Some aspects of the design and implementation of RIS systems in operation overseas and in other Australian jurisdictions that would appear to merit further consideration include, but are not limited to, the following:

- integration of RISs into consultation processes — Canada and the United States of America, for example, have fully integrated regulation impact analysis into public consultation;
- better targeting and clearer guidance on threshold tests — use of preliminary screening and a staged RIS process (eg United Kingdom, United States of America, Canada and Italy), and clearer guidance on threshold triggers for RISs, including monetary thresholds (eg Korea, United States of America and Queensland);
- more formalised coordination of regulation review and RIS preparation within regulatory departments and agencies (possibly modelled on the United Kingdom Departmental Regulation Impact Units);
- increased ministerial involvement and accountability. Many jurisdictions require ministers to certify that RISs comply with requirements (eg United Kingdom, Canada and Victoria). In the United Kingdom, ministers for regulatory reform appointed in key regulatory departments must report to the 'Panel for Regulatory Accountability'; and
- more effective sanctions for non-compliance — in some jurisdictions (eg the Netherlands, Korea, and Canada) independent oversight bodies have the power to reject or delay consideration of regulatory proposals not supported by the appropriate standard of analysis.

Source: Country Reviews (various) prepared by the OECD under its Regulatory Reform Program and material supplied by Australian governments in response to an ORR survey in 2002.

Trans-Tasman regulation review and reform issues

In New Zealand, regulation review and reform has traditionally focused on compliance costs on business. However, the New Zealand Government recently decided to establish a RIS system similar to that used by the Commonwealth, which builds on their existing compliance cost focus.

Throughout 2001-02, the ORR worked closely with officials from the New Zealand Government and provided advice and training on RIS systems (appendix C). The RIS processes in Australia and New Zealand are now broadly comparable.

This dialogue has resulted in greater consistency in regulation-making processes in each jurisdiction, which in turn generates better quality regulations and reduces unnecessary impediments to trade and commerce. These changes contribute to higher productivity and incomes in both countries.

Increasingly, regulation review and reform is being undertaken in cooperation with New Zealand. Therefore, New Zealand participation in Ministerial Councils and national standard-setting bodies is a strategic issue.

New Zealand is already part of the formal decision-making process in relation to those areas of regulation covered by the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Under the TTMRA, reviews of regulation must have regard to the COAG Principles and Guidelines. However, there are questions about how COAG RISs can best include the impacts in New Zealand (including consultation with New Zealand stakeholders) and how best to meet the technical requirements for RISs which are employed in each country. Where this issue arises, the ORR seeks to address these matters on a case-by-case basis, including considering the merits of Australia and New Zealand taking a consistent approach to impact assessment, particularly where the same or similar regulations are considered.

Nevertheless, there is scope for both countries to consider further harmonising regulation-making processes, including the application of COAG RISs. The TTMRA will be reviewed in 2003. This review provides an opportunity to consider how these decision-making processes are working and explore scope for improvements.

A The COAG Principles and Guidelines and the ORR

This appendix summarises the Office of Regulation Review's (ORR's) second report to the National Competition Council (NCC) on compliance with the Council of Australian Governments (COAG) RIS requirements.

In April 1995, Australian governments entered into several agreements allied to competition policy and reform. The conditions and amounts 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 these competition payments, which commenced in 2001-02, factors taken into consideration by the NCC 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).

A.1 COAG's principles and guidelines

In April 1995, COAG decided that regulatory proposals considered by Ministerial Councils and national standard-setting bodies should be subject to a nationally consistent assessment process. This agreement was prompted by the objective that regulations or standards employed by government's be the minimum necessary to achieve agreed outcomes and not impose excessive or unnecessary requirements on business. The agreed assessment process was set out in the COAG's *Principles and Guidelines* (COAG 1997).

The major element of the assessment process is the completion of Regulatory Impact Statements (RISs). A RIS provides a structured approach to regulation-making which aims to achieve better quality regulation. It does this by considering and documenting alternative approaches to resolve identified problems. A RIS assesses the impacts of each option on different groups and the community as a whole. RISs are used as part of community consultation and are considered by decision-making bodies.

For the purposes of applying these RIS requirements COAG defined regulation broadly as including:

> … 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 (1997, p. 4).

A.2 The role of the Office of Regulation Review (ORR)

The role of the Commonwealth ORR is to advise decision-makers on application of the COAG *Principles and Guidelines* and monitor and report on compliance with these requirements. This includes assessing RISs prepared for these intergovernmental bodies. The ORR assesses the RISs at two stages: before they are distributed for consultation with parties affected by the proposed regulation; and again just prior to a decision being made by the responsible body. The ORR is required by the COAG guidelines to assess:

- whether the COAG RIS 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.

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

This is the second ORR report to the NCC dealing with regulation making by Ministerial Councils and national standard-setting bodies. The first ORR report to the NCC covered the period 1 July 2000 to 31 May 2001. For this second ORR report to the NCC, the reporting period has been modified to cover the period 1 April 2001 to 31 March 2002. This change in the reporting period was made to allow adequate time for RIS compliance data to be collected by the ORR and provided in draft form — for information and comment — to the following organisations:

- relevant Ministerial Councils and national standard-setting bodies;
- the Department of Prime Minister and Cabinet;
- competition policy units in each jurisdiction; and
- the New Zealand Ministry of Economic Development (specifically, those parts of the ORR's report dealing with Trans-Tasman issues).

Emerging 'strategic' issues for consideration

Overall, the COAG RIS requirements appear to be working reasonably well in meeting the objective of ensuring that decision-making forums — and the community — are provided with quality information documenting the policy development process. Ministerial Councils and national standard-setting bodies now have a high level of awareness about COAG's RIS requirements. As a consequence, RISs are playing an increasing role in informing decisions about regulations made by these forums.

One issue which has arisen — especially over the last year — is Trans-Tasman regulation review and reform processes. The COAG *Principles and Guidelines* represent best practice in regulatory decision-making as agreed by the nine Australian jurisdictions. However, increasingly, regulatory review and reform by such decision making forums is being undertaken in cooperation with New Zealand. Therefore, New Zealand participation in these decision-making processes is an emerging strategic issue. This issue is discussed in more detail in chapter 4.

A.3 Reporting to the NCC: the scope and focus of the ORR's reports

COAG guidelines apply to agreements or decisions by Ministerial Councils and national standard-setting bodies which will have a regulatory impact. The agreements and decisions made by these forums may be given effect in a variety of ways. These include principal or delegated legislation, administrative decision or other measures. Voluntary codes and other advisory instruments are also included, where there is a reasonable expectation by businesses or individuals that they should comply. In most cases, there is general consensus between the ORR and these decision-makers on which types of agreements and decisions are covered — and are not covered — by the COAG RIS requirements.

In its first report to the NCC — covering the period 1 July 2000 to 31 May 2001 — the ORR excluded two types of decisions:

- The first category involved decisions of an administrative rather than a regulatory nature. These decisions were essentially about the application and administration of regulation for which the broader regulatory framework was already established and there were consequently no regulatory options.
- The second category of decisions included those with a low significance in terms of the scope and magnitude of impacts, to which the RIS process would have added little additional value.

In both of these cases, the ORR advised that preparation of a COAG RIS was not necessary.

During 2001-02 there was dialogue between the ORR, Ministerial Councils and national standard-setting bodies about the scope of COAG's RIS requirements. Issues covered in these discussions included the following.

Do the COAG guidelines apply to broad decisions, plans or strategies?

The development of broad plans and strategies may represent the first step of a staged process of policy development, which is then followed by the development of specific measures, some of which are regulatory.

The ORR notes that the COAG's *Principles and Guidelines* requires that RIS analysis be undertaken early in the policy development process. The COAG guidelines require that a number of fundamental threshold questions be addressed in a RIS, including:

- what is the problem that needs addressing?
- is there market failure?
- can this market failure be addressed without recourse to government regulation? and
- what are the costs, risks or benefits of maintaining the status quo? (COAG 1997, p. 5).

Accordingly, the ORR has advised Ministerial Councils and national standard-setting bodies that the COAG *Principles and Guidelines* apply to decisions on broad plans and strategies which may have regulatory implications, as well as to the more specific regulatory measures which may be developed at a later stage.

Do the COAG Guidelines apply to 'best practice' regulatory measures?

In some cases, Ministerial Councils and national standard-setting bodies agree on regulatory measures which establish 'best practice' requirements. This can include model legislative provisions which aim to influence the conduct and behaviour of regulated organisations or individuals. The ORR has advised that COAG's requirements apply to such best practice measures, if there is an expectation of compliance, and, if such requirements generate regulatory impacts.

Possible duplication of RIS processes?

In relation to instruments for national implementation, the view has been put to the ORR that the subsequent development of legislation in each jurisdiction will itself be subject to individual RISs, so a COAG RIS should not be required.

However, the preparation of a COAG RIS provides a solid analytical base with a nationwide perspective, for the later preparation, where appropriate, of more focused RISs by each jurisdiction. Moreover, a COAG RIS can serve to guide legislative reforms in each jurisdiction from a carefully analysed starting point. It is also the case that States and Territories may forgo their own RIS requirements where an adequate COAG RIS has been prepared.

A.4 Compliance with the COAG RIS requirements

Over the period 1 April 2001 to 31 March 2002, the ORR identified 24 regulatory matters that were subject to the COAG RIS requirements. Of these, the RIS requirements appear to have been met in all but one case.

Table A.1 documents the 23 cases where the COAG RIS requirements applied and were met. This table includes a brief description of the regulatory measure, decision-making body and date of decision.

Case where COAG RIS requirements were not met

In only one case — a decision to prohibit the sale to minors of certain music recordings containing explicit lyrics — were the COAG RIS requirements not met.

The Commonwealth, State and Territory Censorship Ministers met on 8 March 2002. At this meeting it was decided to ask the Australian Record Industry Association (ARIA) to amend their Industry Code of Practice for labelling CDs and tapes that contain explicit lyrics. The amendment request was to prohibit the sale of Level 2 18+ recordings to minors. (The existing Level 2 18+ required an advisory warning label designed to assist buyers (and their parents) when they purchase recordings.) The Office of Film and Literature Classification (OFLC) provides the secretariat for the Censorship Ministers' meetings. This proposal was not included on the agenda of the meeting, and consequently, was not an option or recommendation in the papers provided by the OFLC to the Ministers. Hence, a RIS was not prepared to help inform this decision.

Table A.1 **Cases where COAG RIS requirements were met**

Measure	*Body responsible*	*Date of decision*
1. National Code of Practice for the Defined Interstate Rail Network Vol 1-3	Australian Transport Council (ATC)	25 May 2001
2. National Standard for Commercial Vessels — Part D, Crew Competencies	ATC	25 May 2001
3. Annual adjustment procedure for heavy vehicle charges	ATC	25 May 2001
4. Policy framework for Performance Based Standards for heavy vehicle regulations	ATC	25 May 2001
5. Amendment to Building Code of Australia 1996 to increase the number of toilet pans for female patrons of certain theatres/cinemas	Australia Building Codes Board (ABCB)	15 June 2001
6. In-Service Diesel Vehicle NEPM	National Environment Protection Council (NEPC)	29 June 2001
7. National Approach to Firewood Collection	Australian and New Zealand Environment and Conservation Council (ANZECC)	29 June 2001
8. Amendment of ADR 80 Emission Controls for Heavy Vehicles	ATC	Out-of-session decision process completed by 30 June 2001
9. Minimum energy performance standards for air conditioners	Australian and New Zealand Minerals and Energy Council (ANZMEC)	Out-of-session decision process completed by mid-July 2001
10. Minimum energy performance standards for electric motors	ANZMEC	Out-of-session decision process completed by mid-July 2001
11. Approval of Joint Australia/New Zealand Standard addressing Brake Systems for Passenger Cars	ATC	6 July 2001
12. Adoption of provisions relating to BSE into the Food Standards Code	Australia New Zealand Food Standards Council (ANZFSC)	20 July 2001

(Continued on next page)

Table A.1 **(continued)**

Measure	*Body responsible*	*Date of decision*
13. Permission in the Food Standards Code for the production in Australia of formulated caffeinated beverages	ANZFSC	31 July 2001
14. Temperature Compensation of Petroleum Fuels	Ministerial Council on Consumer Affairs	13 August 2001
15. Australian Standard for the Hygienic Production and Transportation of Meat and Meat Products for Human Consumption	Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ)	17 August 2001
16. Permission for the irradiation of herbs, spices, seeds and herbal infusions	ANZFSC	13 September 2001
17. Phase-Out of use of Chrysotile Asbestos in Australia	National Occupational Health and Safety Commission (NOHSC)	21 September 2001
18. Code of Practice for the Safe Transport of Radioactive Material	Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	24 September 2001
19. Requirements to update signage for people with disabilities, including requirements for braille and tactile signs	ABCB	1 October 2001
20. Automatic Annual Adjustment of Heavy Vehicle Registration Charges	ATC	8 January 2002
21. Implementation plan for Overweight Containers Strategy	Austroads	Out-of-session decision process completed by 28 February 2002
22. Revised Minimum Energy Performance Standards for Refrigerators and Freezers	Ministerial Council on Energy (MEC) [a]	Out-of-session decision process completed during March 2002
23. Minimum Energy Performance Standards for Lighting Ballasts	MEC	Out-of-session decision process completed during March 2002

[a] The Ministerial Council on Energy was formed following COAG's meeting of June 2001, and subsumes the energy component of ANZMEC.

Source: ORR estimates.

A.5 Trends in compliance with COAG RIS requirements

Recent trends in COAG RIS compliance have generally been positive, both in terms of the level of compliance and improvements in compliance over time. As noted, of

the 24 regulatory decisions made for the year ended 31 March 2002, only one was non-compliant with COAG's RIS requirements. This translates to a compliance rate for this reporting period of 96 per cent.

In contrast, for decisions covered by the ORR's first report to the NCC, covering the period 1 July 2000 — 31 May 2001, the compliance rate was 71 per cent, with six out of the 21 regulatory decisions made during the reporting period assessed as non-compliant.[1]

An important consideration in measuring RIS compliance — and changes in compliance over time — is the degree of significance of the decisions made in each period. The ORR classifies each regulatory proposal that requires a RIS into four 'significance' rankings, reflecting the nature and magnitude of the proposal and the scope of its impact.

This classification is intended to provide a better basis on which to apply the 'proportionality rule', that the extent of RIS analysis should be commensurate with the magnitude of the problem.

Of the 24 regulatory decisions reported here, six were assessed by the ORR as of greater significance according to these criteria. They are as follows:

- two decisions by the Australian Transport Council (ATC) — to adopt a policy framework for performance based standards for heavy vehicle regulations, and to amend Australian Design Rule 80 in relation to emission controls for heavy vehicles;
- the decision by the Ministerial Council on Consumer Affairs to require temperature compensation for petrol and diesel fuel loaded at refineries and terminals across Australia, which is expected to promote competition in the industry;
- Australian Radiation Protection and Nuclear Safety Agency decision to adopt an updated Code of Practice for the Safe Transport of Radioactive Material, which impacts on the mining, medical and scientific industries;
- the decision by the Ministerial Council on Energy to revise Minimum Energy Performance Standards for Refrigerators and Freezers which, by reducing the

[1] While there is some overlap between the reporting period for these reports, only four decisions (including one on a significant matter) are covered by both reports. All decisions covered in both reports were compliant with COAG's requirements. Therefore, this modest overlap is not significant for the purposes of comparing compliance between the two periods. Details of the ORR's first report to the NCC are set out in appendix B of *Regulation and its Review 2000-01* (PC 2001a).

required electricity consumption, is expected to generate a net benefit of between $300 million and $400 million over the period to 2015; and

- the decision by the Australia New Zealand Food Standards Council to adopt into the *Food Standards Code* provisions relating to bovine spongiform encephalopathy (BSE).

The RISs for the first five decisions were compliant with COAG's requirements and contained a level of analysis commensurate with the significance and impact of the proposal. The last decision relating to BSE was decided as an emergency issue. While emergency decisions are exempt from COAG's requirement for a RIS to inform the decision, the preparation of a RIS is required after the decision. A RIS on this matter is currently being prepared.

In summary, the compliance result for matters of 'greater significance' for this reporting period is, therefore, 100 per cent. In contrast, the ORR's first report to the NCC (for 1 July 2000 — 31 May 2001) which included nine matters of greater significance, of which four were non-compliant, giving a compliance rate for significant matters of 56 per cent.

These comparisons of compliance results for the first and second reporting periods suggest that compliance by Ministerial Councils and national standard-setting bodies with COAG's RIS requirements improved significantly in the year to March 2002.

A.6 Follow-up on matters for which COAG requirements were not met during the first reporting period

The ORR's first report to the NCC, covering the period 1 July 2000 — 31 May 2001, identified six matters for which the COAG RIS requirements were not met. The ORR's report also noted that, for most of these, there were processes either established or foreshadowed, that may lead to the development of more effective and efficient regulatory responses. The NCC requested that the ORR consider the outcomes of these processes as part of its second report to the NCC.

In November 2000, the Australia New Zealand Food Standards Council (ANZFSC) decided to adopt the joint Food Standards Code. In this case, a RIS was prepared for this significant proposal, but it did not demonstrate net benefits. As part of this decision, Ministers recommended that an intergovernmental taskforce be established to report on issues, such as whether very small businesses should be exempted and strategies for practical and low cost implementation of the code. The

ORR understands that the ANZFSC has considered these issues and decided not to exempt small businesses from the requirements of the new code.

In July 2000, ANZFSC decided to regulate the labelling of genetically modified food and food ingredients. The decision was to take effect from 7 December 2001. In this case, the RIS did not meet the COAG requirements. The ORR's first report to the NCC noted that the Commonwealth Minister had indicated — at the time of the decision — that the Commonwealth would be consulting further with stakeholders to assess its impact on costs and export competitiveness. The ORR understands that there have not been any specific discussions in this regard. However, since the decision, Ministers have agreed to a transitional arrangement. The labelling provisions that would otherwise apply from December 2001 will not apply to those foods manufactured and packaged before 7 December 2001. These products will be allowed to remain on supermarket shelves and other food outlets until sold, but cannot remain for sale beyond December 2002. The ORR notes that this measure may result in a reduction in the transitional costs on business of implementing the new labelling requirement.

A November 2000 decision by the Australian Transport Council (ATC) to adopt the National Road Safety Action Plan contained a number of regulatory options, none of which were subject to RIS analysis. The ORR noted in its first report to the NCC that there remains the opportunity to undertake impact analysis before tangible action is taken on individual options listed in the Plan. While no further decisions have been made over the last year, dealing with specific measures in the Plan, the ORR notes that the ATC has been compliant with COAG's requirements in relation to other regulatory decisions made during the period covered by the ORR's second report.

In November 2000, the Australian National Training Authority Ministerial Council made several regulatory decisions. One was to adopt 'model clauses' for the legislative framework for vocational and educational training. The other was to strengthen the Australian Recognition Framework for skills by, for example, introducing auditable standards and implementing a nationally consistent set of sanctions. A RIS was not prepared for these decisions. The ORR's first report to the NCC noted that this Council had undertaken to prepare a RIS prior to implementation of the model clauses. Preparation of this RIS was underway in 2002-03.

B 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 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 restricts competition, it also includes legislation that may impose costs or confer benefits on business. The Commonwealth's program, announced in June 1996, identified 98 separate reviews. Additional reviews were included on the Schedule, bringing the total number of reviews to 101. As at 30 June 2002, 77 of the reviews on the Commonwealth's schedule had either been completed or were underway. Table B.1 provides an overview of the status of the Commonwealth's legislation review program.

Table B.1 **Overview of Commonwealth's Legislation Review Program as at 30 June 2002**

Status of reviews	*No. of reviews*
Completed reviews	65
Reviews in progress	8
Reviews subsumed into other reviews or reforms	4
Total number of reviews completed or in progress	77
Reviews deleted from the schedule	13
Deferred or delayed reviews	2
Reviews not yet commenced	9

Source: ORR estimates and information provided by Commonwealth departments and agencies.

As can be seen from the above table, 13 reviews have been deleted from the schedule, primarily because such legislation has already been reformed with any remaining restrictions on competition addressed in a manner consistent with the CPA.

Nine reviews had not yet commenced before the 30 June 2002 deadline and two reviews have been deferred. Table B.2 contains a list of the outstanding reviews.

Table B.2 **Reviews outstanding as at 30 June 2002**

Reviews still to be undertaken	*Dept.*	*Status as at 30 June 2001*	*Status as at 30 June 2002*
Environment Protection (Nuclear Codes) Act 1978	DHA	Seeking to delist	Not commenced/ Seeking to delist [a]
Anti-Dumping Authority Act 1988, *Customs Act 1901* Pt XVB & *Customs Tariff (Anti-Dumping) Act 1975*	AG's	Not commenced	Not commenced
Petroleum Retail Marketing Sites Act 1980	DITR	Not commenced	Not commenced
Petroleum Retail Marketing Franchise Act 1980	DITR	Not commenced	Not commenced
Defence Force (Home Loans Assistance) Act 1990	Defence	Not commenced	Not commenced
Dairy Industry Legislation	AFFA	Deferred	Deferred
Dried Vine Fruits Legislation	AFFA	Not commenced	Review deferred to 2003
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
Defence Act 1903 (Army & Airforce Canteen Services Regulations)	Defence	Not commenced	Not commenced
Native Title Act 1993 & Regulations	PM&C	Not commenced	Not commenced
Disability Discrimination Act 1992	AG's	Not commenced	Not commenced

a This review is to be delisted from the Schedule once RISs prepared on the Codes are cleared by the ORR.

Source: Information provided by Commonwealth, State and Territory departments and agencies.

B.1 Terms of reference for reviews

The ORR provides advice to departments and regulatory agencies on appropriate terms of reference, and the composition of review bodies, for reviews under the Commonwealth legislation review program. The Government requires the ORR to advise the Parliamentary Secretary to the Treasurer and the responsible portfolio Minister as to whether proposed terms of reference meet the CPA requirements and the Commonwealth's legislation review requirements. The ORR did not clear any terms of reference in 2001-02, as no outstanding reviews were commenced during this period.

To assist departments and agencies 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. A copy of the template terms of reference is available in *Regulation and its Review 2000-01* (PC 2001a, pp. 78-9).

C ORR activities and performance

The objective of the ORR's regulation review activities is to promote regulation-making processes that, from an economy-wide perspective, improve the effectiveness and efficiency of legislation and regulations. The ORR provides advice to approximately 100 regulation-making bodies or regulators, including 60 Commonwealth departments and agencies and about 40 Ministerial Councils and national standard-setting bodies. The ORR aims to provide objective and insightful advice that is timely and useful to government.

C.1 Activities in 2001-02

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

In advising on quality control mechanisms for reviewing and making regulation in 2001-02 (including examining and advising on RISs), the ORR:

- analysed some 709 RIS queries and regulatory proposals from Commonwealth departments and agencies. Of the regulatory proposals reported to have been made or tabled in 2001-02, the ORR advised that 145 proposals required a RIS and provided comments on 130 RISs subsequently prepared;
- continued to work with, and provide assistance to, the Office of Small Business (OSB) in relation to the development of regulatory plans and regulatory performance indicators;
- analysed 29 regulatory proposals considered by Ministerial Councils and national standard-setting bodies and provided advice on 23 RISs which were considered by these decision-making bodies (see appendix A); and
- reported to the National Competition Council (NCC) on the setting of national standards and regulatory action by Ministerial Councils and national standard-setting bodies, for the year to March 2002.

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

In 1997, the Government directed the ORR to issue a charter outlining its role and functions. 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.

Whilst these are ranked in order of the Government's priorities, the ORR must concentrate its resources where they will have most effect. The ORR, together with the Treasury, advises the Parliamentary Secretary to the Treasury on legislation review matters.

During the past year, the ORR provided formal RIS training on regulatory best practice to 200 Commonwealth officials. It also provided extensive advice and assistance with preparation of RISs, as needed, on an issue-by-issue basis.

Regulation and its Review fulfils the Productivity Commission's and ORR's obligation to report annually on compliance with the Government's regulation review requirements. The report for 2000-01, continued the initiative — begun in 1998-99 — of reporting in greater detail on compliance by portfolio. It also canvassed regulatory issues more broadly, emphasising the importance of RIS requirements to good policy process and high quality regulatory outcomes.

In monitoring and contributing to regulatory reform developments more broadly throughout Australia and internationally during 2001-02, the ORR also:

- organised the annual meeting of regulation review units, representing all States, the ACT and New Zealand, in July 2001, providing a forum for exchange of information among officials from different jurisdictions;
- advised participants at an international conference in July 2001, hosted by the NSW Parliament, on the essential elements of a RIS and regulatory best practice;
- represented Australia at a meeting of the Regulatory Management and Reform Working Party of the OECD in Paris in July 2001, which examined lessons from different countries' experiences with regulatory management and reform;

- presented papers at the Asia Pacific Economic Cooperation (APEC) and Organisation for Economic Cooperation and Development (OECD) 'Cooperative Initiative on Regulatory Reform' workshops in Beijing (China) in September 2001 and Merida (Mexico) in April 2002;
- presented a paper in March 2002 on the Government's RIS requirements for international treaties at the Commonwealth Department of Foreign Affairs and Trade conference — Treaties in a Global Environment; and
- assisted New Zealand Government officials by providing briefing and training in Wellington in July 2001 and April 2002 on RIS processes and lessons from Australia's experiences with RISs. The ORR provided training about regulatory best practice processes and RISs to 140 New Zealand Government officials during 2001-02. In addition, the ORR also hosted a delegation of officials from New Zealand's Ministry of Economic Development, who were in Australia to study the Commonwealth's regulatory review and reform systems.

A restructuring of the ORR, to facilitate a renewed focus on research, was finalised in 2001-02. It is planned to undertake international benchmarking of regulatory review requirements and procedures across selected OECD countries. Future research will also examine systems for measuring outcomes stemming from the RIS and other regulatory quality control processes.

C.2 Quality indicators

As the scope of the ORR's work covers the whole of government, its staff must be able to understand a wide range of complex regulatory issues. However, the confidentiality of RISs considered by Cabinet limits the extent to which specific matters can be reported publicly.

Evidence of the quality of ORR work is provided by feedback from other government bodies, both those that prepare RISs and those that use them. The most recent client survey results (for 1999-2000) rated the ORR as providing an 'above average' service for all aspects of its RIS-related work, including: the 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 between departments and agencies, and the ORR. Another client survey of the performance of the ORR is planned for 2002-03.

The ORR surveyed 100 officials who received ORR training in regulatory best practice in 2001-02. Responses indicate that such training was generally well received, with 85 per cent rating the training as either 'excellent' or 'good' (table C.1). No respondents considered ORR training to be 'unsatisfactory'.

Table C.1 **RIS training evaluation in 2001-02**

Evaluation	*Number of responses* [a]	*Per cent*
Excellent	18	21
Good	56	64
Satisfactory	13	15
Unsatisfactory	0	0
Total	87	100

[a] Includes only those forms returned.

C.3 Timeliness

Timeliness also provides an indication of the ORR's performance. As a general rule, officials preparing a RIS are asked to allow the ORR two weeks to provide advice on the adequacy of RISs. In practice, the ORR provided formal feedback to departments and agencies within five working days for about 80 per cent of all RISs received in 2001-02. Where further redrafting is necessary, additional time may be needed to ensure that an adequate standard is achieved.

However, during 2001-02, there was a large number of instances where departments and agencies requested advice on their RISs within a few days, or even hours. While the ORR was able to meet these requests, such short timeframes make it difficult to give proper consideration to all the issues raised by the RIS.

Under the COAG *Principles and Guidelines*, the ORR is required to provide advice on RISs for Ministerial Councils and national standard-setting bodies in a timely manner. When asked for advice in two weeks or less, the ORR provided advice within the specified timeframe on all occasions in 2001-02.

The ORR has also delivered its other outputs in a timely manner. For example, it 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 12 months to the end of March 2002, was completed on schedule. This assisted the Council in completing its annual third tranche assessment of the compliance of jurisdictions with the requirements of national competition policy.

The timely provision by the ORR of feedback and advice illustrates its commitment to providing an effective and timely service to other areas of government.

Indicators of usefulness to government

The usefulness of the ORR's regulation review activities in contributing to government policy-making and promoting community understanding of regulatory review and reform issues is demonstrated by a range of indicators.

- Compliance with the Government's RIS requirements is improving.
  - Of the 145 regulatory proposals made or tabled in 2001-02 that required preparation of a RIS, 88 per cent complied with the RIS requirements at the decision-making stage. This compares to the 82 per cent RIS compliance rate in 2000-01.
  - Of the 123 regulatory proposals that required a RIS and were tabled in Parliament in 2001-02, 94 per cent complied — higher than the 89 per cent compliance rate achieved in the previous year.
  - For significant regulatory issues, the RIS compliance rate in 2001-02 was 70 per cent, higher than the 60 per cent compliance rate for 2000-01.
  - Although the number of RISs made or tabled in 2001-02 was less than that in 2000-01 — due to the proroguing of Parliament for the Federal election — the total number of queries from departments and agencies regarding regulatory best practice RIS processes remained strong. This suggests that awareness of the RIS requirements among officials remains reasonably high.
- Informal feedback provided by Commonwealth officials generally indicates that departments and agencies find the ORR contribution to be constructive, timely and positive.
  - Where policy development processes in departments and agencies follow the key elements of a RIS — such as the identification of problems and objectives, examination of a range of feasible options and a cost-benefit assessment of each of these options — the preparation of a RIS should generate little additional work. RISs can also assist departments and agencies engage in targeted consultation about regulatory issues. In such cases, RISs document and enhance the transparency of the existing policy-development process.
  - By contrast, where departments and agencies find that preparing a RIS involves considerable additional work, this may be a signal that their internal policy-making processes are not meeting the Government's regulatory best practice requirements. In such cases, regulatory problems and objectives may be poorly defined, a range of feasible options may not be considered, cost-benefit assessments of options may be incomplete and regulatory proposals may be developed without adequate consultation with the community and relevant stakeholders.

- The ORR contributed to a number of initiatives by Commonwealth departments and agencies to better integrate the RIS process into their policy development systems during 2001-02.
  - The Department of Industry, Tourism and Resources, for example, has sought to increase awareness within the department of the Government's RIS requirements through a concerted effort by its senior management and Cabinet Liaison Office to draw these requirements to the attention of officers, and to encourage officers to contact the ORR early in the policy development process. This process has also been assisted by the development of an internal departmental paper, *A Framework for Considering Business Regulation*, to be used as an in-house reference for all officers in the development and assessment of regulation with an impact on business (see chapter 4).
  - Another example of the integration of the RIS process with an existing policy development process concerns the Australian Broadcasting Authority. When preparing Licence Area Plans for radio and television broadcasts for various regions, the authority releases detailed discussion papers which contain an analysis of the relevant issues and a discussion of options and the views of stakeholders. The ORR has agreed that, with some modification, these documents will satisfy the RIS requirements. In future, it will assess the analysis in these documents instead of requiring the preparation of a separate RIS for each proposal.
  - The ORR is also working with Food Standards Australia and New Zealand (FSANZ) to assist in better integrating RIS processes within its policy development procedures. In 2001-02, a protocol was drafted to clarify working arrangements between FSANZ and the ORR on best practice processes in respect to the Council of Australian Governments (COAG) RIS requirements.
- The ORR attempted to achieve a better standard of RISs and increase their usefulness to government by gradually raising the adequacy hurdle over time, as agencies have become more familiar with the processes. This can be gauged by the content, detail and quantification in RISs.
  - To test the extent to which minimum standards for RISs have been raised over the last three years, in 2001-02 the ORR re-assessed nine significant RISs from 1998-99. All nine were cleared as adequate by the ORR at the time. However, it was found that four of these RISs would not meet the required minimum standards for such RISs in 2001-02, because they provided insufficient information about the impacts on the community of options considered in the RISs (chapter 4).

  - In terms of quantification, analysis of a sample of Commonwealth RISs considered in the first half of 2001-02 found that 29 per cent employed quantitative measures. Moreover, the propensity to use quantification in RISs was related directly to the significance and impact of proposals. For example, 80 per cent of RISs assessing proposals with a significant impact across large segments of the community included quantitative measures.

- Reporting on how the RIS process is leading to improved legislation and regulation is constrained by the confidentiality of Cabinet processes.
  - The ORR comments on all aspects of the RIS but does not advocate particular policy solutions or outcomes. Rather, the ORR focuses on the content of the RIS to ensure that the Government's regulatory best practice requirements are met. In many cases, this leads to a more comprehensive assessment of the available options. In some instances, the RIS process has resulted in proposed recommendations being revised 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.
  - Compliance information by portfolio show that several departments and agencies which had been reported in previous years as performing below regulatory best practice have subsequently improved their internal processes during 2001-02, resulting in better regulatory practices and outcomes (see chapter 3).
  - RISs tabled in the Parliament with Memoranda and Explanatory Statements have provided greater transparency regarding the rationale behind regulatory decisions, resulting in the Parliament being better informed. In addition, parliamentarians have drawn on published RISs in debate. For example, in 2001-02, there were 14 separate discussions about particular RISs in debates about regulatory policy issues (three times in the Senate, twice in the House of Representatives and nine times in the work of parliamentary committees).
- Indicators of the usefulness of the ORR's regulation review activities in promoting public understanding of regulatory best practice issues are found in the use of its reports.
  - Printed copies of *Regulation and its Review 2000-0*1 were widely distributed and also accessed around 1900 times on the Commission's website in 2001-02. National press coverage occurred on two occasions in 2001-02. Extensive comments and feedback on matters addressed in the report were received from a range of stakeholders, including business groups, academics and international organisations. Furthermore, interest groups used

information contained in this report, and information contained in individual RISs, in submissions to the Government and in their publications.

  - A further 400 copies of the second edition of *A Guide to Regulation* were distributed for use by policy and regulatory officers in Commonwealth departments, agencies, statutory authorities and boards, and other organisations and individuals interested in regulatory reform. In addition, the guide was accessed around 2900 times on the ORR's website during 2001-02. Overall, the ORR website recorded almost 9000 hits in 2001-02, double the number recorded in 2000-01. During the year, a number of example RISs were made available on the website.
  - In its submission to the current review of the *Trade Pactices Act 1974*, the Australian Bankers' Association used the staff paper, 'Principles of Good Regulation', which was presented at the Commission's conference on achieving better regulation of services (Coghlan 2000).
  - The feature on regulation making in the March 2002 edition of *The Primary Report*, a newsletter circulated by the NSW Farmers' Association, drew on *A Guide to Regulation*, and the analysis of RIS compliance and developments in State jurisdictions reported in *Regulation and its Review 2000-01*.

- Further indicators of usefulness are invitations for the Commission's Chairman to address the international conference hosted by the NSW Parliament on regulatory best practice in July 2001 (the paper presented is available on the Commission's website) and for the presentations, domestic and international, made by ORR staff during the year. The ORR's interaction with a range of international organisations, other national governments and other jurisdictions within Australia can generate a range of benefits. For example, the growing harmonisation of regulation-making processes and enhanced communication between officials providing advice about regulations can result in greater consistency in the design and application of regulations used in each jurisdiction. In turn, this can reduce unnecessary regulatory barriers to trade and commerce both internationally and within Australia.
- Independent assessment of the usefulness of the regulation review activities undertaken by the ORR is found in:
  - the decision by the New Zealand Government to establish RIS systems based on those implemented by the Commonwealth Government; and
  - the review of regulation making systems undertaken by the Scrutiny of Acts and Regulations Committee (2002) of the Victorian Parliament, which recommended that features of ORR be used to strengthen and enhance the Victorian Office of Regulation Reform (box C.).

Box C.2 **An independent perspective on the ORR**

In March 2000 the Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee, Victoria Parliament began an evaluation of the existing Victorian regulatory system and an analysis of regulatory systems in other Australian jurisdictions and in six jurisdictions in the United States. The Committee reported thus:

> At the Commonwealth level, the Committee found that the Office of Regulation Review (the Commonwealth ORR) plays a key role of reviewing the RISs prepared by department and agency staff. To avoid any confusion as to whether or not a RIS needs to be prepared, the Commonwealth ORR has been given responsibility for making this decision, thus ensuring a more consistent approach across the Commonwealth Government. The Commonwealth ORR also has responsibility for reviewing RISs before they proceed to Cabinet. The Commonwealth ORR has fostered strong working relationships with department and agency staff, working alongside them to achieve the most appropriate outcome (whether regulatory or non-regulatory). The Committee notes that the Commonwealth ORR also provides regular and ongoing training to department and agency staff, thus ensuring that new and existing staff familiarise themselves and remain up-to-date with the best methods of preparing RISs. The Committee was particularly impressed with the work done by the Commonwealth ORR and would like to see the Victorian ORR similarly strengthen and enhance its role.

D Recent developments in regulatory review and reform in the States and Territories

Regulation and its Review 2000-01 (PC 2001a), presented a summary of the Regulation Impact Statement (RIS) requirements in place in each of the States and Territories. Given that broader regulation review and reform policies for most States and Territories have essentially remained unchanged over the last year, this appendix focuses on incremental developments in RIS requirements and other regulatory review activity in each jurisdiction.

D.1 Highlights in 2001-02

In the last twelve months, Western Australia has introduced a requirement for RISs (limited to an assessment of small business, and where relevant, regional impacts).

South Australia has also recently introduced a process requiring all proposals for consideration by Cabinet to assess potential impacts upon the community, small business, the environment, families and regions. All new acts, regulations, mandatory standards and codes (and amendments to existing legislation) must be accompanied by a RIS evaluating the proposal's net public benefit in achieving its objective, compared to non-regulatory means.

During 2001-02 the ACT strengthened its commitment to the preparation of RISs through the *Legislation Act 2001 (ACT)* which extends the requirements for preparing RISs to subordinate legislation.

RISs are required for subordinate legislation in New South Wales, Victoria and Queensland, whilst in the ACT, Tasmania and South Australia, RIS requirements also apply to primary legislation.

The Northern Territory is now the only Australian jurisdiction that does not have RIS requirements.

The Commonwealth's RIS requirements differ from the various State and Territory requirements in a number of important aspects. Most States and Territories have specific legislation which imposes the RIS requirements, whereas, the Commonwealth RIS requirements result from government decisions. Many States and Territories have a requirement for the preparation of a RIS at the consultation stage of the policy development process. By contrast, preparation of a RIS for consultation is not mandatory under the Commonwealth's RIS requirements. While some Commonwealth agencies release draft RISs during consultation, there is no formal requirement for them to do so.

The following discussion summarises regulation review and reform developments in 2001-02, by jurisdiction, based on information provided by them.

D.2 New South Wales

New South Wales already has a regulatory reform framework in place, which includes requirements for Regulatory Impact Analysis (RIA). The past year has seen continued progress in reviewing and reforming regulations, including a review considering a best practice regulatory model for all plumbing and drainage regulation, and a review of the design of the NSW workers compensation scheme. This includes making recommendations for the optimum underwriting and insurance arrangements that support the delivery of workers compensation scheme objectives. The NSW Government also progressed the implementation of the on-line licensing project, which is designed to streamline processing of licences and enhance access for customers.

NCP reforms have also continued to be implemented, affecting the *Legal Profession Act 1987 (NSW)*, *Conveyancers Licensing Act 1995 (NSW)* and the *Valuers Registration Act 1975 (NSW).* These NCP-related reforms supplement statutory review requirements which can require a RIA for primary legislation, and the RIS requirements which apply to subordinate legislation.

D.3 Victoria

RISs must be prepared for all regulations which impose an appreciable burden, cost or disadvantage on a sector of the community. RISs must be prepared for all regulations, unless excepted or exempted under the Subordinate Legislation Act 1994 (VIC) (Scrutiny of Acts and Regulations Committee 2002).

The Victorian Government Business Statement *Building Tomorrow's Businesses Today* was released in April 2002. It states:

> The Government will continue to cut red tape, closely scrutinising proposals that impose an additional regulatory burden on business. We will ensure that, wherever possible, regulations will deliver real and practical benefits for the community while providing business (particularly small businesses) with flexibility in achieving compliance; accelerate the ongoing program to identify, review and reform those major pieces of legislation that act as a barrier to business growth; and ensure that new regulatory proposals do not proceed unless it is clear to Government that the benefits outweigh the costs and that non-regulatory alternatives have been fully explored. (Department of Innovation, Industry & Regional Development 2002, pp. 20–1)

Accompanying this statement was a commitment by the Victorian Government to provide $2 million over four years to transform how government agencies service businesses, under a whole-of-government initiative called EASY Government. This will enable business to lodge necessary application forms at Business Centres throughout Victoria. The initiative is designed to free-up time and effort for start-up companies.

D.4 Queensland

During 2001-02, a regulatory communication system was developed by the Business Regulation Reform Unit. The system, known as '*Queensland Regulations: Have Your Say*' has been introduced to assist business and the community to become involved early in the public consultation process, by clear public disclosure of the Government's regulatory intentions. *Queensland Regulations: Have Your Say* was launched by the Minister for State Development and is accessible through the Department of State Development 'SmartSite' website (www.sd.qld.gov.au/qldregulations).

In addition, the Business Referral Service, was established to provide business with access to detailed information and advice on government regulations, particularly compliance matters. This service enables businesses, with complex compliance queries, direct access to relevant experts within government. The service is incorporated in the Department's SmartLicence suite of services.

SmartLicence, a one-stop-shop for business licensing across the three tiers of Government, has developed a series of sectoral licensing packages for potential business participants. The packages outline licensing and regulatory requirements for particular business activities, for example, travel services, plumbing and restaurant and food catering. SmartLicence is also progressing the development of an on-line licensing system. Application for a number of licences can now be made on-line.

Due to the large number of local government authorities in Queensland, the Red Tape Reduction Task Force has taken a keen interest in examining the impact that local government regulation has on the business community. As a consequence, a survey into regulatory issues at the local government level has been conducted in cooperation with a large local government authority. The findings of the survey will assist in the development of a framework for further regulatory reform activities across local government within Queensland.

To complement this activity, a draft regulatory development guideline has been written in conjunction with the Department of Local Government and Planning to assist local governments in the development of their local laws. The guideline has been circulated to a number of local government authorities for comment.

In the past 12 to 18 months Queensland has substantially progressed the implementation of new legislation under its NCP legislation review schedule. The updated legislation regulates a broad range of sectors. For example, changes are being made to legislation affecting architects in the *Architects Act 1985 (QLD)* and *Architects Regulation 1985 (QLD)*, to implement recommendations of a National Working Group, which has considered a Productivity Commission report on the regulation of architects (PC 2000b).

Amendments are also under consideration in the *Professional Engineers Act 1988 (QLD)* and *Professional Engineers Regulation 1992 (QLD)*. A review of these acts was conducted by an interdepartmental committee, supplemented by a consumer representative and an independent member with engineering expertise. The Committee's review report was released in November 2000 and the review was finalised in 2001. The review recommended that future regulation of the profession be based on 'co-regulation' (ie joint administration by the engineering profession and a statutory body). The proposed amendments to the existing legislation are consistent with the review outcome.

Reviews of various areas of consumer protection legislation were completed 2001–2002, including the *Fair Trading Act 1989 (QLD)*; *Hire Purchase Act 1959 (QLD)*; *Building Act 1975 (QLD)*; *Sewerage and Water Supply Act 1949 (QLD)* and *Legal Practitioners Act 1995 (QLD)*.

D.5 South Australia

On 23 April 2002, South Australia introduced a new process requiring all regulatory proposals for consideration by Cabinet to assess potential impacts upon the community, small business, the environment, families and regions.

Any proposal that imposes non-trivial regulations on the community (including all new acts, regulations, mandatory standards and codes, and amendments to existing legislation) must be accompanied by a RIA evaluating the proposal's effectiveness and efficiency (in terms of net public benefit), in achieving its objective compared to non-regulatory means. The RIA must also incorporate an assessment of impacts on the community, including small business, the environment, families and regions.

A revised Guideline, No. 19, *Preparing Cabinet Submissions*, incorporates this new initiative and is to be re-issued in early in 2002-03 (Department of Premier and Cabinet, South Australian Government 2002).

D.6 Western Australia

In February 2001, the Western Australian Government established four Cabinet Standing Committees, to oversee Cabinet decision-making and advise Cabinet on the impact of State government policies and decisions on Western Australian communities. The Cabinet Standing Committee on Economic Policy also has a role in coordinating regulatory reform activity for business. This committee has established a Working Group on Regulatory Reform, to assist with the coordination of reform activity across government, develop best practice guidelines and advise on implementation of COAG's (1997) *Principles and Guidelines.*

In May 2001, Western Australia introduced a requirement to prepare Regional Impact Statements for Cabinet submissions affecting the nine non-metropolitan regions. In addition, the requirement to prepare Small Business Impact Statements was significantly strengthened in 2002. All Cabinet submissions which seek endorsement for regulatory, legislative or policy initiatives, likely to have a significant impact on small business, are required to be accompanied by a Small Business Impact Statement. This Statement documents who is affected and how, the direct and indirect costs associated with proposals, who has been consulted and implementation measures proposed to assist small businesses adapt to any change.

The Small Business Development Corporation (SBDC) also 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 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 web page.

D.7 Australian Capital Territory

The regulatory impact requirements in the ACT were strengthened in 2001-02 by the introduction of the *Legislation Act 2001 (ACT)*. This act requires all subordinate legislation (eg regulations, codes of practice, as well as primary legislation) be assessed for potential regulatory impacts. A RIS should be prepared where any subordinate law is likely to impose appreciable costs on the community, or part of the community. RIS guidelines are currently being prepared to assist staff engaged in policy and legislative development to determine what constitutes 'appreciable cost'. A RIS for subordinate legislation must be tabled in the Legislative Assembly, along with the explanatory material.

A RIS is required to be undertaken for all new and amended primary legislation, in accordance with Cabinet requirements. This RIS must be attached to relevant Cabinet submissions.

A Business Regulation Review Steering Committee was established in February 2002, to undertake a review of the implementation of the 1995 Red Tape Task Force Report (Department of the Treasury (ACT) 1995). The Committee identifies any regulatory processes which impose unnecessary burdens, costs or disadvantages on business activities in the ACT (particularly on small business) and can make recommendations about the implementation of regulations. The review will also consider inconsistent licensing and regulatory requirements between the ACT and NSW for cross-border business activities. The Committee will report back to Government in October 2002.

The ACT's *Consultation Manual 2001* was developed to assist government departments and agencies identify the views of stakeholders, to be taken into account when developing and modifying regulatory policies. The manual requires that the level of consultation should be commensurate with the scope and degree of regulatory impacts.

References

ABS 2001, Business Operations and Industry Performance, Australia 1999-2000 (8140.0).

Banks, G. 2002, The Drivers of Australia's Productivity Surge, Paper Delivered to Outlook 2002 conference, Canberra, 7 March.

Brunetti A., Kisunko G. and Weder B 1997, How Businesses See Government – Responses from Private Sector Surveys in 69 Countries, World Bank Paper, Washington DC.

Cabinet Office (UK) 2000a, Code of Practice on Written Consultation, London, http://www.cabinet-office.gov.uk/servicefirst/2000/consult /code/consultationcode.htm (accessed 2 September 2002).

——— 2000b, Good Policy Making: A Guide to Regulatory Impact Assessment, London, http://www.cabinet-office.gov.uk/regulation/2000 /riaguide/a03.htm (accessed 2 September 2002).

——— 2000c, Principles of Good Regulation, London, http://www.brtf.gov.uk/taskforce/reports/PrinciplesLeaflet.pdf (accessed 3 September 2002).

Chief Minister's Department (ACT) 2001, Consultation Manual 2001: Hands on Help for Planning Effective Consultation Strategies, http://www.act.gov.au/government/department/cmd/comliaison/consult/manual2001.doc (accessed 2 September 2002).

CoA (Commonwealth of Australia) 1992, The National Strategy for Ecologically Sustainable Development, AGPS, Canberra.

——— 1997, More Time for Business, Statement by the Prime Minister the Hon. John Howard MP, Commonwealth of Australia, 24 March 1997.

COAG (Council of Australian Governments) 1997, as amended, Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies, http://www.pc.gov.au/orr/coag.pdf

——— 1998, Compendium of National Competition Policy Agreements, Second Edition http://www.ncc.gov.au/pdf/PIAg-004.pdf

Coghlan, P. 2000, The Principles of Good Regulation, Achieving Better Regulation of Services, Conference Proceedings, AusInfo, Canberra, November.

Department of Innovation, Industry & Regional Development 2002, Building Tomorrow's Businesses Today: Competitive, Innovative, Connected, Victorian Government Business Statement April 2002, Melbourne http://www.business.vic.gov.au/businessstatement/ (accessed 15 August 2002)

Department of Premier and Cabinet (SA) 2002 Preparing Cabinet Submissions, Guideline No.19, Adelaide. (for re-issue early 2002–03).

Department of State Development (Qld) 2002, Guidelines on Alternatives to Prescriptive Regulation, Brisbane, http://www.sd.qld.gov.au/dsdweb/docs-bin/expand/brru_guidelines.pdf (accessed 16 September 2002).

Department of the Premier and Cabinet (WA) 2002, Consulting Citizens: A Resource Guide, Perth, http://www.ccu.dpc.wa.gov.au/ docs/guidecolour.pdf (accessed 16 September 2002).

Department of Treasury (ACT) 1995, Red Tape Task Force Report – from red tape to a blueprint for regulatory reform October 1995, Red Tape Taskforce, Canberra. http://www.act.gov.au/government /publications/policies/agreements/redtape/ (accessed 15 August 2002).

Department of Treasury ACT Government 2001 Consultation Manual 2001, Canberra. http://www.act.gov.au/government/ (accessed 15 August 2002).

IC (Industry Commission) 1996, Regulation and its Review 1995-96, Commonwealth of Australia, September.

OECD (Organisation for Economic Cooperation and Development) 1995, Recommendation of The Council of the OECD on Improving the Quality of Government Regulation, OECD, Paris.

——— 1997a, Regulatory Impact Analysis: Best Practices in OECD Countries, OECD, Paris.

——— 1997b, The OECD Report on Regulatory Reform, Synthesis, OECD, Paris.

——— 1997c, The OECD Report on Regulatory Reform, Vol. 2, Thematic Studies, OECD, Paris.

——— 1999a, Regulatory Reform in Mexico, OECD, Paris.

——— 1999b, Regulatory Reform in the Netherlands, OECD, Paris.

——— 1999c, Regulatory Reform in the United States of America, OECD, Paris.

——— 2000a, Regulatory Reform in Denmark, OECD, Paris.

——— 2000b, Regulatory Reform in Korea, OECD, Paris.

——— 2001a, Businesses' Views on Red Tape: Administrative and Regulatory Burdens on Small and Medium-Sized Enterprises, OECD, Paris.

——— 2001b, Regulatory Reform in Ireland, OECD, Paris.

——— 2001c, Regulatory Reform in Italy, OECD, Paris.

——— 2001d, Results of Member Countries' Answers to OECD's regulatory indicators questionnaire on government capacity to produce high-quality regulations, Room Document no. 4, Meeting of the Working Party on Regulatory Management and Reform, OECD, Paris, July 2001.

——— 2001e, The OECD/PUMA Multi-Country Business Survey Database, OECD, Paris, http://www.oecd.org/EN/document/0,,EN-document-325-9-no-1-22354-0,00.html (accessed 7 August 2002).

——— 2002a, Main Economic Indicators, OECD, Paris, August.

——— 2002b, Regulatory Policies in OECD Countries: From Intervention to Regulatory Governance, OECD, Paris (forthcoming).

Office of Regulation Reform (Vic) 2002, Principles of Good Regulation, Melbourne, http://www.dsd.vic.gov.au/Web/ORR/ORR.nsf /ImageLookup/PDF/$file/princip.pdf (accessed 3 September 2002).

ORR (Office of Regulation Review) 1998, A Guide to Regulation, Commonwealth of Australia, Second Edition.

OSB (Office of Small Business) 2001 Annual Review of Small Businesses, National Capital Printing, Canberra.

PC (Productivity Commission) 1999a, Implementation of Ecologically Sustainable Development by Commonwealth Departments and Agencies, Report no. 5, May.

——— 1999b, Impact of Competition Policy Reforms on Rural and Regional Australia, Report no. 8, Commonwealth of Australia, October.

——— 1999c, Microeconomic Reforms and Australian Productivity: Exploring the Links, Commission Research Paper, vol 1, November.

——— 2000a, Regulation and its Review 1999-2000, AusInfo, Canberra.

——— 2000b, Review of Legislation Regulating the Architectural Profession, Report No. 13, AusInfo, Canberra.

——— 2001a, Regulation and its Review 2000-01, AusInfo, Canberra.

——— 2001b, Cost Recovery by Government Agencies, Report no. 15, AusInfo, Canberra.

SBDTF (Small Business Deregulation Task Force) 1996, Time For Business: Report of the Small Business Deregulation Task Force, Commonwealth of Australia, November.

Scrutiny of Acts Regulations Committee 2002, Inquiry into the Subordinate Legislation Act 1994, Parliament of Victoria, September.

SSCRO (Senate Standing Committee on Regulations and Ordinances) 2002, 110th Report Annual Report 2000-02, the Parliament of the Commonwealth of Australia, March.

The Regulatory Consulting Group Inc & the Delphi Group 2000, Assessing the Contribution of Regulatory Impact Analysis on Decision Making and the Development of Regulations, Ottawa, August.

Victorian Scrutiny of Acts and Regulations Committee 2002, Inquiry into the Subordinate Legislation Act 1994 (VIC), Government Printer, Melbourne.

World Trade Organization (WTO) 1994, General Agreement on Trade in Services and Related Instruments, April, Geneva.