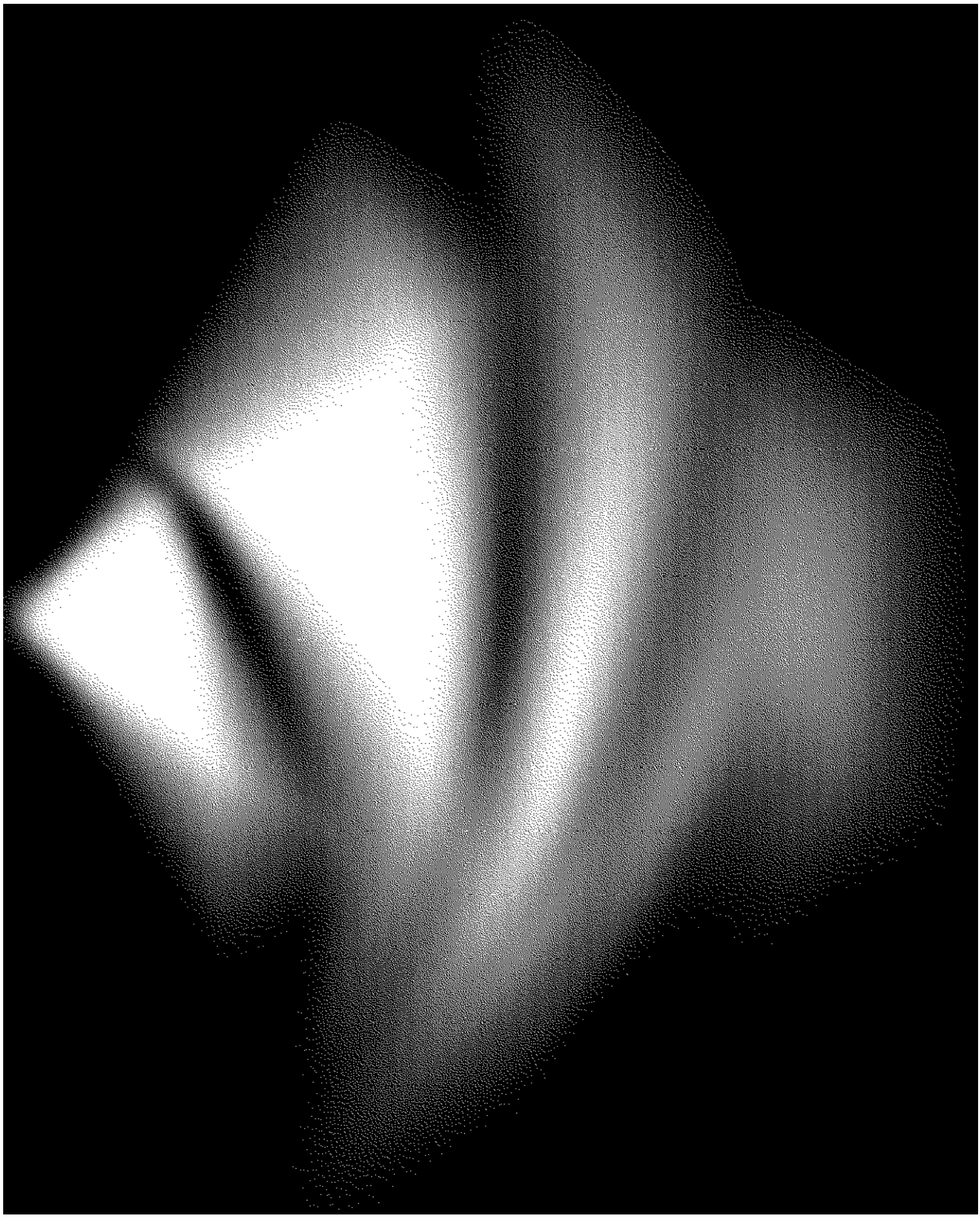
Regulation and its Review 2002-03

PRODUCTIVITY COMMISSION



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

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

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

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The Productivity Commission

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

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

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

Foreword

The Productivity Commission is required to report annually on regulation review and reform issues, including compliance by departments and agencies with the Australian Government's Regulation Impact Statement (RIS) requirements. The Commission also reports on National Competition Policy reviews of Commonwealth legislation and on the adequacy of RISs for regulatory proposals considered by Ministerial Councils and national standard-setting bodies. These processes are all designed to improve the quality of Australia's regulatory system, thereby enhancing regulatory outcomes.

This is the sixth such report. It forms part of the Productivity Commission's annual report series of publications for 2002-03. It draws on the work of the Office of Regulation Review, which advises, monitors and reports on compliance with the Government's RIS requirements.

This edition of *Regulation and its Review* provides RIS compliance information by department and agency over time. As in last year's report, RIS compliance information is provided for individual departments and agencies, with a focus on significant regulatory issues. The present volume also examines developments in regulatory policy in selected OECD countries.

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

Gary Banks
Chairman

November 2003

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Abbreviations

ABA	Australian Broadcasting Authority
ABCB	Australian Building Codes Board
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-G's	Attorney-General's Department
AMSA	Australian Maritime Safety Authority
APRA	Australian Prudential Regulation Authority
APMC	Australasian Police Ministers Council
AQIS	Australian Quarantine Inspection Service
ARPANSA	Australian Radiation Protection and Nuclear Safety Agency
ASIC	Australian Securities and Investments Commission
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
CRR	Committee on Regulation and Reform
COAG	Council of Australian Governments
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
DoTaRS	Department of Transport and Regional Services
EA	Environment Australia
EIA	Extended Impact Assessment
EU	European Union
ESD	ecologically sustainable development
FSANZ	Food Standards Australia New Zealand
GBRMPA	Great Barrier Reef Marine Park Authority
GM	genetically modified
IAC	Industries Assistance Commission
IC	Industry Commission
MCCA	Ministerial Council on Consumer Affairs
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
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget (USA)
ORR	Office of Regulation Review
PC	Productivity Commission
PIA	Preliminary Impact Assessment
PIMC	Primary Industries Ministerial Council
PM&C	Department of The Prime Minister and Cabinet
RBA	Reserve Bank of Australia
RIA	regulatory impact analysis
RIS	Regulation Impact Statement
RRU	Regulation Review Unit (Tasmania)

SARC	Scrutiny of Acts and Regulations Committee
SBC	Small Business Commissioner
SGG	synthetic greenhouse gases
SSCRO	Senate Standing Committee on Regulations and Ordinances (Australian Government)
UCCC	Uniform Consumer Credit Code

OVERVIEW

Key points

- An important element of the Australian Government's regulatory policy is the requirement to prepare Regulation Impact Statements (RISs) for proposed new and amended regulation which affects business.
- Many OECD countries have similar processes for improving the quality of regulations. Some countries have recently strengthened their requirements. The Australian Government's processes have a high degree of consistency with OECD best practice principles.
- Overall, the compliance of departments and agencies in 2002-03 with the RIS requirements at the decision-making stage of policy development was lower than the previous year:
  - Adequate RISs were prepared for 81 per cent of 139 regulatory proposals (compared to 88 per cent in 2001-02).
  - Compliance for regulatory proposals assessed as having a more significant impact on business and the community was noticeably lower at 46 per cent (compared to 70 per cent in 2001-02).
- As in previous years, compliance with the Government's RIS requirements varied considerably both among and within portfolios. While 12 departments and agencies achieved compliance rates of 100 per cent, 11 did not comply fully.
- In 2002-03, some departments and agencies took steps to integrate more effectively the RIS requirements into their broader policy development processes. However, others continue to treat the RIS process largely as an 'add-on'.
- Over the last five years, the average RIS compliance rate was 82 per cent. Of the 33 departments and agencies responsible for preparing RISs over this period, five were fully compliant in all years, with a further 17 being fully compliant in one or more years.
- In 2002-03, compliance by Ministerial Councils and national standard-setting bodies with the Council of Australian Governments' RIS requirements was 89 per cent, down from 97 per cent in 2001-02.

Overview

Regulations are essential for the proper functioning of society and the economy. Effective and efficient regulations can facilitate a wide range of community objectives without creating unnecessary burdens or imposts. Poor quality regulation can impose unnecessary costs, impede innovation and create unnecessary barriers to trade, investment and economic efficiency.

In many OECD countries, the last few decades have seen the extension of market-based mechanisms to areas where governments once made resource decisions. Governments have in turn been relying more on regulation to achieve societal objectives resulting in greater attention being paid to reviewing and reforming regulations. This has encompassed increased use of regulatory impact analysis, greater consultation with stakeholders, closer consideration of alternatives to regulation and initiatives to enhance the transparency of the policy development process and better inform decision makers. Allied with this, the concept of regulatory policy is developing into the wider notion of regulatory governance, which embraces issues such as transparency, accountability, efficiency, adaptability and coherence.

Most OECD countries have adopted explicit policies to improve regulatory quality. And almost all have adopted explicit and wide ranging regulatory reform programs, focusing on both the stock of existing regulations and the flow of new regulations. The OECD strongly supports the use of regulatory impact analysis as part of the policy development process. By the end of 2000, 14 of 28 OECD countries had adopted universal regulatory impact analysis programs and a further six were using this analytical framework for some regulatory proposals (OECD 2002a, p. 45).

The Australian Government has made a firm commitment to improving the quality of its regulation and reducing the burden of regulation on business. The Government's regulatory quality policies, including regulatory plans, Regulation Impact Statement (RIS) requirements and regulatory performance indicators, have a high degree of consistency with OECD best practice principles.

About 60 Australian Government departments and agencies and 40 Ministerial Councils and national standard-setting bodies have powers to prepare or administer regulations. The number of regulatory bodies contributes to concerns that regulation

and red tape continues to impose significant and unnecessary compliance costs on business and the community.

The Prime Minister's 1997 statement (*More Time for Business*) highlights the Government's commitment to reforming regulation making and, in particular, reducing compliance costs faced by business.

> In order to minimise the burden of regulation on business, the Government is firmly committed to reforming regulation making. … Minimising the regulatory burden on small business requires a change in the regulation making culture. Regulation should not only be effective, but also the most efficient way of achieving the objectives at hand. To foster this culture change, the Government will introduce reforms to the way regulation is made by requiring a cost-benefit analysis for regulation that is likely to affect business or restrict competition. (CoA 1997, pp. 65–6)

Since 1997, the principal instrument used to promote the Government's regulatory policy objectives — RISs — have been required for all regulatory proposals that affect business or restrict competition, including primary and subordinate legislation, quasi-regulation and treaties. RISs are designed to identify, consider and balance a wide range of economic, social, environmental and technological issues and impacts. They assist policy makers by laying out the impacts, costs and benefits of all viable options (including non-regulatory measures) for achieving policy objectives. The publication of final RISs (through tabling in Parliament or public release) increases transparency and enhances public confidence in government regulation making processes and the regulatory system.

The Office of Regulation Review (ORR) is part of the Productivity Commission. One of its functions is to advise the Government on whether the RIS requirements have been met, including whether the RIS provides an adequate level of analysis. The Productivity Commission is required to report annually on compliance with these requirements across Government departments and agencies.

Aggregate RIS compliance results for 2002-03

The Government's RIS requirements apply to all departments and agencies. About 1800 Bills, disallowable instruments and other regulations were tabled in Parliament or otherwise implemented in 2002-03, of which less than one-tenth were found to require a RIS.

- Of the 139 regulatory proposals that required the preparation of a RIS for the decision maker, the requirement was met in 120 cases, with 113 of those RISs assessed as containing an adequate level of analysis. Accordingly, the RIS compliance rate in 2002-03 was 81 per cent (table 1), somewhat lower than the previous year (88 per cent).

- The second requirement, that adequate RISs be tabled in Parliament with the explanatory material for Bills or disallowable instruments, was satisfied in 95 per cent of cases in 2002-03. This was slightly higher than in the previous year.

Table 1 **RIS compliance, by type of regulation, 2002-03**

Type of regulation	*Decision-making*			*Tabling* [a]		
	prepared	*adequate*		*prepared*	*adequate*	
	ratio	*ratio*	*%*	*ratio*	*ratio*	*%*
Primary legislation (Bills)	41/52	35/52	67	54/54	50/54	93
Disallowable instruments	54/61	54/61	89	60/62	60/62	97
Non-disallowable instruments	12/13	12/13	92	..	..	..
Quasi-regulation	9/9	9/9	100	..	..	..
Treaties	4/4	3/4	75	3/3	3/3	100
Total	**120/139**	**113/139**	**81**	**117/119**	**113/119**	**95**

.. Not applicable. [a] Compliance for Bills, disallowable instruments and treaties only are subject to formal assessment at this stage by the ORR.

The ORR classified each of the 139 proposals in 2002-03 by 'significance' — reflecting the nature and magnitude of the proposal and the scope of its impact. RIS compliance at the decision-making stage, for the 13 proposals identified as significant, was only 46 per cent in 2002-03. This compares with 85 per cent compliance for proposals with less significant impacts (table 2).

Table 2 **Compliance by significance and timeliness, 2002-03**

Significance rating	*Required*	*Prepared*	*Adequate*	*Compliance*	*Average elapsed time*
	no.	*no.*	*no.*	*%*	*weeks* [a]
More significant	13	9	6	46	5.4
Less significant	126	111	107	85	6.8
Total	**139**	**120**	**113**	**81**	**6.6**

[a] Time 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.

Departments and agencies are encouraged to integrate the RIS into their policy development processes and consult with the ORR at an early stage. The extent of 'lead time' can provide a partial indicator as to whether departments and agencies have undertaken a robust assessment of the impacts of regulatory proposals.

To gauge the timeliness of the preparation of RISs, the ORR records the amount of 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 2002-03, the average elapsed time was approximately six and a half weeks, compared with an average of three weeks in 2001-02 (chapter 2).

Where proposals restrict competition, the *Competition Principles Agreement* requires that RISs demonstrate that the benefits of restricting competition outweigh the costs, and that these benefits can only be achieved by restricting competition (NCC 1997). In 2002-03, 22 RISs considered restrictions on competition. Of these, 18 provided an adequate level of analysis. Therefore, the RIS compliance rate for regulatory proposals which involved restricting competition was 82 per cent — significantly higher than in previous years (chapter 2).

Compliance by departments and agencies

In 2002-03, 23 government departments and agencies made regulations which triggered the RIS requirements. Compliance results at the decision-making stage for these departments and agencies are shown in figure 1.

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 (shaded segments).

The compliance rate in 2002-03 for each department and agency, as a percentage of the number of RISs required, is shown at the end of each bar.

Compliance trends since 1998

Over the five years between 1 July 1998 and 30 June 2003, about 900 RISs were required at the decision-making stage for regulatory proposals. Of these, about 750 provided an adequate level of analysis — an overall RIS compliance rate over the five years of 82 per cent. Most of these RISs were published as part of explanatory material of legislation and are therefore publicly available.

Compliance results at the decision-making stage for departments and agencies with a high level of regulatory activity affecting business are shown in figure 2.

Of the 33 Government departments and agencies that were required to prepare RISs over that period, only two departments — Finance and Administration, and Defence — complied fully with the Government's RIS requirements. A further 17 departments and agencies were fully compliant in one or more years. A few have experienced ongoing difficulty in meeting the Government's RIS requirements (chapter 4).

Figure 1 **Compliance with RIS requirements at the decision-making stage, 2002-03**

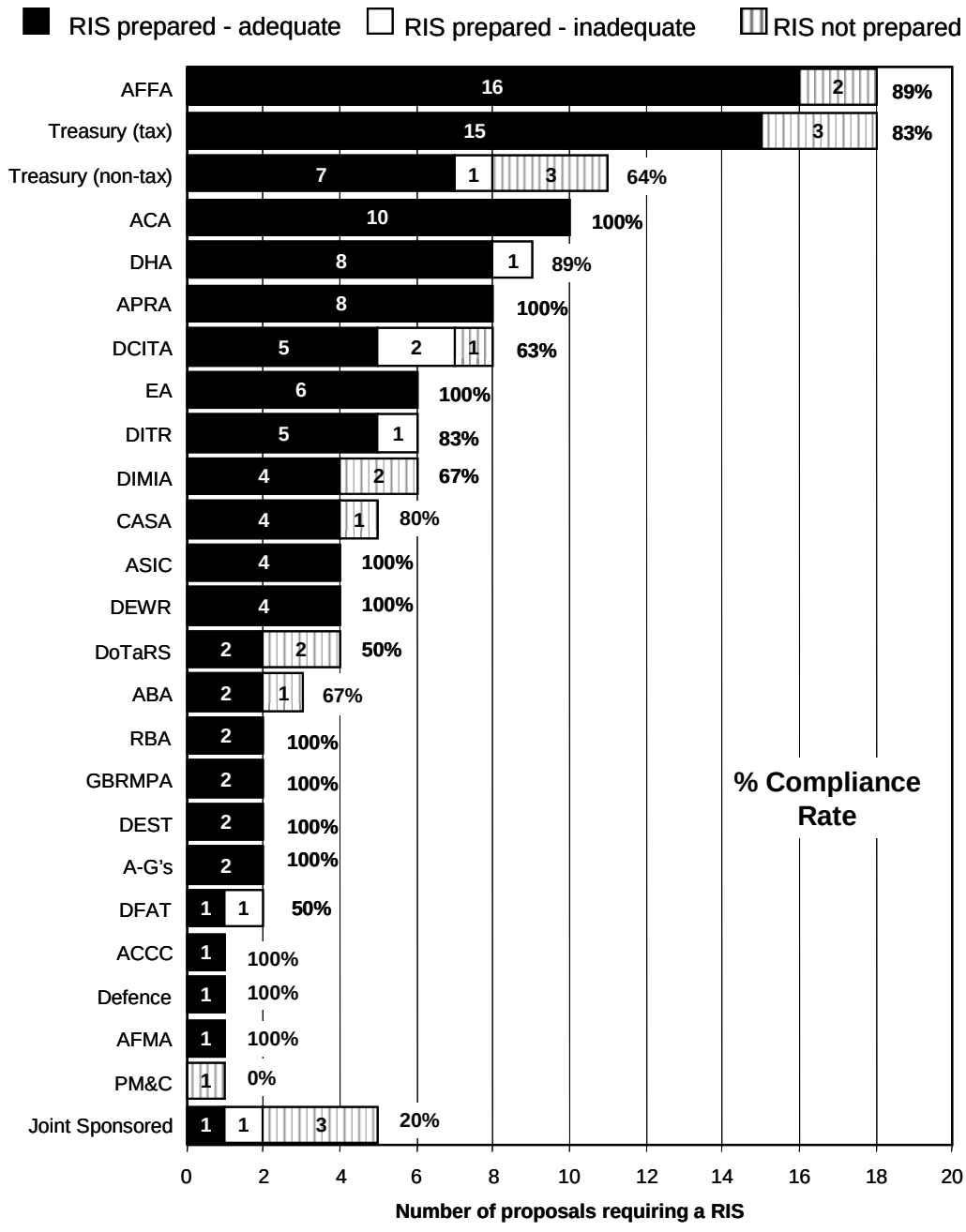
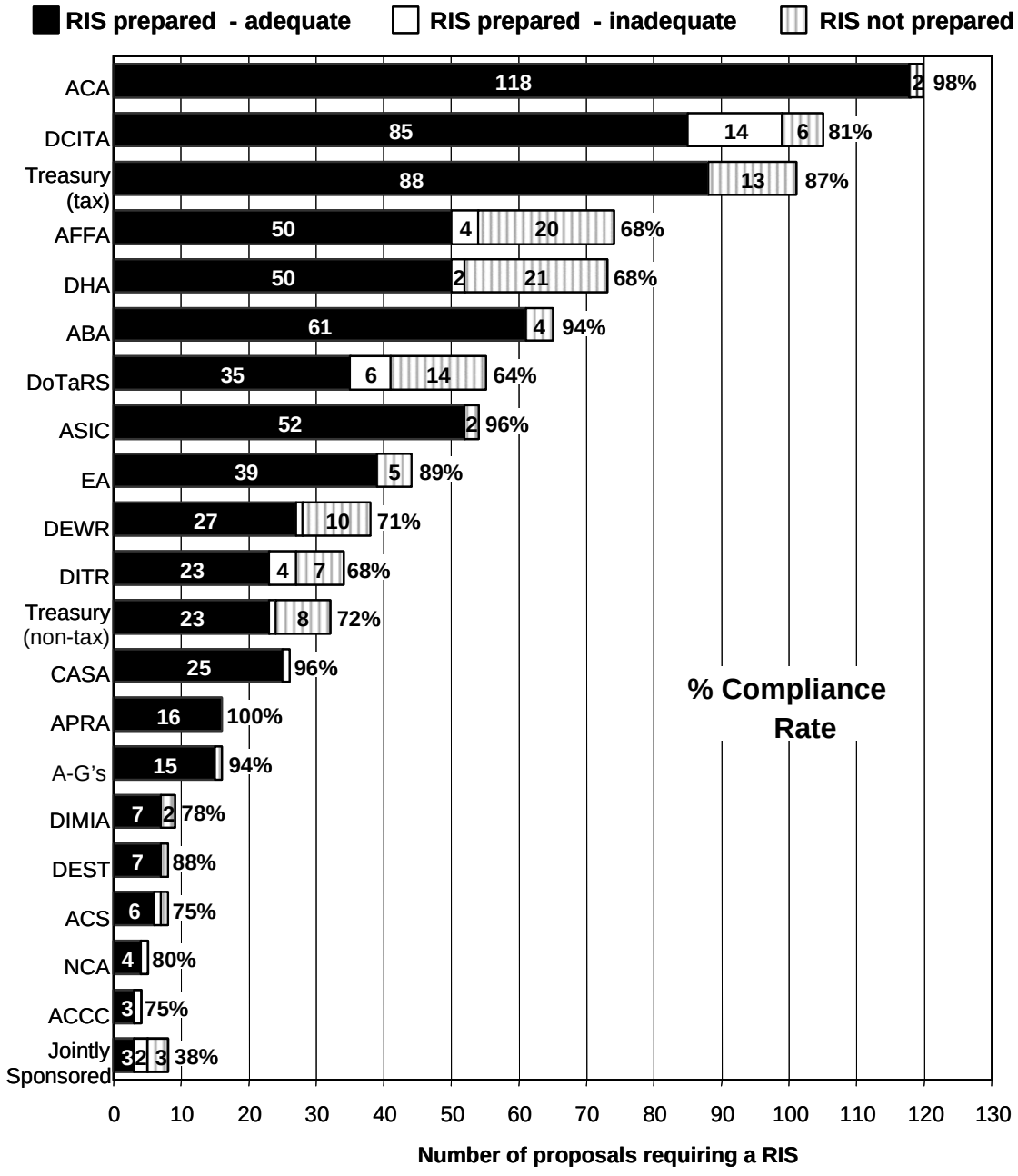


Figure 2 **RIS compliance by department and agency at the decision-making stage, aggregated 1998-99 to 2002-03**



Effective implementation

Best practice regulatory systems require not only high quality regulations, but also effective and efficient implementation of regulations by regulators. Indeed, many of the concerns about regulations are focused on how regulations are interpreted and applied by regulators, rather than the quality of regulations themselves. In particular, business and the community express concerns that regulators are

sometimes not accessible, or transparent and accountable in their decision-making. Some consider that regulators generate red tape and are not mindful of compliance burdens (especially on small business), and that regulatory requirements are sometimes not communicated effectively.

While the RIS process focuses primarily on documenting the policy development process, one of the seven key components of RISs deals explicitly with implementation issues. Key implementation issues which should be addressed in RISs include how the preferred regulatory option will be implemented, the level of flexibility and discretion that should be given to regulators, how compliance costs can be minimised and how (and when) the regulation will be reviewed.

The coverage of implementation issues in RISs complements and reinforces a range of other mechanisms and organisations within government which seek to ensure that regulators undertake their role in an effective and efficient manner and strengthen regulatory governance. These include the use of regulatory performance indicators and the roles played by the National Competition Council, Productivity Commission, Ombudsman, Inspector-General of Taxation and, potentially, the new Implementation Unit based within the Department of The Prime Minister and Cabinet (chapter 5).

National regulation making: RIS compliance results

Regulation making also occurs at a national or inter-jurisdictional level, among some 40 Ministerial Councils and standard-setting bodies involving Australian/State/Territory governments. 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 RIS requirements have been met.

In 2002-03, the ORR identified 24 matters as being subject to the COAG RIS requirements. RISs of an adequate standard were prepared for all but three of these matters. Accordingly, the overall compliance rate was 89 per cent. This was lower than the 97 per cent rate achieved in 2001-02 (appendix A).

Improving performance

Disaggregated information on RIS compliance suggests that:

- some departments and agencies continue to experience difficulty preparing RISs of an adequate standard for regulatory proposals; and
- there was a noticeably lower compliance rate for the more important regulatory proposals.

These findings suggest that a number of departments and agencies are still giving relatively low priority to the Government's requirements. Some are still treating the RIS as an 'add on' task — something to be undertaken after a course of action has already been decided.

Several steps can be taken by departments and agencies to help meet the Government's regulatory best practice requirements:

- There should be an effective system for planning regulatory reviews which is inclusive and involves stakeholders. Publication of up to date regulatory plans can help achieve this — but some regulatory departments and agencies do not publish such plans, or release plans which are incomplete and/or out of date.
- Some departments and agencies could follow the lead of others — notably the Departments of Agriculture, Fisheries and Forestry, and Health and Ageing — by appointing a senior executive officer who can coordinate the developments of RISs as part of the broader policy development processes. This can increase compliance with the Government's RIS requirements and ensure that RISs make a useful contribution to the development and assessment of policy options.

There is also a need for a greater focus on compliance costs. Such costs have a significant impact on business and the community — according to the OECD, compliance costs in Australia in the late 1990s exceeded $17 billion, or 2.9 per cent of GDP (OECD 2001). There is scope for departments and agencies preparing RISs to provide more information about these costs to decision makers. The ORR and the Office of Small Business (within the Department of Industry, Tourism and Resources) are currently working together to prepare a detailed guide which will help officials preparing regulatory proposals identify, measure and report on such costs.

1 Improving the quality of regulation

Regulatory review has developed from a focus on 'deregulation' and 'cutting red tape' to becoming an integral and ongoing part of good governance. Australia is recognised as being one of the leaders in developing processes to underpin good regulatory policy. A range of processes, initiatives and institutions aim to ensure high quality regulation, including the Australian Government's Regulation Impact Statement (RIS) process.

Over the last decade or so, many OECD countries have undertaken substantial regulatory reform — for example, in infrastructure related activities such as electricity, rail, shipping, airports and telecommunications. During the period, there has also been a significant increase in new regulations associated with the environment, health and safety.

In these areas and elsewhere, it is generally recognised that some degree of regulation is essential for a properly functioning society and economy. The challenge for government is to deliver effective and efficient regulation — regulation that is *effective* in addressing an identified problem and *efficient* in terms of minimising compliance and other costs imposed on the community. Poor quality regulation can impose unnecessary costs, impede innovation and create unnecessary barriers to trade, investment and economic efficiency.

Evolution in regulatory policies

The nature of regulatory management and reform has changed over the last few decades. What began as 'deregulation' evolved into a focus on regulatory reform — encompassing a mixture of deregulation, re-regulation and initiatives to improve the effectiveness of regulation. In more recent years, there has been growing recognition that government has an ongoing role in ensuring the quality of the regulatory system.

Today, the concept of 'regulatory policy' is developing into the wider notion of 'regulatory governance' (OECD 2002a). This development recognises that the tasks involved in exercising regulatory authority extend beyond the design and implementation of regulatory instruments, or their coordination, and embrace

governance issues such as transparency, accountability, efficiency, adaptability and coherence. Developing and implementing the concept of regulatory governance is now the focus of the regulatory policy agenda in many OECD countries.

1.1 Regulatory policy

The regulatory policy agenda is based on an integrated approach to three mutually supportive elements: regulatory policies, regulatory tools and regulatory institutions.

Explicit regulatory policies signal commitment to reform and aid transparency, as well as promoting consistency and coordination across different elements of a broader regulatory reform program. A central principle is the establishment of explicit responsibility for regulatory policy at both political and administrative levels, and the adoption of standardised appraisal systems for regulation making and regulatory review processes. Key elements of most policies also include adoption of explicit guiding objectives and the enunciation of principles of good regulation (OECD 2002a).

Regulatory Impact Analysis

Although not a new concept, Regulatory Impact Analysis (RIA)[1] has become one of the main initiatives employed by OECD countries to improve the quality of regulation and promote regulatory governance. Other tools include the systematic consideration of regulatory alternatives, wider public consultation and improved accountability arrangements (OECD 2002a, p.11).

Although only two or three OECD countries were using RIA in the early 1980s, by the end of 2000, 14 of 28 OECD members had adopted universal RIA programs and a further six were using this analytical framework for some regulatory proposals (OECD 2002a, p. 45). The use of RIA across OECD countries is illustrated in figure 1.1.

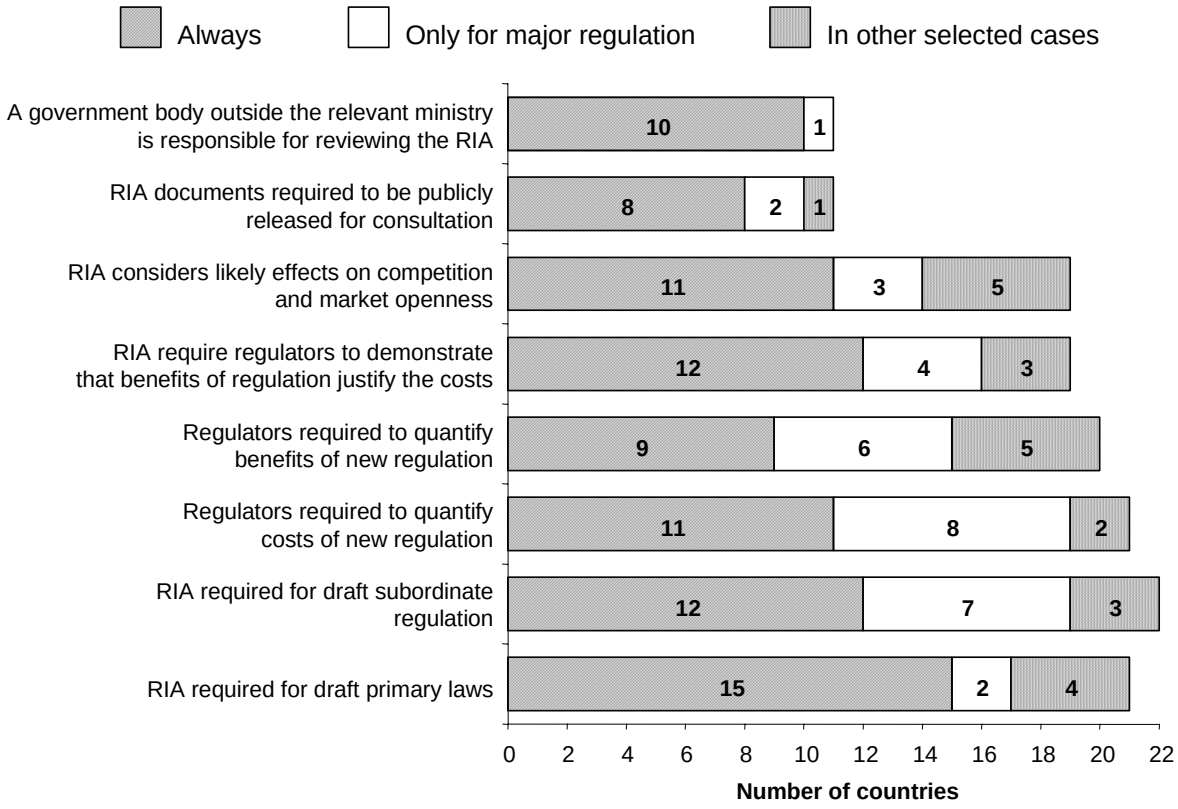
The United States and the United Kingdom are leading countries in implementing regulatory policy — including RIA.

- In the United States, reform of the regulatory process was introduced under an Executive Order of the President in September 1993. RIAs are required for all

[1] The OECD describes Regulatory Impact Analysis (RIA) as a decision tool, a method of systematically and consistently examining selected potential impacts arising from government action and a way of communicating the information to the decision maker (OECD 2002a, p. 45).

significant rules, regardless of the extent to which an agency is permitted by law to consider risks, costs or benefits when issuing regulations. Agencies are required to identify and assess alternatives to direct regulation and are encouraged to allow 60 days for the public to comment on proposed regulations. An independent agency — the Office of Information and Regulatory Affairs — is responsible for oversight of the Government's regulatory quality assurance system.

Figure 1.1 **Key aspects of regulatory impact assessments in 28 OECD countries, 1998**



Source: OECD (2002a, p. 46).

- In the United Kingdom, regulatory impact assessment for proposals that affected businesses, charities or voluntary bodies was introduced in 1998. A central unit — the Regulatory Impact Unit, located within the UK Cabinet Office — works with departments, agencies and regulators to: ensure departments prepare robust RIAs at three stages in the policy development process; consider alternatives to regulation; include RISs[2] for ministerial correspondence seeking collective agreement for 'significant proposals'; provide early and effective consultation

[2] A RIS includes RIA, the systematic consideration of regulatory alternatives and the documentation of public consultation.

with those affected; and actively manage the efficient and fair transposition of EC regulatory law to British statute (Cabinet Office (UK) 2003).

While the use of RIA is growing throughout the OECD, its impact is difficult to gauge. Hahn (1998) concludes that RIA appears to have helped yield more sensible regulations in some cases and also to have reduced the number of unnecessary burdensome regulations in others. While most OECD countries now use RIA, some are strengthening their requirements (discussed in appendix E).

Benefits of regulatory impact analysis

The main benefit of RIA is that it provides a systematic and consistent framework to assess the potential impacts arising from government action (OECD 2002a, p. 45). RIA attempts to clarify relevant factors for decision-making and make trade-offs explicit.

The RIA process also contributes to greater transparency of government decision-making. Improved transparency is regarded by the OECD as the most pressing area for change in many countries which have regulatory impact analysis requirements (OECD 2002a, p. 65). The OECD considers that increased transparency can address many regulatory failures such as regulatory capture, bias toward concentrated benefits/costs for particular groups, decisions based on inadequate information and lack of accountability. Transparency increases the incentives for policy makers to approach the policy making process in a best practice manner.

Some concerns about regulatory impact analysis

The institution of RIA is sometimes criticised for replacing political accountability with a mechanistic tool. However, as the OECD (2002a) has shown, this criticism is misplaced. In OECD countries, RIA is intended to complement good decision-making, not substitute for political accountability.

The OECD also notes that some interest groups and regulators continue to oppose RIA as contrary to their ethos. A key issue appears to be the role of RIA in making explicit the trade-offs implicit in all policy action, as well as the limits to government's power to act (OECD 2002a, p. 49). Such notions are sometimes perceived as challenging the ideals and objectives of some interest groups and regulators.

The OECD highlights the issue of conflicting incentives for regulators (OECD 2002a, p. 51). Regulators are under constant pressure to make decisions quickly,

particularly where political imperatives intervene. Analysis and consultation can slow down the process. However, it is precisely in such situations, where governments are under great pressure to 'do something' and do it quickly that good process is needed to ensure that all of the potential impacts of proposed regulation — costs, as well as the benefits— are given adequate consideration. Speed of action should not preclude good process.

Further, where best practice processes are in place, with RIA integrated into policy development processes, little additional work — and, hence, time — should be involved in complying with RIA requirements. Notwithstanding this, and the growing use of RIA in OECD countries, the need to ensure that RIA is integrated into decision-making is seen as a continuing challenge.

1.2 Regulatory policy in Australia

Among OECD countries, Australia is recognised as one of the leaders in regulatory policy. In Australia, regulations are required to be pro-competitive, with a focus on outcomes. An important objective is to avoid creating unnecessary burdens on business or the community. There is also a general agreement about the need to periodically review and reform regulatory arrangements to ensure that they remain appropriate. Further, the Australian Government's RIS process encompasses the main tools (RIA, the systematic consideration of regulatory alternatives, public consultation and accountability) that the OECD has identified as needed to improve the effectiveness and efficiency of regulation. New Zealand and a number of Australian jurisdictions have recently implemented RIS systems modelled on the approach taken by the Australian Government.

The Government's commitment

The Prime Minister's 1997 statement (*More Time for Business*) highlighted the Government's commitment to reforming regulation making.

> In order to minimise the burden of regulation on business, the Government is firmly committed to reforming regulation making. Improving the regulatory environment starts at the policy development level. (CoA 1997, p. 65)

The Government noted that a cultural change in regulation making was required.

> Minimising the regulatory burden on small business requires a change in the regulation making culture. Regulation should not only be effective, but also the most efficient way of achieving the objectives at hand. To foster this culture change, the Government will introduce reforms to the way regulation is made by requiring a cost-benefit analysis for regulation that is likely to affect business or restrict competition. (CoA 1997, p. 66)

To promote its objective to improve the quality of regulation, the Government announced at that time that RISs would be mandatory for legislation and regulation that has the potential to affect business. As part of this initiative, the Productivity Commission was asked to report on compliance with the Government's RIS requirements. The Office of Regulation Review (ORR), a separate unit within the Productivity Commission, advises on whether the Government's RIS requirements have been met — including the adequacy of RISs.

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

The primary role of a RIS is to improve government decision-making processes by ensuring that all relevant information is presented to the decision maker. In addition (after a decision is made) the RIS may be tabled in Parliament or otherwise made public, providing an open and transparent account of that decision.

The Prime Minister's 1997 statement highlighted the importance of the RIS *process* and not just the RIS *document* itself.

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

In 2001, the Government reaffirmed support for the RIS process in the form of a pre-election statement (*The Howard Government: Putting Australia's Interests First, Getting on with Business*).

> The Coalition will maintain its commitment that each Cabinet Submission is examined for its potential regulatory impact on small business. A formal Regulatory Impact Statement will be prepared for each relevant Cabinet Submission. This will ensure that Cabinet is fully briefed on likely regulatory impacts of Cabinet decisions on small business.

Also in 2001, the Government decided that, where relevant, RISs should include an assessment of ecologically sustainable development (ESD) impacts. And, in 2003, the Government decided that, where appropriate, the RIS should also include a cost recovery statement.

While the Australian Government's RIS process has a high degree of consistency with OECD regulatory best practice principles there is scope to strengthen the RIS process (see appendix E).

Complementary processes, initiatives and institutions

The Australian Government's RIS process complements similar requirements introduced by the Council of Australian Governments (COAG) and by State and Territory governments. The COAG RIS process which applies to national regulatory proposals is discussed in appendix A. The RIS requirements adopted by the States and Territories are discussed in appendix D.

The *Competition Principles Agreement* is another initiative that aims to improve the quality of regulation (NCC 1997). Amongst other things, it obliges the Australian, State and Territory governments to review and, where appropriate, reform legislation that restricts competition. (The Australian Government's legislation review program is discussed in appendix B.) Further, all new legislation that restricts competition must be accompanied by evidence that the benefits of the restriction to the community as a whole outweigh the costs, and that the objectives can only be achieved by restricting competition.

Regulatory plans also form part of the Government's strategy to improve regulation. These are required to be prepared by each department or agency and contain information on recent regulatory changes for the year just ended, as well as activities that could lead to regulatory review and change in the year ahead. (Regulatory plans are discussed in chapter 4.)

Regulatory performance indicators also seek to enhance the quality of regulation. Indicators for a range of regulation are prepared by the Office of Small Business (within the Department of Industry, Tourism and Resources) to facilitate an assessment, over time, of the effectiveness of regulation, including an assessment of administrative aspects, such as compliance costs. (Regulatory performance indicators are discussed in chapter 5.)

In 2003, it was announced that an Implementation Unit was to be established in the Department of The Prime Minister and Cabinet. The Unit is to have two main roles: to monitor and report on the effectiveness with which key programs and services are being delivered; and to ensure departments have carefully considered implementation issues in Cabinet submissions. There is also scope for this Unit to be involved in assessments of the effectiveness of the implementation of regulation.

Effective and accessible appeal provisions complement other measures to improve regulation and strengthen regulatory governance. In Australia, some decisions of regulators are subject to administrative review. A smaller number of decisions are subject to judicial review — seen by the OECD as 'the ultimate guarantor of transparency and accountability' (OECD 2002a, p. 75). Other avenues of review include the Commonwealth Ombudsman and the Inspector-General of Taxation.

These processes of government and similar implementation issues relating to regulation are discussed in more detail in chapter 5.

2 Compliance with RIS requirements

In 2002-03, compliance by Australian Government departments and agencies with the Regulation Impact Statement (RIS) requirements was lower at the decision-making stage than in previous years, but was marginally higher at the tabling stage. Compliance at the decision-making stage for the 13 proposals assessed as 'significant' was also noticeably lower in 2002-03 than in the previous year.

Regulations affecting business and the community can take various forms. These include primary legislation (Acts of Parliament) and subordinate legislation (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. This 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. International treaties can also be a form of regulation if they impact on business and generate expectations that businesses will comply with treaty provisions.

In accordance with the Government's requirements (box 2.1), RISs are required for regulatory proposals that have a direct or significant indirect effect on business or restrict competition. The Government's RIS requirements do not focus on the form a regulation takes (for example, an Act, statutory rule or mandatory standard), but on the intention to regulate and the likely impacts of proposed regulations. A regulatory proposal may be introduced via a single legislative instrument or may be introduced via a package of instruments.

Similarly, the number of RISs required at the decision-making stage reflects the policy development process. Usually a single RIS is required. However, where there are several major incremental decision-making points during the policy development process, RISs should be prepared for each.

Box 2.1 **Australian Government's RIS requirements**

A Regulation Impact Statement (RIS) provides a consistent, systematic and transparent process for assessing alternative policy approaches to problems. It includes an assessment of the impacts of the proposed regulation, and alternatives, on different groups and the community as a whole.

The primary role of a RIS is to improve government decision-making processes by ensuring that all relevant information is presented to the decision maker. In addition, after the decision is made, the RIS is tabled in Parliament or may be published elsewhere, providing an open and transparent account of that decision.

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

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

A RIS should be developed, in consultation with the Office of Regulation Review (ORR), once an administrative decision is made that regulation may be necessary, but before the Government or its delegated official makes a policy decision to regulate. If there are any doubts as to whether or not a regulatory review or proposed regulation qualifies for an exemption/exception from RIS requirements, the matter should be referred to the ORR at the earliest opportunity. It is important to note that it is the ORR — not individual departments, agencies, statutory authorities or boards — that decides whether a RIS should be prepared.

After receiving advice from the ORR that a draft RIS complies with the Government's requirements and contains an adequate level of analysis, it should be attached to the proposals to be considered by the decision maker — Cabinet, the Prime Minister, Minister(s) or board.

A RIS should be tabled with explanatory material. In the case of treaties, a RIS should be prepared when approval to commence negotiations is sought. It should be updated when approval is sought to sign the final text of a treaty, and made public when the treaty is tabled in Parliament. (The Australian Government must table proposed treaty actions in both Houses of Parliament at least 15 sitting days prior to taking binding action.)

Source: NCC (1997), ORR (1998).

2.1 Assessment of compliance

When assessing and reporting on compliance with the Government's RIS requirements, 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.[1]

A department or agency is considered to be fully compliant with the Government's requirements only if it meets these conditions. The ORR uses a number of criteria to determine whether the analysis contained in a RIS is adequate (box 2.2). It has adopted a strategy whereby a relatively low RIS adequacy standard was applied in 1997-98 (the first year in which their preparation was mandatory). Since 1998-99, this standard has been increased slightly each year as officials have become more familiar and experienced with the analytical approach required in RISs.

RIS compliance is reported in *Regulation and its Review* when the legislative instrument(s) implementing a regulatory proposal are tabled in Parliament (in the case of Bills and treaties), or are made (in the case of disallowable and non-disallowable instruments and quasi-regulations). Hence, the data reported here do not include regulatory proposals decided by the Government in 2002-03, but not introduced into the Parliament or made into law within that period.

Aggregate compliance in 2002-03

In 2002-03, 139 RISs were required at the decision-making stage. Of these, 120 were prepared and 113 were assessed as adequate by the ORR (a compliance rate of 81 per cent). This compares with compliance rates of 82 per cent in 1999-2000, 83 per cent in 2000-01, and 88 per cent in 2001-02 (table 2.1). As in previous years, failure to prepare a RIS accounted for the majority (nearly three-quarters) of non-compliance. Trends in RIS compliance are discussed in chapter 4.

At the tabling stage, 119 RISs were required, 117 were prepared and 113 were assessed as adequate by the ORR (a compliance rate of 95 per cent). Unlike previous reporting periods, most non-compliance (two-thirds) at the tabling stage was due to the inadequacy of prepared RISs.

[1] In accordance with the Government's RIS guidelines, RISs for proposals introduced via a Bill, disallowable instrument, or treaty must be tabled in Parliament with the enabling instrument. While there is no formal requirement for RISs for proposals introduced by other forms of instrument to be made public, the ORR encourages departments and agencies to do so.

Box 2.2 **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* (NCC 1997).

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 where appropriate, cost recovery issues.

Source: ORR (1998).

Differences in the total number of RISs required at the decision-making and tabling stages may occur for a variety of reasons. First, 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 quasi-regulation — may be made public, but are not subject to formal assessment by the ORR. Second, more than one RIS may be required at the decision-making stage if there are discrete and significant decision points in the policy development process. Third, differences will occur if a RIS is not required for the decision-making stage, but a RIS is prepared for publication.[2]

Table 2.1 **RIS compliance, 1998-99 to 2002-03**

	1998-99	*1999-00*	*2000-01*	*2001-02*	*2002-03*
Decision-making stage	203/260	169/207	132/160	130/147	113/139
	(78%)	*(82%)*	*(83%)*	*(88%)*	*(81%)*
Tabling stage[a]	202/228	163/179	118/133	116/123	113/119
	(89%)	*(91%)*	*(89%)*	*(94%)*	*(95%)*

a Compliance for regulatory proposals introduced via Bills, treaties and disallowable instruments (that are subject to formal assessment by the ORR).

Source: ORR estimates.

Significance

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.

While facilitating interpretation of compliance data, categorising regulatory proposals according to their significance and impact also provides a better basis on which to apply the 'proportionality rule' — that is, the extent of RIS analysis needs to be commensurate with the magnitude of the problem and with the size and potential impacts of the proposal[3].

Of the 139 proposals that triggered the Australian Government's RIS requirements in 2002-03, the ORR identified 13 proposals as having a significant impact on business and/or the community (table 2.2).

2 A RIS may not be required at the decision-making stage because the decision occurred before the requirements became mandatory or because the regulation is in response to an emergency situation such as a sudden and severe threat to public health and safety.

3 The approach used in classifying the significance of proposals is discussed in *Regulation and its Review 2000-01* (PC 2001a, p. 7).

Compliance at the decision-making stage for these more significant proposals was 46 per cent (70 per cent in 2001-02). For less significant proposals, compliance was 85 per cent (90 per cent in 2001-02). Although a number of factors can affect compliance, the difference in RIS compliance between significant and less significant proposals (and the fact that it appears to be growing) suggests that some departments and agencies have yet to adopt effective strategies to integrate the Government's RIS requirements into their policy development processes. (More information on significant proposals is provided in chapter 3.)

Timeliness

It was the Government's intention that the analytical framework underpinning a RIS should be used throughout the policy development process (*A Guide to Regulation*, p. A5). Consequently, departments and agencies are encouraged 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.

A relatively long time period between the ORR receiving the first draft of a RIS and when it advises whether the RIS requirements have been met at the decision-making stage 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 may be less likely that a RIS will make an effective contribution to policy development.

For more significant regulatory proposals in 2002-03, the average elapsed time between draft RISs being first provided to the ORR and the provision of ORR advice about the adequacy of the RIS at the decision-making stage was 5.4 weeks (table 2.2). This was an increase from an average elapsed time of 2.9 weeks for more significant regulatory proposals in 2001-02. For less significant regulatory proposals in 2002-03, the average elapsed time was 6.8 weeks (up from 5.3 weeks in 2001-02).

While these data indicate that departments and agencies have, in general, been contacting the ORR earlier in the policy development process, the difference in compliance rates for significant and less significant proposals is an ongoing area of concern.

Table 2.2 **Compliance by significance and timeliness, 2002-03**

Significance rating	*Required*	*Prepared*	*Adequate*	*Compliance*	*Average elapsed time*
	no.	*no.*	*no.*	*%*	*weeks*[a]
More significant	13	9	6	46	5.4
Less significant	126	111	107	85	6.8
Total	**139**	**120**	**113**	**81**	**6.6**

[a] Time 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 period (that is, several months or years).

Source: ORR estimates.

Multiple decision stages

In accordance with the Government's RIS requirements, RISs are required at the decision-making stage for proposals that impact on business. In some (generally significant) cases, there may be more than one decision-making stage. For example, the Government may consider a range of regulatory options to deal with an identified problem. Having made a decision on whether and how it wishes to intervene, it then separately considers implementation options. In 2002-03, three proposals followed a multi-stage decision-making process. Of the six RISs required at the various decision-making stages, three were prepared. Of these, only one was assessed as adequate.

Proposals that restrict competition

Restrictions on competition can impose substantial costs through higher prices, reduced choice and impediments to innovation and efficiency. Reflecting these costs — and to meet the requirements of the *Competition Principles Agreement* — where a proposal affects business by restricting competition, the RIS should demonstrate that the benefits of restricting competition outweigh the costs, and that the benefits can only be achieved by restricting competition (NCC 1997).

In 2002-03, there were only two significant proposals that restricted competition. An adequate RIS was not prepared for either proposal. (In the previous year, one of three significant proposals was accompanied by an adequate RIS.) Compliance for less significant proposals that restrict competition was markedly higher than in the previous year (table 2.3).

Table 2.3 **Compliance for proposals that restrict competition at the decision-making stage, 1999-2000 to 2002-03**

Significance rating	*1999-00*	*2000-01*	*2001-02*	*2002-03*
More significant	5/6	2/7	1/3	0/2
	(83%)	*(29%)*	*(33%)*	*(0%)*
Less significant	3/9	-	7/9	18/20
	(33%)	-	*(78%)*	*(90%)*
Total	**8/15**	**2/7**	**8/12**	**18/22**
	(53%)	***(29%)***	***(67%)***	***(82%)***

Source: ORR estimates.

2.2 Compliance by type of regulation

To obtain a better understanding of the possible reasons for non-compliance, the ORR also examines RIS compliance data by type of regulation (table 2.4).

Table 2.4 **RIS compliance, by type of regulation, 2002-03**

Type of regulation	*Decision-making*			*Tabling*		
	prepared	*adequate*		*prepared*	*adequate*	
	ratio	*ratio*	*%*	*ratio*	*ratio*	*%*
Primary legislation (Bills)	41/52	35/52	67	54/54	50/54	93
Disallowable instruments	54/61	54/61	89	60/62	60/62	97
Non-disallowable instruments	12/13	12/13	92	..	..	..
Quasi-regulation	9/9	9/9	100	..	..	..
Treaties	4/4	3/4	75	3/3	3/3	100
Total	**120/139**	**113/139**	**81**	**117/119[a]**	**113/119[a]**	**95**

.. Not applicable. [a] Aggregate compliance for Bills, treaties and disallowable instruments subject to formal assessment at this stage by the ORR.

Source: ORR estimates.

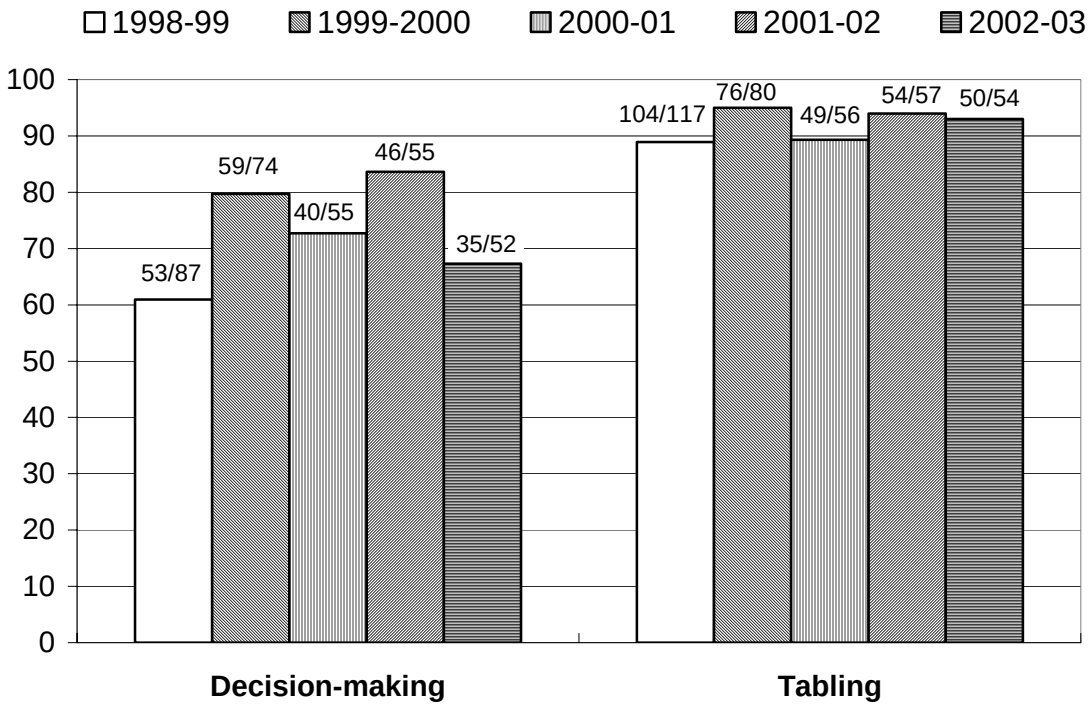
Primary legislation

There were 52 RISs required at the decision-making stage for proposals introduced by primary legislation (37 per cent of all RISs required). Of these, only 41 RISs were prepared and 35 were assessed as adequate (a compliance rate of 67 per cent). This represents a considerable drop in compliance compared with 2001-02. Of the

eight RISs required for significant proposals introduced via Bills in 2002-03, only four adequate RISs were prepared at the decision-making stage (see chapter 3). At the tabling stage, 54 RISs were required.[4] All were prepared, of which 50 (93 per cent) were assessed as adequate (figure 2.1).

The difference between compliance at the decision-making and tabling stages for proposals introduced via Bills, especially for significant proposals, may suggest that, after five years, some Government departments still regard the RIS process as an 'add-on'.

Figure 2.1 **RIS compliance, Bills, 1998-99 to 2002-03**
Per cent



Source: ORR estimates.

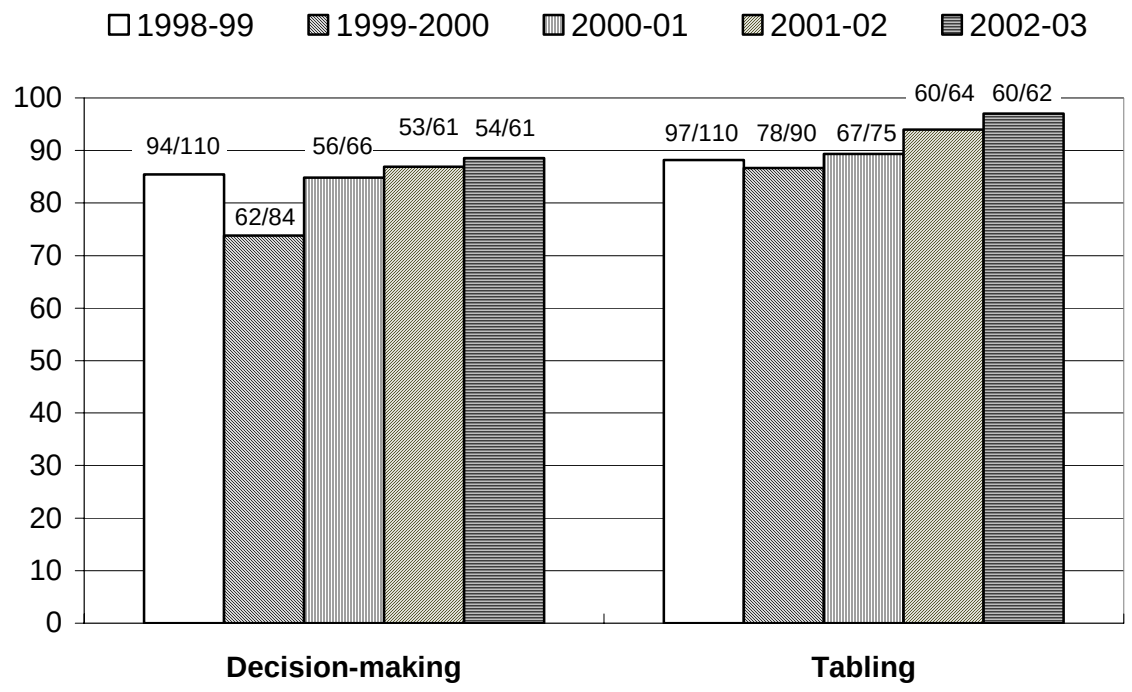
Disallowable instruments

Disallowable instruments are subordinate legislative instruments that are subject to review by the Senate Standing Committee on Regulations and Ordinances and disallowance by the Parliament.

4 Two decisions were made before the RIS requirements became mandatory.

In 2002-03, RISs were required for approximately 4 per cent of proposals introduced by disallowable instruments. (In previous years, the proportion has varied between 4 and 7 per cent.) Of the 61 RISs required at the decision-making stage (44 per cent of all RISs required), 54 were prepared and all were assessed as adequate (resulting in a compliance rate of 89 per cent — comparable with 2001-02) (figure 2.2). At the tabling stage, 62 RISs were required, 60 were prepared, and all were assessed as adequate (a compliance rate of 97 per cent).

Figure 2.2 **RIS compliance, disallowable instruments, 1998-99 to 2002-03**
Per cent



Source: ORR estimates.

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. Non-disallowable instruments accounted for only 9 per cent, and quasi-regulations only 4 per cent, of RISs required in 2002-03.

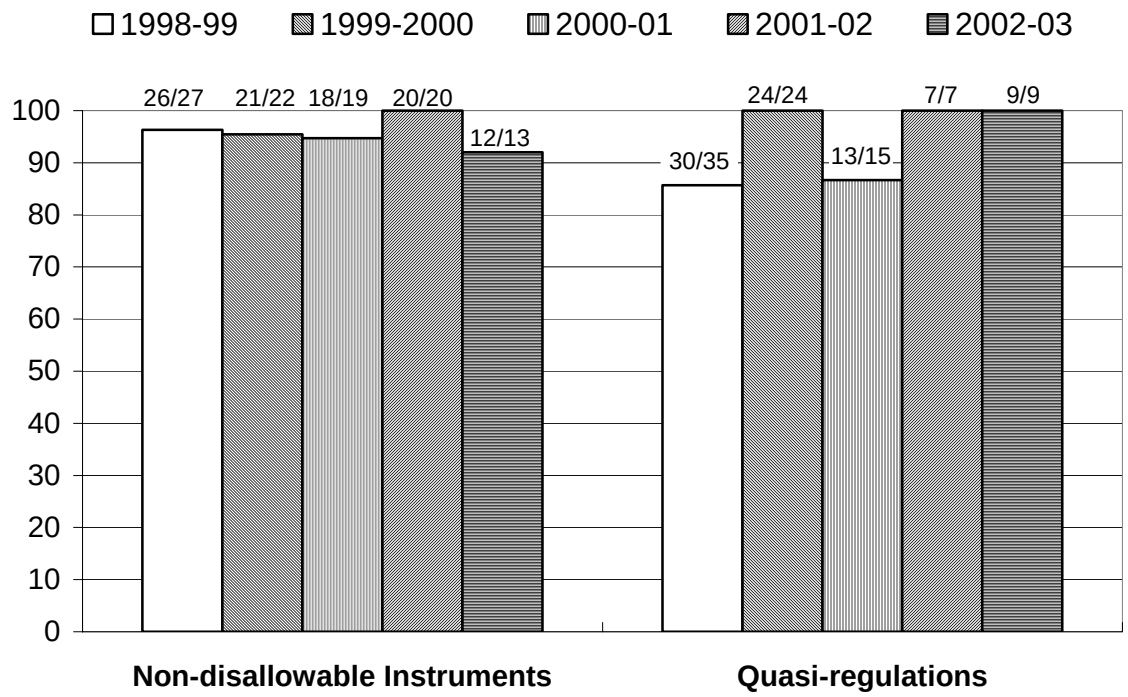
In 2002-03, departments and agencies reported 13 proposals made via non-disallowable instruments that required a RIS at the decision-making stage. In

12 cases RISs were prepared and cleared as adequate by the ORR, resulting in a compliance rate of 92 per cent (figure 2.3).

As in 2001-02, departments and agencies were fully compliant with the Government's RIS requirements for the nine quasi-regulations that required a RIS (figure 2.3).

Figure 2.3 **RIS compliance, non-disallowable instruments and quasi-regulations, 1998-99 to 2002-03**

Per cent



Source: ORR estimates.

Treaties

Under the Australian Government's RIS requirements, a RIS should be prepared at three stages of the treaty making process — before the formal policy decision to pursue treaty negotiations, prior to Australia signing a treaty and, finally, when the treaty is tabled in Parliament. Other countries also require RISs or a RIS-type analysis of the domestic impacts of treaties (see appendix E).

The RIS prepared for a treaty is an evolving document. Before the decision to pursue negotiations, the emphasis is on identifying the need for international action, the Government's objectives, options and the broad impacts of those options. Where negotiations extend over a long period of time, and the Government is asked to

make significant decisions before particular negotiation rounds, RISs may be prepared identifying the options and examining the impacts of those options. The RIS prepared for entry and RISs prepared for subsequent significant decisions on the negotiating position form the basis for the RIS prepared prior to signing, at which stage the economy-wide and sectoral impacts of the negotiated treaty text are fleshed out. As with RISs for other forms of regulation, the RIS for signing may contain in-confidence material. In these circumstances, the material is removed prior to tabling in Parliament.

In 2002-03, three treaties that required RISs were tabled in Parliament. Of these, one required a RIS at each of the three stages. The RIS prepared before the decision to pursue negotiations was assessed as inadequate. RISs prepared before signing and for tabling were assessed as adequate.

In the other two cases, adequate RISs were prepared at signing and at tabling. RISs were not required at the earlier stages as the decisions to enter into negotiations occurred before the Government's RIS requirements became mandatory.

2.3 National regulation making

Where there is agreement between jurisdictions, national regulatory decisions are made by Ministerial Councils and a small number of national standard-setting bodies. Some of these decisions are implemented by the passage of Australian Government 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 the Council of Australian Governments (COAG), the ORR has a role in monitoring and reporting on 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.[5] The ORR is required by COAG to assess:

- whether the COAG *Principles and Guidelines* have been followed;

[5] In November 1997, the COAG *Principles and Guidelines* were amended to require Ministerial Councils and national standard-setting bodies to provide draft RISs to the ORR for comment before undertaking public consultation (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.

- whether the type and level of analysis in the COAG RIS 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 national standard-setting body of its assessment.

The ORR also reports to COAG's Committee on Regulatory Reform and to the National Competition Council on compliance with the COAG Guidelines (see appendix A).

As with Australian Government RISs, it is not the ORR's role to advise on policy aspects of options under consideration, but rather to determine if the guidelines have been followed, the level of analysis is adequate and commensurate with the impacts, and whether alternatives to regulation have been adequately considered. The assessment of the merits of the policy proposal remains the responsibility of the relevant Ministerial Council or standard-setting body.

COAG RIS compliance is reported for the period 1 April to 31 March. Between 1 April 2002 and 31 March 2003, 27 regulatory decisions made by Ministerial Councils and national standard-setting bodies required preparation of a COAG RIS (table 2.5). Adequate RISs were prepared at the decision-making stage for 24 (a compliance rate of 89 per cent). The ORR identified six decisions as having a significant impact on business or the community. In four cases, adequate RISs were prepared (a compliance rate for significant proposals of 67 per cent). Further details are provided in appendix A.

Table 2.5 **COAG RIS compliance, regulatory decisions made by Ministerial Councils and national standard-setting bodies, 2000-01 to 2002-03[a]**

Decision-making stage	*2000-01*	*2001-02*	*2002-03*
All proposals	15/21 *(71%)*	23/24 *(97%)*	24/27 *(89%)*
Significant proposals	5/9 *(56%)*	6/6 *(100%)*	4/6 *(67%)*

a Data for 2000-01 relate to the period 1 July 2000 to 31 May 2001. Data for 2001-02 and 2002-03 relate to the period 1 April to 31 March. There is, therefore, some overlap between the reporting periods for the first two reports. However, for each decision included in both reports, Ministerial Councils were compliant with COAG's requirements.

Source: ORR estimates.

3 Compliance by portfolio

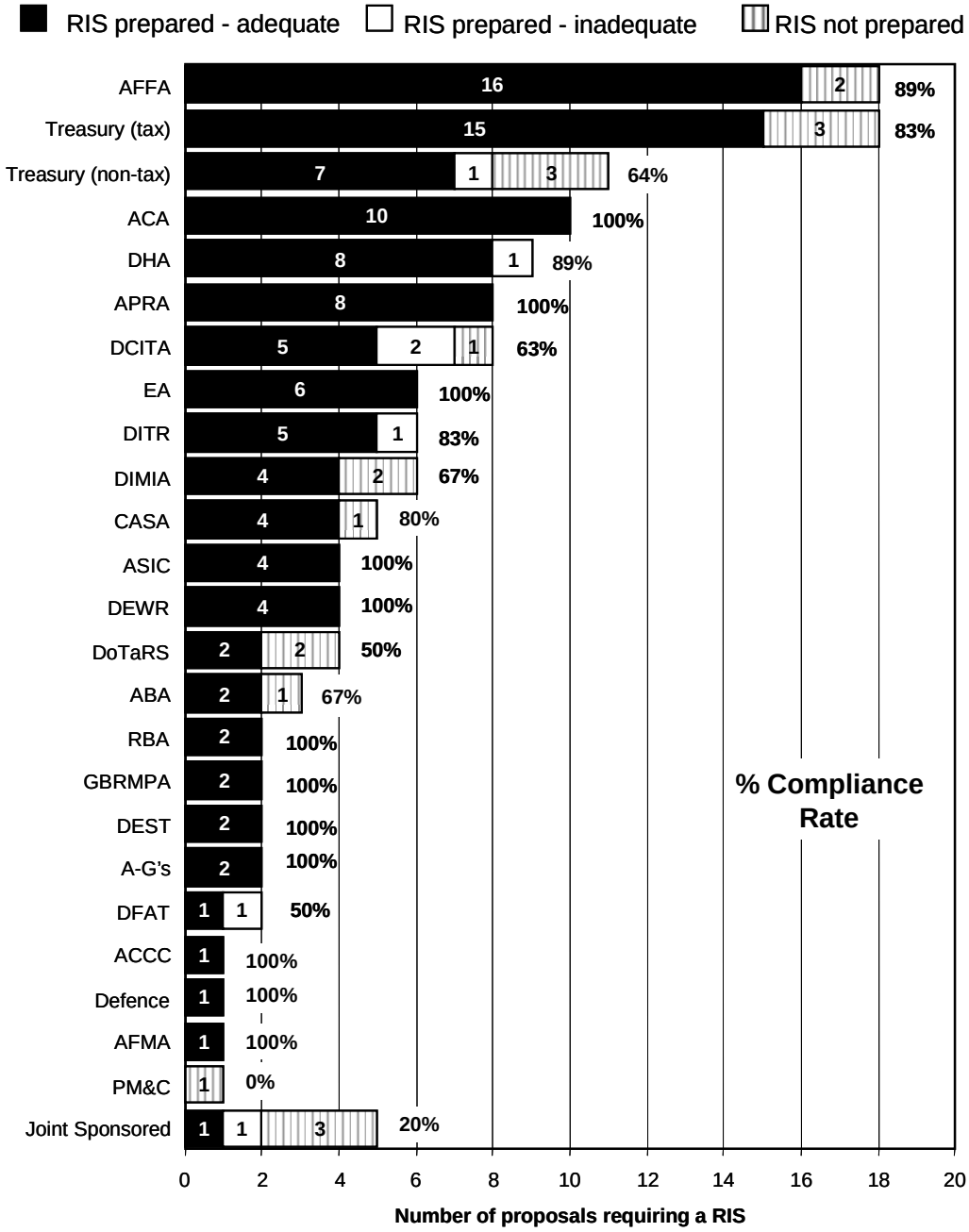
In 2002-03, as in previous reporting periods, compliance with the Government's Regulation Impact Statement (RIS) requirements varied significantly both among and within portfolios. Twelve departments and agencies were fully compliant. Seven departments and agencies were not compliant because they did not prepare RISs where required. Four departments and agencies prepared RISs where required, but some were assessed as inadequate.

In 2002-03, 23 departments and agencies developed regulatory proposals that triggered the requirements to prepare a RIS. Twelve departments and agencies were fully compliant with the Government's RIS requirements for all relevant regulatory activity at the decision-making stage. In the previous year, nine departments and agencies were fully compliant at the decision-making stage. Eleven departments and agencies did not comply fully with the RIS requirements in 2002-03.

Compliance at the decision-making stage is illustrated 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 denotes RISs that 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 shaded 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 for that department/agency, is shown at the end of each bar.

Departments and agencies did not prepare RISs in 19 of the 26 cases of non-compliance. Detailed compliance results for departments and agencies follow. A brief description of significant regulatory proposals is also provided to underline the importance of implementing the RIS process in the early phases of the policy development process.

Figure 3.1 **Compliance with RIS requirements at the decision-making stage, 2002-03[a]**



a When the Government's RIS requirements became mandatory, the Government introduced a modified RIS process for tax proposals. Compliance by the Department of the Treasury is accordingly reported for both tax RISs and non-tax RISs.

Source: ORR estimates.

Timeliness

As discussed in chapter 2, in order to help gauge how well departments and agencies are incorporating the RIS requirements into their policy development processes, the ORR has begun tracking the time taken from receipt of the first draft of the RIS to clearance of the RIS at the decision-making stage by the ORR. In most cases, the longer the elapsed time, the greater the likelihood that departments and agencies have integrated the RIS process into existing policy development processes.

On the other hand, where a department prepares an adequate RIS and the elapsed time is measured in days rather than weeks, this may reflect the urgency of the issue rather than the underlying commitment to the RIS process.

The elapsed time between receipt of the first draft of the RIS and its assessment at the decision-making stage by the ORR is presented for each department or agency. The average elapsed time for all Australian Government departments and agencies in 2002-03 was 6.6 weeks (up from 5.5 weeks in 2001-02). Subject to the comments noted above, this suggests that departments and agencies may be better integrating RISs into their policy development processes.

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.

Department of Agriculture, Fisheries and Forestry — Australia

In 2002-03, AFFA prepared 16 of the 18 RISs required at the decision-making stage (table 3.1). The ORR assessed all of these RISs as adequate, resulting in a compliance rate of 89 per cent at the decision-making stage. In addition, 18 RISs were required for tabling, of which 17 RISs were prepared by the Department and cleared as adequate by the ORR (a compliance rate of 94 per cent).

Following discussions between the ORR and AFFA in early 2003 on the preparation of RISs, both agencies agreed to a range of administrative changes to improve the effectiveness of the working relationship. The changes included AFFA appointing a senior officer as a central point of contact to improve coordination between the two agencies. Since that time, AFFA has achieved 100 per cent compliance with the Government's RIS requirements.

Table 3.1 **AFFA: RIS compliance by type of regulation, 2002-03[a]**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	2/2	2/2	2/2	2/2
Disallowable instruments	14/16	14/16	15/16	15/16
Total	**16/18**	**16/18**	**17/18**	**17/18**
Percentage	*89*	*89*	*94*	*94*

a The Department also shared responsibility for preparing a RIS for a joint proposal with the Department of The Prime Minister and Cabinet (see section 3.15).

Source: ORR estimates.

Significant issues

In 2002-03, AFFA introduced the *Australian Meat and Live-stock Industry Order 2002*, which specified how Australia's annual 378 000 tonne quota for beef exports to the United States was to be allocated from 2003. A RIS was not prepared to inform the decision-making stage. The report of the Quota Management Panel *Quota Allocation Arrangements for Beef Exports to the US — Year 2002 and Beyond*, was submitted to the ORR for assessment as a RIS for the tabling stage. The ORR determined that the report did not meet the Government's RIS requirements.

Timeliness

For AFFA in 2002-03, the average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 6.8 weeks. This compares with an average time across the Australian Government of 6.6 weeks.

Australian Fisheries Management Authority

In 2002-03, the Australian Fisheries Management Authority was fully compliant with the Government's RIS requirements, preparing one RIS that was assessed as adequate, at both the decision-making and tabling stages.

3.2 Attorney-General's

The Attorney-General's Department (A-G's) was fully compliant with the Government's RIS requirements in 2002-03, preparing two adequate RISs at the decision-making and tabling stages.

Table 3.2 **A-G's: RIS compliance by type of regulation, 2002-03[a]**

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

a The Department also shared responsibility for preparing a RIS for a joint proposal with the Department of Transport and Regional Services (see section 3.15).

Source: ORR estimates.

Significant issues

In 2002-03, A-G's introduced a proposal to specifically prohibit age discrimination under Australian Government anti-discrimination laws. An adequate RIS was prepared at the decision-making and tabling stages. The RIS drew on the recommendations of the House of Representatives Standing Committee on Employment, Education and Workplace Relations report, *Age Counts* (HoRSCEEWR 2000).

Timeliness

For A-G's in 2002-03, the average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was six days.

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 (DCITA); the Australian Broadcasting Authority (ABA); the Australian Communications

Authority (ACA); and the National Office for the Information Economy (NOIE). In 2002-03, NOIE was not required to prepare RISs.

Department of Communications, Information Technology and the Arts

In 2002-03, DCITA prepared seven of the eight RISs required at the decision-making stage. The ORR assessed five of the seven as adequate. At the tabling stage, the Department was required to prepare seven RISs, of which six were assessed as adequate.

Table 3.3 **DCITA: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	3/3	1/3	3/3	2/3
Disallowable instruments	3/4	3/4	4/4	4/4
Non-disallowable instruments	1/1	1/1	..	..
Total	**7/8**	**5/8**	**7/7**	**6/7**
Percentage	*88*	*63*	*100*	*86*

.. Not applicable.

Source: ORR estimates.

Significant issues

One significant proposal introduced in 2002-03 was the Government's response to the Productivity Commission's Inquiry Report on *Telecommunications Competition Regulation* (PC 2001b). The measures contained in this response aim to increase the level of competition and investment in the telecommunications market to the benefit of consumers and business by:

- facilitating timely access to basic telecommunications services;
- facilitating investment in new telecommunications infrastructure;
- encouraging a more transparent regulatory market; and
- enhancing accountability and transparency of decision making under Part XIB of the *Trade Practices Act 1974*.

A RIS prepared for the decision-making stage did not contain an adequate level of analysis. However, the RIS for tabling provided an adequate examination of these issues.

Timeliness

For DCITA in 2002-03, the average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 4.1 weeks. This compares with an average time across the Australian Government of 6.6 weeks.

Australian Broadcasting Authority

The ABA prepared two of three RISs required for three proposals at the decision-making stage. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was two days.

Table 3.4 **ABA: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Non-disallowable instruments	2/3	2/3	..	..
Total	**2/3**	**2/3**	..	..
Percentage	*67*	*67*	..	..

.. Not applicable.

Source: ORR estimates.

Australian Communications Authority

The ACA was fully compliant with the Government's RIS requirements in 2002-03. The ACA prepared ten adequate RISs at the decision-making stage. All of the four RISs required at the tabling stage were assessed as adequate. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 2.7 weeks.

Table 3.5 **ACA: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	4/4	4/4	4/4	4/4
Non-disallowable instruments	1/1	1/1	..	..
Quasi-regulations	5/5	5/5	..	..
Total	**10/10**	**10/10**	**4/4**	**4/4**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable.

Source: ORR estimates.

3.4 Defence

The Department of Defence prepared an adequate RIS at the decision-making and tabling stages for one proposal introduced via a disallowable instrument that required a RIS. The RIS was cleared within three days of receipt by the ORR.

3.5 Education, Science and Training

The Department of Education, Science and Training (DEST) was fully compliant with the Government's RIS requirements in 2002-03. It prepared two RISs, both assessed as adequate by the ORR, for two proposals (including a treaty) at the decision-making (signing) and tabling (ratification) stages. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 4.3 weeks.

Table 3.6 **DEST: RIS compliance by type of regulation, 2002-03**

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

Source: ORR estimates.

3.6 Employment and Workplace Relations

The Department of Employment and Workplace Relations (DEWR) was fully compliant with the Government's RIS requirements, preparing four adequate RISs at the decision-making and tabling stages. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 8.5 weeks. This compares with an average time across the Australian Government of 6.6 weeks.

Table 3.7 **DEWR: RIS compliance by type of regulation, 2002-03**

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

Source: ORR estimates.

3.7 Environment and Heritage

The Environment and Heritage portfolio includes the Department of Environment and Heritage (Environment Australia — EA), the Australian Greenhouse Office (AGO) and the Great Barrier Reef Marine Park Authority (GBRMPA). In 2002-03, compliance with the Australian Government's RIS requirements by the AGO is reported under Environment Australia and compliance with the Council of Australian Governments' *Principles and Guidelines* (COAG RIS compliance) is reported in appendix A.

Environment Australia

In 2002-03, EA was fully compliant with the Government's RIS requirements at the decision-making stage, preparing six adequate RISs. However, it was not fully compliant at the tabling stage. While Environment Australia prepared six adequate RISs at the tabling stage, a RIS was not tabled for one proposal.

Table 3.8 **EA: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills[a]	4/4	4/4	5/5	4/5
Disallowable instruments	1/1	1/1	1/1	1/1
Non-disallowable instruments	1/1	1/1	..	..
Total	**6/6**	**6/6**	**6/6**	**5/6**
Percentage	*100*	*100*	*100*	*83*

.. Not applicable. [a] Environment Australia was responsible for preparing one RIS at the tabling stage for which the Department of Transport and Regional Services and Environment Australia shared responsibility for RIS compliance at the decision-making stage (see section 3.15). An adequate RIS was prepared but not tabled.

Source: ORR estimates.

Significant issues

One significant proposal EA and the AGO were responsible for in 2002-03 was the development of a package of reforms to the Australian Government's ozone protection legislation. The reforms included proposed controls on the bulk import, export and manufacture of synthetic greenhouse gases (SGG) used as replacements to ozone depleting substances and on the import and manufacture of SGG in pre-charged refrigeration and air conditioning equipment. The Department and the AGO contacted the ORR early in the policy development process and consulted widely with stakeholders during the development of the proposal.

Timeliness

For EA in 2002-03, the average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 8.9 weeks (compared with an average time across the Australian Government of 6.6 weeks).

Great Barrier Reef Marine Park Authority

The GBRMPA was fully compliant with the Government's RIS requirements in 2002-03, preparing two RISs for two proposals introduced via disallowable instruments at the decision-making and tabling stages. Each was assessed as adequate by the ORR. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 3.7 weeks.

3.8 Foreign Affairs and Trade

The Department of Foreign Affairs and Trade was responsible for preparing RISs for the Singapore–Australia Free Trade Agreement which was tabled in Parliament in 2002-03. The Agreement is wide-ranging, covering tariff-free access for goods, improved market access for services (including specific commitments on sectoral markets for telecommunications, financial services and professional services), and cooperation and trade facilitation in key areas such as e-commerce, standards, education, intellectual property protection, competition policy and customs procedures.

RISs are required at three stages of the treaty-making process: entry into negotiations; at the signing of the Agreement; and at ratification. The Department prepared a RIS that was assessed as inadequate by the ORR at entry into negotiations, but was fully compliant at signing and at ratification. At the signing stage, the elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 9.1 weeks.

3.9 Health and Ageing

The Department of Health and Ageing (DHA) prepared nine RISs for proposals at the decision-making stage, of which one was assessed as inadequate (as it was not provided to the decision maker). At the tabling stage, the Department was fully compliant, preparing ten adequate RISs.

Table 3.9 **DHA: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*Prepared*	*adequate*
Bills[a]	4/4	3/4	5/5	5/5
Disallowable instruments[b]	4/4	4/4	5/5	5/5
Non-disallowable instruments	1/1	1/1	..	..
Total	**9/9**	**8/9**	**10/10**	**10/10**
Percentage	*100*	*89*	*100*	*100*

.. Not applicable. [a] The Department of Health and Ageing was responsible for preparing a RIS at the tabling stage for one proposal — medical indemnity insurance. Compliance for this proposal at the decision-making stage was the responsibility of the Department of The Prime Minister and Cabinet. [b] For one disallowable instrument, the decision-making stage predated the mandatory RIS requirements.

Source: ORR estimates.

In 2002-03, the DHA appointed a senior officer as a central point of contact to improve coordination between the Department and the ORR. Since that time, the DHA has been fully compliant with the Government's RIS requirements.

Significant issues

A significant proposal handled by the DHA in 2002-03 was a package of reforms to regulate the private health insurance industry. The reforms sought to streamline regulation and provide better value to consumers. An adequate RIS was prepared at both the decision-making and tabling stages.

Timeliness

For the DHA in 2002-03, the average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 7.6 weeks.

3.10 Immigration and Multicultural and Indigenous Affairs

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) introduced six proposals for which RISs were required during 2002-03. Four adequate RISs were prepared at the decision-making stage (a compliance rate of 67 per cent). At the tabling stage, the Department was fully compliant, preparing six adequate RISs. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 15.6 weeks, well above the Australian Government average of 6.6 weeks.

Table 3.10 **DIMIA: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	2/2	2/2	2/2	2/2
Disallowable instruments	2/4	2/4	4/4	4/4
Total	**4/6**	**4/6**	**6/6**	**6/6**
Percentage	*67*	*67*	*100*	*100*

Source: ORR estimates.

3.11 Industry, Tourism and Resources

In 2002-03, the Department of Industry, Tourism and Resources (DITR) prepared six RISs at the decision-making stage. The ORR assessed five of these as adequate (a compliance rate of 83 per cent). Seven RISs were required at the tabling stage, of which six were prepared and assessed as adequate (a compliance rate of 86 per cent).

Table 3.11 **DITR: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills[a]	2/2	1/2	2/2	1/2
Disallowable instruments[b]	4/4	4/4	5/5	5/5
Total	**6/6**	**5/6**	**7/7**	**6/7**
Percentage	*100*	*83*	*100*	*86*

a The Department also shared responsibility for preparing a RIS for a joint proposal with the Department of the Treasury (see section 3.15). **b** For one disallowable instrument, the decision-making stage predated the mandatory RIS requirements.

Source: ORR estimates.

Significant issues

In 2002-03, DITR was responsible for a proposal to extend the Automotive Competitiveness and Investment Scheme which covers industry assistance arrangements for the automotive industry. A RIS prepared for the decision-making stage was assessed by the ORR as not meeting the minimum standards of analysis required. The Department tabled this RIS with the legislation without consulting further with the ORR.

Another significant issue was the proposal to exclude the manufacture, supply and use of all spare parts (including those for motor vehicles) used for repairs from the industrial design registration system. The purpose of the exemption was to encourage increased competition in the market for spare parts. The RIS was assessed as adequate at both the decision-making and tabling stages.

Timeliness

For DITR in 2002-03, the average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 5.4 weeks.

Table 3.12 **DITR: RIS compliance for significant proposals, 2002-03**

Title of instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	*prepared*	*adequate*	*prepared*	*adequate*
ACIS Administration Amendment Bill 2003 & Customs Tariff Amendment Bill (ACIS) 2003				
Automotive industry assistance arrangements – extension of the automotive competitiveness and investment scheme	Yes	No	Yes	No
Designs Bill 2002				
Exemption of spare parts used for repairs from the design registration scheme	Yes	Yes	Yes	Yes
Total	**2/2**	**1/2**	**2/2**	**1/2**
Percentage	*100*	*50*	*100*	*50*

Source: ORR estimates.

3.12 Prime Minister and Cabinet

In 2002-03, the Department of The Prime Minister and Cabinet did not prepare a RIS at the decision-making stage for one regulatory proposal to address the issues of affordability of medical indemnity insurance and unfunded, incurred but not reported, liabilities.[1] RIS compliance for this proposal at the tabling stage was the responsibility of the Department of Health and Ageing.

3.13 Transport and Regional Services

The Transport and Regional Services portfolio includes the Department of Transport and Regional Services (DoTaRS), the Australian Maritime Safety Authority, the Civil Aviation Safety Authority (CASA) and the National Capital Authority (NCA). In 2002-03, the NCA was not required to prepare RISs.

[1] The Department of The Prime Minister and Cabinet also shared responsibility for preparing a RIS for a joint proposal with the Department of Agriculture, Fisheries and Forestry — Australia (see section 3.15).

Department of Transport and Regional Services

In 2002-03, DoTaRS was required to prepare four RISs at the decision-making stage. Of these, two were prepared and assessed as adequate, a compliance rate of 50 per cent at the decision-making stage. Of the seven RISs required for tabling, all were prepared and assessed as adequate. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was one week,[2] considerably less than the average time across the Australian Government of 6.6 weeks.

Table 3.13 **DoTaRS: RIS compliance by type of regulation, 2002-03[a]**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	1/3	1/3	6/6	6/6
Treaties	1/1	1/1	1/1	1/1
Total	**2/4**	**2/4**	**7/7**	**7/7**
Percentage	*50*	*50*	*100*	*100*

a The Department also shared responsibility for preparing a RIS for two joint proposals with the Attorney General's Department and Environment Australia (see section 3.15).

Source: ORR estimates.

Civil Aviation Safety Authority

In 2002-03, CASA prepared four of the five RISs required at the decision-making and tabling stages. The ORR assessed all four RISs as adequate, resulting in a compliance rate of 80 per cent at both the decision-making and tabling stages. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was three weeks.

[2] One RIS has been excluded from the calculation of the timeliness figures for the Department as this RIS was initially prepared in 1999 for a Bill which was later reintroduced in 2003.

Table 3.14 **CASA: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	4/5	4/5	4/5	4/5
Total	**4/5**	**4/5**	**4/5**	**4/5**
Percentage	*80*	*80*	*80*	*80*

Source: ORR estimates.

3.14 Treasury

In 2002-03, the Department of the Treasury (Treasury) was required to prepare RISs for tax and non-tax proposals. (Compliance for each are reported separately here.) Among the portfolio's agencies, the Australian Competition and Consumer Commission (ACCC), the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (RBA) were also required to prepare RISs.

Department of the Treasury (non-tax proposals)

In 2002-03, Treasury prepared eight of the eleven RISs required for non-tax proposals at the decision-making stage, one of which was assessed as inadequate. Adequate RISs were, however, prepared for all ten proposals that required a RIS for the tabling stage.

Table 3.15 **Treasury (non-tax): RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	4/7	3/7	7/7	7/7
Disallowable instruments	3/3	3/3	3/3	3/3
Non-disallowable instruments[a]	1/1	1/1	..	..
Total	**8/11**	**7/11**	**10/10**	**10/10**
Percentage	*73*	*64*	*100*	*100*

.. Not applicable. [a] RIS made public.

Source: ORR estimates.

Significant issues

In 2002-03, two significant issues included in the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002 were to provide for prudential supervision of the insurance business of medical defence organisations and for specification of minimum standards of medical indemnity cover. A RIS was not prepared for the decision-making stage, but one was prepared for the tabling stage and assessed as adequate by the ORR.

Timeliness

For Treasury in 2002-03, the average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 3.6 weeks.

Department of the Treasury (tax proposals)

Treasury prepared tax RISs for 15 of the 18 tax-related proposals for which a RIS was required to be prepared in 2002-03, all of which were assessed as adequate. Adequate tax RISs were prepared for all 19 of the proposals that required a RIS for the tabling stage.

Table 3.16 **Treasury (tax): RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills[a]	12/15	12/15	16/16	16/16
Disallowable instruments	3/3	3/3	3/3	3/3
Total	**15/18**	**15/18**	**19/19**	**19/19**
Percentage	*83*	*83*	*100*	*100*

a One tax-related RIS tabled by Treasury was the result of a jointly-sponsored decision-making process with the Department of Industry, Tourism and Resources (see section 3.15).

Source: ORR estimates.

Australian Competition and Consumer Commission

The ACCC was compliant with the Government's RIS requirements in 2002-03, preparing one RIS for a proposal introduced via a non-disallowable instrument.

Australian Prudential Regulation Authority

APRA fully complied with the Government's RIS requirements at both the decision-making and tabling stages in 2002-03. Adequate RISs were prepared for eight regulatory proposals that required a RIS at the decision-making stage. Seven of these RISs were required to be tabled. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was three weeks.

Table 3.17 **APRA: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	7/7	7/7	7/7	7/7
Non-disallowable instruments[a]	1/1	1/1	..	..
Total	**8/8**	**8/8**	**7/7**	**7/7**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable. [a] RIS made public.

Source: ORR estimates.

Australian Securities and Investments Commission

ASIC prepared adequate RISs for the four quasi-regulations that required RISs in 2002-03. There is no formal tabling requirement for quasi-regulation, but ASIC makes the RISs available to the public on request. The average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was a little over 29 weeks, reflecting ASIC's practice of preparing draft RISs at the consultation stage for some issues.

Table 3.18 **ASIC: RIS compliance by type of regulation, 2002-03**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Quasi-regulations	4/4	4/4	..	..
Total	**4/4**	**4/4**	**..**	**..**
Percentage	*100*	*100*		

.. Not applicable.

Source: ORR estimates.

Reserve Bank of Australia

The RBA was required to prepare RISs for two proposals introduced by non-disallowable instruments in 2002-03. Adequate RISs were prepared at the decision-making stage for the proposals and both were made public.

Significant issues

One significant proposal the RBA was responsible for in 2002-03 was the reform of credit card schemes in Australia. The proposal involved a standard on interchange fees, the removal of card scheme restrictions on freedom for merchants to charge according to the means of payment and the removal of restrictions on the eligibility of non-financial institutions to participate in card schemes.

Timeliness

For the RBA in 2002-03, the average elapsed time between receipt of the first draft RIS and assessment of the RIS at the decision-making stage by the ORR was 3.7 weeks.

3.15 Jointly-sponsored proposals

As noted in preceding sections, in 2002-03, there were five RISs required at the decision-making stage for four proposals that were jointly-sponsored.

The Attorney-General's Department and the Department of Transport and Regional Services were jointly responsible for RIS compliance at the decision-making stage for a proposal to introduce Disability Standards for Accessible Public Transport. An adequate RIS that examined the application of alternative standards to public transport, premises and infrastructure and assessed the impacts on industry and the disabled was prepared. The RIS also considered impacts on the aged and parents with infants and young children.

The Departments of The Prime Minister and Cabinet and Agriculture, Fisheries and Forestry did not prepare a RIS at the early decision-making stage for proposed reform of the sugar industry. The proposal resulted in an Australian Government commitment of up to $120 million to the Sugar Industry Reform Program to provide a range of measures to growers and industry including income support and adjustment assistance. This proposal was funded by the introduction of a 3 cents per kilogram statutory levy on sales of sugar for domestic human use. (A RIS was not

prepared by AFFA at the next decision-making stage. However, an adequate RIS was prepared by AFFA for the tabling stage.)

The Department of Transport and Regional Services and Environment Australia did not prepare a RIS at the decision-making stage for a proposal to impose requirements for labelling of transport fuels at the point of sale. (An adequate RIS for the tabling stage was prepared by Environment Australia, but was not tabled.)

The Departments of Industry, Tourism and Resources and the Treasury did not prepare a RIS for the Venture Capital Bill 2002 and Taxation Laws Amendment (Venture Capital) Bill 2002 at the first decision-making stage. A RIS, prepared for the second decision-making stage by both departments, was assessed as inadequate by the ORR. (The Department of the Treasury prepared a RIS at the tabling stage which was assessed as adequate.)

4 Compliance trends since 1998

Over the five years to 30 June 2003, a little over 900 Regulation Impact Statements (RISs) have been required at the decision-making stage for regulatory proposals that affect business. Of these, 82 per cent were assessed as adequate. Thirty-three departments and agencies have been responsible for preparing RISs over this period. Ten departments and agencies have achieved a compliance rate over the period as a whole of 90 per cent or more. Since 1 July 1999, when the ORR began reporting on RIS compliance by the significance of regulatory proposals, 87 RISs have been required for proposals deemed to be 'significant', of which 56 were assessed as adequate (a compliance rate of 64 per cent).

4.1 Overall compliance

Since 1 July 1998, 913 RISs have been required at the decision-making stage for regulatory proposals that have a direct or significant indirect impact on business, or restrict competition. Of the 787 RISs prepared, 747 were assessed as adequate by the ORR (a compliance rate at the decision-making stage of 82 per cent).

Notwithstanding a decline in 2002-03, the annual rate of compliance at the decision-making stage improved from 78 to 88 per cent over the four years to the end of 2001-02. As noted earlier, the standard of analysis required of RISs has been progressively increased over the period. Hence, these compliance rates understate the extent of the improvement.

Departments and agencies may be non-compliant because a RIS was not prepared or because the RIS was assessed as inadequate. Since 1998-99, the failure to prepare a RIS has been the major reason for non-compliance (about 75 per cent of such cases).

Compliance by significance

It is a concern that compliance with the Government's RIS requirements has tended to be poorest where it matters most. Since 1999-2000, the ORR has ranked RISs according to the perceived economic and/or social significance of the regulations

concerned. It has found that compliance at the decision-making stage was only 64 per cent for the 87 regulatory proposals with the most significant impacts on business or the community, compared with 86 per cent for less significant proposals. The reasons for non-compliance were evenly divided between the failure to prepare a RIS and inadequacy of the analysis. In contrast, over the same period, the failure to prepare a RIS accounted for 86 per cent of non-compliant RISs for less significant proposals.

Compliance for less significant proposals rose steadily from 83 per cent in 1999-2000 to 90 per cent in 2001-02, but dropped to 85 per cent in 2002-03. There is no clear trend in compliance for more significant proposals.

4.2 Compliance by department and agency

Since the introduction of mandatory RIS requirements, 33 departments and agencies have been responsible for preparing RISs and/or tax RISs.[1] In eight cases, responsibility for preparing RISs has been shared by more than one department or agency.

Only two departments (Defence and Finance and Administration) and three agencies (the Australian Accounting Standards Board, the Australian Prudential Regulation Authority and the Reserve Bank of Australia) have been fully compliant with the Government's RIS requirements over the period 1998-99 to 2002-03. Of these, the Australian Prudential Regulation Authority has been required to prepare RISs on an ongoing (as opposed to an infrequent) basis.

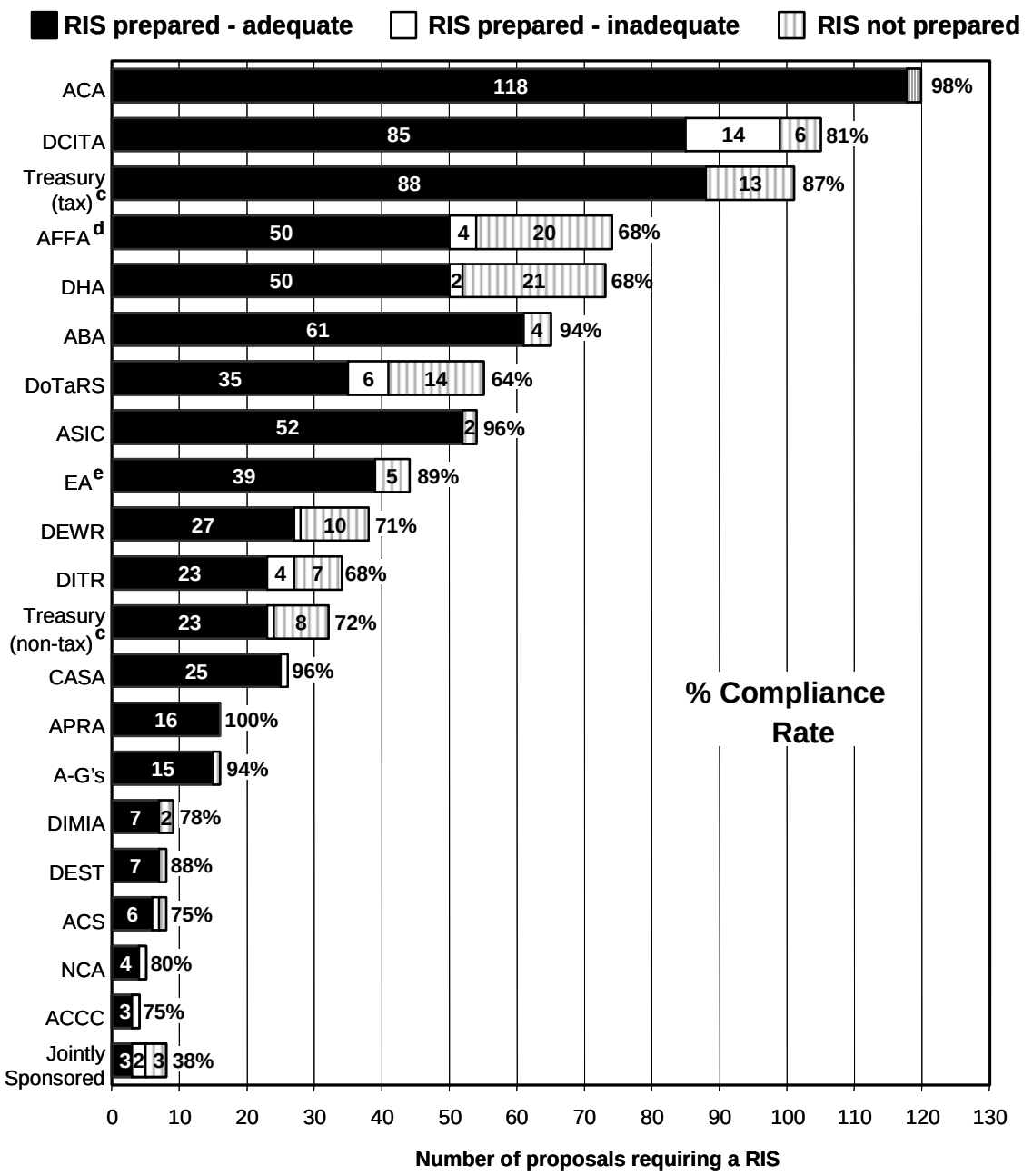
Other departments and agencies with better than 90 per cent compliance over the past five years are the Attorney-General's Department, the Australian Broadcasting Authority, the Australian Communications Authority, the Australian Securities and Investments Commission and the Civil Aviation Safety Authority.

Compliance at the decision-making stage between 1998-99 and 2002-03 for 19 departments and agencies is illustrated in figure 4.1. 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 the number of RISs that 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 shaded area shows the number of cases where RISs should have been prepared, but were not. The

[1] When the Government's RIS requirements became mandatory, the Government introduced a modified RIS process for tax proposals. Compliance by the Department of the Treasury is reported separately for tax RISs and non-tax RISs.

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 4.1 **RIS compliance by department and agency at the decision-making stage, aggregated 1998-99 to 2002-03[a, b]**



a Excludes data for five departments and six agencies that have had to prepare two or less RISs since the RIS requirements became mandatory. Of the 16 RISs required, nine adequate RISs and three inadequate RISs were prepared. Four RISs were not prepared. **b** Where no number appears in a bar, only one RIS was required. **c** When the Government's RIS requirements became mandatory, the Government introduced a modified RIS process for tax proposals. Compliance by the Department of the Treasury is accordingly reported separately for tax RISs and non-tax RISs. **d** Includes data for the Australian Fisheries Management Authority. **e** Includes data for the Great Barrier Reef Marine Park Authority.

Source: ORR estimates.

The breakdown shown in figure 4.1 suggests that of those departments and agencies with the highest regulatory activity, poor RIS compliance was concentrated among four departments: Agriculture, Fisheries and Forestry – Australia (AFFA); Health and Ageing (DHA); Industry, Tourism and Resources (DITR); and Transport and Regional Services (DoTaRS). These departments were responsible for preparing 158 RISs (17 per cent of the total required). In 62 of 78 non-compliant proposals involving these departments, RISs were not prepared. There is no apparent correlation between an agency's level of regulatory activity and its performance in preparing adequate RISs.

The Departments of Agriculture, Fisheries and Forestry and Industry, Tourism and Resources have, however, both significantly improved their annual compliance rates over the period, from 43 to 89 per cent, and from 33 to 83 per cent, respectively (table 4.1).

Over the last five years, 22 departments and agencies have been either fully compliant or were non-compliant because of one or two issues in a single year (table 4.1). Indeed, 24 departments and agencies had better than 90 per cent compliance in one or more years. These departments and agencies accounted for 80 per cent of regulations affecting business over the five years. In several other cases, where full compliance has not been achieved, there has been a steady increase in compliance over the period.

Compliance for tax proposals

In the case of tax proposals, compliance over the past five years has averaged 85 per cent. To improve compliance with the RIS requirements, the ORR has provided tax RIS training. The Australian Taxation Office has also prepared internal guidelines to assist staff in preparing tax RISs.

Compliance for jointly sponsored proposals

Of the eight RISs required for jointly sponsored proposals, only three adequate RISs were prepared at the decision-making stage. In two cases, inadequate RISs were prepared and, in three cases, RISs were not prepared for the decision-making stage.

Table 4.1 RIS compliance at the decision-making stage, by portfolio, 1998-99 to 2002-03

	Compliance rate					
Department/Agency	*1998-99*	*1999-00*	*2000-01*	*2001-02*	*2002-03*	Average
	%	%	%	%	%	%
Australian Communications Authority	100	100	90	100	100	98
Department of Communications, IT & the Arts	87	74	77	94	63	81
Department of the Treasury (tax)	88	94	75	86	83	87
Department of Agriculture, Fisheries & Forestry – Australia	43	67	75	83	89	68
Department of Health & Ageing	93	28	50	78	89	68
Australian Broadcasting Authority	87	100	100	100	67	94
Department of Transport & Regional Services	50	69	87	33	50	64
Australian Securities & Investments Commission	100	100	60	100	100	96
Department of Environment & Heritage [a]	63	88	100	92	100	89
Department of Employment & Workplace Relations	0	100	100	93	100	71
Department of Industry, Tourism & Resources	33	60	100	100	83	68
Department of the Treasury (non-tax)	75	86	50	83	64	72
Civil Aviation Safety Authority	100	100	100	100	80	96
Australian Prudential Regulation Authority	100	-	-	100	100	100
Attorney-General's Department	75	100	100	100	100	94
Department of Immigration & Multicultural & Indigenous Affairs	100	100	100	-	67	78
Department of Education, Science & Training	0	-	100	-	100	88
Australian Customs Service	33	-	100	100	-	75
National Capital Authority	-	75	100	-	-	80
Australian Competition and Consumer Commission	-	100	50	-	100	75
Reserve Bank of Australia	-	-	-	-	100	100
Australian Maritime Safety Authority	-	-	-	50	-	50
Department of Foreign Affairs & Trade	-	-	-	-	50	50
Australian Fisheries Management Authority [b]	-	-	-	0	100	50
Department of Family & Community Services	-	-	100	0	-	50
Department of The Prime Minister & Cabinet	100	-	-	-	0	50
Australian Accounting Standards Board	-	-	-	100	-	100
Department of Defence	-	-	-	-	100	100
Department of Finance & Administration	100	-	-	-	-	100
Food Standards Australia-New Zealand	-	0	-	-	-	0
Australian Trade Commission	-	-	0	-	-	0
Private Health Insurance Advisory Council	-	-	0	-	-	0
Jointly Sponsored Proposals	100	-	0	100	20	38
Average Compliance	**78**	**82**	**83**	**88**	**81**	**81.5**

a Includes compliance by the Great Barrier Reef Marine Park Authority. **b** AFMA's earlier compliance with the RIS requirements was reported under AFFA.

Source: ORR estimates.

4.3 Improving compliance

As reported above, an analysis of historical RIS compliance data shows that compliance for significant proposals has been consistently low relative to compliance for other, less significant proposals. Where a department, agency or the ORR has identified an ongoing problem with compliance, meetings between the ORR and the department can be held and additional RIS training can be provided. The ORR attempts to monitor regulatory activity for that department and provide prompt advice where a RIS may be required.

However, responsibility for compliance with the Government's RIS requirements ultimately rests with departments and agencies. There are a number of practical steps departments and agencies can implement to improve compliance.

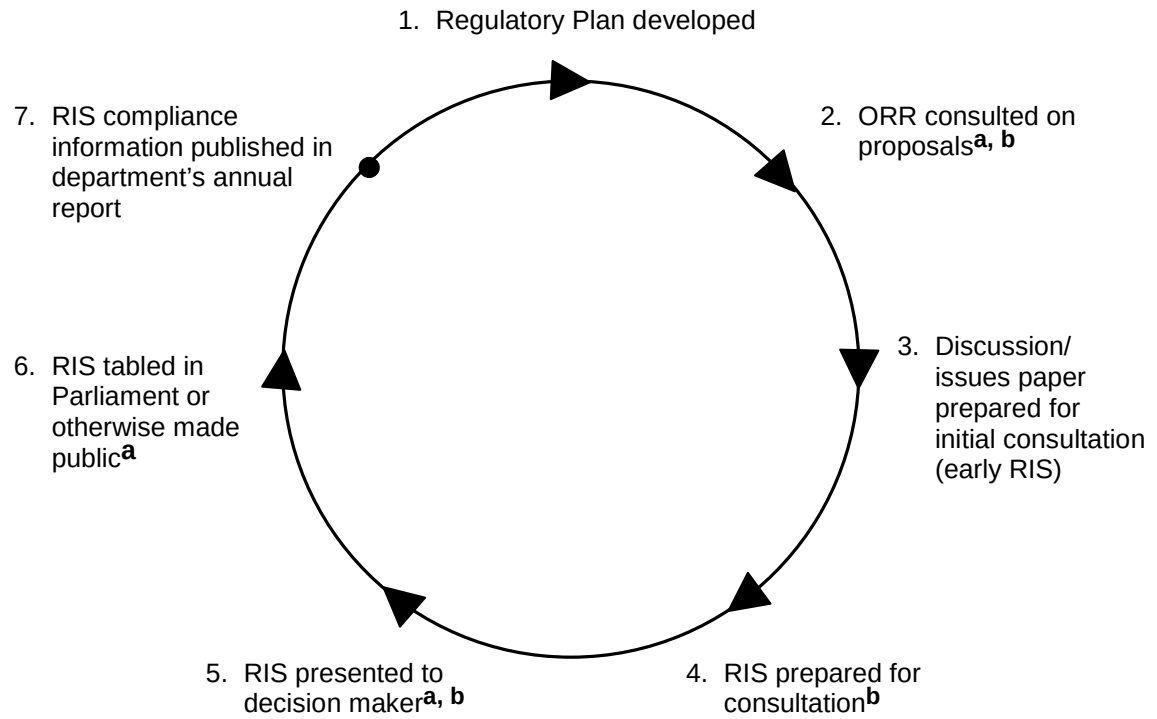
One approach is to establish a 'gate-keeper' within the policy co-ordination area of the department to ensure the RIS process is integrated early in the policy development process. In 2002-03, the Department of Agriculture, Fisheries and Forestry — Australia and the Department of Health and Ageing introduced such arrangements. Since their introduction, both departments have been fully compliant with the RIS requirements.

RIS requirements can be integrated into existing policy development processes by developing agency-specific guidelines. The Australian Taxation Office and the National Road Transport Commission (a COAG body) have adopted this approach.

There is also scope for departments and agencies to make greater use of regulatory plans, an initiative introduced by the Government to alert stakeholders to upcoming regulatory reviews and changes and, in the longer term, bring a strategic focus to the activities of these agencies.

The Australian Government requires departments and agencies to prepare formal regulatory plans which record their previous year's regulatory activity and, more importantly, their intentions for the year ahead. The plans focus on regulation and reviews of legislation which potentially require a RIS. As such, it is an important step in demonstrating the department's commitment to the Government's best practice regulatory process (shown in figure 4.2).

Figure 4.2 **Commitment cycle for the Government's RIS requirements**



a Minimum Australian Government RIS requirement. **b** Minimum COAG RIS requirement.

Source: ORR.

For proposed regulatory activities, the plan includes a description of the issue, information about consultation opportunities and an expected timetable. The timetable identifies major stages and milestones in the development of the regulation, including the preparation of a RIS. The Office of Small Business (in the Department of Industry, Tourism and Resources) administers the initiative. A central entry point is provided at http://www.industry.gov.au.

Regulatory plans can provide business and the community with ready access to information about past and planned changes to Australian Government regulation and make it easier for business to participate in the development of regulation that affects them. However, it appears that regulatory plans are not being fully utilised by departments and agencies. Of the 23 Government departments and agencies which prepared RISs in 2002-03, only 14 had prepared and published a current regulatory plan. The Office of Small Business has contacted departments concerning the matter.

There is also a concern that a number of significant regulatory proposals affecting business are not mentioned in some regulatory plans. For example, in 2002-03, only five of the twelve most significant regulatory proposals were included in regulatory

plans. While there may be cases where regulation is developed in response to issues not envisaged at the beginning of the year (and consequently not listed in plans), regulatory plans could be updated at shorter intervals to include the new proposals.

Preparing and regularly updating regulatory plans would assist departments and agencies to engage stakeholders early in the policy development process with the aim of achieving more efficient and effective regulation.

5 Effective implementation

Well designed regulation will not achieve the Government's objectives if it is poorly implemented. An important step in achieving this is an understanding of the factors that influence the community's willingness to comply with regulation. For effective implementation, careful consideration needs to be given to the way in which the regulation will apply in practice, how regulators will be held accountable for their decisions, and appropriate compliance and enforcement strategies. Once implemented, regulations should be regularly assessed to ensure that they continue to meet the Government's objectives, and that those objectives remain appropriate over time.

5.1 Encouraging compliance

The level of compliance by businesses and individuals with regulatory requirements is a fundamental determinant of the effectiveness of well designed regulation in meeting policy objectives. The OECD noted:

> Though there is little hard evidence, a growing body of anecdotes and studies from OECD countries suggests that inadequate compliance underlies many [regulatory] failures. This trend appears to be related to regulators' increasingly ambitious policy goals and the extent of the resulting 'regulatory inflation'. At the same time, diminished levels of social consensus as to regulatory goals may mean that the high degree of 'consent' which must underlie successful law-making may be diminishing. Lack of compliance is a common but little understood cause of regulatory failure. (OECD 2002a, p. 76)

Regulatory design and implementation must proceed from an understanding of the factors that determine the willingness of regulated groups to comply. Consequently, regulation should not be unduly prescriptive. Where possible, the regulation should be specified in terms of performance goals or outcomes. It should be sufficiently flexible to accommodate different or changing circumstances, and to enable businesses and households to choose the most cost effective ways of complying.

Minimising compliance costs

Compliance and paper burden costs are the additional (incremental) costs incurred by businesses when meeting the requirements of regulations. Compliance costs can usually be divided into two broad categories:

- one-off costs, such as acquiring sufficient knowledge to meet regulatory obligations, purchasing/leasing additional equipment, legal/consultancy fees and training expenses; and
- recurring and ongoing costs, such as staff costs or time, consumable materials, inspection fees/licences and enforcement costs (that is, costs arising from the need to devote additional time and resources to satisfying regulatory requirements).

Excessive, or unnecessary, compliance costs represent an inefficient use of resources. For small businesses in particular, the burden of assimilating and complying with many complex and technical rules can be particularly high and undermine confidence in regulators and the regulatory system. Consequently, ways to minimise compliance and paper burden costs of business need to be explored. The scope for trade-offs between compliance costs and administrative costs of government, such as the costs of implementing and monitoring regulations, should also be considered.

Consultation with business can provide an indication of the additional compliance costs each type of business (for example, small, medium and large, rural or urban) might incur. Where detailed information about compliance costs is not available, cost information can often be estimated by developing plausible assumptions and using available data on business costs and on the number of businesses likely to be affected by a regulatory proposal.

Recognising administrative costs

The Government's capacity to apply and enforce regulation is also important. Regulatory failures tend to lead to calls for more regulation, when the real problem might be a failure by regulators to enforce the regulations already in place. New regulations should be backed by sufficient budgetary and administrative resources to ensure their effective implementation and enforcement.

5.2 Improving implementation

The Commission has emphasised in successive reports over the years the essential characteristics of effective and efficient regulation — summarised in box 5.1. Good regulatory design is a necessary, but not sufficient, condition for efficient and effective implementation.

Box 5.1 **Checklist for assessing regulatory quality**

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

- Minimum necessary to achieve objectives
  - Overall benefits to the community justify costs
  - Kept simple to avoid unnecessary restrictions
  - Targeted at the problem to achieve the objectives
  - Not imposing an unnecessary burden on those affected
  - Does not restrict competition, unless demonstrated net benefit
- 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
  - Flexible enough to deal 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

Source: Argy and Johnson (2003).

As part of its regulatory quality assurance system, the Australian Government has adopted a number of ex ante and ex post processes or mechanisms to improve the implementation of regulation by government departments and agencies. Some of these are considered in the following discussion.

Regulation Impact Statements

The main focus of the Government's RIS requirements is to ensure that: regulation is necessary; the preferred form of regulation is the best option for dealing with the problem; and the costs of regulatory action on business, the Government and other stakeholders are minimised.

The implementation section of a RIS should state how the regulation should be administered, implemented and enforced.[1] It should also state how the recommended option will be monitored, with a view to its amendment or removal should the circumstances which led to its introduction change. The information should include an assessment of the feasibility of:

- a 'sunset' clause;
- ongoing arrangements for consulting with the interest groups affected;
- provision for regular review; and
- provision for regular reporting to the public, such as in an agency's annual report.

The implementation section of a RIS should also discuss the administrative simplicity of the proposal, including:

- an assessment of the impact on small business and ways to minimise compliance costs and paperwork burden associated with regulation;
- the feasibility of 'one stop' facilities for the regulation. This may in some cases involve consideration of the practicability of joint facilities or offices with another government agency, with an appropriate state or local government agency, or even with a related private agency;
- the feasibility of the administrative procedure being carried out by existing teams of staff in other departments or agencies; and
- whether it is appropriate to have an in-built authority to waive or modify the regulation in certain circumstances, and provide for an adequate appeal process.

[1] One of the seven key elements of a RIS focuses on implementation issues. *A Guide to Regulation* (ORR 1998) provides details of the information that might be required in the implementation section of a RIS.

Periodic review

Implementation strategies should also identify when and how proposed regulations will be assessed against the Government's objectives. Review processes help make regulators accountable for their actions. Such accountability requirements constitute a necessary corollary to transparency practices.

The review processes selected should reflect the significance of the regulation. For more significant regulations, an independent committee or statutory body should conduct the review. For less significant regulations, committees drawn from within the department responsible for policy development may be appropriate. Similarly, the appropriate level of consultation to be undertaken during the review will vary according to its significance. Where new regulation forms part of an existing regulatory structure, the framework as a whole, rather than the regulation in isolation, should be reviewed.

As part of the *Competition Principles Agreement* (to review and, where appropriate, reform legislation that restricts competition), COAG initiated a program to systematically review existing Australian Government, State and Territory legislation which potentially restricts competition — the legislation review program.

The Australian Government's legislation review program is broader than required by the *Competition Principles Agreement*. In addition to legislation which potentially restricts competition, it includes legislation that may impose costs or confer benefits on business. Once reviewed, legislation must be systematically reviewed at least every ten years. (The Australian Government's legislation review program is discussed in appendix B.)

The Productivity Commission, as an independent, statutory body undertakes a variety of public inquiries and commissioned studies into policy and regulatory issues. For example, in 2003, the Commission reviewed, among other issues, general practitioners' (medical) administrative and compliance costs and made a number of recommendations to reduce these costs (PC 2003).

Regulatory Performance Indicators

The Australian Government's Office of Small Business (OSB), in the Department of Industry, Tourism and Resources, is responsible for promoting and maintaining links across Government departments and agencies responsible for issues which impact on the small business sector. One of the OSB's roles is to oversee the Regulatory Performance Indicators (RPI) initiative.

The RPI initiative was announced in the Prime Minister's 1997 small business statement *More Time for Business* (CoA 1997). Nine indicators are used to measure the extent to which agencies responsible for small business regulation are demonstrating good regulatory practice. Two of the nine indicators relate to implementation. RPI 2 requires departments and agencies to identify the proportion of regulations made each financial year for which the RIS adequately justified the compliance burden on business. RPI 3 requires them to identify the proportion of regulations that incorporate appropriate flexibility. Appropriate flexibility refers to the capacity of regulations to allow business and stakeholders to determine the most cost effective means of achieving regulatory objectives.

Administrative appeal processes

The OECD encourages member governments to establish independent administrative appeals processes where there is regulatory discretion to ensure that regulators are held accountable for their actions.

In Australia, the Administrative Appeals Tribunal provides aggrieved persons and agencies with an independent review of a wide range of administrative decisions made by Australian Government officials and some non-government bodies. However, the Tribunal does not have the power to review all decisions made under government legislation. The legislation under which the decision was made must state that the Tribunal has, on appeal from an aggrieved person or agency, the power to review it. Some 375 pieces of legislation, including tax legislation, allow decisions to be reviewed by the Tribunal.

Some decisions of regulators may be subject to merit review by the Federal Court of Australia under the *Administrative Decisions (Judicial Review) Act 1977*. In a recent report, the OECD noted its preference for judicial review:

> The availability of judicial review of administrative decisions can be seen as the ultimate guarantor of transparency and accountability and is likely to improve the effective quality of the decisions made during administrative review. (OECD 2002a, p. 75)

Allowing regulatory decisions to be reviewed by independent bodies, like the Administrative Appeals Tribunal and the Federal Court, can, however, impose significant costs on business and on government. The Ombudsman mechanism provides a low cost means of seeking redress and is available to all groups in the community. It operates informally and has a wide ranging remit. The Australian Government Ombudsman's office reports to Parliament and so provides a high level of independence and transparency. The Ombudsman considers and investigates complaints from people who believe they have been treated unfairly or

unreasonably by an Australian Government department or agency. Since its inception in 1977, the Office has assisted in resolving numerous complaints and brought about improvements in the quality of government administration (Commonwealth Ombudsman 2003). For example, in 2002-03, the Commonwealth Ombudsman examined complaint handling in the Australian Taxation Office and the Job Network.

The States and Territories have also established Ombudsman offices. In addition, industry ombudsmen have been created to protect citizens' interests in their dealings with a variety of service providers, especially in industries previously owned or regulated by governments, for example telecommunications, energy, banking and insurance.

In August 2003, the Australian Government announced the appointment of the Inspector-General of Taxation to address business and community concerns about the implementation of taxation regulations. The Inspector-General has broad powers to review taxation administration and can initiate reviews as a result of consultation with taxpayers and their advisers, or at the direction or request of a Treasury Minister, a resolution of either or both Houses of Federal Parliament or a Parliamentary Committee, or at the request of the Commissioner of Taxation (Coonan 2003).

A Compliance with COAG Principles and Guidelines

This appendix contains the Office of Regulation Review's third report to the National Competition Council (NCC) on compliance with the Council of Australian Governments' (COAG) Regulation Impact Statement (RIS) requirements.

In April 1995, the Australian Government entered into several agreements allied to competition policy and reform. The conditions and amounts of related competition payments from the Australian Government 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 Council of Australian Governments' requirements

In April 1995, COAG agreed to apply a nationally consistent assessment process to proposals of a regulatory nature considered by Ministerial Councils and national standard-setting bodies (NSSBs). The agreement arose from concerns about the negative impacts of regulations and standards on business and the community. The agreed assessment process is set out in the COAG *Principles and Guidelines* (COAG 1997).

The major element of the assessment process is the preparation of RISs. A RIS considers and documents alternative approaches to resolve identified problems, and assesses the impacts of each option on different groups and the community as a whole.

A COAG RIS needs to be prepared for proposals having a national dimension that, when implemented by jurisdictions, would result in regulatory impacts. It is used as part of community consultation and as an aid to the decision-making bodies.

A.2 Role of the ORR

The Office of Regulation Review (ORR) advises decision makers on the application of the COAG *Principles and Guidelines* and monitors and reports on compliance with these requirements. This includes assessing COAG RISs prepared for Ministerial Councils and NSSBs at two stages: before they are distributed for consultation; and again just prior to a decision being made. At each stage, it advises the decision-making body of its assessment. The ORR's assessment considers:

- whether the *Principles and 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 COAG *Principles and Guidelines* state that 'public consultation is an important part of any regulatory development process' and a COAG RIS is required for consultation. However, the COAG requirements make it clear that the depth of analysis in the consultation RIS need not be as great as in the final document for decision makers. In contrast, the final RIS should reflect the additional information and views collected from those consulted, and provide a more complete analysis.

In assessing whether the COAG requirements have been met, the ORR takes into account the requirement for an adequate RIS at both the consultation and final decision stages in its overall assessment of compliance.

Another role for the ORR in relation to Ministerial Councils and NSSBs stems from the COAG *Agreement to Implement the National Competition Policy and Related Reforms* (COAG 1998). This requires that, when considering the conditions and amounts of competition payments from the Australian Government to the States and Territories, the NCC takes account of advice from the ORR on compliance with the COAG *Principles and Guidelines*.

This report addresses this obligation for the period 1 April 2002 to 31 March 2003. It is the third report by the ORR to the NCC dealing with regulation making by Ministerial Councils and NSSBs.

A.3 Focus and scope of ORR's report

In its reports to the NCC, the ORR excludes two categories of decisions made by Ministerial Councils or NSSBs, because a COAG RIS is considered not to be necessary. The first category involves decisions which have a low significance in terms of the scope and magnitude of community impacts and, as a consequence, the RIS process would add little additional value. The second category comprises decisions that are more of an administrative than of a regulatory nature. These decisions are essentially about applying an existing regulatory framework to a new set of circumstances without consideration of other regulatory options.

In most of the remaining cases, there is general consensus between the ORR and the relevant decision makers on the types of regulatory decisions and agreements covered — and not covered — by the COAG *Principles and Guidelines*. Furthermore, there is usually agreement regarding how the COAG RIS requirements should be applied. However, the application of the COAG requirements is not always clear cut. Some explanation of these complex areas, and their relevance to the ORR's report, is provided below.

Scope of decisions covered by COAG requirements

The COAG *Principles and Guidelines* cover regulatory decisions that '… would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done' (COAG 1997, p. 4). While noting that Ministerial Councils and other regulatory bodies commonly reach agreement on standards or main elements of a regulatory approach which are then given force through principal or subordinate legislation, COAG went further by defining regulation to include:

> … 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. (COAG 1997, p. 4)

As such, the scope of decisions covered by COAG's requirements is wide, and includes agreements on regulatory approaches, standards and measures of a quasi-regulatory nature.

Decision-making groups covered by COAG requirements

The COAG *Principles and Guidelines* 'apply to decisions of Ministerial Councils and inter-governmental standard-setting bodies, however they are constituted, and

include bodies established statutorily or administratively by government to deal with national regulatory problems' (COAG 1997, p. 4).

On occasion ad hoc bodies of Australian, State and Territory Ministers (and sometimes delegated senior officials) — rather than standing Councils of Ministers or national standard-setting bodies — are established to address and resolve regulatory issues considered to have a national dimension. These ad hoc bodies can be tasked with making decisions that will result in significant regulatory impacts.

In view of COAG's broad definition of what constitutes an inter-governmental body for the purposes of the COAG requirements, the ORR has advised such bodies of the need to comply with the COAG *Principles and Guidelines*.

Further, from time to time COAG itself makes decisions dealing with national regulatory problems. While COAG is not bound by the COAG *Principles and Guidelines*, it would expect, when considering regulatory proposals put to it for endorsement, that its requirements for good regulatory practice have been met. Accordingly, the responsibility for compliance with the COAG requirements rests with the body putting the regulatory proposals to COAG.

Decisions leading to possible duplication of RIS processes

In relation to decisions requiring national implementation, the subsequent development of legislation in each jurisdiction may require the development of State or Territory specific RISs to meet the RIS requirements of individual jurisdictions. This raises the question as to whether the preparation of a COAG RIS is duplicative and therefore unwarranted.

The COAG *Principles and Guidelines* do not include an exemption from the COAG RIS requirements in such situations. As stated in the ORR's second report to the NCC, preparation of an adequate COAG RIS provides a solid analytical base with a nationwide perspective for (what might be described as) the overarching decision taken by the inter-governmental body and, if required, for the later preparation of a more focused RIS at the State or Territory level. Moreover, a COAG RIS can guide the legislative reforms undertaken in each jurisdiction from a carefully analysed starting point. It is also the case that States and Territories may, where applicable, forego their own RIS requirements if an adequate COAG RIS has been prepared.

A.4 Matters for which COAG requirements were met

Table A.1 documents the 24 decisions made during the period 1 April 2002 to 31 March 2003 where the COAG RIS requirements apply and were met. This table

includes a brief description of the regulatory measure, the decision-making body and the date of the decision.

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

Measure	*Body responsible*	*Date of decision*
1. Ban on human cloning and other 'unacceptable practices', and regulation of the use of excess human embryos for stem cell and related research	Australian Health Ministers' Conference (AHMC) [a]	5 April 2002
2. Adoption in the Food Standards Code of a new standard for infant formula	Australia New Zealand Food Standards Council (ANZFSC) [b]	May 2002
3. Update the provisions for residential buildings used for the accommodation of the aged to align with the Commonwealth *Aged Care Act 1997*	Australian Building Codes Board (ABCB)	1 May 2002
4. Agreement to manage risks associated with GM crops to agricultural production and trade through industry self-regulation supplemented by government monitoring	Primary Industries Ministerial Council (PIMC)	2 May 2002
5. Australian Standard for the Hygienic Rendering of Animal Products	PIMC	2 May 2002
6. Model code of practice for the welfare of animals (domestic poultry)	PIMC	2 May 2002
7. Track, Civil and Infrastructure Code (Volume 4 of the Code of Practice for the Defined Interstate Network)	Australian Transport Council (ATC)	6 May 2002
8. Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields - 3kHz to 300GHz	Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	7 May 2002
9. National Standards for Group Training Companies	Australian National Training Authority (ANTA) Ministerial Council	24 May 2002
10. National Standard for Commercial Vessels - Part B General Requirements	ATC/National Marine Safety Authority	Out-of-session decision; process completed by July 2002
11. National Standard for Commercial Vessels - Part C Section 5 (Engineering)	ATC/National Marine Safety Authority	Out-of-session decision; process completed by July 2002

(Continued next page)

Table A.1 **(continued)**

Measure	*Body responsible*	*Date of decision*
12. National Standard for Commercial Vessels (NSCV) - Part F Subsection 1A and 1B - Category F1 Fast Craft	ATC/National Marine Safety Authority	Out-of-session decision; process completed by July 2002
13. Requirements for labelling statements for certain milk products	Australia New Zealand Food Regulation Ministerial Council (ANZFRMC)	30 August 2002
14. Endorsement of recommendations arising from the NCP review of Radiation Protection Legislation	AHMC	10 October 2002
15. Model code of practice for the welfare of animals (the farming of ostriches)	PIMC	10 October 2002
16. Energy efficiency measures in housing provisions of the Code	ABCB	1 November 2002
17. Nationally consistent legislative framework for key aspects of the national vocational education & training (VET) system ('model clauses')	ANTA Ministerial Council	15 November 2002
18. Permission in the Food Standards Code for the importation of raw milk very hard cooked-curd cheeses	ANZFRMC	6 December 2002
19. Requirements for certain warning statements for products containing royal jelly, bee pollen and propolis	ANZFRMC	9 December 2002
20. Australian Design Rule for fuel consumption labelling	ATC	September 2002
21. Freight Loading Manual (Component of Volume 5 of the Code of Practice for the Defined Interstate Network)	ATC	20 December 2002
22. Review of Australian Design Rules for vehicle noise	ATC	February 2003
23. Technical Review Recommendations for the Draft Disability Standards for Accessible Transport	ATC	6 March 2003
24. Compulsory vaccination of poultry for Newcastle disease	PIMC	13 March 2003

a The RIS was prepared for final consideration of the proposal by the Australian Health Ministers' Conference. This was overtaken by COAG's decision on the proposal on 5 April 2002. **b** On 1 July 2002 the Australia New Zealand Food Standards Council was replaced by the Australia New Zealand Food Regulation Ministerial Council.

Source: ORR estimates.

A.5 Matters for which COAG requirements were not met

Table A.2 indicates that, during the period 1 April 2002 to 31 March 2003, the COAG RIS requirements were not met in three cases. It also includes a brief description of the regulatory measure, the decision-making body and the date of the decision. Commentary on the individual decisions, including the reasons why the decisions are considered to be non-compliant, is provided below the table.

Table A.2 **Cases where COAG RIS requirements were not met**

Measure	*Body responsible*	*Date of decision*
1. Uniform consumer credit code — mandatory comparison of interest rates	Ministerial Council on Consumer Affairs	April 2002
2. Public liability and the Review of the Law of Negligence	Insurance Ministers	15 November 2002
3. National reform of hand gun laws	Australasian Police Ministers' Council [a]	28 November 2002

[a] The regulatory proposals were agreed by the Australasian Police Ministers' Council on 28 November 2002 and most were endorsed by COAG on 6 December 2002.

Source: ORR estimates.

Commentary on non-compliant decisions

Uniform consumer credit code — mandatory comparison of interest rates

In April 2002, under the auspices of the Ministerial Council on Consumer Affairs (MCCA), mandatory comparison rates amendments were adopted into the Uniform Consumer Credit Code (UCCC).[1] The amendments introduced two key concepts: any advertisement that includes an interest rate must also include the comparison rate;[2] and a schedule of comparison rates must be displayed and made available to consumers. The amendments also prescribe the precise content and manner in which the comparison rate can be calculated and displayed.

In August 2001, the ORR advised the MCCA and the COAG Committee on Regulatory Reform (CRR) — prior to the Council's decision — that the COAG *Principles and Guidelines* should be followed and a RIS should be prepared. The

1 *Consumer Credit Code (Queensland) Amendment Act 2002*.

2 The comparison rate is a method of reducing the total cost of a loan, including interest and all fees and charges, to a single percentage rate.

ORR confirmed its advice in September 2001. This advice reflected on the National Competition Policy (NCP) Review of the Consumer Credit Code which stated:

> If there is [to be] mandatory disclosure, it should be directed at key information that consumers are likely to use; further research is required to ascertain what information the consumer actually finds useful and also to determine the best method of delivering that information to the consumer. (KPMG Consulting, p. 105)

While an extensive amount of preparatory work was undertaken in the development of the proposal, no COAG RIS on the mandatory comparison rates issue was distributed for consultation, nor was one presented to the MCCA.

Public liability and the Review of the Law of Negligence

Insurance Ministers held a number of meetings on public liability and public liability insurance during 2002. The Ministerial group progressing reforms in this area comprises relevant Commonwealth, State and Territory Ministers and the President/senior Vice President of the Australian Local Government Association. It has been described by COAG senior Ministers as a Commonwealth–State group of Ministers and COAG senior Ministers have endorsed outcomes from its meetings.

During 2002, the group released a number of communiques citing discussion or agreement on regulatory approaches in the area and the Commonwealth Minister, as chair, issued a number of press releases along the same lines. For example, the Ministers announced in their Joint Communique that:

> … many of the issues are complex and cross-jurisdictional, requiring collective action from governments and industry in the immediate and long term. (Insurance Ministers 2002a)

Decisions from this Ministerial group include the acceptance of key recommendations from the Review of the Law of Negligence (Ipp 2002). Its recommendations covered:

- limiting the liability of defendants to only foreseeable, not insignificant, risk;
- allowing findings of 100 per cent contributory negligence by plaintiffs;
- increasing public authority defences to damages claims and limiting claims for mental harm;
- abolishing or limiting legal costs orders for low level damages awards, caps on damages payouts and thresholds to remove small claims from courts; and

- amendments to the *Trade Practices Act 1974* (Cwlth) to protect community groups and risky sporting enterprises, as well as preventing the circumvention of national negligence reforms.

The Ministers:

> … agreed on a package of reforms implementing key recommendations of the Ipp Report. They agreed that the key Ipp recommendations that go to establishing liability should be implemented on a nationally consistent basis and each jurisdiction agreed to introduce the necessary legislation as a matter of priority. (Insurance Ministers 2002b)

While the Ipp Report provided a range of options for reform, it did not provide a cost-benefit assessment of its proposals. The RIS requirements were not followed as no RIS was prepared. Accordingly, the policy development process for this agreement was not consistent with the COAG guidelines.

National reform of handgun laws

In October 2002, the Australasian Police Ministers Council (APMC) was asked by COAG senior Ministers to develop detailed proposals for a national approach to handgun control measures. On 5 November 2002, the APMC reached broad agreement to progress further measures to restrict the availability and use of handguns. Following the consideration of proposals by a Senior Officers' Group, the APMC, at a special meeting on firearms on 28 November 2002, agreed to put forward 19 resolutions for consideration by COAG. On 6 December 2002, these measures were discussed and, in the main, endorsed by COAG.

The proposals developed and considered by the APMC were varied and extensive and included a ban on the importation, sale and ownership of certain sporting handguns; graduated access to handguns and minimum participation rates for sporting club members; reporting requirements for sporting clubs concerning members' behaviour and expulsion; and the inclusion of historical gun collectors in the handgun ban, accreditation and reporting requirements.

The proposals put forward by the APMC for COAG endorsement affect both businesses and individuals. Under the COAG guidelines, the assessment and development by the APMC of the handgun reform proposals should have been the subject of a COAG RIS. The ORR notes the tight timeframe within which the proposals were developed.

A.6 Compliance in cases of emergency

National regulatory decisions are occasionally made as an urgent matter, for example, when there is a significant and imminent risk to public health and safety. Such cases are rare. They are specifically recognised in the COAG Principles and Guidelines, which allows an exemption from the RIS process in an emergency. The exemption must be formally requested from the Prime Minister, and a RIS must be prepared within twelve months of the regulation being made, to ensure that the regulation is justified on the basis of a fully considered analysis. The exemption does not apply where those responsible for meeting the COAG requirements have left the preparation of a RIS until late in the process of developing the proposal.

In July 2001, the predecessor of the Australia New Zealand Food Regulation Ministerial Council — the Australia New Zealand Food Standards Council — decided to adopt into the Food Standards Code provisions relating to bovine spongiform encephalopathy. This decision was taken as an emergency measure, and was reported in the ORR's second report to the NCC. A RIS has subsequently been prepared which justifies the approach taken.

A.7 Trends in compliance with COAG RIS requirements

Of the 27 decisions reported during the year to 31 March 2003 (the ORR's third report to the NCC), compliance with COAG's requirements was 89 per cent. This compares unfavourably to the compliance rate for decisions made during the previous reporting period of 97 per cent (the ORR's second report to the NCC). However, it is considerably better than the compliance rate of 71 per cent for the period 1 July 2000 to 31 May 2001.

An important consideration in measuring compliance — and changes in compliance over time — is the degree of significance of the decisions made in each period. The ORR has classified each regulatory proposal that requires a RIS as of greater or lesser significance, based on:

- the nature and magnitude of the problem and the regulatory proposals for addressing it; and
- the scope and intensity of the proposal's impact on affected parties and the community.

Classifying decisions in this way 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 27 regulatory decisions reported here, six were assessed by the ORR as of greater significance according to these criteria. They include:

- COAG's decision to ban human cloning and other defined 'unacceptable practices', and to regulate the use of stem cell and related research on excess embryos created by assisted reproductive technology;
- the decision by the ATC to adopt a Code of Practice for the Defined Interstate Rail Network (Volume 4) setting out nationally consistent principles, recommendations and requirements for the management of Australia's 8000 kilometres of standard gauge rail track and associated civil and electrical infrastructure to reduce inefficiencies and improve transit times;
- Australian Radiation Protection and Nuclear Safety Agency's (ARPANSA) decision to adopt a radiation protection standard for maximum exposure levels to radiofrequency fields — 3kHz to 300 GHz — to address risks to human health from public and occupational exposure to radiofrequency radiation in the telecommunications and radiocommunications industries and various industries that use radiofrequency heating and welding;
- the decision by Primary Industries Ministerial Council that the risks to agricultural production and sustainability of farming systems, and risks to trade in differentiated agrifood products, posed by genetically modified (GM) crops be managed through industry self-regulation supplemented by government monitoring;
- the decision by the Ministerial Council on Consumer Affairs to adopt into the Consumer Credit Code the mandatory requirement for comparison of interest rates; and
- the decisions by the Insurance Ministers on public liability and professional indemnity insurance, responding to the Review of the Law of Negligence (Ipp 2002). These propose to substantially alter the operation of the common law throughout all Australian jurisdictions.

The COAG *Principles and Guidelines* were followed for the first four of these decisions (a compliance rate of 67 per cent). In contrast, compliance for matters of significance was 100 per cent in the period covered by the ORR's second report to the NCC and 56 per cent for the ORR's first report to the NCC (table A.3).

Table A.3 **COAG RIS compliance for regulatory decisions made by Ministerial Councils and NSSBs, 2000-01 to 2002-03[a]**

	2000-01	*2001-02*	*2002-03*
All proposals	15/21 *(71%)*	23/24 *(97%)*	24/27 *(89%)*
Significant regulatory proposals	5/9 *(56%)*	6/6 *(100%)*	4/6 *(67%)*

a Data for 2000-01 relate to the period 1 July 2000 to 31 May 2001. Data for 2001-02 and 2002-03 relate to the period 1 April to 31 March. There is, therefore, some overlap between the reporting periods for the first two reports. However, for each decision included in both reports, Ministerial Councils were compliant with COAG's requirements and this modest overlap is not seen as significant for the purposes of comparing compliance between the first two periods.

Source: ORR estimates.

A.8 Compliance issues

Less than full compliance with COAG's RIS requirements is due to a number of factors.

First, the allocation of decision-making power to ad hoc groups or committees would appear to involve a risk that these decision-making processes do not follow best practice, because such groups are not aware of COAG's requirements. The lack of a well-defined secretariat providing support for these groups or committees, and an imbued sense of urgency, makes this matter difficult to address.

It also appears that some established Ministerial Councils are not aware of COAG's requirements, even though they have been in place for a considerable period of time. The secretariat function for some Councils alternates among participating jurisdictions and knowledge of the requirements can be lost in the transfer of responsibility. In limited instances, lack of awareness may be due primarily to the creation of new Councils to replace existing Councils.

A third factor is a lack of awareness of the wide scope of regulation covered by the requirements. A number of decision-making bodies are not aware that the requirements extend beyond decisions implemented via legislation to include decisions implemented through other means, and to decisions with an indirect regulatory impact on business through the impact on the community as a whole.

A fourth factor appears to be a mistaken belief held at either the Ministerial or secretariat level that a COAG RIS is not required where decisions are taken on a broad national approach, requiring a regulatory response at the state and territory jurisdictional level.

These factors do not explain all cases of non-compliance reported in this third report to the NCC. Fundamentally, it remains the case that in some instances the RIS requirements have been known and understood, but decisions were still taken without regard to the requirements.

A.9 Improving compliance

There is clearly a need for improved awareness of the scope of the COAG RIS requirements, the required level of analysis and the role of the ORR. In the twelve months to 31 March 2003, the ORR provided training in COAG RIS requirements to approximately 50 government officials. Several secretariats have also taken steps to improve compliance with COAG's requirements.

One case is the agreement between Foods Standards Australia New Zealand (FSANZ) and the ORR to a Protocol to apply to the COAG requirements. This Protocol sets out the obligations of FSANZ and the ORR in respect of the application of the requirements to the work of FSANZ. This allows for a greater focus on regulatory matters of significance, and ensures timely contact between the ORR and FSANZ as regulatory proposals are being developed. The Protocol is expected to improve the quality of regulatory impact assessment over time.

Another case is of a new Council — the Gene Technology Ministerial Council — that has sought to embed the COAG requirements for regulatory impact assessment in its own standard operating procedures for regulatory decision-making. In doing this, the Secretariat to the Council drew on the experience of the Australian Health Ministers' Conference that had previously adopted similar procedural arrangements.

B Australian Government 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 decided 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 extended the period to 30 June 2002.

The Australian Government's legislation review program is broader than that 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 Government'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 2003, 76 of the reviews on the Australian Government's schedule had either been completed or were underway, 14 reviews had been deleted from the schedule, and 11 reviews were deferred, delayed or not yet commenced. Table B.1 contains a list of the outstanding 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 Government's legislation review program. The Government requires the Office of Regulation Review (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 Australian Government's legislation review requirements. The ORR assessed one terms of reference in 2002-03. This was for a Productivity Commission review of the *Disability Discrimination Act 1992*.

The National Competition Council's 2003 assessment will provide a final assessment of Australian Government, State and Territory progress against legislation review and reform obligations.

Table B.1 **Reviews outstanding as at 30 June 2003**

Reviews still to be undertaken	*Department*	*Status as at 30 June 2002*	*Status as at 30 June 2003*
Environment Protection (Nuclear Codes) Act 1978	DHA	Seeking to delist	Not commenced/ Seeking to delist
Anti-Dumping Authority Act 1988, *Customs Act 1901* Pt XVB & *Customs Tariff (Anti-Dumping) Act 1975*	A-G's	Not commenced	Not commenced
Petroleum Retail Marketing Sites Act 1980	DITR	Not commenced	Not commenced [a]
Petroleum Retail Marketing Franchise Act 1980	DITR	Not commenced	Not commenced [a]
Defence Force (Home Loans Assistance) Act 1990	Defence	Not commenced	Not commenced
Dairy Industry Legislation	AFFA	Deferred	Deferred
Dried Vine Fruits Legislation	AFFA	Deferred	Not commenced/ Seeking to delist
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/ Seeking to delist
Customs Prohibited Imports Regulations [b]	A-G's	Not commenced	Not commenced

[a] Legislation to be repealed following the introduction of an industry code under the Trade Practices Act. [b] While the review of the Customs Prohibited Imports Regulations is yet to commence, a review of the Commerce (Imports) Regulations and the *Commerce (Trade Descriptions) Act 1905* commenced in July 2001.

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

C ORR activities and performance

The objective of the ORR's regulation review activities is to promote regulation-making processes which, from an economy-wide perspective, improve the effectiveness and efficiency of regulations. The ORR provides advice to approximately 100 regulators, including about 60 Australian Government 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 2002-03

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

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 regulation impact statements (RISs) prepared by Australian Government departments and agencies;
- provide training and guidance to officials;
- report annually on compliance with the Australian 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 Department of the Treasury, advises the Parliamentary Secretary to the Treasurer who is the Minister responsible for regulatory best practice.

In 2002-03, almost 1800 Bills and disallowable instruments were tabled in the Parliament. In advising on quality control mechanisms for reviewing and making regulation in 2002-03 (including examining and advising on RISs), the ORR analysed in detail some 861 new regulatory proposals from Australian Government departments and agencies (table C.1). Of these, the ORR advised that 132 triggered the RIS requirements. It subsequently received 106 draft RISs from Australian Government departments and agencies.

Of the regulatory proposals reported to have been made or tabled in 2002-03, the ORR advised that 139 proposals required a RIS. It provided comments on the 120 RISs subsequently prepared (table C.1).

Table C.1 **Australian Government regulatory activity and ORR workload, 2001-02 and 2002-03**

	2001-02	*2002-03*
	no.	*no.*
Regulations introduced		
Bills	207	174
Disallowable instruments	1711	1615
Total introduced	**1918**	**1789**
RIS workload		
Total number of new RIS queries received by the ORR	709	861
- of which, the ORR advised a RIS was required	175	132
- of which, the ORR received draft RISs	124	106
Proposals finalised[a]		
Proposals which required a RIS	145	139
RISs prepared	130	120

a Proposals which were tabled or made in the reporting period — for some of these proposals the ORR was contacted in an earlier reporting period.

In addition, the ORR:

- continued to work with, and provide assistance to, the Office of Small Business (within the Department of Industry, Tourism and Resources) in relation to the development of regulatory plans and regulatory performance indicators;
- in the year to 31 March 2003, analysed 43 regulatory proposals considered by Ministerial Councils and national standard-setting bodies and provided advice on 24 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 2003.

During the past year, the ORR provided formal RIS training on regulatory best practice to an estimated 510 Australian Government officials from a wide range of departments and agencies (more than double the number who received such training in 2001-02). It also provided extensive advice and assistance with the preparation of RISs, as needed, on an issue-by-issue basis.

Regulation and its Review fulfils the Productivity Commission's and the ORR's obligation to report annually on compliance with the Government's regulation review requirements. The report for 2001-02, which was released in November 2002, continued the initiative 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 2002-03, the ORR also:

- made a presentation on 'grey-letter law' to the AusBiotech 2002 Conference and Investment Forum in Melbourne in August 2002;
- organised and chaired the annual meeting of regulation review units, representing all States (except Tasmania), the ACT and New Zealand. This meeting, held on 10 September 2002, provided a forum for exchange of information among officials from different jurisdictions;
- represented Australia at an OECD meeting in Paris in October 2002 on regulatory reform in Member countries. The ORR provided a commentary of RIS systems employed in some OECD countries and contributed to a discussion on the OECD forward work program;
- provided input to the Senate Employment, Workplace Relations and Education References Committee Small Business Employment Inquiry, regarding RISs and related regulatory matters in October 2002;
- assisted New Zealand Government officials by providing briefings and training in Wellington in November 2002 and June 2003 on RIS processes and lessons from Australia. Overall, the ORR provided training about regulatory best practice processes and RISs to 155 New Zealand Government officials during 2002-03;
- provided detailed input in December 2002 into a proposal for a new regulatory review regime in the Northern Territory (which subsequently came into force in August 2003);
- provided advice in December 2002 on appropriate terms of reference for one review undertaken as part of the *Competition Principles Agreement* commitment to review and reform all legislation which restricts competition;

- assisted with presentations by the Productivity Commission's Chairman to the Small Business Forum (*Reducing the Business Costs of Regulation*) in March 2003 and the Minerals Council of Australia (*Minimum Effective Regulation and the Mining Industry*) in June 2003.
- assisted the Department of Foreign Affairs and Trade in May 2003 in developing an Australian position regarding the transparency and efficiency of domestic regulation for its negotiations at the World Trade Organisation on the General Agreement on Trade in Services; and
- presented papers at the Asia Pacific Economic Cooperation (APEC) meeting in Khon Kaen, Thailand in May 2003 on regulatory reform systems and processes and the role of the Productivity Commission in Australia.

The ORR's research program was progressed in 2002-03, with benchmarking of Australia's regulatory review requirements and other regulatory quality procedures largely completed. A Staff Working Paper (Argy and Johnson 2003), *Mechanisms for Improving the Quality of Regulations: Australia in an International Context* was subsequently published in July 2003. Work also commenced on the identification and development of a range of robust measures of outcomes that could be used to measure the impacts of the Government's regulation review and reform systems (including RISs) on the effectiveness and efficiency of regulation.

Finally, the ORR's website was restructured during 2002-03 to provide more information and make it more user-friendly, including additional links and a larger range of different types of example RISs.

C.2 Performance of the ORR

The ORR attempts to ensure that its duties are carried out efficiently and effectively by providing timely advice and assistance of a high standard that is useful to government.

Quality indicators

The scope of the ORR's work covers the whole of government. However, the confidentiality of RISs considered by Cabinet limits the extent to which specific matters can be reported publicly.

Evidence of the quality of the ORR's work is provided by feedback from other government and community bodies, including those that prepare RISs and those that use them.

The ORR surveyed the 510 Australian Government officials who received training in regulatory best practice in 2002-03 and 364 responses were received — a response rate of 71 per cent. The responses indicate that the training was generally well received, with 92 per cent rating the training as either 'excellent' or 'good' (table C.2). No respondents considered RIS training to be 'unsatisfactory'.

Table C.2 **Australian Government RIS training evaluation in 2002-03**

Evaluation	*Number of responses*	*Per cent*
Excellent	93	25
Good	243	67
Satisfactory	28	8
Unsatisfactory	0	0
Total	**364**	**100**

In addition, the ORR surveyed 128 of the 155 New Zealand government officials trained during 2002-03. Responses indicated that 84 per cent rated the training as either 'excellent' or 'good'.

The ORR also provided numerous additional ad hoc training sessions on the RIS process and regulatory best practice to smaller groups of officials as required. Although training evaluation forms were not distributed at these meetings, informal feedback indicates that the advice provided by the ORR was also generally well regarded.

The Australian Government's RIS processes are considered to be at the forefront of international best practice. For this reason, in 2002-03, the ORR was invited to provide briefing on Australia's RIS processes to:

- the Dutch Independent Post and Telecommunications Authority and the Dutch Competition Authority on aspects of the regulation of telecommunications and the RIS process, and more generally, the roles of competition and sector-specific competition regulation;
- the Canadian External Advisory Committee on Smart Regulation on recent trends and regulatory practices for a report they were preparing on several countries, including Australia;
- the Danish Committee on Better Regulation for its review of better business regulation in selected OECD countries;
- PRAXIS Centre for Policy Studies in Estonia on cooperation with research oriented organisations in regulatory impact assessment processes; and
- the Queensland Department of the Premier and Cabinet for its evaluation of regulatory best practice arrangements.

Timeliness

Timeliness is also a key indicator of the ORR's performance. A number of factors can affect the ORR's timeliness including: the length and quality of the RIS document received; the complexity of the issue/policy proposals canvassed; the familiarity of ORR staff with the issues covered, including whether the ORR has had prior contact with the department/agency; ORR workloads and staff availability.

As a general rule, officials preparing a RIS are asked to allow the ORR two weeks to provide advice on the adequacy of RISs. However, where further redrafting is necessary, additional time may be needed to ensure an adequate standard is achieved. In practice, the ORR provided formal feedback (comments on the first draft of the RIS) to departments and agencies in an average of four working days for RISs received in 2002-03. Moreover, the ORR provided comments on over 96 per cent of all (first draft) RISs received within two weeks.

During 2002-03, there were several instances where departments and agencies requested advice on their RISs within a few days and sometimes a few hours. While the ORR was always able to meet these requests, such short timeframes make it difficult to give proper consideration to all the issues and raise broader questions about the approach to RIS obligations within some agencies (see chapter 4).

An additional measure of the ORR's timeliness is the time taken by it to respond to initial queries from departments and agencies about whether a proposal under consideration triggers the Government's RIS requirements — the ORR received 861 such RIS queries in 2002-03 (see table C.1). The ORR aims to reply to these queries with a determination as to whether the RIS requirements are triggered within two working days — although more complex issues can take longer. While comprehensive data on the average number of days taken by the ORR to respond to all RIS queries are not available for 2002-03, the ORR intends to record this information for reporting in 2003-04.

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 2002-03.

The ORR has also delivered its other outputs in a timely manner. For example, it prepared a report to the National Competition Council (NCC) 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 twelve months to the end of March 2003, was

completed and delivered on time. This ORR report assisted the NCC in completing its annual third tranche assessment of the compliance of jurisdictions with the requirements of national competition policy.

Indicators of usefulness

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 can be informed by a range of indicators:

- Overall compliance with the Government's RIS requirements remained high in 2002-03, although less so than the preceding year.
  - Of the 139 regulatory proposals made or tabled in 2002-03 that required the preparation of a RIS, 81 per cent complied with the RIS requirements at the decision-making stage. This compares to the 88 per cent RIS compliance rate in 2001-02.
  - Of the 119 regulatory proposals that required a RIS at the tabling stage, 95 per cent complied — up from the 94 per cent compliance rate achieved in the previous year.
  - For significant regulatory issues, the RIS compliance rate in 2002-03 was 46 per cent. This compares unfavourably with a 70 per cent compliance rate for 2001-02 (discussed further in chapter 3).
- Informal feedback provided by Government officials indicates that departments and agencies generally find the ORR contribution to be constructive, timely and positive.
  - Where policy development processes in departments and agencies follow regulatory best practice as a matter of course — such as the identification of problems and objectives, examination of a range of feasible options (both regulatory and non-regulatory) and a cost-benefit assessment of each of these options — the preparation of a RIS generates 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 processes are not meeting the Government's 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 Government departments and agencies to better integrate the RIS process into their policy development systems during 2002-03.
  - Following discussions between the ORR and the Department of Agriculture, Fisheries and Forestry (AFFA), both agencies agreed in early 2003 to a range of machinery changes to improve the effectiveness of the working relationship. The changes included AFFA appointing a senior officer as a central point of contact to improve coordination between the two agencies in the preparation of RISs. A similar arrangement was established between the ORR and the Department of Health and Ageing in June 2003.
  - In November 2002, the ORR signed a protocol with Food Safety Australia New Zealand to formalise the working relationship between the two organisations. The protocol provides clarity regarding regulatory proposals which require preparation of a RIS and gives practical guidance to officers in both organisations. There may be scope for further protocols to be developed between the ORR and national standard-setting bodies which operate under the auspices of COAG's RIS requirements.
  - The ORR provided input to officials at the Department of Immigration and Multicultural and Indigenous Affairs for the development of the Department's Legislative Change Process 'Guide' in May 2003.
- The ORR assesses the content of the RISs it receives to ensure that regulatory best practice requirements are met. In many cases, this leads to a more comprehensive assessment of the available regulatory and non-regulatory options. RISs assist governments in preparing better quality regulations. For example, in some instances, the RIS process has resulted in proposed recommendations being revised before the decision-making stage.
  - For example, in mid-2002, the Australian Building Codes Board released for public comment a draft RIS dealing with the regulation of energy efficiency for houses. Feedback on the RIS from public consultation suggested that additional construction costs, transitional issues and likely energy savings associated with the preferred regulatory approach were overly optimistic. The preferred option was modified, resulting in reduced stringency for some elements of the proposal in order that implementation of the measures could be achieved within a minimum transition time. This is consistent with best practice requirements for regulation, which encourage thorough consultation with stakeholders and the examination of a range of alternatives.

- Reporting on how the RIS process is leading to improved legislation and regulation is constrained by the confidentiality of Cabinet processes. Nevertheless, compliance information by portfolio shows 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 2002-03, resulting in better regulatory practices and outcomes. However, in some instances, compliance has deteriorated over the past year (see chapter 3).
- RISs tabled in the Parliament with Memoranda and Explanatory Statements have provided greater transparency regarding the rationale behind the Government's regulatory decisions, resulting in the Parliament being better informed. In addition, Parliamentarians have drawn on published RISs in debate. For example, in 2002-03, there were 37 separate discussions in Parliament about particular RISs and regulatory policy issues (14 times in the Senate, eight in the House of Representatives and 15 times in the work of parliamentary committees). A wide range of issues were discussed, including vehicle and aircraft safety standards, urban speed limits, electromagnetic radiation protection, fisheries management, educational standards and international trade agreements. For the most part, discussions focussed on the analysis contained in the 'impact' and 'consultation' sections of RISs, as well as the likely small business impacts and the role of RISs in policy development.
- State/Territory government officials contacted the ORR on a number of occasions during 2002-03 to confirm that a proposal complied with COAG RIS requirements before proceeding with legislation in their state/territory.
- 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 2001-02* were widely distributed, including a copy being sent to every Member of the House of Representatives and the Senate. This report was also accessed around 1700 times on the Commission's website in 2002-03.
  - A further 550 copies of the second edition of *A Guide to Regulation* were distributed for use by policy and regulatory officers in government departments, agencies, statutory authorities and boards, and other organisations and individuals interested in regulatory reform. In addition, this guide was accessed over 3300 times on the ORR's website during 2002-03. Overall, the ORR website recorded around 9400 hits in 2002-03, an increase of 6 per cent on the number recorded in 2001-02.

- Further relevant indicators include invitations during the year for the Productivity Commission's Chairman to address the Minerals Council of Australia, the Australian Chamber of Commerce and Industry (ACCI), the Small Business Coalition and the Council of Small Business Organisations of Australia (COSBOA), and presentations, domestic and international, made by ORR staff during the year (discussed earlier). The Chairman also appeared before the Senate Small Business Employment Inquiry to discuss RISs and related regulatory matters. The ORR's interaction with a range of international organisations, other national governments (discussed earlier) and other jurisdictions within Australia generates 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 also found in the decision by the New Zealand Government to continue to apply RIS systems based on those employed by the Australian Government.
- An OECD study released in November 2002 (OECD 2002a), *Regulatory Policies in OECD Countries — From Interventionism to Regulatory Governance*, endorsed a number of key aspects of the Australian Government's regulatory review system as being consistent with international best practice. These included Australia's legislation review program and the Government's RIS structure — which first requires resolution of the threshold question of whether any regulatory action can be expected to be beneficial (including the question of whether government action is justified) followed by an analysis of costs and benefits of a range of options.
- Another OECD study released in 2002, *Canada: Maintaining Leadership Through Innovation*, made similar endorsements of key elements of Australia's RIS requirements for Australian Government regulation, national standard-setting bodies and regulatory action by Ministerial Councils (box C.2).

Box C.2 **An international perspective on the Commission's RIS compliance activities**

In reporting on regulatory reform options in Canada, the OECD noted that a central challenge for most member countries is to improve the ex post evaluation of compliance by departments and other regulation-making bodies with their government's regulatory policies. The OECD suggested that Canada should consider implementing the model used by the Australian Government where the central regulation review body records its assessment of each RIS — known in Canada, as a Regulatory Impact Analysis Statement — as adequate or inadequate against a set of performance criteria.

> Departments can then be given summary information on how well they are complying with the requirements of the policy, while annual publication of the overall results, as in the Australian case, would mean that this information could also be used to compare the performance of departments. Systematic weaknesses and non-compliance could then be identified and addressed (OECD 2002b, p. 71).

D Developments in States and Territories

In 2002-03, some States and Territories strengthened their RIS requirements or made further regulatory reforms. The Northern Territory Government introduced a new regulatory process which substantially aligns with the Australian Government RIS process. The South Australian Government strengthened its Regional Impact Analysis Statement requirements. The Business Regulation Reform Unit (BRUU) in Queensland developed strategies to improve the efficacy of the regulatory reform program. In Victoria, the Government responded to the findings of the Scrutiny of Acts and Regulations Committee (SARC), indicating its partial support for most of the Committee's recommendations to strengthen the RIS process. (A summary of State/Territory RIS requirements and review mechanisms is provided in tables at the end of this appendix.)

D.1 Northern Territory

New requirements for the scrutiny of the impact of new and amended primary and subordinate legislation on competition and business were introduced August 2003 (Department of Chief Minister 2003). (Previously, only consultation requirements applied to regulatory proposals.) The Territory now requires a comprehensive impact assessment for all regulatory proposals that may restrict competition and/or confer a significant cost on business. In these cases, a Competition Impact Analysis should be prepared and include a cost-benefit analysis of all the important economic, social and environmental impacts. The new process is based on the Australian Government RIS requirements.

An implementation plan has been developed with the aim of assisting Northern Territory Government agencies to adapt to the new process. The implementation plan includes monitoring and evaluation of the process. 'Competition Impact Analysis Principles and Guidelines' have been prepared as a guide for Northern Territory Government officers who are involved in the preparation of legislation.

D.2 South Australia

In April 2002, the South Australian Premier, the Hon. Michael Rann MP, announced that assessments of the potential regulatory impacts on small business, environment, regions and families of all proposals considered by Cabinet, should be prepared. In May 2003, the South Australian Cabinet strengthened this requirement by formally requiring departments and agencies, from 1 July 2003, to prepare and make publicly available Regional Impact Analysis Statements prior to implementing significant changes to Government services to rural and regional areas. The Cabinet also approved guidelines to assist in the preparation of Regional Impact Analysis Statements.

D.3 Queensland

Queensland's Regulation Impact Statement (RIS) requirements apply to subordinate legislation where they are likely to impose an appreciable cost on business and/or the community and to quasi-regulation where it is referenced or called up in subordinate legislation. RISs consider all relevant issues pertaining to the regulatory proposal and its alternatives, on a state-wide basis.

During 2002, an evaluation of the BRRU was undertaken by the Queensland Department of the Premier and Cabinet. The evaluation sought to identify ways of refining BRRU's role and strategies for regulation reform. It compared BRRU's strategies and activities with the principles and characteristics of leading regulatory reform practice in other Australian States and Territories, the United Kingdom, Canada, New Zealand and the OECD.

The evaluation team identified seven leading practice principles as necessary to stimulate the development of regulatory efficiency systems. These include:

- the preparation of regulatory impact statements;
- effective consultation with business and the wider community;
- effective enforcement and compliance; and
- periodic and systematic reviews of regulations.

Queensland has a large number of local governments and there is a growing awareness that this third tier of government can have wide-ranging regulatory impacts. During 2002, the BRRU, in cooperation with the Logan City Council in south-east Queensland, undertook an extensive study examining regulatory issues.

The study led to the development of a comprehensive framework to examine regulatory issues at the local government level. The framework can be applied by all local governments throughout Queensland. The BRRU is commencing a second study in the Sunshine Coast area in 2003-04.

To complement this initiative, a set of non-mandatory guidelines for local governments was developed in 2002-03 to assist them with the process of making local laws. The guidelines (Department of State Development 2003) build on leading practice approaches in regulation making.

D.4 Victoria

Victoria has an impact assessment framework where RISs are prepared for all subordinate legislation anticipated to cause an appreciable economic or social burden, cost or disadvantage on a sector of the community.

During 2002-03, SARC conducted a comprehensive review of the Victorian Government's regulation-making process and examined comparable interstate and overseas systems. The inquiry recommended that the basic framework of the *Subordinate Legislation Act 1994* be retained. However, the Committee considered that there was scope for improvement and made a number of recommendations, including broadening the coverage of legislative instruments covered by the Act, enhancing quality assurance measures in the RIS process and utilising modern information technology.

The Government responded to the findings in March 2003. It supported most of SARC's recommendations but did not support the recommendation to extend the scope of the Act to apply to instruments of a legislative character. It considered that to do so would reduce flexibility in determining the appropriate level of scrutiny for an instrument, given the Parliament can determine the form of a legislative instrument and the Governor in Council can prescribe instruments to be subject to the Act.

Following the 2002 state election, the Victorian Government implemented its commitment to establish the office of the Small Business Commissioner (SBC). The role of the SBC is to enhance a competitive and fair operating environment for small business. Its broad areas of responsibility include:

- providing assistance and support on retail tenancy matters;
- resolving business-to-business disputes; and
- monitoring government procedures.

The SBC will also encourage agencies to develop small business service charters and monitor the impact of legislation and government procedures (for example, procurement practices) on small business.

D.5 Australian Capital Territory

The Australian Capital Territory (ACT) Government requires RISs to be prepared for proposals that impose 'appreciable costs' on the community or part of the community when introduced by primary or subordinate legislation.

In March 2002, the Business Regulation Review Committee was asked to identify any regulatory processes that impose unnecessary burdens, costs or disadvantages on business activities in the ACT and to recommend a course of action. The Committee completed its report and presented it to the Government in September 2002. A number of the Committee's recommendations related to the ACT's regulatory impact statement process. For example, the Committee recommended that the March 2000 *Guide to Regulation in the ACT* be endorsed by the Government and be re-issued to all agencies.

Twenty-four of the Committee's 26 recommendations were accepted by the ACT Government, and will be implemented over the coming twelve months. The ACT Government did not accept the Committee's recommendation that RISs for primary legislation be published.

In 2002-03, ACT Treasury commenced a program to review all existing quasi-regulation. The Treasury will consider how best to ensure that proposed quasi-regulation is subject to regulatory assessment.

D.6 Comparisons across jurisdictions

As shown in table D.1, five jurisdictions currently require RISs for some proposals introduced via Bills, seven require RISs for proposals introduced via subordinate instruments and five require RISs for quasi-regulation. Five jurisdictions require RISs at both the consultation and decision-making stages, while two others require RISs at the decision-making stage only. One jurisdiction requires small business impact statements and regional impact statements for Cabinet minutes, and another requires a regional impact assessment statement for all Cabinet submissions.

Table D.1 **RIS requirements in Australian jurisdictions**

Jurisdiction	*Bills*	*Subordinate Instruments*	*Quasi-regulation*	*RIS for consultation*	*RIS for decision maker*
Australian Government	✓	✓	✓	-	✓
New South Wales	✓[a]	✓	✓	✓	✓
Victoria	-	✓[b]	-	✓	✓
Queensland	-	✓[c]	✓[d]	✓	✓
South Australia	✓[e]	✓[e]	✓	-	✓
Western Australia	[f]	[f]	[f]	-	[g]
Tasmania	✓	✓	✓	✓	✓
Australian Capital Territory	✓[h]	✓[i]	-	✓[j]	✓
Northern Territory	✓	✓	-	✓[k]	✓

[a] Cabinet submissions for new Bills must meet best practice requirements. [b] For proposals that impose an appreciable economic or social burden. [c] For proposals likely to impose an appreciable cost on business and/or the community. [d] The RIS requirements apply if these instruments are called up or referenced in subordinate legislation. [e] A Regional Impact Assessment Statement (RIAS) is to be prepared for all Cabinet submissions. [f] A Small Business Impact Statement (SBIS) is required to accompany any Cabinet minute seeking endorsement of a regulatory, legislative or policy initiative that will impact upon small business. A Regional Impact Statement must also accompany all Cabinet Minutes. [g] The SBIS and RIS are considered by Cabinet before making its decision. [h] For new and amended legislation that restricts competition. [i] For proposals likely to impose an appreciable cost on the community. [j] Either a discussion paper or draft RIS. [k] At agency discretion whether draft RIS made public.

Source: Correspondence from States and Territories.

Seven jurisdictions currently have formal RIS guidelines. South Australia has guidelines for regional and national competition impacts only (table D.2). Seven jurisdictions include state-wide cost/benefit analysis in RIS requirements, an eighth takes a case-by-case approach to the breadth of geographic cost-benefit analysis required and a ninth prepares analysis on specific sectors only.

Five jurisdictions report on departments' and agencies' compliance with the RIS requirements and a sixth reports only to the Premier and Parliament as requested. Three prepare regulatory plans. The ACT discontinued this practice in June 2003 following a recommendation by the Business Regulation Review Committee. Six jurisdictions have sunset clauses included in legislation for periodic reviews. A seventh has clauses inserted at the discretion of individual ministers.

Table D.2 **RIS practices in Australian jurisdictions**

Jurisdiction	*RIS guidelines*	*Cost/benefit assessment*	*Report on RIS compliance*	*Regulatory plans*	*Sunset clauses*
Australian Government	✓	✓	✓	✓	-
New South Wales	✓	✓	✓	-	✓
Victoria	✓	✓	✓	✓	✓
Queensland	✓	✓	- [a]	✓	✓
South Australia	✓ [b]	- [c]	✓ [d]	-	✓
Western Australia	-	-	-	-	✓ [e]
Tasmania	✓	✓ [f]	-	-	✓
Australian Capital Territory	✓	✓	✓	- [g]	- [h]
Northern Territory	✓	✓	✓	-	✓

[a] In 2003-04, the Business Regulation Reform Unit will start recording statistics on the number of agencies that comply with BRRU's advice to undertake a RIS. [b] For regional and national competition impacts only. [C] Focuses on regions, small business, environment, family and society and competition policy. [d] Not to departments and agencies. Compliance results are sent to the NCC in the State's annual report on progress implementing the Competition Principles Agreement and to the Premier and Parliament as requested. [e] At the discretion of individual Ministers. [f] Coverage depends on the issue at hand and may be state-wide or regional. [g] Discontinued in line with the Business Regulation Review Committee's recommendation that found scope for duplication of effort and/or inconsistency with government policy. The ACT Government's legislative program provides the basis for all detailed public consultation on the Government's legislative intentions. [h] The ACT Treasury is overseeing the implementation of a formal process to regularly review the ongoing relevance and effectiveness of all legislation and related instruments on an industry-by-industry basis every five years.

Source: Correspondence from States and Territories.

E International developments

The Organisation for Economic Cooperation and Development (OECD) and key government organisations in the United States (USA), United Kingdom (UK) and European Union (EU) have emphasised the importance of Regulatory Impact Analysis (RIA) requirements in improving regulatory quality. To facilitate the development of more efficient and effective regulations, these countries have recently strengthened their existing RIA processes and enhanced the integration of RIA. RIA requirements have become more exhaustive and the minimum standard of analysis has been increased.

Organisation for Economic Cooperation and Development

In 2002, the OECD published the results of a survey of regulatory reform policies in 28 OECD countries (OECD 2002a). The OECD found that by late 2000, 14 of the 28 countries surveyed had adopted universal RIA programs. Another six had introduced limited RIA programs.

> … RIA is increasingly being applied to primary legislation, where in the past it has principally been used in relation to lower level rules. This will necessarily have a major positive impact on its potential contribution to regulatory quality. (OECD 2002a, p. 45)

Other regulatory tools used by those surveyed included assessment of regulatory alternatives (used widely by 17 countries and in specific sectors or policy areas by 12 countries) and consultation with affected parties (used widely by 24 countries and in specific sectors or policy areas by 17 countries).

While the use of RIA has expanded, the type of analysis conducted varies widely. Some countries use cost-benefit analysis, or cost-effectiveness analysis, to assess the impacts of regulatory decisions on the country as a whole and the distributional effects across the economy. Others only require an assessment of specific impacts (for example, administrative and paperwork burdens) or impacts on specific stakeholder groups (for example, business, small business, regional communities or international trade). As the OECD noted:

> In each of these cases, RIA is a decision tool, a method of i) systematically and consistently examining selected potential impacts arising from government action and of ii) communicating the information to decision-makers. Both the analysis and communication aspects are crucial. (OECD 2002a, p. 45)

Policy makers use a range of methods to assess whether or not to introduce, modify or repeal regulation. The OECD identified five main approaches:

- Expert — the use of professional judgement (for example, scientific risk);
- Consensus — balancing the interests of a group of stakeholders;
- Political — based on partisan issues of importance to the political process;
- Benchmarking — reliance on an outside model (for example, international standards); and
- Empirical — collecting and analysing data according to established criteria (OECD 2002a, p. 46).

The OECD saw these five approaches as complementary:

> RIA is an empirical method of decision-making. … RIA itself is neither 'necessary nor sufficient for designing sensible public policy', but it can play an important role in strengthening the quality of debate and understanding within the other decision methods.
>
> … Experience makes clear that RIA's most important contribution to the quality of decisions is *not* the precision of the calculations used, but the action of analysing — questioning, understanding real-world impacts, and exploring assumptions. (OECD 2002a, pp. 46–7)

The OECD found that, while RIA, when done well, can improve regulatory outcomes, these views need to be balanced by evidence of massive non-compliance and quality problems:

> … its degree of integration with policy decision-making is low in almost all cases. It is typically regarded as an additional procedural requirement that, at best, explains the merits of a policy decision rather than determining the decision itself. This is a certain symptom of the absence of the cultural change required within the administration to implement the regulatory policy agenda.
>
> The use of RIA also remains partial, with large parts of the regulatory structure in most countries not being subject to its disciplines at all. Important weaknesses in the use of quantification methods, and in particular benefit-cost techniques and evidence-based justifications prevail. Moreover, it remains separated from consultation processes in too many cases, thus reducing its ability to generate the data needed to maximise its effect on decision-making and, at the same time, undermining its acceptance by stakeholders and the public and thus slowing the cultural changes needed to ensure that it becomes a key part of the decision-making process. (OECD 2002a, pp. 101–2)

The OECD encouraged member countries to better integrate RIA into regulation making processes, through:

- increased commitment to RIA at all levels;
- increased integration of RIA into the policy development process; and

- increased transparency at all stages of the policy development process.

United States

The main regulatory oversight body in the United States is the Office of Information and Regulatory Affairs (OIRA), situated within the Office of Management and Budget (OMB).

Under Executive Order 12866 of September 30 1993 *Regulatory Planning and Review* (58 FR 51735), the OIRA is required to:

> … review 'significant' agency regulatory actions before they are proposed for public comment, and again before they are issued in final form. (Graham 2001, p. 1)

Agencies must prepare a RIA for each regulation that OIRA or the agency considers to be 'economically significant'. Executive Order 12866 defines an 'economically significant' rule as one that is likely to:

> … have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. (Graham 2001, p. 2)

Notably, because of its obligations to determine if final rules are 'significant' and to report to the US Congress on the costs and benefits of Federal regulation, the OIRA requires RIAs for all significant rules, regardless of the extent to which an agency is permitted by law to consider risks, costs or benefits when issuing regulations. Agencies are also required to identify and assess alternatives to direct regulation. The OIRA encourages agencies to allow 60 days for the public to comment on proposed regulations.

While reviewing a draft regulation, the Administrator of OIRA may decide to return a rule to the agency for further consideration. Reasons for returning a draft rule include:

> … if the quality of the agency's analyses is inadequate, if the regulatory standards adopted are not justified by the analyses, if the rule is not consistent with the regulatory principles stated in the Order (58 FR 51735) or with the President's policies and priorities, or if the rule is not compatible with other Executive orders or statutes. (Graham 2001, p. 5)

Each return is accompanied by a 'return letter' from OIRA, which sets out why the proposal did not satisfy the government's requirements. These letters are publicly available, for download, from the OMB's website.

Between 1 July 2001 and 15 October 2002, the OIRA returned 22 significant rulemakings to agencies for their reconsideration (around 3 per cent of rules for review received). Of these, 10 were modified, resubmitted and subsequently approved by the OIRA. By comparison, only seven rulemakings were returned to agencies between 1994 and 2000. In *Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded mandates on State, Local, and Tribal Entities* (OMB 2002), the OIRA noted:

> The quality of regulatory packages seems to be improving, as reflected in the recent decline in the number of returns (that is, only one return since February 2002). More importantly, there is earlier interaction between OIRA and agency staffs during regulatory development in order to prevent returns late in the rulemaking process. It is at these early stages where OIRA's analytic approach can most improve the quality of regulatory analyses and the substance of rules. For example, OIRA and EPA recently announced an initiative to fashion jointly a major rule to reduce pollution from off-road diesel engines used in mining, agriculture, construction and airport service. (OMB 2002, p. 16)

To complement its review of proposed regulatory actions, and building on agencies' obligations under Executive Order 12866 to 'prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA' [Section 4 (b)], the OIRA on 18 September 2001 began issuing 'prompt letters' to highlight issues that the OIRA feels may warrant the attention of regulators. Some prompt letters have identified areas in which appropriate new regulation promises significant net benefits. Others have been issued for rules that the OIRA considered were ready for review. Each requests action by the responsible agency within 30 days (Graham 2001). 'Prompt letters' are also made publicly available to encourage public and congressional scrutiny and are available for download from the OMB's website.

In 2001, the OIRA recommended that draft RIAs, including supporting technical documents (for example, risk assessments and engineering feasibility studies), be subject to formal, independent, external peer review.

> Given the growing public interest in peer review practices, OIRA recommended a four-point plan of competent and credible peer review: (a) peer reviewers should be selected primarily on the basis of necessary technical expertise; (b) peer reviewers should be expected to disclose to the agency any prior technical/policy positions they have taken on the issues at hand; (c) peer reviewers should be expected to disclose to the agency their sources of personal and institutional funding (public sector and private sector sources); and (d) peer reviews should be conducted in an open and rigorous manner. (OMB 2002, p. 20)

The OIRA encourages, but does not require, peer review, offering agencies 'an extra measure of deference during OMB review if a regulatory package has been subjected to competent and credible peer review'. The OIRA went on to note:

> EPA's recent decision to affirm an arsenic standard in drinking water of 10 parts per billion was supported by substantial peer review, including reports from the National Research Council of the National Academy of Sciences and the Agency's Science Advisory Board. Although this is a relatively intensive amount of peer review, OIRA expects that agencies will tailor the intensity of peer review — which can be costly and time-consuming — to the importance of the issue. (OMB 2002, p. 20)

On 3 February 2003, the OIRA released for public comment *OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements*. The OMB 'expect[s] the guidelines to increase transparency of the analysis of prospective regulations to both technical and non-technical readers' (68 FR 5492, p. 5498). The OMB has stated that the additional requirements on regulators preparing RIAs, if adhered to, 'will yield improvements in the information provided by these analyses' and that this will 'strengthen the regulatory development process, resulting in better designed regulations and potentially large net benefits to society as a whole' (68 FR 5492, p. 5498). The key changes include:

- encouraging agencies to perform both cost-effectiveness analysis and cost-benefit analysis of major rules because the two techniques offer regulators somewhat different but useful perspectives (recognising that cost-effectiveness analysis will be feasible in certain situations where a cost-benefit analysis may not be feasible);
- recommending that agencies report analytical results based on two discount rates (3 and 7 per cent) for major rules whose effects will be felt primarily within this generation. (If benefits and costs are expected to last beyond the current generation, the proposal permits additional sensitivity analysis with discount rates as low as 1 per cent.); and
- requiring agencies to support rulemakings with formal probabilistic analysis of the key scientific and economic uncertainties regarding costs and benefits for rules with economic effects that exceed more than US$1 billion per year. (In particular, the analysis must present a probability distribution for the estimated benefits and costs, unless they are known with a high degree of certainty.) (68 FR 5492, p. 5498)

The United States also requires RIA-type analysis of the domestic impacts of trade agreements and treaties. The United States International Trade Commission, under section 2104(f) of the US *Trade Act of 2002*, must submit to the President and the Congress early in the treaty-making process (not later than 90 calendar days after the President enters into [negotiations on] an international agreement) a report providing an assessment of the likely impact of a free trade agreement on the United States economy as a whole and on specific US industry sectors and the interests of US consumers.

In preparing its assessment, the Commission is required to review available economic assessments regarding the agreement in question, including literature relating to any substantially equivalent proposed agreement. The Commission may solicit public comment for its investigation by publishing a notice in the Federal Register and by holding public hearings. The views of interested parties are summarised in the Commission's report (USITC 2003).

The Commission also investigates, under section 131 of the US *Trade Act of 1974*, at the request of the President, the effects on US industries and consumers of possible tariff modifications resulting from trade agreements and of duty-free entry of specific products from developing countries under the Generalised System of Preferences. Under section 2104(b) of the US *Trade Act of 2002*, the Commission, at the request of the President, investigates the probable economic effect on US industries producing like or directly competitive products and on the US economy as a whole of eliminating tariffs on imports of specific agricultural products.

United Kingdom

In August 1998, the British Prime Minister, Mr Tony Blair, introduced regulatory impact assessment requirements for all regulations that impact on businesses, charities or voluntary bodies. Under the requirements, the development of a Regulatory Impact Assessment (an Assessment) follows the policy development process.

An initial Assessment is prepared in the early policy development stage to accompany a submission seeking Ministerial agreement to a proposal. A partial Assessment, building on the initial Assessment, is submitted with any proposal seeking collective agreement from the Cabinet, a Cabinet Committee, the Prime Minister or other interested Ministers.[1] The partial Assessment is also released for public comment with formal consultation documents. A full/final Assessment, bringing together the partial Assessment, the views of those consulted and any further analysis that has been done, is submitted to Ministers with clear recommendations for action.

[1] Where a proposal has a significant impact, then a Regulatory Impact Statement (a summary of the Assessment), agreed with the Regulatory Impact Unit and, if the proposal affects small firms, with the Small Business Service, must be included in the Cabinet Paper or Ministerial letter to colleagues seeking collective agreement to the proposal.

A proposal has significant impact if the costs are in excess of £20 million in any year, there is high media topicality or sensitivity, it has been reported on by the Better Regulation Taskforce or where there is Taskforce work in hand, or where there is a disproportionate impact on a particular group (for example, small business, charities or a particular business sector).

Full Assessments are signed off by the Minister responsible before being placed on departmental websites, and a copy is placed in the House library. In the case of Bills, a summary of the Assessment forms part of the Explanatory Memorandum to the Bill and is tabled in Parliament. If significant changes are made to the Bill in the House in which it was first tabled (Commons or Lords), another version of the Assessment incorporating the changes made must be prepared before tabling the legislation, Explanatory Memorandum and Assessment in the other. In the case of statutory instruments, the Explanatory Note should indicate how the Assessment can be obtained. In the case of European legislation, the Assessment must accompany all Explanatory Memoranda.

An exercise by the Cabinet Office (UK) in December 2002 found the level of compliance by departments and agencies with the requirements to be 92 per cent (Alexander 2003).

On 28 January 2003, the UK Cabinet Office published a new guide for policy makers preparing Assesments: *Better Policy Making: A Guide to Regulation Impact Assessment* (Cabinet Office (UK) 2003). The new Guide sets out when an Assessment should be prepared and how to prepare one. Assessments are required:

- for all proposals (legislative and non-legislative) which are likely to have a direct or indirect impact (whether benefit or cost) on business, charities or the voluntary sector and could have a regulatory solution;
- for any changes made by Regulatory Reform Order, even if they have no impact on business, charities or the voluntary sector;
- for Private Members' Bills that the Government is planning to support, or is not intending to oppose, by the date set down for Second Reading;
- for legislative and non-legislative proposals that originate outside the UK, when seeking policy clearance for a Minister's negotiating stance when attending international meetings and to support UK negotiations;
- for EU proposals including directives, regulations and decisions, including technical adaptations to EU provisions, and joint positions and conventions under second and third pillar co-operation;
- for international agreements such as Treaties and Conventions; and
- for international meetings that might result in legally binding commitments at a later date such as meetings or conferences where recommendations are made that may later lead to action to implement them. In such cases, an initial assessment should be carried out to inform the Minister's negotiating line. (Cabinet Office (UK) 2003, pp. 5–6)

Changes made to the Guide include:

- additional consultation requirements;

- new guidance on the treatment of costs and benefits;
- mandatory competition assessment; and
- new guidance on the treatment of alternatives to regulation.

The new Guide recommends a minimum period of 12 weeks for consultation. A new chapter in the Guide is devoted to the handling of European Union proposals. While a competition assessment is now mandatory, the new Guide applies a two-stage assessment process. The first stage applies a 'filter test' of nine 'Yes/No' questions. If there are more 'No' answers to these questions, no further assessment of the effects on competition are required. If there are more 'Yes' answers, a detailed assessment must be included in the partial Assessment. Finally, alternatives to regulation are canvassed in an Annex to the Guide.

The UK Government also recently announced a regulatory reform action plan (Cabinet Office (UK) 2002). This document contains over 250 regulatory reform measures that are expected to benefit business, charities and the public service.

European Union

On 5 June 2002, the Commission of the European Communities (EC) released its *Action Plan 'Simplifying and improving the regulatory environment'* (EC 2002a). The *Action Plan* commits the Commission to a range of actions including:

- defining minimum standards of consultation;
- assessing the impact of major legislative and policy initiatives;
- expanding the explanatory memoranda accompanying legislative proposals;
- including a review clause in legislative acts;
- simplifying and reducing the volume of Community legislation; and
- assessing the impact of substantial amendments to Commission proposals introduced by the European Parliament and Council.

To assist the Commission in achieving these objectives, it released 'Communications from the Commission' on *Impact Assessment* (EC 2002b) and *Consultation* (EC 2002c).

The Commission's Impact Assessment requirements, covering all legislative proposals and all other major policy proposals, are to be introduced in a phased manner from 2002 — full application is expected in 2004-05. Impact assessment is conducted in two stages. A Preliminary Impact Assessment (PIA) is prepared, and examined by the Commission, one year before adoption, who may request that a

more detailed Extended Impact Assessment (EIA) be carried out. Where it is likely that an EIA will be required, the EIA process may be begun prior to the Commission's request (EC 2002b).

The Commission's *Consultation Document* sets out five minimum standards:

- communication should be clear and concise, and include all necessary information to facilitate responses;
- 'awareness-raising publicity' should be used and tailored to ensure that affected groups are reached;
- public consultations should be published on the Internet and announced on the EC's 'single access point';
- minimum time limits of 6 weeks for the receipt of responses in written public consultation and 20 working days notice for meetings should be adopted; and
- the receipt of contributions should be acknowledged and the results of public consultation should be displayed on websites that are linked to the EC's 'single access point' (EC 2002c, pp. 12–14).

The Commission encouraged member states to establish consultation and impact assessment requirements for draft national laws and national measures to supplement EC directives. It intends to report annually on progress in implementing its *Action Plan*.

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