Australian Government
Productivity Commission

Regulation and its Review 2003-04

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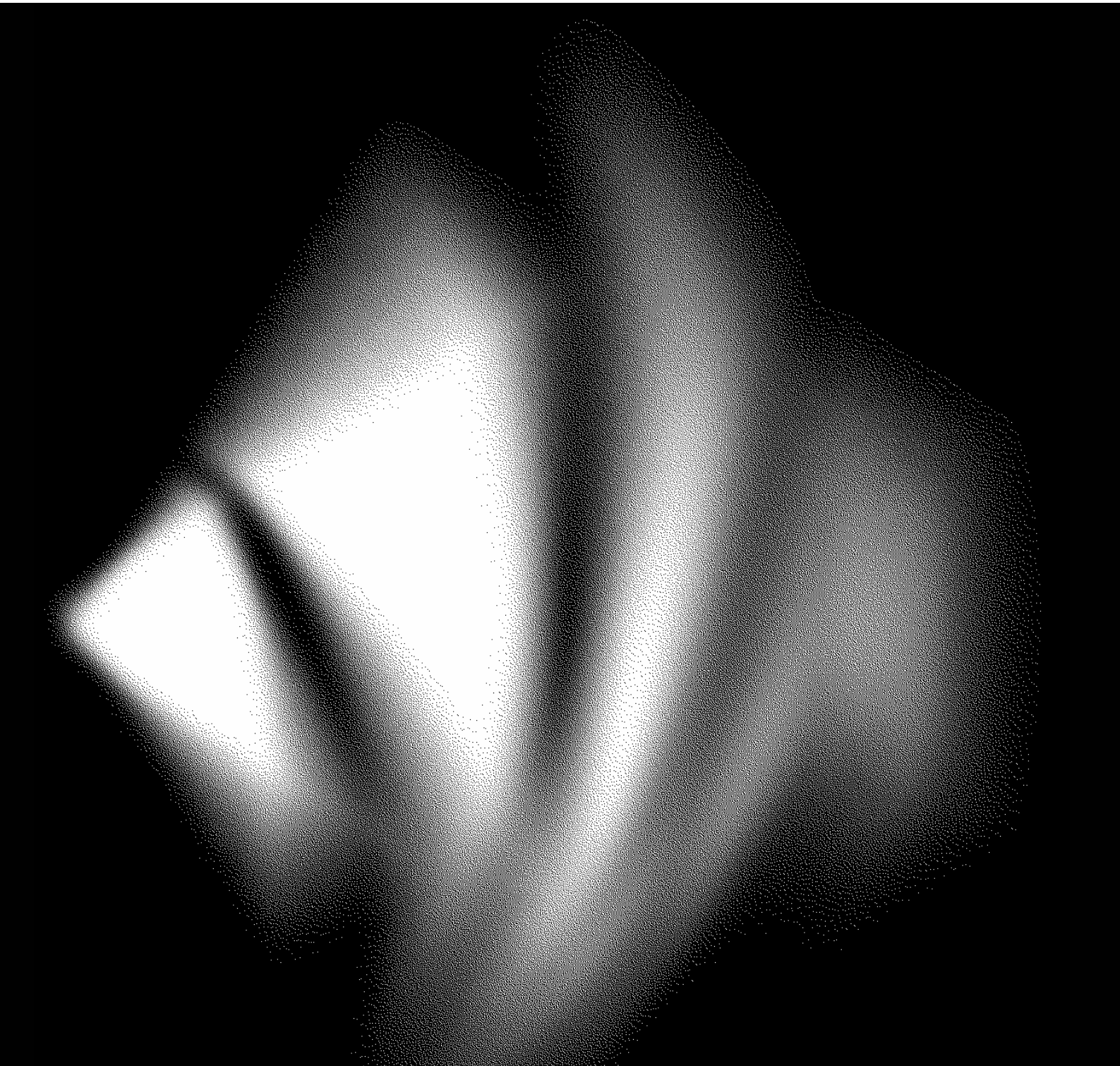
Annual Report Series



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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.

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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 the adequacy of RISs for regulatory proposals considered by Ministerial Councils and national standard-setting bodies, and on National Competition Policy reviews of Australian Government regulation. These processes are all designed to improve the quality of Australia's regulatory systems and enhance regulatory outcomes.

This is the seventh such report and forms part of the Productivity Commission's annual report series of publications for 2003-04. It draws on the work of the Office of Regulation Review, a separate unit within the Productivity Commission, which monitors and reports on compliance with the Government's RIS requirements and those of the Council of Australian Governments.

This edition of *Regulation and its Review* provides RIS compliance information in aggregate and for individual Australian Government departments and agencies, as well as for individual Ministerial Councils and national standard-setting bodies. The assessed adequacy of RISs for all Bills, disallowable instruments and treaties tabled in Parliament during the year is noted for the first time. This year's report also discusses the importance of effective consultation in generating high quality regulation and maintaining public confidence, and provides information on developments in regulatory policy in Australia and internationally.

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

Gary Banks
Chairman

November 2004

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Abbreviations

AASB	Australian Accounting Standards Board
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
A-G's	Attorney-General's Department
AFMA	Australian Fisheries Management Authority
AMSA	Australian Maritime Safety Authority
APRA	Australian Prudential Regulation Authority
AQIS	Australian Quarantine Inspection Service
ANZFRMC	Australia New Zealand Food Regulation Ministerial Council
APMVA	Australian Pesticides and Veterinary Medicines Authority
ASDA	Australian Sports Drug Agency
ASIC	Australian Securities and Investments Commission
ATC	Australian Transport Council
ATO	Australian Taxation Office
BCCS	Business Cost Compliance Statement (New Zealand)
BRRU	Business Regulation Reform Unit (Queensland)
CASA	Civil Aviation Safety Authority
CRR	Committee on Regulatory Reform
CRIS	Cost Recovery Impact Statement
COAG	Council of Australian Governments
DAFF	Department of Agriculture, Fisheries and Forestry

DCITA	Department of Communications, Information Technology and the Arts
DEWR	Department of Employment and Workplace Relations
DEH	Department of the Environment and Heritage
DFAT	Department of Foreign Affairs and Trade
DFCS	Department of Family and Community Services
DHA	Department of Health and Ageing
DITR	Department of Industry, Tourism and Resources
DOTARS	Department of Transport and Regional Services
DoFA	Department of Finance and Administration
EPHC	Environment Protection and Heritage Council
EU	European Union
ESD	ecologically sustainable development
GBRMPA	Great Barrier Reef Marine Park Authority
GM	genetically modified
IAC	Industries Assistance Commission
IC	Industry Commission
JSCOT	Joint Standing Committee on Treaties
MCCA	Ministerial Council on Consumer Affairs
NCA	National Capital Authority
NCC	National Competition Council
NCP	National Competition Policy
NOIE	National Office for the Information Economy
NOHSC	National Occupational Health and Safety Commission
NSSBs	National standard-setting bodies
NSW	New South Wales
NT	Northern Territory
OECD	Organisation for Economic Cooperation and Development
ORR	Office of Regulation Review
PC	Productivity Commission

PIMC	Primary Industries Ministerial Council
PM&C	Department of the Prime Minister and Cabinet
Qld	Queensland
RBA	Reserve Bank of Australia
RIA	regulatory impact analysis
RIAU	Regulatory Impact Analysis Unit (New Zealand)
RIS	Regulation Impact Statement
RRU	Regulation Review Unit (Tasmania)
SA	South Australia
SARC	Scrutiny of Acts and Regulations Committee (Victoria)
SBC	Small Business Commissioner
SCAG	Standing Committee of Attorneys-General
SGG	synthetic greenhouse gases
SSCRO	Senate Standing Committee on Regulations and Ordinances (Australian Government)
Tas	Tasmania
UK	United Kingdom
US	United States of America
Vic	Victoria
WA	Western Australia

OVERVIEW

Key points

- A key element of the Australian Government's objective to improve regulations is the requirement to prepare Regulation Impact Statements (RISs) for proposed new and amended regulation which affects business.
- The Australian Government's RIS processes broadly conform with OECD best practice principles.
- In 2003-04, the Office of Regulation Review advised that RISs were required for 114 regulatory proposals. This represented about 7 per cent of the 1700 regulations which were made.
- Overall, the compliance of departments and agencies in 2003-04 with the RIS requirements at the decision-making stage of regulatory policy development was higher than in previous years:
  - Adequate RISs were prepared for 92 per cent of the 114 regulatory proposals (compared to 81 per cent in 2002-03 and 88 per cent in 2001-02).
  - The compliance rate for the 18 regulatory proposals assessed as having a more significant impact on business and the community was significantly higher at 94 per cent (compared to 46 per cent in 2002-03 and 70 per cent in 2001-02).
- In 2003-04, 24 departments and agencies were required to prepare RISs. Of these, 18 were fully compliant (compared to 12 of 23 in 2002-03).
- In 2003-04, compliance by Ministerial Councils and national standard-setting bodies with the Council of Australian Governments' RIS requirements at the decision-making stage was 88 per cent, similar to that in 2002-03.
- In recognition of the value of effective consultation processes to good regulatory outcomes, many governments in Australia and internationally are taking steps to improve their approach to community consultation.

Overview

Regulations are an essential component of a modern and well-functioning economy and society. The challenge for governments is to deliver effective and efficient regulations which can facilitate a wide range of community objectives without imposing unnecessary burdens on the community.

Poor quality regulation can impose unnecessary costs, impede innovation and create unnecessary barriers to trade, investment and economic efficiency. It can also impede the capacity of society to achieve broader social, economic, regional, equity and environmental objectives.

Even where regulations are well designed and implemented, regulatory compliance costs can be significant. The Organisation for Economic Cooperation and Development (OECD) estimated that, for a limited set of regulations, such compliance costs for small and medium sized businesses in Australia exceeded $17 billion in the late 1990s.

A World Bank study of regulation in over 130 countries concluded that, while many aspects of Australia's regulatory system appear to be effective and efficient, some areas do not appear to meet these two objectives. For example, it found that it takes on average 157 days to enforce a contract in Australia, compared to 50 days in New Zealand, 69 in Singapore and 48 in the Netherlands.

There is also growing concern about the complexity and volume of regulations. Regulatory systems are likely to become more complex as society becomes more diverse. However, many groups in the community — especially small business — consider that the growing complexity of regulations also reflects unnecessary and costly 'regulatory inflation'.

Most OECD countries have adopted a range of policies to improve the quality of regulatory analysis and outcomes, including the use of Regulation Impact Statements (RISs). The OECD has promoted the integration of RIS processes into regulatory policy development processes.

A RIS formalises and documents the steps taken in developing good regulation. It is prepared by the regulatory department/agency and seeks to ensure that regulation achieves its objectives in the most effective and efficient way. It does this by

canvassing feasible options to address a policy problem in a systematic and transparent manner. This in turn can provide a better basis for informed political decision making. RISs also enhance accountability by informing the community and stakeholders about why and how particular regulatory decisions were taken.

Use of Regulation Impact Statements in Australia

The Australian Government's and the Council of Australian Governments' (COAG) RIS processes are recognised as being in line with international best practice. Australia's RIS systems are broadly comparable to those used in many other OECD countries, including the UK, US and New Zealand.

RIS systems applied in Australia are integrated with — and reinforce — other regulatory quality control systems, including regulatory performance indicators and regulatory plans, and the requirements of National Competition Policy.

RIS processes apply to about 100 Australian Government regulators, Ministerial Councils and national standard-setting bodies. These bodies are obliged to prepare RISs, which are then assessed by the Office of Regulation Review (ORR). The ORR's job is to ensure that good regulation making processes are followed. It has an independent 'umpire' role and does not advocate particular regulatory outcomes. The ORR reports to decision makers and to the community. It also provides training on these processes to government officials.

All Australian jurisdictions — with the exception of Western Australia — use RISs. Recently, New Zealand and some Australian jurisdictions, such as Victoria and the Northern Territory, have established RIS processes broadly modelled on those used by the Australian Government and COAG. In 2003-04, COAG processes were strengthened to include, amongst other things, provision for greater cooperation with New Zealand when examining regulatory proposals with trans-Tasman issues. Major changes made by the Australian Government were to reinforce the importance of consultation through the *Legislative Instruments Act 2003* and to establish processes for greater transparency for cost recovery measures.

Measuring the effectiveness of RIS systems in improving the quality of regulation is a complex task and difficult to do in a comprehensive way. However, a number of partial measures indicate the positive impacts of the RIS process on regulatory outcomes. For example, analysis by Hahn (1998) of the impacts and outcomes from the use of RISs by OECD countries concluded that RISs have reduced the number of unnecessary, burdensome regulations. In Australia, the RIS process has often resulted in more robust analysis of regulatory options. It can lead to preliminary recommendations being revised and modified before the final decision-making

stage. For example, in 2003-04, the recommended regulatory response changed during the policy development process in nine of the 105 RISs prepared by the Australian Government in that year.

Box 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 account of the basis for 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 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. A key role of the ORR is to decide whether a RIS should be prepared.

After receiving advice from the ORR that a draft RIS complies with the Government's requirements, it is attached to the proposals to be considered by the decision maker — Cabinet, the Prime Minister, Minister(s) or a board.

A RIS is 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.

In 2003-04, RISs were prepared for a number of significant regulatory changes, including the Australia/United States Free Trade Agreement, new tariff and assistance arrangements for the clothing, textile and footwear industries, and reforms to international taxation arrangements.

In 2003-04, 18 out of 24 departments or agencies required to prepare RISs complied fully with the requirements. Those that did not comply either failed to prepare a RIS or prepared one with an inadequate level of analysis.

A common problem is that RISs are prepared late in the policy-making process, diminishing the capacity of the RIS to aid decision making. Late preparation can be a sign of poor internal management and planning, or may reflect underestimation of the complexity or impacts of a regulatory proposal, resulting in insufficient time being allocated to do the analysis and consult with the ORR.

Aggregate RIS compliance for 2003-04

The Government's RIS requirements apply to all departments and agencies. About 1700 Bills, disallowable instruments and other regulations were tabled in Parliament or otherwise made in 2003-04, of which less than 7 per cent required a RIS.

- Of the 114 regulatory proposals that required a RIS for the decision maker, 109 RISs were prepared, with 105 of those assessed as containing an adequate level of analysis. Accordingly, the RIS compliance rate in 2003-04 was 92 per cent. This compares to an 81 per cent compliance rate in 2002-03 (table 1).
- The second requirement, that adequate RISs be tabled in Parliament with the explanatory material for Bills, disallowable instruments or international treaties, was satisfied in 95 per cent of cases in 2003-04, equal to that in 2002-03.

Table 1 **RIS compliance, by type of regulation, 2003-04**

Type of regulation	*Decision-making*			*Tabling* [a]		
	prepared	*adequate*		*prepared*	*adequate*	
	ratio	*ratio*	*%*	*ratio*	*ratio*	*%*
Primary legislation (Bills)	29/31	29/31	94	33/34	32/34	94
Disallowable instruments	41/43	39/43	91	43/44	42/44	95
Non-disallowable instruments	14/14	12/14	86	..	..	..
Quasi-regulation	12/13	12/13	92	..	..	..
Treaties [b]	13/13	13/13	100	8/8	8/8	100
Total	**109/114**	**105/114**	**92**	**84/86**	**82/86**	**95**

.. Not applicable. Tabling is not a formal requirement. [a] RIS compliance for the tabling of Bills, treaties and disallowable instruments is subject to formal assessment by the ORR. [b] During the treaty-making process, RISs are required at three stages — before entry into negotiations, before signature of the final treaty text and before ratification. The first two stages have been aligned with the decision-making stage. The ratification stage has been aligned with the tabling stage. In three cases, RISs were not required at entry into negotiations.

Source: ORR estimates.

The ORR classified each of the 114 proposals in 2003-04 by its degree of 'significance' — reflecting the nature and magnitude of the proposal and the scope

of its impacts (table 2). RIS compliance at the decision-making stage for the 18 proposals identified as more significant was 94 per cent in 2003-04. This is considerably higher than for the previous year, when the comparable compliance rate was only 46 per cent, and may be a sign that departments and agencies are more fully integrating the RIS requirements into their policy development processes. For proposals with less significant impacts, a 92 per cent compliance rate was achieved — also higher than the 85 per cent compliance rate in the previous year.

Table 2 **Compliance by significance, 2003-04**

Significance rating	*Required*	*Prepared*	*Adequate*	*Compliance*
	no.	*no.*	*no.*	*%*
More significant	18	17	17	94
Less significant	96	92	88	92
Total	**114**	**109**	**105**	**92**

Source: ORR estimates.

Where regulatory proposals would restrict or distort competition, National Competition Policy requires governments to demonstrate that the benefits of restricting competition outweigh the costs, and that the benefits can only be achieved by those means. In 2003-04, the Government introduced five proposals judged to restrict competition. In each case, a RIS was prepared and assessed as adequate by the ORR at the decision-making stage (chapter 2).

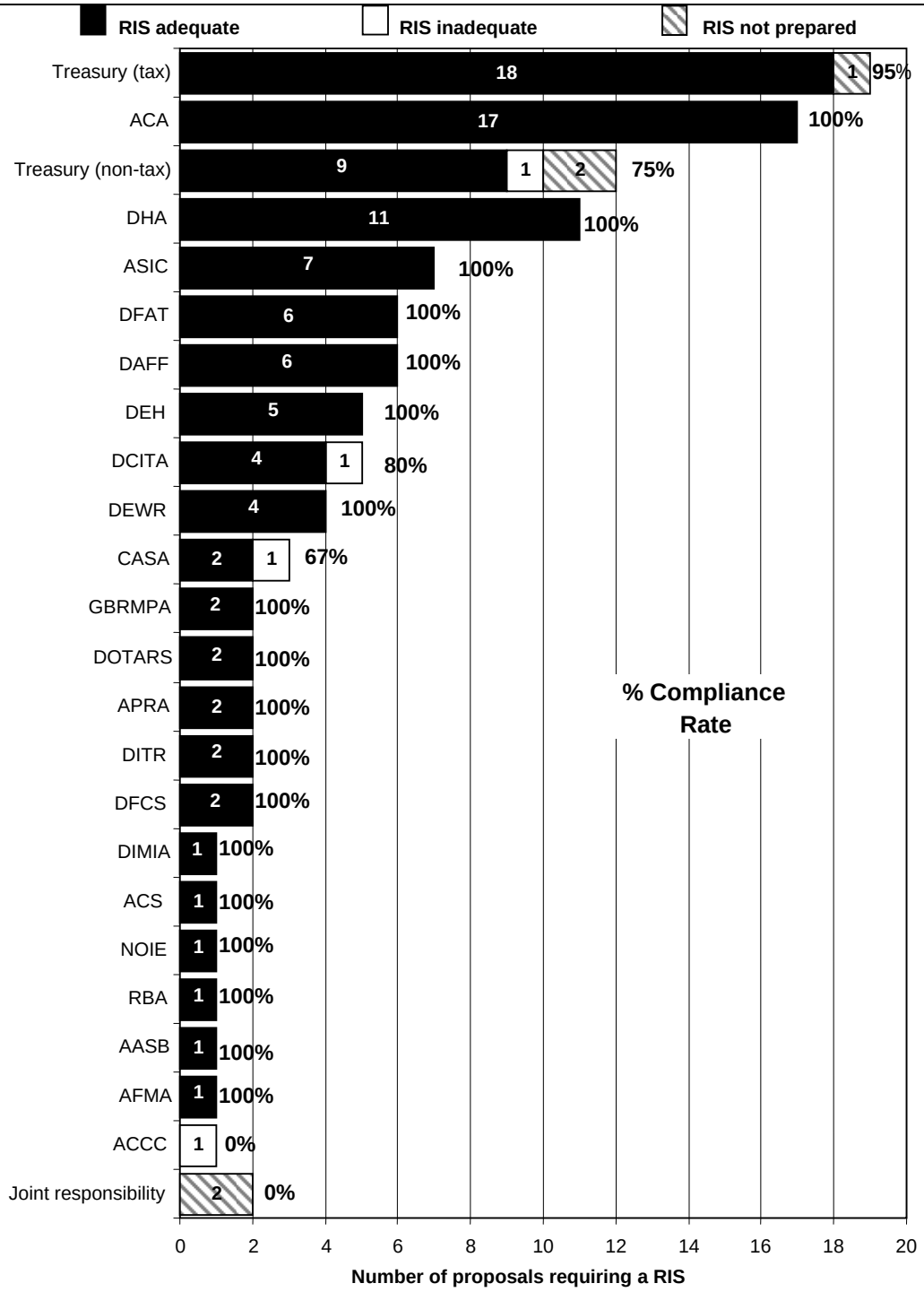
Compliance by departments and agencies

In 2003-04, 24 Australian Government departments and agencies were involved in making 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 2003-04 for each department and agency, as a percentage of the number of RISs required, is shown at the end of each bar. In 2003-04, 18 departments and agencies were fully compliant with the Government's RIS requirements (compared to only 12 in 2002-03).

Figure 1 **Compliance with RIS requirements at the decision-making stage, 2003-04** [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.

National regulation making: RIS compliance results

Regulation making also occurs at a national or inter-jurisdictional level among Ministerial Councils and standard-setting bodies involving Australian, State and Territory governments. In 1995, COAG agreed on principles and guidelines for such regulatory activities, the major element of which is the preparation of a RIS for community consultation and also for the decision-making process (COAG 2004b). 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 the COAG RIS requirements have been met. The ORR is required to assess each COAG RIS at two stages of the regulatory development process: before it is released for community consultation and before the decision-making stage.

COAG RIS compliance is reported annually for the period 1 April to 31 March. In the 12 months to 31 March 2004, 34 regulatory decisions made by Ministerial Councils and national standard-setting bodies required the preparation of a COAG RIS. Of these, 30 adequate RISs were prepared at the decision-making stage — a compliance rate of 88 per cent. Compliance at the community consultation stage was lower, with 28 proposals complying with the COAG RIS requirements — a compliance rate of 82 per cent. RIS compliance for seven regulatory proposals having a significant impact on business and the community remained relatively low, at 57 per cent (chapter 2 and appendix C).

Improving transparency and community consultation

A need for greater transparency in the making and administration of regulation is regarded by the OECD as a pressing area for improvement in many countries that have RIS requirements (OECD 2002, p. 65). The OECD considers that increased transparency can help address many regulatory failures and increase the incentives for policy makers to apply best practice processes in policy development.

Governments in democratic countries have long recognised that an important way of enhancing transparency when reviewing or developing regulations is to carry out a program of effective and meaningful consultation with the community. Such consultation is a useful way of identifying problems and enhancing community confidence in regulatory systems. In turn, this increases the likelihood of achieving high compliance with regulatory requirements, as well as the objectives of the regulation.

The features of effective consultation include accessibility, transparency, responsiveness and timeliness. Having good consultation processes is particularly important for those in the community who are directly affected by regulatory

proposals or who may experience difficulty in having their views heard. For example, small business can be directly, and often disproportionately, affected by a wide range of regulation and associated red tape. Further, Australians who are disadvantaged or have a disability might have difficulty accessing some types of consultation forums.

Those undertaking consultation need to plan for it early in the policy development process and make sure that meaningful information is accessible for relevant stakeholders. Sufficient time should be allowed to enable stakeholders to respond and for their views to be taken into account.

In recognition of the value of effective and meaningful consultation, many governments, both in Australia and internationally, are taking a more systematic and standardised approach. This includes legislative changes which enshrine consultation processes, such as the Australian Government's *Legislative Instruments Act 2003*, and guidelines on how consultation should be undertaken with particular groups, such as small business.

For Australian Government agencies, there is no formal requirement to publicly release RISs for consultation. However, the ORR has observed an increase in the number of agencies doing so, suggesting a greater commitment to implementing good regulatory practice.

At the national level, there is a COAG requirement that Ministerial Councils and national standard-setting bodies consult with the community when reviewing regulations and that they release a draft RIS as part of this consultation process.

In some circumstances, such as regulation to address an emergency, a robust consultation process may not be practicable. More often, however, a failure to consult effectively is the result of poor planning by regulators.

Effective and meaningful consultation does not mean that the views of stakeholders have to be accepted. Indeed, consultative processes will typically bring forth a variety of often opposing views. The object is to enrich the regulator's understanding of the available options for dealing with a policy issue and the effects of these options. In this way, the final choice of regulatory approach is more likely to be well founded and to receive greater community acceptance.

1 The role of Regulation Impact Statements in improving regulation

The Regulation Impact Statement (RIS) process is recognised internationally as playing a pivotal role in improving the quality of regulation. RIS processes also reinforce other processes of government designed to improve the quality, transparency and administration of regulations. In 2003-04, RIS processes were reviewed and strengthened by several Australian jurisdictions. Nevertheless, some regulators continue to experience difficulties in complying with such best practice processes.

Regulations are essential for a properly functioning society and the economy. The challenge for government is to deliver effective and efficient regulation — *effective* in addressing an identified problem and *efficient* in minimising compliance and other costs on the community.

Increasing global competition, advances in technology and changes in community values have resulted in many member countries of the Organisation for Economic Cooperation and Development (OECD) undertaking substantial regulatory reform since the mid-1980s. While this has been most evident in industries such as electricity, rail, shipping, airports and telecommunications, there has also been a significant focus on corporate governance, environmental, public health and safety regulations.

Some compliance costs are a necessary by-product of any regulatory system. However, regulation that fails the tests of efficiency and effectiveness can impose unnecessary costs, as well as impede innovation and productivity. These costs of regulation may sometimes only become apparent over time.

In Australia, there has been growing concern about the complexity of regulations associated with recent increases in the number and average length of regulations (Pender 2004). As society becomes more diverse, it is inevitable that regulatory systems will become more complex. However, many groups in the community — especially small business — are concerned that the growing complexity of regulations also reflects 'regulatory inflation', which is creating unnecessary burdens and making compliance more difficult for business and other affected groups.

Regulatory compliance costs are difficult to estimate, but appear to be substantial, both for individual businesses and the broader community. For example, the OECD estimated in 1998 that, for a limited set of regulations, regulatory compliance costs for small and medium sized businesses in Australia exceeded $17 billion per year — equal to $33,000 for each business (OECD 2001).

In a major new international study, the World Bank (2004a, 2004b) has scrutinised the regulatory systems in over 130 countries. The study measures the time, cost and effort required to manage key aspects of a business, such as establishing a business, hiring workers, obtaining credit, enforcing contracts, securing payments from debtors and resolving bankruptcy issues. It found that Australia ranks highly vis-a-vis other countries on a range of outcome measures, such as the time and cost involved in meeting regulatory requirements to start a business. Some of Australia's current labour market regulations also rate highly, such as flexibility in hiring. In contrast, Australia fares poorly compared to some other countries in the time and cost incurred in enforcing contracts. For example, according to the study it takes on average 157 days to enforce a contract in Australia, compared to 50 days in New Zealand, 69 days in Singapore and 48 days in the Netherlands. The study (which has been extended to more countries) also suggests that, for countries with poor quality regulation, there can be a significant return to regulatory reform in increased economic growth.

1.1 Regulatory review and reform policy

Experience in Australia and overseas has shown that good regulation typically has the following characteristics (Argy and Johnson 2003, p. 6).

- It is *not unduly prescriptive*, being performance or outcome oriented, with the flexibility to accommodate changing circumstances and to allow businesses and others to choose the most efficient and effective means of compliance.
- It does *not restrict or distort competition* and allows market forces to operate without adverse effects.
- It is *predictable and responsive to business and the community*, so that they can make decisions with certainty and confidence.
- It is *clear and concise*, so that it is accessible to those affected by it and can be readily understood.
- It is *consistent* with other laws, agreements and international obligations.
- It is *enforceable*, yet embodies incentives no greater than necessary for reasonable enforcement and for maintaining compliance that is not unduly costly.

- It is *administered in a fair and transparent* manner, with proper accountability and appeal mechanisms.
- It is *monitored and periodically reviewed* to ensure that it continues to achieve its objectives.

Good processes are the key to achieving good regulation. They help ensure that regulation making has clear objectives, is well informed, takes a whole of society perspective and engenders community confidence by providing certainty and transparency about the reasons for and effects of regulation.

In Australia and many OECD countries, a central element of good regulation making is the use of Regulation Impact Statement (RIS) processes. A RIS formalises and documents the steps in developing good regulation. It is prepared by the department/agency developing regulation and aims to ensure that regulation achieves its objectives in the most efficient and effective way.

The benefits of the RIS process include providing a systematic, consistent and transparent framework to assess the benefits and costs of government regulatory action. RISs clarify information about impacts for decision makers and help make economic, social, environmental and other trade-offs explicit. In these ways, RISs can promote regulation that brings the greatest net benefit to the community (OECD 2002, p. 45).

1.2 International regulatory developments

There is a growing recognition internationally that governments need to have systems in place to ensure the quality of regulatory outcomes. Although not a new concept, RISs have become one of the main initiatives employed by OECD countries to improve the quality of regulation and promote regulatory governance. Related tools include the systematic consideration of regulatory alternatives, wider public consultation and improved accountability arrangements (OECD 2002, p.11).

Although only two or three OECD countries were using RISs in the early 1980s, by the end of 2000, 14 of 28 OECD members had adopted universal RIS programs broadly similar to that used by the Australian Government. A further six were using the RIS approach for some types/categories of regulatory proposals (OECD 2002, p. 45).

The United States (US) and the United Kingdom (UK) are leading countries in implementing regulatory quality control processes — including the use of RISs.

- At the federal level in the US, RISs are required 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 required to identify and assess alternatives to direct regulation and are encouraged to allow 60 days for comment on proposed regulations. An independent agency — the Office of Management and Budget — is responsible for oversight of the US Government's regulatory quality assurance system.
- In the UK, regulatory impact assessment for proposals that affect businesses, charities or voluntary bodies was introduced in 1998. The Regulatory Impact Unit, located within the UK Cabinet Office, works with departments, agencies and regulators to ensure they prepare robust RISs. The UK approach requires: consideration of alternatives to regulation, RISs to be included as part of ministerial correspondence seeking collective agreement for 'significant proposals' and early and effective consultation with those affected (Cabinet Office (UK) 2003).

While most OECD countries now use RISs, many are strengthening and enhancing their requirements (Argy and Johnson 2003 and appendix G).

1.3 Regulatory policy in Australia and the use of RISs

RIS processes adopted by the Australian Government and Council of Australian Governments (COAG) are recognised internationally for integrating best practice processes into regulatory policy-making. RIS processes apply to approximately 60 Australian Government regulators and national standard-setting bodies, and a further 40 Ministerial Councils. They encompass the main tools — including the systematic consideration of regulatory alternatives, public consultation and accountability — which the OECD has identified as essential to improving the effectiveness and efficiency of regulation.

Box 1.1 **Australian Government RIS processes**

RISs are mandatory for significant regulations, including international treaties, that have the potential to affect business or restrict competition.

RISs should address a number of key elements. These include an assessment of the problem or issue being addressed and a clear statement of the objective of government action. The problem should be carefully defined, with evidence of its nature, magnitude and impacts. The objective should be explicit in addressing the problem, but not pre-justify a certain course of action. The RIS then assesses feasible options, includes a cost-benefit, impact and risk analysis of each option, and provides justification for the preferred option. It also summarises the consultation process and views of stakeholders on the issues being addressed. In addition, the RIS should address how the regulation will be implemented and when it will be reviewed.

The primary role of a RIS is to ensure that all relevant information is presented to the decision maker. After a decision is made, the RIS may be tabled in Parliament or otherwise made public, promoting transparency about the basis for a decision.

The ORR is required by the Australian Government to advise agencies developing regulatory proposals whether a RIS is necessary and to assess the adequacy of all RISs prepared by agencies.

Agencies are required to consult the ORR at the earliest practicable stage in the policy development process as to whether a RIS is required. Failure to consult with the ORR, prepare a RIS where one is required, or prepare a RIS of an adequate standard can trigger a number of responses, including the ORR providing an adverse report to the decision maker and non-compliance being reported in *Regulation and its Review*. The ORR can also brief the Parliamentary Secretary to the Treasurer, who can address the matter at Ministerial level.

Source: derived from *A Guide to Regulation* (ORR 1998).

The ORR, which is part of the Productivity Commission and shares its statutory independence, plays an 'umpire' role — it focuses on the process and does not advocate or support particular policies or regulatory outcomes. The ORR reports to decision makers on a regular basis and to the broader community annually — through *Regulation and its Review* — on the adequacy of analysis within RISs.

Since 1995, COAG has applied a nationally consistent assessment process to proposals of a regulatory nature considered by Ministerial Councils and national standard-setting bodies. The major element of the COAG assessment process is the preparation of RISs for regulatory proposals. Under the COAG guidelines, the ORR is required to assess the adequacy of the RIS at two stages — prior to public consultation and prior to a decision being taken by the Ministerial Council or national standard-setting body. The application of the COAG RIS process by

Ministerial Councils and national standard-setting bodies is discussed in appendix C.

New Zealand and a number of Australian jurisdictions (such as Victoria and the Northern Territory) have recently implemented RIS systems broadly modelled on the approach taken by the Australian Government. The RIS requirements employed by Australian States and Territories are discussed in appendix F.

Recent developments

A number of recent developments are directly relevant to either the COAG or the Australian Government RIS processes. These include new RIS initiatives by COAG, the *Legislative Instruments Act 2003* and the Government's cost recovery impact requirements.

COAG RIS initiatives

In June 2004, COAG re-endorsed and strengthened the COAG RIS guidelines, particularly in relation to the ORR's role in assessing the adequacy of COAG RISs for consultation and decision making. Other changes included clarification that the guidelines apply to COAG itself and identification of cases where RISs may not have to be prepared — such as when a Ministerial Council or national standard-setting body develops a regulation to meet a genuine emergency situation, or where there is preliminary 'brainstorming' by Ministers. There is also a new requirement for the ORR to work closely with its New Zealand counterpart — the Regulatory Impact Analysis Unit — in assessing draft consultation RISs involving New Zealand issues, such as trans-Tasman mutual recognition (COAG 2004a).

Legislative Instruments Act 2003

The Act requires all legislative instruments — made in the exercise of a power delegated by the Parliament — to be recorded on a Federal Register. Examples include regulations, ordinances, determinations or other written instruments that determine the law. The electronic register will allow individuals and businesses to access all Commonwealth instruments and related material in one place via the Internet. Under the Act, legislative instruments will typically sunset after 10 years in operation.

Importantly, the legislation requires Commonwealth rule-making agencies to consult appropriately with the community before making a legislative instrument, particularly if the instrument will affect business or restrict competition. These

provisions aim, in part, to strengthen and promote regulatory best practice and complement the RIS requirements.

Cost recovery impact statements

In 2003, the Australian Government decided that, where appropriate, RISs should also include a Cost Recovery Impact Statement (CRIS). A CRIS is prepared for proposals to introduce or amend significant cost recovery charges.

If a regulatory proposal includes a cost recovery element, the ORR assesses the RIS against the Government's RIS requirements and also the Department of Finance and Administration (DoFA) Cost Recovery Guidelines (2003). Where a separate CRIS which has no regulatory implications should be prepared, it is assessed by DoFA. The ORR liaises closely with DoFA, including on issues that might trigger the CRIS requirements.

Measuring the impacts of RIS processes

Measuring the impacts of RIS systems on the quality of regulation is a difficult and complex task. However, a number of partial measures illustrate the positive impacts of the RIS process on regulatory outcomes. For example, analysis by Hahn (1998) of the impacts and outcomes from the use of RISs by OECD countries concluded that RISs have helped reduce the number of unnecessary and burdensome regulations.

Other benefits of the RIS process have been clearly evident in Australia, particularly in assisting governments to prepare better quality regulations. The RIS process has sometimes resulted in draft options and recommendations being revised and modified 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. Following feedback on the RIS from public consultation, the preferred option was extensively modified, resulting in more streamlined implementation arrangements.

RISs are intended to identify the best response to a particular policy problem. In 2003-04, the preferred regulatory option changed during the policy development process — between preparation of an early draft RIS and consideration by the decision maker — in about ten per cent of cases where RISs were prepared. This illustrates the contribution of RISs in highlighting to decision makers potential regulatory responses which may better address particular problems.

1.4 Why do some regulators find preparing RISs challenging?

In 2003-04, the Australian Government introduced approximately 1700 regulations, comprising 150 Bills, 1538 disallowable instruments and 29 international treaties. The ORR provided advice to regulators on 845 regulatory proposals and advised that RISs were required for 174. Many of these regulatory proposals were not considered by decision makers by 30 June 2004, so that in the year to 30 June 2004 only 114 matters required a RIS (appendix E). Therefore, in 2003-04, less than 7 per cent of all regulations which were considered by decision makers required the preparation of a RIS.

Over the last six years, compliance with the RIS requirements has generally increased, notwithstanding the fact that the ORR has been progressively increasing the minimum adequacy standard. In 2003-04, 18 of the 22 departments/agencies required to prepare RISs complied fully with the RIS requirements. There has also been a large improvement in compliance for significant proposals (see chapter 2 and appendix A). Many departments and agencies now have internal systems for developing regulation which incorporate the RIS process. In these circumstances, the preparation of a RIS usually requires little additional work by the regulator.

However, some departments and agencies continue to experience difficulties in applying the RIS requirements, either by not preparing a RIS when one should be prepared or preparing a RIS that contains an inadequate level of analysis (see chapter 2 and appendix A).

There can be legitimate reasons for a failure to prepare a RIS before the Government makes a decision — for example, the need to respond to a genuine emergency, where regulation must be introduced quickly. The failure to prepare a RIS in an emergency situation is not deemed to be a breach of the RIS requirements. However, such cases are rare and the RIS requirements are sufficiently flexible to cater for them.

Feedback from departments and agencies that have experienced difficulty in complying fully with the RIS process suggests this often is a result of:

- preparation of RISs late in the policy development process;
- poor integration of the RIS requirements into policy development processes; and/or
- duplication of policy development processes.

A common scenario is where RISs are prepared late in the policy-making process. This can be a sign of poor internal management and planning, or underestimation of

the complexity or impacts of a regulatory proposal, resulting in insufficient time to collect information, properly assess those impacts and consult the ORR.

Some departments and agencies may not be familiar with the RIS requirements, notwithstanding that they have applied for several years. This can occur when a department or agency is seldom required to prepare a RIS or where staff turnover has resulted in the loss of staff with familiarity with the RIS process.

In addition, the political process can sometimes result in the need to develop significant regulation in a short period of time. In these circumstances, it may be difficult for departments and agencies to follow best practice processes.

1.5 Future directions in regulatory reform

In recent years, the concept of 'regulatory policy' has evolved into a wider focus on 'regulatory governance' (OECD 2002). 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 the focus of the regulatory policy agenda in many OECD countries.

Improved transparency in the making and administration of regulation is regarded by the OECD as the most pressing area for improvement in many countries that have regulatory impact analysis requirements (OECD 2002, p. 65). The OECD argues that increased transparency helps address various problems in regulation making, including regulatory capture or bias, decisions based on inadequate information and lack of accountability.

In Australia, RIS requirements are supported by a range of other policy programs and processes of government that seek to improve the transparency of Australia's regulatory systems. For example, the Australian Government requires regulators to prepare regulatory plans which 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 Performance Indicators (RPIs) also seek to enhance the quality of regulation. For government departments and agencies, performance measurement processes have an important role to play in ensuring that government resources are used efficiently and effectively. The Office of Small Business (OSB), within the Department of Industry, Tourism and Resources, in partnership with Australian Government departments and agencies, has developed six objectives and nine

indicators relating to regulatory activities. These are intended to provide an indication of the extent to which agencies responsible for business regulation are implementing good regulatory practice. To avoid duplication of effort, the ORR provides the OSB with information it collects through the RIS process on four of the nine indicators. The performance indicators are published by OSB.

National Competition Policy (NCP) has been a major initiative to improve the quality of regulation. Under NCP, any new legislation that restricts competition needs to 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. Also under NCP, Australian, State and Territory governments have been obliged to review and, where appropriate, reform legislation that restricts competition. (The Australian Government's legislation review program is discussed in appendix D.)

Effective and accessible appeal provisions complement other measures to improve transparency 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 — 'the ultimate guarantor of transparency and accountability' (OECD 2002, p. 75). Other avenues of review include the Commonwealth Ombudsman and the Inspector-General of Taxation (PC 2003).

2 Compliance with RIS requirements

In 2003-04, compliance by departments and agencies with the Australian Government's Regulation Impact Statement (RIS) requirements was higher at the decision-making stage than in previous years and equalled the relatively high compliance rate of last year at the tabling stage. Compliance with COAG's requirements was comparable to that of the previous reporting period.

2.1 Compliance with Australian Government requirements

When assessing and reporting on compliance with the Australian 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[1]; and
- a RIS was tabled in the Parliament or otherwise made public[2] and the analysis was adequate.

A department or agency is considered to be fully compliant with the Government's requirements only if it meets these conditions. The ORR 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 progressively increased 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 implementing a regulatory proposal is tabled in Parliament (in the case of Bills and treaties), or is 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 2003-04, but not introduced into the Parliament or made into law within that period.

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1 Box 2.1 lists the criteria used to determine whether the analysis contained in a RIS is adequate.

2 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 prepared for proposals introduced by other forms of instrument to be made public, the ORR encourages departments and agencies to do so.

Box 2.1 **Adequacy criteria for 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 objectives 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: A Guide to Regulation, p. D 19.

Aggregate compliance in 2003-04

In 2003-04, 114 RISs were required at the *decision-making* stage. Of these, 109 were prepared and 105 were assessed as adequate by the ORR — a compliance rate of 92 per cent. This compares with compliance rates of 81 per cent in 2002-03, 88 per cent in 2001-02, 83 per cent in 2000-01 and 82 per cent in 1999-2000. As in previous years, failure to prepare a RIS accounted for more non-compliance than those prepared but assessed by the ORR as inadequate.

At the *tabling* stage, 86 RISs were required, 84 were prepared and 82 were assessed as adequate by the ORR — a compliance rate of 95 per cent. The compliance rate at the tabling stage was the same as in 2002-03, but higher than for earlier years. Fewer regulations requiring RISs were tabled in 2003-04 than in the previous year, continuing a downwards trend over the last six years (table 2.1).

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-making points in the policy development process, such as for treaties. Third, there may be a single RIS at the decision-making stage but several RISs at the tabling stage if the decision is implemented by more than one piece of regulation. Finally, differences can occur if a RIS is not required for the decision-making stage, but a RIS is required for tabling.[3]

Table 2.1 **RIS compliance, 1998-99 to 2003-04**

	1998-99	*1999-00*	*2000-01*	*2001-02*	*2002-03*	*2003-04*
Decision-making stage [a]	203/260	169/207	132/160	130/147	113/139	105/114
	(78%)	*(82%)*	*(83%)*	*(88%)*	*(81%)*	*(92%)*
Tabling stage [a, b]	202/228	163/179	118/133	116/123	113/119	82/86
	(89%)	*(91%)*	*(89%)*	*(94%)*	*(95%)*	*(95%)*

a The first figure records adequate RISs; the second figure records RISs required. **b** Compliance for regulatory proposals introduced via Bills, disallowable instruments and treaties (which are subject to formal assessment by the ORR).

Source: ORR estimates.

[3] A RIS may not be required at the decision-making stage because the decision occurred before the requirements became mandatory.

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 the significance of their likely impact also provides a better basis on which to apply the 'proportionality rule' — that the extent of RIS analysis needs to be commensurate with the magnitude of the problem and with the size of the potential impacts of the proposal.

The approach used by the ORR to classify regulatory proposals according to their significance is outlined in box 2.2.

Box 2.2 **Classifying the significance of proposals**

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

In terms of the nature and magnitude of proposals, a ban on, say, popular or widespread activities or some other significantly anti-competitive proposal would generally be regarded as 'large'. Placing conditions on activities, such as requiring licences or specific standards typically could be regarded as intervention of a 'medium' nature. Examples of less significant 'small' interventions might be periodic reporting requirements for businesses.

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

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

Source: PC 2001.

Of the 114 proposals that triggered the Australian Government's RIS requirements at the decision-making stage in 2003-04, the ORR identified 18 proposals as having a more significant impact on business and/or the community (table 2.2).

Compliance at the decision-making stage for these more significant proposals was 94 per cent (46 per cent in 2002-03 and 70 per cent in 2001-02). For less significant proposals, compliance was 92 per cent (85 per cent in 2002-03 and 90 per cent in 2001-02). This year's compliance rates, particularly for the more significant proposals, represent a large improvement over previous years.

Timeliness

A Guide to Regulation (p. A5) states that the analytical framework underpinning a RIS should be used throughout the policy development process. 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 with the ORR and commence preparation of a RIS early, in most cases the RIS meets an adequate standard.[4]

To provide some indication of compliance by departments and agencies in this regard, the ORR has collated information on the time taken from receipt of the first draft of a RIS by the ORR until the ORR advises whether the RIS requirements have been met at the decision-making stage.[5]

For more significant regulatory proposals in 2003-04, 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 3.1 weeks. This was a decline from the average elapsed time of 4.9 weeks in 2002-03, but was roughly consistent with the average elapsed time in 2001-02 of 2.9 weeks. For less significant regulatory proposals, the average elapsed time was 3.9 weeks in 2003-04 (down from 6.1 weeks in 2002-03 and 5.3 weeks in 2001-02).

The elapsed times for significant proposals tend to be shorter than for less significant proposals. It should be noted, however, that strong inferences cannot be drawn from the measure used. For example, departments and agencies may have developed a RIS over a long period of time before contacting the ORR, or an initial draft RIS may be of a sufficiently high standard that it can be assessed as adequate by the ORR within a short period of time from its receipt.

4 Where departments and agencies consult with the ORR and prepare RISs late in the policy development process, the RIS is less likely to make an effective contribution to policy development.

5 It is a requirement that all RISs should be developed in consultation with the ORR (*A Guide to Regulation*, p. A10).

In addition, where individual departments or agencies have prepared few RISs, the sample size of elapsed times is too small to provide information that can clearly act as a measure of differences in compliance levels between departments and agencies.

With these points in mind, the indicator of average elapsed times is not provided for individual departments and agencies. The ORR is examining ways to provide a measure that reveals with less ambiguity the extent to which departments and agencies have integrated the RIS process into their policy development processes.

Table 2.2 **Compliance by significance and timeliness, 2003-04**

Significance rating	*Required*	*Prepared*	*Adequate*	*Compliance*	*Average elapsed time*
	no.	*no.*	*no.*	*%*	*Weeks* [a]
More significant	18	17	17	94	3.1
Less significant	96	92	88	92	3.9
Total	**114**	**109**	**105**	**92**	**3.8**

[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 small number of exceptional cases that would otherwise misrepresent the outcomes.

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, the Government may then separately consider implementation options. In 2003-04, two proposals followed such a multi-stage decision-making process. In these cases, of the four RISs required at the various decision-making stages, all were prepared and three were assessed as adequate. At the tabling stage, the two RISs required were prepared and assessed as adequate.

Proposals that restrict competition

Restrictions on competition can impose substantial costs by raising prices, reducing choice and impeding innovation. Reflecting these costs — and to meet the requirements of the National Competition Policy *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 (*A Guide to Regulation*, p. B6).

In 2003-04, none of the more significant proposals were judged to restrict competition, whereas, among those proposals of less significance, six restricted competition. RISs assessed as adequate were prepared for all of these proposals.

Table 2.3 **Compliance at the decision-making stage for proposals that restrict competition, 1999-2000 to 2003-04**

Significance rating	*1999-00*	*2000-01*	*2001-02*	*2002-03*	*2003-04*
More significant	5/6 *(83%)*	2/7 *(29%)*	1/3 *(33%)*	0/2 *(0%)*	-
Less significant	3/9 *(33%)*	- -	7/9 *(78%)*	18/20 *(90%)*	6/6 *(100%)*
Total	**8/15** ***(53%)***	**2/7** ***(29%)***	**8/12** ***(67%)***	**18/22** ***(82%)***	**6/6** **(100%)**

Source: ORR estimates.

2.2 Compliance by type of regulation

The following table shows RIS compliance by type of regulation (table 2.4). The extent to which the RIS requirements have been met, at both the decision-making and tabling stages, is shown for the various types of regulation.

Table 2.4 **RIS compliance, by type of regulation, 2003-04**

Type of regulation	*Decision-making*			*Tabling* [a]		
	prepared	*adequate*		*prepared*	*adequate*	
	ratio	*ratio*	*%*	*ratio*	*ratio*	*%*
Primary legislation (Bills) [b]	29/31	29/31	94	33/34	32/34	94
Disallowable instruments	41/43	39/43	91	43/44	42/44	95
Non-disallowable instruments	14/14	12/14	86	..	..	..
Quasi-regulation	12/13	12/13	92	..	..	..
Treaties [c]	13/13	13/13	100	8/8	8/8	100
Total	**109/114**	**105/114**	**92**	**84/86**	**82/86**	**95**

.. Not applicable. Tabling is not a formal requirement. [a] RIS compliance for the tabling of Bills, treaties and disallowable instruments is subject to formal assessment by the ORR. [b] One decision-making stage resulted in the tabling of two instruments (and associated RISs) — the decision-making RIS is recorded against 'Primary legislation'. [c] During the treaty-making process, RISs are required at three stages — before entry into negotiations, before signature of the final treaty text and before ratification. The first two stages have been aligned with the decision-making stage. The ratification stage has been aligned with the tabling stage. In three cases, RISs were not required at entry into negotiations.

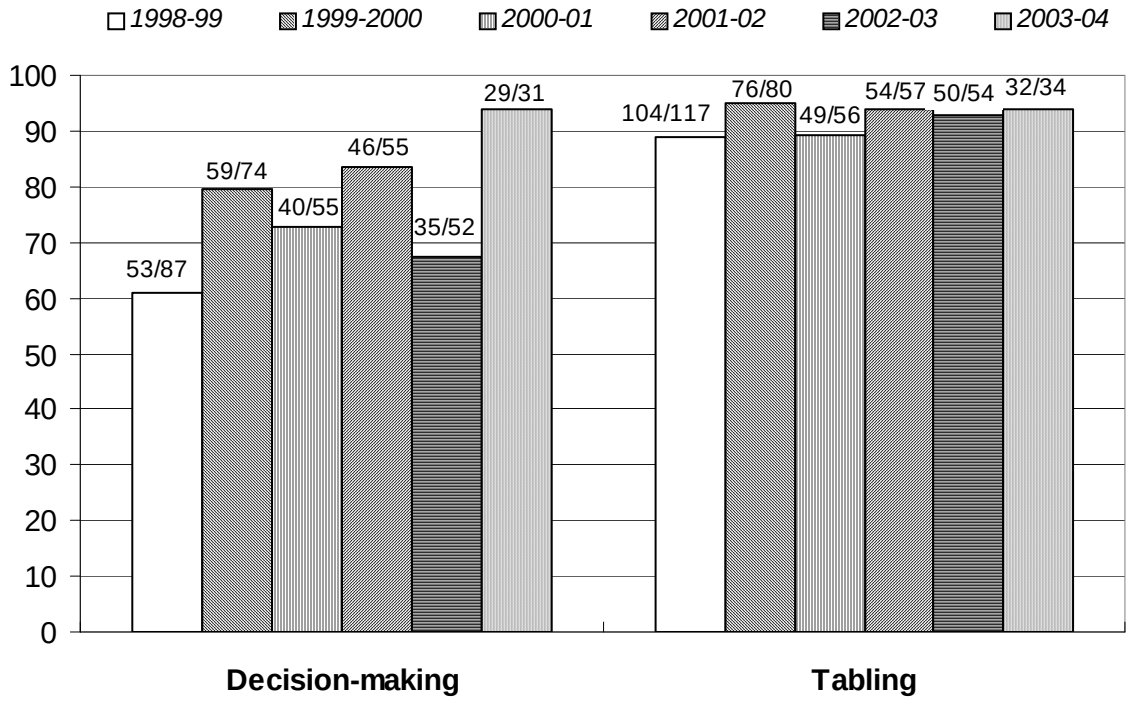
Source: ORR estimates.

Primary legislation

There were 31 RISs required at the decision-making stage for proposals introduced by primary legislation via Bills (27 per cent of all RISs required). Of these, 29 RISs were prepared and were assessed as adequate (a compliance rate of 94 per cent). This represents a considerable rise in compliance compared with the 67 per cent compliance rate in 2002-03. Adequate RISs were prepared at the decision-making stage for all of the 10 RISs required for significant proposals introduced via Bills in 2003-04 (see appendix A).

At the tabling stage for Bills, 34 RISs were required and 33 were prepared. The 32 RISs assessed as adequate represented 94 per cent of those required (figure 2.1).

Figure 2.1 **RIS compliance, Bills, 1998-99 to 2003-04**
Per cent



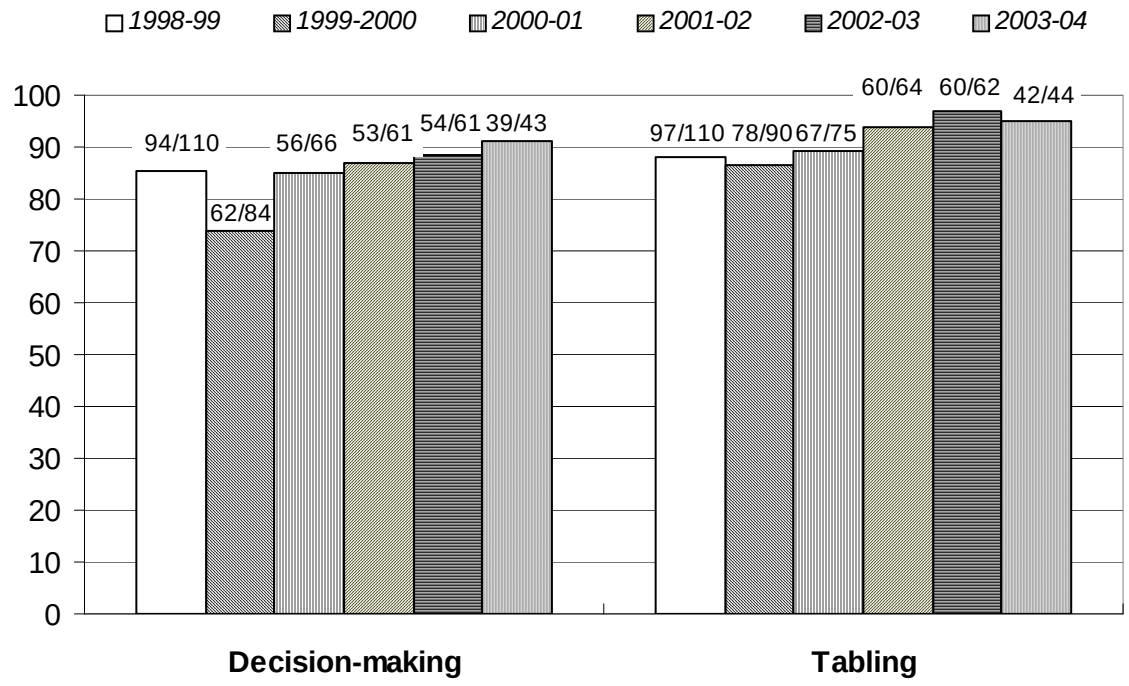
Source: ORR estimates.

Disallowable instruments

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

In 2003-04, RISs were required for only about 3 per cent of proposals introduced by disallowable instruments. Of the 43 RISs required at the decision-making stage (38 per cent of all RISs required), 41 were prepared, of which 39 were assessed as adequate (resulting in a compliance rate of 91 per cent). This is comparable with 2002-03 (89 per cent). At the tabling stage, 44 RISs were required, 43 were prepared, and 42 were assessed as adequate (a compliance rate of 95 per cent).

Figure 2.2 **RIS compliance, disallowable instruments, 1998-99 to 2003-04**
Per cent



Source: ORR estimates.

Non-disallowable instruments and quasi-regulation

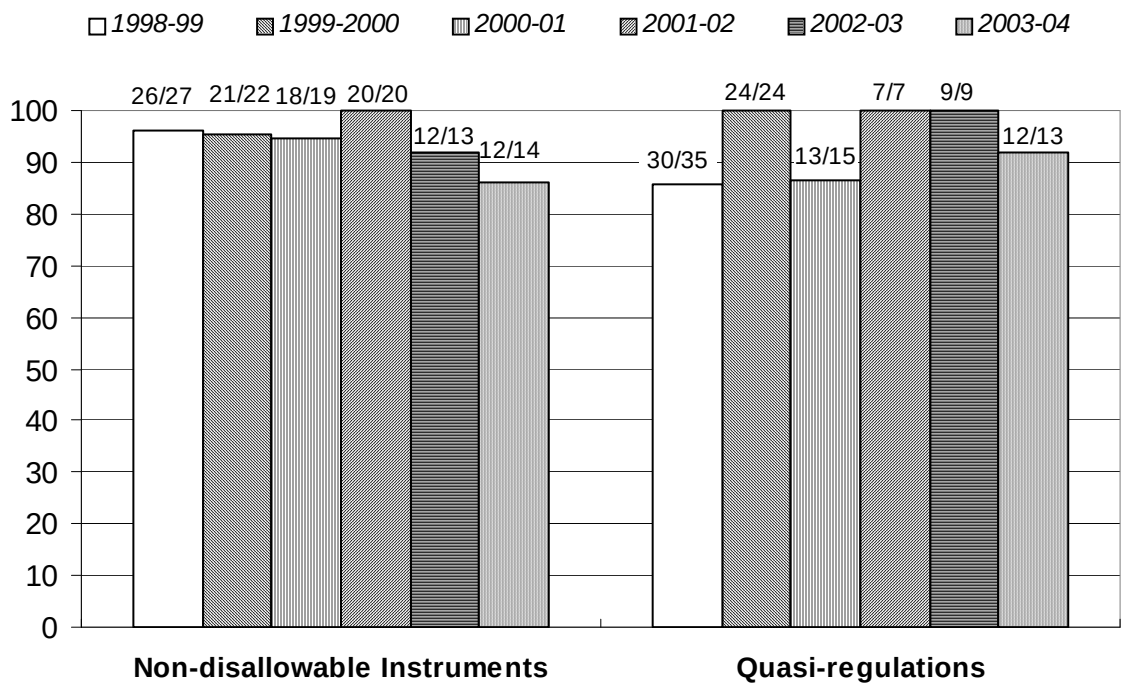
Non-disallowable instruments include all forms of delegated legislation that are not subject to Parliamentary disallowance. In most cases, there is no requirement that these instruments be tabled. Quasi-regulation refers to those rules, instruments and standards where government influences businesses to comply, but which do not necessarily form part of explicit government regulation.

In 2003-04, non-disallowable instruments accounted for 12 per cent, and quasi-regulations for 11 per cent, of RISs required. Departments and agencies reported 14 proposals made via non-disallowable instruments that required a RIS at the decision-making stage. RISs were prepared in all 14 cases, of which 12 were assessed as adequate by the ORR, resulting in a compliance rate of 86 per cent (figure 2.3).

In respect of quasi-regulation, departments and agencies reported 13 proposals 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). This is down from 100 per cent compliance in 2001-02 and 2002-03.

Figure 2.3 **RIS compliance, non-disallowable instruments and quasi-regulations, 1998-99 to 2003-04**

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 for ratification. (Other countries also require RISs or a RIS-type analysis of the domestic impacts of treaties.)

There was full compliance with the Australian Government's RIS requirements for treaties in 2003-04. Eight treaties that required RISs were tabled in Parliament. Of these, five required a RIS at each of the three stages. (In three cases, entry into negotiations occurred before the RIS requirements became mandatory.) Five RISs were prepared before the decision to pursue negotiations, eight were prepared before signature and eight were tabled. Each RIS was assessed as adequate by the ORR.

2.3 National regulation-making under COAG's requirements

Where there is agreement between jurisdictions, national regulatory decisions are made by Ministerial Councils and a small number of national standard-setting bodies. The Council of Australian Governments (COAG) *Principles and Guidelines* apply to those national regulatory decisions that:

> would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done. (COAG 2004b, p.2)

For the application of the *Principles and Guidelines*, COAG has defined 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 2004b, p.2)

Accordingly, the scope of decisions covered by COAG's requirements is wide and includes agreements on standards and measures of a quasi-regulatory nature — such as codes of conduct — as well as national regulatory approaches. Decisions are implemented through coordinated regulation making by all or several jurisdictions or by the passage of Australian Government regulation.

At the direction of COAG, the ORR has a role in monitoring and reporting on compliance by Ministerial Councils and national standard-setting bodies. A RIS, assessed by the ORR, is required at two stages: the first for community consultation with parties affected by the regulatory proposal; and the second or final RIS, reflecting feedback from the community, for the decision-making body. At each stage, the ORR is required by COAG to assess:

- whether the COAG *Principles and Guidelines* have been followed;
- whether the type and level of analysis in the 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 required to advise the relevant Ministerial Council or national standard-setting body of its assessment.

In addition, COAG's *Agreement to Implement the National Competition Policy and Related Reforms* (COAG 1998) requires the ORR to advise the National Competition Council (NCC) on compliance with the COAG *Principles and Guidelines*. The NCC takes this advice into account when considering its recommendations to the Australian Government Treasurer regarding conditions and

amounts of competition payments from the Australian Government to the States and Territories (see appendix C). The ORR also reports on compliance to COAG's Committee on Regulatory Reform.

As with Australian Government RISs, it is not the ORR's role to advise on policy aspects of options under consideration. The assessment of the merits of a policy proposal remains the responsibility of the relevant Ministerial Council or national standard-setting body.

Between 1 April 2003 and 31 March 2004, 34 regulatory decisions made by Ministerial Councils and national standard-setting bodies required the preparation of a COAG RIS (table 2.5). Of these, 30 adequate RISs were prepared at the decision-making stage (a compliance rate of 88 per cent). Compliance at the consultation stage was lower — adequate RISs were prepared for 82 per cent of proposals.

The ORR identified seven decisions as being of particular significance in their impact on business or the community. For four of these, adequate RISs were prepared — a compliance rate for significant proposals of 57 per cent compared to 88 per cent for all proposals. As table 2.5 indicates, a lower compliance rate for significant matters is evident in most of the reporting periods. More detailed compliance information is provided in appendix C.

Table 2.5 **COAG RIS compliance, regulatory decisions made by Ministerial Councils and national standard-setting bodies, 2000-01 to 2003-04** [a]

Decision-making stage	*2000-01*	*2001-02*	*2002-03*	*2003-04*
All proposals	15/21 *(71%)*	23/24 *(96%)*	24/27 *(89%)*	30/34 *(88%)*
Significant proposals	5/9 *(56%)*	6/6 *(100%)*	4/6 *(67%)*	4/7 *(57%)*

a Data for 2000-01 relate to the period 1 July 2000 to 31 May 2001. Data for 2001-02 to 2003-04 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.

COAG re-endorsed and strengthened the COAG RIS guidelines in June 2004 (COAG 2004a, appendix C).

3 The importance of community consultation

Consultation that is well planned and carried out can be a vital tool in achieving regulatory best practice. It ensures that the affected parties have a stake in developing efficient and effective regulation which, in turn, increases the likelihood of achieving high compliance and the objectives of the regulation. Those undertaking consultation need to plan early in the policy development process, make sure the appropriate information is available and allow sufficient time for stakeholders to respond and for their views to be fully taken into account. In recognition of its value, many governments are taking a more systematic approach to consultation.

3.1 Why consult?

Consultation can make a useful contribution to the development of effective and efficient regulation by considering the interests of affected parties, fostering informed debate and exposing the costs, benefits and appropriateness of regulatory options. More specifically, effective consultation:

- helps officials plan, prioritise and deliver better regulatory proposals;
- helps create a working partnership with stakeholders;
- assists in pinpointing problems quickly, providing the opportunity to correct them before government decisions are taken; and
- demonstrates the commitment of government to openness and accountability.

Consultation can also contribute to regulatory quality and minimise the risk of regulatory failure. It can be a cost-effective means of gathering data which supports regulatory impact analyses. In turn, regulatory impact analyses, if made public, can facilitate and enhance consultation by providing relevant information within an analytical framework. Consultation can highlight where proposed regulation lacks acceptability (conflicts with widely held public attitudes as to what constitutes reasonable behaviour) or where it lacks perceived proportionality (not regarded by the public or stakeholders as a reasonable response to the identified problem). Equally, by improving the acceptability and proportionality of regulation,

consultation may promote compliance and, as a consequence, regulatory effectiveness.

More broadly, good consultation processes promote transparency in government decision making — a core governance value underpinning good government. Transparency promotes accountability and helps minimise regulatory capture. It encourages government to adhere to high standards of probity, by ensuring that its conduct is open to scrutiny, and promotes trust between the community and government by allowing stakeholders to see and judge the quality of government actions and regulatory decisions.[1]

3.2 Features of effective consultation

For consultation to achieve these desirable outcomes, it should be undertaken at a time when regulatory proposals are still at the formative stage. Those consulted should be given sufficient information to enable them to consider fully the issues and to respond effectively. They should also be given a reasonable period of time in which to respond. It should be clear to those consulted that their views were reported accurately to decision makers, and it should also be clear how the proposal was modified in response to those views. Some features of high quality community consultation processes are outlined in box 3.1.

Effective consultation is particularly important for small business, which can be disproportionately affected by the costs of regulatory decisions and unnecessary red tape. That said, it may be difficult for small businesses to become involved. There are limits on the time and resources they can make available. Planning appropriate consultation processes needs to be undertaken.

Failure to consult, or doing it poorly, can harm relations between a government or regulator and the community, heightening the risk of not achieving good regulatory outcomes.

[1] For a more detailed discussion of consultation and transparency as governance values, see: Deighton-Smith (2004).

Box 3.1 **Key features of effective consultation**

According to the Small Business Ministerial Council, best practice consultation with community groups typically exhibits the following features.

- **Flexibility**: Consultation strategies should be designed to suit particular circumstances.
- **Timeliness**: It is important to consult as early as possible. It may also be appropriate to consult on specific aspects of a proposal at different stages of the process (for example, when considering implementation options).
- **Accessibility**: Information about the regulatory proposals should be easily available to those affected or interested in contributing.
- **Transparency**: Consultation processes should be open and transparent, with clearly articulated objectives.
- **Responsiveness**: Departments or agencies should acknowledge the input of participants and respond appropriately.
- **Resources**: Consultation processes should be adequately resourced.
- **Evaluation**: The consultation process should be evaluated to consider its effectiveness.
- **Continuity**: Regulatory bodies should aim to develop ongoing dialogue.

Source: Adapted from Small Business Ministerial Council (2002).

More broadly, there are a number of prerequisites for good consultation processes.

Consultation objectives need to be set. Those making policy need to be clear about the reasons for consulting, where it fits into the policy-making cycle and what benefits it will bring. They need to be clear about what participants can contribute to the policy development process, what they will gain from taking part and the extent to which their input can influence decision making. Clear objectives help identify the target audience, select the right consultation method and also assist evaluation.

The 'stakeholders' need to be clearly identified. A variety of factors, such as the nature of the policy issue, resource and time constraints, will influence decisions about which sections of the community should be involved. There needs to be an understanding of the different groups affected by the issue to determine who to involve and which methods to use. The target audience may well be broader than those directly impacted or those who have a known interest.

Other departments and agencies may need to be involved. Involvement by other relevant departments and agencies (or jurisdictions), if appropriate, should be organised at the planning stage. This reduces the risk of government being

disjointed in its policy making and communications. It taps into other consultation channels, promotes an awareness of the wider issues and helps determine factors and forces that can have a positive or negative impact on policy development.

Methods of consultation need to be determined. There are many consultation methods to be considered — for example, the collection of user comments and complaints via monitoring, meetings with representative stakeholders, quantitative surveys, discussion papers and visual presentations. It is important to consider the target audience when choosing the method of consultation. Relying on written communication may not always be the best approach. For some issues or stakeholder groups, public meetings may be more appropriate. Where appropriate, the use of more than one method will often enable a wider audience to be reached and improve the effectiveness of the consultation process.

The nature and form of questions included in written consultation documents need to be considered. Asking the 'right' questions will: reduce the burden on respondents; increase response rates; improve the quality of the information collected; and make the task of analysing the responses easier.

Consultation risks need to be managed. A range of risks could jeopardise the effectiveness of the consultation process. These include: low participation rates; issues being too complex to understand; and mistaking stakeholder participation for the views of end users. Actions to mitigate such risks should be identified as part of the overall policy development process.

3.3 Examples of consultation requirements

OECD countries

Transparency initiatives now form a major part of the regulatory policies of many OECD countries. In 2000, twenty of the thirty OECD member countries had government-wide transparency policies (OECD 2002). Substantial moves have been made towards the use of open, public consultation processes. Consultation is being undertaken earlier, increasing the potential to affect the final shape of regulation. As well, the processes are themselves becoming more standardised and widely published. As an example, box 3.2 provides a brief overview of the Code of Practice on Consultation issued recently by the UK Government. (See also appendix G for further international developments.)

Box 3.2 **UK Government's Code of Practice on Consultation**

In January 2004, the UK Cabinet Office launched a revised code of practice on government consultation. The code, which received the public support of the British Prime Minister, applies to all UK public consultations by government departments and agencies, including consultations on European Union (EU) directives. Although the code does not have legal force, it is to be regarded as otherwise binding. The code details six main criteria that public consultations must follow. These are:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure that your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Source: Cabinet Office (UK) 2004.

The Australian Government

Requirements in 'A Guide to Regulation'

The Australian Government's regulatory best practice requirements are set out in *A Guide to Regulation* (ORR 1998). They stipulate that, in preparing a RIS for regulation that affects business, consultation should take place early with groups likely to be affected by the options. The RIS itself must include a consultation statement identifying those consulted and their views. Box 3.3 outlines the requirements in the Guide relating to consultation.

While the Guide does not mandate it, the exposure of a draft RIS to consultation is noted as desirable. Questions for stakeholders embedded within a RIS can help provide a focus for stakeholder comment. Responses to such questions can also be used to improve the analysis in the RIS ultimately provided to the decision makers. (A number of departments and agencies are now releasing consultation RISs. The ORR provided comments on 14 consultation RISs prior to their release in 2003-04.)

Box 3.3 **Consultation requirements in *A Guide to Regulation***

Consultation with affected parties is a key requirement of the entire RIS process.

Those affected by proposed regulation should be consulted at an early stage of the development of the regulation, with comments received in response to consultation to be taken into account in determining the most appropriate regulatory option.

The purpose of consultation is to examine the costs, benefits and appropriateness of each option. The significance and impact of the relevant regulation determines the level of consultation.

A consultation statement must be included in the RIS. It should contain a statement identifying those consulted and outlining the main views expressed. Areas and the extent of agreement, as well as areas of difference, should be noted. Where relevant, the RIS should also include information on intergovernmental consultation and indicate whether consensus has been achieved.

Where consultation was not undertaken, or where consultation was limited, clear reasons why full consultation was not undertaken should be provided in the RIS.

Source: A Guide to Regulation (ORR 1998).

Legislative Instruments Act 2003

Part 3 of the *Legislative Instruments Act 2003* encourages rule-makers to undertake consultation before legislative instruments are made, without being prescriptive as to how this is done.

The Act provides that a rule-maker, prior to making a legislative instrument, must be satisfied that any consultation that is considered to be appropriate by the rule-maker, and that is reasonably practicable to undertake, has been undertaken. The Act mentions legislative instruments likely to have a direct, or a substantial indirect, effect on business or likely to restrict competition as particular cases (but not the only cases) where consultation should be considered.

The Act also specifies circumstances where the rule-maker may be satisfied that consultation may be unnecessary or inappropriate. These circumstances largely reflect those excepted in *A Guide to Regulation* from the requirement to prepare a RIS. In addition, the *Legislative Instruments Act 2003* provides that consultation may be considered unnecessary or inappropriate in circumstances where an instrument needs to be made as a matter of urgency[2], where an instrument relates to employment generally or to the management of the Australian Defence Force or its

[2] *A Guide to Regulation* provides that a RIS may be prepared after regulatory action has been taken in cases of emergency situations.

personnel. In determining whether appropriate consultation has taken place, the rule-maker may also take into account consultation that has been undertaken by someone other than the rule-maker.

The explanatory statement prepared for each legislative instrument, which is tabled in Parliament and available on the publicly accessible Register, is to include a description of any consultation undertaken in relation to that instrument. If no consultation has been undertaken, the explanatory statement should explain its absence. It is intended that, where a RIS has been prepared and is included as part of the explanatory statement, the RIS will substitute for a separate formal consultation statement.

Consultation for the purposes of a RIS will generally be more extensive than that which might satisfy the requirements of the Act. Consultation under the Act relates to a preferred proposal — a proposed instrument — whereas consultation in relation to the examination within a RIS is generally undertaken at the earlier and broader stage of policy development and is designed to assess the impacts of alternative policy proposals.

Ministerial or agency level requirements

A comprehensive approach to consulting with consumers, and to the appointment of consumer representatives on consultative bodies, can be found in *Principles for the Appointment of Consumer Representatives: A Process for Governments and Industry* (Commonwealth Consumer Affairs Advisory Council, May 2002).[3]

Ways to achieve best practice consultation with small business are contained in *Giving small business a voice — Achieving best practice consultation with small business* (Small Business Ministerial Council, 2002).[4] It draws on experience at the Australian Government level to assist regulatory agencies across Australia in developing guidelines for consulting with small business.

A whole of government approach to consultation is provided in resource material produced by the Management Advisory Committee (MAC) of the Australian Public Service Commission (2004).

> A sound whole of government approach requires understanding of how programs and policies come together to affect particular communities, social groups, sectors of the economy and/or regions. … understanding the different perspectives of external groups is essential to the government's desire to see policies and programs make a constructive

[3] See www.treasury.gov.au.

[4] See www.industry.gov.au.

contribution 'on the ground', as well as in managing the risks associated with new initiatives.

Some statutory agencies are covered by minimum legislated requirements directing them to consult or to consult in certain ways. For example, the *Food Standards Australia New Zealand Act 1991* provides guidance on consultation relating to the development of amendments to the Food Standards Code by Food Standards Australia New Zealand.

The Productivity Commission itself is provided with guidance in respect of its inquiry processes under the *Productivity Commission Act 1998*. These are minimum requirements and consultation for individual inquiries may require additional or more targeted processes to be put in place. A recent instance was the 2004 review of the *Disability Discrimination Act 1992* (box 3.4).

Box 3.4 **Consultation in the Disability Discrimination Act (DDA) inquiry**

The terms of reference for the Productivity Commission DDA inquiry explicitly required consultation with State and Territory governments, and people with disabilities and their representatives. But consultation was important in its own right — it allowed the inquiry team to explain the nature of the Commission and the inquiry to participants who may have been concerned about economists commenting on matters of social justice. Consultation allowed the team to address these concerns and to highlight the opportunities provided by the inquiry.

All inquiries follow the Commission's Access and Equity Policy and Disability Action Plan. However, this inquiry placed particular emphasis on consultation with people with disabilities. This involved:

- paying particular attention to use of language. Inclusive language is a vital part of both oral and written communication with people with disabilities. The inquiry team sought advice on inclusive language from the Commission's Access and Equity Officer and the Office of Disability;
- undertaking an extensive program of informal visits and formal hearings. Commissioners and staff attended community forums in a number of predominantly regional locations, including a series of visits with indigenous people in Alice Springs;
- providing information in alternative formats. Participants in this inquiry with particular communication needs included people with vision, hearing or intellectual impairment, manipulatory and mobility impairment, acquired brain injury and psychiatric disability. Some of these people also came from culturally and linguistically diverse backgrounds and therefore had additional communication needs. Information was provided in alternative formats including electronic, Braille, audio cassette, large print and easy English;

(Continued next page)

Box 3.4 **(continued)**

- promoting alternative means of participation. The inquiry advertised the Commission's FREECALL number and Telephone Typewriter (TTY) (for the deaf and hearing impaired) and encouraged submissions in alternative formats, including oral submissions (for example, tapes or transcribed phone calls); and
- holding accessible public hearings. The inquiry paid particular attention to accessibility requirements for hearings, including an independent access audit of our own premises and extensive vetting of hired premises.

The inquiry team's efforts to facilitate access paid off with extensive participation by people with disabilities and their representatives in the inquiry. Many of these processes have subsequently been adopted by all Commission inquiries.

The Council of Australian Governments

COAG's *Principles and Guidelines* (COAG 2004b) apply to regulatory matters that are to be considered by COAG, Ministerial Councils or national standard-setting bodies. The *Principles and Guidelines* state that 'public consultation is an important part of any regulatory development process', and require consultation on a regulatory proposal and the preparation of an adequate RIS for consultation purposes. A further RIS is required to assist in the decision-making process, with the ORR assessing the adequacy of the RISs at both stages.

Although COAG requires a consultation RIS, the requirements make it clear that the depth of analysis need not be as great as in the RIS for decision makers. In many cases, the focus of the consultation RIS will be on identification of the problem and objectives, and on a preliminary assessment of feasible options. The consultation RIS also sets out which groups will be consulted. The RIS for the decision-making stage should reflect the additional information and views collected from those consulted, and provide a more complete impact analysis.

COAG's explicit requirement for an adequate consultation RIS aims to ensure that consultation is comprehensive and that it adequately informs the development of the proposal. It also ensures that decision makers are fully aware of stakeholder views on the proposal and, if relevant, how the proposal has been developed to address stakeholder concerns.

In 2004, COAG amended the *Principles and Guidelines* to require the ORR to consult with the New Zealand Regulatory Impact Analysis Unit where there are New Zealand issues.

Examples from the States and Territories

Queensland

The Queensland Government has established a strong community engagement program with a focus on providing accessible systems and information for business. The program aims to provide information to the community and receive feedback on regulatory reform, governance and future decisions affecting communities.

A number of on-line portals, including one-stop-shops (*Smart*licence and the Business Referral Service)[5] and interactive consultation sites, have been established. The initiative 'Queensland Regulations – Have your Say'[6] allows the public to participate in the development of regulation by providing on-line input on regulatory proposals directly to the agency involved. Community engagement is also fostered through the 'Get Involved'[7] project which enables Queensland citizens to contribute to the democratic process (attendance at community cabinet meetings, ability to join advisory boards and committees) and share ideas on policy issues. The 'Get Involved' website allows comment on-line, provides a list of key issues and a central register of all issues the Government is considering.

Under the *Legislative Standards Act 1992* (Qld), consultation must specifically take place on RISs prepared for proposed subordinate legislation likely to impose an appreciable cost on either the whole or a part of the community. The Act specifies requirements for publication of notices for public feedback and availability of the RIS.

Victoria

The 'Growing Victoria Together' vision statement[8] released in November 2001 notes the challenge of improving confidence and participation in the democratic decision making of Victorians. Government Ministers now hold regular community cabinet meetings with the public, and departments and agencies undertake community consultation on most issues. The Office of Community Building, within the Department for Victorian Communities, provides a focal point for the Victorian Government to build relationships across departments and key external

5 See www.sd.qld.gov.au/dsdweb/htdocs/ssb/gui_ssb_content.cfm.

6 See www.sd.qld.gov.au/dsdweb/htdocs/global/regactivity_home.cfm.

7 See www.getinvolved.qld.gov.au.

8 See *Growing Victoria Together Booklet* available at www.growingvictoria.vic.gov.au.

stakeholders. Victoria has an on-line 'Business Channel'[9] which provides the business community with easily accessible business information.

RIS consultation processes in Victoria follow similar lines to those in New South Wales and Tasmania, although Victoria goes somewhat further in requiring the responsible Minister to certify that, where consultation is necessary, the guidelines in the *Subordinate Legislation Act 1994* (Vic) have been followed. These guidelines contain detailed information on consultation with any sector of business or the public which may be affected by the proposed statutory rule. The certificate of consultation is required to be given to the Scrutiny of Acts and Regulation Committee (SARC) of the Victorian Parliament as soon as practicable after the statutory rule is made.

Appendix F contains further detail on consultation arrangements at the State/Territory level.

3.4 Lessons from experience

While it would be rare for Australian Government departments and agencies not to consult on regulatory proposals likely to have more than minor impacts, the ORR often encounters instances where consultation processes could have been improved.

Timing is important

Short time frames within which policy developers are directed to put forward regulatory proposals are often the main cause of inadequate consultation. While there can be genuine cases where an urgent regulatory response is needed to a rapidly emerging threat to the community, these are rare. At other times, those directing the development of policy need to take into account the time and resources required for effective consultation.

Overly short consultation periods or consultation undertaken at inappropriate times can be counterproductive. It is particularly difficult for poorly resourced representative organisations and those that need to contact their membership before developing their responses.

Where consultation is commenced too late in the process, its purpose is undermined and it can result in elements of policy development having to be repeated or revised. Without adequate early consultation, the development of regulation may become unduly time-consuming and uncertain.

9 See www.business.channel.vic.gov.au.

While it may not be necessary in every instance to consult on the wording of draft regulation towards the end of the process, such consultation increases the likelihood that regulation will be understood and complied with, and also increases the likelihood that amendments will not need to be made following the passage of the regulation through Parliament. Changes needing to be made to recently enacted legislation can be viewed as wasteful of government resources, and may have wider economic, social and environmental costs.

Given the way some international treaties and/or outcomes from international standard-setting bodies are developed over a considerable period of time, there is a risk of inadequate domestic consultation in the lead up to the creation of domestic regulatory obligations. In these circumstances, there is an onus on policy developers to ensure that consultation opportunities occur early enough for domestic stakeholders to have genuine input.

Attention to informational content

A lack of information about when and how members of the community can provide input to the consultation process can frustrate stakeholders. For example, some stakeholders may not have access to the internet, yet the consultation documentation may be available only on the agency's website. Alternatively, stakeholders may have access to the internet, but do not have the resources to constantly monitor agencies' websites and thus may not be aware that stakeholders' input is being sought.

Consulting only in the broad without informing stakeholders about the feasible alternatives to be put before the decision maker/government can reduce the usefulness of feedback from stakeholders.

Relations with stakeholders

Stakeholders obviously dislike consultation documentation which implies that a particular regulatory proposal and approach has already effectively been settled. Consultation should be conducted in a way that provides genuine participation in the regulatory development process, and supporting documentation should be drafted so that this is clear to stakeholders. Feedback on the outcomes of consultation is also valued by stakeholders.

It is important to provide clear evidence that stakeholders' inputs have been weighed seriously. In some circumstances, it may be appropriate to assist in developing the capacities of representative stakeholders and, more broadly, to closely manage the government/stakeholder interface.

There is also a need to be conscious of consultation fatigue. Combining related issues, rationalising the number of consultation stages, providing adequate information to help stakeholders understand the key issues, and setting appropriate response times can all help to reduce fatigue. Consultation that occurs over a prolonged period may lose its effectiveness and alienate stakeholders.

Finally, good consultation does not necessarily mean that the views of stakeholders have to be accepted. The purpose of consultation is to assist in ensuring that regulatory proposals provide net benefits to the community as a whole rather than to specific stakeholders. At the same time, where stakeholders have put forward their views in good faith, there is a responsibility to explain why a regulatory proposal should not reflect their views in terms of achieving regulatory best practice. A RIS incorporating a consultation statement that is made publicly available can be used for this purpose.

A Compliance by portfolio

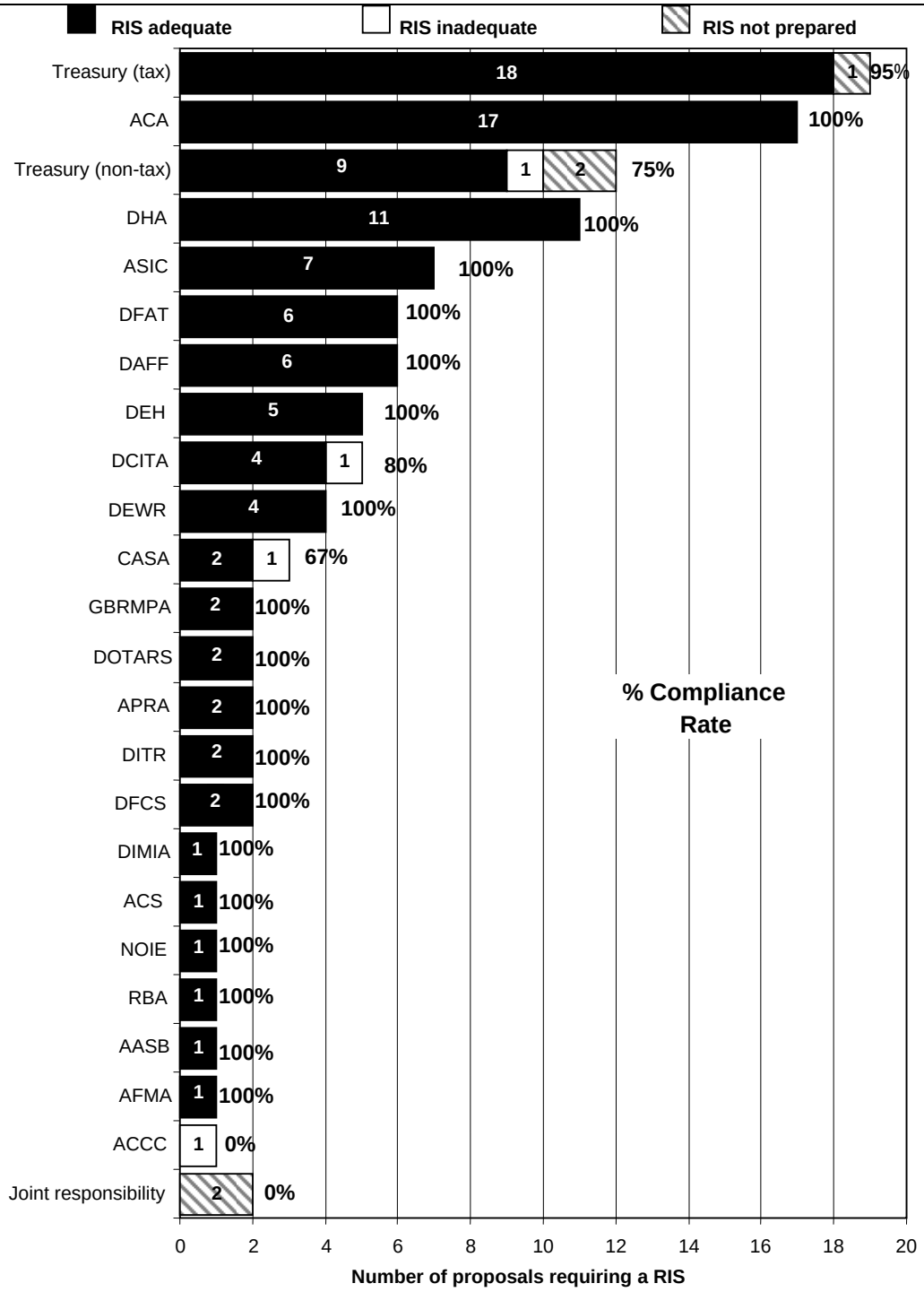
In 2003-04, 24 departments and agencies were required to prepare 114 Regulation Impact Statements (RISs) for the decision-making stage under the Australian Government's RIS requirements. In total, 105 adequate RISs were prepared — a compliance rate of 92 per cent, which is higher than in previous reporting periods. However, compliance varied both between and within portfolios. Eighteen of the 24 departments and agencies required to prepare a RIS were fully compliant.

In 2003-04, 24 departments and agencies developed regulatory proposals that triggered the requirements to prepare a RIS (this number includes those departments and agencies involved in joint proposals). Eighteen departments and agencies were fully compliant with the Government's RIS requirements at the decision-making stage (compared to 12 of 23 departments and agencies in the previous year). Four departments and agencies did not comply fully with the RIS requirements and four were non-compliant in respect of proposals where there was joint responsibility (one of which was otherwise fully compliant; another was already not fully compliant). Of the nine instances where the Government's requirements were not met, five RISs were not prepared and four RISs were assessed as inadequate.

Compliance at the decision-making stage is illustrated in figure A.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 the number of RISs that were prepared but were assessed as containing an inadequate level of analysis. The shaded area shows the RISs that 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.

Detailed compliance results for departments and agencies follow. Brief descriptions of the application of the Government's requirements to significant regulatory proposals are also provided. Compliance results for individual proposals are provided in appendix B.

Figure A.1 **Compliance with RIS requirements at the decision-making stage, 2003-04** [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.

A.1 Agriculture, Fisheries and Forestry

The Agriculture, Fisheries and Forestry portfolio includes the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Fisheries Management Authority (AFMA). (The Australian Pesticides and Veterinary Medicines Authority (APVMA), which is within the portfolio, falls under the COAG RIS requirements.)

Department of Agriculture, Fisheries and Forestry

In 2003-04, the Department of Agriculture, Fisheries and Forestry was fully compliant with the RIS requirements for regulations made. Of the RISs required to be prepared by the Department — six at the decision-making stage and seven at the tabling stage — all were assessed as adequate by the ORR.

Table A.1 **DAFF: RIS compliance by type of regulation, 2003-04**

	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 [a]	4/4	4/4	5/5	5/5
Total	**6/6**	**6/6**	**7/7**	**7/7**
Percentage	*100*	*100*	*100*	*100*

[a] One disallowable instrument did not require a RIS at the decision-making stage as it was responding to an emergency.

Source: ORR estimates.

Australian Fisheries Management Authority

In 2002-03, the Australian Fisheries Management Authority (AFMA) was fully compliant with the Government's RIS requirements — preparing one RIS for a disallowable instrument that was assessed as adequate by the ORR at both the decision-making and tabling stages.

A.2 Attorney-General's

The Attorney-General's portfolio comprises the Attorney-General's Department (A-G's) and agencies including the Australian Customs Service (ACS). A-G's was not required to prepare any RISs in 2003-04.

Australian Customs Service

The ACS was fully compliant with the Government's RIS requirements in 2003-04, preparing one RIS for a disallowable instrument, which was assessed as adequate for both the decision-making and tabling stages.

A.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 Australian Sports Drug Agency (ASDA). In 2003-04, neither the ABA nor ASDA was required to prepare RISs.

On 8 April 2004, the National Office for the Information Economy (NOIE) became the Australian Government Information Management Office. The regulatory functions of the former NOIE were transferred to the Office for the Information Economy within DCITA.

Department of Communications, Information Technology and the Arts

In 2003-04, four of the five RISs required to be prepared by DCITA at the decision-making stage were assessed by the ORR as adequate. Both of the RISs required at the tabling stage were assessed as adequate.

Table A.2 **DCITA: RIS compliance by type of regulation, 2003-04**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments [a, b]	3/3	2/3	2/2	2/2
Non-disallowable instruments	2/2	2/2	..	..
Total	**5/5**	**4/5**	**2/2**	**2/2**
Percentage	*100*	*80*	*100*	*100*

.. Not applicable. [a] One proposal required a RIS for each of two decision-making stages. The first decision-making RIS was assessed as inadequate, and the second decision-making RIS and the tabling RIS were assessed as adequate. [b] For one proposal requiring a RIS, a Bill and a disallowable instrument were required for implementation. The RIS was attached to the disallowable instrument.

Source: ORR estimates.

Australian Communications Authority

The Australian Communications Authority (ACA) was fully compliant with the Government's RIS requirements in 2003-04. The ACA prepared 17 adequate RISs at the decision-making stage. Of the seven RISs required at the tabling stage, all were adequate.

Table A.3 **ACA: RIS compliance by type of regulation, 2003-04**

	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	5/5	5/5	..	..
Quasi-regulations	5/5	5/5	..	..
Total	**17/17**	**17/17**	**7/7**	**7/7**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable.

Source: ORR estimates.

National Office for the Information Economy

In 2003-04, NOIE was fully compliant with the Government's RIS requirements, preparing one RIS for a Bill which was assessed by the ORR as adequate at both the decision-making and tabling stages.

A.4 Employment and Workplace Relations

The Department of Employment and Workplace Relations was fully compliant with the Government's RIS requirements in 2003-04. The Department prepared four RISs at the decision-making stage for three Bills (the Bill relating to the building and construction industry had two decision-making stages), each of which was assessed as adequate by the ORR. Three adequate RISs were tabled with the enabling Bills.

Significant issue

The Department implemented key recommendations of the Royal Commission into the Building and Construction Industry. A RIS was prepared that examined the overall impacts of the Royal Commission recommendations. After endorsement of

the key recommendations had been obtained, exposure draft legislation was released for public comment, and a second RIS was prepared examining implementation options. Each RIS was assessed as adequate by the ORR.

A.5 Environment and Heritage

Within the Environment and Heritage portfolio, the Department of the Environment and Heritage (DEH), the Australian Greenhouse Office (AGO) and the Great Barrier Reef Marine Park Authority (GBRMPA) were required to prepare RISs in 2003-04. For the AGO, compliance with the Australian Government's RIS requirements is reported under DEH and compliance with the COAG RIS requirements is reported in appendix C.

Department of the Environment and Heritage

The Department of the Environment and Heritage was fully compliant with the Government's RIS requirements in 2003-04. The Department prepared five RISs at the decision-making stage, each of which was assessed as adequate by the ORR. The five RISs were subsequently tabled.

Table A.4 **DEH: RIS compliance by type of regulation, 2003-04**

	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	4/4	4/4	4/4	4/4
Total	**5/5**	**5/5**	**5/5**	**5/5**
Percentage	*100*	*100*	*100*	*100*

Source: ORR estimates.

Significant issue

On 2 October 2003, the Environment and Heritage Ministers of the Australian, State and Territory, and New Zealand Governments agreed to examine a national mandatory water efficiency labelling scheme covering showerheads, washing machines, dishwashers and toilets. The Ministers agreed that the Australian Government would develop the proposal.

A draft RIS was prepared and released for public comment by the Department of the Environment and Heritage from 13 March to 16 April 2004. In light of comments received, the proposal was modified to include the mandatory registration and labelling for water efficiency of bathroom basin, kitchen sink and laundry taps and urinals and urinal flushing systems. Legislation to implement the proposal was introduced on 24 June 2004. An Executive Summary of the RIS was attached to the Explanatory Memorandum to the Bill and a complete copy of the RIS is available from the Department's web-site.

The Department met regulatory best practice requirements in engaging with stakeholders during the policy development process, releasing a draft RIS for consultation and modifying the proposal to address concerns raised during consultation.

Great Barrier Reef Marine Park Authority

The Great Barrier Reef Marine Park Authority prepared two adequate RISs at the decision-making stage. Both RISs were subsequently made public.

Table A.5 **GBRMPA: RIS compliance by type of regulation, 2003-04**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	1/1	1/1	1/1	1/1
Quasi-regulation	1/1	1/1	..	..
Total	**2/2**	**2/2**	**1/1**	**1/1**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable.

Source: ORR estimates.

Significant issue

The Great Barrier Reef Marine Park Authority followed regulatory best practice principles in the preparation of a comprehensive zoning plan for the Great Barrier Reef Marine Park. The Great Barrier Reef Marine Park Zoning Plan 2003 provides the framework for the conservation and management of the Amalgamated Great Barrier Reef Section, provides for the division of the Amalgamated Great Barrier Reef Section into zones and makes provision for the purposes for which each zone may be used or entered. The Zoning Plan also provides for the management of remote natural areas of the Marine Park, and the designation of shipping and special

management areas, as well as additional purposes for which zones may be entered or used. The Plan provides its highest level of protection for one-third of the entire Great Barrier Reef Marine Park.

The Authority was fully compliant with the Government's regulatory guidelines. The Authority consulted the ORR early in the policy development process and consulted widely with all stakeholders in developing the Plan. Over 21 300 submissions were received on the draft Zoning Plan during the second stage of consultation. The RIS examined the impacts of options at the national, state, regional and sub-regional levels.

A.6 Family and Community Services

The Department of Family and Community Services (DFCS) was fully compliant with the RIS requirements for regulations made in this period. For the two RISs required to be prepared by the Department for two disallowable instruments, each was assessed as adequate both at the decision-making and tabling stages.

A.7 Foreign Affairs and Trade

The Department of Foreign Affairs and Trade was responsible for preparing RISs for four treaties tabled in 2003-04.

RISs are required at three stages of the treaty-making process — entry into negotiations, before signature (endorsement) and before ratification (tabling).

Of the four treaties tabled, entry into negotiations occurred before the RIS requirements were made mandatory in two cases. The Department was fully compliant at this stage for the other two treaties. The Department was also fully compliant with the Government's RIS requirements at both the signature and tabling stages.

Significant issues

The Department of Foreign Affairs and Trade was responsible for preparing RISs for the Australia-United States Free Trade Agreement (AUSFTA), which was tabled in Parliament in 2003-04. The agreement is wide-ranging, covering, among other areas, reductions in tariffs for goods, improved market access for services (including the ability to tender for government contracts), increased protection for intellectual property rights and easing restrictions on bilateral investment.

The AUSFTA was unusual for a treaty in that it was tabled prior to it being signed. A RIS, assessed as adequate by the ORR, was prepared for entry into negotiations in 2003. At the tabling stage, a preliminary or draft RIS was submitted to the Joint Standing Committee on Treaties (JSCOT) and made public. Following revisions, including the incorporation of quantitative modelling results, a final RIS was submitted to Cabinet Ministers for the signing stage and to JSCOT. That RIS was assessed by the ORR as adequate.

The Department was also responsible for preparing RISs for the Thailand-Australia Free Trade Agreement. Adequate RISs were prepared at the entry into negotiations, signing and tabling stages. The Agreement contains commitments to reduce tariffs across a wide range of agricultural and industrial goods, and provides a basis for future negotiations on improved access for services and investment.

A.8 Health and Ageing

The Department of Health and Ageing (DHA) was fully compliant with RIS requirements for regulations made in this period for which it had sole responsibility. All 11 RISs required to be prepared by the Department at the decision-making stage and the 12 RISs required at the tabling stage were assessed by the ORR as adequate.

Table A.6 **DHA: RIS compliance by type of regulation, 2003-04**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills [a]	4/4	4/4	5/5	5/5
Disallowable instruments [a]	5/5	5/5	6/6	6/6
Treaties	2/2	2/2	1/1	1/1
Total	**11/11**	**11/11**	**12/12**	**12/12**
Percentage	*100*	*100*	*100*	*100*

[a] The Department was responsible for preparing RISs at the tabling stage for an amending Bill and a disallowable instrument that implemented the Government's response to the Review of Pricing Arrangements in Residential Aged Care. Adequate RISs were tabled for each. The Department also tabled an adequate RIS for a set of non-disallowable instruments that implemented the Government's response, although it is not a formal requirement to table RISs for non-disallowable instruments. Compliance with the Government's RIS requirements at the decision-making stage for the proposal, where responsibility was shared with the Department of the Prime Minister and Cabinet, is reported in section A.13.

Source: ORR estimates.

The Department was responsible for preparing a RIS for the Trans-Tasman Treaty for the Establishment of a Joint Scheme for the Regulation of Therapeutic Products.

RISs assessed by the ORR as adequate were prepared at the entry into negotiations, signing and ratification stages for this treaty.

Significant issue

One significant measure was tabled. It dealt with several new aspects of the Government's medical indemnity package, to replace the Incurred But Not Reported (IBNR) Claims Contribution with the United Medical Protection support payment and to implement the Premium Support Scheme. These measures addressed doctors' concerns about the IBNR levy and about the affordability of medical indemnity insurance.

A.9 Immigration and Multicultural and Indigenous Affairs

In 2003-04, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) was fully compliant with the RIS requirements. The one RIS required to be prepared for a Bill by the Department was assessed by the ORR as adequate at the decision-making and tabling stages.

A.10 Industry, Tourism and Resources

In 2003-04, the Department of Industry, Tourism and Resources (DITR) was required to prepare RISs for two Bills. Both RISs were prepared, and assessed as adequate by the ORR, at the decision-making and tabling stages.

Significant issue

New tariff and assistance arrangements for the Textiles, Clothing and Footwear (TCF) sector were introduced. These extended the Textile, Clothing and Footwear Strategic Investment Program and included two five-year pauses in the rate of scheduled tariff reductions for Australia's TCF industry. An adequate RIS was prepared at both the decision-making and tabling stages.

A.11 Transport and Regional Services

The Transport and Regional Services portfolio includes the Department of Transport and Regional Services (DOTARS), the Australian Maritime Safety Authority (AMSA), the Civil Aviation Safety Authority (CASA), Airservices

Australia and the National Capital Authority (NCA). In 2003-04, AMSA and the NCA were not required to prepare RISs.

Airservices Australia and CASA were jointly responsible for the implementation of the National Airspace System (NAS) Stage 2b. The ORR assessed this as a significant issue. It is reported in section A.13.

Department of Transport and Regional Services

In 2003-04, the Department of Transport and Regional Services (DOTARS) was required to prepare two RISs at the decision-making stage. Both were prepared and assessed as adequate. Of the three RISs required for tabling, all were prepared and assessed as adequate.

Table A.7 **DOTARS: RIS compliance by type of regulation, 2003-04** [a]

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills [a]	..	..	1/1	1/1
Disallowable instruments	1/1	1/1	1/1	1/1
Treaties [b]	1/1	1/1	1/1	1/1
Total	**2/2**	**2/2**	**3/3**	**3/3**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable. [a] The *Maritime Transport Security Bill 2003* was considered concurrently with the RIS for the *International Convention for the Safety of Life at Sea* (SOLAS) treaty, and therefore did not require a separate RIS at the decision-making stage. The Department prepared a separate RIS for tabling. [b] Entry into negotiations for the treaty (see below) pre-dated the RIS requirements.

Source: ORR estimates.

The Department was responsible for meeting the RIS requirements for the Protocol to Amend the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 17 February 1978. The entry into negotiations pre-dated the RIS requirements. Adequate RISs were prepared at the signing and ratification stages for the amending Protocol.

Civil Aviation Safety Authority

In 2003-04, CASA prepared three RISs required at the decision-making and tabling stages. The ORR assessed two of the three RISs as adequate.

Table A.8 **CASA: RIS compliance by type of regulation, 2003-04** [a]

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	3/3	2/3	3/3	2/3
Total	**3/3**	**2/3**	**3/3**	**2/3**
Percentage	*100*	*67*	*100*	*67*

[a] CASA also shared responsibility for preparing a RIS for a proposal involving joint responsibility with Airservices Australia. (See section A.13.)

Source: ORR estimates.

A.12 Treasury

Within the Treasury portfolio, the Department of the Treasury, the Australian Accounting Standards Board (AASB), 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 all required to prepare RISs in 2003-04.

The Department was required to prepare RISs for both tax and non-tax proposals. As tax RISs are subject to slightly different requirements — where they focus on the assessment of implementation options rather than policy options — compliance for tax and non-tax proposals are reported separately here.

Department of the Treasury (non-tax proposals)

In 2003-04, the Treasury was required to prepare 12 RISs for non-tax proposals at the decision-making stage and nine for the tabling stage. For the decision-making stage, nine RISs were assessed as adequate. For the tabling stage, eight RISs were assessed as adequate.

Table A.9 **Treasury (non-tax): RIS compliance by type of regulation, 2003-04**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	3/3	3/3	3/3	3/3
Disallowable instruments	4/6	4/6	5/6	5/6
Non-disallowable instruments [a]	3/3	2/3	..	..
Total	**10/12**	**9/12**	**8/9**	**8/9**
Percentage	*83*	*75*	*89*	*89*

.. Not applicable. [a] Although there is not a tabling requirement for RISs relating to non-disallowable instruments, RISs were published on an appropriate website, in line with regulatory best practice.

Source: ORR estimates.

Significant issues

The new audit regulation and corporate disclosure framework (the ninth phase of the Corporate Law Economic Reform Program) was introduced. The measures introduced in the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003* affect all company auditors and institute new standards for corporate governance. The Treasury prepared adequate RISs for these measures at both the decision-making and tabling stages.

The introduction of the enhanced prudential supervision framework for superannuation trustees has required all trustees of superannuation funds regulated by the Australian Prudential Regulation Authority — that is, all funds apart from self-managed small funds — to become licensed and meet certain new standards. The Treasury prepared adequate RISs for both the decision-making and tabling stages.

The Government made its response to the Review of the Competition Provisions of the *Trade Practices Act 1974* (the Dawson Review). A comprehensive public review was undertaken which made significant recommendations. The Government accepted the majority of the recommendations, but of the remainder there were no variations of any significance, so the review report was considered to have complied with the RIS requirements at both the decision-making and tabling stages.

Department of the Treasury (tax proposals)

In 2003-04, the Treasury was required to prepare 19 RISs for tax proposals at the decision-making stage and 20 for the tabling stage. The tabling stage figure includes three proposals that originated from other portfolios where it was considered that a RIS was not required for the policy issues, but there were tax implementation issues that could be considered in a tax RIS. For both decision-making and tabling stages, 18 RISs were assessed as adequate.

Table A.10 **Treasury (tax): RIS compliance by type of regulation, 2003-04**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills [a]	11/12	11/12	14/15	13/15
Disallowable instruments	3/3	3/3	3/3	3/3
Treaties	4/4	4/4	2/2	2/2
Total	**18/19**	**18/19**	**19/20**	**18/20**
Percentage	*95*	*95*	*95*	*90*

a Three more RISs were required for the tabling stage than at the decision-making stage because for three proposals it was considered that there were only minor impacts at the policy decision-making stage, but they were considered to be non-minor at the tabling stage, reflecting the different focus of tax RISs and non-tax RISs.

Source: ORR estimates.

The Treasury was responsible for preparing RISs for two treaties — a revision of the double tax convention between Australia and the United Kingdom and a new double tax agreement between Australia and Mexico. The Treasury was fully compliant, preparing RISs at the negotiation, signing and ratification stages.

Significant issues

In 2003-04, the Government announced its response to the Review of International Taxation Arrangements, which aimed at reducing possible tax impediments to Australian companies expanding offshore, attracting domestic and foreign equity, and locating holding companies and conduit holdings in Australia. The Board of Taxation conducted the public review. The Treasury complied with the RIS requirements by preparing supplementary RISs for the decision-making stage to address variations from the report's recommendations. RISs were also prepared for the tabling stage.

Significant revisions to the double tax convention between Australia and the United Kingdom were also introduced in 2003-04. The revisions align the agreement with

modern business practices, the respective tax systems and modern tax treaty practice to facilitate trade and investment between the two countries.

Australian Accounting Standards Board

The Australian Accounting Standards Board was fully compliant with the Government's RIS requirements in 2003-04. The AASB prepared one RIS, which was assessed as adequate at both the decision-making and publication/tabling stages.

Australian Competition and Consumer Commission

In 2003-04, the Australian Competition and Consumer Commission was required to prepare one RIS for the decision-making stage for a non-disallowable instrument. The RIS prepared was assessed as inadequate against the Government's RIS requirements. A RIS was not required to be tabled.

Australian Prudential Regulation Authority

The Australian Prudential Regulation Authority was fully compliant with the Government's RIS requirements in 2003-04, preparing two RISs, both assessed as adequate, at the decision-making stage. One RIS was subsequently tabled.

Table A.11 **APRA: RIS compliance by type of regulation, 2003-04**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	1/1	1/1	1/1	1/1
Non-disallowable instruments [a]	1/1	1/1	..	..
Total	**2/2**	**2/2**	**1/1**	**1/1**
Percentage	*100*	*100*	*100*	*100*

.. Not applicable. [a] Although there is not a tabling requirement for RISs relating to non-disallowable instruments, the RIS was published on an appropriate website, in line with regulatory best practice.

Source: ORR estimates.

Australian Securities and Investments Commission

The Australian Securities and Investments Commission was fully compliant with the Government's RIS requirements in 2003-04. ASIC prepared seven RISs, each of

which was assessed as adequate at the decision-making stage, for one non-disallowable instrument and six quasi-regulations.

Table A.12 **ASIC: RIS compliance by type of regulation, 2003-04**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Non-disallowable instruments [a, b]	1/1	1/1	..	..
Quasi-regulations	6/6	6/6	..	..
Total	**7/7**	**7/7**	..	..
Percentage	*100*	*100*		

.. Not applicable. [a] Refers to ASIC Policy Statements which may be implemented through Class Orders — a non-disallowable instrument. [b] Although there is not a tabling requirement for RISs relating to non-disallowable instruments, the RIS was published on an appropriate website, in line with regulatory best practice.

Source: ORR estimates.

Reserve Bank of Australia

The Reserve Bank of Australia was fully compliant with the Government's RIS requirements in 2003-04. The RBA prepared one RIS for a non-disallowable instrument, which was assessed as adequate for the decision-making stage. (The RIS was published on the RBA's website, in line with regulatory best practice.)

A.13 Joint responsibility for proposals

As noted in preceding sections, in 2003-04, two RISs were required, but not prepared, at the decision-making stage for two proposals involving joint responsibility.

Airservices Australia and CASA

Significant issue

The Government, in 2002, decided to introduce the National Airspace System (NAS) as the preferred model for airspace reform, subject to appropriate risk assessments and safety analysis being undertaken. NAS is being introduced in stages — Stage 1 was implemented in 2002 and Stage 2a was implemented in June 2003.

Airservices Australia and CASA were jointly responsible for implementing NAS Stage 2b in November 2003 (Campbell 2003, pp. 19194–6). Stage 2b involved reclassification of airspace, with associated changes in the level of air traffic control services provided en-route and standards of separation between aircraft.

While minor changes in airspace classifications, to cater for changes in weather conditions or one-off occurrences such as bush fires, are made on a daily basis by Airservices Australia, the changes being implemented under NAS are far more substantial and result from a Government decision to reform the system. A RIS is required for each stage of NAS prior to its implementation. A RIS was not prepared for the implementation of NAS Stage 2b. As a quasi-regulatory measure, a RIS was not required for tabling.

Department of the Prime Minister and Cabinet and Department of Health and Ageing

The Department of the Prime Minister and Cabinet and the Department of Health and Ageing were jointly responsible for RIS compliance at the decision-making stage for the Government's response to the Review of Pricing Arrangements in Residential Aged Care (the Hogan Review). A RIS was not prepared. The Department of Health and Ageing subsequently prepared adequate RISs for the tabling of three sets of legislative changes flowing from the decision (see section A.8).

B Adequacy of published RISs

This appendix provides the ORR's adequacy assessment, under the Australian Government's RIS requirements, for the 86 RISs that were required at the tabling stage in 2003-04.

In accordance with the Government's RIS requirements, a number of criteria are used to determine whether the analysis contained in a RIS is adequate (box 2.1). The ORR has adopted a strategy whereby a relatively low RIS adequacy standard was applied in 1997-98 (the first year in which their preparation was mandatory). This has been progressively raised each year thereafter as officials have become more familiar and experienced with the analytical approach required in RISs.

The following tables record the ORR's assessment of RISs required for proposals introduced via Bills, disallowable instruments and treaties under the Government's RIS requirements. The Bills, disallowable instruments and treaties are also documented and described (as necessary). The tables do not include the ORR's assessment of RISs for non-disallowable instruments and quasi-regulation, as there is no formal requirement for these RISs to be published. (As mentioned elsewhere in this report, the ORR nevertheless encourages departments and agencies to publish them in line with regulatory best practice.) Compliance for these forms of regulation in 2003-04 was 86 per cent (12/14) and 92 per cent (12/13) respectively. The tables also do not include the ORR's assessment of RISs that have been finalised in 2003-04, but have not yet been made public.

Table B.1 **Bills, individual adequacy assessments** [a]

Title of Bill	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Aged Care Amendment Bill 2004 [b]				
Amendment to allow for reclassification from levels 5-8 to levels 1-4 to be made by aged care service provider without an Aged Care Assessment Team assessment	..	..	Yes	Yes
Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004				
Livestock export industry review — Government response to Keniry report	Yes	Yes	Yes	Yes
Building and Construction Industry Improvement Bill 2003 [c]				
Implement key recommendations of the Royal Commission into the Building and Construction Industry	Yes Yes	Yes Yes	Yes	Yes
Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003				
Audit regulation and corporate disclosure framework (incorporating the Government's response to Ramsay Report on independence of auditors and HIH Royal Commission recommendations)	Yes	Yes	Yes	Yes
Excise Tariff Amendment (Fuels) Bill 2004				
Imposition of excise on biodiesel	No	No	Yes	Yes
Excise differential for high sulphur diesel and low sulphur diesel [d]	..	..	Yes	Yes
Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Bill 2003				
Empowering AFMA to make directions in respect of fishing permits issued under s.32 and licences issued under ss.33, 34 and 40 to close fisheries	Yes	Yes	Yes	Yes
Health Legislation Amendment (Podiatric Surgery and Other Measures) Bill 2004				
Amendment to enable private health insurance funds to pay hospital benefits for accommodation and nursing care costs associated with procedures performed by podiatric surgeons on admitted patients	Yes	Yes	Yes	Yes

.. Not applicable. [a] Copies of Explanatory Memoranda (which include RISs) for Bills can be found at http://scaleplus.law.gov.au/html/ems/browse/TOC.htm. [b] Implements part of the Government's response to the Review of Pricing Arrangements in Residential Aged Care (the Hogan Review). A RIS was not prepared at the decision-making stage (see appendix A). An adequate RIS was prepared for the tabling stage for those outcomes implemented via the Aged Care Amendment Bill 2004. [c] Multi-staged decision-making process — RISs were required at two decision-making stages. [d] Tax RIS required at tabling to address implementation issues.

(Continued next page)

Table B.1 **(continued)**

Title of Bill	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Indirect Tax Legislation Amendment (Small Business Measures) Bill 2004 [d]				
GST: Annual apportionment for partial non-business use for small business	..	..	Yes	Yes
Annual lodgement and payment for small GST registrants	..	..	Yes	Yes
Industrial Chemicals (Notification and Assessment) Amendment (Low Regulatory Concern Chemicals) Bill 2004				
Reform of the regulation of industrial chemicals of low regulatory concern	Yes	Yes	Yes	Yes
Maritime Transport Security Bill 2003 [e]				
Regulation of maritime security	..	..	Yes	Yes
Medical Indemnity Amendment Bill 2004 and Medical Indemnity (IBNR Indemnity) Contribution Amendment Bill 2004				
Amendments to replace the Incurred But Not Reported (IBNR) Claims Contribution with the United Medical Protection support payment, and implement the Premium Support Scheme, addressing doctors' concerns about affordability and the IBNR levy	Yes	Yes	Yes	Yes
Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Bill 2004 & Medical Indemnity (Run-off Cover Support Payment) Bill 2004				
Legislation for a run-off cover indemnity scheme to ensure medical practitioners have access to affordable indemnity insurance cover for claims made against them after they retire or are otherwise not participating in the private medical workforce	Yes	Yes	Yes	Yes
Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003				
Integrity measures for the migration advice industry	Yes	Yes	Yes	Yes
New International Tax Arrangements Bill 2003				
Review of International Taxation Arrangements (Report recommendations 4.2, 4.4 & 4.5) — Foreign Investment Fund rules	Yes	Yes	Yes	Yes

.. Not applicable. **e** Implements elements of the *Amendments to the Annex to the International Convention for the Safety of Life at Sea (SOLAS) 1974* ratified by the Australian Government in 2003 (for which a RIS was prepared, assessed as adequate by the ORR and reported as fully compliant in *Regulation and Its Review 2002-03*).

(Continued next page)

Table B.1 **(continued)**

Title of Bill	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
New International Tax Arrangements Bill 2003 (cont.)				
Review of International Taxation Arrangements (Report recommendation 4.8C) — Tax treatment of foreign investors in Australian managed funds	Yes	Yes	Yes	Yes
Review of International Taxation Arrangements (Report recommendation 3) — Paring back attributable income of controlled foreign companies in broad-exemption listed countries	Yes	Yes	Yes	Yes
New International Tax Arrangements (Managed Funds and Other Measures) Bill 2004				
Review of International Taxation Arrangements (Report recommendations 4.6(1), 4.6(2), 4.7 & 4.8) — Improving the treatment of international investors in Australian managed funds	Yes	Yes	Yes	Yes
New International Tax Arrangements (Participation Exemption and Other Measures) Bill 2004				
Review of International Taxation Arrangements — Controlled Foreign Company rules (see Report chapter 3)	Yes	Yes	Yes	Yes
Petroleum (Submerged Lands) Amendment Bill 2003				
To establish a National Offshore Petroleum Safety Authority (NOPSA), and make improvements to the occupational health and safety provisions of the Petroleum (Submerged Lands) Act 1967	Yes	Yes	Yes	Yes
Spam Bill 2003				
Bill to limit unsolicited commercial electronic messaging	Yes	Yes	Yes	Yes
Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004				
Replacement of the superannuation contributions work test for persons under 65 with one applying only to persons under 18	Yes	Yes	Yes	Yes
Adoption of Ordinary Time Earnings as the standard notional earnings base for calculation of Superannuation Guarantee liabilities	Yes	Yes	Yes	Yes
Superannuation Safety Amendment Bill 2003				
Enhanced prudential framework to improve the safety of superannuation	Yes	Yes	Yes	Yes
Tax Laws Amendment (2004 Measures No. 2) Bill 2004				
Taxation of transfers of overseas superannuation into Australia	Yes	Yes	Yes	Yes

(Continued next page)

Table B.1 **(continued)**

Title of Bill	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Taxation Laws Amendment Bill (No. 8) 2003				
Replacement of franking additional tax with a modified franking deficit tax	Yes	Yes	No	No
Taxation Laws Amendment Bill (No. 9) 2003 [f]				
Provision of rollover relief for balancing adjustments on depreciable assets arising from partial changes in ownership of Simplified Tax System partnerships	Yes	Yes	Yes	No
Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003				
Allow couples to split superannuation contributions	Yes	Yes	Yes	Yes
Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004				
Post 2005 TCF arrangements — response to PC Inquiry Report to extend TCF Strategic Investment Program for ten years	Yes	Yes	Yes	Yes
Trade Practices Legislation Amendment Bill 2004				
Review of the Competition Provisions (Part IV) of the Trade Practices Act 1974 (Dawson Review)	Yes	Yes	Yes	Yes
Water Efficiency Labelling and Standards Bill 2004				
Establishment and operation of National Water Efficiency Labelling and Minimum Performance Standards to certain water use products	Yes	Yes	Yes	Yes
Workplace Relations Amendment (Better Bargaining) Bill 2003				
Allow the suspension of a bargaining period to allow for a cooling-off period during the negotiations for a certified agreement; and allow the suspension of a bargaining period on application of directly affected third parties	Yes	Yes	Yes	Yes
Workplace Relations Amendment (Termination of Employment) Bill 2003 (No. 2)				
Changes to the Commonwealth Unfair Dismissal Scheme	Yes	Yes	Yes	Yes

f Inadequate impact analysis at the tabling stage.

Source: ORR estimates

Table B.2 **Disallowable instruments, individual adequacy assessments** [a]

Title of Disallowable Instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
AASB 1046: Director and Executive Disclosures by Disclosing Entities				
Specifies the remuneration disclosure requirements for directors and executives of disclosing entities	Yes	Yes	Yes	Yes
Air Navigation Amendment Regulations 2003 (No. 3)				
Introduces tighter background checking for Aviation Security Identification Card (ASIC) applicants	Yes	Yes	Yes	Yes
Australian Meat and Livestock Industry (Export of Live-stock to Saudi Arabia) Order 2003 [b]				
Prohibits the holder of an export licence to directly or indirectly export Australian livestock to Saudi Arabia	..	..	Yes	Yes
Broadcasting Services (Events) Notice (No. 1) 2004 [c]				
Revokes and remakes the pay TV anti-siphoning list to apply until 31 December 2005 and provides a revised anti-siphoning list to apply from 1 January 2006 to 31 December 2010	Yes	Yes	Yes	Yes
Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 of 2003) [d]				
Imposes a licence condition on Telstra regarding minimum dial-up Internet connection requirements	Yes Yes	No Yes	Yes	Yes
Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2003 (No. 2)				
Specifies new quality assurance rules for the approval and continued approval of outside school hours care services	Yes	Yes	Yes	Yes
Civil Aviation Amendment Regulations 2003 (No. 4)				
Provides a regulatory regime that covers the requirements for the certification of designers of instrument flight procedures and the qualifications and experience of persons engaged in instrument flight procedures design	Yes	Yes	Yes	Yes

.. Not applicable. [a] Copies of Explanatory Statements (which do not include RISs) for Disallowable Instruments can be found at http://scaleplus.law.gov.au/html/ess/browse/TOC.htm. [b] Emergency exemption at the decision-making stage. [c] The RIS also covered amendments to the anti-siphoning regime made under the *Broadcasting Services Amendment (Anti-Siphoning) Bill 2004.* [d] Multi-staged decision-making process – RISs were required at two decision-making stages. Inadequate impact analysis at first decision-making stage.

(Continued next page)

Table B.2 **(continued)**

Title of Disallowable Instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Civil Aviation Amendment Regulations 2003 (No. 7)				
Provides a regulatory regime that covers the qualification, operation and approval of synthetic training devices (aircraft simulators) that may be used by a person to gain aeronautical experience	Yes	Yes	Yes	Yes
Civil Aviation Orders, Part 105, Airworthiness Directive R22/31 Amendment 8 Robinson R22 helicopters main rotor blades [e]				
Varies the technical requirements for Robinson R22 helicopter main rotor blades	Yes	No	Yes	No
Corporations Amendment Regulations 2003 (No.7)				
Corporations Regulations amendment – disclosure for issue of a new interest in a superannuation fund	Yes	Yes	Yes	Yes
Corporations Amendment Regulations 2003 (No. 8)				
Corporations Regulations amendment – increased withdrawal benefits disclosure requirements for superannuation funds (amendment to regulation 7.9.19)	Yes	Yes	Yes	Yes
Corporations Regulations amendments – clarification of disclosure of amounts: prescribed hierarchy of disclosure forms	Yes	Yes	Yes	Yes
Corporations Amendment Regulations 2004 (No. 5) Income Tax Amendment Regulations 2004 (No.4) Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 4) & Retirement Savings Account Amendment Regulations 2004 (No. 2)				
Regulations to implement the retirement incomes statement: annual work test for 65 to 74s, compulsory cashing of benefits at 75, preservation of rolled-over eligible termination payments and retirement income streams changes	Yes	Yes	Yes	Yes
Corporations Amendment Regulations 2004 (No. 6)				
Corporations Amendment Regulations — amends 'disclosure of fees as dollar amounts' regulations	Yes	Yes	Yes	Yes
Customs (Prohibited Exports) Amendment Regulations 2004 (No. 3) & Customs (Prohibited Imports) Amendment Regulations 2004 (No. 4)				
Control the importation into, and exportation from, Australia of cat and dog fur products	Yes	Yes	Yes	Yes

.. Not applicable. **e** Inadequate impact analysis at both the decision-making and tabling stages.

(Continued next page)

Table B.2 **(continued)**

Title of Disallowable Instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Disability Services (Eligibility—-Wage Phase-in Services and Targeted Support Services) Standards 2004				
Specify standards for the provision of wage phase-in services and targeted support services to persons with a disability	Yes	Yes	Yes	Yes
Foreign Acquisitions and Takeovers Amendment Regulations 2004 (No. 1)				
Exempts from the operation of the Foreign Acquisitions and Takeovers Act a foreign custodian company's holding of a legal interest in a share of an Australian corporation held on behalf of an Australian investor	No	No	Yes	Yes
Fuel Quality Information Standard (Ethanol) Determination 2003				
Introduces a national mandatory labelling standard for ethanol blends at the point of sale	Yes	Yes	Yes	Yes
Fuel Quality Standard (Autogas) Determination 2003				
Introduces a national fuel standard for LPG	Yes	Yes	Yes	Yes
Fuel Standard (Biodiesel) Determination 2003				
Introduces a national fuel standard for biodiesel	Yes	Yes	Yes	Yes
Great Barrier Reef Marine Park Zoning Plan 2003				
Introduces a comprehensive framework for the conservation and management of the Great Barrier Reef Marine Park by dividing the Park into zones and designating specific uses for each	Yes	Yes	Yes	Yes
Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Amendment Regulations 2004 (No. 1)				
Provides for the implementation of the OECD's control system for trans-frontier movements between OECD countries of hazardous wastes destined for recovery operations	Yes	Yes	Yes	Yes
Health Insurance (Accredited Pathology Laboratories - Approval) Amendment Principles (No 1)				
Proposed standards for Laboratory Participation in External Proficiency Testing Programs	Yes	Yes	Yes	Yes
Proposed standard for the validation of in house in vitro diagnostic devices	Yes	Yes	Yes	Yes
Income Tax Amendment Regulations 2004 (No. 3)				
Amendment of Foreign Income Regulations (under the Income Tax Assessment Act 1936) to pare back classes of Eligible Designated Concession Income	Yes	Yes	Yes	Yes

(Continued next page)

Table B.2 **(continued)**

Title of Disallowable Instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Industrial Chemicals (Notification and Assessment) Regulations 2003 (No. 2) & Industrial Chemicals (Notification and Assessment) Regulations 2003 (No. 3)				
Introduces revised fees and charges to enable NICNAS to fully recover the costs of services provided to industry	Yes	Yes	Yes	Yes
National Health Amendment Regulations 2003 (No. 1)				
Enables general insurers to provide cover for out-of-pocket expenses for Australians and other eligible persons on board cruise ships in Australian waters	Yes	Yes	Yes	Yes
Primary Industries (Excise) Levies Amendment Regulations 2003 (No. 14), Primary Industries Levies and Charges Collection Amendment Regulations 2003 (No. 10), Rural Industries Research and Development Corporation Amendment Regulations 2003 (No. 3)				
Establishes a new R&D levy of 3 cents/macropod carcass on slaughtered macropods (including kangaroos), payable by processors of macropods for human consumption and pet food, commencing 1 January 2004	Yes	Yes	Yes	Yes
Primary Industries (Excise) Levies Amendment Regulations 2003 (No. 15), Primary Industries (Customs) Charges Amendment Regulations 2003 (No. 9), Primary Industries Levies and Charges Collection Amendment Regulations 2003 (No. 11)				
Introduces a marketing and research and development (R&D) levy and export charge scheme for the papaya industry	Yes	Yes	Yes	Yes
Primary Industries (Excise) Levies Amendment Regulations 2003 (No. 18), Primary Industries (Customs) Charges Amendment Regulations 2003 (No. 11), Primary Industries Levies and Charges Collection Amendment Regulations 2003 (No. 12)				
Introduces a marketing and research and development (R&D) levy and export charge scheme for the lychee industry	Yes	Yes	Yes	Yes
Primary Industries (Excise) Levies Amendment Regulations 2004 (No. 2), Primary Industries (Customs) Charges Amendment Regulations 2004 (No. 3), Primary Industries Levies and Charges Collection Amendment Regulations 2004 (No. 2)				
Introduces a marketing and research and development (R&D) levy and export charge scheme for the persimmon industry	Yes	Yes	Yes	Yes
Radiocommunications Devices (Compliance Labelling) Notice 2003				
Changes ACA radiocommunications compliance arrangements to achieve harmonisation with New Zealand	Yes	Yes	Yes	Yes

(Continued next page)

Table B.2 **(continued)**

Title of Disallowable Instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Radiocommunications Standards 2003 - (MF & HF equipment - Land Mobile Service), (Data Transmission Equipment Using Spread Spectrum Modulation Techniques) & (121.5 MHz and 243.0 MHz Emergency Position Indicating Radio Beacons)				
Three standards made under the Radiocommunications Act 1992 to manage interference from emergency position indicating radio beacons, spectrum spreading devices and MF/HF land mobile equipment	Yes	Yes	Yes	Yes
Reporting Standard ARS 110.0 Capital Adequacy, Reporting Standard ARS 320.0 Statement of Financial Position (Domestic Books), Reporting Standard ARS 322.0 Statement of Financial Position (Consolidated), & Reporting Standard ARS 323.0 Statement of Financial Position (Licensed ADI)				
Amendments to APRA reporting standards for Authorised Deposit-taking Institutions to take account of the revised prudential accounting treatment of capitalised expenses	Yes	Yes	Yes	Yes
Southern and Eastern Scalefish and Shark Fishery Management Plan 2003				
Introduction of management plan for the Southern and Eastern Scalefish and Shark Fishery	Yes	Yes	Yes	Yes
Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 5)				
Revised form of mandatory portability of superannuation — application limited to inactive accounts	No	No	No	No
Taxation Administration Amendment Regulations 2004 (No. 1)				
Regulations prescribing the first group of payments to be subject to the non-resident withholding tax system	Yes	Yes	Yes	Yes
Telecommunications (Service Provider - Identity Checks for Pre-paid Mobile Telecommunications Services) Amendment Determination 2004 (No. 1)				
Provides further options for carriage service providers concerning the collection of identifying information about end-users of pre-paid mobile phones	Yes	Yes	Yes	Yes
Telecommunications (Standard Form of Agreement Information) Determination 2003				
Specifies a general form of agreement for the supply of services by carriage service providers	Yes	Yes	Yes	Yes
Telecommunications Numbering Plan Variation 2003 (No. 4)				
Makes provision for the inadvertent issuing of numbers inconsistent with the Numbering Plan	Yes	Yes	Yes	Yes

(Continued next page)

Table B.2 **(continued)**

Title of Disallowable Instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Telecommunications Numbering Plan Variation 2004 (No. 1)				
Specifies rules concerning the allocation of freephone and local rate numbers without the involvement of carriage service providers	Yes	Yes	Yes	Yes
Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1)				
Two service provider rules relating to consumer education in relation to the supply of premium rate (190, 191-199 and international) services	Yes	Yes	Yes	Yes
User Rights Amendment Principles 2003 (No. 1)				
Provides for uncapped daily care fees for approved aged care recipients in places for which no Australian Government subsidy is payable	Yes	Yes	Yes	Yes
User Rights Amendment Principles 2004 (No. 1) [f]				
Allows providers to increase accommodation charges for high level care residents	..	..	Yes	Yes

.. Not applicable. [f] Implements part of the Government's response to the Review of Pricing Arrangements in Residential Aged Care (the Hogan Review). A RIS was not prepared at the decision-making stage (see appendix A). An adequate RIS was prepared for the tabling stage for those outcomes implemented via the User Rights Amendment Principles 2004 (No. 1).

Source: ORR estimates.

Table B.3 **Treaties, individual adequacy assessments** [a]

Title of Treaty	*RIS prepared*	*RIS adequate*
Stages		
Agreement between the Government of Australia and the Government of New Zealand for the Establishment of a Joint Scheme for the Regulation of Therapeutic Products		
Entry into negotiations	Yes	Yes
Before signature	Yes	Yes
Tabling/Ratification	Yes	Yes
Australia-United States Free Trade Agreement		
Entry into negotiations	Yes	Yes
Before signature	Yes	Yes
Tabling/Ratification	Yes	Yes
Mexico-Australia Double Tax Agreement		
Entry into negotiations	Yes	Yes
Before signature	Yes	Yes
Tabling/Ratification	Yes	Yes
Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as modified by the Protocol of 17 February 1978 (London, 26 September 1997)		
Entry into negotiations	..	..
Before signature	Yes	Yes
Tabling/Ratification	Yes	Yes
Revision of Australia-United Kingdom Double Tax Convention		
Entry into negotiations	Yes	Yes
Before signature	Yes	Yes
Tabling/Ratification	Yes	Yes
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998		
Entry into negotiations	..	..
Before signature	Yes	Yes
Tabling/Ratification	Yes	Yes
Stockholm Convention on Persistent Organic Pollutants (POPs), done at Stockholm on 22 May 2001		
Entry into negotiations	..	..
Before signature	Yes	Yes
Tabling/Ratification	Yes	Yes
Thailand-Australia Free Trade Agreement		
Entry into negotiations	Yes	Yes
Before signature	Yes	Yes
Tabling/Ratification	Yes	Yes

.. Not applicable. [a] Copies of Treaty texts, National Impact Analyses and RISs (where required) can be found at http://www.aph.gov.au/house/committee/jsct/report.htm.

Source: ORR estimates.

C COAG's RIS requirements — compliance and recent developments

This appendix contains the Office of Regulation Review's fourth report to the National Competition Council (NCC) on compliance with the Council of Australian Governments' (COAG) requirements for Regulatory Impact Statements (RISs). These requirements are set out in the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. The ORR's fourth report to the NCC covers the period 1 April 2003 to 31 March 2004.

In June 2004, COAG made a number of changes to the *Principles and Guidelines* (COAG 2004a). These changes will further enhance the application of the principles of good regulatory practice to COAG decision-making bodies and will ensure greater clarification of the operation of RISs (addressing issues similar to those raised in section C.2). COAG also agreed to changes to the operating guidelines for Ministerial Councils. This appendix concludes with an outline of these developments in section C.9.

(The report below applies to the COAG *Principles and Guidelines* before they were amended in June 2004.)

C.1 The Office of Regulation Review's report to the National Competition Council

The requirements of the Council of Australian Governments

In April 1995, COAG agreed to apply a nationally consistent assessment process to proposals of a regulatory nature considered by all Ministerial Councils and national standard-setting bodies (NSSBs). The agreed assessment process is set out in the COAG *Principles and Guidelines* (COAG 1997 as amended). The major element of the assessment process is the preparation of RISs.

A RIS documents the policy development process and considers alternative approaches to resolve identified problems, and assesses the impacts of each option

on different groups and on the community as a whole. A COAG RIS needs to be prepared for proposals having a national dimension which, when implemented by jurisdictions, would result in regulatory impacts. The first stage RIS is used as part of community consultation and the second or final RIS, reflecting feedback from the community, assists in the decision-making process. The objective of these COAG *Principles and Guidelines* is to improve the quality of regulation, including through the adoption of good consultation processes as regulation is developed.

The role of the Office of Regulation Review

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 advising whether a RIS should be prepared and assessing RISs prepared for Ministerial Councils and NSSBs. The ORR assesses RISs at two stages: before they are released for consultation and again 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 Guidelines have been followed;
- whether the type and level of analysis is adequate and commensurate with the potential economic and social impact of the proposal; and
- whether alternatives to regulation have been adequately considered.

The ORR makes its assessment of the application of the COAG *Principles and Guidelines* independently of the views of any particular jurisdiction. Further, the ORR does not comment on the merits of regulatory proposals being put to decision-making bodies — its prime focus is on the regulatory best practice processes as detailed in the Guidelines.

COAG's *Agreement to Implement the National Competition Policy and Related Reforms* (COAG 1998) also requires the ORR to advise the National Competition Council (NCC) on compliance with the COAG *Principles and Guidelines*. The NCC takes this advice into account when considering its recommendations to the Australian Government Treasurer regarding conditions and amounts of competition payments from the Australian Government to the States and Territories. This ORR report addresses this obligation for the period 1 April 2003 – 31 March 2004, and is the fourth such report by the ORR to the NCC.

C.2 The focus and scope of the ORR's report

In its reports to the NCC, the ORR excludes from the COAG RIS requirements a number of categories of regulatory decisions made by Ministerial Councils or national standard-setting bodies. The first category involves decisions which have a low significance in terms of the scope and magnitude of community impacts. For such minor or machinery regulations, the RIS process may not add significant additional value to the policy development process in a cost-effective manner. The second category comprises decisions that are more of an administrative than of a regulatory nature. These decisions are essentially about the application of existing regulatory frameworks without consideration of other regulatory options.

Further, where a meeting of Ministers or a national standard-setting body considers a report that merely 'brainstorms' a regulatory subject rather than seeks a specific regulatory decision, a COAG RIS is not required beforehand for consideration by Ministers.

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*. Also, 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 the 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 2004b, p.4)

While noting that Ministerial Councils and national standard-setting bodies commonly reach agreement on the main elements of a regulatory approach or standards which are then given force in Australian jurisdictions 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 2004b, p.4)

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

nature — such as endorsement of industry codes of conduct — as well as on national regulatory approaches implemented by legislation.

Decision-making groups covered by the 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 2004b, p.4)

While Councils of Ministers are usually standing bodies — and some are established by statute — there are from time to time ad hoc bodies of Australian Government, State and Territory Ministers (and sometimes delegated senior officials) established to address and resolve regulatory issues considered to have a national dimension. These ad hoc bodies can be required to consider proposals that will result in significant regulatory impacts. (At any one time there are typically about 40 COAG decision-making forums.)

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

Further, from time to time COAG itself makes decisions dealing with national regulatory problems. While COAG is not considered to be bound by the COAG *Principles and Guidelines*, the ORR's advice has been that the responsibility for compliance with the COAG requirements rests with the body preparing or transmitting regulatory proposals for consideration by COAG.[1]

Multi-stage decision making and the RIS requirements

In some cases, a Ministerial Council or national standard-setting body, in addressing a national regulatory problem, may make decisions in several sequential stages. This is more likely to occur for highly complex and significant regulatory issues. For example, a Ministerial Council may consider a range of regulatory options to deal with an identified problem. Having made an initial decision on whether and

[1] In June 2004, COAG decided that the *Principles and Guidelines* should apply to COAG as well as to Ministerial Councils and national standard-setting bodies (COAG 2004a). See section C.9 for a summary of changes made to the *Principles and Guidelines*.

how it wishes to intervene, the Council or standard-setting body then separately considers implementation options.

This situation has led to concern that two or more RISs may be required, one for the key decision and follow-up RISs for the subsequent implementation decisions to accord with the COAG *Principles and Guidelines*. The ORR's approach in such situations is that, where an adequate RIS has been prepared for a regulatory decision made by a Ministerial Council or national standard-setting body, a follow-up or subsequent RIS is not required when only the detail of the regulation is to be put in place to implement the decision. However, a subsequent RIS would be required where follow-up regulatory decisions require further significant new regulation, and if the likely impacts of feasible regulatory options are significant and can be assessed. Whether the implementing regulation for a particular matter requires a RIS should be determined in consultation with the ORR on a case by case basis.

Decisions requiring implementation in States and Territories

For decisions requiring further regulatory decision-making by the States and Territories, including the development of implementing legislation, each jurisdiction may require the development of State or Territory specific RISs to meet their individual RIS requirements. In the past, this has raised the question as to whether the preparation of a COAG RIS is duplicative and therefore unwarranted.

COAG's RIS requirements apply to the initial decision by the Ministerial Council or national standard-setting body. Not only does the COAG RIS guide the overarching decision taken by the inter-governmental body, it can also guide further decisions taken in each jurisdiction from a carefully analysed starting point. It is also the case that States and Territories can, where applicable, forgo their own RIS requirements if an adequate COAG RIS has been prepared.

C.3 Matters for which COAG's requirements were met

Table C.1 documents the 28 decisions made during the period 1 April 2003 – 31 March 2004 where the COAG RIS requirements applied and were fully met. The table includes a brief description of the regulatory measure, the decision-making body and the date of the final decision.

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

Measure	*Body responsible*	*Date of decision*
1. Livestock Identification and Tracing Systems	Primary Industries Ministerial Council (PIMC)	11 April 2003
2. National Ban on Routine Tail Docking of Dogs	PIMC	11 April 2003
3. Amendments to the National Exposure Standard for Benzene	National Occupational Health and Safety Commission (NOHSC)	24 April 2003
4. Amendments to the Approved Criteria for Classifying Hazardous Substances	NOHSC	24 April 2003
5. Amendments to the National Exposure Standards for Atmospheric Contaminants in the Occupational Environment	NOHSC	24 April 2003
6. National Code of Practice for the Preparation of Material Safety Sheets	NOHSC	24 April 2003
7. Australian Builder's Plate (compliance plates for recreational vessels)	Australian Transport Council (ATC)	1 May 2003
8. Australian Road Rules Amendment Package 2003	ATC	30 June 2003
9. Building Code of Australia Amendment 13 Volume 1	Australian Building Codes Board	1 July 2003
10. Review of Processing Requirements of Uncooked Comminuted Fermented Meat	Food Standards Australia New Zealand	2 July 2003
11. Gene Technology (Recognition of Designated Areas) Principle 2003	Gene Technology Ministerial Council	3 July 2003
12. Amendments to the chrysotile asbestos exposure standard	NOHSC	23 July 2003
13. Dangerous Goods – Transport Emergency Response Plan Guidelines	ATC	1 August 2003
14. 50 km/hour National Default Urban Speed Limit	ATC	1 September 2003
15. TTMRA – ADR Review – ADR 12 – Glare Reduction in the Field of View	ATC	1 September 2003

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Table C.1 **(continued)**

Measure	*Body responsible*	*Date of decision*
16. TTMRA – ADR Review – ADR 15 – Demisting of Windscreens	ATC	1 September 2003
17. TTMRA – ADR Review – ADR 71 – Temporary Use Spare Tyres	ATC	1 September 2003
18. Deletion of Australian Design Rule (ADR) 24/02 – Tyre and Rim Selection	ATC	1 September 2003
19. Deletion of ADR 20/00 – Safety Rims	ATC	1 September 2003
20. Review of the 1994 Load Restraint Guide (for vehicles)	ATC	1 October 2003
21. National Compliance and Enforcement Provisions for the National Road Transport Law: Road Transport Reform (Compliance and Enforcement) Bill	ATC	3 October 2003
22. National Code of Practice for the Control of Work Related Exposure to Hepatitis and HIV (blood borne) Viruses	NOHSC	15 October 2003
23. National Standard for Commercial Vessels – Sub section 7A: safety equipment	ATC	1 November 2003
24. Mandatory Food Safety Programs for High Risk Sectors, and Policy Guidelines to Improve Food Safety Management in Australia	Australia New Zealand Food Regulation Ministerial Council (ANZFRMC)	12 December 2003
25. Minimum Energy Performance Standards for Electricity Distribution Transformers	Ministerial Council on Energy	4 February 2004
26. Heavy Vehicle Driver Fatigue	ATC	1 March 2004
27. Heavy Vehicle NHVAS Advanced Fatigue Management Module	ATC	1 March 2004
28. National Safety and Infrastructure Protection Performance Standards (for heavy vehicles)	ATC	1 March 2004

Source: ORR estimates

C.4 Matters for which COAG's requirements were partially met

Table C.2 documents the two decisions made during the period 1 April 2003 – 31 March 2004 where the COAG RIS requirements applied and were partially met; that is, there was qualified compliance with the requirements. Commentary on the individual decisions, including the reasons why the decisions were considered to have partially met the requirements, is provided below the table.

Table C.2 **Cases of qualified compliance with the COAG RIS requirements**

Measure	*Body responsible*	*Date of decision*
1. New National Regulatory Framework for In Vitro Diagnostic Devices	Australian Health Ministers' Conference	1 July 2003
2. Professional standards legislation	Ministerial Meeting on Insurance Issues	6 August 2003

Source: ORR estimates.

Commentary on partially compliant decisions

New national regulatory framework for in vitro diagnostic devices

On 1 July 2003, the Australian Health Ministers' Conference agreed to a new national regulatory framework for in vitro diagnostic devices. While the proposal was the subject of consultation, the ORR had advised that a consultation RIS was required. The discussion paper prepared, whilst detailed, did not substitute for an adequate RIS. However, a final RIS assessed by the ORR as adequate was available to support the decision to adopt the proposed framework.

Implementation of a national system of professional standards legislation

The Ministerial Meeting on Insurance Issues considered a model for implementing a national system of professional standards legislation (PSL) on 6 August 2003 and confirmed the commitment of all jurisdictions to implementing PSL on a nationally consistent basis. The ORR was not provided with forward notice and a consultation RIS was not prepared. However, broad consultation with professional groups and the insurance industry had taken place and it is relevant that professional standards legislation was already in place in at least one jurisdiction. A final RIS assessed by the ORR as adequate was prepared and available to support the decision to endorse a national model.

C.5 Matters for which COAG's requirements were not met

Table C.3 indicates that, during the period 1 April 2003 – 31 March 2004, the COAG RIS requirements were not met at either the consultation stage or at the decision stage in four cases. Commentary on the individual decisions, including the reasons why the decisions were considered to be non-compliant, is provided below the table.

Table C.3 **Cases where COAG RIS requirements were not met**

Measure	*Body responsible*	*Date of decision*
1. Policy Guideline for the Regulation of Caffeine in Food	Australia New Zealand Food Regulation Ministerial Council	4 April 2003
2. Proportionate liability	Ministerial Meeting on Insurance Issues	6 August 2003
3. Endorsement of model provisions for the regulation of the legal profession	Standing Committee of Attorneys-General	7 August 2003
4. Endorsement of the Australian Retailers Association Code of Practice for the Management of Plastic Bags	Environment Protection and Heritage Council	2 October 2003

Source: ORR estimates.

Commentary on non-compliant decisions

Policy guideline for the regulation of caffeine in food

On 4 April 2003, the Australia New Zealand Food Regulation Ministerial Council considered controls over the addition of caffeine to food, and agreed to maintain the current additive permissions for caffeine, while restricting the use of new food products containing non-traditional caffeine-rich ingredients to boost their caffeine content beyond the current provisions.

A RIS was not prepared for community consultation on the proposal as required by the COAG requirements. Although a final RIS was drafted for the decision makers, the ORR assessed the RIS as not having an adequate level of analysis. This was chiefly due to inadequacies in the specification of the problem and in the analysis of individual options.

Proportionate liability

On 6 August 2003, the Ministerial Meeting on Insurance Issues agreed to a national model for proportionate liability where economic loss or property damage occurs through professional negligence. This will replace, throughout all Australian jurisdictions, the established legal principle of joint and several liability, and impacts on businesses throughout Australia in dealing with the risk of, and losses from, the negligent provision of services. The decision was informed by the work done by the Heads of Treasuries Insurance Issues Working Group in developing the proposal.

A COAG RIS was not prepared for consultation or at the decision-making stage. The ORR was not given forward notice of the proposal.

National legal profession model bill

On 7 August 2003, the Standing Committee of Attorneys-General (SCAG) endorsed model provisions for nationally consistent laws for the regulation of Australia's legal profession. A COAG RIS was not prepared for either consultation on the proposed core model provisions or the decision by SCAG to endorse them. In addition, the ORR was not given forward notice of the proposal.

The National Legal Profession Model Bill has since been circulated. The ORR notes that it is intended that a COAG RIS be prepared to examine the impacts of the model provisions. A joint working party, comprising the legal profession, State, Territory and Australian Government officers, is to advise SCAG on the operation and implementation of the Bill and on proposed amendments to its core provisions.

Code of practice for the management of plastic bags

On 2 October 2003, the Environment Protection and Heritage Council (EPHC) decided to endorse the Australian Retailers' Association Code of Practice for the Management of Plastic Bags. The Code aims to improve recycling rates for, and reduce the number of, high density polyethylene plastic bags used in Australia.

A COAG RIS was not prepared in relation to the proposal, for consultation or for the final decision.

The ORR examined documents provided to the Council for its final decision and found that, while a preliminary impact analysis of several legislative options was prepared, this did not extend to analysis of the preferred option.

C.6 Trends in compliance with COAG's RIS requirements

At consultation

The COAG *Principles and Guidelines* state that 'public consultation is an important part of any regulatory development process' and an adequate COAG RIS is required for consultation. These requirements, however, make it clear that the depth of analysis in the consultation RIS need not be as great as in the RIS for decision makers. In many cases, the focus of the consultation RIS will be on identification of the problem and objectives and a preliminary assessment of feasible options. The RIS for the decision-making stage should reflect the additional information and views collected from those consulted, and provide a more complete impact analysis.

While COAG requires a RIS for consultation and for the final decision, the ORR's practice has been that an adequate consultation RIS is only one consideration in whether a matter is compliant overall. In the absence of an adequate consultation RIS, the ORR has in determining overall compliance taken into account the extent of community consultation that took place on the proposal and the level of analysis in the final RIS (relative to the impacts of the proposal). The ORR has applied this approach as a transitional measure to assist in the implementation by Ministerial Councils and NSSBs of the COAG *Principles and Guidelines*.

In relation to decisions covered by this report, compliance at consultation was less than at the decision-making stage. This is notwithstanding the preliminary nature of the RIS required for consultation.

Eighty-two per cent of matters had an adequate consultation RIS — this compares to 88 per cent compliance at final decision (see below).

This is the first time that the ORR has reported compliance with COAG's requirement for a consultation RIS. It is proposed to include such compliance information in the ORR's next report to the NCC covering decisions made in the year to 31 March 2005.

At the decision-making stage

Of the 34 decisions by Ministerial Councils and national standard-setting bodies reported during the year to 31 March 2004 (the ORR's fourth report to the NCC), compliance with COAG's requirements was 88 per cent. This is comparable to the compliance rate of 89 per cent for 27 decisions made during the previous reporting period (the ORR's third report to the NCC).

(For consistency with the reporting of cases in previous reporting periods, the cases listed in table C.2, where RIS requirements were partially met, are treated as compliant for the purposes of this assessment.)

For significant regulatory matters

As discussed in earlier ORR reports to the NCC, 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. The criteria for this classification are 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 regulatory proposals in this way provides 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 and the likely impacts of any regulatory response.

Of the 34 regulatory decisions reported here, seven were assessed by the ORR as of greater significance according to the above criteria. They are as follows:

- The Gene Technology Ministerial Council's decision to issue a policy principle which would recognise State/Territory rights to designate under State/Territory law special areas that are either for genetically modified (GM) or non-GM crops for marketing purposes — the Gene Technology Regulator must then act consistently with the policy principle;
- The agreement by the Ministerial Meeting on Insurance Issues to implement professional standards legislation on a nationally consistent basis, by which an upper limit (cap) is placed on liability payouts to plaintiffs for economic loss where professional groups meet legislated standards;
- The decision by the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC) that food safety programs be mandatory for the highest risk sectors in Australia, and that policy guidelines to improve food safety management be adopted in Australia;
- The Australian Transport Council's decision to adopt performance based standards for heavy vehicles — this involved the adoption of twenty new standards, sixteen relating to vehicle safety, and four to protection of infrastructure;

- The endorsement by the Environment Protection and Heritage Council (EPHC) of the Australian Retailers' Association Code of Practice for the Management of Plastic Bags, which aims to improve recycling rates for, and reduce the number of, high density polyethylene plastic bags used in Australia;
- The agreement by the Ministerial Meeting on Insurance Issues to a national model for proportionate liability, where economic loss or property damage occurs through professional negligence, which replaced throughout all Australian jurisdictions the established legal principle of joint and several liability. This decision will impact on the ability of victims of professional negligence to achieve full compensation in certain instances and may impact on the risks for business in dealing with service providers; and
- The endorsement by the Standing Committee of Attorneys-General of model provisions which are to form the basis for consistent laws for the regulation of Australia's legal profession.

The RISs for the first four of these decisions were compliant with COAG's requirements (one of these had qualified compliance), and contained a level of analysis commensurate with the significance and impact of the proposal. For the last three decisions, the COAG *Principles and Guidelines* were not complied with either at the consultation stage or at the decision-making stage.

In summary, the compliance result for the seven matters of 'greater significance' for the year to 31 March 2004 is 57 per cent. While comparisons from year to year are only indicative given the small number of significant matters in each reporting period, the ORR notes that compliance for the current period is less than that for the ORR's second and third reports to the NCC.

Table C.4 summarises compliance results for all proposals and significant proposals over the periods covered by the four ORR reports to the NCC.

Table C.4 **COAG RIS compliance for regulatory decisions made by Ministerial Councils and NSSBs, 2000-01 to 2003-04** [a]

	2000-01	*2001-02*	*2002-03*	*2003-04*
Overall compliance (qualified and full)	15/21 (71%)	23/24 (96%)	24/27 (89%)	30/34 (88%)
Compliance (qualified and full) for significant regulatory proposals	5/9 (56%)	6/6 (100%)	4/6 (67%)	4/7 (57%)

[a] Data for 2000-01 relate to the period 1 July 2000 - 31 May 2001. Data for 2001-02 relate to the period 1 April 2001 - 31 March 2002. While there is therefore some overlap between these two reports, only four decisions (including one on a significant matter) are covered by both reports. All decisions covered in both reports were compliant with COAG's requirements.

Source: ORR estimates.

C.7 Compliance issues

The lack of full compliance with COAG's RIS requirements, particularly for the more significant regulatory proposals, continues to be an issue.

Non-compliance appears to be due to several factors. The first is that there has not been a good appreciation by some Ministerial Councils and national standard-setting bodies of the analytical requirements of a COAG RIS. This includes adequate identification of the problem and potential case for government regulation, and a balanced and thorough assessment of feasible options.

It would also appear that, as for the third report, the allocation of decision-making power to ad hoc groups or committees involves a risk that these processes may not follow best practice, in large part because such groups are not fully aware of COAG's requirements.

These factors played a role in the first two non-compliant decisions listed in table C.3. It should be noted, however, that each of the relevant decision-making bodies made one other decision during the same period that did meet COAG's RIS requirements. This suggests that these factors, while responsible for poor compliance outcomes for some decisions, may not be systemic with respect to these bodies.

In relation to the third non-compliant decision listed in table C.3, the key factor facilitating non-compliance was the decision being made in several stages. In this case, the initial decision to regulate was not subjected to the COAG RIS process. Operational and implementation issues are to be considered in the second and subsequent stages.

The fourth non-compliant decision noted above was made by a Ministerial Council that, with respect to all other reports by the ORR to the NCC, has been fully compliant with COAG's requirements. Further, the secretariat had consulted early with the ORR on other regulatory proposals being developed during the current reporting period.

Taking a longer term view of compliance over the period covered by the four reports by the ORR, it would appear that, with some exceptions, non-compliance is usually associated with decision-making bodies that make infrequent regulatory decisions, and for which the regulatory best practice approach required by COAG has not become incorporated into their operating protocols. The majority of these decisions have been on regulatory matters of significance.

The lack of compliance at the community consultation stage is also an issue. While it is due in part to a continued lack of awareness of COAG's RIS requirements, it would also appear to be due to a lack of awareness of COAG's specific requirement for a consultation RIS.

C.8 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 2004, the ORR provided training on COAG's RIS requirements to over 90 government officials. Further training will continue, with particular emphasis on officials supporting decision-making groups that make regulatory decisions less often, but potentially on significant issues.

There is also a need for a better understanding of COAG's RIS requirements at the consultation stage. The ORR aims to address this in briefing and training officials. It is also intended that, for the fifth report to the NCC, covering the period 1 April 2004 – 31 March 2005, the ORR will continue to report (as here) on compliance at the consultation stage for individual decisions made during the reporting period. This increased transparency may assist in raising compliance with COAG's RIS requirements.

It is also worthy of note that, while COAG does not require that the final RIS for the decision-making stage be made public, a number of standard-setting bodies and secretariats of Ministerial Councils have made public the final RIS for decisions made during the reporting period. They include the Australian Building Codes Board, the National Occupational Health and Safety Commission, and the secretariat for the Gene Technology Ministerial Council. This practice further promotes the transparency of the policy development process, and as such is consistent with regulatory best practice.

C.9 Recent developments in COAG's requirements for RISs and the operation of Ministerial Councils

At its meeting on 25 June 2004, COAG agreed to changes to the *Principles and Guidelines* and to the *Broad Protocols for the Operation of Ministerial Councils* (COAG 2004c). This followed an evaluation of the implementation of the *Broad Protocols and General Principles for the Operation of Ministerial Councils*

(PM&C 2002). The *Broad Protocols* include the requirement to prepare RISs under the *Principles and Guidelines*.

Changes to the *Principles and Guidelines*

The changes to the *Principles and Guidelines* aim to enhance the application of the principles of good regulatory practice to decisions of COAG, Ministerial Councils, intergovernmental standard-setting bodies and bodies established by government to deal with national regulatory problems. They are summarised below:

- The Guidelines apply to COAG, as well as to Ministerial Councils and national standard-setting bodies;
- Minor or machinery regulatory matters and 'brainstorming' by Ministers — which is not supported by written submissions outlining regulatory options — are exempt from the RIS requirements;
- The National Competition Principles Agreement is explicitly acknowledged;
- It was clarified that the Guidelines apply to bodies preparing advice to Ministerial Councils/standard-setting bodies;
- The importance of early consultation with the ORR and forward notice of the preparation of a RIS was noted;
- Where a trans-Tasman issue is involved, the ORR is to refer the draft RIS for consultation to New Zealand's Regulatory Impact Analysis Unit (RIAU) to allow feedback on New Zealand issues and impacts — with such feedback being incorporated into the ORR's advice;
- It was clarified that the final RIS for the decision makers is to be provided to the ORR;
- Provision is made for genuine regulatory emergencies, with the ORR able to 'post assess', within 12 months, the briefing material prepared for the decision makers;
- It was clarified that, for multi-staged decision making, follow-up RISs for regulation implementing the original decision will not generally be required unless significant additional regulation is contemplated;
- The independent role of the ORR was specified, including a reference to the ORR not supporting any particular jurisdiction;
- It was emphasised that the principles of the Trans-Tasman Mutual Recognition Arrangement must be adequately considered;
- It was clarified that a RIS should consider the impact on business and on the broader community; and

- More robust requirements were included to document compliance costs and small business impacts.

The implementation of these changes will improve the preparation of RISs and ensure greater clarification for the operation of the RIS process in Australia and New Zealand. With respect to the changes to the *Principles and Guidelines* for regulatory proposals involving trans-Tasman issues, the ORR and the RIAU are adopting a protocol outlining the working arrangements between the two offices for the assessment of draft consultation RISs. It is intended that this protocol will evolve over time to ensure the effectiveness and efficiency of these arrangements.

Changes to the *Broad Protocols for the Operation of Ministerial Councils*

COAG also agreed to a number of changes to the *Broad Protocols for the Operation of Ministerial Councils* (COAG 2004c) directed towards the efficiency of Ministerial Council decision-making processes and the coordination of related policy development processes. They include specific requirements for timely meetings of officials prior to meetings of Ministerial Councils; for the timely circulation of final agendas and papers to Ministers; and for copies of minutes from Ministerial Council meetings to be forwarded to the Department of the Prime Minister and Cabinet after each meeting. In addition, COAG agreed to amend the *General Principles for the Operation of Ministerial Councils* (COAG 2004d) to reflect these changes to the *Broad Protocols*.

The changes are expected to result in: Ministerial Council agendas having a greater focus on strategic issues; improved reporting and information flows by Ministerial Councils on key issues and outcomes; and regular reviews by Ministerial Councils of their own functions.

D 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 implemented programs to review and reform legislation 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 covered a total of 101 reviews.[1] As at 30 June 2004, approximately 76 per cent of the reviews on the Australian Government's schedule had either been completed or were underway, approximately 13 per cent of the total had been deleted from the schedule, and approximately 11 per cent of total reviews were deferred, delayed or not yet commenced. Table D.1 contains a list of the outstanding reviews. A more comprehensive assessment of Australian Government, State and Territory progress against legislation review and reform obligations will be available in the National Competition Council's 2004 *Assessment of Governments' Progress in implementing the National Competition Policy and Related Reforms*.

While the legislation review program required jurisdictions to review and reform legislation by 30 June 2002, the CPA provides for the continual review of legislation that restricts competition. Clause 5(6) of the Competition Principles Agreement states that:

> Once a Party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the party will systematically review the legislation at least once every ten years.

As the Schedule was announced in 1996, many pieces of legislation will be due for review again from 2006.

[1] When it was announced in June 1996, the Schedule identified 98 separate reviews. Additional reviews were later included on the Schedule, bringing the total number of reviews to 101.

The Productivity Commission's current inquiry into National Competition Policy may also have implications for the future of the legislation review program. The inquiry's objectives are to assess the impact of competition policy reforms undertaken by Australian governments to date and to identify areas of future reform. This will include an examination of the legislation review program.

Table D.1 **Reviews outstanding as at 30 June 2004**

Reviews still to be undertaken	*Department*	*Status as at 30 June 2003*	*Status as at 30 June 2004*
Environment Protection (Nuclear Codes) Act 1978	DHA	Not commenced/ Seeking to delist	Not commenced [a]
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 [b]
Petroleum Retail Marketing Franchise Act 1980	DITR	Not commenced	Not commenced [b]
Defence Force (Home Loans Assistance) Act 1990	Defence	Not commenced	Not commenced
Dairy Industry Legislation	DAFF	Deferred	Deferred
Dried Vine Fruits Legislation	DAFF	Not commenced/ Seeking to delist	Not commenced [a]
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/ Seeking to delist	Not commenced [a]
Customs Prohibited Imports Regulations [c]	A-G's	Not commenced	Not commenced [a]

[a] Departments have advised that, for various reasons, they will be seeking to delist these reviews. Formal moves to delist these reviews appear not to have occurred as yet. [b] Legislation to be repealed following the introduction of an industry code under the *Trade Practices Act 1974*. [c] 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 and was completed in November 2002.

Source: Information provided by Australian Government departments and agencies.

Role of the ORR

The ORR has a central role in the legislation review process by providing advice to departments and agencies on the appropriate terms of reference and the composition of review bodies for reviews under the Government's legislation review program. The Government requires the ORR to advise the Parliamentary Secretary to the Treasurer and the responsible portfolio Minister as to whether proposed terms of reference meet the CPA requirements and the Australian Government's legislation review requirements. To assist departments and agencies to meet the Government's requirements, the ORR has developed template terms of reference (box D.1) which can be adapted by departments to fit the specific requirements of each review.

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

1. The [legislation], and associated regulations, are referred to the [Review body] for evaluation and report by [date]. The [Review Body] is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.
2. The [Review Body] is to report on the appropriate arrangements for regulation, if any, taking into account the following:
   (a) Legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can be achieved only by restricting competition. Alternative approaches which may not restrict competition include quasi-regulation and self-regulation;
   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;
   (c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;
   (d) there should be explicit assessment of the suitability and impact of any standards referenced in the legislation, and justification of their retention if they remain as referenced standards; and
   (e) compliance costs and the paperwork burden on small business should be reduced where feasible.

(Continued next page)

Box D.1 **(continued)**

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

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

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

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

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

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

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

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

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

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

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

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

Source: ORR.

E ORR activities and performance

The objective of the Office of Regulation Review's (ORR's) regulation review activities is to promote regulation-making processes that, from an economy-wide and public interest perspective, improve the effectiveness and efficiency of regulatory proposals. The ORR provides advice to the Australian Government and assists approximately 100 Australian Government departments and agencies, Ministerial Councils and national standard-setting bodies develop regulatory proposals through the preparation of Regulation Impact Statements (RISs). The ORR aims to provide objective and insightful advice that is timely and useful to government.

E.1 Activities in 2003-04

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

Box E.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 2003-04, the Australian Government introduced 150 Bills, 1538 disallowable instruments and 29 treaties into the Parliament.

In the same period, the ORR received 845 new RIS queries (compared to 861 queries in 2002-03). Of these, the ORR advised that RISs were required in 174 cases.

Of those proposals reported to have been made or tabled in 2003-04, the ORR identified 114 as triggering the Government's RIS requirements at the decision-making stage. It provided comments on the 109 RISs subsequently prepared.

Table E.1 **Australian Government regulatory and RIS activities, 1999-2000 to 2003-04**

	1999-2000	*2000-01*	*2001-02*	*2003-03*	*2003-04*
	no.	*no.*	*no.*	*no.*	*no.*
Regulations introduced					
Bills	159	169	207	174	150
Disallowable instruments	1832	1438	1711	1615	1538
Total introduced	**1991**	**1607**	**1918**	**1789**	**1688**
RIS workload					
Total number of new RIS queries received by the ORR	826	740	709	861	845
- of which, the ORR advised a RIS was required	..	..	175	132	174
Proposals finalised [a]					
Proposals which required a RIS	207	157	145	139	114
RISs prepared	180	133	130	120	109

[a] Proposals at the decision-making stage which were tabled or made in the reporting period — for some of these proposals the ORR was contacted in an earlier reporting period.

.. Data not available.

The ORR provided formal training on RISs and regulatory best practice to an estimated 437 Australian Government, State government and ACT Government officials from a wide range of departments and agencies (compared to 514 officials in 2002-03). For example, the ORR provided such training to: 56 staff from the Australian Securities and Investments Commission; 50 staff from the Australian Building Codes Board; 36 staff from the Department of the Environment and Heritage; 28 staff from the Australian Prudential Regulation Authority; 23 staff from the Australian Communications Authority and 20 staff from the ACT Government.

In advising Ministerial Councils and national standard-setting bodies on regulation-making, the ORR examined 72 regulatory proposals and provided advice

on 36 RISs which were considered by these decision-making bodies in the twelve months ending 31 March 2004 (compared to 61 regulatory proposals and 24 RISs in the twelve months ending 31 March 2003). The ORR also reported to the National Competition Council (NCC) and the Committee on Regulatory Reform (CRR) — a senior officials group reporting to the Council of Australian Governments (COAG) — on the setting of national standards and regulatory action by Ministerial Councils and national standard-setting bodies, for the year ended 31 March 2004 (see appendices A and C).

In monitoring and contributing to regulatory reform developments more broadly throughout Australia and internationally during 2003-04, the ORR also:

- provided input into the review by COAG of the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*;
- worked with the Department of Finance and Administration to implement and harmonise the operation of the Australian Government's RIS (Regulation Impact Statement) and CRIS (Cost Recovery Impact Statement) requirements;
- presented papers on regulatory best practice to the Australian Building Codes Board National Technical Summit on 31 July 2003 and to the National Consumer Conference on 16 March 2004;
- provided briefing to the Department of Foreign Affairs and Trade on issues arising from Australia's participation in the WTO GATS (General Agreement on Trade in Services) Working Party on Domestic Regulation and assisted the Department in developing Australia's response to the WTO's Third Triennial Review on technical barriers to trade;
- participated in a steering group chaired by the Office of Small Business — in the Department of Industry, Tourism and Resources — that examined reforms to Australia's regulatory performance indicators initiative;
- provided advice to a study by the UK Government on the use of sunset clauses in regulation, and to a query concerning bringing sustainable development issues more explicitly into their Regulatory Impact Assessment guidance;
- participated in the annual meeting of regulation review units, representing all States (except New South Wales), the Territories and New Zealand. This meeting, held on 19 September 2003, provided a forum for exchange of information and exploring scope to enhance cooperation on regulatory issues between jurisdictions;

- provided advice on Australia's approach to implementing the tools of regulatory governance to the Bertelsmann Foundation in Germany. The Foundation is one of a group of bodies working with the German Ministry for Economy and Labour to introduce regulation review and reform activities (in particular regulatory impact assessment);
- met with New Zealand Government officials to discuss developments in regulatory reform including scope to enhance trans-Tasman cooperation in the review and reform of regulations;
- met with a delegation from the Japanese Ministry of Public Management, Home Affairs, Posts and Telecommunications, to discuss research on RISs;
- met with officials from the Korean Government to discuss matters related to regulatory reform;
- met with officials from Chung Hua University, Taiwan, to discuss regulatory best practice and standard setting in Australia; and
- met with various stakeholder groups who wished to discuss specific RIS issues or the application of the RIS requirements more generally.

In 2003-04, the ORR was invited by the OECD to provide a peer reviewer for the regulatory reform review of Germany, and to speak about regulatory reform at forums in Canada, Taiwan, Thailand and Sydney. These requests were declined due to other commitments.

E.2 Performance of the ORR

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

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 and reform requirements. The report for 2002-03, which was released in November 2003, continued the initiative of reporting in greater detail on compliance by Australian Government departments and agencies. It also canvassed regulatory issues more broadly, emphasising the importance of RIS requirements to good policy process and high quality regulatory outcomes.

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 last surveyed Australian Government officials who were engaged in preparing RISs in 2000-01 regarding the usefulness of the ORR's advice in the development of RISs. In 2004-05 the ORR will commence an ongoing survey to obtain ongoing feedback on how departments and agencies view the ORR's work performance and the quality of its service.

As in previous years, the ORR surveyed the 417 Australian Government officials who received training in regulatory best practice in 2003-04 and 268 responses were received — a response rate of 64 per cent.[1] The responses indicate that the ORR training was well received, with 85 per cent rating the training as either 'excellent' or 'good' (table E.2). No respondents considered RIS training to be 'unsatisfactory'.

Table E.2 **Australian Government RIS training evaluation: 2001-02 to 2003-04**

Evaluation	*2001-02*		*2002-03*		*2003-04*	
	no.	*%*	no.	*%*	no.	*%*
Total number trained	174		514		417	
Responses received	87	*(50)*	364	*(71)*	268	*(64)*
Excellent	18	*(21)*	93	(25)	60	*(22)*
Good	56	*(64)*	243	*(67)*	170	*(63)*
Satisfactory	13	*(15)*	28	*(8)*	38	*(14)*
Unsatisfactory	0	*(0)*	0	*(0)*	0	*(0)*

In addition, the ORR provided training to 20 staff from the ACT Government. Sixteen staff assessed the quality of ORR training as excellent (80 per cent) and a further three assessed it as good.

[1] On three occasions, (covering 50, 19 and 16 staff, respectively) training evaluation forms were not distributed because the ORR's presentations went beyond formal RIS training and covered a range of other regulatory best practice issues. Omitting these raises the response rate to 81 per cent.

The ORR also provided 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 generally well regarded and useful to officials preparing advice on regulatory issues.

Indicators of the quality and usefulness of the ORR's regulation review activities in promoting public understanding of regulatory best practice issues are also found in the use of its reports both in Australia and internationally.

- Printed copies of *Regulation and its Review 2002-03* were widely distributed, including a copy to each Member of the House of Representatives and the Senate.
- Approximately 500 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.
- The Subordinate Legislation Committee of the Scottish Parliament drew extensively on the ORR Staff Working Paper '*Mechanisms for Improving the Quality of Regulation*' (Argy and Johnson 2003) and the paper's 'Checklist for Assessing Regulatory Quality' in developing a consultation paper for its inquiry into the regulatory framework in Scotland.

The ORR component of the Productivity Commission's website was significantly upgraded during 2003-04 and now functions as a 'self contained' site, with more direct links to information about the ORR and its work. During the reporting period there were 16 718 requests for the ORR Home Page. Requests for the index pages of ORR publications included 3512 for *A Guide to Regulation*, 1990 for *Regulation and its Review 2002-03* and 1138 for *Mechanisms for Improving the Quality of Regulation*. (This compares to 9411 requests for the ORR home page, 3312 requests for *A Guide to Regulation* and 1700 requests for *Regulation and its Review 2001-02* in 2002-03).

ORR Timeliness

The extent to which the ORR's advice is delivered to regulators and decision makers in a timely manner is also a key indicator of 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, in 2003-04 the ORR provided formal feedback (comments on the first draft of the RIS) to departments and agencies, on average, five working days after RISs were received. Moreover, the ORR provided comments on 94 per cent of all (first draft) RISs received within two weeks.

During 2003-04, 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 able to meet these urgent requests, such short timeframes make it difficult to give proper consideration to all the issues and raise broader questions about the approach taken to preparing RISs within some departments and agencies.

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 2003-04.

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 2004, was completed and delivered on time. This ORR report assisted the NCC in preparing 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 2003-04.
  - Of the 114 regulatory proposals in 2003-04 that required the preparation of a RIS, 92 per cent complied with the RIS requirements at the decision-making stage. This compares to a RIS compliance rate of 81 per cent in 2002-03.
  - Compliance for the 86 proposals that required a RIS at the tabling stage was 95 per cent — equal to that in the previous year.

  - For significant regulatory issues, the RIS compliance rate in 2003-04 was 94 per cent. This compares favourably with a 46 per cent compliance rate in 2002-03, and is an improvement on the 70 per cent compliance rate for 2001-02.
  - 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 2003-04, resulting in better regulatory practices and outcomes (see appendix A).

- Informal feedback provided by Government officials indicates that departments and agencies found the ORR's contributions on these matters to be constructive, timely and positive. For example, in the Australian Building and Construction Board's (ABCB) submission[2] to the Productivity Commission study into '*Reform of Building Regulation'*, it stated:

  > Relationships with the ORR are good, with ABCB staff appreciating the constructive approach taken and efficient manner in which draft RISs are handled.

- In 2003-04, RISs for consultation (or similar documents) were prepared for 14 proposals, and submitted to the ORR for input before being released to stakeholders, although this is not a formal requirement under the Australian Government's RIS requirements.
- Of the 114 proposals that required a RIS, in 9 cases the preferred option was modified during the policy development process between the first draft of the RIS sighted by the ORR and the RIS considered by the decision maker. This suggests that consultation and transparency, both key elements of the Government's RIS process, are significant factors in achieving better regulatory outcomes.
  - On 2 October 2003, the Environment and Heritage Ministers of the Australian, State and Territory, and New Zealand Governments agreed to examine a national mandatory water efficiency labelling scheme covering showerheads, washing machines, dishwashers and toilets. The Ministers agreed that the Australian Government would develop the proposal. A draft RIS was prepared, and released for public comment by the Department of Environment and Heritage from 13 March to 16 April 2004. In light of comments received, the proposal was modified to include the mandatory registration and mandatory labelling for water efficiency for bathroom basin, kitchen sink and laundry taps and for urinals and urinal flushing systems.

[2] See www.pc.gov.au/study/building/subs/sub004.pdf, p. 13.

- RISs tabled in the Parliament with explanatory 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, and those appearing before parliamentary committees have referred, favourably and critically, to the content of RISs.
  - In 2003-04, the need for and content of RISs were raised in parliamentary discussions on 34 occasions, primarily in parliamentary committees.[3] Most discussion focussed on the analysis contained in the 'impact' and 'consultation' sections of RISs.
- In a year when a number of treaties that trigger the RIS requirements were tabled, the Joint Standing Committee on Treaties (JSCOT) referred on several occasions to information provided in RISs.[4]
  - In its report on the Stockholm Convention, the Committee commended the Department of the Environment and Heritage 'for the thorough documentation it provided, especially on the issue of consultation. The RIS and consultations annex provides a list of those consulted and also a summary of those comments. The Committee was pleased by the range of organisations contacted in the negotiations process for this treaty and the manner in which the information was presented.'

    The Committee hoped that other departments would follow 'the fine example set by the Department of the Environment and Heritage in this case'.[5]
- The RIS process was also mentioned five times in the parliamentary debate on the *Legislative Instruments Bill 2003*. In December 2003, the Government agreed with the recommendation of the Senate Committee report that the operation of the consultation provisions be included in the review of the Act three years after its commencement (Ellison 2003, p. 18632).
- State/Territory government officials contacted the ORR on two occasions during 2003-04 to confirm that proposals complied with COAG RIS requirements, before proceeding with legislation in their State/Territory.

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[3] These included discussions of: auditor standards; the rezoning of the Great Barrier Reef Marine Park; motor vehicle safety standards and Australian Design Rules; superannuation; age discrimination (supporting the analysis presented in the RIS); migration agents (questioning the analysis presented in the RIS); ethanol fuel labelling; advertising on tobacco packaging; sponsored migration; and commercial regional aviation safety.

[4] These included *Double Tax Agreements* with *the United Kingdom* and *the United Mexican States;* the *Stockholm Convention on Persistent Organic Pollutants;* the *Rotterdam Convention on Notification of Certain Hazardous Chemicals and Pesticides;* and the *1997 Protocol to amend the Maritime Pollution Convention (MARPOL 73/78*)).

[5] See www.aph.gov.au/house/committee/jsct/September2003/report.htm, p. 39.

The Australian Government also showed its support for the RIS process in its response to the Employment, Workplace Relations and Education References Committee's report into *Small Business Employment* (released 6 February 2003). The Committee recommended that the Australian Government amend the Regulation Impact Statement (RIS) guidelines to require that agencies provide quantitative estimates of compliance costs, based on detailed proposals for implementation and administration. It also recommended that the Australian Government commission regular reviews of the accuracy of compliance estimates in the RISs for regulations with a major impact on business.

COAG also re-iterated its support for regulatory governance by re-endorsing on 25 June 2004 the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-setting Bodies*. COAG clarified when the requirements apply, strengthened the ORR's role in assessing COAG RISs before consultation and before the decision-making stage, and required COAG RISs to specifically assess the impacts on small business. COAG also decided that the ORR and the New Zealand Regulatory Impact Analysis Unit would cooperate in assessing COAG RISs for consultation where there are New Zealand issues (such as trans-Tasman mutual recognition).

F Regulatory reform in States and Territories

Advances in regulatory review and reform continued at the State and Territory level in 2003-04. The creation in Victoria of a new body— the Victorian Competition and Efficiency Commission (VCEC) — strengthened the regulatory oversight function in that State. Competitive neutrality policy matters and gatekeeping of regulation impacting on business are to be scrutinised within the same organisation. This strategy aligns with the consolidation of similar activities in South Australia and the introduction of the Competition Impact Analysis (CIA) regime in the Northern Territory in 2003. In addition, government directed regulatory inquiries are to be undertaken by the VCEC.

Regulation Impact Statements (RISs) remain the most common tool used to ensure regulatory quality in Australian jurisdictions. (A summary of the various RIS frameworks is provided at the end of this appendix.) Other regulatory quality measures include stakeholder consultation prior to regulatory change, inbuilt regulatory scrutiny and review mechanisms, and compliance evaluation.

F.1 Victoria

On 1 July 2004, the VCEC replaced the Victorian Office of Regulation Reform (VORR) and expanded its functions. The VCEC has statutory independence, exercised through its Chairman and Commissioners, with a secretariat drawn from the Department of Treasury and Finance. It is the gatekeeper on business regulation reform and oversights Victoria's competitive neutrality policy. It has three core functions — reviewing regulatory impact statements and advising on the economic impact of significant new legislation; undertaking inquiries into matters referred to it by the Government; and operating Victoria's Competitive Neutrality Complaints Unit. The focus of inquiries referred to the VCEC will be on how to make it easier to do business in Victoria by reducing and streamlining regulation. Inquiries will also assess whether the Government's policy objectives are being met through existing regulatory arrangements and will identify and assess alternative regulatory and administrative arrangements that may meet the Government's objectives more effectively. Two initial inquiries have been announced — regulatory impediments

to regional economic development, and regulation of the housing construction sector.

Regulatory Impact Analysis

A Business Impact Assessment (BIA) is to be introduced to supplement the RIS requirements. Primary legislation, with potentially significant effects for business including small business, and competition, will now come under scrutiny with the introduction of the BIA. This extends the previous requirement to assess, within a cabinet submission, the economic, social and environmental impacts (and impacts on competition) of proposed new primary legislation.

The RIS requirements within the *Subordinate Legislation Act 1994* (Vic) will be largely unchanged. The Act generally requires the preparation of a RIS for a proposed statutory rule if it will impose an appreciable economic or social burden on a sector of the public. Exceptions apply where the proposal is of a fundamentally declaratory or machinery nature. The RIS must be circulated prior to a decision to proceed with the making of a statutory rule.

Consultation

The responsible Minister must inform the community of a proposed statutory rule and RIS by placing a notice in the gazette and a daily newspaper generally circulated in Victoria. The RIS is required to be released as part of the consultation process, allowing a period of not less than 28 days for comment. The responsible Minister must certify that, where consultation was necessary, the guidelines in the Subordinate Legislation Act were followed. A certificate of consultation is required to be given to the Scrutiny of Acts and Regulation Committee (SARC) of the Victorian Parliament as soon as practicable after the statutory rule is made.

Review Processes

The VCEC will now assess all RISs and BIAs required to be prepared. Previously, a consultant or the VORR could assess the adequacy of RISs.

The Regulation Review Subcommittee (RRS) of SARC is responsible for scrutinising statutory rules/subordinate legislation laid before Parliament for compliance with the Act in respect of the RIS requirements. SARC also receives references from Parliament or by Governor-in-Council Order to review an Act or issues concerning an Act. Where these references relate to regulations, it is reviewed by the RRS. SARC's *Annual Review 2003, Regulations 2003* stressed that

proper consideration of regulatory alternatives, a rounded cost-benefit analysis and close consideration of all submissions is important for the success of the RIS process.

The Subordinate Legislation Act provides an automatic review mechanism stating that a statutory rule is automatically revoked 10 years after its making.

Compliance Reporting

SARC prepares an annual report that examines compliance with the Act, including compliance with the RIS requirements. The VCEC will shortly commence monitoring and reporting on the compliance by departments and agencies with the RIS and BIA requirements in an annual report.

F.2 South Australia

In July 2003, South Australia implemented a process of community impact assessment including regulatory impact. Its application to cabinet submissions ensures that all regulatory proposals are subjected to this assessment.

The Department of Premier and Cabinet (DPC) Circular 19, *Preparing Cabinet Submissions*, was approved and released on its intranet site in July 2003. The Circular requires an assessment of costs and benefits on all relevant issues throughout the jurisdiction. All proposals considered by Cabinet need to assess the potential regulatory impact and impacts on small business, environment, regions and families.

A review of this framework commenced in June 2004 following nearly 12 months experience with community impact assessments. Its purpose is to ascertain the extent of compliance with the community impact assessment process. The Cabinet Office has been assessing each cabinet submission since January 2004 to determine which of the range of community impacts (including regulatory impacts) should have been assessed and whether or not each relevant impact has been adequately considered. The June 2004 review is now considering this information.

Regulatory Impact Analysis

Every cabinet submission must consider a range of impacts on the community as well as economic, budgetary and financial impacts. However, where there is a significant regulatory impact, a formal RIS or Regional Impact Assessment Report (RIAR) is required to be attached to cabinet submissions. The community impacts

to be assessed within a RIS are regulatory, small business, regional, environmental, and family and social impacts. The RIS process applies to all new Acts, regulations, mandatory standards and codes, and non-trivial amendments to any existing legislation. If the proposal includes any restrictions on competition the RIS needs to provide evidence that the benefits of the restrictions to the community as a whole outweigh the costs, and that the objectives of the legislation can only be achieved by restricting competition.

The DPC provides departments and agencies with advice on the level of impact and thus whether a RIS is required. RISs prepared for regional impacts are lodged in Parliament and published on the website of the Office of Regional Affairs.

Consultation

Circular 19 requires adequate consultation both within government and with the community. While there is no requirement to release the RIS for consultation, there is a requirement for consultation on restrictions on competition that are serious or intermediate; and also where there are proposed significant changes to government services in the regions.

Review Processes

Section 16B of the *Subordinate Legislation Act 1978* (SA) contains a provision that all regulations except those detailed in section 16A expire on 1 September in the year following the tenth anniversary of their promulgation. Prior to the automatic expiration of regulations, reviews are required and the RIS requirements apply. Clause 5 of the Competition Principles Agreement (CPA) requires a review of the legislation restricting competition within ten years of having completed the initial review.

The Legislation Review Committee of the Parliament has the ability to inquire into, consider and report on, subordinate legislation referred to it by the Subordinate Legislation Committee. It also examines sunsetting Acts and subordinate legislation to determine whether they should be allowed to expire, continue or be reviewed for amendment.

Compliance Reporting

It is intended to report compliance with the Government's community impact assessment requirements in the annual report of the DPC at www.premcab.sa.gov.au/publications.

F.3 Queensland

In 2003-04, Queensland's central and pilot agencies initiated a project to improve regulatory design to address the impact of regulation on business. A draft guideline has now been produced with input from key agencies.

There was also a continuing emphasis on the impact of local government regulation on the community. A project was undertaken with four regional local governments during 2003-04 to identify the key regulatory issues and provide a framework for these local governments to improve their regulatory processes.

A review of the *Queensland Regulations: Have Your Say* initiative was also undertaken to improve and enhance the usability of the system for the community and for government agencies utilising the system.

The Queensland Government has committed to undertaking regulation reviews of significant industry sectors in Queensland. These include the manufacturing, food processing, retail and tourism sectors. It is expected that these reviews will be initiated in 2004-05 with significant input from industry.

Regulatory Impact Analysis

Under the *Statutory Instruments Act 1992* (Qld), RIS requirements apply to subordinate legislation. If subordinate legislation is likely to impose 'appreciable costs' on the community or a part of the community, then, before the legislation is made, a RIS must be prepared. RIS requirements apply to quasi-regulation only where instruments are called up by subordinate legislation. Restrictions on competition do not trigger RIS analysis, although they are considered within a RIS. The RIS assesses all issues relevant to the proposed subordinate legislation and targets stakeholders likely to be affected by the change.

Consultation

The Statutory Instruments Act requires that a RIS be prepared for community consultation if the subordinate legislation is likely to impose an appreciable cost on the community or part thereof. A RIS for proposed subordinate legislation must be notified in the gazette and published in a newspaper likely to be read by people particularly affected. The notice must allow at least 28 days from publication of the notice for the making of comments. A copy of the RIS must be available free or at a reasonable price.

Under the *Legislative Standards Act 1992* (Qld), an explanatory note must be tabled in the Legislative Assembly. The explanatory note must include the outcomes of any consultation, including any changes made to the legislation as a result of consultation.

Review Processes

Under the Legislative Standards Act, all regulations in Queensland automatically sunset after 10 years, but provision is made to extend this in certain circumstances.

The Scrutiny of Legislation Committee examines all Bills and subordinate legislation and has a general monitoring role over RISs, explanatory notes and tabling and disallowance of subordinate legislation.

Compliance Reporting

Compliance with the RIS requirements is reported by the Department of State Development and Innovation via the Ministerial Program Statements for the ministerial portfolio.

F.4 New South Wales

The focus of regulatory reform developments in NSW over the past year has been on the public sector. Reforms have included the restructure of government departments, service delivery around strategic policy aims and focussing resources on 'core business'. These outcome-focussed initiatives have resulted in a number of reviews to look at the effectiveness of regulatory arrangements and the simplification and streamlining of regulatory requirements on agencies, businesses and consumers.

The creation of the Department of Infrastructure, Planning and Natural Resources has enabled streamlining of regulation in land use planning and natural resource management and the stripping back of overlapping and contradictory regulations. There have also been initiatives to reduce red-tape for teachers and farmers and in the health, policing and planning and development areas.

Regulatory Impact Analysis

RISs are required for proposed principal statutory rules and a similar, but less formal, process is required for other proposed statutory rules. Restrictions on competition are considered within RIS analysis, where relevant.

There is a general requirement that an assessment is made of the regulatory impact of all proposals for new legislation or amendments to existing legislation. There is no formal requirement that a RIS be prepared for quasi-legislation; however, agencies proposing quasi-regulation must still comply with best practice regulatory process. Specific Rural Communities Impact Statements are required where rural and regional communities are affected by proposals. The NSW Treasury Office assesses the adequacy of regulatory impact assessments contained in proposals before Cabinet.

Consultation

RISs for principal statutory rules must be released to the public for a minimum consultation period of 21 days. The responsible Minister is required to ensure that notice of the availability of the RIS and advice as to where a copy of the RIS can be obtained is published in the gazette, newspapers and, where relevant, professional magazines and journals.

Review Processes

Under the *Subordinate Legislation Act 1989* (NSW), all new regulations, and regulations that have been made after the staged repeal process, need to contain sunset clauses. Some regulations that have not yet been through the staged repeal process do not contain sunset clauses, but will when reviewed as a result of the staged repeal process.

The Legislation Review Committee (LRC) of Parliament examines regulations and recently acquired the function of scrutinising Bills under the *Legislation Review Amendment Act 2002* (NSW). The results of regulation review and reform are monitored — for example, the last five stages of the staged repeal process have reviewed 355 statutory rules and reduced them to 249 statutory rules. Since 1 July 1990, the volume of subordinate legislation has been reduced from 976 instruments to 432 instruments as at September 2003.

Compliance Reporting

Compliance with the RIS process is reported annually to the NSW Parliament. RISs relating to the making of regulations must be provided to the LRC within 14 days of the regulation having been published in the gazette.

F.5 Tasmania

No new developments were reported in the regulatory review, reform or governance framework for 2003-04.

Regulatory Impact Analysis

A RIS is required to be prepared for all proposed primary legislation anticipated to have restrictions on competition or significant negative impacts on business. Proposed subordinate legislation, assessed as imposing restrictions on competition or a significant burden, cost or disadvantage on any sector of the public, also requires a RIS. Quasi-regulation may be declared to be subordinate legislation, which may then require a RIS.

Consultation

A RIS must be released for public consultation with a minimum of 21 days allowed for comments. This is mandatory for both primary and subordinate legislation where a RIS is considered necessary. All RISs must be endorsed by the Regulation Review Unit prior to being released for public consultation.

Review Processes

While sunset clauses are generally not contained in regulations, all regulations are automatically repealed after 10 years under the *Subordinate Legislation Act 1992* (Tas). The Tasmanian Parliament's Subordinate Legislation Committee (SLC) examines subordinate legislation and has the power to ensure that inappropriate subordinate legislation is either not implemented, or, where it has already commenced, is suspended or rescinded. The SLC reviews compliance with the RIS requirements of the Act.

Compliance Reporting

Tasmania does not report on compliance with the RIS requirements.

F.6 Western Australia

As a result of an extensive review of business taxes during 2003-04, a number of significant tax reforms have been introduced. These measures are designed to make

the State taxation system fairer and simpler by reducing compliance and administration costs for businesses and the Government.

Regulatory Impact Analysis

Western Australia does not have formal RIS requirements applying generally to regulatory proposals. Cabinet submissions seeking endorsement of regulatory, legislative or policy initiatives that will significantly impact on small business must be accompanied by a Small Business Impact Statement (SBIS). The SBIS must identify the direct and indirect costs to small business of the proposal, including business compliance costs and red tape. The Small Business Development Corporation (SBDC) reviews cabinet submissions accompanied by a SBIS. The SBDC ensures that the SBIS comprehensively identifies small businesses affected, the direct and indirect compliance costs that will be incurred by small businesses, consultation undertaken with the small business sector and their feedback, and any transitional/implementation measures. Where a SBIS is necessary, but not included or inadequate, the SBDC may report its comments to Cabinet.

Similarly, cabinet proposals affecting regional Western Australia must include a Regional Impact Statement. This includes details of the rural, remote and regional areas likely to be affected by the decision and the short term and long term impacts on the affected communities. Agencies submitting legislative proposals through Cabinet are required to ensure that legislation conforms to NCP principles. If significant restrictions on competition are included in the proposal the restrictions are required to be justified in the public interest, with reference to the consultation process undertaken in developing the legislation. The Cabinet Services Branch of the Department of the Premier and Cabinet may decline to accept a cabinet submission with inadequate supporting material.

Consultation

A draft SBIS and, where relevant, a draft Regional Impact Statement, are not required to be released for public consultation. Government agencies consult with the public through various other means including release of discussion papers, advertising reviews, calling for submissions or convening consultative forums. Following consultation, the SBIS must list all the small business representatives/associations consulted and indicate the level of their support. Where appropriate, a brief summary of the nature of the consultation process undertaken with small business may be provided. Regional Impact Statements must detail the level of consultation undertaken, the likely impact of the proposal and the level of support.

Review Processes

Sunset clauses are used in Bills at the direction of Cabinet, Parliament or individual Ministers. Government decision making is overseen by four Cabinet standing committees established to advise Cabinet on the impact of Government policies in the areas of economic, social, environmental and regional policy. The Cabinet Standing Committee on Regional Policy may have a Regional Impact Statement referred to it for further assessment prior to it being considered by Cabinet.

The Joint Standing Committee on Delegated Legislation scrutinises subordinate legislation laid before either House of Parliament. The Committee on Legislation scrutinises those Bills referred to it by the Legislative Council. It invites written submissions from the public in response to inquiries into legislation.

Compliance Reporting

There is no formal reporting on compliance with the SBIS or Regional Impact Statement requirements.

F.7 Australian Capital Territory

The ACT Government response to the Business Regulation Review Committee's (BRRC) report on the ACT business regulatory environment was released in May 2003. The Microeconomic Reform Section (MER) of the ACT Treasury was tasked with coordinating the implementation of the Government response by government agencies. MER provides regular reports to the Government and the business community — the first progress report was prepared in February 2004.[1]

The ACT has completed a review of its RIS process and associated guide. The updated guide, the *Best Practice Guide for Preparing Regulatory Impact Statements*, was endorsed for release by the Government in February 2004. It incorporates recent trends in regulatory best practice and provides agencies with a process to undertake regulatory cost-benefit analysis of proposed legislation.

In October 2003, agencies were asked to review their non-legislative regulations identified by BRRC, utilising a review method based on the legislation review process conducted under the National Competition Policy (NCP) reforms. This was to clarify the objectives of the regulation, identify the nature of restrictions, undertake a cost-benefit analysis of effects of restrictions, consider regulatory

[1] Reports are available at www.treasury.act.gov.au/competition/pol.html.

alternatives and determine whether the regulation should have its status formalised, discontinued or continue as a voluntary arrangement.

Regulatory Impact Analysis

Any proposals for new or amended primary legislation require a RIS to be completed as part of the policy development process. Cabinet submissions must address the issues raised by this process and the RIS must accompany the submission. Under the *Legislation Act 2001* (ACT), RISs are required to be prepared where a proposal for subordinate legislation is likely to impose appreciable costs on the community or part thereof. RISs are not mandatory for voluntary schemes; however, the RIS guide advises that a regulatory impact assessment should be undertaken to determine the most effective non-legislative model to achieve compliance.

MER has responsibility for assessing RISs for all submissions with legislative proposals and advising Cabinet in terms of their compliance with best practice regulatory requirements.

Consultation

The ACT's RIS process requires that consultation with all affected (and potentially affected) groups take place as part of the assessment. Agencies are encouraged to provide feedback to groups that have been involved in the consultation phase of the RIS process. An issues paper, which describes potential regulatory options, may be released to initiate discussion with interested parties, but is not a RIS as such.

The ACT Government's community consultation portal, *Community Consultation: Have your Say*,[2] allows citizens to provide on-line feedback about government proposals.

Review Processes

Sunset clauses are not contained in all regulations. However, a review clause may be inserted into legislation, particularly where regulatory impacts may occur in a dynamic environment that necessitates the need for relatively frequent review.

Regulations and Bills are examined by the Standing Committee on Legal Affairs. The Committee's responsibilities include checking compliance of regulatory

[2] See www.consultation.act.gov.au/public/topiclist.asp.

proposals against drafting procedures and ensuring consistency with existing laws. It does not assess proposed legislation for compliance with the RIS requirements.

Compliance Reporting

The ACT has no formal process to report on the compliance of departments and agencies with the RIS requirements. Treasury performs a monitoring role and proposals do not receive Treasury endorsement if the RIS fails scrutiny, either in terms of analysis or content.

F.8 Northern Territory

The Northern Territory introduced a new regulatory review framework in 2003, which focussed on Competition Impact Analysis (CIA).

Regulatory Impact Analysis

The CIA process applies to both primary and subordinate regulatory proposals. The preparation of a CIA commences as soon as an administrative decision to develop a regulatory proposal has been made. If the proposal exhibits no potential restrictions on competition, an exemption from the CIA process may be granted. A CIA statement is attached to all cabinet submissions regarding new/amended legislation. Regulatory proposals are unable to proceed to Cabinet without CIA certification by the Department of the Chief Minister (DCM).

Consultation

The *Competition Impact Analysis Principles and Guidelines* (DCM 2003) state that consultation with potentially affected parties, other agencies and other levels of government should occur when legislation is being proposed. Public consultation is mandatory where the proposed legislation would have a major impact on the community. The Guidelines are not prescriptive and allow the agency sponsoring a proposal to decide whether to make the draft CIA available to affected parties. A consultation statement, required as part of the CIA, provides a broad outline of who has been consulted, the method used and details of views expressed by those consulted, and states how those views were addressed. Agencies are strongly encouraged to make finalised CIAs publicly available on passage of the legislation.

Review Processes

A CIA Committee post-assesses CIAs and provides feedback during the drafting process. This provides an internal check of consistency by examining each CIA to determine whether the process has been followed adequately and whether there has been an appropriate depth of analysis of the impacts, benefits and implications. The Committee comprises representatives from the DCM, Department of Treasury and Justice, and, when a regulatory impact on business is involved, the Department of Business, Industry and Resource Development.

The Subordinate Legislation and Publications Committee examines and reports on all papers that are required to be presented to the Legislative Assembly. Sunset clauses are not contained in regulations.

Compliance Reporting

Compliance reports are provided to the Northern Territory Government biannually. The DCM monitors the impact of the CIA process and seeks feedback from agencies regarding whether any improvements/amendments can be made. Reports are then prepared for the Chief Minister, the Treasurer, the Minister for Justice, the Attorney-General and the CIA Committee. To date, reports have provided information on the number of CIAs prepared, exemption details, the quality of CIAs, identification of any training requirements within agencies and any suggested process amendments.

There are no proposals for more widespread publication of compliance reports. However, a general level of public information is intended to be included in the DCM's annual report.

F.9 Comparisons across jurisdictions

RIS requirements

As shown in table F.1, six jurisdictions[3] generally require RISs for proposals introduced via Bills, eight require RISs for proposals introduced via subordinate instruments and four 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

[3] While not a jurisdiction, the Council of Australian Governments (COAG) requires RISs for national regulatory proposals at the consultation and decision-making stages.

impact statements and regional impact statements for cabinet submissions, and another requires the consideration of community impacts (being regulatory, small business, regional, environmental, families and society) for all cabinet submissions.

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

Jurisdiction	*Bills*	*Subordinate Instruments*	*Quasi-regulation*	*RIS required for consultation*	*RIS for decision maker*
COAG	✓	✓	✓	✓	✓
Australian Government	✓	✓	✓	–	✓
NSW	– [a]	✓	– [b]	✓	✓
Vic	✓ [c]	✓ [d]	–	✓	✓ [e]
Qld	–	✓ [f]	✓ [g]	✓	✓
SA	✓ [h]	✓ [h]	✓ [h]	–	✓
WA	– [i]	– [i]	– [i]	–	– [j]
Tas	✓	✓	✓	✓	✓
ACT	✓	✓ [f]	– [b]	– [k]	✓
NT	✓	✓	–	– [l]	✓

[a] Cabinet submissions for new Bills must meet best practice requirements. Rural Community Impact Statements are required where rural and regional communities are affected by the proposal. [b] Not a formal requirement, but agencies proposing quasi-regulation are expected to comply with best practice for regulatory impact assessment. [c] As of 1 July 2004 for all new legislation with potentially significant effects for business and competition. [d] For proposals that impose an appreciable economic or social burden. [e] The consultation RIS and supporting documentation is given to the decision maker. [f] For proposals likely to impose an appreciable cost on the community or part thereof. [g] The RIS requirements apply if these instruments are called up or referenced in subordinate legislation. [h] Every cabinet submission is to consider community impacts — which include regulatory, small business, regional, environmental, families and society. [i] A SBIS is required to accompany any cabinet submission seeking endorsement of a regulatory, legislative or policy initiative that will significantly impact on small business. A Regional Impact Statement must also accompany all cabinet submissions. [j] The SBIS and Regional Impact Statement are considered by Cabinet before making its decision. [k] Consultation is required, but not via a RIS. [l] At agency discretion whether draft RIS made public, but a consultation statement is required as part of the CIA.

Source: ORR and correspondence from States and Territories.

RIS processes

Eight jurisdictions currently have formal RIS guidelines. The South Australian Government endorsed RIS guidelines in July 2003. It retains specific guidelines for regional and national competition impacts (table F.2). Eight jurisdictions include cost benefit analysis in RIS requirements, one taking a case-by-case approach to the geographic scope of analysis, whilst another prepares analysis on specific sectors only.

Table F.2 **RIS processes in Australian jurisdictions**

Jurisdiction	*RIS guidelines*	*Cost-benefit assessment*	*Report on RIS compliance*	*Regulatory plans*	*Sunset clauses*	*RISs - Local Government*
COAG	✓	✓	✓	..	✓	..
Australian Government	✓	✓	✓	✓	–	..
NSW	✓	✓	✓	–	✓ [a]	–
Vic	✓	✓	✓	✓	✓	–
Qld	✓	✓	✓	✓	✓	✓ [b]
SA	✓ [c]	✓ [d]	✓ [e]	–	✓ [f]	✓ [g]
WA	– [h]	– [i]	–	–	✓ [j]	–
Tas	✓	✓ [k]	–	–	✓ [l]	✓ [m]
ACT	✓	✓	–	– [n]	– [o]	✓ [p]
NT	✓	✓	✓ [q]	–	– [r]	–

.. Not applicable. [a] A five year automatic repeal process under the *Subordinate Legislation Act 1989* (NSW). [b] BRRU worked with local government to produce guidelines (Department of State Development 2003) to enhance best practice development of local laws. [c] RIS guidelines endorsed by Cabinet in 2003. [d] Assessment of all costs and benefits across jurisdiction. [e] Not to departments and agencies. Results sent to the Premier and Parliament as requested. It is intended to report compliance in the annual report of the DPC. [f] Regulations within the scope of the *Subordinate Legislation Act 1978* (SA) expire on 1 September in the year following their tenth anniversary. [g] The *Subordinate Legislation Act 1978* (SA) applies to all regulations under the *Local Government Act 1999* (SA). [h] Guidelines on the preparation of the SBIS and Regional Impact Statement are contained in the Cabinet Handbook. [i] Specific to small business sector and regional communities [j] At the direction of Cabinet, the Parliament or discretion of Ministers. [k] Coverage depends on the issue and may be state-wide or regional. [l] All regulations are automatically repealed after ten years under the *Subordinate Legislation Act 1992* (Tas). [m] Under the *Local Government Act 1993* (Tas), the Director of Local Government must issue a certificate of adequacy of the RIS process undertaken by Council before a proposal may progress to full public consultation. (The RRU was involved in developing this process.) [n] The legislative program provides the basis for all detailed public consultation on the Government's legislative intentions. [o] A review clause may be inserted into legislation, particularly in a dynamic environment which may necessitate frequent review. [p] Responsible for both State and local government. [q] Reports are provided to the NT Government biannually. [r] Contained in some legislation.

Source: ORR and correspondence from States and Territories.

Four jurisdictions report on departments' and agencies' compliance with the RIS requirements. A fifth reports only to its Premier and Parliament on request, and a sixth reports to its Government only. Only three prepare regulatory plans. Four jurisdictions have sunset clauses included in all legislation to trigger periodic reviews. One of these has an automatic five year repeal of statutory rules. Two others have an automatic ten year repeal of all subordinate legislation, a seventh has clauses inserted at the discretion of individual ministers, and an eighth only has sunset clauses within some legislation. COAG RIS processes are detailed in appendix C.

A framework for the regulatory impact assessment of local laws exists in four jurisdictions at the local government level.

G International developments

In most developed countries, regulatory impact analysis (RIA) policies are evolving rapidly. Both the United States and European Union (EU) have strengthened their RIA processes. Furthermore, the Organisation for Economic Cooperation and Development (OECD) and Asia-Pacific Economic Cooperation (APEC) intend finalising joint guidelines on good regulatory practice — including RIAs — in late 2004.

Summary of recent RIA developments

United States

The agency responsible for the United States' regulatory impact analysis processes, the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), has released new guidelines for the conduct of regulatory analysis by government agencies. The guidelines became effective for economically significant proposed rules in January 2004, and will become effective for economically significant final rules in January 2005. An economically significant rule is one that 'has an annual effect on the economy of $100 million or more or adversely affects 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).

The new guidelines differ from previous OMB guidance in three main ways (Graham 2004). First, there is a greater emphasis on the use of cost-effectiveness analysis in RIA. Cost-effectiveness analysis can provide a rigorous way to identify options that achieve the most effective use of the resources available without requiring monetisation of all relevant benefits or costs (OMB 2003). While care needs to be taken with its application, cost-effectiveness analysis provides a framework for a wider range of issues to be analysed than pure cost-benefit analysis.

The second main difference is a requirement that formal probability analysis be undertaken for regulations with an economic impact of greater than $1 billion. Specifically, impact analyses are to include an estimate of the probability

distribution of regulatory benefits and costs. The guidelines also note that worst case or conservative analyses are not usually adequate because they do not convey the complete probability distribution of outcomes, and they do not permit calculation of an expected value of net benefits (OMB 2003).

Finally, the guidelines require that a more systematic approach to evaluating qualitative benefits and costs of regulation be undertaken in RIA. In many cases, it is difficult or impossible to quantify the benefits or costs of regulation. In these cases, the guidelines state that detailed information on the nature, timing, likelihood, location and distribution of unquantified benefits and costs could be included, and that a summary table highlighting these benefits and costs should be included with an indication of those that are most important (OMB 2003).

European Union

The implementation of RIA processes in the EU is part of a broader 'Better Regulation' agenda. This agenda includes improving consultation processes, simplifying new and existing legislation, improving public access to regulation and consideration of alternative policy implementation options (Council of the European Union 2003). There have been recent developments in RIA implementation at both the level of EU institutions, and at the member state level.

European Union institutions

In 2002, the European Commission adopted the *Simplifying and improving the regulatory environment* action plan. An integral part of this action plan is the implementation of RIA by the Commission. Impact assessment is conducted in two stages: a preliminary assessment is prepared on all major policy proposals; and, on the basis of this assessment, the Commission determines which proposals will require an extended impact analysis (EC 2002). The RIA process is being gradually phased in, with a view to the system being fully operational by 2004-05. For the first year (2003), the Commission planned to apply the extended impact analysis procedure to 17 per cent of major proposals, increasing to approximately half in 2004 (EC 2003a).

There are a number of positive outcomes which have resulted from the trial introduction of the new procedure in 2003. These included its rigorous application by Commission services; its facilitation of inter-service coordination; and the contribution to more balanced policy solutions (EC 2003a). A number of impediments were also identified. These included the limited capacity of services to evaluate policy impacts beyond the field of their own expertise; the need to examine alternative policy approaches more thoroughly; the limited quantification of policy

impacts; and the need to make extended impact assessments more available to the general public. The Commission will introduce a range of measures to rectify these impediments prior to the full implementation of the RIA system in 2004-05 (EC 2003a).

In December 2003, the European Parliament, the Council of the EU and the European Commission adopted an inter-institutional agreement based on the Commission's action plan. The aim of the agreement is to provide a framework to promote and monitor the action plan's application at the inter-institutional level (EC 2003b).

Member states

Member states of the EU are also implementing better law-making measures to complement and support initiatives at the EU level; these include the introduction of RIA processes. A report by the Council of the EU found that, by early 2003, the majority of member states surveyed had implemented RIA processes, and the balance were trialling the process (Council of the European Union 2003). In most cases, the government ministry responsible for each policy proposal is responsible for the RIA process (table G.1), and in many cases there is an overall supervisory role for a specific government agency.

Table G.1 **Application of RIA by selected EU member states, 2003**

	Regulation Impact Assessment		*RIA on subordinate legislation*	*Agency responsible for RIA*	
	Applied	*Trial*		*Prime Minister's Office*	*Responsible ministry*
Austria	✓		✓		✓
Belgium	✓		✓		✓
Denmark	✓				✓
Finland	✓	✓	✓		✓
Germany	✓		✓		✓
Greece		✓			✓
Luxembourg		✓			✓
Ireland		✓			✓
Italy		✓	✓	✓	
Netherlands	✓		✓		✓
Spain		✓	✓		✓
Sweden	✓		✓		✓
United Kingdom	✓		✓	✓	✓

Source: Council of the European Union 2003.

APEC-OECD

The OECD and APEC have separately endorsed similar principles of regulatory quality to provide a basis for regulatory reform processes in member nations. Since 2000, APEC and OECD members — together representing 45 countries — have been undertaking a joint initiative on economic and regulatory reform. A recent focus of this joint initiative has been the development of a checklist for self-assessment of regulatory, competition and market openness policies, to implement the OECD and APEC principles.

The draft checklist contains a number of criteria that, if met, indicate that a country has 'good practice' regulatory, competition and market openness policies (APEC-OECD 2003). The draft criteria for good practice regulatory policy are:

- the presence of a single body in charge of assuring the quality of existing and new regulation;
- systematic review of the legal basis and economic impacts of drafts of new regulations;
- systematic review of the legal basis and economic impacts of existing regulations;
- rules, regulatory institutions and the regulatory management process are clear and predictable to users both inside and outside government;
- the presence of effective public consultation mechanisms and procedures that are open to regulated parties and other stakeholders, including non-governmental organisations, the private sector, advisory bodies, standards development organisations and other governments;
- a system of regulatory impact analysis is required in the development of new regulation and the review of existing regulation according to agreed upon methodologies and criteria;
- consideration of alternatives to 'control and command' regulation; and
- assurance of compliance with and enforcement of regulations.

The final draft checklist, when approved, will be presented for approval to the respective executive bodies of APEC and the OECD, and will be a valuable tool to assist governments in developing sound regulatory processes.

World Bank study on business regulation

The World Bank has recently begun a multi-year project to examine the nature, scope and impact of business regulation in over 130 countries. The first report of this project was released in 2004 (World Bank 2004a). The report examined the outcomes resulting from regulatory systems in these countries, including the time and cost involved in starting a business, managing labour, enforcing contracts, access to credit and closing a business (bankruptcy).

The World Bank report notes that regulation varies widely around the world. In general, rich countries regulate less on all aspects of business activity covered in the report than poor countries, and countries that have an English common-law tradition have less regulation than those that have a French civil-law tradition (World Bank 2004a). Secondly, heavier regulation brings bad outcomes and, thirdly, rich countries regulate business in a consistent manner.

Across all regulatory indicators, the countries with the least regulation of business activities are: Australia, Canada, Denmark, Hong Kong, Jamaica, the Netherlands, New Zealand, Singapore, Sweden and the United Kingdom. With regard to Australia, the World Bank study finds that, over most indicators, Australia has relatively light-handed regulation. There are a couple of exceptions to this finding: Australia has relatively heavy-handed regulation of employment conditions; and it is relatively costly and time consuming to enforce a contract in Australia (World Bank 2004a).

The report offers two principles of good regulation. First, regulate only when the private market is not sufficient to induce good conduct; second, regulate only if there is the capacity to enforce. The regulatory governance approaches of countries that perform well across the performance indicators considered in the report have several common elements, including (World Bank 2004a):

- simplifying and deregulating in competitive markets;
- focusing on enhancing property rights;
- expanding the use of technology in regulation;
- reducing court involvement in business matters; and
- making reform a continuous process.

The second report in the series was released in September 2004, and largely reinforced the findings of the earlier study. In addition, it found that there can be significant gains from regulatory reform — the World Bank estimates that if regulatory reform could move a country from the worst-regulated quartile to the

best quartile, annual economic growth would increase by up to 2.2 per cent (World Bank 2004b).

References

A Guide to Regulation — see ORR 1998.

APEC-OECD (Asia-Pacific Economic Cooperation – Organisation for Economic Cooperation and Development) 2003, *Prototype APEC-OECD integrated checklist on regulatory reform addressing regulatory, competition policy and market openness policy issues*, Proceedings of the Fifth Workshop of the APEC-OECD Cooperative Initiative on Regulatory Reform, Paris, 2-3 December, http://www.oecd.org/dataoecd/28/44/32689476.pdf (accessed 24 September 2004).

Argy, S. and Johnson, M. 2003, *Mechanisms for improving the quality of regulations: Australia in an international context*, Staff Working Paper, Productivity Commission, Canberra.

Australian Government Treasury, *Principles for the Appointment of Consumer Representatives: A Process for Governments and Industry*, 6 May 2002

Business Regulation Review Committee (ACT) 2002, *Review of ACT Business Regulation: Report to the ACT Government*, September, Canberra, http://www.treasury.act.gov.au/competition/pol.html (accessed August 2004).

Cabinet Office (UK) 2003, *Better Policy Making: A Guide to Regulatory Impact Assessment*, London, January. http://www.cabinet-office.gov.uk/REGULATIONS/Scrutiny/ria-guidance.pdf (accessed 20 August 2003).

—— 2004, *Code of Practice on Consultation*, January. http://www.cabinet-office.gov.uk/regulation/consultation/code.htm (accessed 25 May 2004).

Campbell, I. (The Hon.) 2003, Senate, *Official Hansard*, No. 16, 4 December.

COAG (Council of Australian Governments) 1997 as amended, *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*.

—— 1998, *Compendium of National Competition Policy Agreements*, 2nd edition, http://www.ncc.gov.au/publication.asp?publicationID=99&activityID=39 (accessed 1 September 2004).

—— 2004a, *Council of Australian Governments' Communique*, 25 June, accessed at http://www.coag.gov.au/meetings/250604/index.htm.

—— 2004b as amended, *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* http://www.coag.gov.au/meetings/250604/coagpg04.pdf (accessed 30 August 2004).

—— 2004c, *Broad Protocols for the Operation of Ministerial Councils*, http://www.coag.gov.au/meetings/250604/attachments_e.pdf (accessed 30 August 2004).

—— 2004d, *General Principles for the Operation of Ministerial Councils*, http://www.coag.gov.au/meetings/250604/attachments_f.pdf (accessed 25 August 2004).

Council of the European Union 2003, *Report to the Ministers responsible for Public Administration in the EU member states on the progress of the implementation of the Mandelkern Report's Action Plan on Better Regulation*, May, http://www.cabinet-office.gov.uk/regulation/docs/europe/pdf/rhodesrep.pdf (accessed 6 July 2004).

DCM (Department of Chief Minister) 2003, *Competition Impact Analysis Principles and Guidelines*, Darwin.

DOFA (Department of Finance and Administration) 2003, *Commonwealth Cost Recovery Guidelines for Information and Regulatory Agencies*, Canberra.

Deighton-Smith, R. 2004, *Regulatory transparency in OECD countries: Overview, trends and challenges*, Australian Journal of Public Administration 63(1):66-73, March.

EC (European Commission) 2002, *Communication from the Commission on Impact Assessment*, COM(2002)276 final, Brussels, 5 June, http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0276en01.pdf (accessed 6 July 2004).

——— 2003a, *Report from the Commission: Better Lawmaking 2003*, COM(2003)770 final, Brussels, 12 December, http://www.cabinet-office.gov.uk/regulation/docs/europe/pdf/bet_lawmake03.pdf (accessed 6 July 2004).

——— 2003b, *European Governance: Better Lawmaking*, EC webpage, http://europa.eu.int/comm/governance/governance_eu/law_making_en.htm (accessed 6 July 2004).

Ellison, C.M (The Hon.) 2003, Senate, *Official Hansard*, No. 16, 2 December.

Graham, J. 2001, *Presidential Review of Agency Rulemaking by OIRA*, Memorandum for the President's Management Council, http://www.whitehouse.gov/omb/inforeg/oira_review-process.html (accessed 1 July 2004).

——— 2004, Memorandum for the President's Management Council, 2 March, http://www.whitehouse.gov/omb/inforeg/memo_pmc_a4.pdf (accessed 6 July 2004).

Hahn, R. W. 1998, 'Regulatory impact analysis: a cross-country comparison', in Newman, P. (ed.) *The New Palgrave Dictionary of Economics and the Law*, vol. 3, Macmillian, London, pp. 276–81.

Management Advisory Committee of the Australian Public Service Commission 2004, MAC Report 4, *Connecting Government: Whole of Government Responses to Australia's Priority Challenges, Summary of Findings*, http://www.apsc.gov.au/mac/connectinggovernment.htm (accessed 16 August 2004).

NCC (National Competition Council) 1997, *Compendium of National Competition Policy Agreements*, AGPS, Canberra.

OECD (Organisation for Economic Cooperation and Development) 2001, *Businesses' Views on Red Tape: Administrative and Regulatory Burdens on Small and Medium-Sized Enterprises*, OECD, Paris.

—— 2002, *Regulatory Polices in OECD Countries, From Intervention to Governance*, OECD Reviews of Regulatory Reform, OECD, Paris.

OMB (Office of Management and Budget) 2003, *Regulatory Analysis*, Circular A-4, September 13, http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf (accessed 6 July 2004).

ORR (Office of Regulation Review) 1998, *A Guide to Regulation*, 2nd edn, AusInfo, Canberra.

PC (Productivity Commission) 2001, *Regulation and its Review 2000-01*, AusInfo, Canberra.

—— 2003, *Regulation and its Review 2002-03*, Annual Report Series, Productivity Commission, Canberra.

Pender, H. 2004, 'Public Policy, Complexity and Rule Based Technology', *Discussion Paper Number 67*, The Australia Institute, Canberra.

PM&C (Department of the Prime Minister and Cabinet) 2002, *Broad Protocols and General Principles for the Operation of Ministerial Councils*.

Scrutiny of Acts and Regulations Committee (Vic) 2004, *55th Parliament Annual Review 2003 – Regulations 2003*, May, Melbourne, http://www.parliament.vic.gov.au/sarc/AnnualReview2003/Annual_Review_2003.htm (accessed August 2004).

Small Business Ministerial Council 2002, *Giving small business a voice — Achieving best practice consultation with small business*, Endorsed Paper, March.

World Bank 2004a, *Doing Business in 2004: Understanding Regulation*, Oxford Press, Washington DC. http://rru.worldbank.org/doingbusiness/ (accessed August 2004).

—— 2004b, *Doing Business in 2005: Removing Obstacles to Growth*, Oxford Press, Washington DC. http://rru.worldbank.org/doingbusiness/ (accessed October 2004).