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Productivity Commission

Regulation and its Review 2004-05

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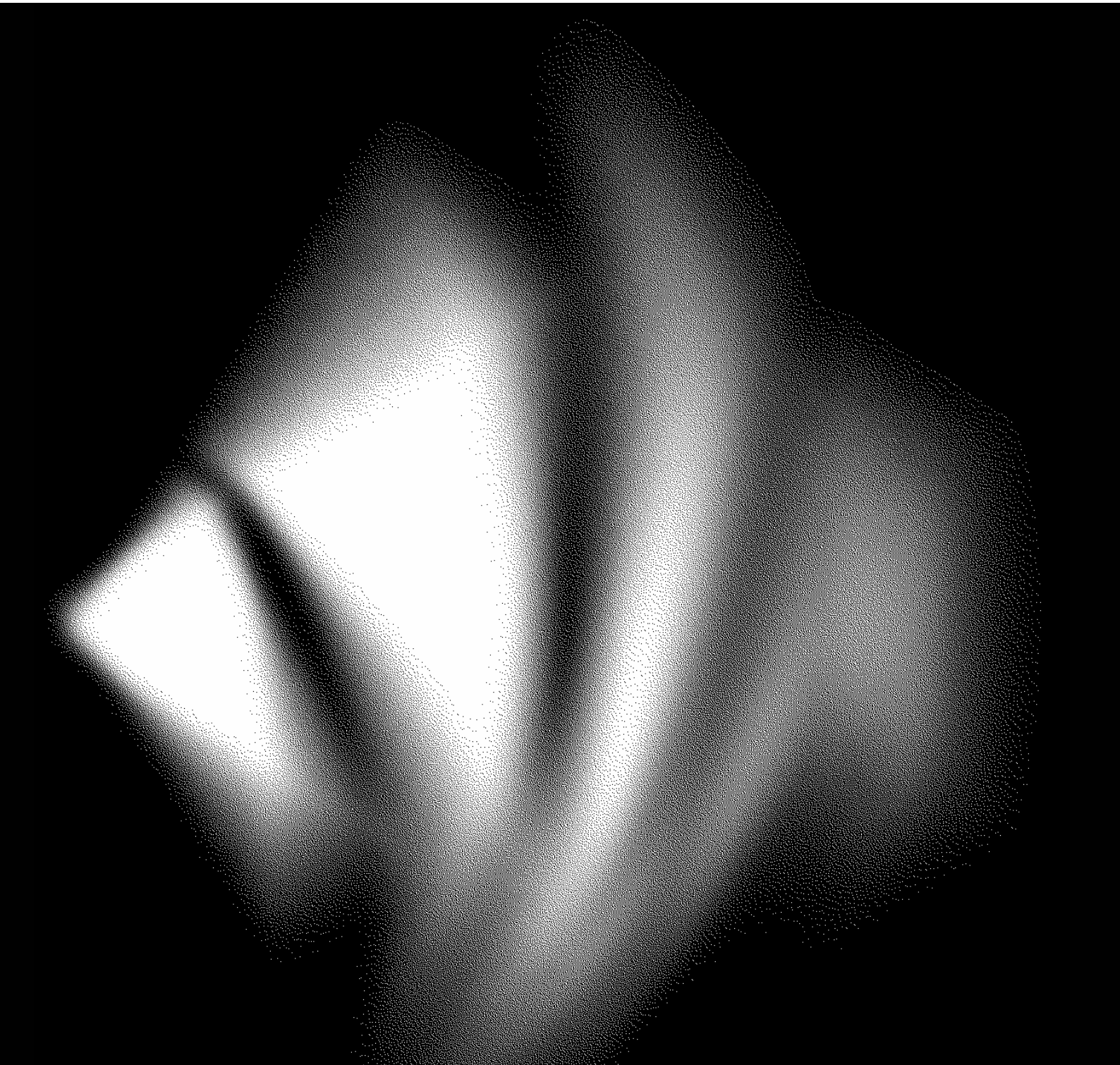
Annual Report Series



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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.

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

Foreword

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

This is the eighth such report and forms part of the Productivity Commission's annual report series of publications for 2004-05. 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, delegated instruments and treaties tabled in Parliament during the year is noted.

This year's report also discusses perceptions about Australia's regulatory system, what governments are doing to improve the quality of regulations and ways of improving regulation making processes. Recent developments in regulatory policy in Australia and internationally are also discussed.

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 and work throughout the year.

Gary Banks
Chairman

October 2005

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Abbreviations

AASB	Australian Accounting Standards Board
ABA	Australian Broadcasting Authority
ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ACCI	Australian Chamber of Commerce and Industry
ACMA	Australian Communications and Media Authority
ACT	Australian Capital Territory
ANU	Australian National University
A-G's	Attorney-General's Department
AFMA	Australian Fisheries Management Authority
ANZMEC	Australian and New Zealand Minerals and Energy Council
APEC	Asia-Pacific Economic Corporation
APMC	Australasian Police Ministers Council
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
BCA	Business Council of Australia
BIA	Business Impact Assessment
BRTF	Better Regulation Task Force
CRR	Committee on Regulatory Reform
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
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

DEST	Department of Education, Science and Training
DHA	Department of Health and Ageing
DITR	Department of Industry, Tourism and Resources
DOTARS	Department of Transport and Regional Services
DVA	Department of Veterans Affairs
ESD	ecologically sustainable development
FRLI	Federal Register of Legislative Instruments
FSANZ	Food Standards Australia and New Zealand
GBRMPA	Great Barrier Reef Marine Park Authority
GDP	Gross Domestic Product
NAS	National Airspace System
NCC	National Competition Council
NCP	National Competition Policy
NPRF	National Plumbing Regulators Forum
NSSBs	National standard-setting bodies
NSW	New South Wales
OECD	Organisation for Economic Cooperation and Development
ORR	Office of Regulation Review
PC	Productivity Commission
Qld	Queensland
RIA	regulatory impact analysis
RIAR	Regional Impact Assessment Report
RIAU	Regulatory Impact Analysis Unit (New Zealand)
RIS	Regulation Impact Statement
SA	South Australia
SCM	Standard Cost Model
UK	United Kingdom
US	United States of America
VAT	Value Added Tax
VCEC	Victorian Competition and Efficiency Commission

OVERVIEW

Key points

- A well functioning regulatory system is an essential component of modern society. The Australian Government's Regulation Impact Statement (RIS) process contributes to this objective by helping to ensure that proposed new regulations that impact on business are warranted and efficient.
- Overall, the compliance of departments and agencies in 2004-05 with the RIS requirements at the decision-making stage for regulation was lower than in some previous years:
  - RISs were prepared for only 84 per cent of the 85 regulatory proposals that required them. Of those prepared, three were assessed as inadequate, giving an overall compliance rate of 80 per cent (compared with 92 per cent in 2003-04 and 81 per cent in 2002-03).
  - Of the 19 Australian Government departments and agencies that were required to prepare RISs in 2004-05, 10 were fully compliant (compared with 18 of 24 in 2003-04 and 12 of 23 in 2002-03).
- In 2004-05, 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 (compared with 88 per cent in 2003-04).
- Most OECD countries and other Australian jurisdictions also use RIS processes. Several of these jurisdictions have based — or are considering basing — their RIS processes on those used by the Australian Government, which are highly regarded internationally.
- Notwithstanding this, there have been growing concerns from Australian business about rising regulatory complexity and compliance burdens. In part, additional regulation and associated burdens are the product of a more sophisticated and diverse economy and society, with growing demands on government. Nevertheless, it is also clear that the quality of regulations could be improved and that more can be done to promote this.
- There is broad agreement that adherence to RIS process can and should be improved — including, for example, by regulators better integrating the preparation of RISs into the policy development process, increasing their commitment to consultation with stakeholders and undertaking more robust analysis of policy options.
- In 2005-06, the ORR intends to further raise the minimum adequacy standards for RISs, with a particular focus on improving the standard of analysis of costs and benefits, and of compliance costs for business. The ORR will also enhance its RIS training and explore the scope to make greater use of information technology to facilitate interaction with regulators.

Overview

A well functioning regulatory system is an essential component of modern society. However, business groups have expressed growing concerns about the compliance burdens regulation imposes on business and the community. For example, in May 2005 the Business Council of Australia (BCA) released a major report on business regulation which claimed that the volume of regulation is growing by about 10 per cent per year.

The BCA claimed that many regulations are not scrutinised properly and give rise to a range of unintended and undesirable impacts and costs on business and the community. Other business groups have expressed similar concerns, and there have been calls for governments to do more to improve the efficiency and effectiveness of regulation, including by reducing compliance burdens and red tape.

Australian governments have implemented a range of strategies to improve the quality of regulation, including the use of Regulation Impact Statements (RISs) where regulatory proposals affect business. The use of RISs is promoted by the OECD and in other international forums.

The RIS process

A RIS formalises and documents the steps taken in developing good regulation. It is prepared by a regulatory department/agency and seeks to ensure that regulation achieves its objectives in the most effective and efficient way. It identifies the problem, outlines objectives and assesses the economic, social and environmental impacts of a range of feasible options for addressing the problem. The level of analysis of each option should be commensurate with the impacts of the proposal, and departments and agencies are encouraged to use quantitative cost/benefit analysis when appropriate. The RIS then documents community consultation, proposes a recommended approach and outlines implementation and review mechanisms.

RISs are intended to provide a basis for more informed decision making and to enhance accountability and transparency by informing the community and stakeholders about why and how particular regulatory decisions were taken. RISs

are integrated with — and reinforce — other regulatory quality control systems, such as regulatory plans and regulatory performance indicators.

RISs are formally required for regulatory proposals that have a direct or significant indirect impact on business. They are not required for proposals that do not impact on business or have only minor impacts on business. In 2004-05, the Office of Regulation Review (ORR) was notified of 851 new regulatory proposals potentially impacting on business and advised that RISs were required in 167 (20 per cent of) cases.

The Council of Australian Governments (COAG) has adopted similar RIS processes to the Australian Government. These apply to all Ministerial Councils and national standard-setting bodies. With the exception of Western Australia, all Australian states and territories also employ RIS processes.

The Australian Government's RIS processes are seen as being at the forefront of international best practice by international organisations such as the Organisation for Economic Cooperation and Development (OECD), and national organisations, such as the National Competition Council (NCC) and the Victorian Government Scrutiny of Acts and Regulations Committee. For example, the recent OECD review of Canada's regulatory quality control systems recommended that the Canadian Government adopt key elements of Australia's approach.

New Zealand and some Australian jurisdictions — most notably Victoria — have broadly modelled their RIS processes on those used by the Australian Government. Other countries, such as Indonesia, are also considering establishing RIS systems based on the Australian Government's approach.

The role of the ORR, a separate unit within the Productivity Commission which shares its statutory independence, is to provide impartial and independent advice to the Australian Government and COAG regulators about whether a RIS is required for each regulatory proposal and, if so, whether the analysis contained within each RIS meets 'adequacy' standards. The ORR does not advocate particular regulatory options or outcomes — it is the department or agency preparing the RIS, not the ORR, which is responsible for the content of RISs. The absence or inadequacy of a RIS does not preclude Government consideration of a proposed regulation. Where a RIS is required but has not been prepared or is inadequate, the Government may decide to proceed with the proposal, postpone policy approval until an adequate RIS is prepared or require the subsequent preparation of a RIS.

The Commission reports annually — through *Regulation and its Review* — on the adequacy of Australian Government RISs. The ORR also provides training and guidance to officials who consider regulatory issues.

The RIS process works best where it receives high level political and bureaucratic support. Departments and agencies need to consult with the ORR early in the policy development process, before regulatory decisions are made. In such cases, the RIS can provide relevant and timely information to decision makers and shape regulatory policy outcomes. When published, a RIS communicates to the broader community the evidence for and rationale behind regulatory proposals.

Poor quality regulation making processes are often associated with decisions being made in haste, with incomplete information about options and their impacts. Inadequate or ineffective consultation can also contribute to poor regulatory outcomes. In such cases there is less scope for the RIS process to add value to policy development.

Box 1 The 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 Australian 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.

As many factors can influence government decisions about regulation, the impact of the RIS process in improving the quality of regulation is difficult to ascertain. However, a range of partial measures yield insights. In 2004-05, the preferred option within a RIS changed in 10 of the 71 RISs which were prepared and considered by decision makers. Discussions between ORR staff and regulators indicate that a significant proportion of these changes were attributable to the RIS process itself. Overall, Australia's improved economic performance since the early 1990s is associated with reforms to a range of areas of regulation, drawing positive assessments by international economic agencies such as the OECD, World Bank and International Monetary Fund (IMF).

That said, it is generally agreed that there is scope to improve and build on existing RIS processes to make them more effective in improving the quality of regulation. For example, some key business groups in Australia — such as the BCA and the Australian Chamber of Commerce and Industry (ACCI) — are supportive of the RIS process. These organisations, as well as the NCC, have also emphasised the importance of regulation review bodies being independent from policy departments or central agencies.

During 2004-05, the Australian Government continued to review its regulation review and reform processes, including the RIS processes. The results of this review were not finalised at the time this report was prepared.

Aggregate RIS compliance for 2004-05

In 2004-05, compliance by departments and agencies with the Australian Government's Regulation Impact Statement (RIS) requirements was lower at the decision-making and tabling stages than in previous years. Compliance with COAG's requirements was slightly lower than in the previous reporting period.

About 2550 Bills, delegated instruments, treaties and quasi-regulations were tabled in Parliament or made in 2004-05. However, a much smaller number were notified to the ORR as potentially impacting on business.

- Of the 85 regulatory proposals that required a RIS at the decision making stage, 71 RISs were prepared, with 68 of those assessed as containing an adequate level of analysis. Accordingly, the RIS compliance rate in 2004-05 was 80 per cent, compared with 92 per cent in 2003-04 (table 1).
- The requirement that adequate RISs be tabled in Parliament with the explanatory material for Bills, delegated legislation or treaties, was satisfied in 89 per cent of cases in 2004-05 (compared with 95 per cent of cases in 2003-04).

Table 1 **RIS compliance, by type of regulation, 2004-05**

	Decision-making			*Tabling* [a]		
	prepared	*adequate*		*prepared*	*adequate*	
	ratio	*ratio*	*%*	*ratio*	*ratio*	*%*
Primary legislation (Bills)	13/17	13/17	76	18/18	18/18	100
Legislative Instruments [b]	45/52	43/52	83	41/45	38/45	84
Non-legislative instruments	4/4	3/4	75	..	..	..
Quasi-regulation	7/8	7/8	88	..	..	..
Treaties [c]	2/4	2/4	50	3/3	3/3	100
Total	**71/85**	**68/85**	**80**	**62/66**	**59/66**	**89**

.. 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] Includes instruments back-captured (or likely to be back-captured) as legislative instruments under section 36 of the *Legislative Instruments Act ! 2003.* [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 one case, a RIS was not required at entry into negotiations.

Source: ORR estimates.

The ORR classifies each of the 85 proposals in 2004-05 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 three proposals identified as being of greater significance was 67 per cent in 2004-05, lower than for other regulatory proposals. This is consistent with the experience in earlier years.

Table 2 **Compliance at the decision-making stage by significance, 2000-01 to 2004-05**

Significance rating	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
More significant	18/30 *(60%)*	7/10 *(70%)*	6/13 *(46%)*	17/18 (94%)	2/3 (67%)
Less significant	111/127 (87%)	121/135 *(90%)*	107/126 *(85%)*	88/96 *(92%)*	66/82 (80%)
Total	**129/157 *(82.2%)***	**128/145 *(88.3%)***	**113/139 *(81.3%)***	**105/114 (92.1%)**	**68/85 (80.0%)**

Source: ORR estimates.

Compliance by departments and agencies

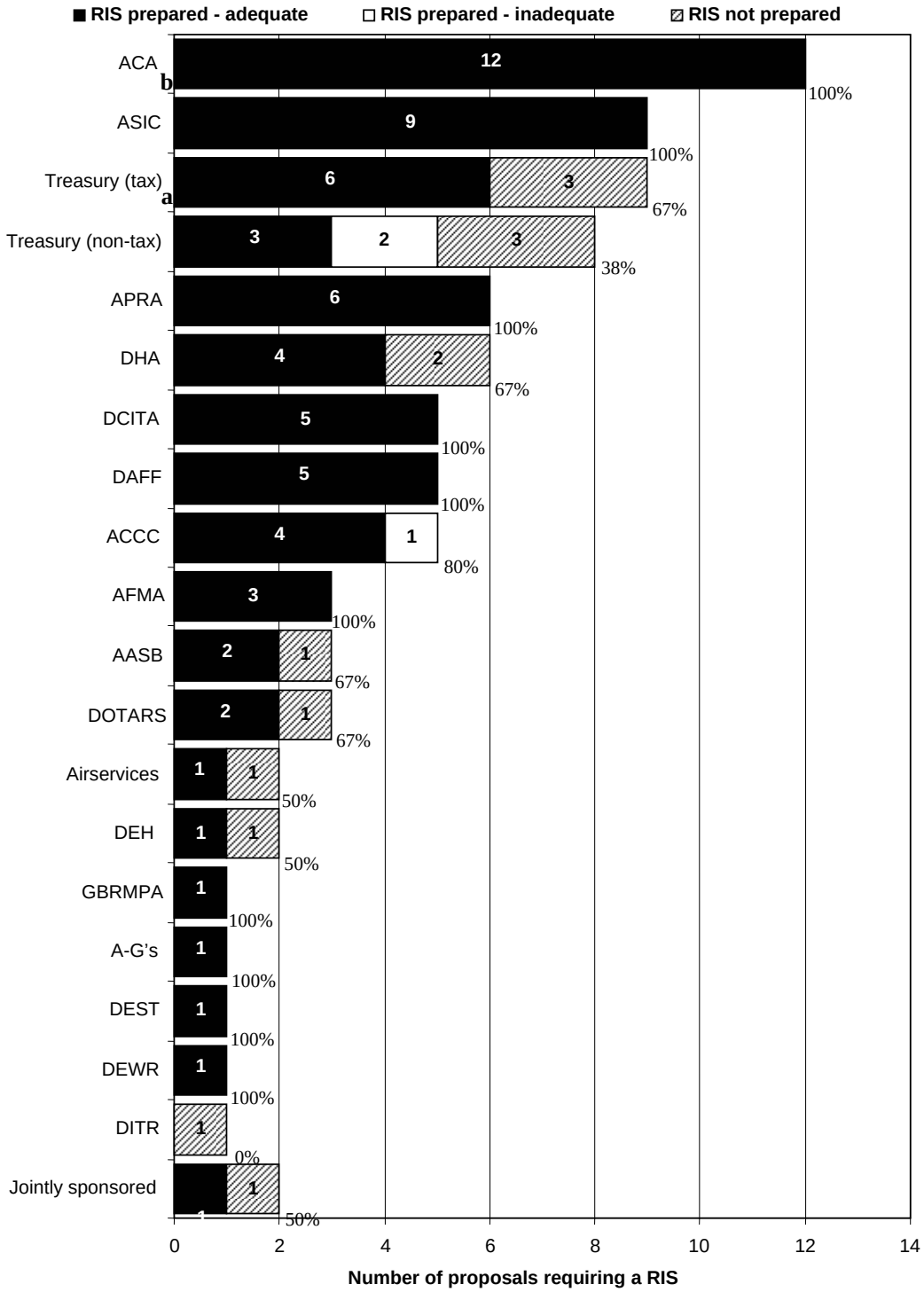
In 2004-05, 19 departments and agencies developed regulatory proposals that triggered the government's requirements to prepare a RIS. Of these, 10 departments and agencies were fully compliant with the Government's RIS requirements at the decision-making stage (compared to 18 of 24 in 2003-04).

Compliance at the decision-making stage is illustrated in figure 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 agencies, as a percentage of the number of RISs required for that department/agency, is shown at the end of each bar. There were 17 instances of non-compliance with the Government's requirements: in 14 instances, RISs were not prepared and in 3 instances, RISs were prepared, but were assessed as inadequate by the ORR.

Regulation making also occurs at a national or inter-jurisdictional level, among some 40 Ministerial Councils and several standard-setting bodies involving the Australian, State and Territory governments. Between 1 April 2004 and 31 March 2005, 24 regulatory decisions made by Ministerial Councils and national standard-setting bodies required the preparation of a COAG RIS (table 2.5). Of these, 21 adequate RISs were prepared at the decision-making stage (a compliance rate of 88 per cent). Compliance at the consultation stage was slightly lower — adequate RISs were prepared for 83 per cent of proposals.

The ORR identified six decisions of COAG forums as being of particular significance in their impact on business or the community. Adequate RISs were prepared in all cases at the decision-making stage (and in five of six cases at the consultation stage.

Figure 1 **Compliance with RIS requirements at the decision-making stage, 2004-05**



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. **b** On 1 July 2005, the Australian Communications Authority and the Australian Broadcasting Authority were merged to become the Australian Communications and Media Authority.

Data source: ORR estimates.

How can RIS compliance be improved?

Some regulators do a thorough job and prepare RISs which make a useful and timely contribution to regulatory decisions and outcomes. Of the 19 departments and agencies which were required to prepare RISs for regulatory proposals in 2004-05, 10 complied fully with the RIS requirements.

Where RIS compliance has fallen short, in many cases it is because regulators have failed to prepare RISs or have prepared them too late in the policy development process to make a meaningful contribution. In some cases, it is because the level of analysis is inadequate. As in previous years, in 2004-05, the Office of Regulation Review (ORR) raised the minimum adequacy standards for RISs, especially with respect to documenting regulatory compliance burdens.

The cost of preparing RISs does not appear to be a significant factor in explaining poor RIS compliance by some Australian Government departments and agencies. Indeed, it is minimal compared to the total budgets of regulatory departments and agencies.

The levels of compliance in 2004-05 indicate significant room for improvement, especially within some departments and agencies. Measures that would improve the quality of RISs include:

- the RIS process receiving high level support, both at the political and departmental/agency head level;
- RISs being prepared early in the policy development process, with departments and agencies consulting early with the ORR and undertaking RIS training where appropriate; and
- regulators improving the analysis of costs and benefits, including where feasible, consulting in a meaningful and timely manner with stakeholders. In many cases, it is also important to undertake risk analysis within RISs, especially for environmental, national security and related issues.

In 2005-06, the ORR intends to continue to:

- raise minimum adequacy standards for RISs, with a particular focus on regulatory compliance costs and the quality of cost/benefit analysis within RISs. This will include working with the Office of Small Business to integrate business compliance cost measurement systems with the RIS process;
- monitor and report on the quality and timeliness of the service it provides to regulators, including surveying officials involved in preparing each RIS;
- enhance its ongoing RIS training for departments and agencies;

- meet with senior officials from poorly performing departments/agencies to discuss ways to improve outcomes;
- explore the scope to use information technology to improve communication with regulators;
- report on regulation review and reform developments in other jurisdictions;
- explore options to improve regulation review and reform processes and systems employed by the Australian Government; and
- encourage regulators to adopt international best practice with respect to the making and implementation of regulations.

1 Improving regulation

The effective functioning of a modern economy and society depends of regulation. However, the volume of existing and new regulation is enormous. There are also concerns about the quality of regulation and compliance burdens on business in particular. Governments have implemented a range of strategies to improve regulation, including the widespread use of Regulation Impact Statements (RIS). The Australian Government's RIS processes are highly regarded internationally. Nevertheless, there is scope to make them more effective and transparent in improving the quality of regulation.

Regulations are an essential component of modern society. When regulations work well, they enhance governance and promote stability, progress and prosperity. By contrast, ill conceived or poor quality regulations can create barriers to trade and commerce, impede innovation and increase business costs and consumer prices.

1.1 Features of Australia's regulatory system

There are approximately 60 Australian Government regulators and national standard setting bodies involved in developing and/or administering regulations. While the total budgets and number of staff of these regulators is difficult to estimate, a sample of 16 Australian Government regulators is indicative. In 2003-04, they had a combined staff of over 33,000 and annual budgets exceeding $4.1 billion (table 1.1).

A further 40 Ministerial Councils are involved in making regulations. While the number of state and territory based regulators is unknown, a recent study by the Victorian Competition and Efficiency Commission (2005a) identified 69 regulators in that state. If the Victorian result is extrapolated to the other seven Australian states and territories, there could be up to 500 state and territory based regulators, making a total of up to 600 regulators Australia-wide.

The volume of existing and new regulation is clearly great, but is difficult to measure with precision. At the Federal Government level, there are more than 1500 Acts of Parliament. The amount of existing subordinate legislation is currently unknown, but there are around 1000 statutory rules (including Regulations) in

force.[1] The establishment of the Federal Register of Legislative Instruments, to meet the requirements of the *Legislative Instruments Act 2003*, will by 2008 allow the identification of all Federal Government subordinate instruments of a legislative nature/character.

In 2004-05, the Australian Government made 2552 new regulations, a significant increase over the annual average of 1441 in the previous five years (table E.1). However, a major contributor to this increase was the revoking and remaking of several hundred legislative instruments, including by the Civil Aviation Safety Authority.

In addition, each state and territory also administers a large body of legislation and regulation, with several hundred new Acts passed each year. For instance, NSW has about 1300 Acts and 650 principal statutory instruments, with a further 5500 local government planning instruments (BCA 2005, pp. viii, 8).

Table 1.1 **Resources of selected Australian Government regulatory agencies in 2003-04**

	Expenses $m	*Staff Numbers*
Australian Customs Service	801	4 806
National Occupational Health and Safety Commission	15	94
Australian Communications Authority	59	444
Australian Maritime Safety Authority	64	245
Food Standards Australia New Zealand	15	132
Australian Prudential Regulation Authority	74	496
Australian Quarantine Inspection Service	290	2 800
Australian Securities and Investments Commission	196	1 531
Civil Aviation Safety Authority	107	701
National Industrial Chemicals Notification and Assessment Scheme	6	38
Australian Pesticides and Veterinary Medicines Authority	22	134
Therapeutic Goods Administration	68	457
Australian Taxation Office	2 315	21 009
Australian Consumer and Competition Commission	81	449
Australian Broadcasting Authority	17	131
Australian Fisheries Management Authority	28	131
Total	**4 158**	**33 598**

Note: Only includes agencies with explicit regulatory functions. Does not include government departments, Ministerial Councils and inter-governmental bodies.

Source: Various agencies' annual reports for 2003-04.

[1] *Source*: ComLaw, http://www.frli.gov.au/comlaw/comlaw.nsf/previewlinks?OpenView&Count=9999&RestrictToCategory=LEGISLATION (accessed 5 October 2005). Over the last 20 years, statutory rules have accounted for approximately one-third of all disallowable subordinate instruments made.

How does Australia's regulatory system compare with other countries?

The last two decades have seen unprecedented regulatory reform in Australia, including through major programs of trade liberalisation and National Competition Policy. It is generally recognised that such reforms have generated significant benefits for Australia, including in employment, productivity and income growth (Banks 2005a, b; International Monetary Fund 2005).

Comparing the performance of Australia's regulatory systems with other countries is complex and difficult. However, international studies have generally concluded that Australia's regulatory system performs well internationally. For example, according to an OECD study of product market regulation, which measures the 'relative friendliness of regulations to market mechanisms', Australia had the second least restrictive regulatory environment in the world in 1998 and the least restrictive environment in 2003 (Conway, Janod and Nicoletti 2005).

A World Bank (2005) study *Doing Business in 2006*, considered the time and cost involved in over 155 countries in performing essential business activities, such as starting a business, hiring workers and enforcing contracts. This report rated Australia sixth best. The World Competitiveness Yearbook (IMD 2005) concludes in its latest report that Australia is the ninth most competitive country.

But there are concerns about the costs of regulation

Notwithstanding this, in recent years Australian business has expressed growing concerns about the quality of regulations. In May 2005, the Business Council of Australia (BCA) released a major report on business regulation. It argued that the growth in regulation in Australia overwhelms the ability of Parliament to consider it properly. New regulation was seen as generating significant compliance burdens on business and the community, and higher administration costs for government. Furthermore, the BCA considered that many regulations have a wide range of unintended and undesirable impacts. It argued that:

> Many other countries have recognised the need to reform business regulation to keep their businesses competitive. If Australia does not match these efforts, we will fall behind and economic growth will slow. If we can surpass the efforts of other countries, Australia's business regulatory environment will be a source of competitive advantage (BCA 2005, p. vi).

Other business groups, including the Australian Industry Group, Australian Chamber of Commerce and Industry, and the Housing Institute of Australia, have also expressed concerns about the volume and cost of regulations for their members.

Specific concerns identified by business include (BCA 2005):

- regulatory over-reach, with governments over-estimating their ability to achieve better outcomes than the market;
- governments focusing on resolving past problems and issues rather than looking to the future;
- regulators being overly prescriptive when they make regulations;
- governments over reacting to "hot issues";
- regulations not being properly enforced;
- unnecessary and costly overlap between a large number of regulators, both within and between jurisdictions; and
- poor communication between governments and businesses/individuals subject to regulation.

A major concern of business is the compliance burden of regulations. Available evidence suggests that the gross compliance burden of regulations is very large. For example, the OECD estimated that in 1998 the cost to small and medium sized businesses in Australia arising from labour market, taxation and environmental regulations was $17 billion (OECD 2001). A range of other estimates of compliance burdens have been published in recent years, highlighting the large additional burden of regulation, unintended and unnecessary impacts and a disproportionate impact on small business (Banks 2005b).

Some compliance costs are an unavoidable consequence of regulations needed to meet important economic, social and environmental goals. Therefore, a key focus of debate about regulation is on whether the objectives of regulation can be achieved with lower compliance costs on business and the community.

1.2 What is being done to improve the quality of new regulations?

Most OECD countries have adopted a range of policies to improve the quality of new regulations, including the use of regulatory impact analysis (RIA). The integration of RIA into regulatory policy development processes has been promoted by the OECD and within APEC.

The OECD also advocates the systematic consideration of regulatory alternatives, public consultation and accountability in the regulatory policy process. The Australian Government has integrated these tools into its Regulation Impact Statement (RIS) process.

What is a RIS?

A RIS formalises and documents the steps taken in developing good regulation (OECD 2002a, b). It is prepared by a regulatory department/agency and seeks to ensure that regulation achieves its objectives in the most effective and efficient way. It does this by canvassing in a systematic and transparent manner objectives and a range of feasible options to address a policy problem. It aims to ensure consideration of the social and environmental as well as economic impacts of any proposed regulation. RISs should utilise cost/benefit analysis to consider and compare the impacts, pros and cons of each option. The RIS then provides a statement about community consultation, a recommended approach and a discussion of how the preferred approach can be implemented and reviewed. A key objective of the RIS is to provide a better basis for informed decision making. RISs also enhance accountability and transparency by informing the community and stakeholders about why and how particular regulatory decisions were taken.

RISs are required for new and significant changes to existing regulatory proposals which impact on business. They are not required for proposals that do not impact on business or have only minor impacts on business. Nor are RISs required for government spending initiatives or specific government purchases. In 2004-05, the ORR received 851 new queries about regulatory reviews potentially impacting on business and advised that RISs were required in 167 (20 per cent of) cases. This is consistent with previous years, where the average number of RISs required was around 22 per cent of queries received.

Growing use of RIS processes

While Australian Government RIS processes date back to 1984, it is only since 1997 that they have been widely used by regulators. The Council of Australian Governments (COAG) has similar RIS processes which have applied since 1995 to all Ministerial Councils and national standard-setting bodies. With the exception of Western Australia, all Australian states and territories also employ RIS processes (appendix F).

New Zealand and some Australian jurisdictions, such as Victoria, have broadly modelled their RIS processes on those used by the Australian Government. Other countries, such as Indonesia, are also considering establishing RIS systems based on the Australian Government approach. Indeed, the Australian Government RIS processes have been seen by organisations such as the OECD, APEC and the National Competition Council, as constituting best practice. For example, the OECD review of Canada's regulatory quality control systems recommended that the Canadian Government adopt key elements of the Australian approach to RISs (OECD 2002b; PC 2003, pp. 84-85; PC 2004, p. 77).

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

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*.

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

The Australian Government and COAG RIS requirements are broadly comparable to those used in other OECD countries, including the UK and US. RIS systems applied in Australia are integrated with — and reinforce — other regulatory quality control systems, such as regulatory plans and regulatory performance indicators, which are administered by the Office of Small Business, within the Department of Industry, Tourism and Resources.

The role of the ORR in RIS processes

The role of the ORR, which is part of the Productivity Commission and shares its statutory independence, is outlined in its Charter (appendix E). The ORR is not subject to Ministerial direction and provides impartial and independent advice to the Australian Government and COAG regulators about whether a RIS is required for each regulatory proposal and, if so, whether the analysis contained within each RIS meets 'adequacy' standards established by the Australian Government and COAG.

The ORR assessments are based on information provided by departments and agencies as well as that included in each RIS. In undertaking this role, the ORR is generally not in a position to verify the underlying data or methodology. Nor does the ORR endorse or support particular regulatory options or outcomes. It is the department or agency preparing the RIS which is ultimately responsible for the content of RISs.

The ORR reports to decision makers on the adequacy of RISs as regulatory proposals are considered. It also reports annually to government and the broader community — through *Regulation and its Review* — on the adequacy of analysis about regulatory issues within Australian Government RISs (see box 1.1 for further information).

The ORR provides training and guidance to officials who consider regulatory issues. In 2004-05, 74 per cent of officials who received RIS training responded to an ORR survey about the quality of such training. Some 94 per cent rated ORR training as either 'excellent' or 'good' (table E.2).

The RIS process generally works best where there is high level political and bureaucratic support for the process, and where regulators consult with the ORR early in the policy development process and before decisions about regulatory issues are made. In such cases, the RIS provides high quality information about regulatory issues and impacts to decision makers and can shape the policy making process. When published, RISs also help communicate the evidence and rationale behind regulatory proposals. In such cases, the preparation of a RIS is merely the codification of good regulation review and reform processes undertaken by regulators.

By contrast, poor quality regulation making processes are often associated with decisions being made routinely in haste, with incomplete information being provided about options and their impacts. Inadequate consultation with stakeholders and the broader community can also be a feature of poor quality processes. Where RISs are prepared very late in the policy making process, they may not achieve the primary objective of assisting the deliberations of decision makers about important regulatory problems and issues. Nevertheless, such RISs can sometimes still provide insightful information and be a useful communication tool.

Since the mid-1990s, the ORR has progressively raised the minimum information requirements of RISs, with the objective of improving the quality of RISs and their usefulness to decision makers. For example, for regulatory proposals that generate additional compliance costs on business, since 1 July 2004, the ORR has advised regulators that quantitative data about such costs must be included in RISs (or, alternatively, a clear statement be made that the regulator is unable to estimate such

costs). In 2004-05, the ORR also commenced using a checklist to measure the features and characteristics of each RIS. This also allows changes in the quality of RISs over time to be documented and measured.

Surveys of regulators preparing RISs have generally given positive feedback about the service provided by the ORR. For example, in 2004-05, 78 per cent of survey respondents preparing RISs rated the quality of the ORR's written and oral advice as 'excellent' or 'good' (Appendix E).

Assessing the effects of the RIS process

As noted above, international perceptions about the quality of regulation in Australia are positive and, in some cases, have improved in recent years. Furthermore, the OECD rates Australia's RIS processes highly. However, many factors can influence government decisions about regulation, so that the influence of the RIS process in improving the quality of regulation is difficult to ascertain.

In recent years the ORR has monitored the extent to which preferred regulatory options change during the policy development process. In 2004-05, the preferred option within a RIS changed in 10 of the 71 RISs which were prepared and considered by decision makers. (Chapter Two provides a more detailed commentary on the contribution of the RIS process to achieving better quality regulations.)

Business groups in Australia have typically been supportive of the RIS process. But some groups consider that it could make a greater contribution to improving the quality of regulation if it was strengthened.[2] For example, the Australian Chamber of Commerce and Industry (ACCI 2005, p. 37) stated in its 2005 pre-budget submission that:

> ACCI proposes a number of recommendations to address the issue of poor RIS compliance and policy design. Firstly, greater education, skill development, resources and priority within agencies is needed. Secondly, the ORR, in conjunction with agency heads, needs to address the mentality within certain departments and agencies that RISs can be used as a means to justify regulation, as opposed to the original intention of validating the need for regulation. And thirdly, State counterparts of the ORR must be made more independent. The Commonwealth ORR, through its operation as an independent body, has formal independence from other Commonwealth departments and agencies. State ORR equivalents are currently co-located within policy departments such as the Premier's Department, State Development or Treasury. The Chamber considers that in order for these bodies to operate impartially and effectively, there must be clear lines of separation.

[2] See appendix E for further information.

The ACCI also stated that it supported recommendations in the 2003 Senate Employment, Workplace Relations and Education Committee's Small Business Employment Report, two of which related to the Productivity Commission and the RIS process:

- that the Productivity Commission be asked to report to COAG on the most appropriate body to monitor and manage a continuing program of cross-jurisdictional regulatory review and coordinate the rolling programs of regulatory review to be undertaken by all tiers of government; and
- that the RIS guidelines be amended so that agencies have to provide quantitative estimates of compliance costs, based on detailed proposals for implementation and administration, and that regular reviews be commissioned of the accuracy of compliance estimates in RISs for regulations with a major impact on business.

The Business Council of Australia (BCA 2005, p. viii) also considers that the RIS process and the role of the ORR should be strengthened, including:

- Creating a champion for better business regulation within Government through enhancing the role and powers of the Office of Regulation Review to challenge the need for new regulation affecting business and oversee the cost-benefit analysis of regulatory proposals.
- Legislating the requirement that all regulatory proposals likely to have a significant impact on business must undergo a detailed regulatory impact assessment to ensure that the benefits of regulation clearly outweigh the costs.
- Requiring the Minister proposing new business regulation to personally certify that the benefits of regulation clearly outweigh the costs.
- Introducing a two-stage impact assessment process, with all regulations likely to affect business subject to a preliminary assessment, and all regulations likely to have a significant impact on business subject to full assessment.
- Requiring the release of draft regulatory impact statements for public comment and allowing sufficient time for consultation to make that consultation meaningful.

The National Competition Council (NCC) has also supported the role and contribution of the RIS process. In its 2004 National Competition Policy Assessment of the regulatory gatekeeping mechanisms of governments, the NCC commented that:

> … the Australian Government's gatekeeping arrangements comply with NCP obligations for effective gatekeeping. In particular, the ORR makes a significant contribution to improving regulatory quality and transparency by monitoring the compliance of departments with the government's regulatory requirements (NCC 2004, p. 46).

The NCC was critical of the lack of a clear independent mechanism for advising the NSW Government on the likely impact of proposed regulations before introduction to Parliament. While the NSW Cabinet Office advises agencies on regulatory best practice, the NCC had reservations about its separation from the policy development process and the transparency of review mechanisms noting:

> This is in contrast to the federal ORR which is located within the Productivity Commission — an independent statutory authority. Consideration should therefore be given to relocating the regulatory review function outside of the Cabinet Office (NCC 2004, pp. 4.7–4.8).

1.3 Recent developments

In 2004-05 there were two significant reviews of Australia's regulatory systems and also changes to the way Commonwealth subordinate legislation is made.

Changes to Australian Government regulation making processes

In 2005, the Australian Government reviewed its regulation review and reform processes, including the RIS processes. The objectives included improving and strengthening these processes, enhancing consultation regarding regulatory issues and reducing red tape and the regulatory burden on business and the broader community.

The results of this review were not finalised at the time this report was prepared.

Review of National Competition Policy

In 2004, the Government asked the Productivity Commission to review the National Competition Policy (NCP) arrangements and report on future competition-related reform priorities. The Commission reported to the Government in early 2005 (PC 2005). In June, the Council of Australian Governments (COAG 2005) considered the future of NCP and agreed:

- that continuing reform is needed to sustain and enhance Australian living standards in light of an ageing population and there are significant potential gains from further reform;
- to proceed immediately with a review of NCP with the review to report to COAG by the end of 2005;
- to COAG Senior Officials undertaking the review and producing its report;

- that the review assess the effectiveness of the existing NCP arrangements, but focus on a possible new national reform agenda;
- that the review identify practical options for the implementation, monitoring and assessment of any new reform agenda;
- that the review draw from, but not be limited by, the recommendations of the Productivity Commission report on the *Review of National Competition Policy Reforms*; and
- that the Australian Local Government Association participate in relevant elements of the Review.

Legislative Instruments Act

The *Legislative Instruments Act 2003* came into effect on 1 January 2005. The Act requires all Australian Government legislative instruments, made in the exercise of a power delegated by the Parliament, to be recorded on a Federal Register of Legislative Instruments (FRLI). It allows all Australians to access these regulations in one place via an internet database, http://www.comlaw.gov.au/.

The Act has procedures for the progressive registration of all existing regulations. For example, all legislative instruments made since 2000 must be lodged on the FRLI by 1 January 2006 while all other legislative instruments made before 2000 must be registered before 1 January 2008. Instruments that have not been registered by these dates will no longer be in force.

Under the Act, legislative instruments will typically sunset after 10 years of operation. In most cases there is a requirement to consult with the community before a legislative instrument is made. Where a RIS is required at the decision-making stage, it should be published with the explanatory statement, thus meeting the Act's consultation requirements. These provisions aim, in part, to strengthen and promote regulatory best practice in concert with the RIS requirements.

2 Compliance with RIS requirements

In 2004-05, compliance by departments and agencies with the Australian Government's Regulation Impact Statement (RIS) requirements was lower than in previous years. Where RIS compliance fell short, RISs were typically not prepared when they should have been, or were prepared too late in the policy development process to make a meaningful contribution. In some cases RISs contained an inadequate level of analysis, including on compliance burdens. The quality of RISs would be improved through early consultation with the ORR and the community, and preparing RISs early in the policy development process. High level support for the process is fundamental. Compliance with the Council of Australian Government's (COAG's) RIS requirements was the same as that of the previous reporting period and there was full compliance for more significant COAG proposals.

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 meets the Government's adequacy criteria[1]; and
- the RIS prepared at the decision-making stage was tabled in the Parliament or otherwise made public[2] and the analysis meets adequacy standards.

[1] Box 2.1 lists the Australian Government's criteria for determining whether the analysis contained in a RIS is adequate.

[2] In accordance with the Government's RIS guidelines, RISs for proposals introduced via primary legislation (bills), tabled delegated legislation or treaties 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 instruments/quasi-regulation 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: ORR 1998, p. D 19.

A department or agency is considered to be fully compliant with the Government's requirements if it meets these conditions. The ORR has adopted a strategy whereby the adequacy standard for RISs has been progressively increased each year since the new requirements were introduced in 1997-98, as officials have become more familiar and experienced with the analytical approach required.

RIS compliance is reported publicly in *Regulation and its Review* after the instrument implementing a regulatory proposal is tabled in Parliament (in the case of bills, legislative instruments, disallowable non-legislative instruments and treaties), or is made (in the case of non-disallowable non-legislative instruments and quasi-regulations). Hence, the data reported here do not include regulatory proposals which were agreed to by the Government in 2004-05, but not introduced into the Parliament or made into law during that period.

Aggregate compliance in 2004-05

The number of RISs required in 2004-05 was lower than in previous years, primarily because the 9 October 2004 Federal Election resulted in a postponement of decisions about regulations during the election period. In 2004-05, 85 RISs were required at the *decision-making* stage. Of these, 71 were prepared and 68 were assessed as adequate by the ORR — a compliance rate of 80 per cent. This compares with compliance rates of 92 per cent in 2003-04, 81 per cent in 2002-03, 88 per cent in 2001-02 and 82 per cent in 2000-01 and 1999-2000.

Compliance at the tabling stage (for proposals introduced via Bills, legislative instruments and treaties) was also lower than in recent years (89 per cent in 2004-05, compared to 95 per cent in 2003-04 and 2002-03 and 94 per cent in 2001-02).

Table 2.1 **RIS compliance, 1999-2000 to 2004-05**

	1999-00	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
Decision-making stage [a]	169/207	129/157	128/145	113/139	105/114	68/85
	(82%)	*(82%)*	*(88%)*	*(81%)*	*(92%)*	*(80%)*
Tabling stage [a, b]	163/179	118/133	116/123	113/119	82/86	59/66
	(91%)	*(89%)*	*(94%)*	*(95%)*	*(95%)*	*(89%)*

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

Source: ORR estimates.

The introduction of the substantive provisions of the *Legislative Instruments Act 2003* ('the Act') on 1 January 2005 will have a impact on the number of RISs required at the tabling stage. Previously, RISs were not required at the tabling stage for proposals introduced via non-disallowable legislative instruments. The Act now requires these instruments to be tabled, with explanatory material (including RISs where required).

While this may address some of the discrepancy between the number of RISs required at the decision-making and tabling stages, differences in the total number of RISs required at each stage will continue for a variety of reasons. First, there is a formal requirement that RISs be tabled with Bills, legislative instruments, disallowable non-legislative instruments and treaties. However, RISs for other types of regulation — non-legislative non-disallowable instruments and quasi-regulation — may not be made public. Second, more than one RIS may be required at the decision-making stage if there are two or more discrete and significant decision-making points in the policy development process, such as for international treaties. Third, differences can occur if a RIS is not required for the decision-making stage, but a RIS is required for tabling.[3]

Significance of regulatory proposals

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.

Of the 85 proposals that triggered the Australian Government's RIS requirements at the decision-making stage in 2004-05, only three were assessed as having a more significant impact on business and/or the community (table 2.2).

[3] In the case of some treaties, for example, RISs may not be required at all decision-making stages because some decisions were made before the requirements became mandatory.

Box 2.2 **Classifying the significance of regulatory 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 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 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.

Table 2.2 **Compliance by significance, 2004-05**

Significance rating	*Required*	*Prepared*	*Adequate*	*Compliance*
	No.	*No.*	*No.*	*%*
More significant	3	3	2	67
Less significant	82	68	66	80
Total	**85**	**71**	**68**	**80.0**

Source: ORR estimates.

This was much fewer than previous years (table 2.3), making it difficult to make conclusions about comparative compliance.[4] For less significant proposals, compliance was 80 per cent (compared to 92 per cent in 2003-04).

[4] The three 'significant' matters in 2004-05 were new Disability Standards for Education (Department of Education, Science and Training), the National Airspace System Stage 2B (Airservices Australia) and health warnings on tobacco products (Department of the Treasury). See discussion (below) on 'inadequate impact analysis' and appendix A for further information.

Table 2.3 **Compliance at the decision-making stage by significance, 2000-01 to 2004-05**

Significance rating	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
More significant	18/30 *(60%)*	7/10 *(70%)*	6/13 *(46%)*	17/18 (94%)	2/3 (67%)
Less significant	111/127 (87%)	121/135 *(90%)*	107/126 *(85%)*	88/96 *(92%)*	66/82 (80%)
Total	**129/157 *(82%)***	**128/145 *(88%)***	**113/139 *(81%)***	**105/114 (92%)**	**68/85 (80%)**

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 2004-05, apart from treaties, where RISs are always required at more than one decision-making stage, there were no cases where proposals followed such a multi-stage decision-making process.

Proposals that restrict competition

Restrictions on competition can impose substantial costs on business and the community by raising prices, reducing choice and impeding innovation. Reflecting these costs — and to meet the requirements of the National Competition Policy *Competition Principles Agreement* — RISs for proposals that affect business by restricting competition should demonstrate that the benefits of restricting competition outweigh the costs, and that the benefits can only be achieved by restricting competition (ORR 1998, p. B6).

In 2004-05, none of the more significant proposals were judged to restrict competition, whereas, among those proposals of less significance, seven restricted competition. RISs were prepared for five of the seven proposals (table 2.4) (i.e. two RISs were not prepared). Of the five RISs that were prepared, only four were assessed as adequate.

Table 2.4 **Compliance at the decision-making stage for proposals that restrict competition, 1999-2000 to 2004-05**

Significance rating	*1999-00*	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
More significant	5/6 *(83%)*	2/7 *(29%)*	1/3 *(33%)*	0/2 *(0%)*	n/a	n/a
Less significant	3/9 *(33%)*	n/a	7/9 *(78%)*	18/20 *(90%)*	6/6 *(100%)*	4/7 (57%)
Total	**8/15 *(53%)***	**2/7 *(29%)***	**8/12 *(67%)***	**18/22 *(82%)***	**6/6 (100%)**	**4/7 (57%)**

n/a – Not applicable.

Source: ORR estimates.

2.2 Compliance by type of regulation

The extent of compliance with the RIS requirements, at both the decision-making and tabling stages, for the various types of regulation, is shown below (table 2.5).

Table 2.5 **RIS compliance, by type of regulation, 2004-05**

Type of regulation	*Decision-making*			*Tabling* [a]		
	prepared	*adequate*		*prepared*	*adequate*	
	ratio	*ratio*	*%*	*ratio*	*ratio*	*%*
Primary legislation (Bills)	13/17	13/17	76	18/18	18/18	100
Legislative instruments [b]	46/53	44/53	83	41/45	38/45	84
Non-legislative instruments [c]	4/4	3/4	75	n/a	n/a	n/a
Quasi-regulations [c]	6/7	6/7	86	n/a	n/a	n/a
Treaties	2/4	2/4	50	3/3	3/3	100
Total	**71/85**	**68/85**	**80**	**62/66**	**59/66**	**89**

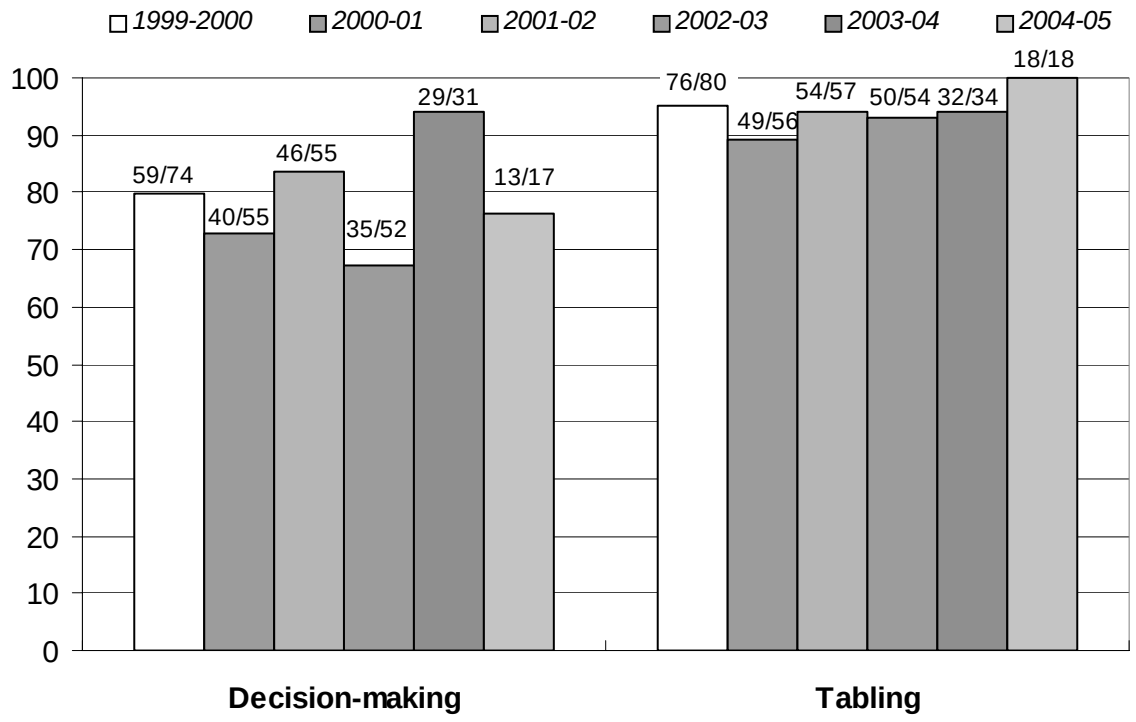
n/a – Not applicable. [a] RIS compliance for the tabling of bills, treaties legislative, and disallowable non-legislative instruments is subject to formal assessment by the ORR. [b] Includes instruments back-captured (or likely to be back-captured) as legislative instruments under section 36 of the *Legislative Instruments Act 2003.* The ORR identified seven proposals introduced via non-disallowable legislative instruments that were made before the substantive provisions of the *Legislative Instruments Act 2003* came into effect. Compliance at the tabling stage for these instruments was not subject to formal assessment by the ORR. [c] Tabling is not a formal requirement. As reported by departments and agencies to the ORR.

Source: ORR estimates.

Primary legislation

There were 17 RISs required at the decision-making stage for proposals introduced by primary legislation in 2004-05 (20 per cent of all RISs required). Of these, only 13 were prepared, all of which were assessed as adequate (a compliance rate of 76 per cent). This compares to compliance rates of 80 per cent in 2003-04 and 67 per cent in 2002-03. An additional five RISs were prepared after the decision-making stage and tabled (figure 2.1).

Figure 2.1 **RIS compliance, Bills, 1999-2000 to 2004-05**
Per cent



Source: ORR estimates.

Delegated legislation

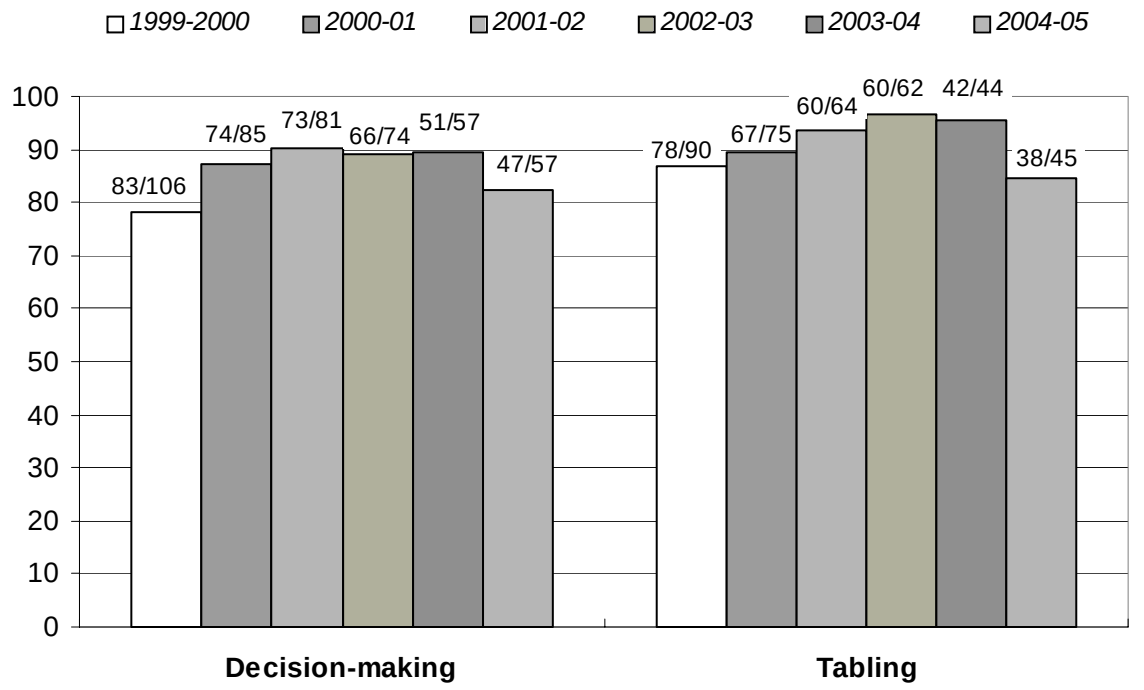
Delegated legislation comprises all rules or instruments that have the force of law and have been made by an authority to which Parliament has delegated part of its legislative power. These instruments may be legislative or non-legislative in nature.

A legislative instrument is a written instrument of a legislative character made in the exercise of a power delegated by the Parliament. An instrument is taken to be legislative if it determines or alters the law, rather than applying it in a particular case, and has the direct or indirect effect of affecting a privilege or interest,

imposing an obligation, creating a right, or varying or removing an obligation or right. Most legislative instruments do not have a direct or significant indirect impact on business, and hence do not trigger the Australian Government's RIS requirements.

In 2004-05, 53 RISs were required at the decision-making stage for proposals introduced by disallowable legislative instruments (62 per cent of all RISs required). Of these, only 46 were prepared, of which 44 were assessed as adequate (resulting in a compliance rate of 83 per cent). At the tabling stage, 45 RISs were required, only 41 were prepared, and 38 were assessed as adequate (a compliance rate of 84 per cent).

Figure 2.2 **RIS compliance, delegated legislation, 1999-2000 to 2004-05**
Per cent



Source: ORR estimates.

Non-legislative instruments are those declared by the Attorney-General not to be legislative instruments or are not of a legislative character (see above). Four non-legislative instruments made in 2004-05 were reported by departments and agencies to the ORR. Four RISs were prepared, of which three were assessed as adequate (a compliance rate of 75 per cent). Although RISs for non-legislative instruments do not have to be made public, all three non-legislative instrument RISs which met the Government's adequacy criteria were publicly released.

Quasi-regulation

Quasi-regulation refers to the range of rules, instruments and standards whereby government influences business to comply, but which do not form part of explicit government regulation. Examples of quasi-regulation include industry codes of practice, guidance notes, standards, industry-government agreements and accreditation schemes.

Seven quasi-regulations made in 2004-05 were reported by departments and agencies to the ORR (8 per cent of all RISs required). RISs were prepared in six cases, and all were assessed as adequate (a compliance rate of 86 per cent, down from 92 per cent in 2003-04).

The introduction of the Legislative Instruments Act 2003 may have some impact on the number of quasi-regulations reported as 'made' to the ORR.[5]

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. Where Australia is considering acceding to an existing treaty, RISs are required prior to accession and when the treaty is tabled in Parliament. (Other countries also require RISs or a RIS-type analysis of the domestic impacts of treaties.)

Three treaties ratified in 2004-05 triggered the Government's RIS requirements. There was full compliance at the signing stage, but zero compliance at the entry into negotiations stage. (One treaty did not require a RIS at entry into negotiations.) There was full compliance with the Government's RIS requirements at the ratification stage.

[5] Where the Attorney-General determines, for example, that a class of instrument previously reported to the ORR as 'quasi-regulatory' should be registered as legislative instruments under the *Legislative Instruments Act 2003.*

2.3 National regulation-making under COAG's requirements

Regulation making also occurs at a national or inter-jurisdictional level among some 40 Ministerial Councils and several standard-setting bodies involving the Australian, State and Territory governments. In 1995, the Council of Australian Governments (COAG) agreed on a set of *Principles and Guidelines* for such activities. The major element of the Guidelines is the preparation of a regulation impact statement (RIS) for 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 2004a as amended, p. 2)

At the direction of COAG, the ORR has a role in monitoring and reporting on compliance by Ministerial Councils and national standard-setting bodies with these Guidelines. 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.

Table 2.6 **COAG RIS compliance, regulatory decisions made by Ministerial Councils and national standard-setting bodies, 2000-01 to 2004-05** [a]

Decision-making stage	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
All proposals	15/21 *(71%)*	23/24 *(96%)*	24/27 *(89%)*	30/34 *(88%)*	21/24 *(88%)*
Significant proposals	5/9 *(56%)*	6/6 *(100%)*	4/6 *(67%)*	4/7 *(57%)*	6/6 *(100%)*

[a] Data for 2000-01 relate to the period 1 July 2000 to 31 May 2001. Data for 2001-02 to 2004-05 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.

Between 1 April 2004 and 31 March 2005, 24 regulatory decisions made by Ministerial Councils and national standard-setting bodies required the preparation of a COAG RIS (table 2.5). Of these, 21 adequate RISs were prepared at the decision-making stage (a compliance rate of 88 per cent). Compliance at the consultation stage was slightly lower — adequate RISs were prepared for 83 per cent of proposals.

The ORR identified six decisions made by Ministerial Councils or national standard setting bodies as being of particular significance in their impact on business or the broader community. Adequate RISs were prepared in all cases at the decision-making stage, but in only five of six cases at the consultation stage (a compliance rate of 83 per cent). More detailed compliance information about regulation making by COAG forums, including RIS compliance, is provided in appendix C.

In addition, COAG's *Agreement to Implement the National Competition Policy and Related Reforms* (NCC 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. The ORR also reports on compliance to COAG's Committee on Regulatory Reform.

At its meeting on 25 June 2004, COAG amended the *Principles and Guidelines* and the *Broad Protocols for the Operation of Ministerial Councils* (COAG 2004b). A number of the changes clarify existing ORR processes and methodologies that have been applied to COAG RISs over the last few years. A significant change is the requirement for the ORR to confer with the Regulatory Impact Analysis Unit of the New Zealand Government on draft consultation RISs where there are New Zealand impacts and issues (for example where trans-Tasman trade may be affected). (See appendix C for more information.)

2.4 Why has RIS compliance fallen short?

The compliance of departments and agencies with the Australian Government's RIS requirements was lower in 2004-05 compared to previous years, at both the decision-making and tabling stages. Compliance for a small number of significant regulatory issues was also somewhat lower.

There can be legitimate reasons for not preparing a RIS before a decision is taken to regulate, for example, the need to respond to a genuine emergency. However, such cases are rare and the RIS requirements are sufficiently flexible to respond to such situations (PC 2004, pp. 8-9). The ORR is not aware that such factors were more prevalent in 2004-05 than in previous years.

A number of factors appear to have resulted in lower RIS compliance in 2004-05, as discussed below.

Timeliness

The Australian Government's *A Guide to Regulation* (ORR 1998, 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 internal 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 adequacy standards.

Where departments and agencies do not consult with the ORR early in the policy development process, there is often insufficient time to address major weaknesses in a RIS before seeking the ORR's final assessment of the RIS for the decision-making stage. In addition, 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.

Of the seventeen cases of non-compliance with the Government's RIS requirements in 2004-05, in twelve the ORR was not contacted until after the decision to regulate was made. In the other five cases, the RIS process was commenced, but not completed. For example, in one instance, a draft RIS was only provided to the ORR the day before the RIS was to be provided to the decision-maker for a decision. There was insufficient time to address deficiencies in this RIS and the agency did not provide the final RIS to the ORR for its assessment until after the decision was made. In another case, the ORR was contacted by the department and provided advice early in the policy development process. However, an amended draft RIS was not provided to the ORR for comment until the day the decision was made.

Inadequate RISs

Where RISs were prepared but failed the Government's adequacy test, the analysis of costs, benefits and impacts was typically deficient. In 2004-05, there were three such cases. In one, the department did not clearly identify the problem and did not adequately identify the economic and social impacts of the proposal, including on small business. In another case, the RIS did not contain a summary of views received from stakeholders and the community (including dissenting views), or a discussion of how such views had been considered and addressed. In the third case, regulatory compliance costs were not quantified, even in broad terms.

Raising minimum adequacy standards in RISs

In 2004-05, the ORR continued to raise minimum adequacy standards for RISs, in part, by making it mandatory for RISs to include quantitative data and analysis of regulatory compliance costs on business and the community, or an explicit statement that such costs could not be estimated. Therefore, some of the reduction in RIS compliance in 2004-05 (specifically where RISs were prepared but failed adequacy tests) can be attributed to the minimum adequacy standards for RISs being increased incrementally in 2004-05.

2.5 Improving RIS compliance

The cost of preparing RISs does not appear to be a significant factor in explaining poor RIS compliance by some Australian Government departments and agencies. The cost of preparing RISs is quite small compared to the total budgets of regulatory departments and agencies (table 1.1). For example, in 2004-05, the ORR requested that Australian Government regulators preparing a RIS provide data of the number of person days taken to prepare each RIS. On average, each RIS took 13.6 person days to prepare, with total gross wage cost per RIS averaging about $4500. This is the estimated *gross* cost. Where regulators carefully define policy objectives, consider feasible options and their impacts etc, the additional net cost of preparing a RIS would be smaller, because the RIS simply documents the existing policy development process.

In 2004-05, nine departments and agencies complied fully with the RIS requirements, namely:

- Australian Communications Authority;
- Australian Securities and Investments Commission;

- Australian Prudential Regulation Authority;
- Department of Communications, Information Technology and the Arts;
- Department of Agriculture, Fisheries and Forestry;
- Australian Fisheries Management Authority;
- Attorney-General's Department;
- Department of Education, Science and Training; and
- Department of Employment and Workplace Relations.

There were several examples of high quality RISs prepared by Australian Government departments and agencies in 2004-05. In those cases, the RISs were generally prepared early and made a useful contribution to the policy development process, including by demonstrating that the preferred option would result in net benefits for the community:

- the Department of Education, Science and Training prepared a RIS for new Disability Standards for Education. The new standards are likely to benefit some 210,000 students with disabilities across Australia and were developed following extensive consultation with a range of stakeholders. The RIS drew on a comprehensive cost-benefit analysis of the impacts of the new standards. It provided high quality and insightful analysis of the key issues, including a detailed community consultation statement;
- the Department of the Environment and Heritage and the Department of Transport and Regional Services prepared a RIS for new petrol and diesel fuel quality and related vehicle emission standards. The Departments met with the ORR early in the policy development process and maintained regular contact with the ORR during the policy development process. As elements of the proposal fell under both the COAG RIS requirements and the Australian Government's RIS requirements, the Departments prepared a comprehensive draft RIS for community consultation;
- the Department of Communications, Information Technology and the Arts and the Attorney-General's Department prepared a RIS for an amendment to the *Copyright Act 1968* to grant film directors a right to share, as copyright owners, in remuneration for the retransmission of films included in free-to-air broadcasts. The RIS contained an insightful level of analysis commensurate with the impacts of the proposal;
- the Attorney-General's Department also prepared a high quality RIS for amendments to the Bankruptcy Regulations to prescribe performance standards for trustees' conduct of personal insolvency administrations. The RIS contained

a very good description of the problem, and considered a comprehensive range of options; and

- the Australian Prudential Regulatory Authority prepared a RIS for a variation to Prudential Standard APS 112, amending the capital adequacy risk weighting requirements for 'low documentation loan' residential mortgages. The RIS contained a very good consultation section, and the preferred option was modified after consultation with stakeholders and the community.

This suggests considerable scope for improvement by the departments and agencies with poor RIS compliance. The quality of RISs can be improved through:

- departments and agencies consulting early with the ORR and undertaking RIS training where appropriate;
- RISs being prepared early in the policy development process and well before decisions are made; and
- regulators undertaking more robust cost-benefit analysis, including where feasible, consulting in a meaningful and timely manner with stakeholders. In many cases, it is important to undertake risk analysis within RISs, especially for environmental, national security and safety problems and related issues.

Ultimately, further improvements will depend on the RIS process receiving support from the top down at political and administrative levels.

To facilitate further improvements in regulating making, in 2005-06 the ORR intends to continue to:

- raise minimum adequacy standards for RIS, with a particular focus on documenting regulatory compliance costs and improving the quality of cost/benefit analysis within RISs. This will include working with the Office of Small Business to integrate business compliance cost measurement systems with the RIS process;
- monitor and report on the quality and timeliness of the service it provides to regulators, including surveying officials involved in preparing each RIS;
- enhance its ongoing RIS training for departments and agencies;
- meet with senior officials from poorly performing departments/agencies to discuss performance and ways to improve outcomes;
- explore the scope to use information technology to improve communication with regulators;
- report on regulation review and reform developments in other jurisdictions;

- explore options to improve regulation review and reform processes and systems employed by the Australian Government; and
- encourage regulators to adopt international best practice with respect to the making and implementation of regulations.

A Compliance by Portfolio

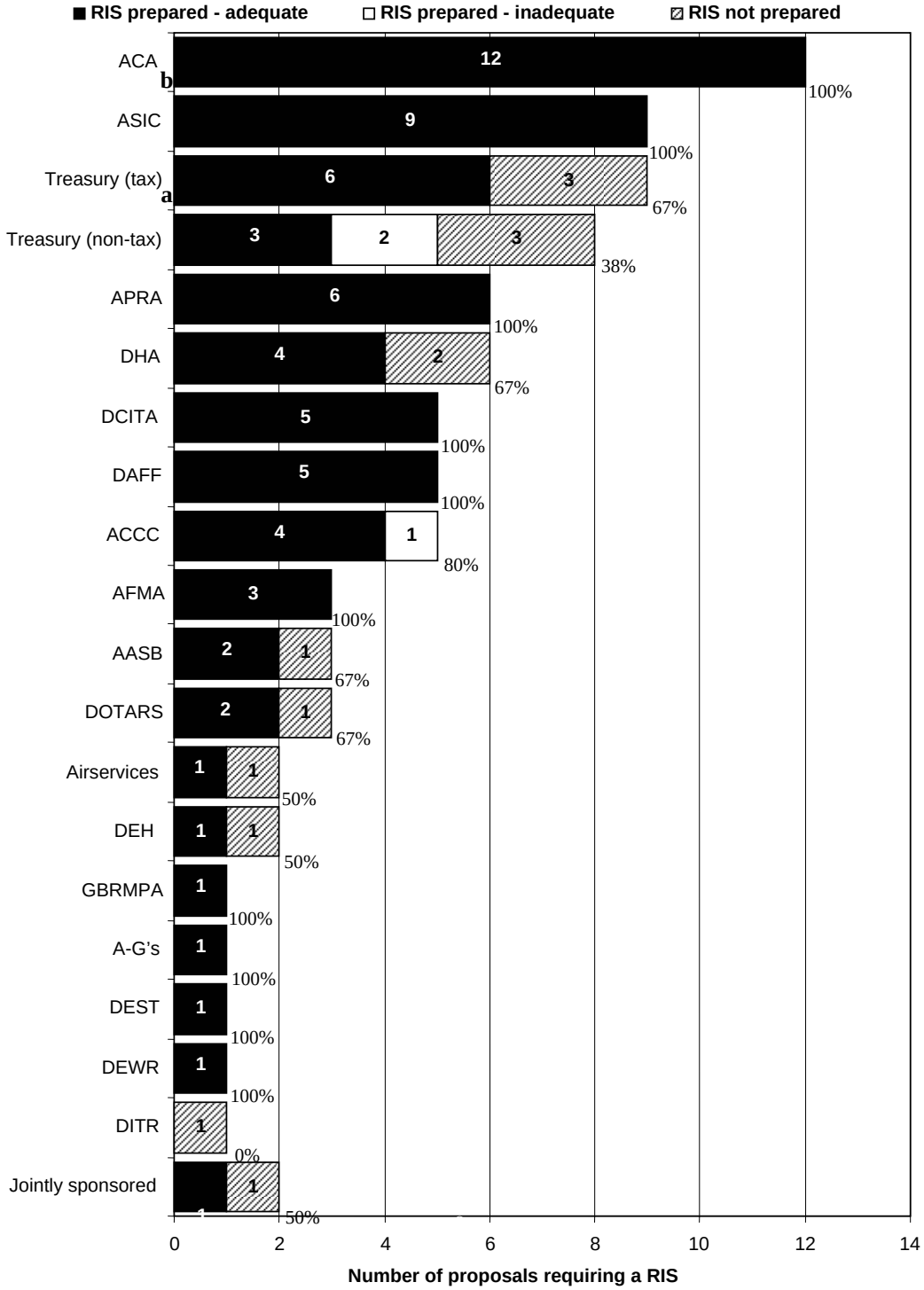
In 2004-05, reporting on compliance by portfolio has been modified to reflect the commencement of the *Legislative Instruments Act* 2003 on 1 January 2005. Reporting has been split into two half year periods 1 July — 31 December 2004 and 1 January — 30 June 2005. Compliance of portfolios has decreased from 2003-04 with only 10 of 19 departments and agencies preparing Regulation Impact Statements (RISs) being assessed as fully compliant.

In 2004-05, 19 departments and agencies developed regulatory proposals that triggered the government's requirements to prepare a RIS. Of these, 10 departments and agencies were fully compliant with the Government's RIS requirements at the decision-making stage (compared to 18 in 2003-04). The nine non-compliant departments and agencies were responsible for 14 proposals for which RISs were not prepared, and for a further three RISs that were prepared, but assessed by the ORR as providing an inadequate level of analysis.

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 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 agencies, 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. A brief description of three significant regulatory proposals is also provided.

Figure A.1 **Compliance with RIS requirements at the decision-making stage, 2004-05**



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. **b** On 1 July 2005, the Australian Communications Authority and the Australian Broadcasting Authority were merged to become the Australian Communications and Media Authority.

Data 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).

Department of Agriculture, Fisheries and Forestry

In 2004-05, the Department of Agriculture, Fisheries and Forestry was fully compliant with the RIS requirements for regulations made in this period. For the five RISs required to be prepared by the Department, all were assessed by the ORR as adequate at the decision-making and tabling stages, resulting in a compliance rate of 100 per cent for both stages.

Table A.1 **DAFF: RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	1/1	1/1	1/1	1/1
Disallowable instruments [a]	2/2	2/2	2/2	2/2
Legislative Instruments [b]	2/2	2/2	2/2	2/2
Total	**5/5**	**5/5**	**5/5**	**5/5**
Percentage	*100%*	*100%*	*100%*	*100%*

[a] Applies to instruments made during July to December 2004. [b] Applies to instruments made from 1 January 2005, when the Federal Register of Legislative Instruments commenced.

Source: ORR estimates.

Australian Fisheries Management Authority

In 2004-05, the Australian Fisheries Management Authority was fully compliant with the Government's RIS requirements for instruments made within the period, preparing three RISs that were assessed as adequate by the ORR, at both the decision-making and tabling stages, for proposals introduced by disallowable instruments.

A.2 Attorney-General's

In 2004-05, the Attorney-General's Department prepared one RIS, assessed as adequate at both the decision making and tabling stages, for a proposal introduced by a legislative instrument.[1]

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) and the Australian Communications and Media Authority (ACMA).

Department of Communications, Information Technology and the Arts

The Department of Communications, Information Technology and the Arts was fully compliant with the Government's RIS requirements in 2004-05 at the decision-making stage. Of the five RISs required, all were prepared and assessed as adequate, but only four were tabled.[2]

Table A.2 **DCITA: RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	3/3	3/3	3/3	3/3
Legislative instruments	2/2	2/2	2/2	1/2
Total	**5/5**	**5/5**	**5/5**	**4/5**
Percentage	*100%*	*100%*	*100%*	*80%*

Source: ORR estimates.

1 The Attorney-General's Department was also jointly responsible, with the Department of Communications, Information Technology and the Arts, for a proposal to introduce a limited form of directors' rights under the *Copyright Act 1968*. See section A.11.

2 The Department of Communications, Information Technology and the Arts was also jointly responsible, with the Attorney-General's Department, for a proposal to introduce a limited form of directors' rights under the *Copyright Act 1968*. See section A.11.

Australian Communications and Media Authority

The Australian Communications and Media Authority was formed on 1 July 2005, following the merger of the former Australian Broadcasting Authority (ABA) and Australian Communications Authority (ACA).

The ACA was fully compliant with the Australian Government's RIS requirements in 2004-05. It prepared 12 adequate RISs at the decision making stage. Of the 10 RISs required at the tabling stage, all were assessed as adequate (RISs were not formally required at the tabling stage for two instruments which were made before 1 January 2005).

The ABA was not required to prepare RISs for any legislation introduced in 2004-05.

A.4 Education, Science and Training

In 2004-05, the Department of Education, Science and Training (DEST) was required to prepare a RIS for one legislative instrument made in the period. The RIS was prepared, and assessed as adequate by the ORR, at the decision-making and tabling stages.

Significant issues

In 2004-05, DEST was responsible for preparing a RIS for new Disability Standards for Education. These standards, made under the Disability Discrimination Act 1992, set out: the obligations of education and training providers in relation to the education of students with disabilities; how those obligations can be met; and what students with disabilities can reasonably expect in participating in education. An adequate RIS was prepared at both the decision-making and tabling stages, and the RIS was published on the DEST website.

A.5 Employment and Workplace Relations

The Department of Employment and Workplace Relations was fully compliant with the Government's RIS requirements in 2004-05, preparing one RIS for a disallowable instrument, which was assessed as adequate at both the decision-making and tabling stages.[3]

[3] Two Bills introduced in 2004-05 which did require a RIS have not been included in this report as they re-introduced legislation that has already been reported in previous editions of *Regulation and its Review* (PC 2003, 2004).

A.6 Environment and Heritage

Within the Environment and Heritage portfolio, the Department of the Environment and Heritage (DEH) and the Great Barrier Reef Marine Park Authority (GBRMPA) were required to prepare RISs in 2004-05.

Department of the Environment and Heritage

The Department of the Environment and Heritage was required to prepare RISs for two proposals, including a treaty. An adequate RIS was prepared at the decision-making stage for one of the proposals and at the tabling stage for both proposals.

RISs are required at three stages of the treaty-making process – entry into negotiation, before signature (endorsement) and before ratification. In the case of the treaty tabled in 2004-05, a RIS was not prepared at entry into negotiation. A RIS was not required at the endorsement stage, because an adequate RIS had already been prepared for legislation implementing the treaty obligations, the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003, reported in *Regulation and its Review 2002-03* (PC 2003).

Table A.3 **DEH: RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments	1/1	1/1	1/1	1/1
Treaties [a]	0/1	0/1	1/1	1/1
Total	**1/2**	**1/2**	**2/2**	**2/2**
Percentage	*50%*	*50%*	*100%*	*100%*

[a] For reporting on treaties, RISs required at both entry into negotiations and signature have been aligned with the decision-making stage. However, for this treaty, a RIS was required at entry into negotiation, but not at signature (endorsement).

Source: ORR estimates.

Great Barrier Reef Marine Park Authority

The Great Barrier Reef Marine Park Authority was fully compliant with the Government's RIS requirements, preparing one RIS for a quasi-regulation which was assessed as adequate at the decision-making stage. GBRMPA followed regulatory best practice in making the RIS publicly available.

A.7 Health and Ageing

The Department of Health and Ageing (DHA) was required to prepare six RISs at the decision-making stage in 2004-05. Of these, only four were prepared, all of which were assessed by the ORR as adequate. At the tabling stage, four of the six RISs required were deemed adequate and tabled.

Table A.4 **DHA: RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills [a]	2/2	2/2	3/3	3/3
Disallowable instruments	1/2	1/2	1/2	0/2
Treaties	1/2	1/2	1/1	1/1
Total	**4/6**	**4/6**	**5/6**	**4/6**
Percentage	*67%*	*67%*	*83%*	*67%*

a The Department was responsible for preparing a RIS at the tabling stage for an amending Bill that implemented an element of the Government's response to the Review of Pricing Arrangements in Residential Aged Care in May 2004. An adequate RIS was tabled. 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, was reported in PC 2004, p. 55.

Source: ORR estimates.

A.8 Industry, Tourism and Resources

In 2004-2005, the Department of Industry, Tourism and Resources (DITR) failed to prepare one RIS at the decision making stage for a quasi-regulatory proposal. The Department prepared a RIS for tabling for one proposal introduced by disallowable instrument.

Table A.5 **DITR: RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments [a]	n/a	n/a	1/1	1/1
Quasi-regulations	0/1	0/1	n/a	n/a
Total	**0/1**	**0/1**	**1/1**	**1/1**
Percentage	*0%*	*0%*	*100%*	*100%*

n/a – Not applicable. **a** Decision pre-dated mandatory RIS requirements.

Source: ORR estimates.

A.9 Transport and Regional Services

Within the Transport and Regional Services portfolio, the Department of Transport and Regional Services (DOTARS) and Airservices Australia were required to prepare RISs in 2004-05.

Department of Transport and Regional Services

The Department of Transport and Regional Services was required to prepare RISs for three regulatory proposals at the decision-making stage in 2004-05. Two RISs were prepared, and assessed as adequate. Four RISs were required at the tabling stage. The Department prepared all four, each of which were assessed as adequate.

Table A.6 **DOTARS: RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills [a]	n/a	n/a	1/1	1/1
Legislative instruments	1/2	1/2	2/2	2/2
Treaties	1/1	1/1	1/1	1/1
Total	**2/3**	**2/3**	**4/4**	**4/4**
Percentage	*67%*	*67%*	*100%*	*100%*

n/a – Not applicable. [a] The Department of Transport and Regional Services shared responsibility for RIS compliance for this proposal at the decision making stage with the Department of the Prime Minister and Cabinet (see section A.11 for further information).

Source: ORR estimates.

Treaties

The Department was responsible for preparing a RIS for the Montreal Convention for the Unification of Certain Rules for International Carriage by Air. RISs for treaties are usually required at three stages: entry into negotiations; signing (RIS for decision in table 1); and ratification (RIS for tabling in table 1). However, as Australia was merely acceding to an existing treaty, RISs were only required at the latter two stages. Hence, in 2004–05, the Department was fully compliant with the RIS process for treaties.

Airservices Australia

In 2004-2005, Airservices Australia was required to prepare two RISs at the decision making stage and one RIS at the tabling stage for proposals introduced via legislative instruments. Only one adequate RIS was prepared for the decision making stage. It was not required to be tabled.

Significant issues

Airservices Australia was concerned that an inadequate analysis of the National Airspace System Stage 2b (NAS 2b) had been conducted prior to the policy being implemented, resulting in unacceptably high risk levels in certain types of airspace. In 2004-05, it conducted a review of its airspace classification decisions in NAS 2b which recommended methods of reducing these risks. A RIS was prepared and assessed as adequate at the decision-making stage. A RIS was not required at the tabling stage.

A.10 Treasury

Within the Treasury portfolio, the Department of the Treasury (the Treasury), the Australian Accounting Standards Board (AASB), the Australian Competition and Consumer Commission (ACCC), the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) were responsible for regulations during 2004-05 for which RISs were required. The Department was required to prepare RISs for both tax and non-tax proposals. Tax and non-tax proposals are reported separately as tax RISs are subject to different requirements, by taking the policy decision as given and focusing on implementation options.

Department of the Treasury (non-tax proposals)

In 2004-05, the Treasury was required to prepare eight RISs for non-tax proposals at the decision-making stage and six for the tabling stage (there is no formal tabling requirement for non-disallowable instruments). For the decision-making stage, five RISs were prepared, of which only three were assessed as adequate against the Government's requirements. For the tabling stage, of five RISs prepared, four were assessed to be adequate.

Table A.7 **Treasury (non-tax): RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Bills	0/1	0/1	1/1	1/1
Disallowable instruments [a]	2/2	1/2	2/2	1/2
Legislative instruments [b]	2/3	2/3	2/3	2/3
Non-disallowable instruments [a]	1/2	0/2	n/a	n/a
Total	**5/8**	**3/8**	**5/6**	**4/6**
Percentage	*63%*	*38%*	*83%*	*67%*

n/a – Not applicable. [a] Applies to instruments made during July to December 2004. [b] Applies to instruments made from 1 January 2005, when the *Legislative Instruments Act 2003* entered into effect.

Source: ORR estimates.

Significant issues

In 2004-05, significant issues included the review of health warnings on tobacco products, which was introduced in the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004. The review, instigated by the Health and Ageing portfolio and taken over by the Treasury, proposed new graphic health warnings for cigarette packets and other upgrades of current tobacco product warnings. The proposals were likely to generate significant costs and benefits. The RIS did not adequately incorporate a cost-benefit analysis, or provide a balanced assessment of the alternatives, and was assessed as inadequate at both the decision-making and tabling stages.

Department of the Treasury (tax proposals)

Tax proposals are subject to separate RIS requirements. These requirements take the policy as given and focus on identifying administrative options for implementation that maximise effectiveness and minimise compliance burdens. In 2004-05, the Treasury was required to prepare nine RISs for tax proposals at the decision-making stage and the tabling stage. For the decision-making stage, six RISs were prepared and assessed as adequate. Nine RISs were assessed as adequate at the tabling stage.

Table A.8 **Treasury (tax): RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*Prepared*	*adequate*	*prepared*	*adequate*
Bills	6/8	6/8	8/8	8/8
Disallowable instruments	0/1	0/1	1/1	1/1
Total	**6/9**	**6/9**	**9/9**	**9/9**
Percentage	*67%*	*67%*	*100%*	*100%*

Source: ORR estimates.

Australian Accounting Standards Board

In 2004-05, the Australian Accounting Standards Board was required to prepare RISs for three legislative instruments. Two RISs were prepared, both of which were assessed as adequate by the ORR at the decision making and tabling stages.

Australian Competition and Consumer Commission

In 2004-05, the Australian Competition and Consumer Commission was required to prepare five RISs. One RIS for a non-disallowable instrument was assessed as inadequate at the decision-making stage. One RIS was subsequently tabled.

Table A.9 **ACCC: RIS compliance by type of regulation, 2004-05**

	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	4/4	3/4	n/a	n/a
Total	**5/5**	**4/5**	**1/1**	**1/1**
Percentage	*100%*	*80%*	*100%*	*100%*

n/a – Not applicable.

Source: ORR estimates.

Australian Prudential Regulation Authority

The Australian Prudential Regulation Authority was fully compliant with the Australian Government's RIS requirements for proposals finalised in 2004-05. APRA prepared six RISs, each of which was assessed as adequate for the decision-making stage and the publication/tabling stage.

Table A.10 **APRA: RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*Prepared*	*adequate*	*prepared*	*adequate*
Disallowable instruments [a]	3/3	3/3	3/3	3/3
Legislative instruments [b]	2/2	2/2	2/2	2/2
Non-disallowable instruments [a c]	1/1	1/1	n/a	n/a
Total	**6/6**	**6/6**	**5/5**	**5/5**
Percentage	*100%*	*100%*	*100%*	*100%*

n/a – Not applicable. [a] Applies to instruments made during July to December 2004. [b] Applies to instruments made from 1 January 2005, when the *Legislative Instruments Act 2003* entered into effect. [c] 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

In 2004-05, the Australian Securities and Investments Commission (ASIC) was assessed to be fully compliant with the Australian Government's RIS requirements. ASIC finalised nine regulatory proposals for which RISs were required to be prepared at the decision-making stage, all of which were assessed as adequate. Until recently, there was no formal tabling requirement for non-disallowable instruments and quasi-regulation and ASIC has been making their RISs available to the public on request. With the application of the *Legislative Instruments Act 2003* on 1 January 2005, the relevant ASIC instruments are now subject to a formal tabling requirement for legislative instruments. An adequate RIS was prepared for the one proposal required to be tabled and the RIS was published on the ASIC website.

Table A.11 **ASIC: RIS compliance by type of regulation, 2004-05**

	RIS for decision		*RIS for tabling*	
Regulatory proposals introduced via	*prepared*	*adequate*	*prepared*	*adequate*
Legislative instruments	1/1	1/1	1/1	1/1
Non-disallowable instruments	2/2	2/2	n/a	n/a
Quasi-regulations [a]	6/6	6/6	n/a	n/a
Total	**9/9**	**9/9**	**1/1**	**1/1**
Percentage	*100*	*100*	*100*	*100*

n/a – Not applicable. [a] Mostly refers to ASIC Policy Statements – these may be implemented by way of Class Orders, which are legislative instruments under the *Legislative Instruments Act 2003.* Prior to 1 January 2005 they were regarded as non-disallowable instruments.

Source: ORR estimates.

A.11 Joint responsibility for proposals

In 2004-05, two RISs were required at the decision-making stage, for two proposals involving joint responsibility.

Attorney-General's Department and Department of Communications, Information Technology and the Arts

The Attorney-General's Department and the Department of Communications, Information Technology and the Arts were fully compliant with the Government's RIS requirements for a proposal to grant directors a right to share, as copyright owners, in remuneration for the retransmission of films included in free-to-air broadcasts. A RIS was prepared and assessed as adequate at the decision-making stage. The RIS was tabled with the Copyright Amendment (Film Directors' Rights) Bill 2005.

Department of Transport and Regional Services and Department of the Prime Minister and Cabinet

The Department of Transport and Regional Services and the Department of the Prime Minister and Cabinet did not prepare a RIS at the decision-making stage for a proposal to extend security arrangements for shipping to the offshore oil and gas industry. (The Department of Transport and Regional Services prepared a RIS at the tabling stage that was assessed as adequate.)

B Adequacy of published RISs

This appendix provides the ORR's adequacy assessment, under the Australian Government's RIS requirements, for the 66 RISs that were required at the tabling stage in 2004-05.

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 the adequacy standard for RISs has been progressively increased each year since the new requirements were introduced in 1997-98, as officials have become more familiar and experienced with the analytical approach required.

The following tables record the ORR's assessment of RISs required for proposals introduced via Bills, delegated instruments (includes disallowable instruments tabled before 1 January 2005 and legislative instruments tabled after 1 January 2005), and treaties under the Government's RIS requirements. The Bills, delegated instruments and treaties are also documented and described (as necessary).

The tables do not include the ORR's assessment of RISs for non-legislative 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 2004-05 was 75 per cent (3/4) and 88 per cent (7/8) respectively. The tables also do not include the ORR's assessment of RISs that have been finalised in 2004-05, 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 (Transition Care and Assets Testing) Bill 2005				
Legislation to transfer from aged care service providers to Centrelink and the Department of Veterans' Affairs the assessment of potential residents' assets	n/a	n/a	Yes	Yes
Copyright Amendment (Film Directors' Rights) Bill 2005				
Grant directors a right to share, as copyright owners, in remuneration for the retransmission of films included in free-to-air broadcasts	Yes	Yes	Yes	Yes
Fisheries Legislation Amendment (International Obligations and Other Matters) Bill 2005				
Fisheries Management Act 1991 – new approach to allocating access rights to new fisheries resources	Yes	Yes	Yes	Yes
Maritime Transport Security Amendment Bill 2005				
Extend security arrangements for shipping to the offshore oil and gas industry	No	No	Yes	Yes
Medical Indemnity (Competitive Advantage Payment) Bill 2005 & Medical Indemnity Legislation Amendment (Competitive Neutrality) Bill 2005				
Government response to review of competitive neutrality issues in the medical indemnity market	Yes	Yes	Yes	Yes
Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Bill 2005				
Provide intellectual property protection for the insignia of the Melbourne Commonwealth Games	Yes	Yes	Yes	Yes
National Health Amendment (Prostheses) Bill 2004				
Sets out new arrangements for the payment of private health insurance benefits for prostheses	Yes	Yes	Yes	Yes
New International Tax Arrangements (Foreign-owned Branches and Other Measures) Bill 2005				
New taxation arrangements for dividends paid by foreign owned branches	Yes	Yes	Yes	Yes
Tax Laws Amendment (2004 Measures No. 6) Bill 2004				
Extension of the water facilities and landcare tax concessions to irrigation corporations who are in the business of supplying water to primary producers	Yes	Yes	Yes	Yes

Title of Bill	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate

Tax Laws Amendment (2004 Measures No. 6) Bill 2004 (continued)				
Amendment to allow any insolvency practitioner to declare shares and other securities in a company to be worthless for CGT purposes (	No	No	Yes	Yes
Tax Laws Amendment (2004 Measures No. 7) Bill 2004				
Employee Share Ownership – Taxation rollover relief for certain Employee Share Scheme holdings	Yes	Yes	Yes	Yes
25 Per Cent 'Entrepreneurs' Tax Discount	Yes	Yes	Yes	Yes
Petroleum Resource Rent Tax offshore petroleum exploration incentive for high risk frontier areas	No	No	Yes	Yes
Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005 & Shortfall Interest Charge (Imposition) Bill 2005				
Review of Self Assessment: General Interest Charge and penalties amendments	Yes	Yes	Yes	Yes
Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004				
GST transition amendment for treatment of pre-existing non-reviewable long-term contracts with input-taxed recipients	Yes	Yes	Yes	Yes
Tax Laws Amendment (Superannuation Reporting) Bill 2004				
Removal of quarterly Superannuation Guarantee reporting requirement	No	No	Yes	Yes
Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Bill 2005				
Provide consistent regulation of the installation of submarine telecommunications cables in Commonwealth-controlled waters and protection for submarine cables of national significance	Yes	Yes	Yes	Yes
Telecommunications (Consumer Protection and Service Standards) Amendment (National Relay Service) Bill 2005				
Allow the National Relay Service to be provided by more than one person and under more than one contract with the Commonwealth	Yes	Yes	Yes	Yes

n/a – Not applicable. **a** Copies of Explanatory Memoranda (which include RISs) for Bills can be found at www.comlaw.gov.au

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

Title of Delegated instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
1900-1920 MHZ and 2010-2025 MHZ Bands Frequency Band Plan 2004				
To facilitate the deployment of Broadband Wireless Services in the 1900-1920 MHz and 2010-2025 MHz Bands	Yes	Yes	Yes	Yes
A New Tax System (Goods and Services Tax) Amendment Regulations 2004 (No. 1)				
Amendment to the GST Regulations to change GST treatment of barter trade exchange schemes from input taxed to taxable	Yes	No	Yes	Yes
AASB 6 Exploration for and Evaluation of Mineral Resources				
Accounting standards relating to the exploration for and evaluation of mineral resources	Yes	Yes	Yes	Yes
AASB 119 Employment Benefits				
Accounting standards re: employee benefits	Yes	Yes	Yes	Yes
ASIC Class Order [CO 05/26] Relief for placements and rights issues of interests in registered managed investment schemes				
Replacement ASIC class order for managed investment schemes; determining issue price of scheme interests	Yes	Yes	Yes	Yes
Australian Equivalents to International Financial Reporting Standards				
Adoption of Australian equivalents to IASB International Financial Reporting Standards	No	No	No	No
Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2004 (No. 1)				
Improve the application and approval processes for live-stock export licences and enable government to set and assess standards in relation to live-stock exports	Yes	Yes	Yes	Yes
Aviation Transport Security Regulations 2005				
Introduce safeguards against unlawful interference with aviation	No	No	Yes	Yes
Banking (Prudential Standards) Determination No. 1 of 2005				
New APRA prudential standard on Business Continuity Management (BCM) for Authorised Deposit-taking Institutions (ADIs)	Yes	Yes	Yes	Yes
Bankruptcy Amendment Regulations 2004 (No.1)				
Prescribe performance standards for trustees' conduct of personal insolvency administrations	Yes	Yes	Yes	Yes

Title of Delegated instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2004 (No. 1)				
Amendments to allow AFMA to change fishing season dates and increase minimum size limit of scallops to 90mm	Yes	Yes	Yes	Yes
Broadcasting Services (Events) Notice No. 1 of 2004 (Amendment No. 1 of 2005)				
Addition of FIFA World Cup 2010 to the Broadcasting Anti-siphoning List	Yes	Yes	Yes	No
Corporations Amendment Regulations 2005 (No. 1)				
Amend the FSRA requirements relating to disclosure of fees and other costs to mandate the form of disclosure	No	No	Yes	Yes
Corporations Amendment Regulations 2005 (No. 2)				
Split from the National Guarantee Fund (NGF) the current clearing support functions and limit the NGF to investor protection	Yes	Yes	Yes	No
Determination of Fishing Capacity No NPFD 02				
Sets fishing gear capacities in the Northern Prawn Fishery	Yes	Yes	Yes	Yes
Disability Standards for Eduction 2005				
Standards to make more explicit the obligations of education and training service providers under the Disability Discrimination Act 1992 and the rights of people with disabilities in relation to education and training	Yes	Yes	Yes	Yes
Determination (No. PB 14 of 2004) under sn 99L(1) of the National Health Act 1953				
Prevent pharmacies located in or adjacent to supermarkets from being approved to supply PBS medicines	No	No	No	No
Export Control (Animals) Order 2004				
Impose specified conditions and restrictions on the export of live animals and animal reproductive material	Yes	Yes	Yes	Yes
Financial Sector (Collection of Data) Determination No. 2 of 2004 – Reporting Standards for Providers of Medical Indemnity Cover				
APRA reporting standards for Medical Defence Organisations (MDOs)	Yes	Yes	Yes	Yes

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Table B.2 **(continued)**

Title of Delegated instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Financial Sector (Collection of Data) Determination No. 3 of 2004 – Reporting Standards for General Insurers, and Financial Sector (Collection of Data) Determination No. 4 of 2004 – Reporting Standards for Lloyd's of London				
APRA reporting standard and determination for the collection and publication of policy and claims data for public liability and professional indemnity insurance	Yes	Yes	Yes	Yes
Financial Sector (Collection of Data) Determination No. 7 of 2004 – Variation of Reporting Standards Applying to Trustees of Superannuation Entities				
Amendment of the APRA reporting standards for superannuation entities	Yes	Yes	Yes	Yes
Fuel Quality Standards Amendment Determination 2004 No. 1				
Sets fuel quality and vehicle emission standards to apply from 2006	Yes	Yes	Yes	Yes
Game, Poultry and Rabbit Meat Amendment Orders 2005 (No. 1)				
Amendments to meat export certification arrangements for game, poultry and rabbit meat	Yes	Yes	Yes	Yes
Instrument Exercising Air Services Regulations – 1995 (AERU-05-01)				
Changes to airspace around Jandakot airport	No	No	No	No
Insurance (Prudential Standards) Determination No. 1 of 2005				
New APRA prudential standard on Business Continuity Management (BCM) for general insurers	Yes	Yes	Yes	Yes
Motor Vehicle Standards Amendment Regulations 2005 (No. 1)				
Prescribe new arrangements for the importation of vehicles 15 or more years old	Yes	Yes	Yes	Yes
Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004				
Moving from existing prescriptive Directions to objective based regulations	n/a	n/a	Yes	Yes
Quarantine (Christmas Island) Proclamation 2004 & Quarantine (Cocos Islands) Proclamation 2004				
Introduce new quarantine regimes for Christmas and Cocos (Keeling) Islands	Yes	Yes	Yes	Yes
Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2005 (No. 1)				
Impose rollout obligations for new apparatus licensees in the 1900-1920 MHz and 2010-2025 MHz Bands	Yes	Yes	Yes	Yes

Table B.2 **(continued)**

Title of Delegated instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	Adequate
Radiocommunications (Short Range Devices) Standard 2004, Radiocommunications (UHF CB Radio Equipment) Standard 2004, Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2004, Radiocommunications Devices (Compliance Labelling) Amendment Notice 2004 (No. 1)				
Specifies revised standards for short range devices, radiotelephone transmitters, receivers that operate on one or more maritime mobile service VHF frequencies and UHF CB radio equipment	Yes	Yes	Yes	Yes
Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2005				
Permit the re-allocation of spectrum in the 2010-2025 MHz band for spectrum licensing of Broadband Wireless Access (BWA) services in metropolitan and regional Australia	Yes	Yes	Yes	Yes
Radiocommunications (Transmitter Licence Tax) Amendment Determination 2005 (No. 1) and related instruments				
Stage II of proposed fee increases for fixed service licences in spectrum below 960 MHz	Yes	Yes	Yes	Yes
Southern Bluefin Tuna Fishery Management Plan Amendment 2004 (No. SBT 05)				
Amendments to Southern Bluefin Tuna Fishery Management Plan	Yes	Yes	Yes	Yes
Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 2) and Retirement Savings Account Amendment Regulations 2005 (No. 1)				
Allow benefits to be paid in a specified form to retirement savings account holders who have attained their preservation age	Yes	Yes	Yes	Yes
Telecommunications Numbering Plan Variation 2004 (No. 8)				
Specifies a reduction in the unit size of geographic numbers allocated in metropolitan areas and introduces a monitoring and reporting regime for Protection and Watch areas	Yes	Yes	Yes	Yes
Telecommunications Numbering Plan Variation 2004 (No. 9)				
Provides for the creation of new standard zone units	Yes	Yes	Yes	Yes
Telecommunications Numbering Plan Variation 2005 (No. 1)				
Introduces new prefixes in 13 areas across Australia	Yes	Yes	Yes	Yes

(continued next page)

Table B.2 **(continued)**

Title of Delegated instrument	*RIS for decision*		*RIS for tabling*	
Description of regulatory proposal	prepared	adequate	prepared	adequate
Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No. 1)				
Restricts adult content on mobile premium services (19) or walled garden mobile portals*	Yes	Yes	Yes	Yes
Telecommunications Service Provider (Premium Services) Determination 2004 (No. 2)				
Specifies the rules that apply to carriage service providers in relation to the supply of specified carriage services and/or specified content services	Yes	Yes	Yes	Yes
Telecommunications (Service Provider – Identity Checks for Pre-paid Public Mobile Telecommunications Services) Amendment Determination 2004 (No. 2)				
Apply identity checks to pre-paid mobile telecommunications services provided to end users free of charge	Yes	Yes	Yes	Yes
Therapeutic Goods Order (TGO) No. 65 – Child Resistant Packaging for Therapeutic Goods				
Broadens the scope of child-resistant packaging (CRP) requirements for medicines but allows for alternatives to achieve compliance	Yes	Yes	Yes	No
Trade Practices (Consumer Product Safety Standards) Amendment Regulations 2004 (No. 1)				
Revises elastic luggage strap safety regulations	Yes	Yes	Yes	Yes
Trade Practices (Consumer Product Safety Standard) (Baby Bath Aids) Regulations 2005				
Introduces a mandatory consumer product safety standard on baby bathing aids	Yes	Yes	Yes	Yes
Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004				
Revises health warnings on tobacco products	No	No	No	No
Workplace Relations Amendment Regulations 2004 (No. 2)				
Prescribe the requirements for keeping and inspection of records for employees covered by Schedule 1A to the Workplace Relations Act 1996 and contract outworkers	Yes	Yes	Yes	Yes

n/a – Not applicable. **a** Copies of explanatory material (which include RISs) can be found at www.comlaw.gov.au.

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

Title of Treaty *Stages*	RIS prepared	RIS adequate
Australia-Canada Mutual Recognition Agreement on Medicines Good Manufacturing Practice (GMP)		
Entry into negotiations	No	No
Before signature	Yes	Yes
Ratification	Yes	Yes
Beijing Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Beijing in November 1999		
Entry into negotiations	No	No
Before signature	n/a	n/a
Ratification	Yes	Yes
Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999)		
Entry into negotiations	n/a	n/a
Before signature	Yes	Yes
Ratification	Yes	Yes

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 trends

This appendix contains the Office of Regulation Review's fifth 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 COAG's *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. The ORR's report addresses the obligation under COAG's *Agreement to Implement the National Competition Policy and Related Reforms* to advise the NCC on RIS compliance by these decision-making bodies.

The ORR's fifth report covers the period 1 April 2004 to 31 March 2005. The report concludes with an assessment of trends in RIS compliance for all proposals covered by the ORR's five reports to the NCC.

C.1 Background to the Office of Regulation Review's report

The COAG requirements

In April 1995, the Council of Australian Governments (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 for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (COAG 2004a as amended). These aim to improve the quality of regulation, including through the adoption of good consultation processes as regulation is developed.

The major element of the assessment process is the preparation of Regulatory Impact Statements (RISs). A RIS documents the policy development process, 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 should be prepared for proposals having a national dimension which, when implemented by jurisdictions, would result in regulatory impacts.

Decisions covered by the COAG requirements

The application of the COAG *Principles and Guidelines* is wide in scope. They cover regulatory decisions that:

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

COAG 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 2004a as amended, p. 2)

Accordingly, COAG's requirements cover agreements on standards and measures of a quasi-regulatory nature — such as endorsement of industry codes of conduct — as well as agreements on national regulatory approaches implemented by legislation, either at the Australian Government or State/Territory level or both.

While there are some 40 Ministerial Councils and a small number of national standard-setting bodies (NSSBs), only around one-third of these make regulatory decisions that require a COAG RIS in any reporting period. This reflects the periodic nature of decision-making processes for most Ministerial Councils and NSSBs, and the fact that some decision-making bodies rarely make decisions of a regulatory or quasi-regulatory nature.

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.

COAG has directed the ORR to provide independent advice on regulatory best practice processes. As well as advising on the need for a RIS, the ORR must assess whether RISs meet minimum adequacy standards mandated by COAG, given the significance of the regulatory issues under consideration. The ORR bases its assessments on information provided by Ministerial Councils and NSSBs and on information included in each RIS. In undertaking this role, the ORR does not verify the underlying data or methodology. Nor does the ORR endorse or support

particular regulatory options or outcomes. It is the Ministerial Council and NSSB preparing the RIS, not the ORR, which is responsible for the content of RISs.

The ORR assesses RISs at two stages: before they are released for community 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.

In addition, the ORR is required, under COAG's *Agreement to Implement the National Competition Policy and Related Reforms* (NCC 1998), 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 report covers the period 1 April 2004 – 31 March 2005, and is the fifth such report by the ORR to the NCC.

C.2 Recent developments in COAG's requirements for RISs

Changes to the Principles and Guidelines

At its meeting on 25 June 2004, COAG decided to make a number of changes to the *Principles and Guidelines* and also to the *Broad Protocols for the Operation of Ministerial Councils,* which govern the conduct and reporting mechanisms of Ministerial Councils (COAG 2004b). These changes followed an evaluation of the implementation of the *Broad Protocols and General Principles for the Operation of Ministerial Councils*.

- The changes aim to enhance the application of the principles of good regulatory practice by COAG, Ministerial Councils, intergovernmental standard-setting bodies and bodies established by government to deal with national regulatory issues and problems.[1]

[1] The changes were listed in the ORR's fifth report to the NCC and are also set out in Section C.9, Appendix C of *Regulation and its Review 2003-04*.

Impact of the changes to COAG's RIS requirements

A number of the changes clarify existing ORR processes and methodology which have been applied to COAG RISs over the last few years. These changes will assist with the application of the RIS requirements. More fundamentally, COAG's re-endorsement and strengthening of the *Principles and Guidelines* has increased awareness of the RIS requirements and the importance of compliance with them.

A significant change to the *Principles and Guidelines* is the requirement for the ORR to confer with the Regulatory Impact Analysis Unit (RIAU) in New Zealand on draft consultation RISs. This applies where there are New Zealand impacts and issues, such as those arising from a proposal to apply a standard in both Australia and New Zealand, or where a proposal in Australia would affect trans-Tasman trade. A key aim of this new requirement is to ensure that the analysis in the consultation RIS reflects potential impacts in both Australia and New Zealand. These changes will also encourage better and earlier dialogue between regulators in each country.

To support the application of this new requirement, the ORR and the RIAU have established a Protocol between the two offices (PC & MED 2004). The Protocol, agreed in September 2004, sets out the operational arrangements for interaction between the ORR and the RIAU in order to meet COAG's requirement. These arrangements include the following:

- identification by the ORR, in consultation with the RIAU as necessary, of any trans-Tasman issues for particular regulatory proposals;
- where a proposal raises trans-Tasman issues, the ORR provides the draft consultation RIS to the RIAU for comments, in particular on the trans-Tasman impacts of the particular regulatory proposal; and
- the ORR advises the Ministerial Council (or standard-setting body) of its assessment of the draft consultation RIS, incorporating any comments from the RIAU.

At the time of reporting to the NCC, the ORR had sent five RISs to the RIAU for comment. The ORR had also discussed with the RIAU the potential trans-Tasman issues and impacts of a number of other ongoing proposals. As none of the five matters had reached the decision-making stage by 31 March 2005, they are not included in this report. For all five matters, the relevant New Zealand Minister is a member of the final decision-making body.

A copy of the Protocol has been provided to the secretariats of all Ministerial Councils and standard-setting bodies, and is publicly available. It is intended that this Protocol will evolve over time to ensure the continued 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 improving the operation 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. The changes are expected to result in Ministerial Council agendas having a greater focus on strategic issues, improved reporting and information flows between Ministerial Councils on key issues and outcomes, and regular reviews by Ministerial Councils of their own functions.

C.3 Reporting on compliance at consultation and at decision

The focus and scope of the ORR's report

This report includes an assessment by the ORR of compliance at each of the community consultation and decision-making stages of the policy development process. An assessment of compliance at consultation is included where the final decision was made between 1 April 2004 and 31 March 2005, even where such consultation occurred before 1 April 2004.

Prior to 25 June 2004, in cases where a RIS had not been prepared, the ORR had in some cases undertaken an ex-post assessment of the consultation or decision documentation against COAG's RIS requirements. This approach was adopted as a transitional measure to cover cases where best practice may have been substantively followed, despite a lack of awareness of COAG's RIS requirements.

COAG's June 2004 decision limited the application of ex-post assessment to cases of genuine emergency and has effectively ruled out ex-post assessments for other matters. Therefore, for this reporting period, in the absence of a RIS the ORR has only assessed the relevant documentation ex-post where the consultation or decision occurred before 25 June 2004. This is a transitional reporting arrangement - future ORR reports will only contain ex-post assessments for cases of genuine emergency.

Matters for which COAG's requirements were fully met

Table C.1 documents the 19 decisions made during the period 1 April 2004 – 31 March 2005 where the COAG RIS requirements applied and were met at both the consultation stage and the decision-making stage. The table includes a brief description of the regulatory measure, the decision-making body and the date of the final decision.

Matters for which COAG's requirements were partially met

During the period 1 April 2004 – 25 June 2004, there was one matter for which COAG's RIS requirements applied and were partially met. This was COAG's decision of 25 June 2004 to endorse the National Water Initiative. A RIS was not prepared at the earlier consultation stage. However, a Discussion Paper was prepared and released by the Senior Officials' Group on Water. The ORR assessed the Discussion Paper, after its release, as substantively following regulatory best practice in line with COAG's requirements. A RIS was prepared at the decision-making stage, and assessed as adequate by the ORR.

Table C.1 **Cases where COAG RIS requirements were met at both the consultation and the decision-making stages**

	Measure	*Body responsible*	*Date of decision*
1.	National Health Assessment Guidelines for Rail Safety Workers	Australian Transport Council	1 April 2004
2.	Quality of active constituents used in Agricultural Chemical Products	Australian Pesticides and Veterinary Medicines Authority	1 May 2004
3.	Building Codes of Australia 2004 Volumes 1 and 2: reform of the sound insulation provisions	Australian Building Codes Board	1 May 2004
4.	Code of Practice and Safety Guide for Portable Density/Moisture Gauges Containing Radioactive Sources	Australian Radiation Protection and Nuclear Safety Agency	18 May 2004
5.	Australian Model Code of Practice for the Welfare of Animals – Cattle	Primary Industries Ministerial Council	19 May 2004
6.	Introduction of Minimum Energy Performance Standards for single phase refrigerated air conditioners and increasing the stringency of requirements for single-phase and three-phase air conditioners	Ministerial Council on Energy	31 May 2004
7.	Introduction of Revised Minimum Energy Performance Standards for Electric Motors	Ministerial Council on Energy	31 May 2004
8.	Introduction of Minimum Energy Performance Standards for Linear Fluorescent Lamps	Ministerial Council on Energy	31 May 2004

(continued next page)

Table C.1 **(continued)**

	Measure	*Body responsible*	*Date of decision*
9.	Adverse Experience Reporting Program for Agricultural Chemical Products	Australian Pesticides and Veterinary Medicines Authority	1 July 2004
10.	Introduction of Minimum Energy Performance Standards for Commercial Refrigeration	Ministerial Council on Energy	12 July 2004
11.	National Standard for Recreational Vessels – Safety Equipment	Australian Transport Council	23 July 2004
12.	National Directory for Radiation Protection, Edition 1.0	Australian Health Ministers' Conference	29 July 2004
13.	Implementation Plan for the National Mine Safety Framework	Ministerial Council on Mineral and Petroleum Resources	29 July 2004
14.	Australian Design Rule ADR 18/03 – Standards for Instrumentation	Australian Transport Council	1 August 2004
15.	Amendments to the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment: Exposure Standard for Crystalline Silica	National Occupational Health and Safety Commission	1 October 2004
16.	Approved Criteria for Classifying Hazardous Substances	National Occupational Health and Safety Commission	1 October 2004
17.	National Standard for Commercial Vessels – Part E: Operational	Australian Transport Council	19 November 2004
18.	Ensuring the Enduring Good Manufacturing Practice Compliance of Overseas Veterinary Manufacturers	Australian Pesticides and Veterinary Medicines Authority	17 February 2005
19.	Australian Design Rules — Post 2006 Light and Heavy Vehicle Emission Standards	Australian Transport Council	1 March 2005

Source: ORR data and information provided by Ministerial Councils and NSSBs.

Matters for which COAG's requirements were not met

Table C.2 indicates that, during the period 1 April 2004 — 31 March 2005, the COAG RIS requirements were not met at the consultation stage and/or the decision stage in four cases.

Commentary on the individual decisions, including the reasons why the matters were considered to be non-compliant, is provided below the table. In all of these cases, the decision-making body appears to have been aware of COAG's requirements and either did not contact the ORR at the appropriate time or did not follow the advice provided by the ORR.

Table C.2 **Cases where COAG RIS requirements were not met at the consultation and/or the decision-making stage**

	Measure	*Body responsible*	*Date of decision*	*Compliance consultation*	*Compliance decision*
1.	Requirement for pre-market assessment of biomarker maintenance claims on food	Australia and New Zealand Food Regulation Ministerial Council	28 May 2004	No	No
2.	National regulation of ammonium nitrate	COAG	25 June 2004	No	Yes
3.	Amendments to the regulation of firearm use by the security industry	Australasian Police Ministers' Council	30 June 2004	No	No
4.	National Plumbing Code of Australia	National Plumbing Regulators Forum	December 2004	No	No

Source: ORR data and information provided by Ministerial Councils and NSSBs.

Commentary on non-compliant matters

Requirement for pre-market assessment of biomarker maintenance claims on food

On 28 May 2004, the Australia and New Zealand Food Regulation Ministerial Council decided that biomarker maintenance claims on food were to be regulated in the same way as for biomarker enhancement claims[2]; that is, manufacturers would be required to apply to Food Standards Australia New Zealand (FSANZ) for approval of a biomarker maintenance claim prior to releasing the product onto the market. This led to changes to the Council's Policy Guideline on Nutrition, Health and Related Claims. This Guideline is taken into consideration by FSANZ in progressing the development of a standard for nutrition, health and related claims on food.

The ORR advised the secretariat that a COAG RIS may be required and requested relevant documentation on the proposal going to Ministers to confirm this advice.

[2] A biomarker is one indicator of a person's risk of developing a serious disease. For example, blood cholesterol is a biomarker for the risk of heart disease (Australia and New Zealand Food Regulation Ministerial Council, 2004, p 5) An example of a biomarker maintenance claim is 'This food is low in saturated fat which, as part of a diet low in saturated fat, may help to maintain a healthy blood cholesterol level' (Food Standards Australia New Zealand, 2004, p. 40).

The documentation was not provided to the ORR either before or after the Ministers' decision. Nor was a RIS prepared for consultation on the proposal or for the decision by Ministers.

National regulation of ammonium nitrate

On 25 June 2004, COAG agreed to regulate access to ammonium nitrate on a national basis. This followed a review of the regulation, reporting and security around the storage, sale and handling of hazardous materials relevant to counter-terrorism. COAG's agreement will result in the establishment in each jurisdiction of a licensing regime for the use, manufacture, storage, transport, supply, import and export of ammonium nitrate. The regime will ensure that ammonium nitrate is only accessible to persons who have demonstrated a legitimate need for the product, are not a security concern and who will store and handle the product safely and securely.

A COAG RIS was not prepared for consultation on the proposal. However a RIS, assessed as adequate by the ORR, was prepared for the decision-making stage.

Amendments to the regulation of firearm use by the security industry

On 30 June 2004, the Australasian Police Ministers' Council (APMC) agreed to further regulate the use of firearms in the private security industry. While preliminary contact was made with the ORR, the APMC did not prepare a RIS at either the consultation or the decision-making stage.

Since this decision was made, the Council secretariat has met with the ORR to agree a range of strategies that will lead to the integration of the COAG RIS requirements and the Council's operating practices.

National Plumbing Code of Australia

In December 2004, the National Plumbing Regulators Forum (NPRF) agreed to the National Plumbing Code of Australia. The Code sets out technical provisions for plumbing and drainage installations in Australia. It also sets out requirements for the use of plumbing materials and products and the process for certification and authorisation of materials and products that require statutory authorisation.

The adoption of the Code by a State or Territory government could be subject to the variation or deletion of some of its provisions, or the addition of extra provisions. Any provision of the Code may be overridden by, or subject to, State and Territory legislation. Therefore, adoption of the Code is essentially voluntary for each State and Territory. However, there is a reasonable expectation that its promotion by the

NPRF on behalf of each State and Territory government could be interpreted as requiring full or partial compliance. As such, the ORR assessed that the Code was quasi-regulatory and required a RIS.

The NPRF prepared a draft RIS for consultation. The ORR assessed this draft as inadequate because it did not meet the COAG requirements and provided comments to address this inadequacy. However, the RIS was not developed further before public release. Nor was a RIS prepared for the final decision-making stage.

C.4 Compliance with COAG's RIS requirements in the year to 31 March 2005

At the consultation stage

While COAG requires a RIS at both consultation and at decision making, the RIS requirements 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 and robust impact analysis.

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.

An adequate consultation RIS was prepared for 83 per cent of matters. This is slightly above the 82 per cent compliance rate achieved in the previous reporting period.

At the decision-making stage

Of the 24 decisions by Ministerial Councils and national standard-setting bodies reported during the year to 31 March 2005, compliance with COAG's requirements was 88 per cent. This is the same as for the previous reporting period.

For significant regulatory matters

As discussed in earlier ORR reports to the NCC, an important consideration in measuring RIS compliance — and changes in compliance over time — is the degree of significance of the decisions made in each period. The ORR 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 24 regulatory decisions reported here, six were assessed by the ORR as of greater significance according to the above criteria. They are as follows:

- the decision of 1 May 2004 by the Australian Building Codes Board to amend the Building Codes of Australia to introduce construction standards aimed at reducing residential amenity problems caused by the transition of sound between units in multi-unit dwellings. This amendment will impact on owners, builders and tenants of new and renovated units in multi-unit dwellings;
- the decision by the Ministerial Council on Energy on 31 May 2004 to revise Minimum Energy Performance Standards for 3-phase electric motors. This aims to increase energy efficiency and reduce greenhouse gas emissions;
- the further decision by the Ministerial Council on Energy on 12 July 2004 to introduce new performance standards for commercial refrigeration cabinets. This has similar aims to that for the Council's decision on electric motors;
- the decision of 1 October 2004 by the National Occupational Health and Safety Commission to amend the National Exposure Standard for Crystalline Silica in the workplace. The amendment establishes a lower exposure standard for workers exposed to respirable quartz in the workplace. Silica dust is a common by-product of work activity in a range of industries including mining, quarrying, iron and steel foundries, and construction;
- the agreement by COAG, on 25 June 2004, to the National Water Initiative covering a range of measures to achieve greater compatibility across jurisdictions and the adoption of best-practice approaches to water management nationally; and
- on 25 June 2004, COAG also agreed to the national regulation of ammonium nitrate involving the establishment in each jurisdiction of a licensing regime for the use, manufacture, storage, transport, supply, import and export of ammonium nitrate.

The RISs for all but the last decision were compliant with COAG's requirements at both the consultation and decision-making stages and contained a level of analysis commensurate with the significance and impact of the proposal (one of these — the National Water Initiative — had qualified compliance at consultation). For the last decision — national regulation of ammonium nitrate — the COAG requirements were not met at the consultation stage, but were met at the decision-making stage.

In summary, the compliance results for the six matters of 'greater significance' were 83 per cent at consultation and 100 per cent at decision making. While comparisons from year to year are only indicative given the relatively small number of significant matters in each reporting period, the ORR notes that compliance for the current period is significantly higher than the 57 per cent at consultation and 57 per cent at decision making in the previous reporting period.

C. 5 Trends in RIS compliance: 2000-01 to 2004-05

Table C.3 summarises compliance results for all proposals covered by the ORR's five reports to the NCC.

Given the small numbers with which to make comparisons over time, the trends are indicative only. However, broad compliance issues have been identified, as discussed below.

Table C.3 **COAG RIS compliance for regulatory decisions made by Ministerial Councils and NSSBs, 2000-01 to 2004-05** [a]

	2000-01	*2001-02*	*2002-03*	*2003-04*	*2004-05*
Compliance (qualified and full) at the consultation stage	*n/a*	*n/a*	*n/a*	*28/34* ***82%***	*20/24* ***83%***
Compliance (qualified and full) at the decision-making stage	*15/21* ***71%***	*23/24* ***96%***	*24/27* ***89%***	*30/34* ***88%***	*21/24* ***88%***
Compliance (qualified and full) for significant regulatory proposals					
Consultation stage	*n/a*	*n/a*	*n/a*	*4/7* ***57%***	*5/6* ***83%***
Decision-making stage	*5/9* ***56%***	*6/6* ***100%***	*4/6* ***67%***	*4/7* ***57%***	*6/6* ***100%***

n/a – Not available. [a] Data for 2000-01 relate to the period 1 July 2000 to 31 May 2001. For subsequent years, data relate to the period 1 April to 31 March, in line with a change in the reporting period as requested by the NCC. In relation to assessments for 2003-04, matters where RIS requirements were reported as partially met were treated as compliant for purposes of consistency with reporting in previous reporting periods.

Source: ORR data and information provided by Ministerial Councils and NSSBs.

Compliance issues emerging over time

Examining patterns of non-compliance, and also the characteristics of Ministerial Councils and NSSBs that have been fully compliant, can shed some light on RIS compliance issues.

Table C.4 lists in alphabetical order the twelve Councils/NSSBs that have not been fully compliant with COAG's requirements between 2000-01 and 2004-05. The table sets out (on the left hand side) for each decision-making body the number of decisions in each reporting period that have been compliant compared to the total number of decisions requiring a RIS (on the right hand side). For example, a result of 0/1 would illustrate that one RIS was required and that the RIS requirements were not met in this case.

Table C.4 **COAG RIS compliance for Ministerial Councils and NSSBs with one or more non-compliant decisions between 2000-01 and 2004-05**

Council/NSSBs *Compliant/total decisions made*	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
Australasian Police Ministers' Council	-	-	0/1	-	0/1
Australia and New Zealand Food Regulation Ministerial Council [b]	1/3	3/3	4/4	1/2	0/1
Australian Health Ministers' Advisory Council	0/1	-	-	-	-
Australian Transport Council	6/7	7/7	8/8	15/15	5/5
Council of Australian Governments [c]	2/2	-	-	-	2/2
Ministerial Council on Consumer Affairs	0/1	1/1	0/1	-	-
Ministerial Council on the Australian National Training Authority	0/1	-	2/2	-	-
Ministerial Meeting on Insurance Issues	-	-	0/1	1/2	-
National Environment Protection and Heritage Council [d]	-	2/2	-	0/1	-
National Plumbing Regulators' Forum	-	-	-	-	0/1
Standing Committee of Attorneys-General	-	-	-	0/1	-
Standing Committee of Attorneys-General (Censorship)	-	0/1	-	-	-

a Compliant decisions include those reported as partially compliant. **b** On 1 July 2002 this Council replaced the Australia New Zealand Food Standards Council. **c** For one matter covered by the 2004-05 report, COAG was non-compliant at the consultation stage and hence is included in this table. **d** COAG agreed on 8 June 2001 to the creation of the National Environment Protection and Heritage Council, comprising the National Environment Protection Council, the environment protection components of the Australian and New Zealand Environment and Conservation Council and the Heritage Ministers' Meetings.

Source: ORR data and information provided by Ministerial Councils and NSSBs.

Although the numbers are small, table C.4 illustrates that variations in compliance appear not only between Ministerial Councils/NSSBs but also between decisions taken by individual Ministerial Councils/NSSBs over time.

From the ORR's experience with individual decisions of these Ministerial Councils/NSSBs, the main reasons for non-compliance include:

- a poor understanding of COAG's requirements and the broad scope of their application;
- a poor understanding of the regulatory impacts of national decision making;
- a lack of contact with the ORR before consultation takes place on regulatory proposals and also prior to decision making; and
- a lack of follow-up on ORR advice.

More fundamentally, both the patchy nature of compliance by some of these decision-making bodies and the specific reasons for non-compliance tend to suggest that COAG's RIS requirements have not been incorporated into their operating practices.

Table C.5 sets out comparable data for the thirteen Ministerial Councils and NSSBs that have been fully compliant over the period of the five reports.

A number of these bodies make regulatory decisions infrequently (table C.5), yet they have been fully compliant with the COAG requirements.

Further, a number of the decision-making bodies listed in table C.5 have adopted regulatory best practice beyond the formal COAG requirements, by making public the final RIS for decisions. As noted in the ORR's fourth report, these bodies include the Australian Building Codes Board, the National Occupational Health and Safety Commission and the Gene Technology Ministerial Council (PC 2004, page 83). FSANZ also follows this practice. The public release of final RISs prepared for the decision-making stage of the policy development process demonstrates their commitment to regulatory best practice and transparent policy development processes.

Table C.5 **COAG RIS compliance for Ministerial Councils and NSSBs fully compliant with COAG's RIS requirements between 2000-01 and 2004-05**

Council/NSSB *Compliant/total decisions made*	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
Australian Building Codes Board	-	2/2	2/2	1/1	1/1
Australian Health Ministers' Conference	-	-	2/2	1/1	1/1
Australian Pesticides and Veterinary Medicines Authority [a]	-	-	-	-	3/3
Australian Radiation Protection and Nuclear Safety Agency	-	1/1	1/1	-	1/1
Austroads	-	1/1	-	-	-
Food Standards Australia New Zealand	-	-	-	1/1	-
Gene Technology Ministerial Council	-	-	-	1/1	-
Ministerial Council on Energy [b]	2/2	4/4	-	1/1	4/4
Ministerial Council on Mineral and Petroleum Resources [c]	1/1	-	-	-	1/1
National Occupational Health and Safety Commission	-	1/1	-	6/6	2/2
Primary Industries Ministerial Council [d]	1/1	1/1	5/5	2/2	1/1
Tourism Ministers' Council	1/1	-	-	-	-
Workplace Relations Ministers' Council	1/1	-	-	-	-

[a] The Australian Pesticides and Veterinary Medicines Authority was formerly the National Registration Authority. [b] COAG agreed on 8 June 2001 to the creation of a new Ministerial Council on Energy. This subsumed the energy component of the Australian and New Zealand Minerals and Energy Council (ANZMEC). [c] COAG agreed on 8 June 2001 to the creation of a new Ministerial Council on Minerals (subsequently known as the Ministerial Council on Mineral and Petroleum Resources), which comprised the mineral component from ANZMEC. [d] The Primary Industries Ministerial Council was created in 2001, subsuming primary industries policy from the Agricultural and Resource Management Council of Australia and New Zealand and the Ministerial Council on Forestry, Fisheries and Aquaculture.

Source: ORR data and information provided by Ministerial Councils and NSSBs.

Improving compliance with COAG's RIS requirements

COAG's decision in June 2004 to re-endorse and strengthen the *Principles and Guidelines* and to more clearly specify the governance requirements of Ministerial Councils is expected to increase the awareness of Ministers, decision makers and officials with the requirements over time and to improve decision-making processes generally.

The compliance outcome for this period combined with earlier periods suggests a range of strategies is required to improve compliance with COAG's regulatory best practice processes.

With respect to regulatory decision making, where it appears that there are problems in consistently meeting COAG's requirements, the ORR proposes in its next report to identify those Councils and standard-setting bodies where there appear to be systemic issues in achieving compliance with COAG's RIS requirements.

The ORR recognises a need for continued regular contact with secretariats of Ministerial Councils/NSSBs to ensure ongoing awareness of the scope of the COAG RIS requirements, the required level of analysis and the role of the ORR. In addition, the ORR's website will be enhanced to ensure that it remains a reliable and comprehensive source of information on COAG's RIS requirements and the role of the ORR.

Training of officials is another way to maintain awareness of the requirements. In addition to the 50 Ministerial Council and NSSB officials that were trained in the previous reporting period, the ORR provided training to over 100 officials in the current reporting period. The ORR will continue this training effort in the coming period, with a focus on those decision-making bodies where compliance has been uneven or poor.

Finally, the ORR will continue to publicise and encourage the adoption of non-mandatory best practice measures by Ministerial Councils and NSSBs, such as publishing final RISs which were considered by decision makers.

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 which may impose significant costs or benefits on business. The Government's program covered a total of 101 reviews.[1] As at 30 June 2005, approximately 76 per cent of the reviews on the Australian Government's schedule had either been completed or were underway, approximately 14 per cent of the total had been deleted from the schedule, and approximately 9 per cent of 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 2005 *Assessment of Governments' Progress in implementing the National Competition Policy and Related Reforms*. At the time of writing, COAG is undertaking a review of the National Competition Policy. This review, to be completed by the end of this year, will inform its decision about whether, and how, to continue the national economic reform program. In the meantime, the future of the legislation review program is uncertain.

It should be noted that while most of the legislation reviews in the Australian Government's schedule have been completed, clause 5(6) of the CPA provides for legislation on the schedule to be systematically reviewed at least once every ten years. As the schedule was announced in 1996, many pieces of legislation will be due for review once 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.

Table D.1 **Reviews outstanding as at 30 June 2005**

Reviews still to be undertaken	*Department*	*Status as at 30 June 2004*	*Status as at 30 June 2005*
Environment Protection (Nuclear Codes) Act 1978	DHA	Not commenced	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 [a]
Dried Vine Fruits Legislation	DAFF	Not commenced	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 [a]
Defence Act 1903 (Army & Airforce Canteen Services Regulations)	Defence	Not commenced	Not commenced [a]
Native Title Act 1993 & regulations	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*.

Source: Information provided by Australian Government departments and agencies.

Role of the ORR

The ORR provides 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 both 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 a template terms of reference (box D.1) which can be adapted by departments to fit the specific requirements of each review. This template may assist departments and agencies to meet their requirements for the 10-year review of legislation as required under clause 5(6) of the CPA.

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.

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];

(Continued next page)

Box D.1 **(continued)**

(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.

The Future

On 14 April 2005, the Productivity Commission released its inquiry report, *Review of National Competition Policy Reforms*. The report analysed the impact of NCP and related reforms on the Australian economy and community more broadly, and provided recommendations on future reform priorities. Its recommendations focused on areas offering '*…opportunities for significant gains to the Australian economy from removing impediments to efficiency, and enhancing competition, including through a possible further legislation review and reform programme…*' (PC 2005, pp. IV-V).

The report found evidence of substantial economic benefits from the NCP, and recommended that a future legislation review program similar to the current one be implemented. Drawing on some of its findings about the perceived weaknesses of the current program the report recommended that a new reform program be limited to legislation which is likely to provide significant net benefit to the community,

place a greater emphasis on transparency and independence through formal requirements to make reports public, and involve greater consultation requirements and independence of review bodies (PC 2005, pp. 250-255).

The Treasurer stated that as the Commission's report was intended to inform the COAG review of NCP arrangements later in 2005, there would be no formal government response to this report (Costello 2005). The response would instead be the outcome of the COAG review.

E ORR activities and performance

The objective of the work of the Office of Regulation Review (ORR) is to promote regulation-making processes that, from an economy-wide 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 including, where appropriate, the preparation of Regulation Impact Statements (RISs).

E.1 Activities in 2004-05

The activities that the ORR is required by the Government to undertake are set down in its charter (box E1).

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 2004-05, the Australian Government introduced 172 Bills and 2380 disallowable instruments into Parliament. The large number of disallowable instruments introduced relates, in part, to the commencement of the *Legislative Instruments Act 2003* on 1 January 2005.[1]

In the same period, the ORR received 851 new RIS queries (compared with 845 queries in 2003-04). Of these, the ORR advised that RISs were required in 167 cases. Of those proposals reported to have been made or tabled in 2004-05[2], the ORR identified 85 as triggering the Government's RIS requirements at the decision-making stage. It provided comments on the 71 RISs subsequently prepared.

Table E.1 **Australian Government regulatory and RIS activities, 1999-2000 to 2004-05**

	1999-2000	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
	no.	*no.*	*no.*	*no.*	*no.*	*no.*
Regulations introduced						
Bills	159	169	207	174	150	172
Disallowable instruments	1832	1438	1711	1615	1538	2380
Total introduced	**1991**	**1607**	**1918**	**1789**	**1688**	**2552**
RIS workload						
Total number of new RIS queries received by the ORR	826	740	709	861	845	851
- of which, the ORR advised a RIS was required	266	171	175	132	174	167
Proposals finalised in 2004-05 [a]						
RISs required	207	157	145	139	114	85
RISs prepared	180	133	130	120	109	71

[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.

Source: ORR estimates.

1 For example, the Civil Aviation Safety Authority tabled 365 instruments that revoked and remade 11 185 Airworthiness Directives. The Departments of Communications, Information Technology and the Arts, Health and Ageing, and Transport and Regional Services tabled approximately 30 per cent more disallowable instruments in 2004-05 than in 2003-04. The Departments of Education, Science and Training, Environment and Heritage, Industry, Tourism and Resources, and the Treasury tabled almost double the usual number of instruments. This increase did not, however, lead to a significant change in the number of RIS queries received or RISs required, suggesting that the changes were minor or machinery and had little, if any, impact on business.

2 A number of proposals are decided on within a reporting period, but are not introduced into Parliament or made into law within that period.

As shown in table E.1, the number of RIS queries received has been relatively static in the last three years, but there was a decline in the number of proposals finalised in 2004-05 that required a RIS. This suggests that the 9 October 2004 Federal election resulted in fewer significant regulations being made. Furthermore a large proportion of the Australian Government's recent regulatory activity has been focussed on making minor amendments to existing arrangements, rather than in introducing new, or making significant amendments to, existing regulation. Such minor and machinery regulation does not require preparation of a RIS, but nevertheless requires the ORR to carefully consider each proposal and provide advice on whether a RIS is required.

In 2004-05, the ORR also provided formal training on RISs and regulatory best practice to a total of 415 officials from a wide range of departments and agencies. This compares with 437 officials trained in 2003-04. RIS training was provided to 209 Australian Government, 14 State Government and 80 New Zealand Government officials, and to 112 officials assisting Ministerial Councils and national standard-setting bodies.

In addition, in advising Ministerial Councils and national standard-setting bodies on regulatory best practice, the ORR provided advice on 21 RISs which were considered by these decision-making bodies in the twelve months ending 31 March 2005 (compared to 36 RISs in the twelve months ending 31 March 2004). The ORR reported on regulation making by Ministerial Councils and national standard-setting bodies to the National Competition Council (NCC) and to the Committee on Regulatory Reform (CRR), a Senior Officials group reporting to the Council of Australian Governments (COAG) (see appendix C).

In monitoring and contributing to regulatory reform developments more broadly throughout Australia and internationally during 2004-05, the Head of the ORR:

- visited the OECD and UK Cabinet Office to deliver three presentations and discuss a range of regulatory review and reform mechanisms and processes;
- delivered a presentation to the Australian Public Service Commission/Economic Society of Australia Symposium on Cost-Benefit Analysis;
- attended and delivered presentations to the annual meeting of State, Territory and New Zealand regulation review units in Perth, Western Australia, in October 2004; and
- provided input into the Australian Public Service Commission 'Foundation Project' booklet and internet resource.

The ORR also:

- hosted an officer for four weeks from the Regulatory Impact Analysis Unit, Ministry of Economic Development, of the New Zealand Government;

- commented on Department of Treasury guidelines for preparing explanatory material for tax legislation;
- provided advice on regulatory impact analysis training, regulatory performance indicators and the role of the ORR to officials from the Flemish Regional Government in Belgium, the Republic of Korea, Bradford University and Illinois University;
- in conjunction with State and Territory regulation review units, developed a web-forum, for sharing information relating to regulatory review;
- had ongoing discussions with a wide range of business, community and other groups regarding regulation making and the RIS process; and
- liaised on a variety of regulatory issues with the OECD, New Zealand, United Kingdom Cabinet Office and government officials from a range of countries, including Korea and Belgium.

The ORR provides information on its regulatory review activities through *Regulation and its Review*, part of the Productivity Commission's Annual Report suite of publications. *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 2003-04, which was released in November 2004, 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 value of effective and meaningful consultation in achieving high quality regulatory outcomes.

The ORR also provides information to government agencies and the public through a webpage linked to the Productivity Commission's website.

E.2 Performance of the ORR

The ORR aims to ensure that its activities — 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 2003-04, which was released in November 2004, 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 value of effective and meaningful consultation in achieving 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.

In 2004-05, the ORR commenced an ongoing survey of officials preparing RISs to obtain feedback on how departments and agencies view the ORR's work performance and the quality of its service in providing advice on the Government's regulatory best practice requirements. The ORR dispatched 59 evaluation forms and received 27 responses, a response rate of 45 per cent. Fourteen respondents (52 per cent) rated the quality of the ORR's written and oral advice as 'excellent' while seven (26 per cent) rated it as 'good'. Six respondents (22 per cent) considered the ORR's service as 'satisfactory'. Ten respondents offered specific suggestions on how the ORR could improve the quality of its advice, including:

- being more flexible about the RIS requirements;
- having a better appreciation of 'political realities underlying regulatory action';
- not seeking technical and financial information that is not readily available; and
- not providing comments on second or third iterations of a draft RIS, which could have been provided on the first draft.

Table E.2 **Australian Government RIS training evaluation: 2001-02 to 2004-05** [a]

Evaluation	*2001-02*		*2002-03*		*2003-04*		*2004-05*	
	no.	*%*	no.	*%*	no.	*%*	no.	*%*
Total number trained	174		373		355		209	
Responses received	87	*(50)*	250	*(67)*	272	*(77)*	154	*(74)*
Excellent	18	*(21)*	62	*(25)*	52	*(19)*	43	*(28)*
Good	56	(*64)*	170	(*68)*	182	(*67)*	101	(*66)*
Satisfactory	13	*(15)*	19	*(7)*	38	*(14)*	9	*(6)*
Unsatisfactory	0	*(0)*	0	*(0)*	0	*(0)*	1	*(1)*

[a] Does not include officials from State/Territory Governments, the New Zealand Government or officials assisting Ministerial Councils and national standard-setting bodies.

Source: ORR estimates.

As in previous years, the ORR surveyed the 209 Australian Government officials who received training in regulatory best practice in 2004-05 and 154 responses were received — a response rate of 74 per cent. The responses indicate that the ORR training was well received, with 94 per cent rating the training as either 'excellent' or 'good' (table E.2).

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 their adequacy. However, where further redrafting is necessary, additional time may be needed to ensure an adequate standard is achieved. In practice, in 2004-05 the ORR provided formal feedback (comments on the first draft of the RIS) to departments and agencies, on average, 5.3 working days after RISs were received. Moreover, the ORR provided comments on 92 per cent of all (first draft) RISs received within two weeks.

During 2004-05, there were several instances where departments and agencies requested advice on their RISs within a few days and sometimes a few hours, often without prior notice or warning. In some cases, the ORR was not able to meet these urgent requests, as such short timeframes make it difficult to give proper consideration to all the relevant regulatory options and impacts. Such requests may indicate poor planning and development processes for regulation making 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 2004-05.

The ORR has also delivered all other outputs in a timely manner. For example, it prepared a report to the 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 2005, was completed and delivered on time.

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:

- The ORR has sought to improve the quality of regulation making by gradually increasing the standard of analysis required in RISs. However, a significant source of non-compliance continues to be a failure by departments and agencies to prepare RISs when required.
  - While RISs were required for 85 regulatory proposals in 2004-05, only 71 were prepared. Of these, 68 were assessed as adequate at the decision-making stage (80 per cent compliance). This compares to a RIS compliance rate of 92 per cent in 2003-04.
  - Compliance for the 66 proposals that required a RIS at the tabling stage was 89 per cent (down from 95 per cent in 2003-04).
  - For significant regulatory issues, the RIS compliance rate in 2004-05 was 67 per cent (down from 94 per cent in 2003-04).[3]
- Of the 71 proposals for which a RIS was prepared, in 10 cases the preferred option was modified during the policy development process between the first draft of the RIS sighted by the ORR and the final RIS considered by the decision maker. This supports the contention that consultation and transparency, both key elements of the Government's RIS process, are important factors in achieving better regulatory outcomes. It also illustrates the potential for the RIS process to add value to deliberations about regulatory problems and possible solutions.
- RISs tabled in the Parliament with explanatory memoranda and explanatory statements provide 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 people appearing before parliamentary committees have drawn on the content of RISs.
  - In 2004-05, the need for — and content of — RISs were raised in parliamentary discussions on 10 occasions.[4] Most discussion focussed on the analysis contained in the 'impact' and 'consultation' sections of RISs.

[3] It is difficult to compare compliance for significant proposals over time as there were only three significant proposals in 2004-05 compared with 18 in 2003-04.

[4] These included RISs on: water efficiency labelling standards, maritime security identity cards, five tax proposals and three treaties (including the Australia-US Free Trade Agreement and the Australia-Thai Free Trade Agreement).

- State/Territory government officials contacted the ORR on six occasions during 2004-05 to confirm that proposals complied with COAG RIS requirements, before proceeding with legislation in their State/Territory.

Indicators of the usefulness of the ORR's regulation review activities in promoting understanding of regulatory best practice are also found in its use of its reports.

- In its analysis of business regulation reform proposals, the Business Council of Australia's Action Plan extensively cited the 2003 Staff Working Paper, *Mechanisms for Improving the Quality of Regulations: Australia in an International Context*, as well as drawing on data and analysis in *Regulation and its Review* (various issues), Commission inquiry reports and speeches by the Commission's Chairman on regulatory issues (BCA 2005). (The Chairman responded to the BCA proposals in his speech at the ANU, 'Regulation-making in Australia: Is it broke? How do we fix it?', on 7 July 2005 (Banks 2005b).)
- While not specifically mentioning ORR outputs, upon releasing the report *Compliance Costs Time and Money* in November 2004, the Australian Industry Group proposed that the regulation compliance burden be managed and reduced by 'Strengthening accountability under Regulation Impact Statements by making government departments more accountable through periodic reviews to assess how well departments anticipated the impact of any new regulation on business compliance' (Ai Group 2004).
- As discussed in chapter one, in its 2005 pre-budget submission the Australian Chamber of Commerce and Industry drew on reporting in *Regulation and its Review*, proposed measures to address poor RIS compliance and policy design, and argued that the operation of ORR's equivalents in the States could be improved by giving them the same formal independence from government as accorded the ORR.
- Approximately 1500 printed copies of *Regulation and its Review 2003-04* were distributed in 2004-05, including to each Member of the House of Representatives and the Senate.

In 2004-05 there were just over 15 000 requests for the ORR Home Page and 2450 requests for *Regulation and its Review 2003-04.* There were 3550 requests for *A Guide to Regulation* and 2400 requests for the *COAG Principles and Guidelines.* The RIS training package (1300 requests) and example RISs (2050 requests) were also accessed frequently.

F Regulatory reform in States and Territories

This appendix focuses on the *changes* to the regulatory regimes of Australia's States and Territories during 2004-05[1]. Key developments in 2004-05 include:

- in Victoria, the government released a *Guide to Regulation*, which establishes a consistent framework across the whole of government for the development of all regulation;
- in Queensland, several regulatory reviews, including a red-tape reduction stocktake are currently being undertaken; and
- in Tasmania a review of the subordinate legislation is underway with the objective of reducing compliance burdens.

F.1 Victoria

Regulatory Impact Analysis

Victoria has a comprehensive regulatory impact analysis process. This includes a statutory requirement to prepare a Regulatory Impact Statement (RIS) where a proposed regulation is likely to impose an appreciable economic or social burden on a sector of the public. In addition, a requirement for a Business Impact Assessment (BIA) has been introduced to supplement the RIS requirement.

Developments in regulatory governance

In February 2005, the Victorian Government released the *Victorian Guide to Regulation* (VCEC 2005b). This guide establishes a consistent framework across the whole of government for the development of all regulation. It also sets out the requirements for preparing RISs (for subordinate legislation) and BIAs (for primary legislation) in Victoria, consolidating five previous publications.

[1] Appendix F of *Regulation and its Review 2003-04* contains a more detailed description of the quality control process for regulation in each of these jurisdictions.

In January 2005, the newly formed Victorian Competition and Efficiency Commission (VCEC) released a draft report examining *Regulation and Regional Victoria: Challenges and Opportunities*. The VCEC recommended a minimum of 60 days be provided for public consultation on RISs covering significant or complex regulatory issues. The draft report further suggested that each proposal going to the Parliament's Scrutiny of Acts and Regulation Committee document the time allowed for consultation and explain why such consultation was adequate (VCEC 2005c). The final report was submitted to the Victorian Government in June 2005. It has not been made public at the time of writing this appendix.

The VCEC also released a report examining *The Victorian Regulatory System* (VCEC 2005a). The report provided an overview of the 69 Victorian Government regulators of business and a comprehensive mapping of the Victorian regulatory system. These regulators are responsible for administering a total of 170 Acts and 176 regulations.

In addition, the VCEC has developed training workshops for departmental officers on development of best practice regulation, and preparation of RISs and BIAs. In 2004-05, VCEC conducted seven workshops, training over one hundred participants, focussing on assisting departments and agencies integrate future RIS and BIA analysis into the policy-making process.

As part of its obligation to report annually on compliance with the Victorian Government's best practice processes for making regulations and legislation, the VCEC will produce annually two publications:

- *VCEC Annual Report.* Core elements of the annual report in 2004-05 include reporting on: compliance with BIA and RIS processes for primary and subordinate legislation respectively; the findings of inquiries into matters referred to the Commission by government; and compliance with competitive neutrality policy; and
- *The Victorian Regulatory System (2nd edition)* will survey and report on regulatory developments in each of the Victorian Government business regulators.

Resources for regulatory review

The VCEC and its Secretariat had an average of 14.6 full time equivalent staff and expenditure of $2.4 million during 2004-05. Approximately 20 per cent of these resources were assigned to the Regulation Review Team that examined new regulatory proposals. It consults with agencies and provides detailed written and verbal advice in relation to policy analysis contained in the RIS and BIA

documents. The remaining 80 per cent of resources were allocated to inquiries examining areas of existing regulation and to competitive neutrality activities. The two inquiries underway during 2004-05 examined regulatory barriers to regional economic development, and regulation of the housing construction sector and related issues. On 14 September 2005, the Victorian Treasurer announced the VCEC would be undertaking an inquiry into managing transport congestion.

F.2 South Australia

In South Australia, a RIS is required to be attached to Cabinet submissions where there is a significant regulatory impact. 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.

A formal Regional Impact Assessment Report (RIAR) is also required to be prepared and attached to Cabinet submissions where there is a significant change proposed in relation to services or infrastructure in regional areas. RIARs are lodged in Parliament and published on the website of the Office of Regional Affairs. Compliance with the Government's community impact assessment requirements is reported in the South Australia's 2005 annual report to the National Competition Council (Department of Premier and Cabinet (SA) 2005).

Resources for regulatory review

There are six officers throughout five portfolio agencies whose duties include advising upon the adequacy of the assessments of community impacts. Actual budget figures relating to regulatory review activities are not available.

F.3 Queensland

Under the provisions of the *Statutory Instruments Act 1992 (Qld)*, a RIS must be prepared for community consultation if subordinate legislation is likely to impose an appreciable cost to the community or part thereof.

As part of its 2004-05 small business policy, the Queensland Government announced that it would undertake industry specific reviews of the impact of regulations on small businesses, beginning with manufacturing, tourism, retail and food processing.

The manufacturing (including food processing) review has been completed with recommendations arising from the review being progressed with relevant agencies. The retail and tourism industry reviews are to be completed in 2005-06.

The 2004-05 Red Tape Reduction Stocktake, which identifies red tape reduction initiatives across the Queensland Government, commenced in July 2005. In 2003-04, alone, the annual stocktake reported a gross saving to business of over $16 million resulting from new red tape reduction activities. Since 1999, total savings of over $78 million have been made through initiatives identified in the stocktake.

The Red Tape Reduction Task Force was established several years ago to advise the Government on ways to improve the regulatory environment. Membership includes representatives from business and other stakeholders. The future role of the Taskforce is currently being reviewed.

Draft guidelines on improving regulatory design have also been developed. When finalised, these guidelines will be widely circulated to government agencies in Queensland and made available on the internet. They will be supported by more strategically targeted and agency specific policy training.

F.4 New South Wales

In New South Wales, RISs are required for proposed principal statutory rules and a similar, but less formal, process is required for other proposed statutory rules. No substantive new developments were reported in NSW in 2004-05.

F.5 Tasmania

A RIS is required to be prepared for all proposed primary legislation anticipated to have restrictions on competition or significant negative impacts on business.

A review of the *Subordinate Legislation Act 1992* is currently underway in Tasmania. The review is designed to reduce unnecessary administrative burdens, whilst ensuring the Act continues to provide a scrutiny process for new subordinate legislation, and to facilitate the removal of outdated or inappropriate subordinate legislation from the statute book. Consultation on the proposed changes to the Act was due to commence early in 2005-06.

Resources for regulatory review

There are currently five officers within Tasmania's Regulatory Review Unit. All officers undertake regulatory review work and several other related tasks. The unit's budgeted wage cost (including payroll tax, worker compensation premiums and superannuation) for 2004-05 was $368 477, of which around 60 per cent could be directly attributed to regulatory review work. This proportion, however, will depend on the economic policy and regulatory issues in a given year.

F.6 Western Australia

Western Australia does not have formal RIS requirements. However, the Western Australian Government continues to support the several regulatory review initiatives introduced in the past few years, in particular:

- introduction of the *small business impact statement* for Cabinet submissions seeking approval of regulatory, legislative or policy initiatives affecting small business, ensuring that Cabinet is informed of the potential impacts on small business prior to making a decision;
- introduction of the *regional impact statement* for Cabinet submissions which may have an impact on regional Western Australia; and
- operation of a free small business advocacy service to assist small businesses in their dealings with government agencies and investigate specific issues affecting individual small business operators. The service provides an avenue to identify red tape and government regulations affecting the operations of small businesses. Such issues are then pursued as part of the Government's regulatory reform agenda to lessen the administrative burden on small business.

In the last four years, two whole-of-government public sector reviews were conducted: the machinery of government review in 2001 and the functional review in 2003. The report arising from the functional review recommended that all statutory authorities be reviewed again by 31 December 2006 to assess the appropriateness and feasibility of incorporating their functions into departments of State. Progress to implement this recommendation continues across Government.

Resources for regulatory review

As Western Australia does not have a formal regulation review unit, it is not possible to identify the number of regulatory review officers and their budget over the last 12 months. Regulation review is conducted on an ongoing basis as appropriate and absorbed within the operating costs of each government agency.

However, the Microeconomic Policy section of the Department of Treasury and Finance has coordinating responsibility for National Competition Policy, including the oversight of new regulatory proposals that restrict competition. This section has a manager and two full-time policy analysts, of which about 1.5 full time equivalent staff work on regulatory review. The cost of these staff are estimated to be about $110 000.

F.7 Australian Capital Territory

In the Australian Capital Territory, any proposal for new or amended primary legislation requires a RIS to be completed as part of the policy development process.

In April 2005, the ACT commenced an inquiry into community pharmacy. The inquiry has two aims: to identify and remedy any unmet needs in the delivery of community pharmacy services; and to identify costs and benefits to consumers and stakeholders from alternative models of pharmacy service delivery. The final report is expected to be available for the Government's consideration in September 2005.

Resources for regulatory review

The Microeconomic Reform Section of the ACT Treasury has responsibility for regulatory oversight. The section has a part-time manager and two full-time analysts, with a salaries and administrative expenses budget of about $400 000 for 2004-05.

F.8 Northern Territory

The Northern Territory commenced a review of its regulatory review framework, which focuses on competition impact analysis, in 2005.

Resources for regulatory review

The unit has a full time policy officer and a part time research officer, with a salaries and on cost budget of about $105 000 for 2004-05.

F.9 A summary of resources for regulation review units

As noted in Chapter one, there are about 500 state and territory based regulators. The combined budgets, staffing and volume of regulation made by these bodies is unknown.

This year the ORR collected, for the first time, information from States and Territories on the resources committed to the whole of government regulation review and reform units. In several jurisdictions this information was not available as the function was carried out by staff who had other responsibilities and a meaningful estimate was not practicable. The following table summarises the information collected.

Table F.1 **Resources for state and territory regulation review units and related activities, 2004-05**[a]

Jurisdiction	*Full time equivalent staff*	*Budge $ (including salary & on-costs)*
Victoria	3.0	480 000
South Australia	n/a	n/a
Queensland	n/a	n/a
New South Wales	n/a	n/a
Western Australia	1.5	110 000
Tasmania	3.0	220 000
Australian Capital Territory	2.0	400 000
Northern Territory	1.5	105 000
Total	**11.0**	**1 315 000**

n/a – Not available. **a** In 2004-05, the ORR had 17.5 full time equivalent staff and a budget of about $2.7 million.

Source: Information provided by State and Territory Regulation Review Units.

G Regulation review and reform: international perspectives

In previous editions of *Regulation and its Review*, this appendix has reviewed the year's international developments in the areas of regulatory impact analysis and other means of ensuring that new regulation is efficient and effective. This year the focus is on the measurement of the burden imposed by existing regulations. In the past year, numerous organisations in Australia have drawn attention to the proliferation of business regulation and the burden that this imposes. One organisation, the Business Council of Australia, illustrated this point when it claimed that the stock of primary legislation at the Australian Government level grew by more than 10 per cent in 2002 (BCA 2005).

This appendix reviews efforts overseas to measure and reduce administrative burden.

Measurement and reduction of administrative burden

Administrative burdens are increasingly being recognised by governments around the world as a significant brake on business innovation and growth. Administrative burdens can be defined as 'the costs imposed on businesses when complying with government information obligations stemming from government regulation' (OECD 2005), and differ from the direct costs of regulation that are attributable to the policy goal of the regulation. Administrative costs include the costs of collecting and organising information, storing and maintaining information, and reporting this information both publicly and to government, in response to a government requirement.

The measurement and reduction of administrative burdens are the subject of a number of major international studies. The World Bank's ongoing *Doing Business* study measures the costs to business of a variety of different activities — such as starting a business, enforcing a contract, and closing a business — across over 150 countries (World Bank 2004, 2005). Another example is the Organisation for Economic Cooperation and Development's (OECD) *Red Tape Scoreboard* project, which is due to report in 2006. The OECD's study has three aims: to develop a

methodology to measure and compare administrative burdens across countries; to carry out comparative surveys of selected burdens in OECD countries; and to analyse the results with a view to identify burden reduction strategies (OECD 2005).

Several national governments are also actively undertaking the task of measuring and reducing administrative burdens seriously. Some of the activities of these countries and activities are summarised below.

Netherlands

In 2003, the newly elected Dutch Government committed to measuring and reducing the administrative burden on business by 25 per cent (ECOFIN 2004). Using the Standard Cost Model (see box G.1), the Dutch Government estimated that the administrative burden in 2002 was €16.4 billion ($A26 billion), or about 3.6 per cent of Dutch GDP (BRTF 2005). The Government estimated that a reduction in the administrative burden of 25 per cent would increase GDP by 1.5 per cent over the medium term (reported in BRTF 2005).

During 2003-04, government and business identified 130 measures whereby legislation could be improved. If fully implemented, the improvements would lead to national-level reductions in the administrative burden of 18 per cent. By the end of 2004, the Dutch Cabinet estimated that the measures already implemented had reduced the administrative burden by just over €900 million, or 6 per cent of the total administrative burden (Dutch Cabinet 2005). In 2005, further measures were sent to the Dutch parliament aimed at achieving the balance of the targeted 25 per cent reduction.

The Better Regulation Task Force (BRTF) of the United Kingdom (UK) identified three main reasons why the Dutch approach to the reduction of administrative burden appeared to be successful (BRTF 2005):

- *Measurement*: Each government department and regulatory agency is required to measure the administrative burden of each of its regulatory activities;
- *Commitment to target*: There is a strong political commitment by the Dutch Government to a reduction of 25 per cent in the administrative burden; and
- *Organisational structure*: The Dutch Minister of Finance is responsible for achieving the reduction target, and reports on progress to parliament every six months. Each government department has established a small unit of officers dedicated to supporting the reduction of the administrative burden in that department. An independent body (the Advisory Board on Regulatory Burden —

Actal) was established to review and publish the regulatory burden reduction initiatives of all departments. Actal also acts as a gatekeeper for new regulatory proposals: Actal reviews the departments' calculations of the administrative burden of new proposals and reports to the Dutch Cabinet when it considers whether to endorse the proposals.

Box G.1 **The Standard Cost Model**

The Standard Cost Model (SCM) was developed by the Dutch Government to measure the size of the administrative burden placed on business by government. For the purposes of the model, 'administrative burden' is defined as:

> the costs imposed on businesses, when complying with information obligations stemming from government regulation.

information obligations are further defined as:

> a duty to procure or prepare information and subsequently make it available to either a public authority or a third party. It is an obligation businesses cannot decline without coming into conflict with the law. Each information obligation consists of a number of required pieces of data – or messages – that businesses have to report.

Formula

The basic formula of the SCM is *PXQ*, where:

P=Tariff X Time; and

Q=Number of businesses X Frequency.

The tariff is the hourly rate of the person in the business who deals with the information obligation. It includes all on-costs and, where appropriate, the cost of external contracts. Time is the number of hours it takes to fulfil the information obligation. The number of businesses refers to the number of businesses to which the information obligation applies, and the frequency is the number of times per year each business is required to fulfil the obligation per year.

There are various recommended methods for collecting the data for the model, depending on the type of regulation and the industry involved. However, in general, the *P* component is estimated via surveys of businesses, while the *Q* component is determined either from the regulation itself or government business registers.

In this way, the model estimates the administrative costs of a regulation, and not the policy costs. The difference can be shown by way of example: the Netherlands has a regulation whereby all staff must have a window in their workplace. The cost of providing staff with a window is the policy cost, while the cost of reporting compliance with the regulation is an administrative burden (BRTF 2005).

Source: International Working Group on Administrative Burdens 2004.

Several countries, including the UK (see below), are investigating their own versions of the Dutch approach to reducing administrative burdens. Countries that have begun to implement the SCM include (BRTF 2005):

- Belgium which is using it for Value Added Tax (VAT) and business permits;
- Denmark, which is now measuring all regulation;
- Estonia, which is using it for VAT and statistical burdens;
- France and Italy, which are adopting it for business permits;
- Hungary, which is using it for VAT;
- Norway and Sweden, which started to use the Dutch approach for VAT costs and are now broadening its use;
- Poland, which is using it for VAT and transport; and
- South Africa, which is using it for measuring the impact of fiscal legislation.

United Kingdom

In the UK, the government established an independent advisory group —the Better Regulation Task Force (BRTF) — in 1997 to 'advise the government on action to ensure that regulation and its enforcement are transparent, accountable, proportionate, consistent and targeted'. A recent report by the BRTF (2005) examined the feasibility of a number of measures to reduce the regulatory burden on business. Two main recommendations were:

- the Government could considerably reduce the regulatory burden by adopting the Dutch approach to reducing administrative burden; and
- a 'one in, one out' approach to new regulation be implemented. This approach would require proposals for new regulation to be accompanied by consideration of compensatory simplification measures of other regulation. Simplification could include such measures as deregulation, consolidating existing regulations and rationalising regulations.

The BRTF estimated that implementing these proposals could result in an increase in GDP of more than one per cent (BRTF 2005). In July 2005, the UK Government accepted the recommendations of the BRTF report.

Would the SCM be useful in Australia?

The use of a standard costing methodology as a tool for measuring administrative burden and other business compliance costs — and thus providing a benchmark against which effort at reform can be judged — appears to have merit.

However, the compliance costs of regulation to business should not be viewed in isolation — other costs (including distortions in production and investment decisions) and, importantly, the benefits of regulation, both to business and the wider community, should be considered. As such, the use of such tools have the greatest potential to assist policy makers as part of a broader RIS framework.

The Office of Small Business, within the Department of Industry, Tourism and Resources, has developed a standard costing methodology for local government grant applications under the new Regulation Reduction Incentive Fund and is currently exploring scope to extend this methodology to Australian government regulatory proposals.

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