
4 Compliance trends since 1998

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

4.1 Overall compliance

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

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

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

Compliance by significance

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

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

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

4.2 Compliance by department and agency

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

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

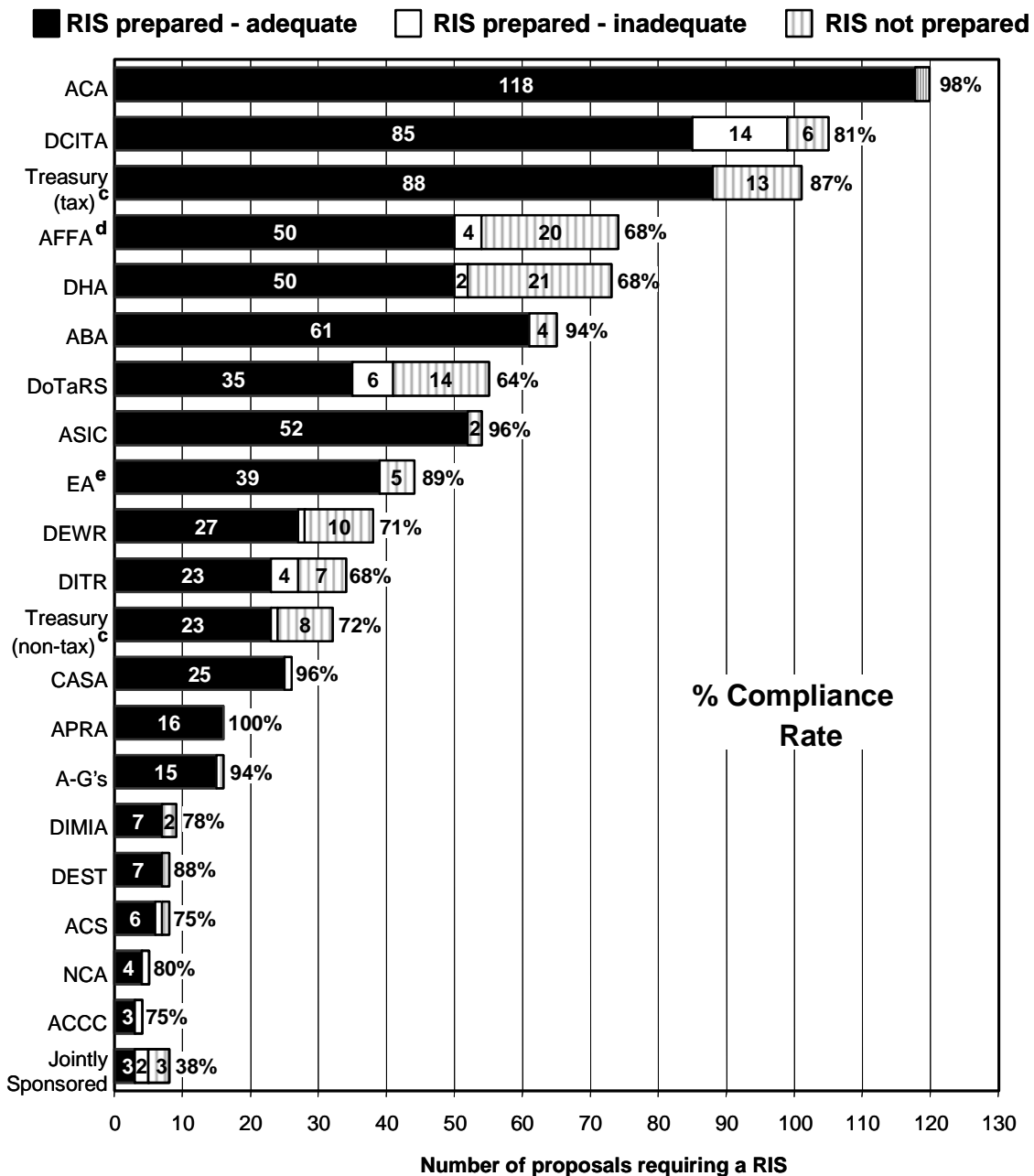
Other departments and agencies with better than 90 per cent compliance over the past five years are the Attorney-General's Department, the Australian Broadcasting Authority, the Australian Communications Authority, the Australian Securities and Investments Commission and the Civil Aviation Safety Authority.

Compliance at the decision-making stage between 1998-99 and 2002-03 for 19 departments and agencies is illustrated in figure 4.1. The total length of each bar indicates the number of RISs required to be prepared at the decision-making stage. The area in black illustrates the number of RISs that were prepared and assessed as adequate by the ORR. The area in white shows cases where RISs were prepared, but were assessed as containing an inadequate level of analysis. The shaded area shows the number of cases where RISs should have been prepared, but were not. The

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

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

Figure 4.1 RIS compliance by department and agency at the decision-making stage, aggregated 1998-99 to 2002-03^{a, b}



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

Source: ORR estimates.

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

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

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

Compliance for tax proposals

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

Compliance for jointly sponsored proposals

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

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

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

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

Source: ORR estimates.

4.3 Improving compliance

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

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

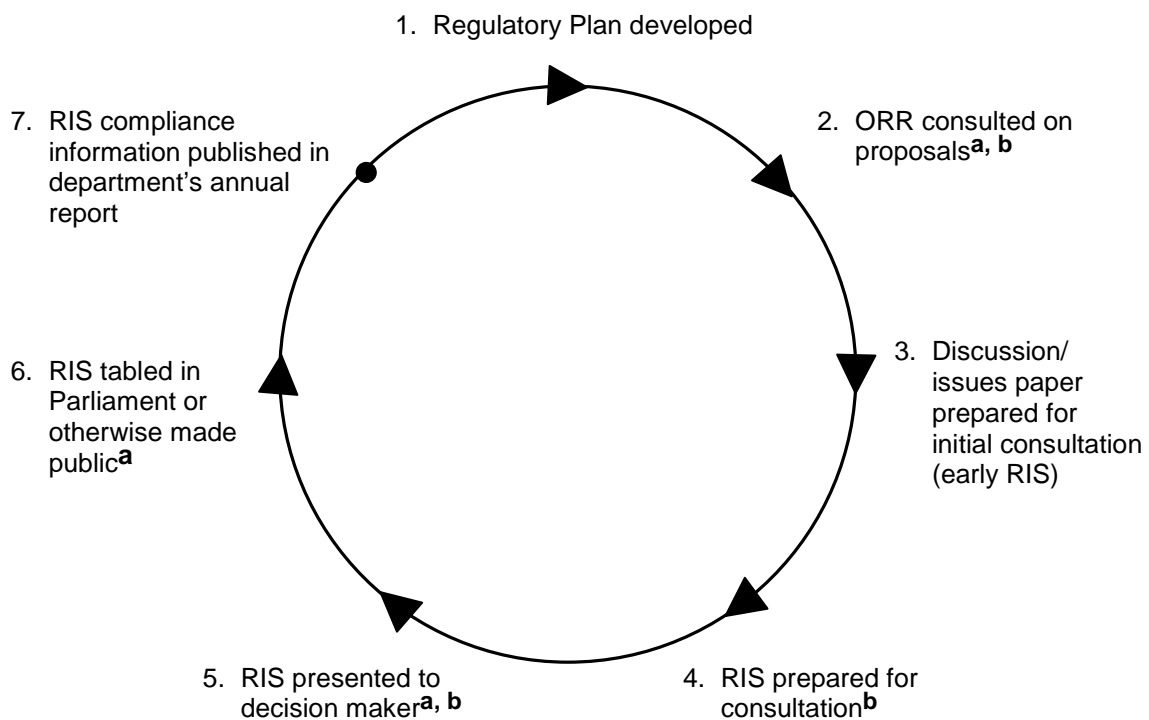
One approach is to establish a 'gate-keeper' within the policy co-ordination area of the department to ensure the RIS process is integrated early in the policy development process. In 2002-03, the Department of Agriculture, Fisheries and Forestry — Australia and the Department of Health and Ageing introduced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

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

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

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

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



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

Source: ORR.

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

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

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

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

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