
OVERVIEW

Key points

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

Overview

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

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

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

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

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

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

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

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

Aggregate RIS compliance results for 2001-02

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

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

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

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

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

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

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

Table 2 Compliance by significance and timeliness, 2001-02

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

^a From receipt by the ORR of the first draft of the RIS up to when the ORR formally advised on its adequacy at the decision-making stage. These averages exclude a very small number of exceptional cases where external factors resulted in an exceptionally long time lapse (ie. several months or years).

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

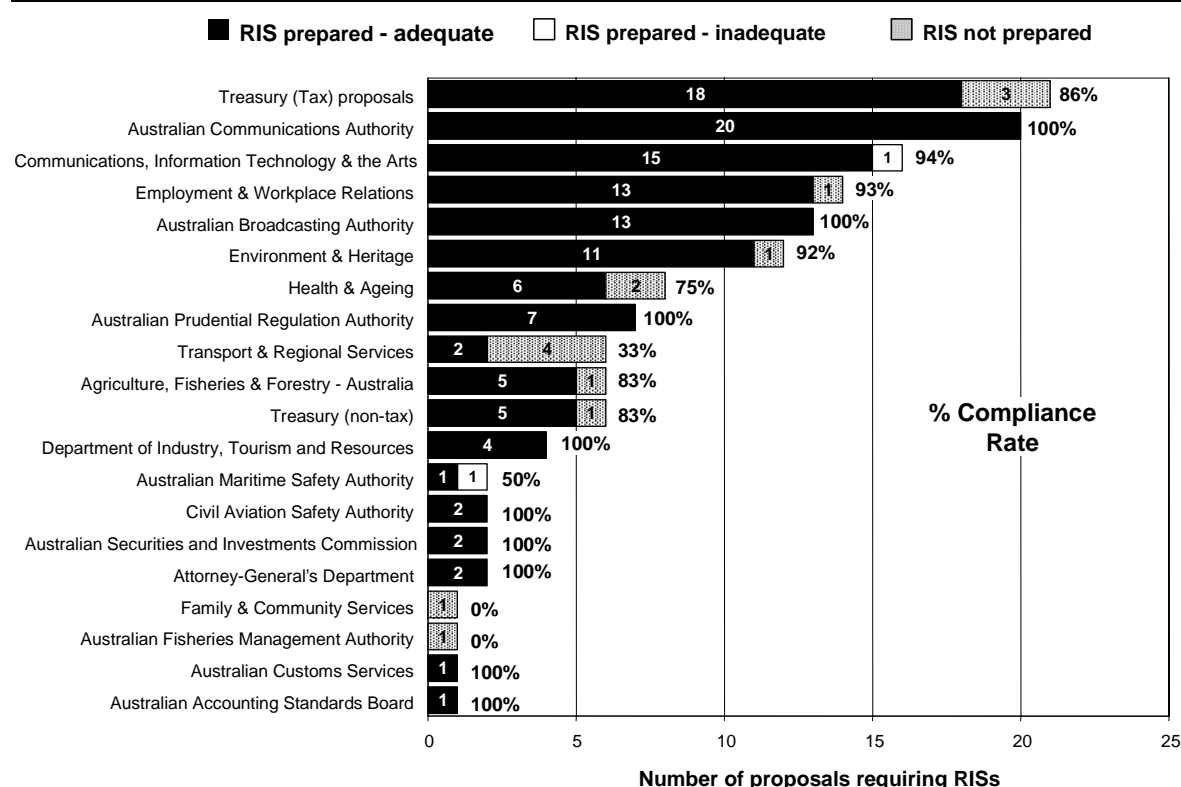
prepare RISs late in the policy development process it is less likely that a RIS will make an effective contribution.

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

Compliance by departments and agencies

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

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



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

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

National regulation-making: RIS compliance results

Regulation-making also occurs at a national or inter-jurisdictional level, where there is agreement between jurisdictions, among some 40 Commonwealth/State/Territory Ministerial Councils and standard-setting bodies. In 1995, the Council of Australian Governments (COAG) agreed on principles and guidelines for such activities, the major element of which is the preparation of a RIS to serve as one input to the decision-making process (COAG 1997). The ORR is required to assess whether such RISs contain an adequate standard of analysis given the significance of the issue, and also to monitor and report on whether COAG's RIS requirements have been met. The ORR's reports on COAG RIS compliance are also considered by the National Competition Council (NCC) as part of its assessment and reporting on the compliance of Australian jurisdictions with National Competition Policy.

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

Improving performance

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

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

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

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

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

Some priority issues

Compliance costs

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

Small business

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

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

Ecologically sustainable development (ESD)

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

Cost recovery

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

Monitoring and learning from developments and trends in other jurisdictions

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

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

Trans-Tasman regulation review and reform issues

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

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