



© Commonwealth of Australia 2001

ISBN 1 74037 065 1

This work is subject to copyright. Apart from any use as permitted under the *Copyright Act 1968*, the work may be reproduced in whole or in part for study or training purposes, subject to the inclusion of an acknowledgment of the source. Reproduction for commercial use or sale requires prior written permission from Info Products. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Legislative Services, Info Products, Department of Finance and Administration, GPO 1920, Canberra, ACT, 2601.

Publications Inquiries:

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

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

General Inquiries:

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

An appropriate citation for this paper is:

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

The Productivity Commission

The Productivity Commission, an independent Commonwealth agency, is the 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 compliance by Commonwealth departments and agencies with the Government's Regulation Impact Statement requirements. The Commission also reports on two Council of Australian Government programs: reviews of existing Commonwealth legislation which restricts competition; and proposals being considered by Ministerial Councils and standard-setting bodies. These processes aim to achieve best practice regulatory outcomes.

This is the third such report. It forms part of the Productivity Commission's annual report series of publications for 2000-01.

The Commission's Office of Regulation Review provides training and advice to all departments and agencies on the best practice requirements, and monitors compliance. This edition of *Regulation and its Review* provides for the first time aggregate data on compliance classified according to the significance of the proposal and whether Regulation Impact Statements have been prepared early enough in the policy development process to have contributed to an assessment of alternatives. As in last year's edition, compliance information for individual agencies is also provided.

The Commission is grateful for the cooperation of Commonwealth departments and agencies, Ministerial Councils and standard-setting bodies, in providing information to the Office of Regulation Review on their regulatory activity throughout the year.

Gary Banks
Chairman

Contents

Foreword	III
Abbreviations	X
Key messages	XII
Overview	XIII
1 Compliance with RIS requirements	1
1.1 Assessment of compliance	1
1.2 Primary legislation	9
1.3 Disallowable instruments	10
1.4 Non-disallowable instruments and quasi-regulations	11
1.5 Treaties	12
1.6 National regulation making	13
2 Compliance by portfolio	17
2.1 Agriculture, Fisheries and Forestry	19
2.2 Attorney-General's	20
2.3 Communications, Information Technology and the Arts	21
2.4 Education, Training and Youth Affairs	25
2.5 Employment, Workplace Relations and Small Business	25
2.6 Environment and Heritage	26
2.7 Family and Community Services	26
2.8 Foreign Affairs and Trade	27
2.9 Health and Aged Care	27
2.10 Immigration and Multicultural Affairs	30
2.11 Industry, Science and Resources	30
2.12 Industry, Science and Resources/Transport and Regional Services	31
2.13 Transport and Regional Services	31
2.14 Treasury	33

3	Better integration of the RIS process	39
3.1	Agency management	40
3.2	Compliance reporting	43
3.3	Legislation reviews	43
3.4	Training policy officers	44
3.5	Regulatory plans	45
3.6	Agency commitment	46
3.7	Ecologically Sustainable Development	48
3.8	Cost recovery	48
3.9	Examples from States/Territories and OECD	49
3.10	Agency self-assessment trial	50
3.11	Conclusion	50
A	Monitoring quasi-regulation	53
B	Compliance with COAG RIS requirements	63
C	Commonwealth legislation reviews	75
D	ORR activities and performance	81
E	Regulatory reform in States and Territories	89
F	Integration of the RIS process — international experience	101
	References	107

BOXES

1.1	The Commonwealth Government's RIS requirements	2
1.2	Adequacy criteria for Regulation Impact Statements (RISs)	4
1.3	Classifying the significance of proposals	7
3.1	Phases of the commitment cycle	47
A.1	Some examples of quasi-regulation reported in 2000-01	56
C.1	The template terms of reference	78
D.1	Charter of the Office of Regulation Review	82
D.2	Database measures: reporting on ORR performance	85
E.1	Questionnaire for <i>Regulation and its Review 2000-01</i>	90

FIGURES

1	RIS compliance at decision-making stage, 2000-01	XVI
1.1	RIS compliance for proposals introduced via Bills, 1998-99 to 2000-01	9
1.2	RIS compliance for proposals introduced via disallowable instruments, 1998-99 to 2000-01	10
1.3	RIS compliance for proposals introduced via non-disallowable instruments and quasi-regulations, 1998-99 to 2000-01	11
2.1	Compliance with RIS requirements at the decision-making stage, 2000-01	18
3.1	Commitment cycle for the Government's RIS requirements	46

TABLES

1	Aggregate RIS compliance at decision-making stage, 2000-01 and 1999-2000	XIV
2	RIS compliance at decision-making stage, by significance and timeliness, 2000-01	XV
1.1	Total RIS compliance, 1997-98 to 2000-01	5
1.2	RIS compliance, by type of regulation, 2000-01	5
1.3	Compliance by significance and timeliness, 2000-01	8
1.4	COAG RIS compliance for regulatory decisions made by Ministerial Councils and SSBs, 1998-99 to 2000-01	15
2.1	AFFA: RIS compliance by type of regulation, 2000-01	19
2.2	A-G's: RIS compliance by type of regulation, 2000-01	21
2.3	DoCITA: RIS compliance by type of regulation, 2000-01	22
2.4	DoCITA: RIS compliance for significant proposals, 2000-01	23
2.5	ABA: RIS compliance by type of regulation, 2000-01	24
2.6	ACA: RIS compliance by type of regulation, 2000-01	25
2.7	DEWRSB: RIS compliance by type of regulation, 2000-01	26
2.8	DEH: RIS compliance by type of regulation, 2000-01	26
2.9	DHAC: RIS compliance by type of regulation, 2000-01	28
2.10	DHAC: RIS compliance for significant proposals, 2000-01	28
2.11	DISR: RIS compliance by type of regulation, 2000-01	31
2.12	DTRS: RIS compliance by type of regulation, 2000-01	32
2.13	Treasury: RIS compliance for (non-tax) significant proposals, 2000-01	34

2.14	Treasury and ATO: RIS compliance by type of taxation regulation, 2000-01	36
2.15	Treasury and ATO: RIS compliance for significant (taxation) proposals, 2000-01	36
A.1	Types and examples of quasi-regulation	54
C.1	Overview of Commonwealth's Legislation Review Program as at 30 June 2001	75
C.2	Reviews Outstanding as at 30 June 2001	76
D.1	RIS training evaluation in 2000-01	88

Abbreviations

ABA	Australian Broadcasting Authority
ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ACIF	Australian Communications Industry Forum
ACS	Australian Customs Service
ACT	Australian Capital Territory
AFFA	Agriculture, Fisheries and Forestry — Australia (Department of)
A-Gs	Attorney-General’s Department
ALR	Australian Law Report
AMSA	Australian Maritime Safety Authority
ANZFA	Australia New Zealand Food Authority
ANZFSC	Australia New Zealand Food Standards Council
ANZMEC	Australia New Zealand Minerals and Energy Council
APEC	Asia-Pacific Economic Cooperation
APRA	Australian Prudential Regulation Authority
AQIS	Australian Quarantine Inspection Service
ASIC	Australian Securities and Investments Commission
ATC	Australian Transport Council
ATM	automatic teller machine
ATO	Australian Taxation Office
BAS	Business Activity Statement
BRRU	Business Regulation Reform Unit (Queensland)
CASA	Civil Aviation Safety Authority
COAG	Council of Australian Governments
CPA	Competition Principles Agreement

DEH	Department of Environment and Heritage
DEWRSB	Department of Employment, Workplace Relations and Small Business
DHAC	Department of Health and Aged Care
DIRN	defined interstate rail network
DISR	Department of Industry, Science and Resources
DNA	deoxyribonucleic acid
DoCITA	Department of Communications, Information Technology and the Arts
DTRS	Department of Transport and Regional Services
DVA	Department of Veterans' Affairs
EFT	electronic funds transfer
EFTPOS	electronic funds transfer at point of sale
EPBC	Environment Protection and Biodiversity Conservation (Act 1999)
ESD	ecologically sustainable development
GHz	gigahertz
GMOs	genetically modified organisms
GST	goods and services tax
HDTV	high definition digital television
IUCN	International Union for the Conservation of Nature
MHz	megahertz
NCC	National Competition Council
NCP	National Competition Policy
NOIE	National Office for the Information Economy
NRTC	National Road Transport Commission
OECD	Organisation for Economic Cooperation and Development
ORR	Office of Regulation Review
PC	Productivity Commission
PM&C	Prime Minister and Cabinet
PS	Policy Statement