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## 2 Commonwealth requirements for new and amended regulation

**This chapter outlines the Commonwealth Government's Regulation Impact Statement requirements that apply to new and amended regulation, and the Productivity Commission's task of reporting on compliance with these requirements. Indicators developed to measure compliance in 1997–98 are also outlined.**

### 2.1 Commonwealth Regulation Impact Statement requirements

Although the types of regulation covered have varied, the requirement to prepare a Regulation Impact Statement (RIS) has been in the Commonwealth domain for over a decade. For example, the preparation of a RIS has been required for all Cabinet proposals affecting business since 1986. Since its origin, the basic elements of a RIS have remained unchanged. However, in recent years the scope of the requirements and the sanctions imposed on those who do not comply have increased.

In 1996, the Government established a Small Business Deregulation Task Force (the task force) aimed at reducing the paper and compliance burden of small business. Its report, *Time for Business*, suggested improvements to regulatory processes. In the Government's response, *More Time for Business*, the Prime Minister accepted many of the recommendations of the task force and clarified the requirements of Commonwealth regulation makers.

As a result, the Commonwealth RIS requirements were consolidated in *A Guide to Regulation* (the Guide) which was endorsed by the Government in September 1997. The RIS requirements contained within the Guide are summarised briefly below.

The Guide defines regulation broadly as including:

any law or other government 'rules' which influence the way people behave. It is not limited to primary or delegated legislation; it also includes quasi-regulation (such as codes of conduct or advisory instruments or notes etc) where there is reasonable expectation by governments of compliance. (Office of Regulation Review 1997, p. A1)

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The preparation of a RIS is mandatory for all reviews of existing regulation, proposed new regulation and proposed treaties which will directly affect business, or which will have a significant indirect effect on business, or which will restrict competition. It is important to note that regulation ‘affects’ business where it imposes a cost or confers a benefit on business.

Preparation of a RIS is not mandatory for regulation that:

- is not likely to have a direct, or a substantial indirect, effect on business and is not likely to restrict competition;
- is of a minor or machinery nature and does not substantially alter existing arrangements;
- involves a specific Government purchase;
- is required in the interest of national security;
- is primary legislation or a legislative instrument which merely meets an obligation of the Commonwealth under an international agreement by repeating or adopting the terms of all or part of an instrument for which the agreement provides;
- is a legislative instrument of the type specified in subparagraph 28(1)(a)(iv), (vi), (vii) or (viii) of the Legislative Instruments Bill 1996 — these instruments include those that give effect to specific Budget decisions, incorporate certain foreign airworthiness directives, application order proposals made under section 111A of the Corporations Law of the Australian Capital Territory, and those that provide solely for the commencement of all or part of enabling legislation;
- is a regulation of a state or self-governing territory that applies in a non-self governing territory; or
- gives effect to a specific election commitment.

The role of a RIS is to assist decision making by ensuring that all relevant information is presented to the decision maker in a logical standardised framework. In addition, after the decision is made, the RIS can become a public and transparent account of that decision making.

To fulfil these roles, a RIS should identify:

- the problem or issues which give rise to the need for action;
- the desired objective(s);
- the options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s);

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- an assessment of the impact (costs and benefits) on consumers, business, government and the community of each option;
  - a consultation statement;
  - a recommended option; and
  - a strategy to implement and review the preferred option.

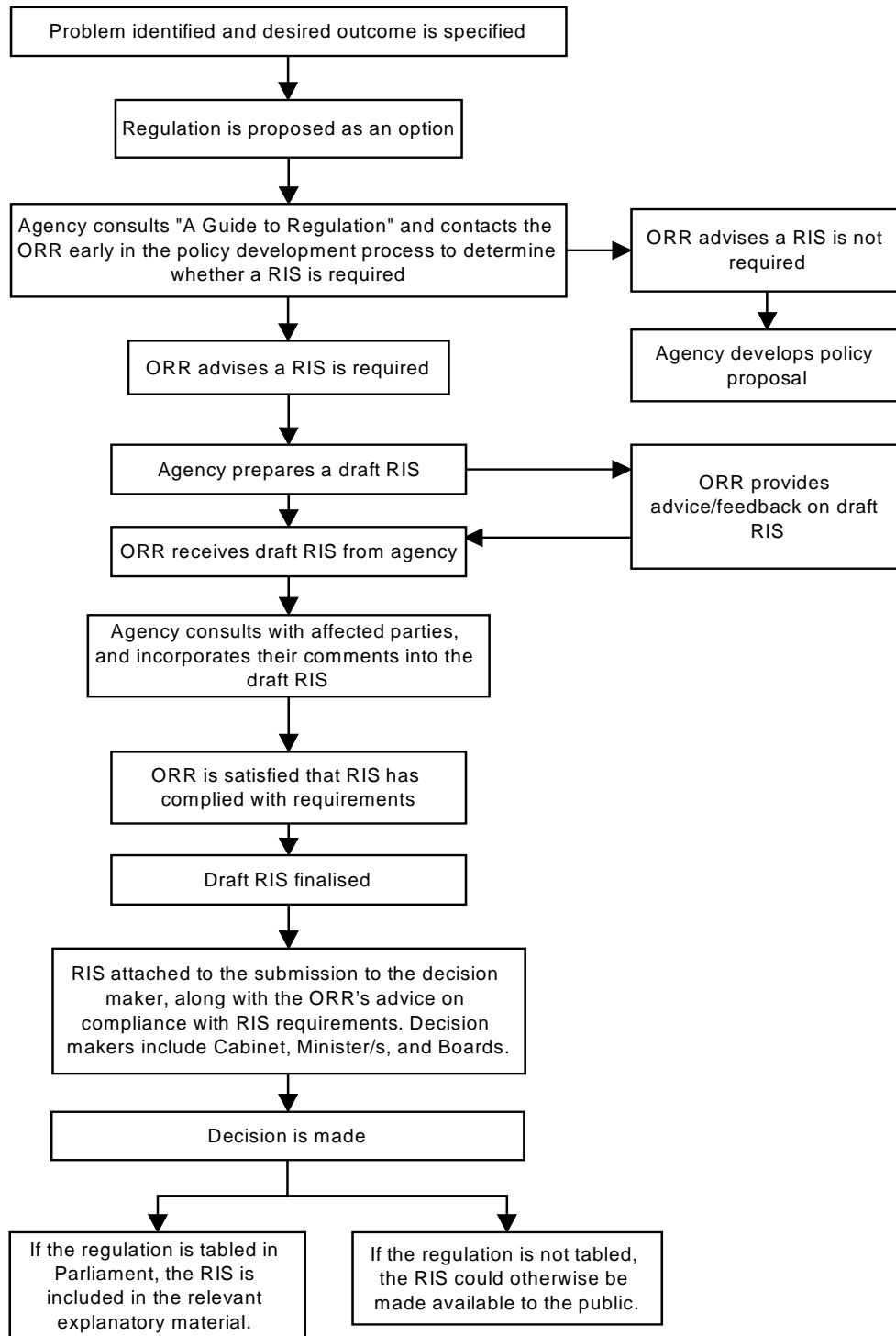
Figure 2.1 illustrates how the RIS requirements fit into the policy development process.

The Assistant Treasurer has formal responsibility for promoting compliance with RIS requirements.

If a RIS is inadequate or absent, and the ORR anticipates preparing a negative comment, the Assistant Treasurer can draw the matter to the attention of the responsible Minister and/or the Prime Minister. In some cases the Assistant Treasurer may suggest the withdrawal of the regulatory proposal. Where the proposal is to be considered by Cabinet, the Prime Minister can co-opt the Assistant Treasurer to assist the relevant Cabinet discussion.

An absent or inadequate final RIS may also attract adverse Parliamentary or public comment, once it is tabled or otherwise made available to the public. In addition, the Productivity Commission is required to report publicly on compliance with RIS requirements.

Figure 2.1 Integrating RIS requirements within the policy making process



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## 2.2 The Productivity Commission to report on compliance

The Prime Minister's Statement *More Time for Business* gave the Commission the task of reporting annually on compliance with the Commonwealth Government's RIS requirements, starting in 1997–98. In particular, this report must include:

the number of Bills introduced into Parliament and the number of treaties and legislative instruments made during the relevant financial year for which a regulation impact statement was required. The report will also note how many Bills were accompanied by a regulation impact statement. In addition, the [Productivity] Commission will continue to comment in its annual report on the Government's overall performance in regulation setting and review (Prime Minister 1997, pp. 69–70).

*Regulation and its Review 1997–98* is part of the series of publications making up the Productivity Commission's Annual Report and meets this requirement.

In this first year of formal reporting, the Commonwealth's overall performance against RIS requirements is assessed. For future reports, consideration will be given to providing disaggregated information at the departmental and agency level. This would be consistent with the Government's decision that the Office of Small Business will publish information on performances of individual portfolios against specific (measurable) indicators of sound regulatory practice.

The methodology used in this year's report on compliance with RIS requirements is summarised in box 2.1 below.

### Box 2.1 Methodology — where did the compliance figures come from?

Under the Prime Minister's Statement *More Time for Business* (p. 70), Commonwealth Departments and agencies were required to assist in reporting on compliance with RIS requirements by providing the Office of Regulation Review with relevant information.

The ORR sent letters to Commonwealth Departments and some regulatory agencies over 1997–98 requesting:

- a list of all regulations made (including Bills, subordinate legislation, quasi-regulation, treaties, national standards and the decisions of Ministerial Councils) and a brief description of each; and
- in each case, whether a RIS was prepared for the decision maker and tabled in Parliament.

The ORR then decided on the basis of the information provided by Departments and agencies whether the preparation of a RIS was required, and evaluated the performance of each Department or agency against the RIS requirements.

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## 2.3 Compliance indicators

A set of indicators was developed to measure the Commonwealth's compliance with RIS requirements.

1. Was the ORR consulted at an early stage in the policy development process (as required by the Government)?
2. Was a RIS prepared for the decision maker? If so, was this RIS of an adequate standard?
3. Was a RIS tabled in Parliament or otherwise provided to the public? If so, was this RIS of an adequate standard?

For the 1997–98 compliance report, consultation with the ORR was assessed as occurring at 'an early stage in the policy development process' if it took place before the policy decision was made. If the ORR is consulted early, and a RIS is prepared before the decision to regulate is made, the analysis can add significant value to the decision making process.

In some cases during 1997–98 the ORR was consulted sufficiently early in the policy development process so that the relevant department was able to use a draft RIS as a consultation document. The department was then well placed to provide an adequate RIS to the decision maker by refining the consultation document, streamlining the documentation required.

Chapters 3 to 6 assess the information provided on Bills, subordinate regulation, quasi-regulation, and treaties against the RIS requirements.