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## D OBPR activities and performance

The role of the Office of Best Practice Regulation (OBPR) is to promote efficient and effective legislation and other regulations.

The OBPR provides advice to Government departments and agencies on appropriate quality control mechanisms for the development of regulatory proposals (see the *Best Practice Regulation Handbook*) and provides a similar function for the Council of Australian Governments, ministerial councils and national standard-setting bodies.

In monitoring compliance with the Australian Government's requirements, the OBPR is responsible for determining when further regulatory impact analysis of a proposal is required and the appropriate level of analysis, either in the form of a Regulation Impact Statement (RIS) or a quantitative assessment of business compliance costs. The OBPR provides assistance to approximately 100 Australian Government departments and agencies, ministerial councils and national standard-setting bodies in undertaking regulatory analysis and reports annually on compliance.

Following the introduction of the new regulatory governance arrangements in November 2006, the OBPR is also responsible for managing Annual Regulatory Plans and Regulatory Performance Indicators, promoting the whole-of-government consultation principles and providing technical assistance to officials on cost-benefit analysis and consultation processes. The full range of activities that the OBPR is required to undertake are set out in its charter (box D.1).

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### Box D.1 **Charter for the Office of Best Practice Regulation**

The role of the Office of Best Practice Regulation (OBPR) is to promote the Australian Government's objective of effective and efficient legislation and regulations. Its functions are to:

- advise Government, departments and agencies on appropriate quality control mechanisms for the development of regulatory proposals and for the review of existing regulations
- examine Regulation Impact Statements and advise whether they meet the Government's requirements and provide an adequate level of analysis, including cost-benefit and risk analysis of appropriate quality
- advise departments and agencies on the Government's requirements for compliance costs assessment, and maintain the Business Cost Calculator as a regulation costing tool
- manage other regulatory mechanisms, including Annual Regulatory Plans and Regulatory Performance Indicators
- promote the whole-of-government consultation principles and provide clear guidance on best practice consultation with stakeholders to be undertaken as part of the policy development process
- provide training and guidance to officials to assist them in meeting the assessment requirements to justify regulatory proposals
- provide technical assistance to officials on cost-benefit analysis and consultation processes
- report annually on compliance with the Government's requirements for Regulation Impact Statements, compliance cost assessment and consultation, and on regulatory reform developments generally
- provide advice to ministerial councils and national standard-setting bodies on Council of Australian Governments guidelines that apply when such bodies make regulations
- monitor regulatory reform developments in the States and Territories, and in other countries, in order to assess their relevance to Australia
- lodge submissions and publish reports on regulatory issues having significant implications.

The OBPR is to focus its efforts on regulations that restrict competition, have a significant impact on business and individuals or involve medium compliance costs. The OBPR is to ensure that the effects on small business of proposed new and amended legislation and regulations are made explicit and given adequate consideration.

Source: Australian Government 2007a, *Best Practice Regulation Handbook*, Canberra.

## Activities in 2006-07

### Australian Government regulatory activity

In 2006-07, the total number of regulations introduced (2338) was down slightly on the past two years (table D.1). The number of bills introduced was higher (191 in 2006-07 compared with 149 in 2005-06 and 172 in 2004-05) while the number of disallowable instruments was lower.

While the number of queries received by the OBPR was also lower (780 queries received in 2006-07 compared with 948 queries in 2005-06 and 851 queries in 2004-05), the number of proposals requiring a RIS was higher (17.7 per cent of queries received in 2006-07 compared with 13.5 per cent in 2005-06 and 15.7 per cent in 2004-05). In addition, the OBPR advised that quantification of compliance costs (in the form of a BCC report) was required on 25 occasions (3 per cent of queries received). See table D.1.

Table D.1 **Australian Government regulatory activities, 2001-02 to 2006-07**

	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>
<b>Regulations introduced</b>						
Bills	207	174	150	172	149	191
Disallowable instruments <sup>a</sup>	1711	1615	1538	2458	2497	2147
<b>Total introduced</b>	<b>1918</b>	<b>1789</b>	<b>1688</b>	<b>2630</b>	<b>2646</b>	<b>2338</b>
<b>Regulatory assessment workload</b>						
Total number of new queries received by the OBPR <sup>b</sup>	709	861	845	851	948	780
Number requiring further analysis	175	132	169	134	128	163
<b>Proposals finalised in period <sup>c d</sup></b>						
RISs required	145	139	114	85	96	81
RISs prepared	130	120	109	71	79	72

<sup>a</sup> The large numbers of disallowable instruments reported since 2004-05 relate, in part, to the re-making of existing delegated legislation (delegated instruments made before 1 January 2005) under the *Legislative Instruments Act 2003*. <sup>b</sup> In 2006-07, the OBPR received 780 queries. Of these, 388 were received before 20 November 2006 and 392 queries were received on or after 20 November 2006. <sup>c</sup> Proposals introduced into Parliament or made into law in the reporting period. <sup>d</sup> In 2006-07, 63 RISs were required for proposals finalised under the previous RIS requirements, while 16 RISs were required (as two proposals were granted exceptional circumstances status) for proposals finalised under the best practice regulation requirements. Two BCC reports were also required under the new arrangements.

Sources: SSCRO (2007), OBPR.

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## **COAG regulatory activity**

In advising ministerial councils and national standard-setting bodies on regulatory best practice, the OBPR identified 33 decisions made in the 12 months to 31 March 2007 for which RISs were required. RISs were prepared and assessed as adequate by the OBPR at the consultation stage for 29 proposals and at the decision-making stage for 31 proposals.

The OBPR also reports on regulation making on an annual basis by ministerial councils and national standard-setting bodies to the National Competition Council (see appendix C).

## **Reporting on compliance**

The OBPR provides information on its regulatory review activities through the *Best Practice Regulation Report* (formerly *Regulation and its Review*) which has been part of the Productivity Commission's annual report suite of publications. The report fulfils the Productivity Commission's and the OBPR's obligation to report annually on compliance with the Government's regulation review and reform requirements. *Regulation and its Review 2005-06* was released on 1 December 2006. In the year ending 30 June 2007, there were 2260 requests for the report from the Productivity Commission's website.

## **Release of new regulatory guidance material and related initiatives**

In line with the OBPR's expanded role in assisting departments meet their regulatory obligations, the OBPR has made available a number of tools, publications and guides in print and online at the OBPR website, linked to the Productivity Commission's website (see box D.2).

In November 2006, the OBPR made the Business Cost Calculator available for download on the OBPR website. The Business Cost Calculator is an electronic costing tool designed to assist departments and agencies meet the mandatory requirement to consider business compliance costs for all proposals requiring regulatory impact analysis. As at 30 June 2007, the Business Cost Calculator had been downloaded 1507 times.

Also in November 2006, the OBPR prepared the draft *Best Practice Regulation Handbook*, which replaced the second edition of the former guidance material, *A Guide to Regulation*. Around 1400 copies of the draft Handbook were distributed for use by policy and regulatory officers in all Australian Government departments,

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agencies, statutory authorities and boards and to other people interested in regulatory reform. The draft *Best Practice Regulation Handbook* was also made available online. The draft Handbook was complemented with the ready references *Quickstart to Regulatory Impact Analysis* and the *Users Guide to the Best Practice Regulation Handbook*, which were made available in hard copy and were also made available online. The final version of the *Best Practice Regulation Handbook* was launched in September 2007, along with associated guidance material including a preliminary assessment form. The guidance material is available online with a preliminary assessment ‘smart’ form.

In all, the best practice regulation material including the *Best Practice Regulation Handbook*, the Business Cost Calculator, *A Guide to Regulation* and supplementary material were downloaded 79 653 times.

**Box D.2      Guidance material issued by the OBPR in 2006-07**

Since the Australian Government’s August response to the report of the Regulation Taskforce (2006), the Office of Best Practice Regulation made the following tools and guidance material publicly available in the year ending 30 June 2007:

- *Best Practice Regulation Handbook*, (draft) issued November 2006
- *Quickstart to Regulatory Impact Analysis*, (draft) issued November 2006
- User’s Guide to the *Best Practice Regulation Handbook*, (draft) issued November 2006
- Business Cost Calculator and supplementary materials, re-issued November 2006 (in line with the change in responsibilities from the Office of Small Business)
- Preliminary Assessment Quicksan, (limited release) first issued January 2007
- Coordinators’ website and associated material, including Best Practice Coordinators’ bulletin and information sheets.

In September 2006, the Secretary of the Department of the Prime Minister and Cabinet, Dr Peter Shergold, wrote to each department and agency requesting that they nominate a senior executive officer to coordinate regulatory matters within their organisation and help oversight the successful bedding down of the new arrangements.

Each Australian Government department and agency responsible for making regulation has appointed a Best Practice Regulation Coordinator. The role of the Coordinators varies across departments and agencies with many Coordinators taking a strong advocacy role and encouraging and ensuring compliance with the enhanced requirements.

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To assist Coordinators in their role, the OBPR organised a forum for Coordinators to receive information on the new arrangements, discuss their roles and responsibilities, and raise issues arising from the rollout of the new arrangements. The OBPR also developed and made available a website for Coordinators where they can access additional material about the new best practice requirements.

## **Training**

In addition to providing advice and assistance to policy officers to meet the Australian Government and COAG regulatory impact analysis requirements, in 2006-07, the OBPR offered formal training to all departments and agencies. It provided formal training on regulatory best practice to 889 officials from a wide range of departments and agencies:

- 232 senior officials were briefed by the Executive Director and staff of the OBPR on the Government's new requirements
- 532 policy officers received training in the Government's regulatory assessment requirements, including changes to the requirements, how to quantify compliance costs and how to prepare a RIS
- 55 policy officers received specific training on how to use the Business Cost Calculator
- 70 were provided with an introduction to cost-benefit analysis.

## **Other activities**

In monitoring and contributing to regulatory reform developments more broadly throughout Australia and internationally during 2006-07, the OBPR met with officials from:

- the International Monetary Fund
- the Organisation for Economic Co-Operation and Development
- the Legislative Affairs Office of State Council of the Chinese Government
- the Indonesian Ministry of Trade
- the Regulatory Impact Analysis Unit, New Zealand Ministry of Economic Development
- the Investment and Financial Services Association
- the Insurance Council of Australia
- the Australian Public Service Commission

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- State and Territory regulatory impact assessment units
  - the Victorian Competition and Efficiency Commission.

The OBPR also responded to requests for information on Australia's regulatory impact analysis requirements from the Portuguese, Belgian and Japanese governments.

## **Performance in 2006-07**

The OBPR aims to ensure that its activities are carried out efficiently and effectively by providing timely advice and assistance of a high standard that is useful to government.

### **Quality indicators**

The scope of the OBPR'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 OBPR's work is provided by feedback from other government and community bodies, including those that prepare RISs and those that use them.

In 2006-07, the OBPR continued its ongoing survey of officials preparing RISs to obtain feedback on how departments and agencies view the OBPR's work performance and the quality of its service in providing advice on the Government's regulatory best practice requirements. The OBPR dispatches evaluation forms after each RIS has been assessed. The response rate in 2006-07 was 77 per cent (compared with 51 per cent in 2005-06). Thirty-three per cent of respondents rated the quality of the OBPR's written and oral advice as 'excellent' (compared with 27 per cent in 2005-06), while 60 per cent rated it as 'good' (compared with 51 per cent in 2005-06). Seven per cent of respondents considered the OBPR's service as 'satisfactory' (compared with 22 per cent in 2005-06). Six respondents offered specific suggestions on how the OBPR could improve the quality of its advice, including:

- more clearly communicating the additional requirements under the new regulatory framework
- having a better understanding of the background to issues
- making its expectations clearer earlier in the process.

As in previous years, the OBPR surveyed the 657 Australian Government officials who received training in regulatory best practice in 2006-07 and 430 responses were received — a response rate of 65 per cent (compared with a response rate of 49 per cent in 2005-06). Trends in training and its evaluation are shown in table D.2.

**Table D.2 Australian Government training evaluation, 2002-03 to 2006-07<sup>a</sup>**

<i>Evaluation</i>	<i>2002-03</i>		<i>2003-04</i>		<i>2004-05</i>		<i>2005-06</i>		<i>2006-07</i>	
	no.	%	no.	%	no.	%	no.	%	no.	%
Total number trained	373		355		209		289		657	
Responses received	250	(67)	272	(77)	154	(74)	178	(49)	430	(65)
Excellent	62	(25)	52	(19)	43	(28)	36	(20)	110	(26)
Good	170	(68)	182	(67)	101	(66)	127	(71)	283	(66)
Satisfactory	19	(7)	38	(14)	9	(6)	14	(8)	37	(9)
Unsatisfactory	0	(0)	0	(0)	1	(1)	1	(1)	0	(0)

<sup>a</sup> Excludes officials from State/Territory governments, the New Zealand Government or officials assisting ministerial councils and national standard-setting bodies.

Source: OBPR.

The comparatively large number of officials trained in 2006-07 was associated with the OBPR's increased role in training Government departments about regulatory best practice, and the increased demand from agencies for training resulting from the new regulation-making framework. The responses indicate that the OBPR training was generally well received, with 92 per cent of respondents rating the training as either 'excellent' or 'good' (table D.3).

**Table D.3 Regulatory impact analysis training by type, 2006-07<sup>a</sup>**

	<i>Business Cost Calculator</i>		<i>RIS</i>		<i>Cost-benefit analysis</i>		<i>Total</i>	
	no.	%	no.	%	no.	%	no.	%
Total number trained	55		532		70		657	
Responses received	44	(80)	350	(58)	36	(51)	430	(65)
Excellent	12	(27)	92	(26)	6	(17)	110	(26)
Good	30	(68)	232	(66)	21	(58)	283	(66)
Satisfactory	2	(5)	26	(7)	9	(25)	37	(9)
Unsatisfactory	0	(0)	0	(0)	0	(0)	0	(0)

<sup>a</sup> Excludes officials from State/Territory governments or officials assisting ministerial councils and national standard-setting bodies.

Source: OBPR.

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## **OBPR timeliness**

The extent to which the OBPR'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 OBPR's timeliness including: the length and quality of the regulatory impact analysis document received; the complexity of the issues/policy proposals canvassed; the familiarity of OBPR staff with the issues covered, including whether the OBPR has had prior contact with the department/agency in relation to the issue; OBPR workloads; and staff availability.

As a general rule, officials preparing RISs are asked to allow the OBPR two weeks to provide advice on their adequacy. However, where further redrafting is necessary, additional time may be needed to ensure that the required adequacy criteria are met. In 2006-07, the OBPR provided formal feedback (comments on the first draft of the RIS) to departments and agencies, on average, eight working days after RISs were received. The ORR provided comments on 96 per cent of all (first draft) RISs received within two weeks.

Under the COAG Principles and Guidelines, the OBPR is also required to provide advice on RISs or BCC Reports for ministerial councils and national standard-setting bodies in a timely manner. When asked for advice in two weeks or less, the OBPR provided advice within the specified timeframe on all occasions in 2006-07.

## **Indicators of usefulness**

The usefulness of the OBPR'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.

- RISs tabled in the Parliament with explanatory memoranda or explanatory statements provide greater transparency regarding the rationale behind the Government's regulatory decisions, resulting in the Parliament and the public being better informed. RISs and the report of the Regulation Taskforce were referred to in Hansard on 36 occasions in 2006-07.<sup>1</sup>

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

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<sup>1</sup> Issues raised included: the Independent Contractors Bill 2006, the Migration Amendment (Employer Sanctions) Bill 2006, Air Service Agreements.

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- The Australian Government cited compliance data from *Regulation and its Review 2005-06* (PC 2006) in its *National Competition Policy Report 2005-07* (Australian Government 2007b) and these data were also used in policy statements by the Opposition (eg, Rudd 2007, Emerson 2007).
  - The Business Council of Australia (BCA) drew on the 2005-06 report on compiling its own assessment of regulatory reform, *A Scorecard of State Red Tape Reform*. In addition, the BCA stated:

The BCA strongly supports a process of accountability that includes an independent agency like the Office of Best Practice Regulation, which provides oversight of the RIS process and reports on the adequacy of RISs each year in its annual publication *Regulation and its Review*. Transparency and accountability mechanisms are essential for ensuring that regulation-making processes are properly implemented and adhered to. (BCA 2007, p. 5)
  - Data from *Regulation and its Review 2005-06* were also used in WTO Trade Policy Review. (WTO 2007)
  - Approximately 1550 printed copies of *Regulation and its Review 2005-06* were distributed (including copies distributed to each Member of the Federal Parliament) and there was coverage of the report in national newspapers.
  - In the year ending 30 June 2007, there were more than 2200 requests for *Regulation and its Review 2005-06* from the Productivity Commission's website and a total of more than 3900 requests for the previous two reports.

The OBPR also provides information on regulatory best practice via its website. From 1 July 2006 to 19 November 2006, the ORR website received more than 8000 viewing requests. From 20 November 2006 to 30 June 2007, the OBPR website received more than 211 000 viewing requests and the BCC website, which went live in January 2007, received more than 78 000 requests. There were more than 70 000 requests for best practice regulation material (including the draft version of the *Best Practice Regulation Handbook*, released in November 2006 and the BCC). Quickstart was requested more than 6100 times and the Users Guide was requested more than 9700 times. There were more than 35 600 requests for the chapters of the *Best Practice Regulation Handbook* and more than 9300 requests for the appendixes. The COAG Principles and Guidelines were requested more than 1200 times in 2006-07.