
Key messages

- Overall, compliance with the Commonwealth Government's Regulation Impact Statement (RIS) requirements by departments and agencies in 2000-01 was broadly comparable to the previous year.
 - Some 157 regulatory proposals affected business or restricted competition and required the preparation of a RIS.
 - Adequate RISs were prepared for the policy approval/decision-making stage for 82 per cent of those proposals.
 - The compliance rate was considerably lower for those proposals assessed as having a significant impact — with only around 60 per cent assessed as adequate.
- The relatively short time frames in which RISs were prepared for some significant proposals suggest that the potential for the RIS process to contribute to policy development is not being fully realised.
- Compliance with the Government's RIS requirements varied significantly both among and within portfolios. While 12 agencies achieved compliance rates of 100 per cent, the (weighted) average compliance rate for the remaining 12 was 74 per cent.
- While various departments and agencies have integrated the RIS process into their policy development process, some still treat it as an 'add-on'. Practical measures that agencies can adopt to better integrate the Government's RIS requirements include:
 - preparing a Regulatory Plan in consultation with the Office of Regulation Review;
 - establishing 'gate-keepers' within agencies to ensure that RIS requirements are met;
 - preparing an 'early' RIS for consultation; and
 - publishing RIS compliance information in annual reports.
- Regulation making also occurs at a national level among a wide range of Commonwealth/State/Territory Ministerial Councils and some standard-setting bodies. In 2000-01, the rate of compliance with the *Principles and Guidelines* agreed to by the Council of Australian Governments was 76 per cent.

Overview

Regulation Impact Statements (RISs) are intended to assist government policy makers by identifying and assessing all viable options (including non-regulatory measures) for achieving government policy objectives. They are required for all regulatory proposals (including proposals in the form of non-disallowable instruments, quasi-regulation and treaties) that affect business or restrict competition.

Since 1997, the Commonwealth Government has required that RISs be presented to decision makers and later be made public. One of the functions of the Office of Regulation Review (ORR) is to advise on whether the Government's RIS process requirements have been met, including whether the RIS provides an adequate level of analysis. In turn, the Productivity Commission has an obligation to report annually on compliance with these requirements across Commonwealth departments and agencies.

Aggregate compliance results for 2000-01

Of those regulatory proposals tabled in Parliament or made in 2000-01, 157 required the preparation of a RIS for decision makers. This requirement was met in 133 cases, with 129 of those RISs containing analysis judged to be of an adequate standard. Accordingly, the compliance rate was 82 per cent (table 1). This is the same rate as that achieved in 1999-2000, but somewhat higher than in 1998-99.

The second requirement, that adequate RISs be tabled in Parliament (with the explanatory material for the Bill or legislative instrument) or otherwise be made public, was satisfied in 89 per cent of cases in 2000-01. This was a little below the nominal compliance rate achieved in the previous year.

As in previous years, in 2000-01 the ORR continued to raise the standard of analysis required for a RIS to be deemed 'adequate', in keeping with the Government's aim of improving the regulatory decision-making process. This implies that the compliance rate reported for 2000-01 is likely to have been slightly higher if assessed against the standards of the previous year.

Table 1 Aggregate RIS compliance at decision-making stage, 2000-01 and 1999-2000

<i>Proposals introduced via</i>	<i>Number of RISs</i>			<i>2000-01^a</i>	<i>1999-2000</i>
	<i>required</i>	<i>prepared</i>	<i>adequate</i>	<i>compliance</i>	<i>compliance</i>
				<i>%</i>	<i>%</i>
Primary legislation (Bills)	55	44	40	73	80
Disallowable instruments	66	56	56	85	73
Non-disallowable instruments	19	18	18	95	95
Quasi-regulation	15	13	13	87	100
Treaties	2	2	2	100	100
Total	157	133	129	82	82

^a Only those proposals that were made or tabled during 2000-01 are reported. The data exclude RISs prepared for the decision-making stage for many other proposals developed in 2000-01, but not made or tabled prior to 30 June 2001.

Source: ORR estimates.

How well are the RIS requirements being met?

It is pertinent to question whether the Government's objectives when introducing RIS requirements in March 1997 have been met. At that time, the Prime Minister stated that 'the purpose of the [regulation impact] statement is to ensure that departments and agencies fully consider the costs and benefits of all viable alternatives, with a view to choosing the alternative with the maximum positive impact' (CoA 1997).

The compliance data shown above sheds some light on this question at an aggregate level. However, the ORR has also been monitoring two particular aspects of compliance — first, whether compliance varies with the significance of the proposals and, second, whether RISs have been prepared early enough in the policy development process to have contributed to a meaningful assessment of alternatives, as is the Government's intent.

To gauge whether compliance differed with the significance of regulatory proposals, the ORR classified each of the 157 proposals to one of four 'significance' rankings — reflecting judgements about the nature and magnitude of the proposal and the scope of its impact. Compliance at the decision-making stage for the two highest rankings, that accounted for about one-fifth of all proposals in 2000-01, was only 60 per cent, compared with 87 per cent for the two lesser rankings (table 2).

Table 2 RIS compliance at decision-making stage, by significance and timeliness, 2000-01

<i>Significance rating</i>	<i>Required</i>	<i>Adequate</i>	<i>Compliance</i>	<i>Average elapsed time</i>
	no.	no.	%	weeks ^a
More significant	30	18	60	2
Less significant	127	111	87	9.5
Total	157	129	82	

^a Measured as the time from receipt of the first draft in the ORR up to when the ORR advises whether the RIS requirements have been met at the decision-making stage.

Source: ORR estimates.

With regard to timeliness, it is typically the case that a first draft of a RIS presented to the ORR is deficient in at least some aspects. This triggers an interactive process whereby the ORR provides comments and the responsible agency progressively improves the document with the objective of obtaining ORR clearance of an ‘adequate’ document by the time papers are assembled for the decision maker (Cabinet, the Prime Minister, another Minister, a board, etc). To gauge the timeliness of the preparation of RISs, the ORR has been measuring the elapsed time between when a first draft is received and when the ORR advises whether the RIS requirements have been met at the decision-making stage. For regulatory proposals finalised in 2000-01, the average elapsed time for the more significant one-fifth of proposals was only two weeks, compared with more than nine weeks for the less significant proposals.

Compliance by departments and agencies

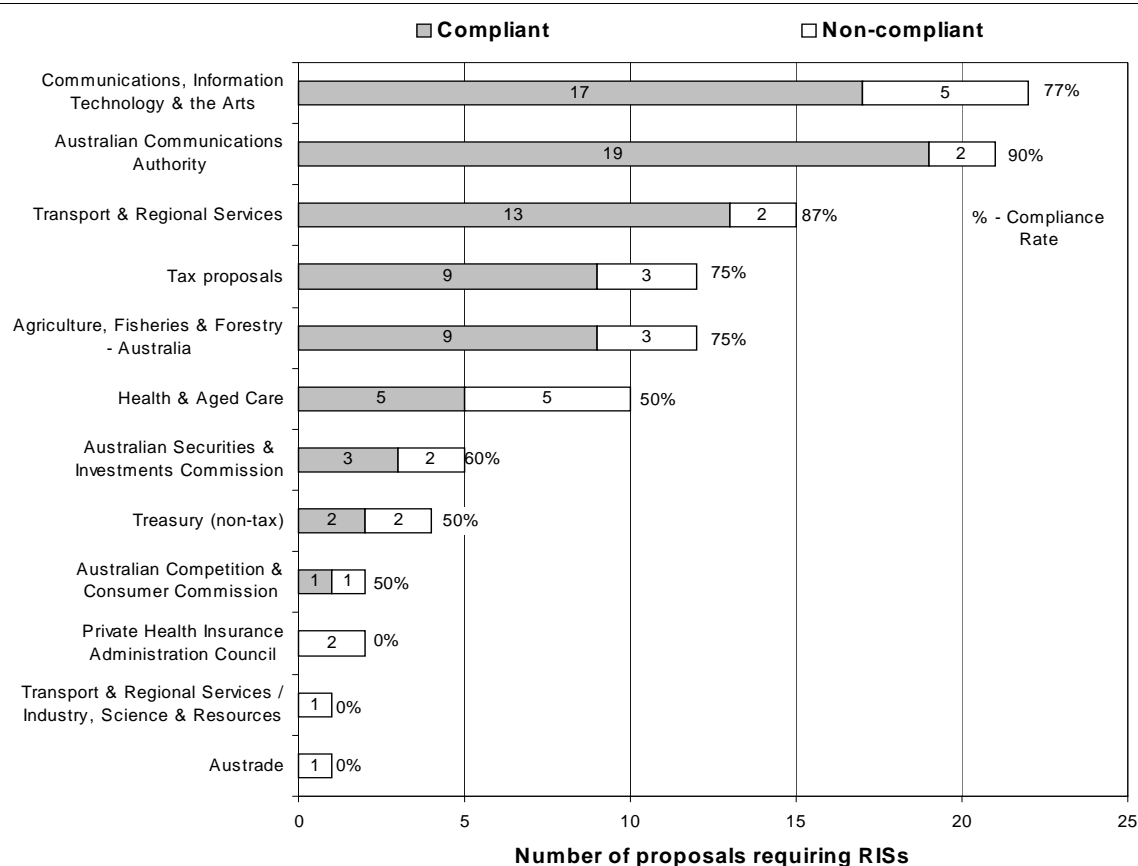
Those departments and agencies that were required to prepare RISs during 2000-01 and fully complied with the requirements at the decision-making stage were:

- Attorney-General’s Department (3 RISs);
- Australian Broadcasting Authority (11 RISs);
- Australian Customs Service (4 RISs);
- Australian Prudential Regulation Authority (1 RIS);
- Civil Aviation Safety Authority (4 RISs);
- Department of Education, Training and Youth Affairs (5 RISs);
- Department of Employment, Workplace Relations and Small Business (8 RISs);
- Department of the Environment and Heritage (9 RISs);
- Department of Family and Community Services (1 RIS);

- Department of Immigration and Multicultural Affairs (1 RIS);
- Department of Industry, Science and Resources (5 RISs); and
- National Capital Authority (1 RIS).

The results for agencies that did not comply fully are shown in figure 1. It indicates, for example, that 17 of the 22 RISs that the Department of Communications, Information Technology and the Arts was required to prepare were assessed as containing an adequate standard of analysis — a 77 per cent compliance rate.

Figure 1 RIS compliance at decision-making stage, 2000-01



Note: Excludes the 12 departments and agencies that fully complied with the RIS requirements at the decision-making stage.

Source: ORR estimates.

National regulation making: compliance results

The results reported above cover the regulatory activities of Commonwealth departments and agencies. Regulation making also occurs at a national or interjurisdictional level among a wide range of Commonwealth/State/Territory Ministerial Councils and some 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 Regulatory Impact Statement 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.

In 2000-01, the ORR identified 25 matters that it assessed as being subject to the COAG *Principles and Guidelines* (COAG 1997). Six of those did not meet the RIS requirements, implying an overall compliance rate of 76 per cent. Details are provided in chapter 1 and appendix B.

Improving performance

Preparation of a Regulation Impact Statement is a central feature of good regulation making, primarily because it formalises and provides evidence of the steps that should be taken in policy formulation. It helps to ensure that options to address a perceived policy problem are canvassed in a systematic, objective and transparent manner, with options ranked according to their net economic and social benefits.

While overall compliance with the Government's RIS requirements appears satisfactory, the disaggregated information raises some concerns. It suggests that:

- there is significantly lower than average compliance for the more important regulatory proposals; and
- there is a tendency for the RIS process on substantial proposals to be undertaken in compressed time frames, raising doubts about the extent to which it contributes to the policy development process.

These findings suggest that some agencies are giving relatively low priority to the requirements and treating them as an 'add on' task after a course of action has already been agreed, if not formally decided. (Also see Banks 2001.) While meeting the prescribed RIS requirements, such an approach is not consistent with the spirit of the Government's intent and may preclude the full realisation of the benefits available from the RIS process.

Improving regulatory outcomes

Action that has been taken by the ORR to promote genuine compliance with the requirements includes formal notifications to those agencies where it is evident that there are systemic failures in meeting the Government's requirements. However, there is a range of measures, outlined below, that agencies themselves can adopt to

help them meet both the form and the spirit of the Government's requirements and to benefit from the RIS process. Some additional measures that can further enhance the Government's objectives are also identified.

First, there needs to be an adequate early warning system of pending regulatory changes. Reflecting concerns that affected parties be given ample opportunity to participate in consultation processes, the Government decided in 1998 that each department and agency would publish early in each financial year the regulatory changes planned for that year. The Commission understands that, by the latter half of 2001, some Commonwealth agencies had not met this commitment. It is important for agencies that have not yet done so to publish regulatory plans on their websites as soon as possible.

Second, in recent years some agencies have taken the opportunity to review their policy development processes and to embed the RIS requirements into those processes. This helps ensure that the RIS analysis is done relatively early and thereby increases the prospects that it can make a useful contribution to the development and assessment of policy options. However, the evidence presented above on the short time frames allied to some quite substantial regulatory proposals confirms the anecdotal impression that some regulatory proposals are developed with scant analysis of the relative merits of different options or of their impacts on affected parties.

Third, tangible ways of encouraging greater commitment to the RIS process, thereby tapping into its potential to improve legislative and regulatory outcomes, include:

- departments and agencies publishing their compliance record in their annual reports; and
- agencies with compliance performances consistently below the average nominating a senior official with responsibility for remedying the situation.

Finally, analytical resources committed to the RIS process need to be concentrated where they can be most effective. In the case of proposals having relatively minor significance, consideration could be given to a self-regulatory approach whereby responsible agencies would meet the requirements without ORR input, but with the ORR auditing those RISs after the process has concluded and continuing to publish annual compliance results. This would enable the ORR to give greater attention to those proposals with substantial impacts where compliance has been unsatisfactory.