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## D ORR activities and performance

The objective of the Commission's regulation review activities is to promote processes that, from an economy-wide perspective, improve the effectiveness and efficiency of legislation and regulations developed by Commonwealth departments and regulatory agencies. The ORR aims to assess Regulation Impact Statements (RISs) and undertake associated activities to a high standard, with advice that is timely and useful to government.

### Activities in 2000-01

The range of activities that the ORR is required to undertake is set down in its Charter (box D.1).

In advising on quality control mechanisms for making and reviewing regulation in 2000-01, the ORR:

- analysed whether some 400 different regulatory proposals from Commonwealth departments and agencies affected business or restricted competition; 157 proposals required a RIS, 13 of which related to administrative options for amendments to taxation arrangements;
- provided advice on appropriate terms of reference for a review undertaken as part of the Competition Principles Agreement commitment to review and reform all legislation which restricts competition;
- continued to work with, and provide assistance to, the Office of Small Business in relation to the development of regulatory plans and regulatory performance indicators, and agreed to provide additional information regarding the flexibility of options under the RIS framework;
- examined RISs and provided advice in relation to 25 regulatory decisions taken by Ministerial Councils and national standard-setting bodies; and
- reported to the National Competition Council on compliance with the Council of Australian Governments' (COAG's) *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*, allied to a requirement under the Third Tranche arrangements for competition payments to be linked to regulatory reform in the Regulatory reform in the States and Territories.

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#### Box D.1 Charter of the Office of Regulation Review

In 1997, the Government directed the ORR to issue a charter outlining its role and functions. Ranked in order of priority, the ORR's seven principal activities are to:

- advise on quality control mechanisms for regulation making and review;
- examine and advise on RISs prepared by Commonwealth departments and agencies;
- provide training and guidance to officials;
- report annually on compliance with the Commonwealth Government's RIS requirements;
- advise Ministerial Councils and national standard-setting bodies on regulation making;
- lodge submissions and publish reports on regulatory issues; and
- monitor regulatory reform developments in the States and Territories, and in other countries.

The ORR, together with the Treasury, advises the Assistant Treasurer in his role as the Minister responsible for regulatory best practice, and the Minister for Financial Services and Regulation on legislation review matters.

During the past year, the ORR provided RIS training for 240 officials, including 100 Australian Tax Office officials.

The Commission's publication, *Regulation and its Review*, fulfils the obligation to report annually on compliance with the Government's regulation review requirements. The report for 1999-2000 was released in November 2000. It continued the initiative, begun in 1998-99, of reporting in greater detail on compliance with the Government's regulation review requirements by portfolio, emphasising the importance of these requirements to good policy process and regulatory outcomes.

In monitoring regulatory reform developments around Australia and internationally during 2000-01, the ORR:

- organised, in July 2000, the annual meeting of all regulation review units, representing all States and Territories except the Northern Territory, with discussions focusing on the promotion of good regulatory practice across all jurisdictions;
- participated in several meetings of the COAG Committee on Regulatory Reform and submitted papers on key issues;

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- continued to represent Australia at meetings of the OECD regulatory reform group, including analysing results from a multi-country survey of business views on regulation;
  - attended the International Regulatory Reform Forum in Puebla, Mexico on the challenges of regulatory reform in OECD countries and the promotion of regulatory quality across levels of government;
  - submitted a brief paper to the World Trade Organisation (WTO) Working Party on Domestic Regulation on how regulatory impact analysis is undertaken in Australia and how it has improved the transparency of government regulation making;
  - represented Australia at an APEC–OECD cooperative initiative on regulatory reform, held in Singapore, where progress on regulatory reform and improvements in communication between countries on common issues were discussed; and
  - assisted New Zealand officials by offering advice on how to set up an equivalent body in that country.

## **Performance of the ORR**

The ORR attempts to ensure that its duties are carried out efficiently and effectively. To report on the ORR’s output and success in meeting its responsibility, performance is assessed against the following criteria:

- the quality of ORR work;
- the timeliness of that work; and
- the overall usefulness of ORR work in promoting the objectives of good regulatory practice.

## **Quality indicators**

While the ORR has a responsibility to report on the quality of its work, the confidentiality of RIS issues limits the extent to which specific matters can be reported. However, ORR staff must be able to understand a wide range and complexity of regulatory issues as the scope of work covers the whole of government.

Evidence of the quality of ORR work is provided by the feedback from other government bodies, both those that prepare RISs and those that use them. Client

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survey results for the previous year (1999-2000) rated the ORR above average for all aspects including:

- ability to understand the regulatory issue being dealt with;
- clarity of ORR advice;
- overall competence of ORR staff relative to other departments that respondents dealt with; and
- the working relationship.

In the year 2000-01, no comparable survey was conducted. However, ad hoc feedback provided as comments to ORR staff generally indicate that departments find the ORR contribution to be constructive and positive. Further, New Zealand officials who have liaised with the ORR to assist in their formation of an effective regulatory review body have reported such assistance to be particularly helpful.

## **Timeliness**

Although timeliness is a measure of performance that is difficult to report on accurately for ORR activities, there are some indicators which can assist in this regard (box D.2).

As a general rule, officials preparing a RIS are asked to allow at least two to three weeks in case several rounds of consulting with the ORR, and possible redrafting, are necessary to ensure an adequate standard is achieved. Of the 157 RISs prepared in 2000-01, 34 per cent were assessed by the ORR within two weeks and 65 per cent within five weeks. However, this is a loose measure of ORR timeliness, as external factors — including the resource commitments of the agencies preparing the RIS — had a significant influence on the time taken for redrafting and final clearance. Furthermore, extended consultation can mean that the quality and value of a RIS is improved.

In a specific example of working to short timeframes, the ORR had less than two days to provide comments on a draft RIS of more than 100 pages, which it assessed as inadequate. Following a meeting with the relevant department, an adequately re-drafted RIS was produced for Cabinet consideration within a further four days. The ORR aims to avoid these short time frames by encouraging departments to integrate the RIS process into their policy development process and consult with the ORR at an early stage.

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#### Box D.2 Database measures: reporting on ORR performance

The ORR logs all RIS issues onto confidential databases. This provides a tool to assist the ORR's staff in providing consistent, quality advice, timely service, and to record compliance details. The information recorded includes:

- the date the ORR is first contacted by a department or agency;
- the date the first draft of a RIS is received;
- the date the ORR clears the RIS as meeting an adequate standard; and
- the date that the proposal is due to go to the decision maker.

This information can be utilised to assess the timeliness of the ORR's advice. This is done by providing aggregate measures of the length of time between the ORR receiving a RIS and clearing it as 'adequate' or 'not adequate' in meeting the Government's requirements. Similarly, the time between the first draft being provided to the ORR and the provision of papers to the decision maker can give a very loose guide as to how well the RIS process has been integrated into the policy development process by the agency or department in question.

For complex proposals, such as COAG regulatory issues, the ORR should be contacted early in the process to ensure the RIS contributes as much as possible to good policy process. It is a requirement that the ORR assess the RIS at the consultation stage on COAG issues. Under the *COAG Principles and Guidelines*, the ORR is required to provide advice on draft RISs within two weeks. This was met on each occasion in 2000-01.

The ORR has additional tasks from time to time, and the successful completion of these, concurrent with the ORR's normal responsibilities, indicates a commitment to timeliness.

- The ORR prepared a report to the National Competition Council on compliance with the *COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. This report, which covered compliance for the 11 months to the end of May 2001, was completed on schedule.
- The ORR quickly responded to a Treasury request for a list of all Bills tabled during 1999-2000 that restricted competition.
- The ORR promptly prepared a briefing on regulation impact statements, as requested by the Department of Foreign Affairs and Trade, for the WTO Working Party on Domestic Regulation.

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## Indicators of usefulness

The main measures of whether the ORR is providing a useful service include:

- evidence that agencies are integrating the RIS process within their policy development processes;
- feedback and requests for advice from agencies and departments;
- improvements in the quality of RISs; and, ultimately,
- any evidence that the standard of regulation is improving over time.

One example of an integration of the RIS process with an existing policy development process concerns the Civil Aviation Safety Authority. The Authority releases three documents for most regulatory proposals — a ‘discussion paper’, a ‘notice of proposed rule making’ and a ‘summary of responses’. With some modification, the ORR has agreed that these documents will satisfy the RIS requirements and will assess the analysis in these documents instead of requiring a separate RIS for each proposal.

The ORR attempts to achieve a better standard of RISs by gradually raising the adequacy hurdle over time. This can be gauged by the content, detail and quantification seen in RISs. There is some evidence of overall improvement in the period since RISs have been mandatory. For example, the ORR re-examined a sample of significant RISs across a variety of portfolios which it rated as ‘adequate’ three years ago. Reassessed against current standards, only half of these RISs would still be rated as ‘adequate’.

To be useful and relevant, RISs should be tailored to provide the decision maker with an accurate assessment of options. Discussions between the ORR, the Department of Communications, Information Technology and the Arts and the Australian Communications Authority, for example, led to an arrangement on a complex issue where separate RISs were prepared for the Minister and the Australian Communications Authority Board for their decisions on different aspects of the issue. Another example of enhanced usefulness to decision makers was the improved analysis required by the ORR on the issue of chrysotile asbestos use. The ORR’s suggestions resulted in a more useful final document.

The ORR comments on all aspects of the RIS and, in many cases, this leads to an improvement in quantifying costs and benefits and the analysis of options. There is some evidence that the RIS process has caused policy analysts to revise some proposed recommendations before the decision-making stage. This is consistent with the Government’s best practice requirements for regulation which encourage

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the examination and adoption of alternatives to prescriptive regulation, including self-regulation.

The RIS process can provide useful information when regulatory proposals could be perceived as being contrary to the public interest. For example, when a national competition policy review is carried out and the Government implements the recommendations, the ORR regards the review report as having satisfied the RIS requirements. However, if the implementation is not in line with the review recommendations, there may be grounds for a separate RIS to explain why the chosen option is better from a public interest perspective. If no additional RIS is carried out, or the RIS is inadequate, the ORR reports this in its annual assessment of compliance.

Where a proposal has an adequate RIS attached, it would be useful for both decision makers and, at the tabling stage, Parliament, to be fully informed that this is the case. Most regulations have the RIS attached in the explanatory statement or memorandum, but there is nothing to indicate whether a RIS complies with the Government's requirements for regulatory best practice. For example, the RISs on the proposed ban on certain interactive gambling services and single-desk marketing arrangements for horticultural products were rated inadequate by the ORR, but there is no indication of this in the tabled documents.

The publication of compliance data by portfolio is useful in monitoring the commitment to regulatory best practice within certain areas of government. This information has received national press coverage in the past, suggesting that it is information of use to the community in monitoring the performance of government agencies.

The ORR responds to many requests by departments and agencies for meetings. This enables ORR staff to understand the issue at hand and helps to promote a wider understanding of the Government's requirements for best practice. Generally the feedback is positive, although occasionally comments have been made about agency staff time being devoted to RIS work with little perceived value added for the agency concerned. Other liaison provides useful outcomes, such as the regular meetings held with Treasury, to discuss issues of mutual relevance, and ad hoc meetings to discuss RIS requirements, such as with the Reserve Bank of Australia.

The ORR facilitates the meeting of State and Territory regulatory review units, thereby enhancing the operation and communication between these units. This has proved particularly useful for jurisdictions where regulatory review arrangements are less developed.

Other indicators of the usefulness of the ORR's work follow.

- ORR reports are widely distributed and disseminated. Around 1450 copies of *Regulation and its Review 1999-2000* were distributed, with some coverage by the national press. The report was accessed around 1300 times on the Commission's website in 2000-01.
- A further 460 copies of the second edition of *A Guide to Regulation* were distributed for use by policy and regulatory officers in all Commonwealth Government departments, agencies, statutory authorities and boards, and to other people interested in regulatory reform. The Guide was accessed around 2000 times on the Commission's website during 2000-01. As part of the response to respondents from a previous survey by the ORR, example RISs were made available on the website. Each of these was accessed, on average, around 400 times.
- Training evaluation forms were received from 68 of the 240 people to whom ORR staff provided RIS training in 2000-01. Their views indicated that the training was well received, with more than one-third rating their training as excellent or good (table D.1). A further 63 per cent considered their training to be satisfactory. One participant considered the standard of the training to be unsatisfactory.

**Table D.1 RIS training evaluation in 2000-01**

<i>Evaluation</i>	<i>Number of responses</i> <sup>a</sup>	<i>Per cent</i>
Excellent	17	25
Good	7	10
Satisfactory	43	63
Unsatisfactory	1	1
<b>Total</b> <sup>b</sup>	68	100

<sup>a</sup> Includes only those forms returned. <sup>b</sup> Items do not add to 100 due to rounding.