
3 Bills introduced into Parliament

Compliance with Regulation Impact Statement requirements for Bills introduced into Parliament during 1997–98 was mixed. A Regulation Impact Statement was tabled in most cases where required, and generally the level of analysis was adequate. However, the requirement to provide a Regulation Impact Statement to the decision maker was complied with in only about a third of cases.

3.1 Regulatory activity in Bills

Based on the information provided by departments and agencies, 184 Bills were introduced into Parliament by the Government in 1997–98 (see figure 3.1 below). Of these, 80 did not require a Regulation Impact Statement (RIS) because they were exempted from the RIS process, or did not impact on business or restrict competition. Of the 104 Bills that required the preparation of a RIS, 81 had a direct impact on business; eight had a substantial indirect impact on business; and 15 restricted competition.

Figure 3.1 Bills introduced into Parliament in 1997–98

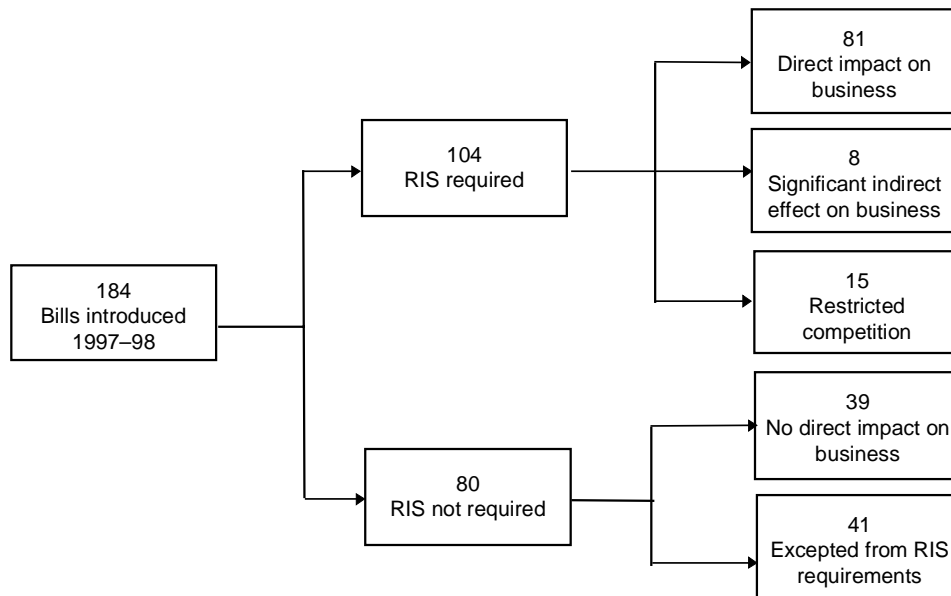


Table 3.1 Selected Commonwealth legislation having an effect on business, 1997–98

<i>Legislation</i>	<i>Features</i>	<i>Effect on Business</i>
Migration Legislation Amendment (Migration Agents) Bill 1997	Implements a regime that requires the registration of migration agents	Restricts competition
Ballast Water Research and Development Funding Levy Bill 1997	Enables a research and development levy to be collected from certain ships arriving in Australian ports	Direct impact
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1997	Implements choice of superannuation fund arrangements for Commonwealth civilian employees	Significant indirect impact
Trade Practices (Fair Trading) Amendment Bill 1997	Allows for industry codes of practice to be prescribed and enforced and prohibits unconscionable conduct in relation to certain small business transactions.	Direct impact
Customs Tariff Amendment Bill (No. 6) 1997	Freezes post-2000 tariff rates for passenger motor vehicles and textiles, clothes and footwear from 1 July 2000 until 2004. Rates are to be reduced from 1 January 2005.	Restricts competition

Table 3.1 above provides some examples of those Bills that had an impact on business or restricted competition.

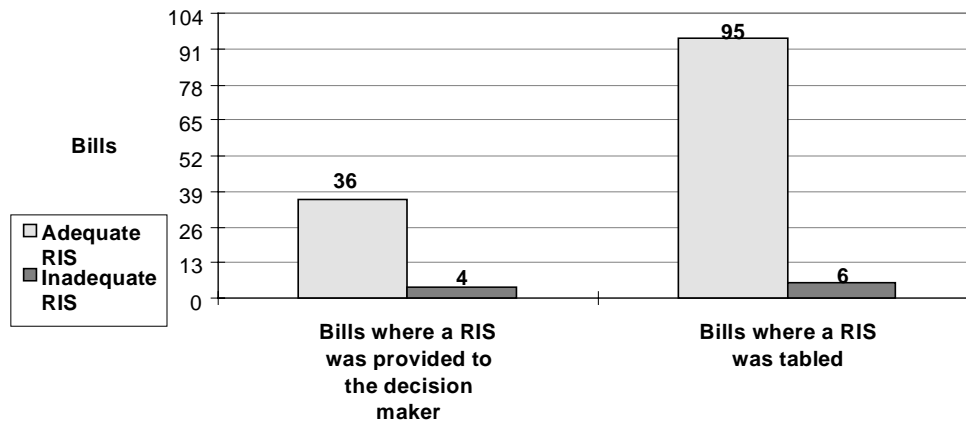
3.2 Compliance with indicators for Bills introduced

To determine the level of compliance with RIS requirements for Bills introduced into Parliament in 1997–98, the relevant procedures were assessed against the compliance indicators developed in chapter 2. The results are summarised below.

The Office of Regulation Review (ORR) was consulted before the decision to regulate had been made, for 69 out of a total of 184 Bills. In some of these cases, the ORR advised that the preparation of a RIS was not required.

Of the 104 Bills that required the preparation of a RIS in 1997–98, for only about one-third was a RIS prepared for the decision maker. When tabled in Parliament, almost all were accompanied by a RIS, as shown in figure 3.2. This suggests that most RISs were prepared to explain a decision that had already been made.

Figure 3.2 Bills introduced in 1997–98 for which a RIS was prepared



There needs to be more emphasis on integrating the RIS into the early stages of decision making.

Figure 3.2 also reveals that the level of analysis in RISs prepared was generally adequate.

Box 3.1 provides an example of compliance with RIS requirements for a Bill introduced during 1997–98.

Box 3.1 An example of compliance with RIS requirements

The *Migration Legislation Amendment (Migration Agents) Bill 1997* followed the RIS principles from an early stage in the development process. In late 1995, the ORR cleared the terms of reference for the national competition policy review of the *Migration Act 1958 (Migration Agents and Immigration Assistance)*, the *Migration Agents Registration (Application) Levy Act 1992* and the *Migration Agents Registration (Renewal) Levy Act 1992*. The review was completed in March 1997.

The Department of Immigration and Multicultural Affairs (DIMA) was able to prepare a RIS suitable for consideration by a decision maker based on the analysis contained within the report. The ORR cleared the RIS as containing an adequate level of analysis.

The RIS was then provided to the Government to inform their decision making. The Government decided to move the migration advice industry towards statutory self-regulation. The *Migration Legislation Amendment (Migration Agents) Bill 1997* was tabled in Parliament as part of the legislative package effecting this decision. The RIS was also tabled in Parliament as part of the explanatory memorandum of that Bill.

3.3 Explaining compliance for Bills

Compliance with RIS requirements for Bills introduced during 1997–98 has been mixed.

Relatively poor compliance with the requirement to prepare a RIS for the decision maker is likely to be a result of many factors, including the following.

- Some agencies were aware of RIS requirements, yet avoided contacting the ORR or chose not to comply. Most Commonwealth departments have limited resources and the RIS process was sometimes seen as unhelpful and as another layer of bureaucracy for regulation makers.

This perception underscores the importance of consulting the ORR early in the policy development process. If the main elements of a RIS are reflected in the early drafts of documents prepared for decision making, this avoids duplication and costly redrafting. At this early point, the analytical framework of the RIS can add real value to decision making by focussing drafters and stakeholders on key issues.

- Responsible officers were sometimes unaware of RIS requirements, indicating inadequate enforcement of the relevant Government decision.

As a result, some agencies did not realise that the RIS requirements applied to all layers of regulation, nor that a RIS was intended to be prepared early in the policy development process and provided to the decision maker. Agencies were not always aware that even if the proposal has obvious net benefits and/or industry support, the proposal may still require a RIS.

- The ORR's resource base constrained its educational and enforcement activities. The ORR was required to assess all Commonwealth regulatory proposals brought to its attention. In doing this, the ORR advised officials within 20 portfolios and 64 agencies attached to these portfolios, as well as over 40 Ministerial Councils. Appendix D summarises the resources and main activities of the ORR during 1997–98.
- Limited differences of opinion occurred between departments and the ORR in applying the RIS requirements. Although the ORR relies mainly on information provided by departments, the role of advising whether a RIS is required — or adequate — falls ultimately to the ORR.

However, where a RIS *was* prepared for the decision maker, most agencies recognised its capacity to assist decision making.

In contrast to the poor compliance with the requirement to prepare a RIS for the decision maker, the requirement to table a RIS in Parliament was complied with in almost all cases.

The possibility of adverse Parliamentary and public comment on an absent or inadequate RIS contributed to a high level of compliance with this requirement. In addition, the bureaucratic processes required for tabling Bills in Parliament specifically incorporate the RIS requirements. When bidding for Parliamentary time, departments identified whether they had contacted the ORR and whether a RIS had been prepared for each proposed Bill. The ORR was provided with a copy of these legislative bids and was able to contact agencies that had not yet complied with RIS requirements.

Generally, where a RIS was prepared — either for the decision maker or for tabling — the level of analysis was adequate. This reflected the practice of refining successive drafts of a RIS between the ORR and the relevant department.

3.4 Improving compliance for Bills

Departments and agencies have a pivotal role in increasing compliance with RIS requirements. Some initiatives which could improve future compliance are listed below.

- Early policy development should be targetted as the point at which officers contact the ORR.
- All relevant officers should have sufficient understanding of RIS requirements, especially in policy making and legal areas. A knowledge of RIS requirements could form part of the selection criteria for such placements.
- A coordinated internal approach within departments and agencies is likely to improve compliance, as well as making reporting on compliance easier. A particular individual, section, branch or division could be given the specific responsibility to ensure compliance with RIS requirements within the department. This approach has been followed with some success in the Civil Aviation Safety Authority.

The ORR can also assist in improving agency compliance. In 1997–98, the ORR achieved compliance with RIS requirements through a number of mechanisms, from encouragement and education through to the use of sanctions and the Assistant Treasurer’s involvement. In addition to these ongoing activities, the ORR could focus its training on problem areas.

To provide the ORR and other stakeholders with early notice of proposals, plans of proposed regulatory activity would assist. The Department of Employment, Workplace Relations and Small Business is to conduct a pilot project to develop a model for regulatory plans which could be adopted by other departments and agencies in the future.

Compliance with RIS requirements may also be improved by the increased use of 'gatekeeper' roles. A gatekeeper role was played, to a limited extent, by the Department of the Prime Minister and Cabinet over 1997–98. In these cases, agencies approaching that department for policy approval were told to contact the ORR and prepare a RIS if necessary before receipt of the proposal would be acknowledged.