
OVERVIEW

Key points

- A well functioning regulatory system is an essential component of modern society. The Australian Government's Regulation Impact Statement (RIS) process contributes to this objective by helping to ensure that proposed new regulations that impact on business are warranted and efficient.
- Overall, the compliance of departments and agencies in 2004-05 with the RIS requirements at the decision-making stage for regulation was lower than in some previous years:
 - RISs were prepared for only 84 per cent of the 85 regulatory proposals that required them. Of those prepared, three were assessed as inadequate, giving an overall compliance rate of 80 per cent (compared with 92 per cent in 2003-04 and 81 per cent in 2002-03).
 - Of the 19 Australian Government departments and agencies that were required to prepare RISs in 2004-05, 10 were fully compliant (compared with 18 of 24 in 2003-04 and 12 of 23 in 2002-03).
- In 2004-05, compliance by Ministerial Councils and national standard-setting bodies with the Council of Australian Governments' RIS requirements at the decision-making stage was 88 per cent (compared with 88 per cent in 2003-04).
- Most OECD countries and other Australian jurisdictions also use RIS processes. Several of these jurisdictions have based — or are considering basing — their RIS processes on those used by the Australian Government, which are highly regarded internationally.
- Notwithstanding this, there have been growing concerns from Australian business about rising regulatory complexity and compliance burdens. In part, additional regulation and associated burdens are the product of a more sophisticated and diverse economy and society, with growing demands on government. Nevertheless, it is also clear that the quality of regulations could be improved and that more can be done to promote this.
- There is broad agreement that adherence to RIS process can and should be improved — including, for example, by regulators better integrating the preparation of RISs into the policy development process, increasing their commitment to consultation with stakeholders and undertaking more robust analysis of policy options.
- In 2005-06, the ORR intends to further raise the minimum adequacy standards for RISs, with a particular focus on improving the standard of analysis of costs and benefits, and of compliance costs for business. The ORR will also enhance its RIS training and explore the scope to make greater use of information technology to facilitate interaction with regulators.

Overview

A well functioning regulatory system is an essential component of modern society. However, business groups have expressed growing concerns about the compliance burdens regulation imposes on business and the community. For example, in May 2005 the Business Council of Australia (BCA) released a major report on business regulation which claimed that the volume of regulation is growing by about 10 per cent per year.

The BCA claimed that many regulations are not scrutinised properly and give rise to a range of unintended and undesirable impacts and costs on business and the community. Other business groups have expressed similar concerns, and there have been calls for governments to do more to improve the efficiency and effectiveness of regulation, including by reducing compliance burdens and red tape.

Australian governments have implemented a range of strategies to improve the quality of regulation, including the use of Regulation Impact Statements (RISs) where regulatory proposals affect business. The use of RISs is promoted by the OECD and in other international forums.

The RIS process

A RIS formalises and documents the steps taken in developing good regulation. It is prepared by a regulatory department/agency and seeks to ensure that regulation achieves its objectives in the most effective and efficient way. It identifies the problem, outlines objectives and assesses the economic, social and environmental impacts of a range of feasible options for addressing the problem. The level of analysis of each option should be commensurate with the impacts of the proposal, and departments and agencies are encouraged to use quantitative cost/benefit analysis when appropriate. The RIS then documents community consultation, proposes a recommended approach and outlines implementation and review mechanisms.

RISs are intended to provide a basis for more informed decision making and to enhance accountability and transparency by informing the community and stakeholders about why and how particular regulatory decisions were taken. RISs

are integrated with — and reinforce — other regulatory quality control systems, such as regulatory plans and regulatory performance indicators.

RISs are formally required for regulatory proposals that have a direct or significant indirect impact on business. They are not required for proposals that do not impact on business or have only minor impacts on business. In 2004-05, the Office of Regulation Review (ORR) was notified of 851 new regulatory proposals potentially impacting on business and advised that RISs were required in 167 (20 per cent of) cases.

The Council of Australian Governments (COAG) has adopted similar RIS processes to the Australian Government. These apply to all Ministerial Councils and national standard-setting bodies. With the exception of Western Australia, all Australian states and territories also employ RIS processes.

The Australian Government's RIS processes are seen as being at the forefront of international best practice by international organisations such as the Organisation for Economic Cooperation and Development (OECD), and national organisations, such as the National Competition Council (NCC) and the Victorian Government Scrutiny of Acts and Regulations Committee. For example, the recent OECD review of Canada's regulatory quality control systems recommended that the Canadian Government adopt key elements of Australia's approach.

New Zealand and some Australian jurisdictions — most notably Victoria — have broadly modelled their RIS processes on those used by the Australian Government. Other countries, such as Indonesia, are also considering establishing RIS systems based on the Australian Government's approach.

The role of the ORR, a separate unit within the Productivity Commission which shares its statutory independence, is to provide impartial and independent advice to the Australian Government and COAG regulators about whether a RIS is required for each regulatory proposal and, if so, whether the analysis contained within each RIS meets 'adequacy' standards. The ORR does not advocate particular regulatory options or outcomes — it is the department or agency preparing the RIS, not the ORR, which is responsible for the content of RISs. The absence or inadequacy of a RIS does not preclude Government consideration of a proposed regulation. Where a RIS is required but has not been prepared or is inadequate, the Government may decide to proceed with the proposal, postpone policy approval until an adequate RIS is prepared or require the subsequent preparation of a RIS.

The Commission reports annually — through *Regulation and its Review* — on the adequacy of Australian Government RISs. The ORR also provides training and guidance to officials who consider regulatory issues.

The RIS process works best where it receives high level political and bureaucratic support. Departments and agencies need to consult with the ORR early in the policy development process, before regulatory decisions are made. In such cases, the RIS can provide relevant and timely information to decision makers and shape regulatory policy outcomes. When published, a RIS communicates to the broader community the evidence for and rationale behind regulatory proposals.

Poor quality regulation making processes are often associated with decisions being made in haste, with incomplete information about options and their impacts. Inadequate or ineffective consultation can also contribute to poor regulatory outcomes. In such cases there is less scope for the RIS process to add value to policy development.

Box 1 The Australian Government's RIS requirements

A Regulation Impact Statement (RIS) provides a consistent, systematic and transparent process for assessing alternative policy approaches to problems. It includes an assessment of the impacts of the proposed regulation, and alternatives, on different groups and the community as a whole.

The primary role of a RIS is to improve government decision-making processes by ensuring that all relevant information is presented to the decision maker. In addition, after the decision is made, the RIS is tabled in Parliament or may be published elsewhere, providing an account of the basis for that decision.

Since March 1997, it has been mandatory to prepare a RIS for all reviews of existing regulation, proposed new or amended regulation, quasi-regulation and proposed treaties involving regulation, which will directly or indirectly affect business or restrict competition. A range of exceptions apply (see *A Guide to Regulation* for details).

The RIS requirements apply to all Australian Government departments, agencies, statutory authorities and boards that review or make regulations, including agencies or boards with administrative or statutory independence.

A RIS should be developed, in consultation with the ORR, once an administrative decision is made that regulation may be necessary, but before the Government or its delegated official makes a policy decision to regulate. A key role of the ORR is to decide whether a RIS should be prepared.

After receiving advice from the ORR that a draft RIS complies with the Government's requirements, it is attached to the proposals to be considered by the decision maker — Cabinet, the Prime Minister, Minister(s) or a board.

A RIS is tabled with explanatory material. In the case of treaties, a RIS should be prepared when approval to commence negotiations is sought. It should be updated when approval is sought to sign the final text of a treaty, and made public when the treaty is tabled in Parliament.

As many factors can influence government decisions about regulation, the impact of the RIS process in improving the quality of regulation is difficult to ascertain. However, a range of partial measures yield insights. In 2004-05, the preferred option within a RIS changed in 10 of the 71 RISs which were prepared and considered by decision makers. Discussions between ORR staff and regulators indicate that a significant proportion of these changes were attributable to the RIS process itself. Overall, Australia's improved economic performance since the early 1990s is associated with reforms to a range of areas of regulation, drawing positive assessments by international economic agencies such as the OECD, World Bank and International Monetary Fund (IMF).

That said, it is generally agreed that there is scope to improve and build on existing RIS processes to make them more effective in improving the quality of regulation. For example, some key business groups in Australia — such as the BCA and the Australian Chamber of Commerce and Industry (ACCI) — are supportive of the RIS process. These organisations, as well as the NCC, have also emphasised the importance of regulation review bodies being independent from policy departments or central agencies.

During 2004-05, the Australian Government continued to review its regulation review and reform processes, including the RIS processes. The results of this review were not finalised at the time this report was prepared.

Aggregate RIS compliance for 2004-05

In 2004-05, compliance by departments and agencies with the Australian Government's Regulation Impact Statement (RIS) requirements was lower at the decision-making and tabling stages than in previous years. Compliance with COAG's requirements was slightly lower than in the previous reporting period.

About 2550 Bills, delegated instruments, treaties and quasi-regulations were tabled in Parliament or made in 2004-05. However, a much smaller number were notified to the ORR as potentially impacting on business.

- Of the 85 regulatory proposals that required a RIS at the decision making stage, 71 RISs were prepared, with 68 of those assessed as containing an adequate level of analysis. Accordingly, the RIS compliance rate in 2004-05 was 80 per cent, compared with 92 per cent in 2003-04 (table 1).
- The requirement that adequate RISs be tabled in Parliament with the explanatory material for Bills, delegated legislation or treaties, was satisfied in 89 per cent of cases in 2004-05 (compared with 95 per cent of cases in 2003-04).

Table 1 RIS compliance, by type of regulation, 2004-05

| | <i>Decision-making</i> | | | <i>Tabling^a</i> | | |
|--------------------------------------|------------------------|-----------------|-----------|----------------------------|-----------------|-----------|
| | <i>prepared</i> | <i>adequate</i> | | <i>prepared</i> | <i>adequate</i> | |
| | <i>ratio</i> | <i>ratio</i> | <i>%</i> | <i>ratio</i> | <i>ratio</i> | <i>%</i> |
| Primary legislation (Bills) | 13/17 | 13/17 | 76 | 18/18 | 18/18 | 100 |
| Legislative Instruments ^b | 45/52 | 43/52 | 83 | 41/45 | 38/45 | 84 |
| Non-legislative instruments | 4/4 | 3/4 | 75 | .. | .. | .. |
| Quasi-regulation | 7/8 | 7/8 | 88 | .. | .. | .. |
| Treaties ^c | 2/4 | 2/4 | 50 | 3/3 | 3/3 | 100 |
| Total | 71/85 | 68/85 | 80 | 62/66 | 59/66 | 89 |

.. Not applicable. Tabling is not a formal requirement. ^a RIS compliance for the tabling of Bills, treaties and disallowable instruments is subject to formal assessment by the ORR. ^b Includes instruments back-captured (or likely to be back-captured) as legislative instruments under section 36 of the *Legislative Instruments Act 2003*. ^c During the treaty-making process, RISs are required at three stages — before entry into negotiations, before signature of the final treaty text and before ratification. The first two stages have been aligned with the decision-making stage. The ratification stage has been aligned with the tabling stage. In one case, a RIS was not required at entry into negotiations.

Source: ORR estimates.

The ORR classifies each of the 85 proposals in 2004-05 by its degree of ‘significance’ — reflecting the nature and magnitude of the proposal and the scope of its impacts (table 2). RIS compliance at the decision-making stage for the three proposals identified as being of greater significance was 67 per cent in 2004-05, lower than for other regulatory proposals. This is consistent with the experience in earlier years.

Table 2 Compliance at the decision-making stage by significance, 2000-01 to 2004-05

| <i>Significance rating</i> | <i>2000-01</i> | <i>2001-02</i> | <i>2002-03</i> | <i>2003-04</i> | <i>2004-05</i> |
|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|--------------------------|
| More significant | 18/30 (60%) | 7/10 (70%) | 6/13 (46%) | 17/18 (94%) | 2/3 (67%) |
| Less significant | 111/127 (87%) | 121/135 (90%) | 107/126 (85%) | 88/96 (92%) | 66/82 (80%) |
| Total | 129/157 (82.2%) | 128/145 (88.3%) | 113/139 (81.3%) | 105/114 (92.1%) | 68/85 (80.0%) |

Source: ORR estimates.

Compliance by departments and agencies

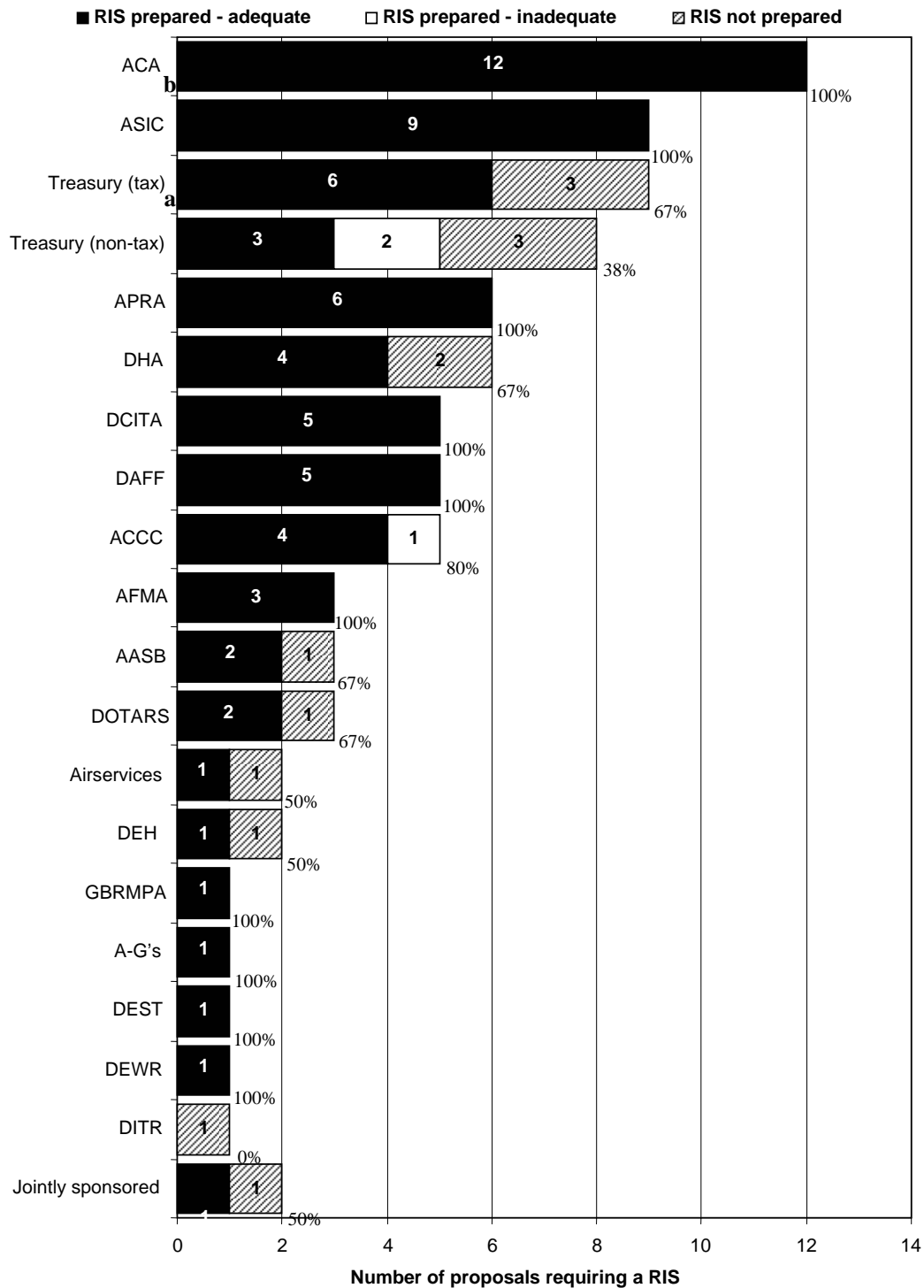
In 2004-05, 19 departments and agencies developed regulatory proposals that triggered the government's requirements to prepare a RIS. Of these, 10 departments and agencies were fully compliant with the Government's RIS requirements at the decision-making stage (compared to 18 of 24 in 2003-04).

Compliance at the decision-making stage is illustrated in figure 1. The total length of each bar indicates the number of RISs required to be prepared at the decision-making stage. The area in black denotes RISs that were prepared and assessed as adequate by the ORR. The area in white shows the number of RISs that were prepared but were assessed as containing an inadequate level of analysis. The shaded area shows the RISs that should have been prepared but were not. The compliance rate for each department and agencies, as a percentage of the number of RISs required for that department/agency, is shown at the end of each bar. There were 17 instances of non-compliance with the Government's requirements: in 14 instances, RISs were not prepared and in 3 instances, RISs were prepared, but were assessed as inadequate by the ORR.

Regulation making also occurs at a national or inter-jurisdictional level, among some 40 Ministerial Councils and several standard-setting bodies involving the Australian, State and Territory governments. Between 1 April 2004 and 31 March 2005, 24 regulatory decisions made by Ministerial Councils and national standard-setting bodies required the preparation of a COAG RIS (table 2.5). Of these, 21 adequate RISs were prepared at the decision-making stage (a compliance rate of 88 per cent). Compliance at the consultation stage was slightly lower — adequate RISs were prepared for 83 per cent of proposals.

The ORR identified six decisions of COAG forums as being of particular significance in their impact on business or the community. Adequate RISs were prepared in all cases at the decision-making stage (and in five of six cases at the consultation stage).

Figure 1 Compliance with RIS requirements at the decision-making stage, 2004-05



^a When the Government's RIS requirements became mandatory, the Government introduced a modified RIS process for tax proposals. Compliance by the Department of the Treasury is accordingly reported for both tax RISs and non-tax RISs. ^b On 1 July 2005, the Australian Communications Authority and the Australian Broadcasting Authority were merged to become the Australian Communications and Media Authority.

Data source: ORR estimates.

How can RIS compliance be improved?

Some regulators do a thorough job and prepare RISs which make a useful and timely contribution to regulatory decisions and outcomes. Of the 19 departments and agencies which were required to prepare RISs for regulatory proposals in 2004-05, 10 complied fully with the RIS requirements.

Where RIS compliance has fallen short, in many cases it is because regulators have failed to prepare RISs or have prepared them too late in the policy development process to make a meaningful contribution. In some cases, it is because the level of analysis is inadequate. As in previous years, in 2004-05, the Office of Regulation Review (ORR) raised the minimum adequacy standards for RISs, especially with respect to documenting regulatory compliance burdens.

The cost of preparing RISs does not appear to be a significant factor in explaining poor RIS compliance by some Australian Government departments and agencies. Indeed, it is minimal compared to the total budgets of regulatory departments and agencies.

The levels of compliance in 2004-05 indicate significant room for improvement, especially within some departments and agencies. Measures that would improve the quality of RISs include:

- the RIS process receiving high level support, both at the political and departmental/agency head level;
- RISs being prepared early in the policy development process, with departments and agencies consulting early with the ORR and undertaking RIS training where appropriate; and
- regulators improving the analysis of costs and benefits, including where feasible, consulting in a meaningful and timely manner with stakeholders. In many cases, it is also important to undertake risk analysis within RISs, especially for environmental, national security and related issues.

In 2005-06, the ORR intends to continue to:

- raise minimum adequacy standards for RISs, with a particular focus on regulatory compliance costs and the quality of cost/benefit analysis within RISs. This will include working with the Office of Small Business to integrate business compliance cost measurement systems with the RIS process;
- monitor and report on the quality and timeliness of the service it provides to regulators, including surveying officials involved in preparing each RIS;
- enhance its ongoing RIS training for departments and agencies;

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- meet with senior officials from poorly performing departments/agencies to discuss ways to improve outcomes;
 - explore the scope to use information technology to improve communication with regulators;
 - report on regulation review and reform developments in other jurisdictions;
 - explore options to improve regulation review and reform processes and systems employed by the Australian Government; and
 - encourage regulators to adopt international best practice with respect to the making and implementation of regulations.