
C COAG's RIS requirements — compliance and recent developments

This appendix contains the Office of Regulation Review's fourth report to the National Competition Council (NCC) on compliance with the Council of Australian Governments' (COAG) requirements for Regulatory Impact Statements (RISs). These requirements are set out in the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. The ORR's fourth report to the NCC covers the period 1 April 2003 to 31 March 2004.

In June 2004, COAG made a number of changes to the *Principles and Guidelines* (COAG 2004a). These changes will further enhance the application of the principles of good regulatory practice to COAG decision-making bodies and will ensure greater clarification of the operation of RISs (addressing issues similar to those raised in section C.2). COAG also agreed to changes to the operating guidelines for Ministerial Councils. This appendix concludes with an outline of these developments in section C.9.

(The report below applies to the COAG *Principles and Guidelines* before they were amended in June 2004.)

C.1 The Office of Regulation Review's report to the National Competition Council

The requirements of the Council of Australian Governments

In April 1995, COAG agreed to apply a nationally consistent assessment process to proposals of a regulatory nature considered by all Ministerial Councils and national standard-setting bodies (NSSBs). The agreed assessment process is set out in the COAG *Principles and Guidelines* (COAG 1997 as amended). The major element of the assessment process is the preparation of RISs.

A RIS documents the policy development process and considers alternative approaches to resolve identified problems, and assesses the impacts of each option

on different groups and on the community as a whole. A COAG RIS needs to be prepared for proposals having a national dimension which, when implemented by jurisdictions, would result in regulatory impacts. The first stage RIS is used as part of community consultation and the second or final RIS, reflecting feedback from the community, assists in the decision-making process. The objective of these COAG *Principles and Guidelines* is to improve the quality of regulation, including through the adoption of good consultation processes as regulation is developed.

The role of the Office of Regulation Review

The Office of Regulation Review (ORR) advises decision makers on the application of the COAG *Principles and Guidelines* and monitors and reports on compliance with these requirements. This includes advising whether a RIS should be prepared and assessing RISs prepared for Ministerial Councils and NSSBs. The ORR assesses RISs at two stages: before they are released for consultation and again prior to a decision being made. At each stage, it advises the decision-making body of its assessment. The ORR's assessment considers:

- whether the Guidelines have been followed;
- whether the type and level of analysis is adequate and commensurate with the potential economic and social impact of the proposal; and
- whether alternatives to regulation have been adequately considered.

The ORR makes its assessment of the application of the COAG *Principles and Guidelines* independently of the views of any particular jurisdiction. Further, the ORR does not comment on the merits of regulatory proposals being put to decision-making bodies — its prime focus is on the regulatory best practice processes as detailed in the Guidelines.

COAG's *Agreement to Implement the National Competition Policy and Related Reforms* (COAG 1998) also requires the ORR to advise the National Competition Council (NCC) on compliance with the COAG *Principles and Guidelines*. The NCC takes this advice into account when considering its recommendations to the Australian Government Treasurer regarding conditions and amounts of competition payments from the Australian Government to the States and Territories. This ORR report addresses this obligation for the period 1 April 2003 – 31 March 2004, and is the fourth such report by the ORR to the NCC.

C.2 The focus and scope of the ORR's report

In its reports to the NCC, the ORR excludes from the COAG RIS requirements a number of categories of regulatory decisions made by Ministerial Councils or national standard-setting bodies. The first category involves decisions which have a low significance in terms of the scope and magnitude of community impacts. For such minor or machinery regulations, the RIS process may not add significant additional value to the policy development process in a cost-effective manner. The second category comprises decisions that are more of an administrative than of a regulatory nature. These decisions are essentially about the application of existing regulatory frameworks without consideration of other regulatory options.

Further, where a meeting of Ministers or a national standard-setting body considers a report that merely 'brainstorms' a regulatory subject rather than seeks a specific regulatory decision, a COAG RIS is not required beforehand for consideration by Ministers.

In most of the remaining cases, there is general consensus between the ORR and the relevant decision makers on the types of regulatory decisions and agreements covered — and not covered — by the COAG *Principles and Guidelines*. Also, there is usually agreement regarding how the COAG RIS requirements should be applied. However, the application of the COAG requirements is not always clear cut. Some explanation of these complex areas, and their relevance to the ORR's report, is provided below.

Scope of decisions covered by the COAG requirements

The COAG *Principles and Guidelines* cover regulatory decisions that:

... would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done (COAG 2004b, p.4)

While noting that Ministerial Councils and national standard-setting bodies commonly reach agreement on the main elements of a regulatory approach or standards which are then given force in Australian jurisdictions through principal or subordinate legislation, COAG went further by defining regulation to include:

... the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as those voluntary codes and advisory instruments ... for which there is a reasonable expectation of widespread compliance. (COAG 2004b, p.4)

As such, the scope of regulatory decisions covered by COAG's requirements is wide, and includes agreements on standards and measures of a quasi-regulatory

nature — such as endorsement of industry codes of conduct — as well as on national regulatory approaches implemented by legislation.

Decision-making groups covered by the COAG requirements

The COAG *Principles and Guidelines*:

... apply to decisions of Ministerial Councils and inter-governmental standard-setting bodies, however they are constituted, and include bodies established statutorily or administratively by government to deal with national regulatory problems. (COAG 2004b, p.4)

While Councils of Ministers are usually standing bodies — and some are established by statute — there are from time to time ad hoc bodies of Australian Government, State and Territory Ministers (and sometimes delegated senior officials) established to address and resolve regulatory issues considered to have a national dimension. These ad hoc bodies can be required to consider proposals that will result in significant regulatory impacts. (At any one time there are typically about 40 COAG decision-making forums.)

In view of COAG's broad definition of what constitutes an inter-governmental body for the purposes of the COAG requirements, the ORR advises such bodies of the need to comply with the COAG *Principles and Guidelines* when reviewing and considering regulatory issues.

Further, from time to time COAG itself makes decisions dealing with national regulatory problems. While COAG is not considered to be bound by the COAG *Principles and Guidelines*, the ORR's advice has been that the responsibility for compliance with the COAG requirements rests with the body preparing or transmitting regulatory proposals for consideration by COAG.¹

Multi-stage decision making and the RIS requirements

In some cases, a Ministerial Council or national standard-setting body, in addressing a national regulatory problem, may make decisions in several sequential stages. This is more likely to occur for highly complex and significant regulatory issues. For example, a Ministerial Council may consider a range of regulatory options to deal with an identified problem. Having made an initial decision on whether and

¹ In June 2004, COAG decided that the *Principles and Guidelines* should apply to COAG as well as to Ministerial Councils and national standard-setting bodies (COAG 2004a). See section C.9 for a summary of changes made to the *Principles and Guidelines*.

how it wishes to intervene, the Council or standard-setting body then separately considers implementation options.

This situation has led to concern that two or more RISs may be required, one for the key decision and follow-up RISs for the subsequent implementation decisions to accord with the *COAG Principles and Guidelines*. The ORR's approach in such situations is that, where an adequate RIS has been prepared for a regulatory decision made by a Ministerial Council or national standard-setting body, a follow-up or subsequent RIS is not required when only the detail of the regulation is to be put in place to implement the decision. However, a subsequent RIS would be required where follow-up regulatory decisions require further significant new regulation, and if the likely impacts of feasible regulatory options are significant and can be assessed. Whether the implementing regulation for a particular matter requires a RIS should be determined in consultation with the ORR on a case by case basis.

Decisions requiring implementation in States and Territories

For decisions requiring further regulatory decision-making by the States and Territories, including the development of implementing legislation, each jurisdiction may require the development of State or Territory specific RISs to meet their individual RIS requirements. In the past, this has raised the question as to whether the preparation of a COAG RIS is duplicative and therefore unwarranted.

COAG's RIS requirements apply to the initial decision by the Ministerial Council or national standard-setting body. Not only does the COAG RIS guide the overarching decision taken by the inter-governmental body, it can also guide further decisions taken in each jurisdiction from a carefully analysed starting point. It is also the case that States and Territories can, where applicable, forgo their own RIS requirements if an adequate COAG RIS has been prepared.

C.3 Matters for which COAG's requirements were met

Table C.1 documents the 28 decisions made during the period 1 April 2003 – 31 March 2004 where the COAG RIS requirements applied and were fully met. The table includes a brief description of the regulatory measure, the decision-making body and the date of the final decision.

Table C.1 Cases where COAG RIS requirements were met

<i>Measure</i>	<i>Body responsible</i>	<i>Date of decision</i>
1. Livestock Identification and Tracing Systems	Primary Industries Ministerial Council (PIMC)	11 April 2003
2. National Ban on Routine Tail Docking of Dogs	PIMC	11 April 2003
3. Amendments to the National Exposure Standard for Benzene	National Occupational Health and Safety Commission (NOHSC)	24 April 2003
4. Amendments to the Approved Criteria for Classifying Hazardous Substances	NOHSC	24 April 2003
5. Amendments to the National Exposure Standards for Atmospheric Contaminants in the Occupational Environment	NOHSC	24 April 2003
6. National Code of Practice for the Preparation of Material Safety Sheets	NOHSC	24 April 2003
7. Australian Builder's Plate (compliance plates for recreational vessels)	Australian Transport Council (ATC)	1 May 2003
8. Australian Road Rules Amendment Package 2003	ATC	30 June 2003
9. Building Code of Australia Amendment 13 Volume 1	Australian Building Codes Board	1 July 2003
10. Review of Processing Requirements of Uncooked Comminuted Fermented Meat	Food Standards Australia New Zealand	2 July 2003
11. Gene Technology (Recognition of Designated Areas) Principle 2003	Gene Technology Ministerial Council	3 July 2003
12. Amendments to the chrysotile asbestos exposure standard	NOHSC	23 July 2003
13. Dangerous Goods – Transport Emergency Response Plan Guidelines	ATC	1 August 2003
14. 50 km/hour National Default Urban Speed Limit	ATC	1 September 2003
15. TTMRA – ADR Review – ADR 12 – Glare Reduction in the Field of View	ATC	1 September 2003

(Continued next page)

Table C.1 (continued)

<i>Measure</i>	<i>Body responsible</i>	<i>Date of decision</i>
16. TTMRA – ADR Review – ADR 15 – Demisting of Windscreens	ATC	1 September 2003
17. TTMRA – ADR Review – ADR 71 – Temporary Use Spare Tyres	ATC	1 September 2003
18. Deletion of Australian Design Rule (ADR) 24/02 – Tyre and Rim Selection	ATC	1 September 2003
19. Deletion of ADR 20/00 – Safety Rims	ATC	1 September 2003
20. Review of the 1994 Load Restraint Guide (for vehicles)	ATC	1 October 2003
21. National Compliance and Enforcement Provisions for the National Road Transport Law: Road Transport Reform (Compliance and Enforcement) Bill	ATC	3 October 2003
22. National Code of Practice for the Control of Work Related Exposure to Hepatitis and HIV (blood borne) Viruses	NOHSC	15 October 2003
23. National Standard for Commercial Vessels – Sub section 7A: safety equipment	ATC	1 November 2003
24. Mandatory Food Safety Programs for High Risk Sectors, and Policy Guidelines to Improve Food Safety Management in Australia	Australia New Zealand Food Regulation Ministerial Council (ANZFRMC)	12 December 2003
25. Minimum Energy Performance Standards for Electricity Distribution Transformers	Ministerial Council on Energy	4 February 2004
26. Heavy Vehicle Driver Fatigue	ATC	1 March 2004
27. Heavy Vehicle NHVAS Advanced Fatigue Management Module	ATC	1 March 2004
28. National Safety and Infrastructure Protection Performance Standards (for heavy vehicles)	ATC	1 March 2004

Source: ORR estimates

C.4 Matters for which COAG's requirements were partially met

Table C.2 documents the two decisions made during the period 1 April 2003 – 31 March 2004 where the COAG RIS requirements applied and were partially met; that is, there was qualified compliance with the requirements. Commentary on the individual decisions, including the reasons why the decisions were considered to have partially met the requirements, is provided below the table.

Table C.2 **Cases of qualified compliance with the COAG RIS requirements**

<i>Measure</i>	<i>Body responsible</i>	<i>Date of decision</i>
1. New National Regulatory Framework for In Vitro Diagnostic Devices	Australian Health Ministers' Conference	1 July 2003
2. Professional standards legislation	Ministerial Meeting on Insurance Issues	6 August 2003

Source: ORR estimates.

Commentary on partially compliant decisions

New national regulatory framework for in vitro diagnostic devices

On 1 July 2003, the Australian Health Ministers' Conference agreed to a new national regulatory framework for in vitro diagnostic devices. While the proposal was the subject of consultation, the ORR had advised that a consultation RIS was required. The discussion paper prepared, whilst detailed, did not substitute for an adequate RIS. However, a final RIS assessed by the ORR as adequate was available to support the decision to adopt the proposed framework.

Implementation of a national system of professional standards legislation

The Ministerial Meeting on Insurance Issues considered a model for implementing a national system of professional standards legislation (PSL) on 6 August 2003 and confirmed the commitment of all jurisdictions to implementing PSL on a nationally consistent basis. The ORR was not provided with forward notice and a consultation RIS was not prepared. However, broad consultation with professional groups and the insurance industry had taken place and it is relevant that professional standards legislation was already in place in at least one jurisdiction. A final RIS assessed by the ORR as adequate was prepared and available to support the decision to endorse a national model.

C.5 Matters for which COAG's requirements were not met

Table C.3 indicates that, during the period 1 April 2003 – 31 March 2004, the COAG RIS requirements were not met at either the consultation stage or at the decision stage in four cases. Commentary on the individual decisions, including the reasons why the decisions were considered to be non-compliant, is provided below the table.

Table C.3 **Cases where COAG RIS requirements were not met**

<i>Measure</i>	<i>Body responsible</i>	<i>Date of decision</i>
1. Policy Guideline for the Regulation of Caffeine in Food	Australia New Zealand Food Regulation Ministerial Council	4 April 2003
2. Proportionate liability	Ministerial Meeting on Insurance Issues	6 August 2003
3. Endorsement of model provisions for the regulation of the legal profession	Standing Committee of Attorneys-General	7 August 2003
4. Endorsement of the Australian Retailers Association Code of Practice for the Management of Plastic Bags	Environment Protection and Heritage Council	2 October 2003

Source: ORR estimates.

Commentary on non-compliant decisions

Policy guideline for the regulation of caffeine in food

On 4 April 2003, the Australia New Zealand Food Regulation Ministerial Council considered controls over the addition of caffeine to food, and agreed to maintain the current additive permissions for caffeine, while restricting the use of new food products containing non-traditional caffeine-rich ingredients to boost their caffeine content beyond the current provisions.

A RIS was not prepared for community consultation on the proposal as required by the COAG requirements. Although a final RIS was drafted for the decision makers, the ORR assessed the RIS as not having an adequate level of analysis. This was chiefly due to inadequacies in the specification of the problem and in the analysis of individual options.

Proportionate liability

On 6 August 2003, the Ministerial Meeting on Insurance Issues agreed to a national model for proportionate liability where economic loss or property damage occurs through professional negligence. This will replace, throughout all Australian jurisdictions, the established legal principle of joint and several liability, and impacts on businesses throughout Australia in dealing with the risk of, and losses from, the negligent provision of services. The decision was informed by the work done by the Heads of Treasuries Insurance Issues Working Group in developing the proposal.

A COAG RIS was not prepared for consultation or at the decision-making stage. The ORR was not given forward notice of the proposal.

National legal profession model bill

On 7 August 2003, the Standing Committee of Attorneys-General (SCAG) endorsed model provisions for nationally consistent laws for the regulation of Australia's legal profession. A COAG RIS was not prepared for either consultation on the proposed core model provisions or the decision by SCAG to endorse them. In addition, the ORR was not given forward notice of the proposal.

The National Legal Profession Model Bill has since been circulated. The ORR notes that it is intended that a COAG RIS be prepared to examine the impacts of the model provisions. A joint working party, comprising the legal profession, State, Territory and Australian Government officers, is to advise SCAG on the operation and implementation of the Bill and on proposed amendments to its core provisions.

Code of practice for the management of plastic bags

On 2 October 2003, the Environment Protection and Heritage Council (EPHC) decided to endorse the Australian Retailers' Association Code of Practice for the Management of Plastic Bags. The Code aims to improve recycling rates for, and reduce the number of, high density polyethylene plastic bags used in Australia.

A COAG RIS was not prepared in relation to the proposal, for consultation or for the final decision.

The ORR examined documents provided to the Council for its final decision and found that, while a preliminary impact analysis of several legislative options was prepared, this did not extend to analysis of the preferred option.

C.6 Trends in compliance with COAG's RIS requirements

At consultation

The COAG *Principles and Guidelines* state that 'public consultation is an important part of any regulatory development process' and an adequate COAG RIS is required for consultation. These requirements, however, make it clear that the depth of analysis in the consultation RIS need not be as great as in the RIS for decision makers. In many cases, the focus of the consultation RIS will be on identification of the problem and objectives and a preliminary assessment of feasible options. The RIS for the decision-making stage should reflect the additional information and views collected from those consulted, and provide a more complete impact analysis.

While COAG requires a RIS for consultation and for the final decision, the ORR's practice has been that an adequate consultation RIS is only one consideration in whether a matter is compliant overall. In the absence of an adequate consultation RIS, the ORR has in determining overall compliance taken into account the extent of community consultation that took place on the proposal and the level of analysis in the final RIS (relative to the impacts of the proposal). The ORR has applied this approach as a transitional measure to assist in the implementation by Ministerial Councils and NSSBs of the COAG *Principles and Guidelines*.

In relation to decisions covered by this report, compliance at consultation was less than at the decision-making stage. This is notwithstanding the preliminary nature of the RIS required for consultation.

Eighty-two per cent of matters had an adequate consultation RIS — this compares to 88 per cent compliance at final decision (see below).

This is the first time that the ORR has reported compliance with COAG's requirement for a consultation RIS. It is proposed to include such compliance information in the ORR's next report to the NCC covering decisions made in the year to 31 March 2005.

At the decision-making stage

Of the 34 decisions by Ministerial Councils and national standard-setting bodies reported during the year to 31 March 2004 (the ORR's fourth report to the NCC), compliance with COAG's requirements was 88 per cent. This is comparable to the compliance rate of 89 per cent for 27 decisions made during the previous reporting period (the ORR's third report to the NCC).

(For consistency with the reporting of cases in previous reporting periods, the cases listed in table C.2, where RIS requirements were partially met, are treated as compliant for the purposes of this assessment.)

For significant regulatory matters

As discussed in earlier ORR reports to the NCC, an important consideration in measuring compliance — and changes in compliance over time — is the degree of significance of the decisions made in each period. The ORR has classified each regulatory proposal that requires a RIS as of greater or lesser significance. The criteria for this classification are based on:

- the nature and magnitude of the problem and the regulatory proposals for addressing it; and
- the scope and intensity of the proposal's impact on affected parties and the community.

Classifying regulatory proposals in this way provides a better basis on which to apply the 'proportionality rule' that the extent of RIS analysis should be commensurate with the magnitude of the problem and the likely impacts of any regulatory response.

Of the 34 regulatory decisions reported here, seven were assessed by the ORR as of greater significance according to the above criteria. They are as follows:

- The Gene Technology Ministerial Council's decision to issue a policy principle which would recognise State/Territory rights to designate under State/Territory law special areas that are either for genetically modified (GM) or non-GM crops for marketing purposes — the Gene Technology Regulator must then act consistently with the policy principle;
- The agreement by the Ministerial Meeting on Insurance Issues to implement professional standards legislation on a nationally consistent basis, by which an upper limit (cap) is placed on liability payouts to plaintiffs for economic loss where professional groups meet legislated standards;
- The decision by the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC) that food safety programs be mandatory for the highest risk sectors in Australia, and that policy guidelines to improve food safety management be adopted in Australia;
- The Australian Transport Council's decision to adopt performance based standards for heavy vehicles — this involved the adoption of twenty new standards, sixteen relating to vehicle safety, and four to protection of infrastructure;

- The endorsement by the Environment Protection and Heritage Council (EPHC) of the Australian Retailers' Association Code of Practice for the Management of Plastic Bags, which aims to improve recycling rates for, and reduce the number of, high density polyethylene plastic bags used in Australia;
- The agreement by the Ministerial Meeting on Insurance Issues to a national model for proportionate liability, where economic loss or property damage occurs through professional negligence, which replaced throughout all Australian jurisdictions the established legal principle of joint and several liability. This decision will impact on the ability of victims of professional negligence to achieve full compensation in certain instances and may impact on the risks for business in dealing with service providers; and
- The endorsement by the Standing Committee of Attorneys-General of model provisions which are to form the basis for consistent laws for the regulation of Australia's legal profession.

The RISs for the first four of these decisions were compliant with COAG's requirements (one of these had qualified compliance), and contained a level of analysis commensurate with the significance and impact of the proposal. For the last three decisions, the COAG *Principles and Guidelines* were not complied with either at the consultation stage or at the decision-making stage.

In summary, the compliance result for the seven matters of 'greater significance' for the year to 31 March 2004 is 57 per cent. While comparisons from year to year are only indicative given the small number of significant matters in each reporting period, the ORR notes that compliance for the current period is less than that for the ORR's second and third reports to the NCC.

Table C.4 summarises compliance results for all proposals and significant proposals over the periods covered by the four ORR reports to the NCC.

Table C.4 COAG RIS compliance for regulatory decisions made by Ministerial Councils and NSSBs, 2000-01 to 2003-04^a

	2000-01	2001-02	2002-03	2003-04
Overall compliance (qualified and full)	15/21 (71%)	23/24 (96%)	24/27 (89%)	30/34 (88%)
Compliance (qualified and full) for significant regulatory proposals	5/9 (56%)	6/6 (100%)	4/6 (67%)	4/7 (57%)

^a Data for 2000-01 relate to the period 1 July 2000 - 31 May 2001. Data for 2001-02 relate to the period 1 April 2001 - 31 March 2002. While there is therefore some overlap between these two reports, only four decisions (including one on a significant matter) are covered by both reports. All decisions covered in both reports were compliant with COAG's requirements.

Source: ORR estimates.

C.7 Compliance issues

The lack of full compliance with COAG's RIS requirements, particularly for the more significant regulatory proposals, continues to be an issue.

Non-compliance appears to be due to several factors. The first is that there has not been a good appreciation by some Ministerial Councils and national standard-setting bodies of the analytical requirements of a COAG RIS. This includes adequate identification of the problem and potential case for government regulation, and a balanced and thorough assessment of feasible options.

It would also appear that, as for the third report, the allocation of decision-making power to ad hoc groups or committees involves a risk that these processes may not follow best practice, in large part because such groups are not fully aware of COAG's requirements.

These factors played a role in the first two non-compliant decisions listed in table C.3. It should be noted, however, that each of the relevant decision-making bodies made one other decision during the same period that did meet COAG's RIS requirements. This suggests that these factors, while responsible for poor compliance outcomes for some decisions, may not be systemic with respect to these bodies.

In relation to the third non-compliant decision listed in table C.3, the key factor facilitating non-compliance was the decision being made in several stages. In this case, the initial decision to regulate was not subjected to the COAG RIS process. Operational and implementation issues are to be considered in the second and subsequent stages.

The fourth non-compliant decision noted above was made by a Ministerial Council that, with respect to all other reports by the ORR to the NCC, has been fully compliant with COAG's requirements. Further, the secretariat had consulted early with the ORR on other regulatory proposals being developed during the current reporting period.

Taking a longer term view of compliance over the period covered by the four reports by the ORR, it would appear that, with some exceptions, non-compliance is usually associated with decision-making bodies that make infrequent regulatory decisions, and for which the regulatory best practice approach required by COAG has not become incorporated into their operating protocols. The majority of these decisions have been on regulatory matters of significance.

The lack of compliance at the community consultation stage is also an issue. While it is due in part to a continued lack of awareness of COAG's RIS requirements, it would also appear to be due to a lack of awareness of COAG's specific requirement for a consultation RIS.

C.8 Improving compliance

There is clearly a need for improved awareness of the scope of the COAG RIS requirements, the required level of analysis and the role of the ORR.

In the twelve months to 31 March 2004, the ORR provided training on COAG's RIS requirements to over 90 government officials. Further training will continue, with particular emphasis on officials supporting decision-making groups that make regulatory decisions less often, but potentially on significant issues.

There is also a need for a better understanding of COAG's RIS requirements at the consultation stage. The ORR aims to address this in briefing and training officials. It is also intended that, for the fifth report to the NCC, covering the period 1 April 2004 – 31 March 2005, the ORR will continue to report (as here) on compliance at the consultation stage for individual decisions made during the reporting period. This increased transparency may assist in raising compliance with COAG's RIS requirements.

It is also worthy of note that, while COAG does not require that the final RIS for the decision-making stage be made public, a number of standard-setting bodies and secretariats of Ministerial Councils have made public the final RIS for decisions made during the reporting period. They include the Australian Building Codes Board, the National Occupational Health and Safety Commission, and the secretariat for the Gene Technology Ministerial Council. This practice further promotes the transparency of the policy development process, and as such is consistent with regulatory best practice.

C.9 Recent developments in COAG's requirements for RISs and the operation of Ministerial Councils

At its meeting on 25 June 2004, COAG agreed to changes to the *Principles and Guidelines* and to the *Broad Protocols for the Operation of Ministerial Councils* (COAG 2004c). This followed an evaluation of the implementation of the *Broad Protocols and General Principles for the Operation of Ministerial Councils*

(PM&C 2002). The *Broad Protocols* include the requirement to prepare RISs under the *Principles and Guidelines*.

Changes to the *Principles and Guidelines*

The changes to the *Principles and Guidelines* aim to enhance the application of the principles of good regulatory practice to decisions of COAG, Ministerial Councils, intergovernmental standard-setting bodies and bodies established by government to deal with national regulatory problems. They are summarised below:

- The Guidelines apply to COAG, as well as to Ministerial Councils and national standard-setting bodies;
- Minor or machinery regulatory matters and ‘brainstorming’ by Ministers — which is not supported by written submissions outlining regulatory options — are exempt from the RIS requirements;
- The National Competition Principles Agreement is explicitly acknowledged;
- It was clarified that the Guidelines apply to bodies preparing advice to Ministerial Councils/standard-setting bodies;
- The importance of early consultation with the ORR and forward notice of the preparation of a RIS was noted;
- Where a trans-Tasman issue is involved, the ORR is to refer the draft RIS for consultation to New Zealand’s Regulatory Impact Analysis Unit (RIAU) to allow feedback on New Zealand issues and impacts — with such feedback being incorporated into the ORR’s advice;
- It was clarified that the final RIS for the decision makers is to be provided to the ORR;
- Provision is made for genuine regulatory emergencies, with the ORR able to ‘post assess’, within 12 months, the briefing material prepared for the decision makers;
- It was clarified that, for multi-staged decision making, follow-up RISs for regulation implementing the original decision will not generally be required unless significant additional regulation is contemplated;
- The independent role of the ORR was specified, including a reference to the ORR not supporting any particular jurisdiction;
- It was emphasised that the principles of the Trans-Tasman Mutual Recognition Arrangement must be adequately considered;
- It was clarified that a RIS should consider the impact on business and on the broader community; and

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- More robust requirements were included to document compliance costs and small business impacts.

The implementation of these changes will improve the preparation of RISs and ensure greater clarification for the operation of the RIS process in Australia and New Zealand. With respect to the changes to the *Principles and Guidelines* for regulatory proposals involving trans-Tasman issues, the ORR and the RIAU are adopting a protocol outlining the working arrangements between the two offices for the assessment of draft consultation RISs. It is intended that this protocol will evolve over time to ensure the effectiveness and efficiency of these arrangements.

Changes to the *Broad Protocols for the Operation of Ministerial Councils*

COAG also agreed to a number of changes to the *Broad Protocols for the Operation of Ministerial Councils* (COAG 2004c) directed towards the efficiency of Ministerial Council decision-making processes and the coordination of related policy development processes. They include specific requirements for timely meetings of officials prior to meetings of Ministerial Councils; for the timely circulation of final agendas and papers to Ministers; and for copies of minutes from Ministerial Council meetings to be forwarded to the Department of the Prime Minister and Cabinet after each meeting. In addition, COAG agreed to amend the *General Principles for the Operation of Ministerial Councils* (COAG 2004d) to reflect these changes to the *Broad Protocols*.

The changes are expected to result in: Ministerial Council agendas having a greater focus on strategic issues; improved reporting and information flows by Ministerial Councils on key issues and outcomes; and regular reviews by Ministerial Councils of their own functions.