

Overview

This report meets the Productivity Commission's obligation to report annually on compliance with the Government's requirements for Regulation Impact Statements (RISs).

Commonwealth departments and agencies must ensure that RISs of an adequate standard are prepared, in consultation with the Commission's Office of Regulation Review (ORR), for regulatory proposals that affect business or restrict competition. These RISs are intended to provide government decision makers with an even-handed description and assessment of all the viable options (including non-regulatory options) for dealing with identified policy issues and their likely impacts. In 1997, the Government directed that adequate RISs must be made available to the decision makers and, later, be tabled in Parliament with the relevant Bill or disallowable instrument. The Government also directed that regulatory proposals in the form of non-disallowable instruments, quasi-regulation and treaties should also be analysed using the RIS process.

Aggregate compliance results for 1999-2000

Of those regulatory proposals tabled in Parliament or made in 1999-2000, 207 required the preparation of RISs for decision makers. The requirement was met in 180 cases, with 169 of those containing analysis judged to be of an adequate standard. The compliance rate was accordingly 82 per cent, as indicated in the following table.

Table 1 **Aggregate RIS compliance at decision-making stage: 1999-2000 and 1998-1999**

<i>Proposals introduced via</i>	<i>1999-2000</i>			<i>1998-1999</i>	
	<i>required</i>	<i>prepared</i>	<i>adequate</i>	<i>% compliance</i>	<i>% compliance</i>
Primary legislation (Bills)	74	65	59	80	61
Disallowable instruments	84	67	62	73	85
Non-disallowable instruments	22	21	21	95	96
Quasi-regulation	24	24	24	100	86
Treaties	3	3	3	100	100
Total	207	180	169	82	78

Source: ORR estimates.

While the total compliance result in 1999-2000 is only a little higher than for the previous year, it fails to reflect two developments that suggest a greater underlying improvement in compliance. Firstly, in 1998-99 when disaggregated compliance results were compiled for the first time, departments and agencies were often given the benefit of the doubt in cases where their compliance reports differed from the ORR's records. In contrast, in 1999-2000, departments and agencies were asked to substantiate any compliance claims that differed from the ORR's records. It is evident that had this procedure been applied in 1998-99, compliance in that year would have been lower than the 78 per cent shown in table 1. Secondly, the ORR has adopted a strategy whereby a relatively low RIS adequacy standard was applied in 1997-98 (the first year in which RIS preparation was mandatory) and this has been increased progressively as officials became more familiar and experienced with the analytical approach.

These factors are particularly relevant to the drop in the recorded compliance rate for disallowable instruments, from 85 per cent in 1998-99 to 73 per cent in 1999-2000.

Another important aspect in interpreting compliance results is the large differences among regulatory proposals in terms of their potential economic impact. For example, the regulatory framework for digital television could be expected to have substantial impacts on government, the entertainment and information industries, and consumers. In contrast, conditions imposed on certain commercial activities at airports are likely to affect very few and have a relatively small economic impact.

In order to gauge how compliance might vary with the significance of proposals, the ORR classified each of the more than 200 regulatory proposals to one of four 'significance' rankings. The compliance rate for measures in the two highest rankings, which accounted for one sixth of all the measures, was 74 per cent compared with 83 per cent for the two lowest rankings. It would have been more appropriate if relatively high rates of compliance had been achieved for the most significant proposals. The results raise important questions for departments and agencies as to whether more analytical resources should be applied to significant proposals, and about policy development processes more generally.

Compliance results by portfolio

In its previous report, *Regulation and its Review 1998-99*, the Commission recorded compliance results by portfolio only in broad terms. That was an advance on the first year's reporting, when aggregate Commonwealth results were presented, with no portfolio information. It has been a deliberate strategy to publish a little more compliance information each year, in working towards the Government's intention

that ‘regular reporting is essential in assessing the effectiveness of these ... arrangements’ (Prime Minister 1997, p. 69).

The logical next step, taken in this report, is to publish compliance results by department and agency for individual instruments. Details are provided in chapter 2.

Those departments and agencies that fully complied with RIS requirements at the important decision-making stage were:

- Attorney-General’s Department
- Australian Broadcasting Authority
- Australian Communications Authority
- Australian Competition and Consumer Commission
- Australian Securities and Investments Commission
- Civil Aviation Safety Authority
- Department of Employment, Workplace Relations and Small Business
- Department of Immigration and Multicultural Affairs

Those with better than average compliance rates were:

- Treasury and the Australian Taxation Office (tax matters)
- Department of Environment and Heritage
- Treasury (non-tax matters)

Those with overall compliance rates at about the average were:

- Department of Communications, Information Technology and the Arts
- National Capital Authority

Below-average compliance rates were obtained from:

- Department of Transport and Regional Services
- Department of Agriculture, Fisheries and Forestry — Australia
- Department of Industry, Science and Resources
- Department of Health and Aged Care

Such rankings, which are in terms of percentage compliance at the policy approval or decision-making stage, tell only part of the story. In terms of the overall *volume* of RISs, Communications and Health issues accounted for half of all non-compliance at the decision-making stage. In terms of the *significance* of

proposals for which the Government's requirements were not met, Communications and Health also stand out.

Factors in determining compliance

Compliance is reported on the basis of whether or not a RIS is prepared and is 'adequate' at both the decision-making and tabling stages (although the results above are just for the more important decision-making stage). In assessing adequacy, the ORR applies the principle that the detail and depth of analysis needs to be commensurate with the magnitude of the issue.

Given the very wide range of regulatory proposals developed each year, those assessments are made on a case-by-case basis, typically during interaction between officials and the ORR in the development of individual RISs. The main factors taken into account in determining an appropriate level of analysis are:

- the nature and magnitude of the problem;
- the nature and extent of the options for addressing that problem;
- the size and scope of the impacts of those options;
- the extent to which well-informed decision-making can be based on qualitative information alone, or also some degree of quantitative data; and
- the stage of development of the proposal — whether it is broad strategy, options for implementation, or the detailed regulations needed to put into effect an option previously chosen by the Government.

In applying these tests on a case-by-case basis, the ORR started with a relatively lenient standard in 1997 when the requirements were new. As officials in departments and agencies have become more familiar and experienced with the requirements, it has been necessary to raise the standard progressively in order to attain the Government's objectives for the RIS process.

The Commission is of the view, based on the experience in 1999-2000, that further improvement in the standard of analysis in RISs, and in use of the process more generally, is necessary before the Government's requirements can be fully met. In particular, some departments and agencies have been treating the RIS requirements as an 'add on', undertaken too late to make any useful contribution. They need to embed RIS-type analysis in their policy development processes, especially prior to seeking policy approval from the Government.