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# OVERVIEW

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## Key points

- The past year was a milestone for regulatory governance in Australia. In November 2006, implementation of the Commonwealth Government's enhanced regulatory governance arrangements commenced. Responding to an independent Regulation Taskforce, the Government introduced the enhanced regulation-making framework to improve the analysis of regulatory proposals and the quality of regulation.
  - The Council of Australian Governments also strengthened its regulatory impact analysis requirements for national regulation making and agreed on similar requirements in the states and territories.
- Measures to improve the quality of new regulation at the Commonwealth level include: strengthened requirements to assess costs (including business compliance costs), benefits and risks; adoption of a whole-of-government consultation policy; and strengthened gate-keeping arrangements.
- Review mechanisms have also been introduced to examine and improve the stock of existing regulation.
- Some implementation issues included:
  - clarifying the scope of the new arrangements
  - providing guidance on best practice consultation processes
  - aligning regulatory impact analysis requirements for tax measures with other regulatory proposals.
- To support effective implementation, the OBPR commenced an education and training campaign to ensure that policy officers and other stakeholders are aware of the new requirements.
  - Each department and agency has appointed a senior officer to champion sound policy development processes. These 'Best Practice Regulation Coordinators' are helping to ensure the effective adoption of the enhanced regulatory framework.
- In 2006-07, compliance with the Government's regulatory impact analysis requirements at the decision-making stage for regulation was higher than in previous years.
  - Under the previous RIS requirements, 54 adequate RISs were prepared of 63 required, resulting in a compliance rate of 86 per cent (compared with an average of 80 per cent over the previous three years).
  - Under the enhanced requirements, two separate assessments of business compliance costs were prepared of two required and 15 adequate RISs were prepared of the 16 required, resulting in a compliance rate of 94 per cent. There were also two proposals granted exceptional circumstance status.
- Under the Council of Australian Government's regulatory impact analysis requirements, 31 adequate RISs were prepared of the 33 required at the decision-making stage, resulting in a compliance rate of 94 per cent.

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# Overview

In November 2006, the implementation of significantly enhanced regulatory governance arrangements commenced at the Commonwealth level. The new arrangements, which draw on the *Report of the Taskforce on Reducing Regulatory Burdens on Business*, seek to strengthen the analysis of regulatory proposals and their subsequent review, and thereby raise the quality of regulation over time.

The objectives of the enhanced processes are to:

- achieve a robust system of regulatory oversight that encourages sound policy development and implementation, by ensuring officials and ministers consider the potential costs and adverse implications, as well as benefits, of regulatory proposals
- ensure that Government maintains appropriate control over decision-making processes and the capacity to implement policy quickly where necessary
- ensure that ultimate responsibility for regulatory quality rests with individual ministers, departments and agencies and other delegated authorities.

## Improving the quality of regulation

An efficient regulatory system, which is essential to a well functioning society and economy, depends on having effective processes and institutions for making and administering regulation in all its forms. The Government has adopted a number of initiatives to improve the quality of both the stock and the flow of regulation (detailed in chapter 1).

In relation to the *flow* of new regulation, the main initiatives involve:

- strengthened regulatory impact analysis requirements for proposals, including more comprehensive assessment of business compliance costs, and improved analysis of costs, benefits and risks
- adoption of a whole-of-government consultation policy
- strengthened gate-keeping arrangements.

With regard to the *stock* of existing regulation, systematic and periodic reviews require regulators to consider whether government action is still required and, if so, whether the

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current regulation is still the most appropriate measure. Over the years, a number of review mechanisms have been introduced at various levels of government.

The review mechanisms (see chapter 1) include the annual reviews of regulatory burdens on business, reviews of regulations that are subject to sunset clauses, five year reviews of other regulations, reviews under the Competition Principles Agreement, reviews of Council of Australian Governments (COAG) 'hot spots' and regulatory benchmarking across jurisdictions.

Regulation is pervasive and initiatives to improve it are required at all levels of government. While the Commonwealth Government has committed to improving regulation by enhancing its regulation-making framework, in 2007 COAG also strengthened its regulatory impact statement requirements for national regulation making. COAG also agreed to apply these requirements to regulation-making processes in the states and territories (see appendixes C and D).

If Australia is to meet the challenges and opportunities of globally competitive markets, it needs to keep pace with or lead, other countries in improving regulation. Recent initiatives represent an important step forward, but will need to be effectively implemented and sustained. At the same time, other countries are improving their own regulation-making systems. Appendix F provides information on recent international developments.

## **Implementation issues and challenges**

The Office of Best Practice Regulation (OBPR), established within the Productivity Commission as an independent body, has been assigned a central role in improving the quality of regulation by administering the best practice regulation requirements.

The key challenge for the OBPR in 2006-07 was the implementation of the enhanced regulatory impact analysis requirements. The implementation process was guided by a Steering Committee comprised of senior officers from the Departments of the Prime Minister and Cabinet, the Treasury and Industry, Tourism and Resources.

The enhanced requirements (outlined in chapter 1) came into effect on 20 November 2006 and were detailed in a draft *Best Practice Regulation Handbook*. The guidance material was released in draft form to allow testing with departments and agencies during a nine month transition period.

The OBPR sought comment on the draft material and the implementation of the enhanced requirements in a range of forums including meetings with senior officers from each department and agency, known as the Best Practice Regulation Coordinators. Secondees to the OBPR from a number of departments provided feedback on implementing the new requirements and assisted in the revision of the guidance material. The OBPR also met

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individually with a number of departments and agencies to advise on the implementation of the requirements and gain feedback. See chapter 2 for more information.

Where it was found that the requirements could be expressed more clearly or effectively, the guidance material was redrafted. The Steering Committee oversaw this process and agreed to the launch of the final Handbook and guidance material in September 2007.

## **Compliance with regulatory impact analysis requirements**

There are significant differences between the previous regulation impact statement (RIS) requirements and the new regulatory impact analysis requirements, including the need for: preliminary assessments of all regulatory proposals to determine the level of regulatory impact analysis required; an assessment of compliance costs and greater use of cost-benefit analysis; a whole-of-government consultation policy; and strengthened gate-keeping arrangements (detailed in chapter 1).

Consequently, compliance is reported separately for two sub-periods — 1 July 2006 to 19 November 2006 under the previous RIS requirements, and 20 November 2006 to 30 June 2007 under the new arrangements (see chapter 3).

Under the previous RIS requirements, 63 RISs were required at the decision-making stage (see table 1). Of these, 57 were prepared and 54 were assessed as adequate, a compliance rate of 86 per cent. This compares with compliance rates of 71 per cent in 2005-06 and 80 per cent in 2004-05. Compliance at the tabling stage was 94 per cent, compared with 86 per cent in 2005-06 and 89 per cent in 2004-05.

Under the enhanced regulation-making framework, 18 RISs were required at the decision-making stage (see table 2). Of these, 15 were assessed as adequate and exceptional circumstances were granted in two cases — giving a compliance rate of 94 per cent. Two regulatory proposals were assessed by the OBPR as having medium level compliance costs and ‘no to low’ other impacts. Business Cost Calculator (BCC) reports were prepared in each case, certified by the OBPR at the decision-making stage and published in this period.

**Table 1 RIS compliance, by type of regulation,  
1 July to 19 November 2006**

Type of regulation	Decision-making			Tabling <sup>a</sup>		
	prepared	adequate		prepared	adequate	
	ratio	ratio	%	ratio	ratio	%
Primary legislation (bills)	30/33	27/33	82	29/32	27/32	91
Legislative instruments	19/20	19/20	95	20/20	20/20	100
Quasi-regulation <sup>b</sup>	2/2	2/2	100	..	..	..
Treaties	6/8	6/8	75	4/4	4/4	100
<b>Total</b>	<b>57/63</b>	<b>54/63</b>	<b>86</b>	<b>53/56</b>	<b>53/56</b>	<b>94</b>

.. Not applicable. Tabling is not a formal requirement for quasi-regulation. <sup>a</sup> RIS compliance for the tabling of bills, legislative instruments and treaties is subject to formal assessment by the OBPR. <sup>b</sup> As reported by departments and agencies to the OBPR.

Source: OBPR.

During the transition period to implement the Government's new regulatory impact analysis (RIA) requirements, no green papers or exposure drafts were formally required. However, four exposure drafts of regulations were released for public consultation. Departments and agencies reported 342 preliminary assessments had been undertaken for proposals which required no further regulatory impact analysis.

**Table 2 RIA compliance, by type of regulation,  
20 November 2006 to 30 June 2007**

		Primary legislation	Delegated legislation	Quasi-regulation	Treaties	Total
<b>Reports on compliance costs<sup>a</sup></b>						
- decision	ratio	2/2				2/2
	%	100				100
- transparency	ratio	2/2				2/2
	%	100				100
<b>Regulation Impact Statements<sup>a</sup></b>						
- decision	ratio	7/8	7/7		1/1	15/16
	%	88	100		100	94
- transparency	ratio	7/8	7/7		1/1	15/16
	%	88	100		100	94
<b>Exceptional circumstances</b>	no.	2				2

<sup>a</sup> Proposals granted exceptional circumstances not included.

Source: OBPR.

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Two proposals were granted exceptional circumstances in 2006-07. The two bills, *Wheat Marketing Amendment Bill 2007* and the *Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007*, require post-implementation reviews in one to two years.

Post-implementation reviews are required when a proposal proceeds to the decision maker without an adequate RIS or report assessing business compliance costs. Such reviews are required regardless of whether or not exceptional circumstances had been granted for the proposal.

One regulatory proposal — the *Workplace Relations Amendment (A Stronger Safety Net) Bill 2007* to establish a fairness test for workplace agreements — was non-compliant with the Government's requirements in 2006-07. It was not granted exceptional circumstances from the regulatory impact analysis requirements. Consequently, it requires a post-implementation review within one to two years.

### *Compliance by significance*

The OBPR classifies the significance of regulatory proposals according to the nature and size of the impacts on business and the community. In 2006-07, five RISs were required at the decision-making stage for regulatory proposals identified by the OBPR as having a highly significant impact. Four of these RISs were required under the previous RIS arrangements; all four were prepared of which three were assessed as adequate — a compliance rate of 75 per cent. Under the enhanced regulatory framework, one RIS was required but not prepared. (See chapter 3 for more information.)

### *Compliance by agency*

Of the 18 departments and agencies required to prepare RISs, 11 were fully compliant at the decision-making stage.

For the new regulatory impact analysis requirements, of the nine departments and agencies required to undertake further regulatory analysis (in the form of a Business Cost Calculator report or RIS), eight were fully compliant. (See appendix A for more information.)

## **National regulation-making**

In the year to 31 March 2007, the OBPR identified 33 decisions made by ministerial councils and national standard-setting bodies that required the preparation of a RIS under the COAG *Principles and Guidelines* (see chapter 3).

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An adequate RIS was prepared at the consultation stage for 29 decisions, resulting in a compliance rate of 88 per cent (the same as in 2005-06). Of the 33 decisions, an adequate RIS was prepared at the subsequent decision-making stage for 31 decisions, resulting in an overall compliance rate of 94 per cent — a significant improvement on the 76 per cent rate in 2005-06.

Of the 33 regulatory decisions reported, three were assessed by the OBPR as highly significant. For these highly significant matters, compliance at the consultation stage was 67 per cent, compared with 100 per cent achieved in 2005-06. However, the reduction in the compliance rate is due to only one consultation RIS not being prepared. At the decision-making stage, the compliance rate was 100 per cent. (See appendix C for more information.)

## **Moving forward**

Key tasks in strengthening the regulatory process over the next 12 months involve the continued training of policy officers in the new requirements, improving consultation practices in line with the whole-of-government policy, and raising the level of cost-benefit analysis undertaken in RISs.

Apart from departments and agencies, other organisations influence compliance with the best practice regulation requirements. Consequently, the OBPR will broaden the scope of the awareness program to include ministers' offices and selected non-government organisations.

In addition, the OBPR will continue to provide training and other assistance on the COAG guidelines to organisations responsible for compliance with these requirements.

The key challenge is to achieve cultural change within all governments so that best practice regulation and consultation processes become accepted as routine.