
2 Compliance with RIS requirements

In 2004-05, compliance by departments and agencies with the Australian Government's Regulation Impact Statement (RIS) requirements was lower than in previous years. Where RIS compliance fell short, RISs were typically not prepared when they should have been, or were prepared too late in the policy development process to make a meaningful contribution. In some cases RISs contained an inadequate level of analysis, including on compliance burdens. The quality of RISs would be improved through early consultation with the ORR and the community, and preparing RISs early in the policy development process. High level support for the process is fundamental. Compliance with the Council of Australian Government's (COAG's) RIS requirements was the same as that of the previous reporting period and there was full compliance for more significant COAG proposals.

2.1 Compliance with Australian Government requirements

When assessing and reporting on compliance with the Australian Government's RIS requirements, the ORR considers whether:

- a RIS was prepared to inform the decision maker at the policy approval stage and the analysis contained in the RIS meets the Government's adequacy criteria¹; and
- the RIS prepared at the decision-making stage was tabled in the Parliament or otherwise made public² and the analysis meets adequacy standards.

¹ Box 2.1 lists the Australian Government's criteria for determining whether the analysis contained in a RIS is adequate.

² In accordance with the Government's RIS guidelines, RISs for proposals introduced via primary legislation (bills), tabled delegated legislation or treaties must be tabled in Parliament with the enabling instrument. While there is no formal requirement for RISs prepared for proposals introduced by other forms of instruments/quasi-regulation to be made public, the ORR encourages departments and agencies to do so.

Box 2.1 Adequacy criteria for RISs

The Government has endorsed the following criteria which are employed by the ORR to assess whether each RIS meets the Government's regulatory best practice requirements.

1. Is it clearly stated in the RIS what is the fundamental **problem** being addressed? Is a case made for why government action is needed?
2. Is there a clear articulation of the **objectives**, outcomes, goals or targets sought by government action?
3. Is a range of viable **options** assessed including, as appropriate, non-regulatory options?
4. Are the groups in the community likely to be affected identified, and the **impacts** on them specified? There must be explicit assessment of the impact on small businesses, where appropriate. Both costs and benefits for each viable option must be set out, making use of quantitative information where possible.
5. What was the form of **consultation**? Have the views of those consulted been articulated, including substantial disagreements? If no consultation was undertaken, why not?
6. Is there a clear statement as to which is the **preferred option** and why?
7. Is information provided on how the preferred option would be **implemented**, and on the **review** arrangements after it has been in place for some time?

Relevant to all seven criteria (which correspond to the seven sections of a RIS) is an overriding requirement that the degree of detail and depth of analysis must be commensurate with the magnitude of the problem and with the size of the potential impact of the proposals.

For proposals which maintain or establish restrictions on competition (such as barriers to entry for new businesses or restrictions on the quality of goods and services available), it must be established that:

- the benefits to the community outweigh the costs; and
- the Government's objectives can be achieved only by restricting competition;

both of which are requirements under the *Competition Principles Agreement* (NCC 1997).

The ORR also takes into account recent Government requirements for RISs to include an assessment of ecologically sustainable development (ESD), small business and international trade impacts and, where appropriate, cost recovery issues.

Source: ORR 1998, p. D 19.

A department or agency is considered to be fully compliant with the Government's requirements if it meets these conditions. The ORR has adopted a strategy whereby the adequacy standard for RISs has been progressively increased each year since the new requirements were introduced in 1997-98, as officials have become more familiar and experienced with the analytical approach required.

RIS compliance is reported publicly in *Regulation and its Review* after the instrument implementing a regulatory proposal is tabled in Parliament (in the case of bills, legislative instruments, disallowable non-legislative instruments and treaties), or is made (in the case of non-disallowable non-legislative instruments and quasi-regulations). Hence, the data reported here do not include regulatory proposals which were agreed to by the Government in 2004-05, but not introduced into the Parliament or made into law during that period.

Aggregate compliance in 2004-05

The number of RISs required in 2004-05 was lower than in previous years, primarily because the 9 October 2004 Federal Election resulted in a postponement of decisions about regulations during the election period. In 2004-05, 85 RISs were required at the *decision-making* stage. Of these, 71 were prepared and 68 were assessed as adequate by the ORR — a compliance rate of 80 per cent. This compares with compliance rates of 92 per cent in 2003-04, 81 per cent in 2002-03, 88 per cent in 2001-02 and 82 per cent in 2000-01 and 1999-2000.

Compliance at the tabling stage (for proposals introduced via Bills, legislative instruments and treaties) was also lower than in recent years (89 per cent in 2004-05, compared to 95 per cent in 2003-04 and 2002-03 and 94 per cent in 2001-02).

Table 2.1 **RIS compliance, 1999-2000 to 2004-05**

	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05
Decision-making stage ^a	169/207 (82%)	129/157 (82%)	128/145 (88%)	113/139 (81%)	105/114 (92%)	68/85 (80%)
Tabling stage ^{a, b}	163/179 (91%)	118/133 (89%)	116/123 (94%)	113/119 (95%)	82/86 (95%)	59/66 (89%)

^a The first figure records adequate RISs; the second figure records RISs required. ^b Compliance for regulatory proposals introduced via Bills, legislative instruments and treaties (which are subject to formal assessment by the ORR).

Source: ORR estimates.

The introduction of the substantive provisions of the *Legislative Instruments Act 2003* ('the Act') on 1 January 2005 will have a impact on the number of RISs required at the tabling stage. Previously, RISs were not required at the tabling stage for proposals introduced via non-disallowable legislative instruments. The Act now requires these instruments to be tabled, with explanatory material (including RISs where required).

While this may address some of the discrepancy between the number of RISs required at the decision-making and tabling stages, differences in the total number of RISs required at each stage will continue for a variety of reasons. First, there is a formal requirement that RISs be tabled with Bills, legislative instruments, disallowable non-legislative instruments and treaties. However, RISs for other types of regulation — non-legislative non-disallowable instruments and quasi-regulation — may not be made public. Second, more than one RIS may be required at the decision-making stage if there are two or more discrete and significant decision-making points in the policy development process, such as for international treaties. Third, differences can occur if a RIS is not required for the decision-making stage, but a RIS is required for tabling.³

Significance of regulatory proposals

The ORR classifies the significance of each regulatory proposal according to:

- the nature and magnitude of the problem and proposal; and
- the scope (broad or narrow) and scale (level or degree) of impacts on affected parties and the community.

While facilitating interpretation of compliance data, categorising regulatory proposals according to the significance of their likely impact also provides a better basis on which to apply the 'proportionality rule' — that the extent of RIS analysis needs to be commensurate with the magnitude of the problem and with the size of the potential impacts of the proposal.

The approach used by the ORR to classify regulatory proposals according to their significance is outlined in box 2.2.

Of the 85 proposals that triggered the Australian Government's RIS requirements at the decision-making stage in 2004-05, only three were assessed as having a more significant impact on business and/or the community (table 2.2).

³ In the case of some treaties, for example, RISs may not be required at all decision-making stages because some decisions were made before the requirements became mandatory.

Box 2.2 **Classifying the significance of regulatory proposals**

A simple approach to classifying the significance of a regulatory proposal is to consider, first, the nature and magnitude of the proposal (and the problem) and second, its impacts on affected parties. The following examples illustrate this approach.

In terms of the nature and magnitude of proposals, a ban on, say, popular or widespread activities or some other significantly anti-competitive proposal would generally be regarded as 'large'. Placing conditions on activities, such as requiring licences or specific standards typically could be regarded as intervention of a 'medium' nature. Examples of less significant interventions might be periodic reporting requirements for businesses.

Impacts can be viewed from an economy-wide perspective, having regard to both their scope and intensity. The ORR classification involves just two categories — broad and narrow.

An increase in the rate of excise on petrol, for example, would be considered broad in its impact. On the other hand, a late night curfew on flights into, say, Coolangatta airport would be relatively narrow in terms of its impacts. A third example might be deregulation of the dairy industry. On the supply side, there might be a relatively narrow industry based impact but, on the demand side, there might be a widely dispersed impact on consumers, which could result in the proposal being classified as 'broad'.

Source: PC 2001.

Table 2.2 **Compliance by significance, 2004-05**

<i>Significance rating</i>	<i>Required</i>	<i>Prepared</i>	<i>Adequate</i>	<i>Compliance</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>%</i>
More significant	3	3	2	67
Less significant	82	68	66	80
Total	85	71	68	80.0

Source: ORR estimates.

This was much fewer than previous years (table 2.3), making it difficult to make conclusions about comparative compliance.⁴ For less significant proposals, compliance was 80 per cent (compared to 92 per cent in 2003-04).

⁴ The three 'significant' matters in 2004-05 were new Disability Standards for Education (Department of Education, Science and Training), the National Airspace System Stage 2B (Airservices Australia) and health warnings on tobacco products (Department of the Treasury). See discussion (below) on 'inadequate impact analysis' and appendix A for further information.

Table 2.3 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%)	128/145 (88%)	113/139 (81%)	105/114 (92%)	68/85 (80%)

Source: ORR estimates.

Multiple decision stages

In accordance with the Government's RIS requirements, RISs are required at the decision-making stage for proposals that impact on business. In some (generally significant) cases, there may be more than one decision-making stage. For example, the Government may consider a range of regulatory options to deal with an identified problem. Having made a decision on whether and how it wishes to intervene, the Government may then separately consider implementation options. In 2004-05, apart from treaties, where RISs are always required at more than one decision-making stage, there were no cases where proposals followed such a multi-stage decision-making process.

Proposals that restrict competition

Restrictions on competition can impose substantial costs on business and the community by raising prices, reducing choice and impeding innovation. Reflecting these costs — and to meet the requirements of the National Competition Policy *Competition Principles Agreement* — RISs for proposals that affect business by restricting competition should demonstrate that the benefits of restricting competition outweigh the costs, and that the benefits can only be achieved by restricting competition (ORR 1998, p. B6).

In 2004-05, none of the more significant proposals were judged to restrict competition, whereas, among those proposals of less significance, seven restricted competition. RISs were prepared for five of the seven proposals (table 2.4) (i.e. two RISs were not prepared). Of the five RISs that were prepared, only four were assessed as adequate.

Table 2.4 Compliance at the decision-making stage for proposals that restrict competition, 1999-2000 to 2004-05

<i>Significance rating</i>	<i>1999-00</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>
More significant	5/6 (83%)	2/7 (29%)	1/3 (33%)	0/2 (0%)	n/a	n/a
Less significant	3/9 (33%)	n/a	7/9 (78%)	18/20 (90%)	6/6 (100%)	4/7 (57%)
Total	8/15 (53%)	2/7 (29%)	8/12 (67%)	18/22 (82%)	6/6 (100%)	4/7 (57%)

n/a – Not applicable.

Source: ORR estimates.

2.2 Compliance by type of regulation

The extent of compliance with the RIS requirements, at both the decision-making and tabling stages, for the various types of regulation, is shown below (table 2.5).

Table 2.5 RIS compliance, by type of regulation, 2004-05

<i>Type of regulation</i>	<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	46/53	44/53	83	41/45	38/45	84
Non-legislative instruments ^c	4/4	3/4	75	n/a	n/a	n/a
Quasi-regulations ^c	6/7	6/7	86	n/a	n/a	n/a
Treaties	2/4	2/4	50	3/3	3/3	100
Total	71/85	68/85	80	62/66	59/66	89

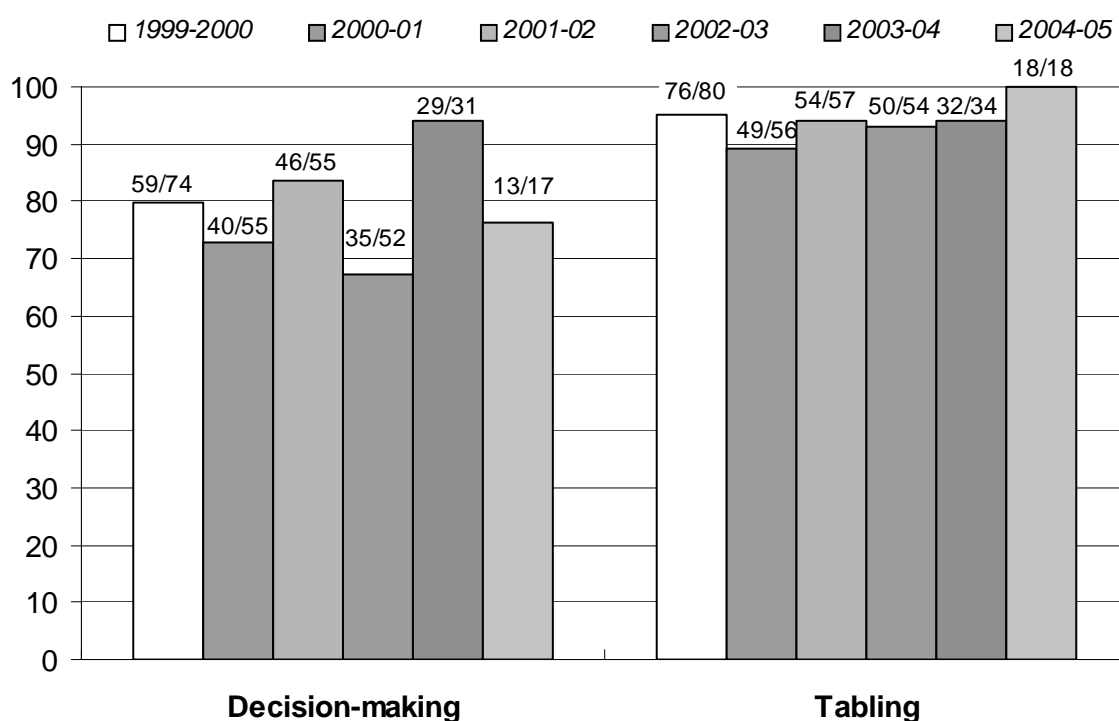
n/a – Not applicable. ^a RIS compliance for the tabling of bills, treaties legislative, and disallowable non-legislative instruments is subject to formal assessment by the ORR. ^b Includes instruments back-captured (or likely to be back-captured) as legislative instruments under section 36 of the *Legislative Instruments Act 2003*. The ORR identified seven proposals introduced via non-disallowable legislative instruments that were made before the substantive provisions of the *Legislative Instruments Act 2003* came into effect. Compliance at the tabling stage for these instruments was not subject to formal assessment by the ORR. ^c Tabling is not a formal requirement. As reported by departments and agencies to the ORR.

Source: ORR estimates.

Primary legislation

There were 17 RISs required at the decision-making stage for proposals introduced by primary legislation in 2004-05 (20 per cent of all RISs required). Of these, only 13 were prepared, all of which were assessed as adequate (a compliance rate of 76 per cent). This compares to compliance rates of 80 per cent in 2003-04 and 67 per cent in 2002-03. An additional five RISs were prepared after the decision-making stage and tabled (figure 2.1).

Figure 2.1 **RIS compliance, Bills, 1999-2000 to 2004-05**
Per cent



Source: ORR estimates.

Delegated legislation

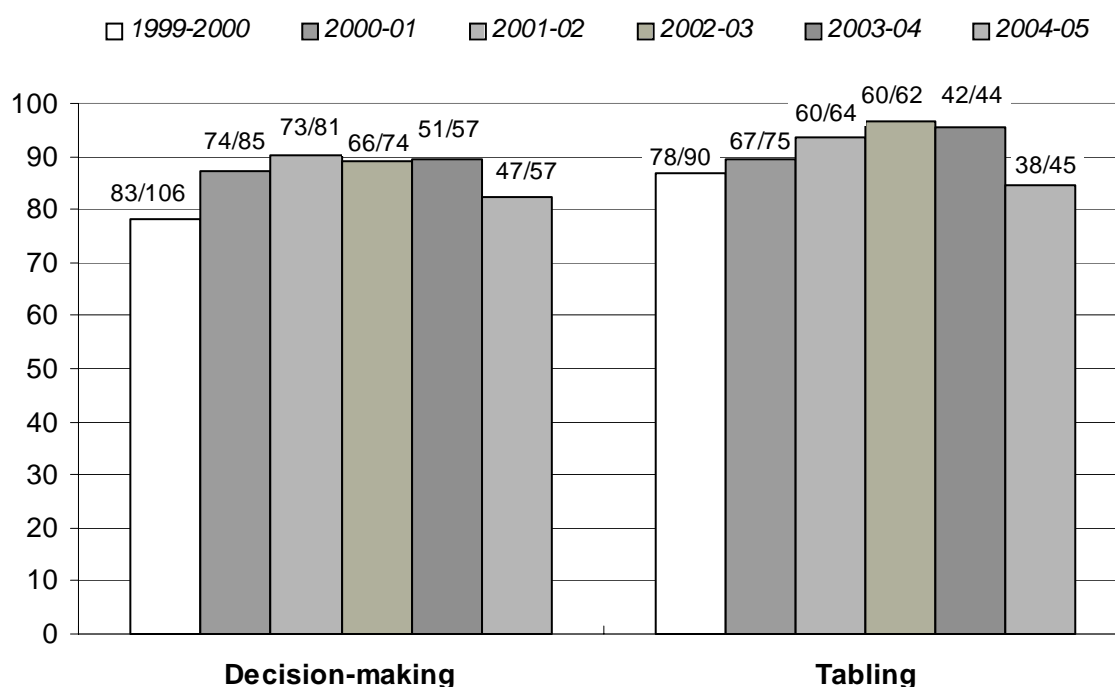
Delegated legislation comprises all rules or instruments that have the force of law and have been made by an authority to which Parliament has delegated part of its legislative power. These instruments may be legislative or non-legislative in nature.

A legislative instrument is a written instrument of a legislative character made in the exercise of a power delegated by the Parliament. An instrument is taken to be legislative if it determines or alters the law, rather than applying it in a particular case, and has the direct or indirect effect of affecting a privilege or interest,

imposing an obligation, creating a right, or varying or removing an obligation or right. Most legislative instruments do not have a direct or significant indirect impact on business, and hence do not trigger the Australian Government's RIS requirements.

In 2004-05, 53 RISs were required at the decision-making stage for proposals introduced by disallowable legislative instruments (62 per cent of all RISs required). Of these, only 46 were prepared, of which 44 were assessed as adequate (resulting in a compliance rate of 83 per cent). At the tabling stage, 45 RISs were required, only 41 were prepared, and 38 were assessed as adequate (a compliance rate of 84 per cent).

Figure 2.2 RIS compliance, delegated legislation, 1999-2000 to 2004-05
Per cent



Source: ORR estimates.

Non-legislative instruments are those declared by the Attorney-General not to be legislative instruments or are not of a legislative character (see above). Four non-legislative instruments made in 2004-05 were reported by departments and agencies to the ORR. Four RISs were prepared, of which three were assessed as adequate (a compliance rate of 75 per cent). Although RISs for non-legislative instruments do not have to be made public, all three non-legislative instrument RISs which met the Government's adequacy criteria were publicly released.

Quasi-regulation

Quasi-regulation refers to the range of rules, instruments and standards whereby government influences business to comply, but which do not form part of explicit government regulation. Examples of quasi-regulation include industry codes of practice, guidance notes, standards, industry-government agreements and accreditation schemes.

Seven quasi-regulations made in 2004-05 were reported by departments and agencies to the ORR (8 per cent of all RISs required). RISs were prepared in six cases, and all were assessed as adequate (a compliance rate of 86 per cent, down from 92 per cent in 2003-04).

The introduction of the Legislative Instruments Act 2003 may have some impact on the number of quasi-regulations reported as 'made' to the ORR.⁵

Treaties

Under the Australian Government's RIS requirements, a RIS should be prepared at three stages of the treaty-making process — before the formal policy decision to pursue treaty negotiations, prior to Australia signing a treaty and, finally, when the treaty is tabled in Parliament for ratification. Where Australia is considering acceding to an existing treaty, RISs are required prior to accession and when the treaty is tabled in Parliament. (Other countries also require RISs or a RIS-type analysis of the domestic impacts of treaties.)

Three treaties ratified in 2004-05 triggered the Government's RIS requirements. There was full compliance at the signing stage, but zero compliance at the entry into negotiations stage. (One treaty did not require a RIS at entry into negotiations.) There was full compliance with the Government's RIS requirements at the ratification stage.

⁵ Where the Attorney-General determines, for example, that a class of instrument previously reported to the ORR as 'quasi-regulatory' should be registered as legislative instruments under the *Legislative Instruments Act 2003*.

2.3 National regulation-making under COAG's requirements

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. In 1995, the Council of Australian Governments (COAG) agreed on a set of *Principles and Guidelines* for such activities. The major element of the Guidelines is the preparation of a regulation impact statement (RIS) for those national regulatory decisions that:

... would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done. (COAG 2004a as amended, p. 2)

At the direction of COAG, the ORR has a role in monitoring and reporting on compliance by Ministerial Councils and national standard-setting bodies with these Guidelines. A RIS, assessed by the ORR, is required at two stages: the first for community consultation with parties affected by the regulatory proposal; and the second or final RIS, reflecting feedback from the community, for the decision-making body. At each stage, the ORR is required by COAG to assess:

- whether the COAG *Principles and Guidelines* have been followed;
- whether the type and level of analysis in the RIS is adequate and commensurate with the potential economic and social impacts of the proposal; and
- whether alternatives to regulation have been adequately considered.

The ORR is required to advise the relevant Ministerial Council or national standard-setting body of its assessment.

Table 2.6 **COAG RIS compliance, regulatory decisions made by Ministerial Councils and national standard-setting bodies, 2000-01 to 2004-05^a**

<i>Decision-making stage</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>
All proposals	15/21 (71%)	23/24 (96%)	24/27 (89%)	30/34 (88%)	21/24 (88%)
Significant proposals	5/9 (56%)	6/6 (100%)	4/6 (67%)	4/7 (57%)	6/6 (100%)

^a Data for 2000-01 relate to the period 1 July 2000 to 31 May 2001. Data for 2001-02 to 2004-05 relate to the period 1 April to 31 March. There is, therefore, some overlap between the reporting periods for the first two reports. However, for each decision included in both reports, Ministerial Councils were compliant with COAG's requirements.

Source: ORR estimates.

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 made by Ministerial Councils or national standard setting bodies as being of particular significance in their impact on business or the broader community. Adequate RISs were prepared in all cases at the decision-making stage, but in only five of six cases at the consultation stage (a compliance rate of 83 per cent). More detailed compliance information about regulation making by COAG forums, including RIS compliance, is provided in appendix C.

In addition, COAG's *Agreement to Implement the National Competition Policy and Related Reforms* (NCC 1998) 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. The ORR also reports on compliance to COAG's Committee on Regulatory Reform.

At its meeting on 25 June 2004, COAG amended the *Principles and Guidelines* and the *Broad Protocols for the Operation of Ministerial Councils* (COAG 2004b). A number of the changes clarify existing ORR processes and methodologies that have been applied to COAG RISs over the last few years. A significant change is the requirement for the ORR to confer with the Regulatory Impact Analysis Unit of the New Zealand Government on draft consultation RISs where there are New Zealand impacts and issues (for example where trans-Tasman trade may be affected). (See appendix C for more information.)

2.4 Why has RIS compliance fallen short?

The compliance of departments and agencies with the Australian Government's RIS requirements was lower in 2004-05 compared to previous years, at both the decision-making and tabling stages. Compliance for a small number of significant regulatory issues was also somewhat lower.

There can be legitimate reasons for not preparing a RIS before a decision is taken to regulate, for example, the need to respond to a genuine emergency. However, such cases are rare and the RIS requirements are sufficiently flexible to respond to such situations (PC 2004, pp. 8-9). The ORR is not aware that such factors were more prevalent in 2004-05 than in previous years.

A number of factors appear to have resulted in lower RIS compliance in 2004-05, as discussed below.

Timeliness

The Australian Government's *A Guide to Regulation* (ORR 1998, p. A5) states that the analytical framework underpinning a RIS should be used throughout the policy development process. Departments and agencies are encouraged to integrate the RIS process into their internal policy development process and consult with the ORR at an early stage. Where departments and agencies consult with the ORR and commence preparation of a RIS early, in most cases the RIS meets adequacy standards.

Where departments and agencies do not consult with the ORR early in the policy development process, there is often insufficient time to address major weaknesses in a RIS before seeking the ORR's final assessment of the RIS for the decision-making stage. In addition, where departments and agencies consult with the ORR and prepare RISs late in the policy development process, the RIS is less likely to make an effective contribution to policy development.

Of the seventeen cases of non-compliance with the Government's RIS requirements in 2004-05, in twelve the ORR was not contacted until after the decision to regulate was made. In the other five cases, the RIS process was commenced, but not completed. For example, in one instance, a draft RIS was only provided to the ORR the day before the RIS was to be provided to the decision-maker for a decision. There was insufficient time to address deficiencies in this RIS and the agency did not provide the final RIS to the ORR for its assessment until after the decision was made. In another case, the ORR was contacted by the department and provided advice early in the policy development process. However, an amended draft RIS was not provided to the ORR for comment until the day the decision was made.

Inadequate RISs

Where RISs were prepared but failed the Government's adequacy test, the analysis of costs, benefits and impacts was typically deficient. In 2004-05, there were three such cases. In one, the department did not clearly identify the problem and did not adequately identify the economic and social impacts of the proposal, including on small business. In another case, the RIS did not contain a summary of views received from stakeholders and the community (including dissenting views), or a discussion of how such views had been considered and addressed. In the third case, regulatory compliance costs were not quantified, even in broad terms.

Raising minimum adequacy standards in RISs

In 2004-05, the ORR continued to raise minimum adequacy standards for RISs, in part, by making it mandatory for RISs to include quantitative data and analysis of regulatory compliance costs on business and the community, or an explicit statement that such costs could not be estimated. Therefore, some of the reduction in RIS compliance in 2004-05 (specifically where RISs were prepared but failed adequacy tests) can be attributed to the minimum adequacy standards for RISs being increased incrementally in 2004-05.

2.5 Improving RIS compliance

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. The cost of preparing RISs is quite small compared to the total budgets of regulatory departments and agencies (table 1.1). For example, in 2004-05, the ORR requested that Australian Government regulators preparing a RIS provide data of the number of person days taken to prepare each RIS. On average, each RIS took 13.6 person days to prepare, with total gross wage cost per RIS averaging about \$4500. This is the estimated *gross* cost. Where regulators carefully define policy objectives, consider feasible options and their impacts etc, the additional net cost of preparing a RIS would be smaller, because the RIS simply documents the existing policy development process.

In 2004-05, nine departments and agencies complied fully with the RIS requirements, namely:

- Australian Communications Authority;
- Australian Securities and Investments Commission;

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- Australian Prudential Regulation Authority;
 - Department of Communications, Information Technology and the Arts;
 - Department of Agriculture, Fisheries and Forestry;
 - Australian Fisheries Management Authority;
 - Attorney-General's Department;
 - Department of Education, Science and Training; and
 - Department of Employment and Workplace Relations.

There were several examples of high quality RISs prepared by Australian Government departments and agencies in 2004-05. In those cases, the RISs were generally prepared early and made a useful contribution to the policy development process, including by demonstrating that the preferred option would result in net benefits for the community:

- the Department of Education, Science and Training prepared a RIS for new Disability Standards for Education. The new standards are likely to benefit some 210,000 students with disabilities across Australia and were developed following extensive consultation with a range of stakeholders. The RIS drew on a comprehensive cost-benefit analysis of the impacts of the new standards. It provided high quality and insightful analysis of the key issues, including a detailed community consultation statement;
- the Department of the Environment and Heritage and the Department of Transport and Regional Services prepared a RIS for new petrol and diesel fuel quality and related vehicle emission standards. The Departments met with the ORR early in the policy development process and maintained regular contact with the ORR during the policy development process. As elements of the proposal fell under both the COAG RIS requirements and the Australian Government's RIS requirements, the Departments prepared a comprehensive draft RIS for community consultation;
- the Department of Communications, Information Technology and the Arts and the Attorney-General's Department prepared a RIS for an amendment to the *Copyright Act 1968* to grant film directors a right to share, as copyright owners, in remuneration for the retransmission of films included in free-to-air broadcasts. The RIS contained an insightful level of analysis commensurate with the impacts of the proposal;
- the Attorney-General's Department also prepared a high quality RIS for amendments to the Bankruptcy Regulations to prescribe performance standards for trustees' conduct of personal insolvency administrations. The RIS contained

a very good description of the problem, and considered a comprehensive range of options; and

- the Australian Prudential Regulatory Authority prepared a RIS for a variation to Prudential Standard APS 112, amending the capital adequacy risk weighting requirements for ‘low documentation loan’ residential mortgages. The RIS contained a very good consultation section, and the preferred option was modified after consultation with stakeholders and the community.

This suggests considerable scope for improvement by the departments and agencies with poor RIS compliance. The quality of RISs can be improved through:

- departments and agencies consulting early with the ORR and undertaking RIS training where appropriate;
- RISs being prepared early in the policy development process and well before decisions are made; and
- regulators undertaking more robust cost-benefit analysis, including where feasible, consulting in a meaningful and timely manner with stakeholders. In many cases, it is important to undertake risk analysis within RISs, especially for environmental, national security and safety problems and related issues.

Ultimately, further improvements will depend on the RIS process receiving support from the top down at political and administrative levels.

To facilitate further improvements in regulating making, in 2005-06 the ORR intends to continue to:

- raise minimum adequacy standards for RIS, with a particular focus on documenting regulatory compliance costs and improving 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;
- meet with senior officials from poorly performing departments/agencies to discuss performance and 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;

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- 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.