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## E ORR activities and performance

The objective of the Office of Regulation Review's (ORR's) regulation review activities is to promote regulation-making processes that, from an economy-wide and public interest perspective, improve the effectiveness and efficiency of regulatory proposals. The ORR provides advice to the Australian Government and assists approximately 100 Australian Government departments and agencies, Ministerial Councils and national standard-setting bodies develop regulatory proposals through the preparation of Regulation Impact Statements (RISs). The ORR aims to provide objective and insightful advice that is timely and useful to government.

### E.1 Activities in 2003-04

The activities that the ORR is required by the Government to undertake are set down in its Charter (box E.1).

#### Box E.1 Charter of the Office of Regulation Review

In 1997, the Government directed the ORR to issue a charter outlining its role and functions. The ORR's seven principal activities are to:

- advise on quality control mechanisms for regulation making and review;
- examine and advise on regulation impact statements (RISs) prepared by Australian Government departments and agencies;
- provide training and guidance to officials;
- report annually on compliance with the Australian Government's RIS requirements;
- advise Ministerial Councils and national standard-setting bodies on regulation making;
- lodge submissions and publish reports on regulatory issues; and
- monitor regulatory reform developments in the States and Territories, and in other countries.

Whilst these are ranked in order of the Government's priorities, the ORR must concentrate its resources where they will have most effect. The ORR, together with the Department of the Treasury, advises the Parliamentary Secretary to the Treasurer who is the Minister responsible for regulatory best practice.

In 2003-04, the Australian Government introduced 150 Bills, 1538 disallowable instruments and 29 treaties into the Parliament.

In the same period, the ORR received 845 new RIS queries (compared to 861 queries in 2002-03). Of these, the ORR advised that RISs were required in 174 cases.

Of those proposals reported to have been made or tabled in 2003-04, the ORR identified 114 as triggering the Government's RIS requirements at the decision-making stage. It provided comments on the 109 RISs subsequently prepared.

**Table E.1 Australian Government regulatory and RIS activities, 1999-2000 to 2003-04**

	1999-2000	2000-01	2001-02	2002-03	2003-04
	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>
<b>Regulations introduced</b>					
Bills	159	169	207	174	150
Disallowable instruments	1832	1438	1711	1615	1538
<b>Total introduced</b>	<b>1991</b>	<b>1607</b>	<b>1918</b>	<b>1789</b>	<b>1688</b>
<b>RIS workload</b>					
Total number of new RIS queries received by the ORR	826	740	709	861	845
- of which, the ORR advised a RIS was required	..	..	175	132	174
<b>Proposals finalised <sup>a</sup></b>					
Proposals which required a RIS	207	157	145	139	114
RISs prepared	180	133	130	120	109

<sup>a</sup> Proposals at the decision-making stage which were tabled or made in the reporting period — for some of these proposals the ORR was contacted in an earlier reporting period.

.. Data not available.

The ORR provided formal training on RISs and regulatory best practice to an estimated 437 Australian Government, State government and ACT Government officials from a wide range of departments and agencies (compared to 514 officials in 2002-03). For example, the ORR provided such training to: 56 staff from the Australian Securities and Investments Commission; 50 staff from the Australian Building Codes Board; 36 staff from the Department of the Environment and Heritage; 28 staff from the Australian Prudential Regulation Authority; 23 staff from the Australian Communications Authority and 20 staff from the ACT Government.

In advising Ministerial Councils and national standard-setting bodies on regulation-making, the ORR examined 72 regulatory proposals and provided advice

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on 36 RISs which were considered by these decision-making bodies in the twelve months ending 31 March 2004 (compared to 61 regulatory proposals and 24 RISs in the twelve months ending 31 March 2003). The ORR also reported to the National Competition Council (NCC) and the Committee on Regulatory Reform (CRR) — a senior officials group reporting to the Council of Australian Governments (COAG) — on the setting of national standards and regulatory action by Ministerial Councils and national standard-setting bodies, for the year ended 31 March 2004 (see appendices A and C).

In monitoring and contributing to regulatory reform developments more broadly throughout Australia and internationally during 2003-04, the ORR also:

- provided input into the review by COAG of the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*;
- worked with the Department of Finance and Administration to implement and harmonise the operation of the Australian Government's RIS (Regulation Impact Statement) and CRIS (Cost Recovery Impact Statement) requirements;
- presented papers on regulatory best practice to the Australian Building Codes Board National Technical Summit on 31 July 2003 and to the National Consumer Conference on 16 March 2004;
- provided briefing to the Department of Foreign Affairs and Trade on issues arising from Australia's participation in the WTO GATS (General Agreement on Trade in Services) Working Party on Domestic Regulation and assisted the Department in developing Australia's response to the WTO's Third Triennial Review on technical barriers to trade;
- participated in a steering group chaired by the Office of Small Business — in the Department of Industry, Tourism and Resources — that examined reforms to Australia's regulatory performance indicators initiative;
- provided advice to a study by the UK Government on the use of sunset clauses in regulation, and to a query concerning bringing sustainable development issues more explicitly into their Regulatory Impact Assessment guidance;
- participated in the annual meeting of regulation review units, representing all States (except New South Wales), the Territories and New Zealand. This meeting, held on 19 September 2003, provided a forum for exchange of information and exploring scope to enhance cooperation on regulatory issues between jurisdictions;

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- provided advice on Australia's approach to implementing the tools of regulatory governance to the Bertelsmann Foundation in Germany. The Foundation is one of a group of bodies working with the German Ministry for Economy and Labour to introduce regulation review and reform activities (in particular regulatory impact assessment);
  - met with New Zealand Government officials to discuss developments in regulatory reform including scope to enhance trans-Tasman cooperation in the review and reform of regulations;
  - met with a delegation from the Japanese Ministry of Public Management, Home Affairs, Posts and Telecommunications, to discuss research on RISs;
  - met with officials from the Korean Government to discuss matters related to regulatory reform;
  - met with officials from Chung Hua University, Taiwan, to discuss regulatory best practice and standard setting in Australia; and
  - met with various stakeholder groups who wished to discuss specific RIS issues or the application of the RIS requirements more generally.

In 2003-04, the ORR was invited by the OECD to provide a peer reviewer for the regulatory reform review of Germany, and to speak about regulatory reform at forums in Canada, Taiwan, Thailand and Sydney. These requests were declined due to other commitments.

## **E.2 Performance of the ORR**

The ORR aims to ensure that its duties — as defined by its charter — are carried out efficiently and effectively by providing timely advice and assistance of a high standard that is useful to government.

*Regulation and its Review* fulfils the Productivity Commission's and the ORR's obligation to report annually on compliance with the Government's regulation review and reform requirements. The report for 2002-03, which was released in November 2003, continued the initiative of reporting in greater detail on compliance by Australian Government departments and agencies. It also canvassed regulatory issues more broadly, emphasising the importance of RIS requirements to good policy process and high quality regulatory outcomes.

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## Quality indicators

The scope of the ORR's work covers the whole of government. However, the confidentiality of RISs considered by Cabinet limits the extent to which specific matters can be reported publicly.

Evidence of the quality of the ORR's work is provided by feedback from other government and community bodies, including those that prepare RISs and those that use them.

The ORR last surveyed Australian Government officials who were engaged in preparing RISs in 2000-01 regarding the usefulness of the ORR's advice in the development of RISs. In 2004-05 the ORR will commence an ongoing survey to obtain ongoing feedback on how departments and agencies view the ORR's work performance and the quality of its service.

As in previous years, the ORR surveyed the 417 Australian Government officials who received training in regulatory best practice in 2003-04 and 268 responses were received — a response rate of 64 per cent.<sup>1</sup> The responses indicate that the ORR training was well received, with 85 per cent rating the training as either 'excellent' or 'good' (table E.2). No respondents considered RIS training to be 'unsatisfactory'.

Table E.2 **Australian Government RIS training evaluation: 2001-02 to 2003-04**

<i>Evaluation</i>	<i>2001-02</i>		<i>2002-03</i>		<i>2003-04</i>	
	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>
Total number trained	174		514		417	
Responses received	87	(50)	364	(71)	268	(64)
Excellent	18	(21)	93	(25)	60	(22)
Good	56	(64)	243	(67)	170	(63)
Satisfactory	13	(15)	28	(8)	38	(14)
Unsatisfactory	0	(0)	0	(0)	0	(0)

In addition, the ORR provided training to 20 staff from the ACT Government. Sixteen staff assessed the quality of ORR training as excellent (80 per cent) and a further three assessed it as good.

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<sup>1</sup> On three occasions, (covering 50, 19 and 16 staff, respectively) training evaluation forms were not distributed because the ORR's presentations went beyond formal RIS training and covered a range of other regulatory best practice issues. Omitting these raises the response rate to 81 per cent.

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The ORR also provided ad hoc training sessions on the RIS process and regulatory best practice to smaller groups of officials as required. Although training evaluation forms were not distributed at these meetings, informal feedback indicates that the advice provided by the ORR was generally well regarded and useful to officials preparing advice on regulatory issues.

Indicators of the quality and usefulness of the ORR's regulation review activities in promoting public understanding of regulatory best practice issues are also found in the use of its reports both in Australia and internationally.

- Printed copies of *Regulation and its Review 2002-03* were widely distributed, including a copy to each Member of the House of Representatives and the Senate.
- Approximately 500 copies of the second edition of *A Guide to Regulation* were distributed for use by policy and regulatory officers in government departments, agencies, statutory authorities and boards, and other organisations and individuals interested in regulatory reform.
- The Subordinate Legislation Committee of the Scottish Parliament drew extensively on the ORR Staff Working Paper '*Mechanisms for Improving the Quality of Regulation*' (Argy and Johnson 2003) and the paper's 'Checklist for Assessing Regulatory Quality' in developing a consultation paper for its inquiry into the regulatory framework in Scotland.

The ORR component of the Productivity Commission's website was significantly upgraded during 2003-04 and now functions as a 'self contained' site, with more direct links to information about the ORR and its work. During the reporting period there were 16 718 requests for the ORR Home Page. Requests for the index pages of ORR publications included 3512 for *A Guide to Regulation*, 1990 for *Regulation and its Review 2002-03* and 1138 for *Mechanisms for Improving the Quality of Regulation*. (This compares to 9411 requests for the ORR home page, 3312 requests for *A Guide to Regulation* and 1700 requests for *Regulation and its Review 2001-02* in 2002-03).

## **ORR Timeliness**

The extent to which the ORR's advice is delivered to regulators and decision makers in a timely manner is also a key indicator of performance. A number of factors can affect the ORR's timeliness including: the length and quality of the RIS document received; the complexity of the issue/policy proposals canvassed; the familiarity of ORR staff with the issues covered, including whether the ORR has had prior contact with the department/agency; ORR workloads and staff availability.

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As a general rule, officials preparing a RIS are asked to allow the ORR two weeks to provide advice on the adequacy of RISs. However, where further redrafting is necessary, additional time may be needed to ensure an adequate standard is achieved. In practice, in 2003-04 the ORR provided formal feedback (comments on the first draft of the RIS) to departments and agencies, on average, five working days after RISs were received. Moreover, the ORR provided comments on 94 per cent of all (first draft) RISs received within two weeks.

During 2003-04, there were several instances where departments and agencies requested advice on their RISs within a few days and sometimes a few hours. While the ORR was able to meet these urgent requests, such short timeframes make it difficult to give proper consideration to all the issues and raise broader questions about the approach taken to preparing RISs within some departments and agencies.

Under the COAG *Principles and Guidelines*, the ORR is required to provide advice on RISs for Ministerial Councils and national standard-setting bodies in a timely manner. When asked for advice in two weeks or less, the ORR provided advice within the specified timeframe on all occasions in 2003-04.

The ORR has also delivered its other outputs in a timely manner. For example, it prepared a report to the National Competition Council (NCC) on compliance with the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. This report, which covered compliance for the twelve months to the end of March 2004, was completed and delivered on time. This ORR report assisted the NCC in preparing its annual third tranche assessment of the compliance of jurisdictions with the requirements of National Competition Policy.

## **Indicators of usefulness**

The usefulness of the ORR's regulation review activities in contributing to government policy-making and promoting community understanding of regulatory review and reform issues can be informed by a range of indicators:

- Overall compliance with the Government's RIS requirements remained high in 2003-04.
  - Of the 114 regulatory proposals in 2003-04 that required the preparation of a RIS, 92 per cent complied with the RIS requirements at the decision-making stage. This compares to a RIS compliance rate of 81 per cent in 2002-03.
  - Compliance for the 86 proposals that required a RIS at the tabling stage was 95 per cent — equal to that in the previous year.

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- For significant regulatory issues, the RIS compliance rate in 2003-04 was 94 per cent. This compares favourably with a 46 per cent compliance rate in 2002-03, and is an improvement on the 70 per cent compliance rate for 2001-02.
  - Compliance information by portfolio shows that several departments and agencies which had been reported in previous years as performing below regulatory best practice have subsequently improved their internal processes during 2003-04, resulting in better regulatory practices and outcomes (see appendix A).
  - Informal feedback provided by Government officials indicates that departments and agencies found the ORR's contributions on these matters to be constructive, timely and positive. For example, in the Australian Building and Construction Board's (ABCB) submission<sup>2</sup> to the Productivity Commission study into '*Reform of Building Regulation*', it stated:

Relationships with the ORR are good, with ABCB staff appreciating the constructive approach taken and efficient manner in which draft RISs are handled.
  - In 2003-04, RISs for consultation (or similar documents) were prepared for 14 proposals, and submitted to the ORR for input before being released to stakeholders, although this is not a formal requirement under the Australian Government's RIS requirements.
  - Of the 114 proposals that required a RIS, in 9 cases the preferred option was modified during the policy development process between the first draft of the RIS sighted by the ORR and the RIS considered by the decision maker. This suggests that consultation and transparency, both key elements of the Government's RIS process, are significant factors in achieving better regulatory outcomes.
    - On 2 October 2003, the Environment and Heritage Ministers of the Australian, State and Territory, and New Zealand Governments agreed to examine a national mandatory water efficiency labelling scheme covering showerheads, washing machines, dishwashers and toilets. The Ministers agreed that the Australian Government would develop the proposal. A draft RIS was prepared, and released for public comment by the Department of Environment and Heritage from 13 March to 16 April 2004. In light of comments received, the proposal was modified to include the mandatory registration and mandatory labelling for water efficiency for bathroom basin, kitchen sink and laundry taps and for urinals and urinal flushing systems.

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<sup>2</sup> See [www.pc.gov.au/study/building/subs/sub004.pdf](http://www.pc.gov.au/study/building/subs/sub004.pdf), p. 13.

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- RISs tabled in the Parliament with explanatory memoranda and explanatory statements have provided greater transparency regarding the rationale behind the Government's regulatory decisions, resulting in the Parliament being better informed. In addition, parliamentarians have drawn on published RISs in debate, and those appearing before parliamentary committees have referred, favourably and critically, to the content of RISs.
    - In 2003-04, the need for and content of RISs were raised in parliamentary discussions on 34 occasions, primarily in parliamentary committees.<sup>3</sup> Most discussion focussed on the analysis contained in the 'impact' and 'consultation' sections of RISs.
  - In a year when a number of treaties that trigger the RIS requirements were tabled, the Joint Standing Committee on Treaties (JSCOT) referred on several occasions to information provided in RISs.<sup>4</sup>
    - In its report on the Stockholm Convention, the Committee commended the Department of the Environment and Heritage 'for the thorough documentation it provided, especially on the issue of consultation. The RIS and consultations annex provides a list of those consulted and also a summary of those comments. The Committee was pleased by the range of organisations contacted in the negotiations process for this treaty and the manner in which the information was presented.'

The Committee hoped that other departments would follow 'the fine example set by the Department of the Environment and Heritage in this case'.<sup>5</sup>

- The RIS process was also mentioned five times in the parliamentary debate on the *Legislative Instruments Bill 2003*. In December 2003, the Government agreed with the recommendation of the Senate Committee report that the operation of the consultation provisions be included in the review of the Act three years after its commencement (Ellison 2003, p. 18632).
- State/Territory government officials contacted the ORR on two occasions during 2003-04 to confirm that proposals complied with COAG RIS requirements, before proceeding with legislation in their State/Territory.

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<sup>3</sup> These included discussions of: auditor standards; the rezoning of the Great Barrier Reef Marine Park; motor vehicle safety standards and Australian Design Rules; superannuation; age discrimination (supporting the analysis presented in the RIS); migration agents (questioning the analysis presented in the RIS); ethanol fuel labelling; advertising on tobacco packaging; sponsored migration; and commercial regional aviation safety.

<sup>4</sup> These included *Double Tax Agreements with the United Kingdom and the United Mexican States*; the *Stockholm Convention on Persistent Organic Pollutants*; the *Rotterdam Convention on Notification of Certain Hazardous Chemicals and Pesticides*; and the *1997 Protocol to amend the Maritime Pollution Convention (MARPOL 73/78)*.

<sup>5</sup> See [www.aph.gov.au/house/committee/jsct/September2003/report.htm](http://www.aph.gov.au/house/committee/jsct/September2003/report.htm), p. 39.

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The Australian Government also showed its support for the RIS process in its response to the Employment, Workplace Relations and Education References Committee's report into *Small Business Employment* (released 6 February 2003). The Committee recommended that the Australian Government amend the Regulation Impact Statement (RIS) guidelines to require that agencies provide quantitative estimates of compliance costs, based on detailed proposals for implementation and administration. It also recommended that the Australian Government commission regular reviews of the accuracy of compliance estimates in the RISs for regulations with a major impact on business.

COAG also re-iterated its support for regulatory governance by re-endorsing on 25 June 2004 the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-setting Bodies*. COAG clarified when the requirements apply, strengthened the ORR's role in assessing COAG RISs before consultation and before the decision-making stage, and required COAG RISs to specifically assess the impacts on small business. COAG also decided that the ORR and the New Zealand Regulatory Impact Analysis Unit would cooperate in assessing COAG RISs for consultation where there are New Zealand issues (such as trans-Tasman mutual recognition).