
C ORR activities and performance

The objective of the ORR's regulation review activities is to promote regulation-making processes which, from an economy-wide perspective, improve the effectiveness and efficiency of regulations. The ORR provides advice to approximately 100 regulators, including about 60 Australian Government departments and agencies and about 40 Ministerial Councils and national standard-setting bodies. The ORR aims to provide objective and insightful advice that is timely and useful to government.

C.1 Activities in 2002-03

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

Box C.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 2002-03, almost 1800 Bills and disallowable instruments were tabled in the Parliament. In advising on quality control mechanisms for reviewing and making regulation in 2002-03 (including examining and advising on RISs), the ORR analysed in detail some 861 new regulatory proposals from Australian Government departments and agencies (table C.1). Of these, the ORR advised that 132 triggered the RIS requirements. It subsequently received 106 draft RISs from Australian Government departments and agencies.

Of the regulatory proposals reported to have been made or tabled in 2002-03, the ORR advised that 139 proposals required a RIS. It provided comments on the 120 RISs subsequently prepared (table C.1).

Table C.1 Australian Government regulatory activity and ORR workload, 2001-02 and 2002-03

| | <i>2001-02</i> | <i>2002-03</i> |
|---|----------------|----------------|
| | <i>no.</i> | <i>no.</i> |
| Regulations introduced | | |
| Bills | 207 | 174 |
| Disallowable instruments | 1711 | 1615 |
| Total introduced | 1918 | 1789 |
| RIS workload | | |
| Total number of new RIS queries received by the ORR | 709 | 861 |
| - of which, the ORR advised a RIS was required | 175 | 132 |
| - of which, the ORR received draft RISs | 124 | 106 |
| Proposals finalised^a | | |
| Proposals which required a RIS | 145 | 139 |
| RISs prepared | 130 | 120 |

^a Proposals which were tabled or made in the reporting period — for some of these proposals the ORR was contacted in an earlier reporting period.

In addition, the ORR:

- continued to work with, and provide assistance to, the Office of Small Business (within the Department of Industry, Tourism and Resources) in relation to the development of regulatory plans and regulatory performance indicators;
- in the year to 31 March 2003, analysed 43 regulatory proposals considered by Ministerial Councils and national standard-setting bodies and provided advice on 24 RISs which were considered by these decision-making bodies (see appendix A); and
- reported to the National Competition Council (NCC) on the setting of national standards and regulatory action by Ministerial Councils and national standard-setting bodies, for the year to March 2003.

During the past year, the ORR provided formal RIS training on regulatory best practice to an estimated 510 Australian Government officials from a wide range of departments and agencies (more than double the number who received such training in 2001-02). It also provided extensive advice and assistance with the preparation of RISs, as needed, on an issue-by-issue basis.

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 requirements. The report for 2001-02, which was released in November 2002, continued the initiative of reporting in greater detail on compliance by portfolio. It also canvassed regulatory issues more broadly, emphasising the importance of RIS requirements to good policy process and high quality regulatory outcomes.

In monitoring and contributing to regulatory reform developments more broadly throughout Australia and internationally during 2002-03, the ORR also:

- made a presentation on 'grey-letter law' to the AusBiotech 2002 Conference and Investment Forum in Melbourne in August 2002;
- organised and chaired the annual meeting of regulation review units, representing all States (except Tasmania), the ACT and New Zealand. This meeting, held on 10 September 2002, provided a forum for exchange of information among officials from different jurisdictions;
- represented Australia at an OECD meeting in Paris in October 2002 on regulatory reform in Member countries. The ORR provided a commentary of RIS systems employed in some OECD countries and contributed to a discussion on the OECD forward work program;
- provided input to the Senate Employment, Workplace Relations and Education References Committee Small Business Employment Inquiry, regarding RISs and related regulatory matters in October 2002;
- assisted New Zealand Government officials by providing briefings and training in Wellington in November 2002 and June 2003 on RIS processes and lessons from Australia. Overall, the ORR provided training about regulatory best practice processes and RISs to 155 New Zealand Government officials during 2002-03;
- provided detailed input in December 2002 into a proposal for a new regulatory review regime in the Northern Territory (which subsequently came into force in August 2003);
- provided advice in December 2002 on appropriate terms of reference for one review undertaken as part of the *Competition Principles Agreement* commitment to review and reform all legislation which restricts competition;

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- assisted with presentations by the Productivity Commission's Chairman to the Small Business Forum (*Reducing the Business Costs of Regulation*) in March 2003 and the Minerals Council of Australia (*Minimum Effective Regulation and the Mining Industry*) in June 2003.
 - assisted the Department of Foreign Affairs and Trade in May 2003 in developing an Australian position regarding the transparency and efficiency of domestic regulation for its negotiations at the World Trade Organisation on the General Agreement on Trade in Services; and
 - presented papers at the Asia Pacific Economic Cooperation (APEC) meeting in Khon Kaen, Thailand in May 2003 on regulatory reform systems and processes and the role of the Productivity Commission in Australia.

The ORR's research program was progressed in 2002-03, with benchmarking of Australia's regulatory review requirements and other regulatory quality procedures largely completed. A Staff Working Paper (Argy and Johnson 2003), *Mechanisms for Improving the Quality of Regulations: Australia in an International Context* was subsequently published in July 2003. Work also commenced on the identification and development of a range of robust measures of outcomes that could be used to measure the impacts of the Government's regulation review and reform systems (including RISs) on the effectiveness and efficiency of regulation.

Finally, the ORR's website was restructured during 2002-03 to provide more information and make it more user-friendly, including additional links and a larger range of different types of example RISs.

C.2 Performance of the ORR

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

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 surveyed the 510 Australian Government officials who received training in regulatory best practice in 2002-03 and 364 responses were received — a response rate of 71 per cent. The responses indicate that the training was generally well received, with 92 per cent rating the training as either ‘excellent’ or ‘good’ (table C.2). No respondents considered RIS training to be ‘unsatisfactory’.

Table C.2 Australian Government RIS training evaluation in 2002-03

| <i>Evaluation</i> | <i>Number of responses</i> | <i>Per cent</i> |
|-------------------|----------------------------|-----------------|
| Excellent | 93 | 25 |
| Good | 243 | 67 |
| Satisfactory | 28 | 8 |
| Unsatisfactory | 0 | 0 |
| Total | 364 | 100 |

In addition, the ORR surveyed 128 of the 155 New Zealand government officials trained during 2002-03. Responses indicated that 84 per cent rated the training as either ‘excellent’ or ‘good’.

The ORR also provided numerous additional 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 also generally well regarded.

The Australian Government’s RIS processes are considered to be at the forefront of international best practice. For this reason, in 2002-03, the ORR was invited to provide briefing on Australia’s RIS processes to:

- the Dutch Independent Post and Telecommunications Authority and the Dutch Competition Authority on aspects of the regulation of telecommunications and the RIS process, and more generally, the roles of competition and sector-specific competition regulation;
- the Canadian External Advisory Committee on Smart Regulation on recent trends and regulatory practices for a report they were preparing on several countries, including Australia;
- the Danish Committee on Better Regulation for its review of better business regulation in selected OECD countries;
- PRAXIS Centre for Policy Studies in Estonia on cooperation with research oriented organisations in regulatory impact assessment processes; and
- the Queensland Department of the Premier and Cabinet for its evaluation of regulatory best practice arrangements.

Timeliness

Timeliness is also a key indicator of the ORR's 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.

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, the ORR provided formal feedback (comments on the first draft of the RIS) to departments and agencies in an average of four working days for RISs received in 2002-03. Moreover, the ORR provided comments on over 96 per cent of all (first draft) RISs received within two weeks.

During 2002-03, 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 always able to meet these requests, such short timeframes make it difficult to give proper consideration to all the issues and raise broader questions about the approach to RIS obligations within some agencies (see chapter 4).

An additional measure of the ORR's timeliness is the time taken by it to respond to initial queries from departments and agencies about whether a proposal under consideration triggers the Government's RIS requirements — the ORR received 861 such RIS queries in 2002-03 (see table C.1). The ORR aims to reply to these queries with a determination as to whether the RIS requirements are triggered within two working days — although more complex issues can take longer. While comprehensive data on the average number of days taken by the ORR to respond to all RIS queries are not available for 2002-03, the ORR intends to record this information for reporting in 2003-04.

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 2002-03.

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 2003, was

completed and delivered on time. This ORR report assisted the NCC in completing 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 2002-03, although less so than the preceding year.
 - Of the 139 regulatory proposals made or tabled in 2002-03 that required the preparation of a RIS, 81 per cent complied with the RIS requirements at the decision-making stage. This compares to the 88 per cent RIS compliance rate in 2001-02.
 - Of the 119 regulatory proposals that required a RIS at the tabling stage, 95 per cent complied — up from the 94 per cent compliance rate achieved in the previous year.
 - For significant regulatory issues, the RIS compliance rate in 2002-03 was 46 per cent. This compares unfavourably with a 70 per cent compliance rate for 2001-02 (discussed further in chapter 3).
- Informal feedback provided by Government officials indicates that departments and agencies generally find the ORR contribution to be constructive, timely and positive.
 - Where policy development processes in departments and agencies follow regulatory best practice as a matter of course — such as the identification of problems and objectives, examination of a range of feasible options (both regulatory and non-regulatory) and a cost-benefit assessment of each of these options — the preparation of a RIS generates little additional work. RISs can also assist departments and agencies engage in targeted consultation about regulatory issues. In such cases, RISs document and enhance the transparency of the existing policy-development process.
 - By contrast, where departments and agencies find that preparing a RIS involves considerable additional work, this may be a signal that their processes are not meeting the Government's best practice requirements. In such cases, regulatory problems and objectives may be poorly defined, a range of feasible options may not be considered, cost-benefit assessments of

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- options may be incomplete and regulatory proposals may be developed without adequate consultation with the community and relevant stakeholders.
- The ORR contributed to a number of initiatives by Government departments and agencies to better integrate the RIS process into their policy development systems during 2002-03.
 - Following discussions between the ORR and the Department of Agriculture, Fisheries and Forestry (AFFA), both agencies agreed in early 2003 to a range of machinery changes to improve the effectiveness of the working relationship. The changes included AFFA appointing a senior officer as a central point of contact to improve coordination between the two agencies in the preparation of RISs. A similar arrangement was established between the ORR and the Department of Health and Ageing in June 2003.
 - In November 2002, the ORR signed a protocol with Food Safety Australia New Zealand to formalise the working relationship between the two organisations. The protocol provides clarity regarding regulatory proposals which require preparation of a RIS and gives practical guidance to officers in both organisations. There may be scope for further protocols to be developed between the ORR and national standard-setting bodies which operate under the auspices of COAG's RIS requirements.
 - The ORR provided input to officials at the Department of Immigration and Multicultural and Indigenous Affairs for the development of the Department's Legislative Change Process 'Guide' in May 2003.
 - The ORR assesses the content of the RISs it receives to ensure that regulatory best practice requirements are met. In many cases, this leads to a more comprehensive assessment of the available regulatory and non-regulatory options. RISs assist governments in preparing better quality regulations. For example, in some instances, the RIS process has resulted in proposed recommendations being revised before the decision-making stage.
 - For example, in mid-2002, the Australian Building Codes Board released for public comment a draft RIS dealing with the regulation of energy efficiency for houses. Feedback on the RIS from public consultation suggested that additional construction costs, transitional issues and likely energy savings associated with the preferred regulatory approach were overly optimistic. The preferred option was modified, resulting in reduced stringency for some elements of the proposal in order that implementation of the measures could be achieved within a minimum transition time. This is consistent with best practice requirements for regulation, which encourage thorough consultation with stakeholders and the examination of a range of alternatives.

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- Reporting on how the RIS process is leading to improved legislation and regulation is constrained by the confidentiality of Cabinet processes. Nevertheless, 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 2002-03, resulting in better regulatory practices and outcomes. However, in some instances, compliance has deteriorated over the past year (see chapter 3).
 - RISs tabled in the Parliament with 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. For example, in 2002-03, there were 37 separate discussions in Parliament about particular RISs and regulatory policy issues (14 times in the Senate, eight in the House of Representatives and 15 times in the work of parliamentary committees). A wide range of issues were discussed, including vehicle and aircraft safety standards, urban speed limits, electromagnetic radiation protection, fisheries management, educational standards and international trade agreements. For the most part, discussions focussed on the analysis contained in the 'impact' and 'consultation' sections of RISs, as well as the likely small business impacts and the role of RISs in policy development.
 - State/Territory government officials contacted the ORR on a number of occasions during 2002-03 to confirm that a proposal complied with COAG RIS requirements before proceeding with legislation in their state/territory.
 - Indicators of the usefulness of the ORR's regulation review activities in promoting public understanding of regulatory best practice issues are found in the use of its reports.
 - Printed copies of *Regulation and its Review 2001-02* were widely distributed, including a copy being sent to every Member of the House of Representatives and the Senate. This report was also accessed around 1700 times on the Commission's website in 2002-03.
 - A further 550 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. In addition, this guide was accessed over 3300 times on the ORR's website during 2002-03. Overall, the ORR website recorded around 9400 hits in 2002-03, an increase of 6 per cent on the number recorded in 2001-02.

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- Further relevant indicators include invitations during the year for the Productivity Commission's Chairman to address the Minerals Council of Australia, the Australian Chamber of Commerce and Industry (ACCI), the Small Business Coalition and the Council of Small Business Organisations of Australia (COSBOA), and presentations, domestic and international, made by ORR staff during the year (discussed earlier). The Chairman also appeared before the Senate Small Business Employment Inquiry to discuss RISs and related regulatory matters. The ORR's interaction with a range of international organisations, other national governments (discussed earlier) and other jurisdictions within Australia generates a range of benefits. For example, the growing harmonisation of regulation-making processes and enhanced communication between officials providing advice about regulations can result in greater consistency in the design and application of regulations used in each jurisdiction. In turn, this can reduce unnecessary regulatory barriers to trade and commerce, both internationally and within Australia.
 - Independent assessment of the usefulness of the regulation review activities undertaken by the ORR is also found in the decision by the New Zealand Government to continue to apply RIS systems based on those employed by the Australian Government.
 - An OECD study released in November 2002 (OECD 2002a), *Regulatory Policies in OECD Countries — From Interventionism to Regulatory Governance*, endorsed a number of key aspects of the Australian Government's regulatory review system as being consistent with international best practice. These included Australia's legislation review program and the Government's RIS structure — which first requires resolution of the threshold question of whether any regulatory action can be expected to be beneficial (including the question of whether government action is justified) followed by an analysis of costs and benefits of a range of options.
 - Another OECD study released in 2002, *Canada: Maintaining Leadership Through Innovation*, made similar endorsements of key elements of Australia's RIS requirements for Australian Government regulation, national standard-setting bodies and regulatory action by Ministerial Councils (box C.2).

Box C.2 An international perspective on the Commission’s RIS compliance activities

In reporting on regulatory reform options in Canada, the OECD noted that a central challenge for most member countries is to improve the ex post evaluation of compliance by departments and other regulation-making bodies with their government’s regulatory policies. The OECD suggested that Canada should consider implementing the model used by the Australian Government where the central regulation review body records its assessment of each RIS — known in Canada, as a Regulatory Impact Analysis Statement — as adequate or inadequate against a set of performance criteria.

Departments can then be given summary information on how well they are complying with the requirements of the policy, while annual publication of the overall results, as in the Australian case, would mean that this information could also be used to compare the performance of departments. Systematic weaknesses and non-compliance could then be identified and addressed (OECD 2002b, p. 71).