
C Compliance with the COAG RIS requirements

Under the Council of Australian Governments (COAG) *Agreement to Implement the National Competition Policy and Related Reforms*, the Office of Regulation Review (ORR) has been obliged to report annually to the National Competition Council on compliance by Ministerial Councils and national standard-setting bodies with COAG's *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. (COAG 2004)

The Guidelines require the preparation of a Regulatory Impact Statement (RIS) for decisions that:

... would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done ... (COAG 2004)

The ORR has assessed RISs required by COAG at two stages: before they are released for community consultation and prior to a regulatory decision being made. The ORR advises the decision-making body of its assessment at each stage. The assessment considers:

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

This report covers decisions made between 1 April 2005 and 31 March 2006.

C.1 Recent developments

On 10 February 2006 COAG agreed to:

... establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition. (COAG 2006, decision 5.1)

These arrangements include establishing and maintaining ‘gatekeeping mechanisms’, improving the quality of regulatory impact analysis, better measurement of compliance costs (such as with the Australian Government’s Business Cost Calculator) and broadening the scope of regulatory impact analyses to include, where appropriate, the effects of regulation on individuals and the cumulative burden on business.

These changes will have a direct impact on the quality of RISs prepared and raise the adequacy standard required for COAG RISs at the consultation and decision-making stages. Quantification of compliance costs and use of (where appropriate) cost-benefit analysis will require a greater investment by Ministerial Councils and national standard-setting bodies in developing the skills within their secretariats to assess the options associated with regulatory proposals. It will also require greater efforts by the ORR to offer training in regulatory impact analysis and training in the use of the Business Cost Calculator.

For these reasons, compliance assessments made in 2006-07 may not be directly comparable with compliance assessments made in previous reporting periods (including 2005-06).

Changes to the COAG RIS requirements have occurred in a similar timeframe to the changes made by the Australian Government to its own regulatory quality processes.

C.2 Overall compliance in 2005-06

In the year to 31 March 2006, the ORR identified 34 decisions made by Ministerial Councils and national standard-setting bodies that required the preparation of a RIS under the COAG Principles and Guidelines.

An adequate RIS was prepared at the consultation stage for 30 decisions, resulting in a compliance rate of 88 per cent. This is comparable to the 83 per cent compliance rate at the consultation stage in 2004-05. However, of the 34 decisions reported, an adequate RIS was prepared at the subsequent decision-making stage for only 26 decisions, resulting in an overall compliance rate of 76 per cent, compared to 88 per cent in 2004-05.

The difference in compliance at the two stages partly reflects differences in the standard of analysis required at each stage — the depth of analysis required for consultation is lower than the standard applied to a RIS at the decision making stage. In many cases, the RIS for consultation focuses on the identification of the problem and objectives, and a preliminary assessment of feasible options. The RIS

for the decision-making stage should reflect the additional information and views collected from those consulted, and provide a more complete and robust impact analysis.

Figure C.1 shows the overall compliance at the decision-making stage by COAG agencies. Section C.3 contains a detailed discussion of these figures.

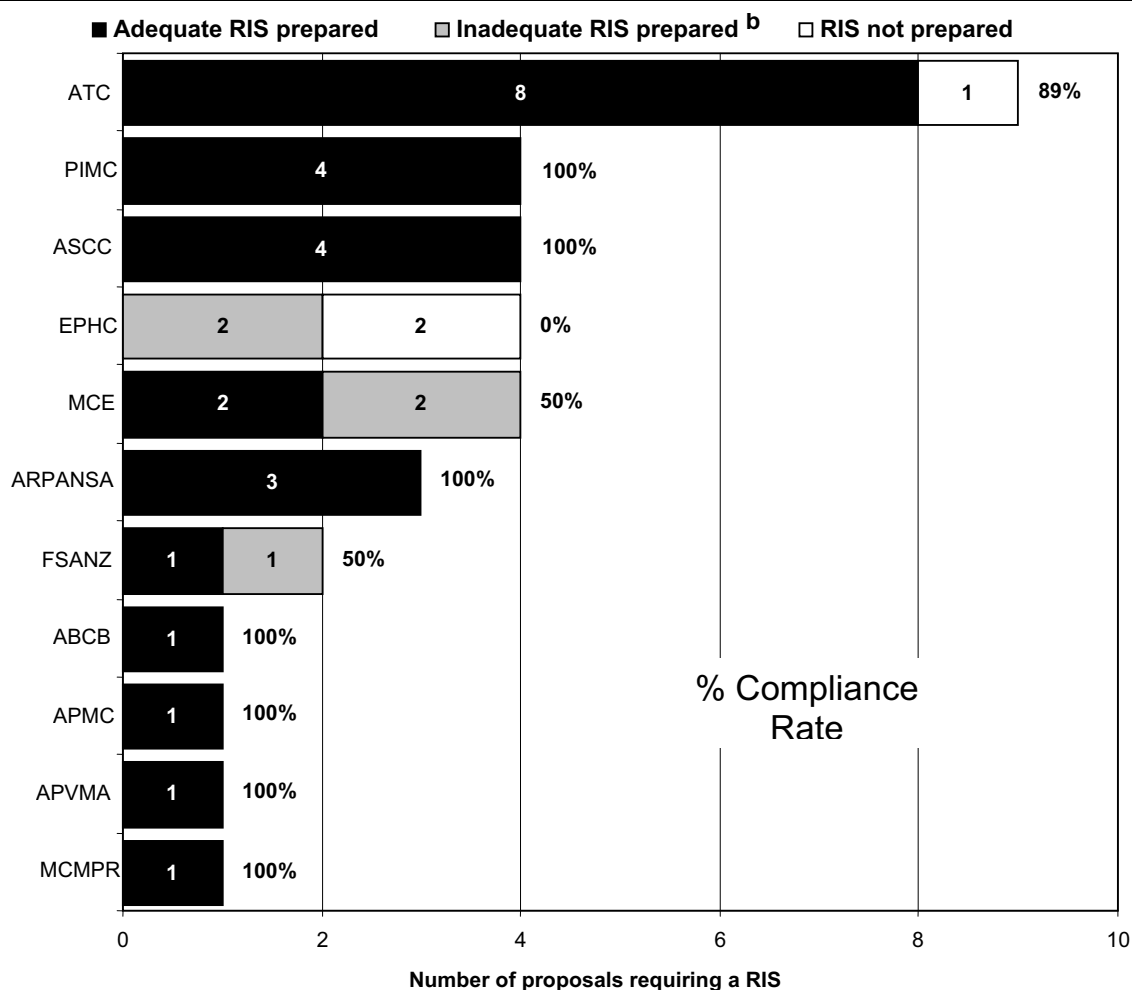
Compliance for significant regulatory proposals

The ORR classifies each regulatory proposal that requires a RIS according to whether it is of greater or lesser significance. The criteria for this broad classification relate to:

1. the nature and magnitude of the problem and the regulatory proposals for addressing it; and
2. the scope and intensity of the proposal's impact on affected parties and the community.

Classifying regulatory proposals in this way assists in applying COAG's 'proportionality rule', which states that the extent of RIS analysis should be commensurate with the magnitude of the problem and the likely impacts of any regulatory response.

Figure C.1 COAG RIS compliance at the decision-making stage, 1 April 2005 to 31 March 2006 ^a



a Australian Transport Council (ATC), Environmental Protection and Heritage Council (EPHC), Australian Safety and Compensation Council (ASCC), Primary Industries Ministerial Council (PIMC), Ministerial Council on Energy (MCE), Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), Food Standards Australia New Zealand (FSANZ), Ministerial Council on Minerals and Petroleum Resources (MCMPR), Australian Pesticides and Veterinary Medicines Authority (APVMA), Australasian Police Ministers' Council (APMC), Australian Building Codes Board (ABCB).

b This includes cases where RISs were prepared but not provided to the ORR for assessment

Source: ORR data and information provided by Ministerial Councils and NSSBs.

Of the 34 regulatory decisions reported, four were assessed by the ORR as being of greater significance. For these matters, compliance at the consultation stage was 100 per cent. At the decision-making stage, compliance was 50 per cent, compared to full compliance achieved in 2004-05 (see table C.1).

Table C.1 Compliance with COAG RIS requirements for decisions made by Ministerial Councils and national standard-setting bodies, 2003-04 to 2005-06

	2003-04	2004-05	2005-06
Overall compliance			
Consultation stage	28/34 82%	20/24 83%	30/34 88%
Decision-making stage	30/34 88%	21/24 88%	26/34 76%
Compliance for significant regulatory proposals			
Consultation stage	4/7 57%	5/6 83%	4/4 100%
Decision-making stage	4/7 57%	6/6 100%	2/4 50%

Source: ORR data and information provided by Ministerial Councils and NSSBs.

C.3 Compliance by decision

Matters for which COAG's requirements were fully met

Table C.2 shows the 26 decisions which complied with the COAG RIS requirements at both the consultation and decision-making stages in the year to 31 March 2006.

Table C.2 Cases where COAG RIS requirements were met at both the consultation and the decision-making stages

<i>Ministerial Council / NSSB</i>	<i>Decision</i>	<i>Date of decision</i>
Australasian Police Ministers' Council (APMC)	Regulation of rifles designed to accept high capacity detachable magazines	14 Oct 2005
Australian Building Codes Board (ABCB)	Building Code of Australia 2005 Volume 1: Energy efficiency measures for Class 2 and 3 and Class 4 parts ^a	1 May 2005
Australian Pesticides and Veterinary Medicines Authority (APVMA)	Revision of manufacturing principles and the Australian code of good manufacturing practice for veterinary chemicals products	7 Oct 2005

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Table C.2 (continued)

<i>Ministerial Council / NSSB</i>	<i>Decision</i>	<i>Date of decision</i>
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	Code of practice for exposure of humans to ionizing radiation for research purposes	27 April 2005
	Code of Practice and Safety Guide for Radiation Protection and Radioactive Waste Management in Mining and Mineral Processing	31 Aug 2005
	Code of Practice and Safety Guide for Radiation Protection in Dentistry	20 Dec 2005
Australian Safety and Compensation Council (ASCC)	Declaration of the <i>National Code of Practice for the Safe Removal of Asbestos 2nd Edition</i> ; Declaration of the <i>National Code of Practice for the Management and Control of Asbestos in Workplaces</i> ; Publication of the <i>Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Fibres 2nd Edition</i>	7 April 2005
	Declaration of the <i>National Standard for Construction Work</i>	7 April 2005
	Declaration of amendments to the <i>Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment - 1st Batch of Fast-Track Chemicals from NICNAS PEC Reports</i>	28 July 2005
	<i>Declaration to the amendments to the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment - 4th Batch of Fast-Track Chemicals sourced from the British HSE</i>	28 July 2005
Australian Transport Council (ATC)	Length Limit for B-Doubles	3 June 2005
	Repeal of Australian Design Rule 17/00: Fuel Systems	21 July 2005
	Towing of Trailers by Cranes	1 Oct 2005
	Revision of NSCV Part C Section 5B – Electrical	18 Nov 2005
	Amendment of NSCV Part C Section 7A – Safety Equipment	18 Nov 2005
	Lighting and Braking Standards for Special Purpose Vehicles Type 'Plant'.	1 Dec 2005
	Intelligent Access Program model legislation	1 Dec 2005
Third Heavy Vehicle Charges Determination ^a	1 Mar 2006	
Food Standards Australia New Zealand (FSANZ)	A470 - Formulated Beverages	24 Nov 2005
Ministerial Council on Energy (MCE)	Liquid Fuel Emergency Inter-Governmental Agreement (LFE IGA)	4 Nov 2005
	Accelerate the introduction of Minimum Energy Performance Standards (MEPS) for room air conditioners to 1 April 2006	12 Jan 2006

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Table C.2 (continued)

<i>Ministerial Council / NSSB</i>	<i>Decision</i>	<i>Date of decision</i>
Ministerial Council on Mineral and Petroleum Resources (MCMPR)	Guiding principles for Carbon Dioxide Capture and Storage	25 Nov 2005
Primary Industries	Australian Standard for the Hygienic Production of Pet Meat	14 April 2005
Ministerial Council (PIMC)	National Egg Labelling Standards	29 July 2005
	Model Code of Practice for the Welfare of Animals – The Camel	26 Oct 2005
	Model Code of Practice for the Welfare of Animals – The Sheep (Appendix to Model Code – Mulesing)	26 Oct 2005

^a Significant issues – see commentary below.

Source: ORR data and information provided by Ministerial Councils and NSSBs.

Commentary on fully compliant significant issues

Energy efficiency building standards

On 1 May 2005, the Australian Building Codes Board amended the Building Code of Australia to include minimum energy efficiency standards for non-house residential buildings. This amendment will impact on owners, builders and tenants of new and renovated multi-unit dwellings and residential buildings such as motels, hostels and dormitories.

Third Heavy Vehicle Charges Determination

In March 2006, Australian Transport Ministers voted on a proposed Third Heavy Vehicles Charging Determination. This determination, which was consistent with the COAG transport reform agenda outlined in the 10 February 2006 COAG communiqué, would have involved ‘rebalancing’ heavy vehicle charges to remove identified cross-subsidies between vehicle classes. This would have had significant impacts on owners and users of B-double vehicles in particular. Ministers did not support the proposed determination.

Matters for which COAG's requirements were not met

Table C.3 indicates that in eight cases the COAG RIS requirements were not met at the consultation stage and/or the decision-making stage between 1 April 2005 and 31 March 2006.

Table C.3 Cases where COAG RIS requirements were not met at the consultation and/or the decision-making stage

<i>Ministerial Council / NSSB</i>	<i>Decision</i>	<i>Date of decision</i>	<i>Compliant at consultation</i>	<i>Compliant at decision</i>
Australian Transport Council (ATC)	Emergency towage	3 June 2005	No	No
Environment Protection and Heritage Council (EPHC)	Endorsement of strengthened National Packaging Covenant	1 July 2005	Yes	No
	Variation to the Used Packaging Materials National Environment Protection Measure	1 July 2005		
	Change to threshold for the Used Packaging Materials National Environment Protection Measure	26 Oct 2005	n/a ^a	No
	National Action Plan on dioxins	26 Oct 2005	No	No
Food Standards Australia - New Zealand (FSANZ)	P292 – Country of origin labelling of food ^b	23 Sept 2005	Yes	No
Ministerial Council on Energy (MCE)	Upgrade of mandatory MEPS for 50 litre mains pressure water heaters ^b	3 May 2005	Yes	No
	Introduction of MEPS for mains pressure water heaters (smaller than 50 litres) and miscellaneous electric hot water heaters from 1 October 2005	3 May 2005	Yes	No

^a No consultation RIS was required for this decision as it represented a further stage of a multi-stage decision process. ^b Significant issues.

Source: ORR data and information provided by Ministerial Councils and NSSBs.

Commentary on non-compliant significant issues

Country of origin labelling

On 23 September 2005, the Food Standards Australia-New Zealand Board agreed to the mandatory labelling of country of origin of food to ensure that adequate information is provided about the origin of food products to enable consumers to make informed choices.

A RIS was prepared, and assessed as adequate for consultation. The RIS was revised, after consultation, for the decision-making stage but was assessed as inadequate by the ORR.

The RIS failed the COAG requirement to demonstrate that the benefits of introducing this standard outweighed the costs. The cost-benefit analysis indicated significant transitional costs and also ongoing costs related to the labelling requirements, plus unquantified costs related to trade policy. Yet the evidence provided did not demonstrate that the benefits were commensurate with these costs. New Zealand decided not to adopt the standard.

Mandatory energy performance standards for small mains pressure hot water heaters

An adequate RIS was prepared by the Ministerial Council on Energy at the consultation stage for a proposal to revise Mandatory Energy Performance Standards (MEPS) for small mains pressure electric hot water heaters. However, no RIS for the decision-making stage was provided to the ORR for assessment of this proposal.

Commentary on other non-compliant issues

Emergency towage

On 3 June 2005, the Australian Transport Council (ATC) agreed in-principle to a national approach to ensure a minimum level of emergency towage coverage in strategic regions around the Australian coastline and to provide an appropriate regulatory framework. The approach included a vessel for the northern section of the Great Barrier Reef and the Torres Strait, which currently has no port-based emergency towage services. An in-principle decision was made to proceed with these proposed measures on the basis of full cost recovery from the shipping

industry subject to completion of a RIS and further consideration of the detail of the measures.

After careful consideration of this matter, the ORR noted that the ATC-prepared RIS was detailed, narrow and specific in nature. The ORR had previously advised that a RIS should be prepared for any in-principle decision that precluded the consideration of broader options (i.e. alternatives to the proposed national framework, such as a range of cost recovery options). As a RIS was not prepared for consultation or final decision prior to the in-principle decision, the ORR assessed the ATC as not meeting the COAG RIS requirements.

National Packaging Covenant

The National Packaging Covenant, originally established in 1999, is an agreement between stakeholders in the packaging supply chain and all spheres of government. It is designed to minimise the environmental impacts arising from the disposal of used packaging, conserve resources through better design and production processes and facilitate the re-use and recycling of used packaging materials. It is underpinned by a Used Packaging Materials National Environment Protection Measure (UPM NEPM) which imposes sanctions on brand holders which do not sign up to and comply with the covenant.

On 1 July 2005, the Environment Protection and Heritage Council (EPHC) endorsed a strengthened version of the Covenant, and also varied the UPM NEPM to support the revised Covenant. The EPHC prepared separate RISs for these two measures, having regard to the fact that a separate NEPM Impact Statement, which could be assessed as the consultation RIS, would in any case be required for the UPM NEPM under the *National Environment Protection Council Act 1994*. The ORR assessed the RIS for the revised Covenant as adequate at the consultation stage, but specified significant improvements which would be required for the RIS to be considered adequate at the decision stage. These included clearer specification of the obligations and actions expected to result from the revised Covenant, and a more soundly based analysis of the likely costs and benefits. As a suitably revised RIS was not provided to the ORR, the EPHC was assessed as non-compliant at the decision stage for this measure.

The ORR assessed the consultation RIS for the variation to the UPM NEPM as inadequate on the grounds that the costs and benefits of the proposed change were not adequately analysed, and that alternatives were not appropriately considered. No RIS was provided to the ORR for assessment at the decision stage.

On 26 October 2005, the EPHC agreed to a new mechanism for determining whether small businesses are covered by the UPM NEPM. It agreed that businesses with an annual turnover of more than \$5 million would have to comply with the NEPM and businesses with annual turnover less than \$2 million would not have to comply. The Council deferred a decision on whether the UPM NEPM would apply to businesses with turnover between \$2 million and \$5 million, requesting further research. This change triggered the COAG RIS requirements as it affected the population of businesses which are subject to regulation under the NEPM. The decision represented a further stage of a multi-stage decision process, following on from decisions on the Covenant and NEPM. As these decisions had already been the subject of extensive consultation, the ORR concluded that a consultation RIS was not required on the change to the threshold. No RIS was provided for this measure at the decision stage.

National action plan on dioxins

On 26 October 2005 the EPHC endorsed a National Action Plan on dioxins. The ORR advised that this measure triggered the COAG RIS requirements because it would affect the basis on which government approval was given to new combustion facilities (eg furnaces) or upgrading of existing facilities. No RIS was provided for this measure at either the consultation or decision stage.

Mandatory energy performance standards for small mains pressure hot water heaters

An adequate RIS was prepared by the Ministerial Council on Energy at the consultation stage for a proposal to revise Mandatory Energy Performance Standards (MEPS) for small mains pressure electric hot water heaters. However, no RIS for the decision-making stage was provided to the ORR for assessment for this proposal.

C.4 Consultation

Consultation is a key requirement of the COAG *Principles and Guidelines*. Table C.4 details the issues for which RISs had been prepared, and assessed by the ORR, at the consultation stage that were still active on 31 March 2006. It is likely that most of these decisions will be reported in 2006-07.

Table C.4 Active RISs assessed for consultation before 31 March 2006 and made public

<i>Ministerial Council / NSSB</i>	<i>Issue</i>	<i>Date RIS assessed</i>
Australian Building Codes Board (ABCB)	Proposed protocol for administering building access in the context of the disability standards for access to premises	19 Dec 2003
Australia New Zealand Food Regulation Ministerial Council (ANZFRMC)	National food safety audit implementation framework	1 June 2005
Australian Pesticides and Veterinary Medicines Authority (APVMA)	Adoption of the JEFCA approach to setting maximum residue limits for veterinary chemicals	1 Aug 2005
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	Proposed standard on occupational exposure to ultra violet radiation	8 April 2003
	Code of practice for the safe use of fixed radiation gauges	24 Aug 2005
	Code of practice for the safe use of radiation in veterinary science	8 Sept 2005
	Code of conduct for the security of radioactive sources	16 Mar 2006
Australian Safety and Compensation Council (ASCC)	Revision of the national standard and code of practice for manual handling	9 Dec 2004
	Draft national code for prevention of falls from height in construction (commercial and domestic)	8 July 2005
	National standard for licensing persons performing high risk work	25 July 2005
	National code of practice for occupational health and safety induction training in the construction industry	2 Aug 2005
Australian Transport Council (ATC)	Australian Design Rules (ADR) 62: mechanical couplings	3 Feb 2004
	ADR 35 & 38: commercial vehicle and trailer brake systems	5 Feb 2004
	ADR 8: TTMRA/ADR Review – Standards for safety glazing material	25 May 2005
	Australian road rules seatbelt legislation amendment package	25 July 2005
	Package of amendments to the Australian road rules - including the creation of tramways	2 Aug 2005
	Model rail safety legislation	17 Oct 2005
	Revisions to the business rules for the national heavy vehicle accreditation scheme	19 Oct 2005

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Table C.4 (continued)

<i>Ministerial Council / NSSB</i>	<i>Issue</i>	<i>Date RIS assessed</i>
Australian Transport Council (continued)	National standard for commercial vessels Part C Section 6 - stability; and subsection 6A - general requirements	26 Oct 2005
	Mass limits for accredited heavy vehicles	23 Feb 2006
	NSCV Part of section 1 fast craft, subsection 1C	30 Mar 2006
Food Standards Australia New Zealand (FSANZ)	Development of joint food regulation for sports foods (P236)	14 Feb 2003
	Primary production and processing standard for poultry meat (P282)	2 Nov 2005
	Nutrition, health and related claims (P293)	3 Nov 2005
Ministerial Council for Consumer Affairs (MCCA)	Review of Australian consumer product safety system	23 June 2004
	National regulation of property investment advice	15 July 2004
	National regulation of finance and mortgage brokers	15 Nov 2004
	Test procedures for the determination of the net weight of frozen fish	14 Dec 2004 10 Mar 2005
	National introduction of the average quantity system	
	Review of the system of mandatory comparison rates for finance charges in the Uniform Consumer Credit Code.	24 Oct 2005
Ministerial Council on Energy (MCE)	MCE response to the PC review of gas access regime - greenfields incentives	9 Nov 2005
	MCE response to the PC Review of gas access regime - coverage test threshold	9 Nov 2005
	Merits review for National Energy Market regulation	29 Nov 2005
Primary Industries Ministerial Council (PIMC)	Changes to animal welfare code covering emu farming	14 July 2005

Source: ORR data.

Consultation with New Zealand

In June 2004, COAG asked the ORR to confer with the Regulatory Impact Analysis Unit (RIAU) in New Zealand on draft consultation RISs, where there are New Zealand impacts and issues or where a proposal in Australia would affect Trans-Tasman trade. Between 1 April 2005 and 31 March 2006, the ORR forwarded five RISs to the RIAU at the consultation stage (see table C.5).

Table C.5 Consultation with New Zealand RIAU

<i>Ministerial Council / NSSB</i>	<i>Issue</i>	<i>Date Consultation RIS sent to RIAU</i>
Australia New Zealand Food Regulation Ministerial Council (ANZFRMC)	Feasibility study into extension of mandatory country of origin labelling	13 Jan 2006
Australian Transport Council (ATC)	TTMRA/ADR Review – standards for safety glazing material (ADR 8)	11 April 2005
Food Standards Australia New Zealand (FSANZ)	A470 – Formulated beverages	13 April 2005
	P292 – Mandatory country of origin labelling	19 Aug 2005
	P293 – Nutrition, health and related claims	15 Sept 2005

Source: ORR data.

C.5 Improving compliance

In February 2006, COAG agreed to improve the quality of regulatory impact analysis through the use of cost-benefit analysis and better measurement of compliance costs (including through the use of the Business Cost Calculator).

In 2005-06, the ORR provided training to over 30 officials involved in the preparation of COAG RISs. In 2006-07, the ORR intends to increase the level of training it provides to officials, in support of COAG's decision. This will include the provision of technical advice on cost-benefit analysis and on the use of the Business Cost Calculator for the measurement of compliance costs.

The ORR recognises a need for continued regular contact with secretariats of Ministerial Councils and NSSBs to ensure ongoing awareness of the scope of the COAG RIS requirements, the required level of analysis and the role of the ORR. In 2006-07 the ORR's website will be upgraded to enhance its capacity to provide reliable and comprehensive information on COAG's RIS requirements and the role of the ORR.

Finally, the ORR will continue to publicise and encourage the adoption of non-mandatory best practice measures by Ministerial Councils and NSSBs, such as publishing final RISs that were considered by decision makers.