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# A Compliance by Portfolio

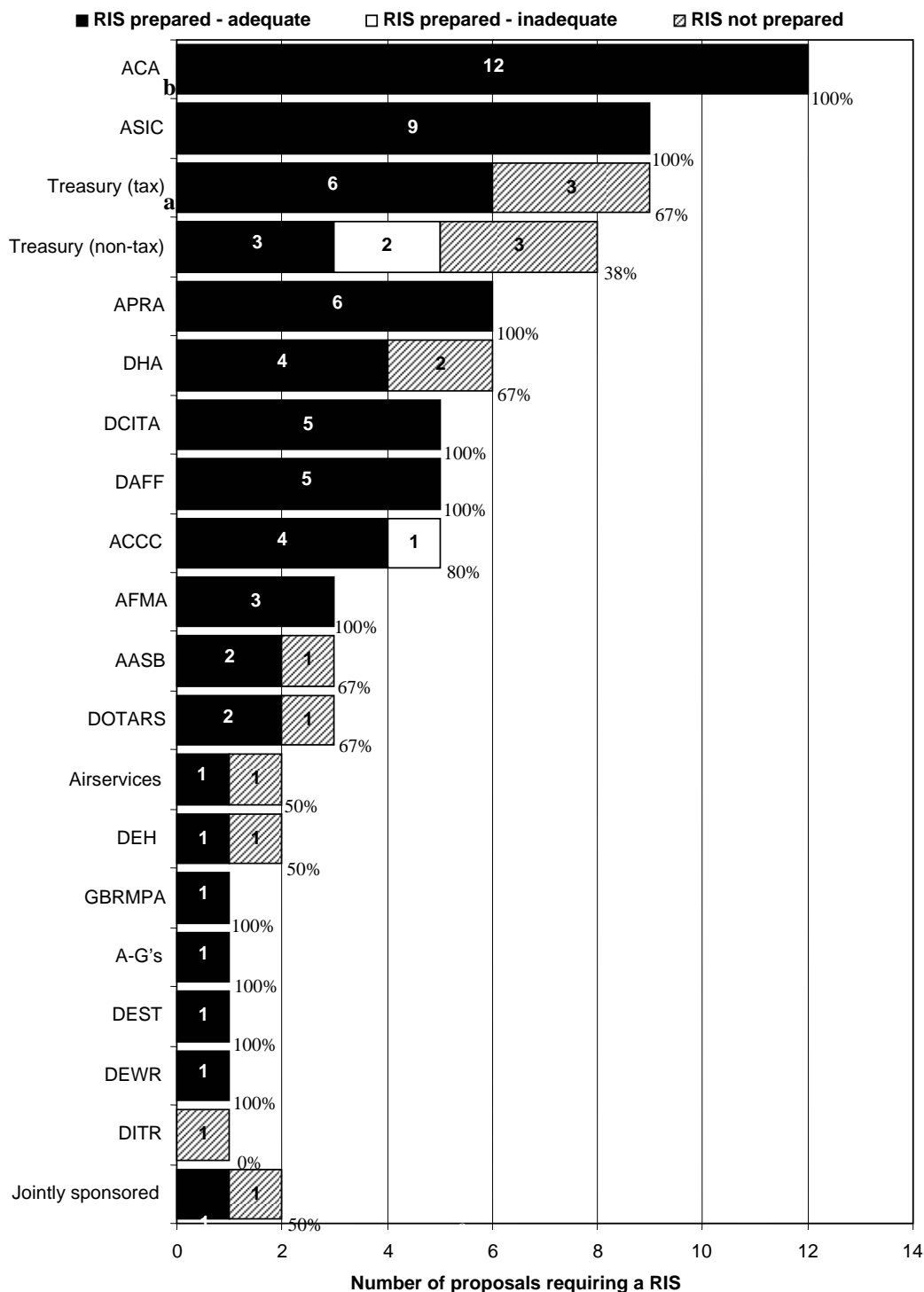
**In 2004-05, reporting on compliance by portfolio has been modified to reflect the commencement of the *Legislative Instruments Act 2003* on 1 January 2005. Reporting has been split into two half year periods 1 July — 31 December 2004 and 1 January — 30 June 2005. Compliance of portfolios has decreased from 2003-04 with only 10 of 19 departments and agencies preparing Regulation Impact Statements (RISs) being assessed as fully compliant.**

In 2004-05, 19 departments and agencies developed regulatory proposals that triggered the government's requirements to prepare a RIS. Of these, 10 departments and agencies were fully compliant with the Government's RIS requirements at the decision-making stage (compared to 18 in 2003-04). The nine non-compliant departments and agencies were responsible for 14 proposals for which RISs were not prepared, and for a further three RISs that were prepared, but assessed by the ORR as providing an inadequate level of analysis.

Compliance at the decision-making stage is illustrated in figure A.1. The total length of each bar indicates the number of RISs required to be prepared at the decision-making stage. The area in black denotes RISs that were prepared and assessed as adequate by the ORR. The area in white shows the number of RISs that were prepared but assessed as containing an inadequate level of analysis. The shaded area shows the RISs that should have been prepared but were not. The compliance rate for each department and agencies, as a percentage of the number of RISs required for that department/agency, is shown at the end of each bar.

Detailed compliance results for departments and agencies follow. A brief description of three significant regulatory proposals is also provided.

**Figure A.1 Compliance with RIS requirements at the decision-making stage, 2004-05**



**a** When the Government's RIS requirements became mandatory, the Government introduced a modified RIS process for tax proposals. Compliance by the Department of the Treasury is accordingly reported for both tax RISs and non-tax RISs. **b** On 1 July 2005, the Australian Communications Authority and the Australian Broadcasting Authority were merged to become the Australian Communications and Media Authority.

Data source: ORR estimates.

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## A.1 Agriculture, Fisheries and Forestry

The Agriculture, Fisheries and Forestry portfolio includes the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Fisheries Management Authority (AFMA).

### Department of Agriculture, Fisheries and Forestry

In 2004-05, the Department of Agriculture, Fisheries and Forestry was fully compliant with the RIS requirements for regulations made in this period. For the five RISs required to be prepared by the Department, all were assessed by the ORR as adequate at the decision-making and tabling stages, resulting in a compliance rate of 100 per cent for both stages.

Table A.1 **DAFF: RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	1/1	1/1	1/1	1/1
Disallowable instruments <sup>a</sup>	2/2	2/2	2/2	2/2
Legislative Instruments <sup>b</sup>	2/2	2/2	2/2	2/2
<b>Total</b>	<b>5/5</b>	<b>5/5</b>	<b>5/5</b>	<b>5/5</b>
<i>Percentage</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

<sup>a</sup> Applies to instruments made during July to December 2004. <sup>b</sup> Applies to instruments made from 1 January 2005, when the Federal Register of Legislative Instruments commenced.

Source: ORR estimates.

### Australian Fisheries Management Authority

In 2004-05, the Australian Fisheries Management Authority was fully compliant with the Government's RIS requirements for instruments made within the period, preparing three RISs that were assessed as adequate by the ORR, at both the decision-making and tabling stages, for proposals introduced by disallowable instruments.

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## A.2 Attorney-General's

In 2004-05, the Attorney-General's Department prepared one RIS, assessed as adequate at both the decision making and tabling stages, for a proposal introduced by a legislative instrument.<sup>1</sup>

## A.3 Communications, Information Technology and the Arts

The Communications, Information Technology and the Arts portfolio includes the Department of Communications, Information Technology and the Arts (DCITA) and the Australian Communications and Media Authority (ACMA).

### Department of Communications, Information Technology and the Arts

The Department of Communications, Information Technology and the Arts was fully compliant with the Government's RIS requirements in 2004-05 at the decision-making stage. Of the five RISs required, all were prepared and assessed as adequate, but only four were tabled.<sup>2</sup>

Table A.2 DCITA: RIS compliance by type of regulation, 2004-05

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	3/3	3/3	3/3	3/3
Legislative instruments	2/2	2/2	2/2	1/2
<b>Total</b>	<b>5/5</b>	<b>5/5</b>	<b>5/5</b>	<b>4/5</b>
<i>Percentage</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>80%</i>

Source: ORR estimates.

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<sup>1</sup> The Attorney-General's Department was also jointly responsible, with the Department of Communications, Information Technology and the Arts, for a proposal to introduce a limited form of directors' rights under the *Copyright Act 1968*. See section A.11.

<sup>2</sup> The Department of Communications, Information Technology and the Arts was also jointly responsible, with the Attorney-General's Department, for a proposal to introduce a limited form of directors' rights under the *Copyright Act 1968*. See section A.11.

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## **Australian Communications and Media Authority**

The Australian Communications and Media Authority was formed on 1 July 2005, following the merger of the former Australian Broadcasting Authority (ABA) and Australian Communications Authority (ACA).

The ACA was fully compliant with the Australian Government's RIS requirements in 2004-05. It prepared 12 adequate RISs at the decision making stage. Of the 10 RISs required at the tabling stage, all were assessed as adequate (RISs were not formally required at the tabling stage for two instruments which were made before 1 January 2005).

The ABA was not required to prepare RISs for any legislation introduced in 2004-05.

## **A.4 Education, Science and Training**

In 2004-05, the Department of Education, Science and Training (DEST) was required to prepare a RIS for one legislative instrument made in the period. The RIS was prepared, and assessed as adequate by the ORR, at the decision-making and tabling stages.

### *Significant issues*

In 2004-05, DEST was responsible for preparing a RIS for new Disability Standards for Education. These standards, made under the Disability Discrimination Act 1992, set out: the obligations of education and training providers in relation to the education of students with disabilities; how those obligations can be met; and what students with disabilities can reasonably expect in participating in education. An adequate RIS was prepared at both the decision-making and tabling stages, and the RIS was published on the DEST website.

## **A.5 Employment and Workplace Relations**

The Department of Employment and Workplace Relations was fully compliant with the Government's RIS requirements in 2004-05, preparing one RIS for a disallowable instrument, which was assessed as adequate at both the decision-making and tabling stages.<sup>3</sup>

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<sup>3</sup> Two Bills introduced in 2004-05 which did require a RIS have not been included in this report as they re-introduced legislation that has already been reported in previous editions of *Regulation and its Review* (PC 2003, 2004).

## A.6 Environment and Heritage

Within the Environment and Heritage portfolio, the Department of the Environment and Heritage (DEH) and the Great Barrier Reef Marine Park Authority (GBRMPA) were required to prepare RISs in 2004-05.

### Department of the Environment and Heritage

The Department of the Environment and Heritage was required to prepare RISs for two proposals, including a treaty. An adequate RIS was prepared at the decision-making stage for one of the proposals and at the tabling stage for both proposals.

RISs are required at three stages of the treaty-making process – entry into negotiation, before signature (endorsement) and before ratification. In the case of the treaty tabled in 2004-05, a RIS was not prepared at entry into negotiation. A RIS was not required at the endorsement stage, because an adequate RIS had already been prepared for legislation implementing the treaty obligations, the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003, reported in *Regulation and its Review 2002-03* (PC 2003).

Table A.3 **DEH: RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Disallowable instruments	1/1	1/1	1/1	1/1
Treaties <sup>a</sup>	0/1	0/1	1/1	1/1
<b>Total</b>	<b>1/2</b>	<b>1/2</b>	<b>2/2</b>	<b>2/2</b>
<i>Percentage</i>	<i>50%</i>	<i>50%</i>	<i>100%</i>	<i>100%</i>

<sup>a</sup> For reporting on treaties, RISs required at both entry into negotiations and signature have been aligned with the decision-making stage. However, for this treaty, a RIS was required at entry into negotiation, but not at signature (endorsement).

Source: ORR estimates.

### Great Barrier Reef Marine Park Authority

The Great Barrier Reef Marine Park Authority was fully compliant with the Government's RIS requirements, preparing one RIS for a quasi-regulation which was assessed as adequate at the decision-making stage. GBRMPA followed regulatory best practice in making the RIS publicly available.

## A.7 Health and Ageing

The Department of Health and Ageing (DHA) was required to prepare six RISs at the decision-making stage in 2004-05. Of these, only four were prepared, all of which were assessed by the ORR as adequate. At the tabling stage, four of the six RISs required were deemed adequate and tabled.

Table A.4 **DHA: RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills <sup>a</sup>	2/2	2/2	3/3	3/3
Disallowable instruments	1/2	1/2	1/2	0/2
Treaties	1/2	1/2	1/1	1/1
<b>Total</b>	<b>4/6</b>	<b>4/6</b>	<b>5/6</b>	<b>4/6</b>
<i>Percentage</i>	67%	67%	83%	67%

<sup>a</sup> The Department was responsible for preparing a RIS at the tabling stage for an amending Bill that implemented an element of the Government's response to the Review of Pricing Arrangements in Residential Aged Care in May 2004. An adequate RIS was tabled. Compliance with the Government's RIS requirements at the decision-making stage for the proposal, where responsibility was shared with the Department of the Prime Minister and Cabinet, was reported in PC 2004, p. 55.

Source: ORR estimates.

## A.8 Industry, Tourism and Resources

In 2004-2005, the Department of Industry, Tourism and Resources (DITR) failed to prepare one RIS at the decision making stage for a quasi-regulatory proposal. The Department prepared a RIS for tabling for one proposal introduced by disallowable instrument.

Table A.5 **DITR: RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Disallowable instruments <sup>a</sup>	n/a	n/a	1/1	1/1
Quasi-regulations	0/1	0/1	n/a	n/a
<b>Total</b>	<b>0/1</b>	<b>0/1</b>	<b>1/1</b>	<b>1/1</b>
<i>Percentage</i>	0%	0%	100%	100%

n/a – Not applicable. <sup>a</sup> Decision pre-dated mandatory RIS requirements.

Source: ORR estimates.

## A.9 Transport and Regional Services

Within the Transport and Regional Services portfolio, the Department of Transport and Regional Services (DOTARS) and Airservices Australia were required to prepare RISs in 2004-05.

### Department of Transport and Regional Services

The Department of Transport and Regional Services was required to prepare RISs for three regulatory proposals at the decision-making stage in 2004-05. Two RISs were prepared, and assessed as adequate. Four RISs were required at the tabling stage. The Department prepared all four, each of which were assessed as adequate.

Table A.6 **DOTARS: RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills <sup>a</sup>	n/a	n/a	1/1	1/1
Legislative instruments	1/2	1/2	2/2	2/2
Treaties	1/1	1/1	1/1	1/1
<b>Total</b>	<b>2/3</b>	<b>2/3</b>	<b>4/4</b>	<b>4/4</b>
<i>Percentage</i>	<i>67%</i>	<i>67%</i>	<i>100%</i>	<i>100%</i>

n/a – Not applicable. <sup>a</sup> The Department of Transport and Regional Services shared responsibility for RIS compliance for this proposal at the decision making stage with the Department of the Prime Minister and Cabinet (see section A.11 for further information).

Source: ORR estimates.

#### *Treaties*

The Department was responsible for preparing a RIS for the Montreal Convention for the Unification of Certain Rules for International Carriage by Air. RISs for treaties are usually required at three stages: entry into negotiations; signing (RIS for decision in table 1); and ratification (RIS for tabling in table 1). However, as Australia was merely acceding to an existing treaty, RISs were only required at the latter two stages. Hence, in 2004–05, the Department was fully compliant with the RIS process for treaties.

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## **Airservices Australia**

In 2004-2005, Airservices Australia was required to prepare two RISs at the decision making stage and one RIS at the tabling stage for proposals introduced via legislative instruments. Only one adequate RIS was prepared for the decision making stage. It was not required to be tabled.

### *Significant issues*

Airservices Australia was concerned that an inadequate analysis of the National Airspace System Stage 2b (NAS 2b) had been conducted prior to the policy being implemented, resulting in unacceptably high risk levels in certain types of airspace. In 2004-05, it conducted a review of its airspace classification decisions in NAS 2b which recommended methods of reducing these risks. A RIS was prepared and assessed as adequate at the decision-making stage. A RIS was not required at the tabling stage.

## **A.10 Treasury**

Within the Treasury portfolio, the Department of the Treasury (the Treasury), the Australian Accounting Standards Board (AASB), the Australian Competition and Consumer Commission (ACCC), the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) were responsible for regulations during 2004-05 for which RISs were required. The Department was required to prepare RISs for both tax and non-tax proposals. Tax and non-tax proposals are reported separately as tax RISs are subject to different requirements, by taking the policy decision as given and focusing on implementation options.

### **Department of the Treasury (non-tax proposals)**

In 2004-05, the Treasury was required to prepare eight RISs for non-tax proposals at the decision-making stage and six for the tabling stage (there is no formal tabling requirement for non-disallowable instruments). For the decision-making stage, five RISs were prepared, of which only three were assessed as adequate against the Government's requirements. For the tabling stage, of five RISs prepared, four were assessed to be adequate.

Table A.7 **Treasury (non-tax): RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	0/1	0/1	1/1	1/1
Disallowable instruments <sup>a</sup>	2/2	1/2	2/2	1/2
Legislative instruments <sup>b</sup>	2/3	2/3	2/3	2/3
Non-disallowable instruments <sup>a</sup>	1/2	0/2	n/a	n/a
<b>Total</b>	<b>5/8</b>	<b>3/8</b>	<b>5/6</b>	<b>4/6</b>
<i>Percentage</i>	<i>63%</i>	<i>38%</i>	<i>83%</i>	<i>67%</i>

n/a – Not applicable. <sup>a</sup> Applies to instruments made during July to December 2004. <sup>b</sup> Applies to instruments made from 1 January 2005, when the *Legislative Instruments Act 2003* entered into effect.

Source: ORR estimates.

### *Significant issues*

In 2004-05, significant issues included the review of health warnings on tobacco products, which was introduced in the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004. The review, instigated by the Health and Ageing portfolio and taken over by the Treasury, proposed new graphic health warnings for cigarette packets and other upgrades of current tobacco product warnings. The proposals were likely to generate significant costs and benefits. The RIS did not adequately incorporate a cost-benefit analysis, or provide a balanced assessment of the alternatives, and was assessed as inadequate at both the decision-making and tabling stages.

### **Department of the Treasury (tax proposals)**

Tax proposals are subject to separate RIS requirements. These requirements take the policy as given and focus on identifying administrative options for implementation that maximise effectiveness and minimise compliance burdens. In 2004-05, the Treasury was required to prepare nine RISs for tax proposals at the decision-making stage and the tabling stage. For the decision-making stage, six RISs were prepared and assessed as adequate. Nine RISs were assessed as adequate at the tabling stage.

Table A.8 **Treasury (tax): RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>Prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	6/8	6/8	8/8	8/8
Disallowable instruments	0/1	0/1	1/1	1/1
<b>Total</b>	<b>6/9</b>	<b>6/9</b>	<b>9/9</b>	<b>9/9</b>
<i>Percentage</i>	<i>67%</i>	<i>67%</i>	<i>100%</i>	<i>100%</i>

Source: ORR estimates.

### **Australian Accounting Standards Board**

In 2004-05, the Australian Accounting Standards Board was required to prepare RISs for three legislative instruments. Two RISs were prepared, both of which were assessed as adequate by the ORR at the decision making and tabling stages.

### **Australian Competition and Consumer Commission**

In 2004-05, the Australian Competition and Consumer Commission was required to prepare five RISs. One RIS for a non-disallowable instrument was assessed as inadequate at the decision-making stage. One RIS was subsequently tabled.

Table A.9 **ACCC: RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Disallowable instruments	1/1	1/1	1/1	1/1
Non-disallowable instruments	4/4	3/4	n/a	n/a
<b>Total</b>	<b>5/5</b>	<b>4/5</b>	<b>1/1</b>	<b>1/1</b>
<i>Percentage</i>	<i>100%</i>	<i>80%</i>	<i>100%</i>	<i>100%</i>

n/a – Not applicable.

Source: ORR estimates.

## Australian Prudential Regulation Authority

The Australian Prudential Regulation Authority was fully compliant with the Australian Government's RIS requirements for proposals finalised in 2004-05. APRA prepared six RISs, each of which was assessed as adequate for the decision-making stage and the publication/tabling stage.

Table A.10 **APRA: RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>Prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Disallowable instruments <sup>a</sup>	3/3	3/3	3/3	3/3
Legislative instruments <sup>b</sup>	2/2	2/2	2/2	2/2
Non-disallowable instruments <sup>a c</sup>	1/1	1/1	n/a	n/a
<b>Total</b>	<b>6/6</b>	<b>6/6</b>	<b>5/5</b>	<b>5/5</b>
<i>Percentage</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

n/a – Not applicable. <sup>a</sup> Applies to instruments made during July to December 2004. <sup>b</sup> Applies to instruments made from 1 January 2005, when the *Legislative Instruments Act 2003* entered into effect. <sup>c</sup> Although there is not a tabling requirement for RISs relating to non-disallowable instruments, the RIS was published on an appropriate website, in line with regulatory best practice.

Source: ORR estimates.

## Australian Securities and Investments Commission

In 2004-05, the Australian Securities and Investments Commission (ASIC) was assessed to be fully compliant with the Australian Government's RIS requirements. ASIC finalised nine regulatory proposals for which RISs were required to be prepared at the decision-making stage, all of which were assessed as adequate. Until recently, there was no formal tabling requirement for non-disallowable instruments and quasi-regulation and ASIC has been making their RISs available to the public on request. With the application of the *Legislative Instruments Act 2003* on 1 January 2005, the relevant ASIC instruments are now subject to a formal tabling requirement for legislative instruments. An adequate RIS was prepared for the one proposal required to be tabled and the RIS was published on the ASIC website.

Table A.11 **ASIC: RIS compliance by type of regulation, 2004-05**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Legislative instruments	1/1	1/1	1/1	1/1
Non-disallowable instruments	2/2	2/2	n/a	n/a
Quasi-regulations <sup>a</sup>	6/6	6/6	n/a	n/a
<b>Total</b>	<b>9/9</b>	<b>9/9</b>	<b>1/1</b>	<b>1/1</b>
<i>Percentage</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>

n/a – Not applicable. <sup>a</sup> Mostly refers to ASIC Policy Statements – these may be implemented by way of Class Orders, which are legislative instruments under the *Legislative Instruments Act 2003*. Prior to 1 January 2005 they were regarded as non-disallowable instruments.

Source: ORR estimates.

## **A.11 Joint responsibility for proposals**

In 2004-05, two RISs were required at the decision-making stage, for two proposals involving joint responsibility.

### **Attorney-General's Department and Department of Communications, Information Technology and the Arts**

The Attorney-General's Department and the Department of Communications, Information Technology and the Arts were fully compliant with the Government's RIS requirements for a proposal to grant directors a right to share, as copyright owners, in remuneration for the retransmission of films included in free-to-air broadcasts. A RIS was prepared and assessed as adequate at the decision-making stage. The RIS was tabled with the Copyright Amendment (Film Directors' Rights) Bill 2005.

### **Department of Transport and Regional Services and Department of the Prime Minister and Cabinet**

The Department of Transport and Regional Services and the Department of the Prime Minister and Cabinet did not prepare a RIS at the decision-making stage for a proposal to extend security arrangements for shipping to the offshore oil and gas industry. (The Department of Transport and Regional Services prepared a RIS at the tabling stage that was assessed as adequate.)