
OVERVIEW

Key points

- A key element of the Australian Government's objective to improve regulations is the requirement to prepare Regulation Impact Statements (RISs) for proposed new and amended regulation which affects business.
- The Australian Government's RIS processes broadly conform with OECD best practice principles.
- In 2003-04, the Office of Regulation Review advised that RISs were required for 114 regulatory proposals. This represented about 7 per cent of the 1700 regulations which were made.
- Overall, the compliance of departments and agencies in 2003-04 with the RIS requirements at the decision-making stage of regulatory policy development was higher than in previous years:
 - Adequate RISs were prepared for 92 per cent of the 114 regulatory proposals (compared to 81 per cent in 2002-03 and 88 per cent in 2001-02).
 - The compliance rate for the 18 regulatory proposals assessed as having a more significant impact on business and the community was significantly higher at 94 per cent (compared to 46 per cent in 2002-03 and 70 per cent in 2001-02).
- In 2003-04, 24 departments and agencies were required to prepare RISs. Of these, 18 were fully compliant (compared to 12 of 23 in 2002-03).
- In 2003-04, compliance by Ministerial Councils and national standard-setting bodies with the Council of Australian Governments' RIS requirements at the decision-making stage was 88 per cent, similar to that in 2002-03.
- In recognition of the value of effective consultation processes to good regulatory outcomes, many governments in Australia and internationally are taking steps to improve their approach to community consultation.

Overview

Regulations are an essential component of a modern and well-functioning economy and society. The challenge for governments is to deliver effective and efficient regulations which can facilitate a wide range of community objectives without imposing unnecessary burdens on the community.

Poor quality regulation can impose unnecessary costs, impede innovation and create unnecessary barriers to trade, investment and economic efficiency. It can also impede the capacity of society to achieve broader social, economic, regional, equity and environmental objectives.

Even where regulations are well designed and implemented, regulatory compliance costs can be significant. The Organisation for Economic Cooperation and Development (OECD) estimated that, for a limited set of regulations, such compliance costs for small and medium sized businesses in Australia exceeded \$17 billion in the late 1990s.

A World Bank study of regulation in over 130 countries concluded that, while many aspects of Australia's regulatory system appear to be effective and efficient, some areas do not appear to meet these two objectives. For example, it found that it takes on average 157 days to enforce a contract in Australia, compared to 50 days in New Zealand, 69 in Singapore and 48 in the Netherlands.

There is also growing concern about the complexity and volume of regulations. Regulatory systems are likely to become more complex as society becomes more diverse. However, many groups in the community — especially small business — consider that the growing complexity of regulations also reflects unnecessary and costly 'regulatory inflation'.

Most OECD countries have adopted a range of policies to improve the quality of regulatory analysis and outcomes, including the use of Regulation Impact Statements (RISs). The OECD has promoted the integration of RIS processes into regulatory policy development processes.

A RIS formalises and documents the steps taken in developing good regulation. It is prepared by the regulatory department/agency and seeks to ensure that regulation achieves its objectives in the most effective and efficient way. It does this by

canvassing feasible options to address a policy problem in a systematic and transparent manner. This in turn can provide a better basis for informed political decision making. RISs also enhance accountability by informing the community and stakeholders about why and how particular regulatory decisions were taken.

Use of Regulation Impact Statements in Australia

The Australian Government's and the Council of Australian Governments' (COAG) RIS processes are recognised as being in line with international best practice. Australia's RIS systems are broadly comparable to those used in many other OECD countries, including the UK, US and New Zealand.

RIS systems applied in Australia are integrated with — and reinforce — other regulatory quality control systems, including regulatory performance indicators and regulatory plans, and the requirements of National Competition Policy.

RIS processes apply to about 100 Australian Government regulators, Ministerial Councils and national standard-setting bodies. These bodies are obliged to prepare RISs, which are then assessed by the Office of Regulation Review (ORR). The ORR's job is to ensure that good regulation making processes are followed. It has an independent 'umpire' role and does not advocate particular regulatory outcomes. The ORR reports to decision makers and to the community. It also provides training on these processes to government officials.

All Australian jurisdictions — with the exception of Western Australia — use RISs. Recently, New Zealand and some Australian jurisdictions, such as Victoria and the Northern Territory, have established RIS processes broadly modelled on those used by the Australian Government and COAG. In 2003-04, COAG processes were strengthened to include, amongst other things, provision for greater cooperation with New Zealand when examining regulatory proposals with trans-Tasman issues. Major changes made by the Australian Government were to reinforce the importance of consultation through the *Legislative Instruments Act 2003* and to establish processes for greater transparency for cost recovery measures.

Measuring the effectiveness of RIS systems in improving the quality of regulation is a complex task and difficult to do in a comprehensive way. However, a number of partial measures indicate the positive impacts of the RIS process on regulatory outcomes. For example, analysis by Hahn (1998) of the impacts and outcomes from the use of RISs by OECD countries concluded that RISs have reduced the number of unnecessary, burdensome regulations. In Australia, the RIS process has often resulted in more robust analysis of regulatory options. It can lead to preliminary recommendations being revised and modified before the final decision-making

stage. For example, in 2003-04, the recommended regulatory response changed during the policy development process in nine of the 105 RISs prepared by the Australian Government in that year.

Box 1 Australian Government's RIS requirements

A Regulation Impact Statement (RIS) provides a consistent, systematic and transparent process for assessing alternative policy approaches to problems. It includes an assessment of the impacts of the proposed regulation, and alternatives, on different groups and the community as a whole.

The primary role of a RIS is to improve government decision-making processes by ensuring that all relevant information is presented to the decision maker. In addition, after the decision is made, the RIS is tabled in Parliament or may be published elsewhere, providing an account of the basis for that decision.

Since March 1997, it has been mandatory to prepare a RIS for all reviews of existing regulation, proposed new or amended regulation, quasi-regulation and proposed treaties involving regulation, which will directly or indirectly affect business or restrict competition. A range of exceptions apply (see *A Guide to Regulation* for details).

The RIS requirements apply to all government departments, agencies, statutory authorities and boards that review or make regulations, including agencies or boards with administrative or statutory independence.

A RIS should be developed, in consultation with the ORR, once an administrative decision is made that regulation may be necessary, but before the Government or its delegated official makes a policy decision to regulate. A key role of the ORR is to decide whether a RIS should be prepared.

After receiving advice from the ORR that a draft RIS complies with the Government's requirements, it is attached to the proposals to be considered by the decision maker — Cabinet, the Prime Minister, Minister(s) or a board.

A RIS is tabled with explanatory material. In the case of treaties, a RIS should be prepared when approval to commence negotiations is sought. It should be updated when approval is sought to sign the final text of a treaty, and made public when the treaty is tabled in Parliament.

In 2003-04, RISs were prepared for a number of significant regulatory changes, including the Australia/United States Free Trade Agreement, new tariff and assistance arrangements for the clothing, textile and footwear industries, and reforms to international taxation arrangements.

In 2003-04, 18 out of 24 departments or agencies required to prepare RISs complied fully with the requirements. Those that did not comply either failed to prepare a RIS or prepared one with an inadequate level of analysis.

A common problem is that RISs are prepared late in the policy-making process, diminishing the capacity of the RIS to aid decision making. Late preparation can be a sign of poor internal management and planning, or may reflect underestimation of the complexity or impacts of a regulatory proposal, resulting in insufficient time being allocated to do the analysis and consult with the ORR.

Aggregate RIS compliance for 2003-04

The Government's RIS requirements apply to all departments and agencies. About 1700 Bills, disallowable instruments and other regulations were tabled in Parliament or otherwise made in 2003-04, of which less than 7 per cent required a RIS.

- Of the 114 regulatory proposals that required a RIS for the decision maker, 109 RISs were prepared, with 105 of those assessed as containing an adequate level of analysis. Accordingly, the RIS compliance rate in 2003-04 was 92 per cent. This compares to an 81 per cent compliance rate in 2002-03 (table 1).
- The second requirement, that adequate RISs be tabled in Parliament with the explanatory material for Bills, disallowable instruments or international treaties, was satisfied in 95 per cent of cases in 2003-04, equal to that in 2002-03.

Table 1 **RIS compliance, by type of regulation, 2003-04**

Type of regulation	Decision-making			Tabling ^a		
	prepared	adequate		prepared	adequate	
	ratio	ratio	%	ratio	ratio	%
Primary legislation (Bills)	29/31	29/31	94	33/34	32/34	94
Disallowable instruments	41/43	39/43	91	43/44	42/44	95
Non-disallowable instruments	14/14	12/14	86
Quasi-regulation	12/13	12/13	92
Treaties ^b	13/13	13/13	100	8/8	8/8	100
Total	109/114	105/114	92	84/86	82/86	95

.. Not applicable. Tabling is not a formal requirement. ^a RIS compliance for the tabling of Bills, treaties and disallowable instruments is subject to formal assessment by the ORR. ^b During the treaty-making process, RISs are required at three stages — before entry into negotiations, before signature of the final treaty text and before ratification. The first two stages have been aligned with the decision-making stage. The ratification stage has been aligned with the tabling stage. In three cases, RISs were not required at entry into negotiations.

Source: ORR estimates.

The ORR classified each of the 114 proposals in 2003-04 by its degree of 'significance' — reflecting the nature and magnitude of the proposal and the scope

of its impacts (table 2). RIS compliance at the decision-making stage for the 18 proposals identified as more significant was 94 per cent in 2003-04. This is considerably higher than for the previous year, when the comparable compliance rate was only 46 per cent, and may be a sign that departments and agencies are more fully integrating the RIS requirements into their policy development processes. For proposals with less significant impacts, a 92 per cent compliance rate was achieved — also higher than the 85 per cent compliance rate in the previous year.

Table 2 Compliance by significance, 2003-04

<i>Significance rating</i>	<i>Required</i>	<i>Prepared</i>	<i>Adequate</i>	<i>Compliance</i>
	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>%</i>
More significant	18	17	17	94
Less significant	96	92	88	92
Total	114	109	105	92

Source: ORR estimates.

Where regulatory proposals would restrict or distort competition, National Competition Policy requires governments to demonstrate that the benefits of restricting competition outweigh the costs, and that the benefits can only be achieved by those means. In 2003-04, the Government introduced five proposals judged to restrict competition. In each case, a RIS was prepared and assessed as adequate by the ORR at the decision-making stage (chapter 2).

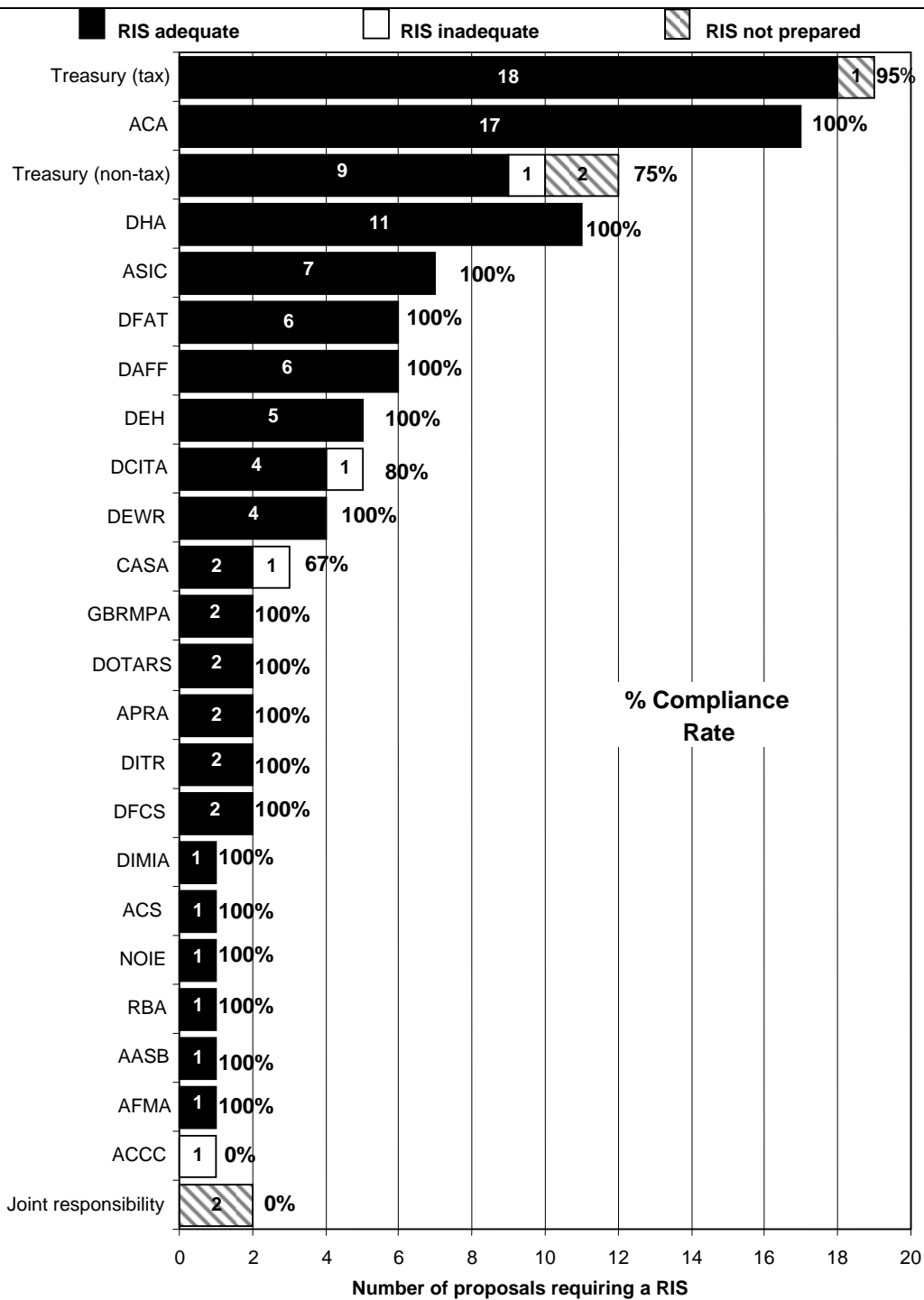
Compliance by departments and agencies

In 2003-04, 24 Australian Government departments and agencies were involved in making regulations which triggered the RIS requirements. Compliance results at the decision-making stage for these departments and agencies are shown in figure 1.

The total length of each bar in figure 1 indicates the number of RISs required to be prepared at the decision-making stage. The black segment shows how many of those RISs were assessed as adequate. The other segments show the number of RISs that were not compliant, either because the ORR assessed the RISs as not adequate (white segments) or because RISs were not prepared (shaded segments).

The compliance rate in 2003-04 for each department and agency, as a percentage of the number of RISs required, is shown at the end of each bar. In 2003-04, 18 departments and agencies were fully compliant with the Government's RIS requirements (compared to only 12 in 2002-03).

Figure 1 Compliance with RIS requirements at the decision-making stage, 2003-04 ^a



^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.

Source: ORR estimates.

National regulation making: RIS compliance results

Regulation making also occurs at a national or inter-jurisdictional level among Ministerial Councils and standard-setting bodies involving Australian, State and Territory governments. In 1995, COAG agreed on principles and guidelines for such regulatory activities, the major element of which is the preparation of a RIS for community consultation and also for the decision-making process (COAG 2004b). The ORR is required to assess whether such RISs contain an adequate standard of analysis given the significance of the issue, and also to monitor and report on whether the COAG RIS requirements have been met. The ORR is required to assess each COAG RIS at two stages of the regulatory development process: before it is released for community consultation and before the decision-making stage.

COAG RIS compliance is reported annually for the period 1 April to 31 March. In the 12 months to 31 March 2004, 34 regulatory decisions made by Ministerial Councils and national standard-setting bodies required the preparation of a COAG RIS. Of these, 30 adequate RISs were prepared at the decision-making stage — a compliance rate of 88 per cent. Compliance at the community consultation stage was lower, with 28 proposals complying with the COAG RIS requirements — a compliance rate of 82 per cent. RIS compliance for seven regulatory proposals having a significant impact on business and the community remained relatively low, at 57 per cent (chapter 2 and appendix C).

Improving transparency and community consultation

A need for greater transparency in the making and administration of regulation is regarded by the OECD as a pressing area for improvement in many countries that have RIS requirements (OECD 2002, p. 65). The OECD considers that increased transparency can help address many regulatory failures and increase the incentives for policy makers to apply best practice processes in policy development.

Governments in democratic countries have long recognised that an important way of enhancing transparency when reviewing or developing regulations is to carry out a program of effective and meaningful consultation with the community. Such consultation is a useful way of identifying problems and enhancing community confidence in regulatory systems. In turn, this increases the likelihood of achieving high compliance with regulatory requirements, as well as the objectives of the regulation.

The features of effective consultation include accessibility, transparency, responsiveness and timeliness. Having good consultation processes is particularly important for those in the community who are directly affected by regulatory

proposals or who may experience difficulty in having their views heard. For example, small business can be directly, and often disproportionately, affected by a wide range of regulation and associated red tape. Further, Australians who are disadvantaged or have a disability might have difficulty accessing some types of consultation forums.

Those undertaking consultation need to plan for it early in the policy development process and make sure that meaningful information is accessible for relevant stakeholders. Sufficient time should be allowed to enable stakeholders to respond and for their views to be taken into account.

In recognition of the value of effective and meaningful consultation, many governments, both in Australia and internationally, are taking a more systematic and standardised approach. This includes legislative changes which enshrine consultation processes, such as the Australian Government's *Legislative Instruments Act 2003*, and guidelines on how consultation should be undertaken with particular groups, such as small business.

For Australian Government agencies, there is no formal requirement to publicly release RISs for consultation. However, the ORR has observed an increase in the number of agencies doing so, suggesting a greater commitment to implementing good regulatory practice.

At the national level, there is a COAG requirement that Ministerial Councils and national standard-setting bodies consult with the community when reviewing regulations and that they release a draft RIS as part of this consultation process.

In some circumstances, such as regulation to address an emergency, a robust consultation process may not be practicable. More often, however, a failure to consult effectively is the result of poor planning by regulators.

Effective and meaningful consultation does not mean that the views of stakeholders have to be accepted. Indeed, consultative processes will typically bring forth a variety of often opposing views. The object is to enrich the regulator's understanding of the available options for dealing with a policy issue and the effects of these options. In this way, the final choice of regulatory approach is more likely to be well founded and to receive greater community acceptance.