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# OVERVIEW

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## Key points

- An important element of the Australian Government's regulatory policy is the requirement to prepare Regulation Impact Statements (RISs) for proposed new and amended regulation which affects business.
- Many OECD countries have similar processes for improving the quality of regulations. Some countries have recently strengthened their requirements. The Australian Government's processes have a high degree of consistency with OECD best practice principles.
- Overall, the compliance of departments and agencies in 2002-03 with the RIS requirements at the decision-making stage of policy development was lower than the previous year:
  - Adequate RISs were prepared for 81 per cent of 139 regulatory proposals (compared to 88 per cent in 2001-02).
  - Compliance for regulatory proposals assessed as having a more significant impact on business and the community was noticeably lower at 46 per cent (compared to 70 per cent in 2001-02).
- As in previous years, compliance with the Government's RIS requirements varied considerably both among and within portfolios. While 12 departments and agencies achieved compliance rates of 100 per cent, 11 did not comply fully.
- In 2002-03, some departments and agencies took steps to integrate more effectively the RIS requirements into their broader policy development processes. However, others continue to treat the RIS process largely as an 'add-on'.
- Over the last five years, the average RIS compliance rate was 82 per cent. Of the 33 departments and agencies responsible for preparing RISs over this period, five were fully compliant in all years, with a further 17 being fully compliant in one or more years.
- In 2002-03, compliance by Ministerial Councils and national standard-setting bodies with the Council of Australian Governments' RIS requirements was 89 per cent, down from 97 per cent in 2001-02.

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# Overview

Regulations are essential for the proper functioning of society and the economy. Effective and efficient regulations can facilitate a wide range of community objectives without creating unnecessary burdens or imposts. Poor quality regulation can impose unnecessary costs, impede innovation and create unnecessary barriers to trade, investment and economic efficiency.

In many OECD countries, the last few decades have seen the extension of market-based mechanisms to areas where governments once made resource decisions. Governments have in turn been relying more on regulation to achieve societal objectives resulting in greater attention being paid to reviewing and reforming regulations. This has encompassed increased use of regulatory impact analysis, greater consultation with stakeholders, closer consideration of alternatives to regulation and initiatives to enhance the transparency of the policy development process and better inform decision makers. Allied with this, the concept of regulatory policy is developing into the wider notion of regulatory governance, which embraces issues such as transparency, accountability, efficiency, adaptability and coherence.

Most OECD countries have adopted explicit policies to improve regulatory quality. And almost all have adopted explicit and wide ranging regulatory reform programs, focusing on both the stock of existing regulations and the flow of new regulations. The OECD strongly supports the use of regulatory impact analysis as part of the policy development process. By the end of 2000, 14 of 28 OECD countries had adopted universal regulatory impact analysis programs and a further six were using this analytical framework for some regulatory proposals (OECD 2002a, p. 45).

The Australian Government has made a firm commitment to improving the quality of its regulation and reducing the burden of regulation on business. The Government's regulatory quality policies, including regulatory plans, Regulation Impact Statement (RIS) requirements and regulatory performance indicators, have a high degree of consistency with OECD best practice principles.

About 60 Australian Government departments and agencies and 40 Ministerial Councils and national standard-setting bodies have powers to prepare or administer regulations. The number of regulatory bodies contributes to concerns that regulation

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and red tape continues to impose significant and unnecessary compliance costs on business and the community.

The Prime Minister's 1997 statement (*More Time for Business*) highlights the Government's commitment to reforming regulation making and, in particular, reducing compliance costs faced by business.

In order to minimise the burden of regulation on business, the Government is firmly committed to reforming regulation making. ... Minimising the regulatory burden on small business requires a change in the regulation making culture. Regulation should not only be effective, but also the most efficient way of achieving the objectives at hand. To foster this culture change, the Government will introduce reforms to the way regulation is made by requiring a cost-benefit analysis for regulation that is likely to affect business or restrict competition. (CoA 1997, pp. 65–6)

Since 1997, the principal instrument used to promote the Government's regulatory policy objectives — RISs — have been required for all regulatory proposals that affect business or restrict competition, including primary and subordinate legislation, quasi-regulation and treaties. RISs are designed to identify, consider and balance a wide range of economic, social, environmental and technological issues and impacts. They assist policy makers by laying out the impacts, costs and benefits of all viable options (including non-regulatory measures) for achieving policy objectives. The publication of final RISs (through tabling in Parliament or public release) increases transparency and enhances public confidence in government regulation making processes and the regulatory system.

The Office of Regulation Review (ORR) is part of the Productivity Commission. One of its functions is to advise the Government on whether the RIS requirements have been met, including whether the RIS provides an adequate level of analysis. The Productivity Commission is required to report annually on compliance with these requirements across Government departments and agencies.

## **Aggregate RIS compliance results for 2002-03**

The Government's RIS requirements apply to all departments and agencies. About 1800 Bills, disallowable instruments and other regulations were tabled in Parliament or otherwise implemented in 2002-03, of which less than one-tenth were found to require a RIS.

- Of the 139 regulatory proposals that required the preparation of a RIS for the decision maker, the requirement was met in 120 cases, with 113 of those RISs assessed as containing an adequate level of analysis. Accordingly, the RIS compliance rate in 2002-03 was 81 per cent (table 1), somewhat lower than the previous year (88 per cent).

- The second requirement, that adequate RISs be tabled in Parliament with the explanatory material for Bills or disallowable instruments, was satisfied in 95 per cent of cases in 2002-03. This was slightly higher than in the previous year.

**Table 1 RIS compliance, by type of regulation, 2002-03**

<i>Type of regulation</i>	<i>Decision-making</i>			<i>Tabling<sup>a</sup></i>		
	<i>prepared</i>	<i>adequate</i>		<i>prepared</i>	<i>adequate</i>	
	<i>ratio</i>	<i>ratio</i>	<i>%</i>	<i>ratio</i>	<i>ratio</i>	<i>%</i>
Primary legislation (Bills)	41/52	35/52	67	54/54	50/54	93
Disallowable instruments	54/61	54/61	89	60/62	60/62	97
Non-disallowable instruments	12/13	12/13	92	..	..	..
Quasi-regulation	9/9	9/9	100	..	..	..
Treaties	4/4	3/4	75	3/3	3/3	100
<b>Total</b>	<b>120/139</b>	<b>113/139</b>	<b>81</b>	<b>117/119</b>	<b>113/119</b>	<b>95</b>

.. Not applicable. <sup>a</sup> Compliance for Bills, disallowable instruments and treaties only are subject to formal assessment at this stage by the ORR.

The ORR classified each of the 139 proposals in 2002-03 by ‘significance’ — reflecting the nature and magnitude of the proposal and the scope of its impact. RIS compliance at the decision-making stage, for the 13 proposals identified as significant, was only 46 per cent in 2002-03. This compares with 85 per cent compliance for proposals with less significant impacts (table 2).

**Table 2 Compliance by significance and timeliness, 2002-03**

<i>Significance rating</i>	<i>Required</i>	<i>Prepared</i>	<i>Adequate</i>	<i>Compliance</i>	<i>Average elapsed time</i>
	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>%</i>	<i>weeks<sup>a</sup></i>
More significant	13	9	6	46	5.4
Less significant	126	111	107	85	6.8
<b>Total</b>	<b>139</b>	<b>120</b>	<b>113</b>	<b>81</b>	<b>6.6</b>

<sup>a</sup> Time from receipt by the ORR of the first draft of the RIS up to when the ORR formally advised on its adequacy at the decision-making stage.

Departments and agencies are encouraged to integrate the RIS into their policy development processes and consult with the ORR at an early stage. The extent of ‘lead time’ can provide a partial indicator as to whether departments and agencies have undertaken a robust assessment of the impacts of regulatory proposals.

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To gauge the timeliness of the preparation of RISs, the ORR records the amount of time between when a first draft is received and when it advises whether the RIS requirements have been met at the decision-making stage. For regulatory proposals finalised in 2002-03, the average elapsed time was approximately six and a half weeks, compared with an average of three weeks in 2001-02 (chapter 2).

Where proposals restrict competition, the *Competition Principles Agreement* requires that RISs demonstrate that the benefits of restricting competition outweigh the costs, and that these benefits can only be achieved by restricting competition (NCC 1997). In 2002-03, 22 RISs considered restrictions on competition. Of these, 18 provided an adequate level of analysis. Therefore, the RIS compliance rate for regulatory proposals which involved restricting competition was 82 per cent — significantly higher than in previous years (chapter 2).

## Compliance by departments and agencies

In 2002-03, 23 government departments and agencies made 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 2002-03 for each department and agency, as a percentage of the number of RISs required, is shown at the end of each bar.

## Compliance trends since 1998

Over the five years between 1 July 1998 and 30 June 2003, about 900 RISs were required at the decision-making stage for regulatory proposals. Of these, about 750 provided an adequate level of analysis — an overall RIS compliance rate over the five years of 82 per cent. Most of these RISs were published as part of explanatory material of legislation and are therefore publicly available.

Compliance results at the decision-making stage for departments and agencies with a high level of regulatory activity affecting business are shown in figure 2.

Of the 33 Government departments and agencies that were required to prepare RISs over that period, only two departments — Finance and Administration, and Defence — complied fully with the Government’s RIS requirements. A further 17 departments and agencies were fully compliant in one or more years. A few have experienced ongoing difficulty in meeting the Government’s RIS requirements (chapter 4).

**Figure 1 Compliance with RIS requirements at the decision-making stage, 2002-03**

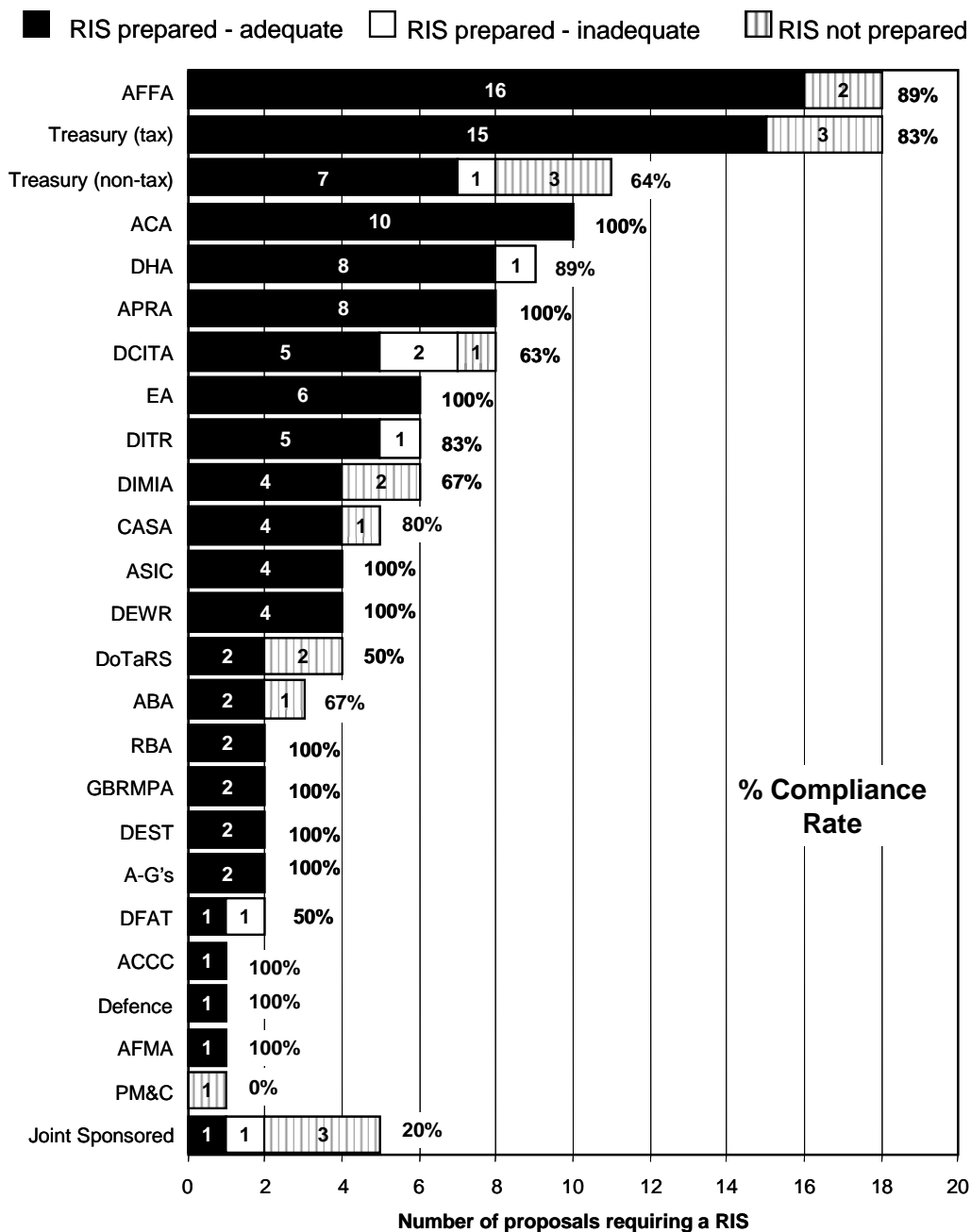
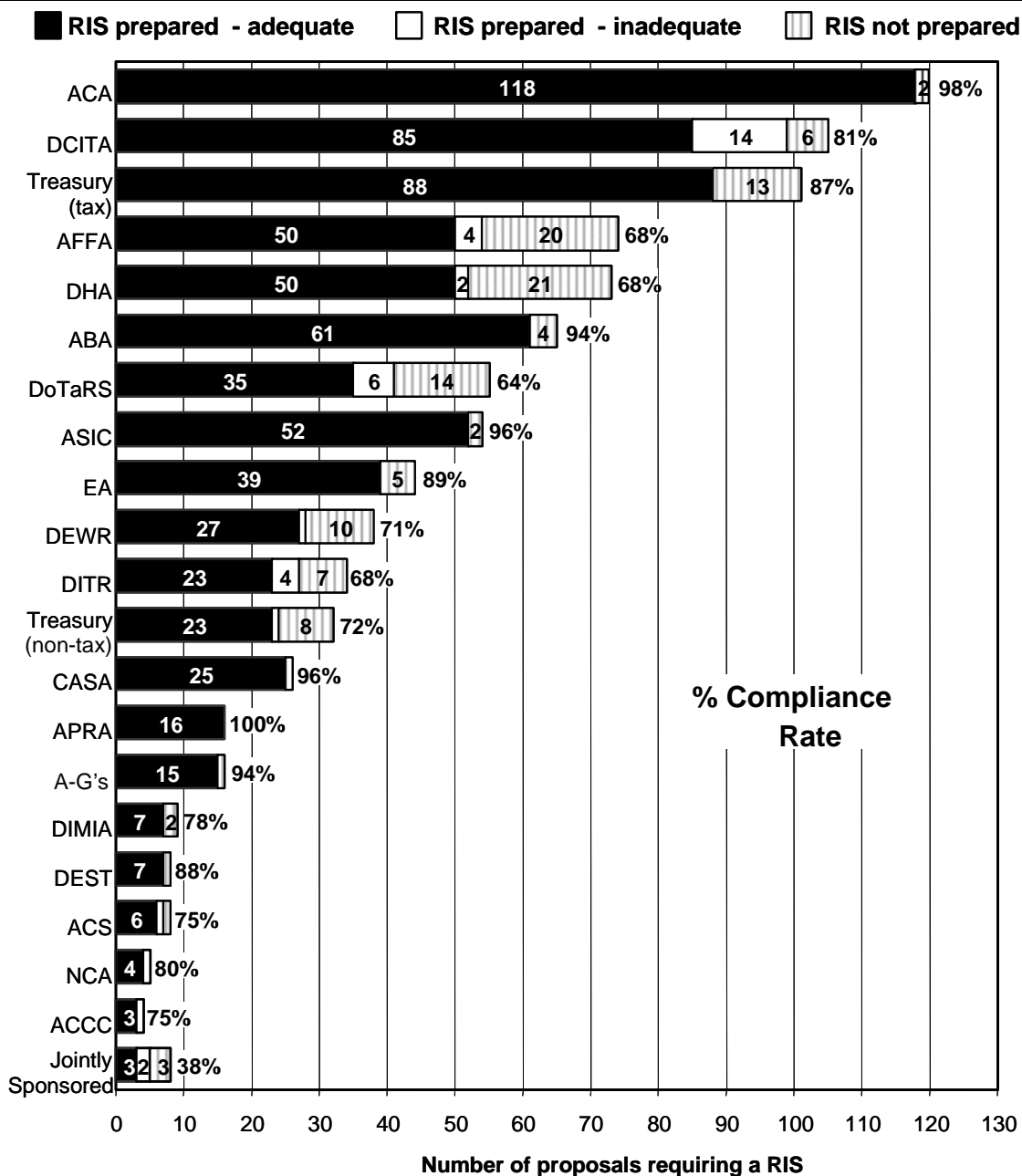


Figure 2 RIS compliance by department and agency at the decision-making stage, aggregated 1998-99 to 2002-03



### Effective implementation

Best practice regulatory systems require not only high quality regulations, but also effective and efficient implementation of regulations by regulators. Indeed, many of the concerns about regulations are focused on how regulations are interpreted and applied by regulators, rather than the quality of regulations themselves. In particular, business and the community express concerns that regulators are

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sometimes not accessible, or transparent and accountable in their decision-making. Some consider that regulators generate red tape and are not mindful of compliance burdens (especially on small business), and that regulatory requirements are sometimes not communicated effectively.

While the RIS process focuses primarily on documenting the policy development process, one of the seven key components of RISs deals explicitly with implementation issues. Key implementation issues which should be addressed in RISs include how the preferred regulatory option will be implemented, the level of flexibility and discretion that should be given to regulators, how compliance costs can be minimised and how (and when) the regulation will be reviewed.

The coverage of implementation issues in RISs complements and reinforces a range of other mechanisms and organisations within government which seek to ensure that regulators undertake their role in an effective and efficient manner and strengthen regulatory governance. These include the use of regulatory performance indicators and the roles played by the National Competition Council, Productivity Commission, Ombudsman, Inspector-General of Taxation and, potentially, the new Implementation Unit based within the Department of The Prime Minister and Cabinet (chapter 5).

## **National regulation making: RIS compliance results**

Regulation making also occurs at a national or inter-jurisdictional level, among some 40 Ministerial Councils and standard-setting bodies involving Australian/State/Territory governments. In 1995, the Council of Australian Governments (COAG) agreed on principles and guidelines for such activities, the major element of which is the preparation of a RIS to serve as one input to the decision-making process (COAG 1997). 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 COAG RIS requirements have been met.

In 2002-03, the ORR identified 24 matters as being subject to the COAG RIS requirements. RISs of an adequate standard were prepared for all but three of these matters. Accordingly, the overall compliance rate was 89 per cent. This was lower than the 97 per cent rate achieved in 2001-02 (appendix A).

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## Improving performance

Disaggregated information on RIS compliance suggests that:

- some departments and agencies continue to experience difficulty preparing RISs of an adequate standard for regulatory proposals; and
- there was a noticeably lower compliance rate for the more important regulatory proposals.

These findings suggest that a number of departments and agencies are still giving relatively low priority to the Government's requirements. Some are still treating the RIS as an 'add on' task — something to be undertaken after a course of action has already been decided.

Several steps can be taken by departments and agencies to help meet the Government's regulatory best practice requirements:

- There should be an effective system for planning regulatory reviews which is inclusive and involves stakeholders. Publication of up to date regulatory plans can help achieve this — but some regulatory departments and agencies do not publish such plans, or release plans which are incomplete and/or out of date.
- Some departments and agencies could follow the lead of others — notably the Departments of Agriculture, Fisheries and Forestry, and Health and Ageing — by appointing a senior executive officer who can coordinate the developments of RISs as part of the broader policy development processes. This can increase compliance with the Government's RIS requirements and ensure that RISs make a useful contribution to the development and assessment of policy options.

There is also a need for a greater focus on compliance costs. Such costs have a significant impact on business and the community — according to the OECD, compliance costs in Australia in the late 1990s exceeded \$17 billion, or 2.9 per cent of GDP (OECD 2001). There is scope for departments and agencies preparing RISs to provide more information about these costs to decision makers. The ORR and the Office of Small Business (within the Department of Industry, Tourism and Resources) are currently working together to prepare a detailed guide which will help officials preparing regulatory proposals identify, measure and report on such costs.