
3 Compliance with best practice requirements

The Government's regulatory impact analysis arrangements came into effect on 20 November 2006. As a result, regulatory proposals reported in 2006-07 were assessed under two sets of requirements.

- For proposals assessed under the previous arrangements, the OBPR reports the number of Regulation Impact Statements (RISs) required, whether a RIS was prepared to inform the decision maker, whether the analysis in the RIS met the Government's adequacy criteria, and whether the RIS was tabled in the Parliament or otherwise made public.
- Under the enhanced arrangements, the OBPR reports not only on the adequacy of analysis of RISs at the decision-making and transparency stages, but also on the requirements to assess compliance costs (using the Business Cost Calculator or an approved equivalent), preparation of green papers for highly significant proposals, the preparation of exposure drafts for complex regulations, the granting of exceptional circumstances by the Prime Minister and the need for post-implementation reviews.

3.1 Role of the Office of Best Practice Regulation

The Office of Best Practice Regulation (OBPR) has been assigned a central role in improving the quality of regulation by administering the Government's best practice regulation requirements. It has a dual role of assisting departments and agencies to meet the requirements, and monitoring and reporting on compliance with the requirements.

In assessing the quality of regulatory impact analysis, the OBPR does not endorse or support particular regulatory options or outcomes. Rather, its role is to assess whether good regulatory practice has been followed, in accordance with the processes and requirements outlined in the *Best Practice Regulation Handbook*.

The OBPR undertakes a rigorous compliance checking process, whereby all regulatory proposals that have been made or tabled are checked to ensure that the appropriate level of regulatory analysis was undertaken.

3.2 Compliance with the Government requirements

In assessing and reporting on compliance with the Government's RIS requirements applying in 2006-07, for proposals that went to the decision maker before 20 November 2006, the OBPR has considered whether:

- a RIS was prepared to inform the decision maker at the policy approval stage and the analysis contained in the RIS meets the Government's adequacy criteria
- the RIS prepared at the decision-making stage was tabled in the Parliament or otherwise made public.

For proposals that went to the decision maker on or after 20 November 2006, the OBPR has assessed, in addition to the above, whether:

- a report assessing compliance costs (a BCC report or approved equivalent) was prepared to inform the decision maker at the policy approval stage (in instances where medium level compliance costs are involved but other impacts are minor)
- the report assessing compliance costs was tabled in the Parliament or otherwise made public
- exceptional circumstances were granted by the Prime Minister and a post-implementation review is required in one to two years.

After the transition period (from August 2007), the OBPR will report whether a green paper was prepared (for regulatory proposals of major significance) or an exposure draft was released as a basis for consultation (for complex regulatory proposals).

Adequacy criteria for RISs

To be assessed as adequate, all seven elements of a RIS must contain a degree of detail and depth of analysis that is commensurate with the size of the potential impacts of the proposal. Subject to this overriding principle, the OBPR uses the criteria from the *Best Practice Regulation Handbook* shown in box 3.1 (which follow the seven elements of a RIS) to assess whether a RIS contains an adequate level of information and analysis.

Box RIS adequacy criteria

1. Problem

The RIS should clearly identify the fundamental problem(s) that needs to be addressed. This part of the analysis must:

- present evidence on the magnitude (scale and scope) of the problem
- document relevant existing regulation at all levels of government, and demonstrate that it is not adequately addressing the problem
- if the problem involves risk, identify the relevant risks, and explain why it may be appropriate for government to act to reduce them
- present a clear case for considering that additional government action may be warranted, taking account of existing regulation and any risk issues.

2. Objectives

The RIS should explain the objectives, outcomes, goals or targets of government action.

3. Options

The RIS should identify a range of viable options including, as appropriate, non-regulatory, self-regulatory and co-regulatory options. If only one option (apart from the status quo) is considered feasible, the RIS should provide sound justification for considering only two options.

4. Impact analysis

The RIS should provide an adequate analysis of the costs and benefits of the feasible options, and should:

- identify the groups in the community likely to be affected by each option and specify significant economic, social and environmental impacts on them
- assess the costs and benefits of all the options supported by an acceptable level of evidence, where appropriate through a formal cost-benefit analysis
- assess the impacts on business, particularly small business, and quantify (using the BCC or equivalent approved by the OBPR) the effect of each option on business compliance costs
- quantify other significant costs and benefits to an appropriate extent, taking into account the significance of the proposal and its impact on stakeholders
- if an objective of regulation is to reduce risk, analyse the extent to which each option would reduce the relevant risk, and the costs and benefits involved
- recognise the effect of the options on individuals and the cumulative burden on business

Continued next page

Box 3.1 continued

- document any relevant international standards, and if the proposed regulation differs from them, identify the implications and justify the variations
- if the proposed regulation would maintain or establish restrictions on competition, demonstrate that the Government's objective can be achieved only by restricting competition
- provide evidence in support of key assumptions and clearly identify any gaps in data.

5. Consultation

The RIS should:

- outline the consultation objective
- describe how consultation was conducted (including the stages of the policy development process at which consultation was undertaken, the timeframes given, and the methods of consultation)
- articulate the views of those consulted, including substantial disagreements
- outline how those views were taken into consideration
- if full consultation was not undertaken, provide a reasonable explanation.

The consultation process reported in the RIS should conform with the Government's best practice principles and policy on consultation.

6. Conclusion and recommended option

The RIS should provide a clear statement as to which is the preferred option and why.

The RIS should demonstrate that:

- the benefits of the proposal to the community outweigh the costs
- the preferred option has the greatest net benefit for the community, taking into account all the impacts.

7. Implementation and review

The RIS should provide information on how the preferred option would be implemented, monitored and reviewed. Interactions between the preferred option and existing regulation of the sector should be clearly identified.

Source: Australian Government 2007a, p. 54.

Aggregate compliance in 2006-07

The year ending 30 June 2007 was a transition year to the enhanced regulation-making framework. As discussed in section 1.2, the new regulation-making framework differs from the previous RIS requirements. Consequently, the report for this year records compliance with the previous RIS requirements from 1 July 2006 to 19 November 2006 and compliance with the new regulatory impact analysis requirements from 20 November 2006 to 30 June 2007.

In line with previous years, only around four per cent of regulatory proposals tabled required regulatory impact analysis.

Previous regulation impact statement requirements

Under the previous RIS requirements (1 July 2006 to 19 November 2006), 63 RISs were required at the decision-making stage. Of these, 57 were prepared and 54 were assessed as adequate – a compliance rate of 86 per cent. This compares with compliance rates of 71 per cent in 2005-06 and 80 per cent in 2004-05.

As in previous years, the failure to prepare a RIS accounted for a significant proportion of non-compliance (67 per cent of cases of non-compliance in 2006-07 compared to 61 per cent in 2005-06 and 80 per cent in 2004-05).

With respect to the tabling stage (for proposals introduced via bills, legislative instruments and treaties), compliance was 94 per cent, compared to 86 per cent in 2005-06 and 89 per cent in 2004-05.

Table 3.1 RIS compliance, 2001-02 to 2006-07 ^a

	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
Decision-making stage ^b	128/145	113/139	105/114	68/85	68/96	54/63
	88%	81%	92%	80%	71%	86%
Tabling stage ^{b, c}	116/123	113/119	82/86	59/66	73/85	53/56
	94%	95%	95%	89%	86%	94%

^a RISs assessed under the previous regulation-making framework for the period 1 July 2006 to 19 November 2006. ^b The first figure records adequate RISs; the second figure records RISs required. ^c Compliance for regulatory proposals introduced via bills, legislative instruments and treaties (which are subject to formal assessment by the OBPR). The number of RISs required at tabling is usually lower because: RISs are not required at the tabling stage for quasi-regulations; RISs may be required at more than one decision-making stage (for highly significant regulatory proposals); and RISs are required at two decision-making stages for treaties.

Source: OBPR.

Enhanced regulatory impact analysis requirements

Under the new regulation-making framework (20 November 2006 to 30 June 2007), 18 RISs were required at the decision-making stage. Of these, 15 were assessed as adequate and exceptional circumstances were granted in two cases – giving a compliance rate of 94 per cent.

Two regulatory proposals were assessed by the OBPR as having medium level compliance costs and ‘no to low’ other impacts. Two Business Cost Calculator (BCC) reports were prepared, certified by the OBPR at the decision-making stage and published in this period.

No green papers or exposure drafts were formally required during the transition period. Departments and agencies reported that 342 preliminary assessments had been undertaken for proposals which required no further regulatory impact analysis. The OBPR agrees with these assessments.

In the absence of exceptional circumstances, a regulatory proposal with medium compliance costs or significant impacts on business and individuals or the economy cannot proceed to Cabinet or other decision maker unless it has complied with the regulatory impact analysis requirements. Post-implementation reviews are required when a proposal proceeds to the decision maker without an adequate RIS or report assessing business compliance costs. Such reviews are required regardless of whether or not exceptional circumstances are granted.

Two proposals were granted exceptional circumstances in 2006-07 and require post-implementation reviews in one to two years (see table 3.2).

Table 3.2 Post-implementation reviews required, exceptional circumstances granted

<i>Agency</i>	<i>Regulatory Proposal</i>	<i>Date tabled</i>
DAFF	<i>Wheat Marketing Amendment Bill 2007</i>	14 June 2007
DoTARS	<i>Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007</i>	14 February 2007

Source: OBPR data and information provided by departments and agencies.

One regulatory proposal was non-compliant with the Government’s enhanced regulatory requirements in 2006-07 and requires post-implementation review in one to two years (see table 3.3).

Table 3.3 Post-implementation review required, regulatory impact analysis requirements not met

<i>Agency</i>	<i>Regulatory proposal</i>	<i>Date tabled</i>
DEWR	<i>Workplace Relations Amendment (A Stronger Safety Net) Bill 2007</i>	28 May 2007

Source: OBPR data and information provided by departments and agencies.

RIS compliance by significance

The OBPR classifies the significance of each regulatory proposal according to the nature and size of the impacts on affected parties and the community.

In 2006-07, five RISs were required at the decision-making stage for regulatory proposals that the OBPR identified as having a highly significant impact on business and individuals or the economy. Four of these RISs were required under the previous RIS arrangements; all four were prepared and three were assessed as adequate — a compliance rate of 75 per cent. Under the enhanced regulation-making framework, one RIS was required, but was not prepared.

Table 3.4 Compliance for highly significant proposals, decision-making stage, 2006-07

<i>Regulation-making framework</i>	<i>Required</i>	<i>Prepared</i>	<i>Adequate</i>	<i>Compliance</i>
	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>%</i>
Previous requirements	4	4	3	75
Enhanced requirements	1	0	0	0
Total	5	4	3	60

Source: OBPR.

Department of Communications, Information Technology and the Arts

In 2006-07, the Department of Communications, Information Technology and the Arts introduced media ownership reforms and digital television reforms.

The media ownership reforms related to the foreign and cross media ownership laws. A RIS, assessed as adequate by the then Office of Regulation Review (ORR), was prepared for both the decision-making and tabling stages of the proposal.

The digital television reforms amended several aspects of the digital television and commercial television broadcasting regime, including the requirements relating to multi-channelling and high definition television, and the ‘anti-siphoning’ list. A RIS

was prepared for the decision-making stage but was assessed as inadequate by the ORR. The RIS did not adequately identify and assess the options. The ORR considered the tabling stage RIS to be inadequate for the same reasons.

Department of Health and Ageing

The Department of Health and Ageing introduced the Private Health Insurance reform package aimed at giving Australians greater choice in health care and making private health insurance more competitive and attractive to consumers. It also consolidated and merged existing legislation to improve the efficiency of the private health insurance system. The RIS met the best practice regulatory requirements at the decision-making and transparency stages.

Department of the Treasury

The Department of the Treasury introduced ‘*A Plan to Simplify and Streamline Superannuation*’. A tax RIS was prepared that considered how to implement the reforms announced by the Treasurer. The ORR assessed the tax RIS as adequate at the decision-making and tabling stages under the Government’s previous RIS process.

Department of Employment and Workplace Relations

The Department of Employment and Workplace Relations introduced the *Workplace Relations Amendment (A Stronger Safety Net) Bill 2007* which amended the *Workplace Relations Act 1996* to establish a fairness test for workplace agreements, and two statutory agencies – the Workplace Authority and the Workplace Ombudsman. This proposal constituted a significant change to the workplace relations system in Australia. Under the Government’s new arrangements for regulatory impact analysis, a RIS should have been assessed as adequate by the OBPR before the proposal proceeded to the decision maker. The RIS should have included information about business compliance costs derived from use of the BCC or an approved equivalent.

A RIS was not prepared for the proposal, and the OBPR was not contacted about the issue until after a decision had been made. Neither was exceptional circumstances status granted.

Proposals that restrict competition

Many existing and proposed regulations and requirements restrict competition. Such regulations can restrict consumer choice, raise prices and reduce overall productivity by denying the economy the efficiency gains that competition provides. Where a particular option restricts competition, the RIS must address additional issues in the context of the cost-benefit analysis in order to meet the Australian Government's commitments under the intergovernmental Competition Principles Agreement. In particular, the RIS must examine whether the recommended/preferred option is the only way of achieving the desired objective. This is because the RIS should not recommend an option that restricts competition unless it is demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the desired objective can be achieved only by restricting competition (Australian Government 2007, p. 73).

In 2006-07, two of the more significant proposals were judged to restrict competition and, among those proposals of less significance, seven restricted competition. RISs were prepared for all nine proposals. One of the RISs prepared for the more significant proposals was assessed as adequate and one was assessed as inadequate. All of the RISs prepared for the less significant proposals were assessed as adequate.

Compliance by type of regulation

For the purposes of this report, regulation has been grouped into the following categories: primary legislation (bills), delegated legislation (legislative instruments and non-legislative instruments), quasi-regulation and treaties.

Primary legislation is explicit government regulation in the form of Bills passed by Parliament. Delegated legislation comprises all rules or instruments that have the force of law but which have been made by an authority to which Parliament has delegated part of its legislative power. Such rules or instruments are taken to be legislative if they determine or alter the law rather than apply it in a particular case. Quasi-regulation comprises a wide range of rules or arrangements which, while not legally binding, enable governments to achieve regulatory ends by putting pressure on businesses to comply, for example, a government-endorsed industry code of practice. Treaties between the Australian Government and overseas governments that are likely to involve domestic regulation are also subject to the Government's best practice regulation requirements.

Compliance with the Government's former RIS requirements from 1 July 2006 to 19 November 2006 by type of regulation is shown in table 3.5. At the

decision-making stage, the compliance rate for RISs prepared for bills was 82 per cent (27 assessed as adequate from the 33 required), for legislative instruments 95 per cent (19/20), quasi-regulation 100 per cent (2/2) and for treaties 75 per cent (6/8).

Table 3.5 Regulation impact statement compliance, by type of regulation, 1 July to 19 November 2006

<i>Type of regulation</i>	<i>Decision-making</i>			<i>Tabling^a</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)	30/33	27/33	82	29/32	29/32	91
Legislative instruments	19/20	19/20	95	20/20	20/20	100
Quasi-regulation ^b	2/2	2/2	100
Treaties	6/8	6/8	75	4/4	4/4	100
Total	57/63	54/63	86	53/56	53/56	94

.. Not applicable. Tabling is not a formal requirement for quasi-regulation. ^a RIS compliance for the tabling of bills, legislative instruments and treaties is subject to formal assessment by the OBPR. ^b As reported by departments and agencies to the OBPR.

Source: OBPR.

Compliance with the Government's enhanced requirements by type of regulation is shown in table 3.6. At the decision-making stage, the compliance rate for bills requiring BCC reports was 100 per cent (2/2) and for RISs 88 per cent (7/8), for delegated legislation 100 per cent (7/7) and for treaties 100 per cent (1/1).

During the transition period to implement the enhanced requirements, no green papers or exposure drafts were formally required. However, four exposure drafts of regulation were released for public consultation. Departments and agencies reported 342 preliminary assessments had been undertaken for proposals tabled or made in the reporting period and which required no further regulatory impact analysis. Based on a bi-annual compliance checking process, the OBPR agrees with the assessments.

Table 3.6 **Regulatory impact analysis compliance, by type of regulation, 20 November 2006 to 30 June 2007**

		<i>Primary legislation</i>	<i>Delegated legislation</i>	<i>Quasi- regulation</i>	<i>Treaties</i>	<i>Total</i>
Reports on compliance costs ^a						
- decision	ratio	2/2				2/2
	%	100				100
- transparency	ratio	2/2				2/2
	%	100				100
Regulation Impact Statements ^a						
- decision	ratio	7/8	7/7		1/1	15/16
	%	88	100		100	94
- transparency	ratio	7/8	7/7		1/1	15/16
	%	88	100		100	94
Exceptional circumstances	no.	2				2

^a Proposals granted exceptional circumstances not included.

Source: OBPR.

3.3 National regulation making

Regulation making also occurs at a national or inter-jurisdictional level among some 40 ministerial councils and several standard-setting bodies involving the Commonwealth, State and Territory governments. In 1995, the Council of Australian Governments (COAG) agreed on a set of *Principles and Guidelines* for such activities. The major element of the Guidelines is the preparation of a regulatory impact statement (RIS) for those national regulatory decisions that:

... would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done. (COAG 2004, p.2)

At the direction of COAG, the OBPR has a role in monitoring and reporting on compliance by ministerial councils and national standard-setting bodies (NSSBs) with these guidelines. A RIS, assessed by the OBPR, is required at two stages: the first for community consultation with parties affected by the regulatory proposal; and the second or final RIS, reflecting feedback from the community, for the decision-making body. At each stage, the OBPR is required by COAG to assess whether:

- the COAG Principles and Guidelines have been followed
- the type and level of analysis in the RIS is adequate and commensurate with the potential economic and social impacts of the proposal
- alternatives to regulation have been adequately considered.

In the year to 31 March 2007, the OBPR identified 33 decisions made by ministerial councils and NSSBs that required the preparation of a RIS under the COAG *Principles and Guidelines* (see appendix C for more detail).

An adequate RIS was prepared at the consultation stage for 29 decisions, resulting in a compliance rate of 88 per cent (88 per cent in 2005-06). Of the 33 decisions, an adequate RIS was prepared at the subsequent decision-making stage for 31 decisions, resulting in an overall compliance rate of 94 per cent — a significant improvement on the 76 per cent compliance rate achieved in 2005-06. Figure 3.1 shows the overall compliance at the decision-making stage by COAG decision-making bodies.

Compliance by significance

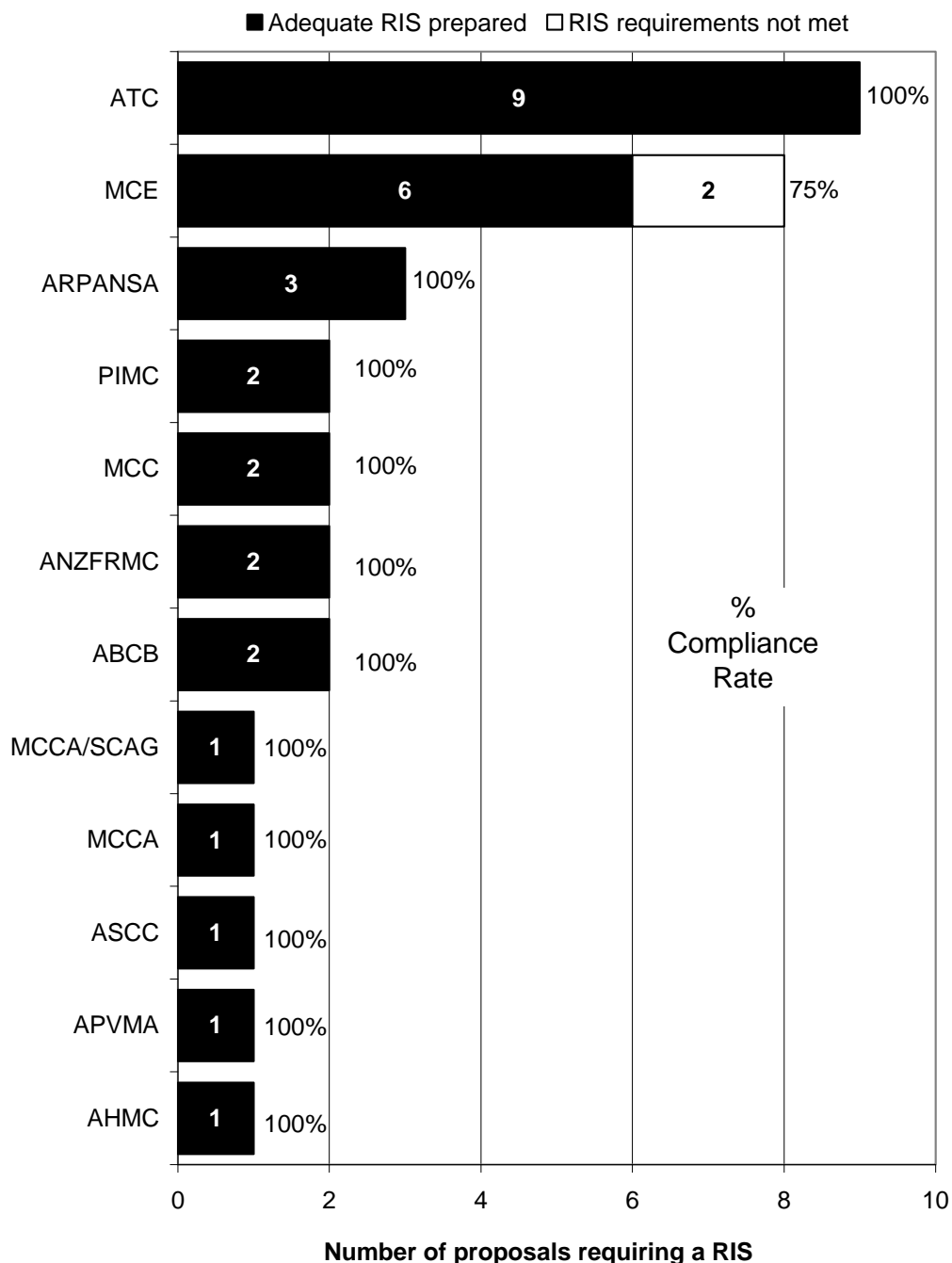
Of the 33 regulatory decisions reported, three were assessed by the OBPR as being highly significant. For these highly significant matters, compliance at the consultation stage was 67 per cent, compared to the 100 per cent compliance rate achieved in 2005-06 (see appendix C for more information). The reduction in the compliance rate is due to one consultation RIS not being prepared. At the decision-making stage, the compliance rate was 100 per cent (see table 3.7).

Table 3.7 Compliance with COAG RIS requirements 2004-05 to 2006-07

<i>Compliance by stage and significance</i>	2004-05		2005-06		2006-07	
	ratio	%	ratio	%	ratio	%
Overall compliance						
Consultation stage	20/24	83	30/34	88	29/33	88
Decision-making stage	21/24	88	26/34	76	31/33	94
Compliance for highly significant regulatory proposals						
Consultation stage	5/6	83	4/4	100	2/3	67
Decision-making stage	6/6	100	2/4	50	3/3	100

Source: OBPR data and information provided by ministerial councils and NSSBs.

Figure 3.1 **COAG RIS compliance at decision-making stage**
1 April 2006 to 31 March 2007^{a b}



^a Australian Transport Council (ATC), Ministerial Council on Energy (MCE), Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), Primary Industries Ministerial Council (PIMC), Ministerial Council for Corporations (MCC), Australian New Zealand Food Regulation Ministerial Council (ANZFRMC), Australian Building Codes Board (ABCB), Ministerial Council for Consumer Affairs/Standing Committee of Attorney Generals (MCCA/SCAG), Ministerial Council for Consumer Affairs (MCCA), Australian Safety and Compensation Council (ASCC), Australian Pesticides and Veterinary Medicines Authority (APVMA), Australian Health Ministers Conference (AHMC). ^b SCAG and MCCA jointly prepared one RIS.

Source: OBPR data and information provided by ministerial councils and NSSBs.