
D ORR activities and performance

The objective of the work of the Office of Regulation Review (ORR) is to promote regulation-making processes that, from an economy-wide perspective, improve the effectiveness and efficiency of regulatory proposals. The ORR provides advice to the Australian Government and assists approximately 100 Australian Government departments and agencies, Ministerial Councils and national standard-setting bodies develop regulatory proposals including, where appropriate, the preparation of Regulation Impact Statements (RISs).

D.1 Activities in 2005-06

The activities that the ORR is required by the Government to undertake are set down in its charter (box D.1).

Box D.1 Charter of the Office of Regulation Review

In 1997, the Government directed the ORR to issue a charter outlining its role and functions. The ORR's seven principal activities are to:

- advise on quality control mechanisms for regulation making and review;
- examine and advise on regulation impact statements (RISs) prepared by Australian Government departments and agencies;
- provide training and guidance to officials;
- report annually on compliance with the Australian Government's RIS requirements;
- advise Ministerial Councils and national standard-setting bodies on regulation making;
- lodge submissions and publish reports on regulatory issues; and
- monitor regulatory reform developments in the States and Territories, and in other countries.

Whilst these are ranked in order of the Government's priorities, the ORR must concentrate its resources where they will have most effect. The ORR, together with the Department of the Treasury, advises the Parliamentary Secretary to the Treasurer who is the Minister responsible for regulatory best practice.

In 2005-06, the Australian Government introduced 149 Bills and 2497 disallowable instruments into Parliament. In the same period, the ORR received 948 new RIS queries (compared with 851 queries in 2004-05). Of these, the ORR advised that RISs were required in 128 cases.

As shown in table D.1, the number of RIS queries received has been rising since 2003-04, but there has been a steady decline in the number of proposals requiring a RIS (as a proportion, from 20 per cent of queries in 2003-04 to 16 per cent in 2004-05 to 14 per cent in 2005-06).

Table D.1 Australian Government regulatory and RIS activities, 2000-01 to 2005-06

	2000-2001	2001-02	2002-03	2003-04	2004-05	2005-06
	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>No.</i>
Regulations introduced						
Bills	169	207	174	150	172	149
Disallowable instruments ^a	1438	1711	1615	1538	2458	2497
Total introduced	1607	1918	1789	1688	2630	2646
RIS workload						
Total number of new RIS queries received by the ORR	740	709	861	845	851	948
- of which, the ORR advised a RIS was required	171	175	132	169	134	128
Proposals finalised in 2005-06 ^b						
RISs required ^c	157	145	139	114	85	96
RISs prepared ^c	133	130	120	109	71	79

^a The large numbers of disallowable instruments reported in 2004-05 and 2005-06 relate, in part, to the commencement of the *Legislative Instruments Act 2003* on 1 January 2005. For example, of the 2857 disallowable instruments tabled in 2005, 365 (12 per cent) were instruments that revoked and remade 11,185 Airworthiness Directives to assist with the back-capturing of these directives under the new rule-making regime introduced under the *Legislative Instruments Act 2003*. ^b Proposals introduced into Parliament or made into law in 2005-06. ^c RISs required and prepared at the decision-making stage.

Source: SSCRO (2006). ORR estimates.

While there has been a downward trend in the number of RISs required for proposals finalised each financial year, it was not followed this year. Ninety-six (96) RISs were required at the decision-making stage for proposals that were finalised in 2005-06.¹ In 79 cases, RISs were prepared, and commented on/assessed by the ORR.

¹ Proposals are finalised when introduced into Parliament or made into law. RISs for these proposals may have been assessed in the 2005-06 or in previous reporting periods.

D.2 Performance in 2005-06

The ORR aims to ensure that its activities — as defined by its charter — are carried out efficiently and effectively by providing timely advice and assistance of a high standard that is useful to government.

In 2005-06, the ORR provided formal training on RISs and regulatory best practice to 367 officials from a wide range of departments and agencies. This compares with 415 officials trained in 2004-05. RIS training was provided to 289 Australian Government officials, 56 officials assisting Ministerial Councils and national standard-setting bodies, and 22 others (including foreign government officials).

In advising Ministerial Councils and national standard-setting bodies on regulatory best practice, the ORR reported on 34 RISs which were to be considered by these decision-making bodies in the twelve months ending 31 March 2006 (compared to 24 RISs in the twelve months ending 31 March 2005). The ORR reported on regulation making by Ministerial Councils and national standard-setting bodies to the National Competition Council (NCC) and to the Committee on Regulatory Reform (CRR) — a senior officials group reporting to the Council of Australian Governments (COAG) (see appendix C).

In monitoring and contributing to regulatory reform developments more broadly throughout Australia and internationally during 2005-06, the Head of the ORR:

- delivered a presentation on regulatory impact analysis to graduate students in the Masters course on Contemporary Theories for Industry Policy at the Australian National University;
- delivered a presentation to the Economic Society of Australia on cost-benefit analysis;
- delivered a presentation on ‘Best Practice Regulation’ to the Civil Aviation Safety Authority; and
- attended and delivered presentations to the annual meeting of State, Territory and New Zealand regulation review units in Perth, Western Australia, in December 2005.

The ORR also:

- delivered a presentation on *Improving Australia's Business Environment through Good Regulatory Process* at an international conference on regulatory reform organised by the Korean Development Institute (KDI) held in Seoul, Republic of Korea on 4 May 2006;
- participated in the selection of consultants to develop a good regulatory practice model for environmental regulations impacting on farmers;

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- met with a delegation of officials from the Chinese Government to discuss cost-benefit analysis and its application to the development of Australian transport legislation;
 - met periodically with officials from the Regulatory Impact Analysis Unit, Ministry of Economic Development, of the New Zealand Government to discuss regulatory matters of mutual interest;
 - provided guidance material on regulatory best practice to the Sustainable Development Unit of the Hong Kong Special Administrative Region Government and to the Regulatory Reform Bureau of the Republic of Korea; and
 - met with delegations of officials from the Indonesian Government (Departments of Industry, Trade and Finance), the Brazilian Ministry of Development, Industry and Foreign Trade, and Ofcom, the UK's independent regulator and competition authority for the communications industry, to discuss a variety of regulatory issues.

The ORR provides information on its regulatory review activities through *Regulation and its Review*, part of the Productivity Commission's Annual Report suite of publications. The report for 2004-05, which was released in October 2005, reported in detail on compliance by Australian Government departments and agencies with the Australian Government's RIS requirements and compliance by Ministerial Councils and national standard-setting bodies with the COAG requirements. It also discussed perceptions about Australia's regulatory system, what governments are doing to improve the quality of regulations, and ways to improve regulation making processes. *Regulation and its Review* fulfils the Productivity Commission's and the ORR's obligation to report annually on compliance with the Government's regulation review and reform requirements.

The ORR also provides information to government agencies and the public through a webpage linked to the Productivity Commission's website.

Quality indicators

The scope of the ORR's work covers the whole of government. However, the confidentiality of RISs considered by Cabinet limits the extent to which specific matters can be reported publicly.

Evidence of the quality of the ORR's work is provided by feedback from other government and community bodies, including those that prepare RISs and those that use them.

In 2005-06, the ORR continued its ongoing survey of officials preparing RISs to obtain feedback on how departments and agencies view the ORR's work performance and the quality of its service in providing advice on the Government's regulatory best practice requirements. The ORR dispatched 132 evaluation forms and received 67 responses, a response rate of 51 per cent (compared to 46 per cent in 2004-05). Eighteen respondents (27 per cent) rated the quality of the ORR's written and oral advice as 'excellent' while 34 (51 per cent) rated it as 'good'. Fifteen respondents (22 per cent) considered the ORR's service as 'satisfactory'. Sixteen respondents offered specific suggestions on how the ORR could improve the quality of its advice, including:

- looking to substance rather than form when commenting on RISs;
- having a better understanding of the background to issues; and
- making its expectations clearer earlier in the process (for example, not making comments on later iterations of a draft RIS that should have been made on the first or second drafts).

As in previous years, the ORR surveyed the 289 Australian Government officials who received training in regulatory best practice in 2005-06 and 178 responses were received — a response rate of 49 per cent. The responses indicate that the ORR training was well received, with 91 per cent rating the training as either 'excellent' or 'good' (table D.2).

Table D.2 Australian Government RIS training evaluation, 2001-02 to 2005-06 ^a

<i>Evaluation</i>	<i>2001-02</i>		<i>2002-03</i>		<i>2003-04</i>		<i>2004-05</i>		<i>2005-06</i>	
	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>
Total number trained	174		373		355		209		289	
Responses received	87	(50)	250	(67)	272	(77)	154	(74)	178	(49)
Excellent	18	(21)	62	(25)	52	(19)	43	(28)	36	(20)
Good	56	(64)	170	(68)	182	(67)	101	(66)	127	(71)
Satisfactory	13	(15)	19	(7)	38	(14)	9	(6)	14	(8)
Unsatisfactory	0	(0)	0	(0)	0	(0)	1	(1)	1	(1)

^a Does not include officials from State/Territory Governments, the New Zealand Government or officials assisting Ministerial Councils and national standard-setting bodies.

Source: ORR estimates.

ORR timeliness

The extent to which the ORR's advice is delivered to regulators and decision makers in a timely manner is also a key indicator of performance. A number of

factors can affect the ORR's timeliness including: the length and quality of the RIS document received; the complexity of the issues/policy proposals canvassed; the familiarity of ORR staff with the issues covered, including whether the ORR has had prior contact with the department/agency; ORR workloads; and staff availability.

As a general rule, officials preparing a RIS are asked to allow the ORR two weeks to provide advice on their adequacy. However, where further redrafting is necessary, additional time may be needed to ensure that the required adequacy criteria are met. In 2005-06, the ORR provided formal feedback (comments on the first draft of the RIS) to departments and agencies, on average, 6 working days after RISs were received. The ORR provided comments on 92 per cent of all (first draft) RISs received within two weeks.

Under the COAG *Principles and Guidelines*, the ORR is required to provide advice on RISs for Ministerial Councils and national standard-setting bodies in a timely manner. When asked for advice in two weeks or less, the ORR provided advice within the specified timeframe on all occasions in 2005-06.

The ORR has delivered all other outputs in a timely manner. For example, it prepared a report to the National Competition Council (NCC) on compliance with the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. This report, which covered compliance for the twelve months to the end of March 2006, was completed and delivered on time.

Indicators of usefulness

The usefulness of the ORR's regulation review activities in contributing to government policy-making and promoting community understanding of regulatory review and reform issues can be informed by a range of indicators:

- The ORR has sought to improve the quality of regulation making by gradually increasing the standard of analysis required in RISs. However, a significant source of non-compliance continues to be a failure by departments and agencies to prepare RISs when required.
 - While 96 RISs were required at the decision-making stage in 2005-06, 79 were prepared. Of these, 68 were assessed as adequate (71 per cent compliance). This compares to RIS compliance rates of 80 per cent in 2004-05 and 92 per cent in 2003-04.
 - Compliance at the tabling stage was 86 per cent (down from 89 per cent in 2004-05 and 95 per cent in 2003-04).

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- For significant regulatory issues, compliance at the decision-making stage in 2005-06 was zero (compared to 67 per cent in 2004-05 and 94 per cent in 2003-04).²
 - RISs tabled in the Parliament with explanatory memoranda or explanatory statements provide greater transparency regarding the rationale behind the Government's regulatory decisions, resulting in the Parliament being better informed. In addition, parliamentarians have drawn on published RISs in debate, and individuals and organisations appearing before parliamentary committees have drawn on the content of RISs.
 - In 2005-06, the need for, and content of, RISs were raised in parliamentary discussions on 22 occasions.³
 - State/Territory government officials contacted the ORR on three occasions during 2005-06 to identify whether proposals complied with COAG RIS requirements, before proceeding with legislation in their State/Territory.

Indicators of the usefulness of the ORR's regulation review activities in promoting understanding of regulatory best practice are also found in the use of its reports.

- Approximately 1500 printed copies of *Regulation and its Review 2004-05* were distributed (including copies distributed to each Member of the Parliament). There was extensive coverage of the release of the report in national and regional newspapers, commercial and public television and radio stations.

The ORR also provides information on regulatory best practice via the Productivity Commission's website. In 2005-06, there were nearly 18 000 requests for the ORR Home Page and over 3000 requests for *Regulation and its Review 2004-05*. There were 4378 requests for *A Guide to Regulation* and 2326 requests for the *COAG Principles and Guidelines*. The RIS training package (1282 requests) and example RISs (2250 requests) were also accessed frequently.

² Although it is difficult to compare compliance for significant proposals over time (there were eight significant proposals in 2005-06 compared to only three significant proposals in 2004-05 and 18 in 2003-04), consistently lower compliance rates for significant proposals suggests an ongoing lack of commitment to the Government's RIS process.

³ Issues raised included: rules of origin in free trade agreements; the operational separation of Telstra; the quarterly superannuation guarantee regime; heavy vehicle pricing determinations; possible extensions to country of origin labelling of food; terrorist financing; the regulation of national tenancy databases; changes to vessel safety regulation; illegal overseas workers; the Petroleum Retail Legislation Repeal Bill; the Therapeutic Goods Amendment Bill 2005; Financial Services Regulations; and the Treasury Department's RIS compliance in 2004-05.