
2 Compliance with RIS requirements

In 2003-04, compliance by departments and agencies with the Australian Government's Regulation Impact Statement (RIS) requirements was higher at the decision-making stage than in previous years and equalled the relatively high compliance rate of last year at the tabling stage. Compliance with COAG's requirements was comparable to that of the previous reporting period.

2.1 Compliance with Australian Government requirements

When assessing and reporting on compliance with the Australian Government's RIS requirements, the ORR considers whether:

- a RIS was prepared to inform the decision maker at the policy approval stage and the analysis contained in the RIS was adequate¹; and
- a RIS was tabled in the Parliament or otherwise made public² and the analysis was adequate.

A department or agency is considered to be fully compliant with the Government's requirements only if it meets these conditions. The ORR has adopted a strategy whereby a relatively low RIS adequacy standard was applied in 1997-98 (the first year in which their preparation was mandatory). Since 1998-99, this standard has been progressively increased as officials have become more familiar and experienced with the analytical approach required in RISs.

RIS compliance is reported in *Regulation and its Review* when the legislative instrument implementing a regulatory proposal is tabled in Parliament (in the case of Bills and treaties), or is made (in the case of disallowable and non-disallowable instruments and quasi-regulations). Hence, the data reported here do not include regulatory proposals decided by the Government in 2003-04, but not introduced into the Parliament or made into law within that period.

¹ Box 2.1 lists the criteria used to determine whether the analysis contained in a RIS is adequate.

² In accordance with the Government's RIS guidelines, RISs for proposals introduced via a Bill, disallowable instrument or treaty must be tabled in Parliament with the enabling instrument. While there is no formal requirement for RISs prepared for proposals introduced by other forms of instrument to be made public, the ORR encourages departments and agencies to do so.

Box 2.1 Adequacy criteria for RISs

The Government has endorsed the following criteria which are employed by the ORR to assess whether each RIS meets the Government's regulatory best practice requirements.

1. Is it clearly stated in the RIS what is the fundamental **problem** being addressed? Is a case made for why government action is needed?
2. Is there a clear articulation of the **objectives**, outcomes, goals or targets sought by government action?
3. Is a range of viable **options** assessed including, as appropriate, non-regulatory options?
4. Are the groups in the community likely to be affected identified, and the **impacts** on them specified? There must be explicit assessment of the impact on small businesses, where appropriate. Both costs and benefits for each viable option must be set out, making use of quantitative information where possible.
5. What was the form of **consultation**? Have the views of those consulted been articulated, including substantial disagreements? If no consultation was undertaken, why not?
6. Is there a clear statement as to which is the **preferred option** and why?
7. Is information provided on how the preferred option would be **implemented**, and on the **review** arrangements after it has been in place for some time?

Relevant to all seven criteria (which correspond to the seven sections of a RIS) is an overriding requirement that the degree of detail and depth of analysis must be commensurate with the magnitude of the problem and with the size of the potential impact of the proposals.

For proposals which maintain or establish restrictions on competition (such as barriers to entry for new businesses or restrictions on the quality of goods and services available), it must be established that:

- the benefits to the community outweigh the costs; and
- the Government's objectives can be achieved only by restricting competition;

both of which are requirements under the *Competition Principles Agreement* (NCC 1997).

The ORR also takes into account recent Government requirements for RISs to include an assessment of ecologically sustainable development (ESD), small business and international trade impacts and, where appropriate, cost recovery issues.

Source: A Guide to Regulation, p. D 19.

Aggregate compliance in 2003-04

In 2003-04, 114 RISs were required at the *decision-making* stage. Of these, 109 were prepared and 105 were assessed as adequate by the ORR — a compliance rate of 92 per cent. This compares with compliance rates of 81 per cent in 2002-03, 88 per cent in 2001-02, 83 per cent in 2000-01 and 82 per cent in 1999-2000. As in previous years, failure to prepare a RIS accounted for more non-compliance than those prepared but assessed by the ORR as inadequate.

At the *tabling* stage, 86 RISs were required, 84 were prepared and 82 were assessed as adequate by the ORR — a compliance rate of 95 per cent. The compliance rate at the tabling stage was the same as in 2002-03, but higher than for earlier years. Fewer regulations requiring RISs were tabled in 2003-04 than in the previous year, continuing a downwards trend over the last six years (table 2.1).

Differences in the total number of RISs required at the decision-making and tabling stages may occur for a variety of reasons. First, there is a formal requirement that RISs be tabled with Bills, disallowable instruments and treaties. However, RISs for other types of regulation — non-disallowable instruments and quasi-regulation — may be made public, but are not subject to formal assessment by the ORR. Second, more than one RIS may be required at the decision-making stage if there are discrete and significant decision-making points in the policy development process, such as for treaties. Third, there may be a single RIS at the decision-making stage but several RISs at the tabling stage if the decision is implemented by more than one piece of regulation. Finally, differences can occur if a RIS is not required for the decision-making stage, but a RIS is required for tabling.³

Table 2.1 **RIS compliance, 1998-99 to 2003-04**

	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Decision-making stage ^a	203/260 (78%)	169/207 (82%)	132/160 (83%)	130/147 (88%)	113/139 (81%)	105/114 (92%)
Tabling stage ^{a, b}	202/228 (89%)	163/179 (91%)	118/133 (89%)	116/123 (94%)	113/119 (95%)	82/86 (95%)

^a The first figure records adequate RISs; the second figure records RISs required. ^b Compliance for regulatory proposals introduced via Bills, disallowable instruments and treaties (which are subject to formal assessment by the ORR).

Source: ORR estimates.

³ A RIS may not be required at the decision-making stage because the decision occurred before the requirements became mandatory.

Significance

The ORR classifies the significance of each regulatory proposal according to:

- the nature and magnitude of the problem and proposal; and
- the scope (broad or narrow) and scale (level or degree) of impacts on affected parties and the community.

While facilitating interpretation of compliance data, categorising regulatory proposals according to the significance of their likely impact also provides a better basis on which to apply the ‘proportionality rule’ — that the extent of RIS analysis needs to be commensurate with the magnitude of the problem and with the size of the potential impacts of the proposal.

The approach used by the ORR to classify regulatory proposals according to their significance is outlined in box 2.2.

Box 2.2 **Classifying the significance of proposals**

A simple approach to classifying the significance of a regulatory proposal is to consider, first, the nature and magnitude of the proposal (and the problem) and second, its impacts on affected parties. The following examples illustrate this approach.

In terms of the nature and magnitude of proposals, a ban on, say, popular or widespread activities or some other significantly anti-competitive proposal would generally be regarded as ‘large’. Placing conditions on activities, such as requiring licences or specific standards typically could be regarded as intervention of a ‘medium’ nature. Examples of less significant ‘small’ interventions might be periodic reporting requirements for businesses.

Impacts can be viewed from an economy-wide perspective, having regard to both their scope and intensity. The ORR classification involves just two categories — broad and narrow.

An increase in the rate of excise on petrol, for example, would be considered quite broad in its impact. On the other hand, a late night curfew on flights into, say, Coolangatta airport would be relatively narrow in terms of its impacts. A third example might be deregulation of the dairy industry. On the supply side, there might be a relatively narrow industry based impact but, on the demand side, there might be a widely dispersed impact on consumers, which could result in the proposal being classified as ‘broad’.

Source: PC 2001.

Of the 114 proposals that triggered the Australian Government’s RIS requirements at the decision-making stage in 2003-04, the ORR identified 18 proposals as having a more significant impact on business and/or the community (table 2.2).

Compliance at the decision-making stage for these more significant proposals was 94 per cent (46 per cent in 2002-03 and 70 per cent in 2001-02). For less significant proposals, compliance was 92 per cent (85 per cent in 2002-03 and 90 per cent in 2001-02). This year's compliance rates, particularly for the more significant proposals, represent a large improvement over previous years.

Timeliness

A Guide to Regulation (p. A5) states that the analytical framework underpinning a RIS should be used throughout the policy development process. Departments and agencies are encouraged to integrate the RIS process into their policy development process and consult with the ORR at an early stage. Where departments and agencies consult with the ORR and commence preparation of a RIS early, in most cases the RIS meets an adequate standard.⁴

To provide some indication of compliance by departments and agencies in this regard, the ORR has collated information on the time taken from receipt of the first draft of a RIS by the ORR until the ORR advises whether the RIS requirements have been met at the decision-making stage.⁵

For more significant regulatory proposals in 2003-04, the average elapsed time between draft RISs being first provided to the ORR and the provision of ORR advice about the adequacy of the RIS at the decision-making stage was 3.1 weeks. This was a decline from the average elapsed time of 4.9 weeks in 2002-03, but was roughly consistent with the average elapsed time in 2001-02 of 2.9 weeks. For less significant regulatory proposals, the average elapsed time was 3.9 weeks in 2003-04 (down from 6.1 weeks in 2002-03 and 5.3 weeks in 2001-02).

The elapsed times for significant proposals tend to be shorter than for less significant proposals. It should be noted, however, that strong inferences cannot be drawn from the measure used. For example, departments and agencies may have developed a RIS over a long period of time before contacting the ORR, or an initial draft RIS may be of a sufficiently high standard that it can be assessed as adequate by the ORR within a short period of time from its receipt.

⁴ Where departments and agencies consult with the ORR and prepare RISs late in the policy development process, the RIS is less likely to make an effective contribution to policy development.

⁵ It is a requirement that all RISs should be developed in consultation with the ORR (*A Guide to Regulation*, p. A10).

In addition, where individual departments or agencies have prepared few RISs, the sample size of elapsed times is too small to provide information that can clearly act as a measure of differences in compliance levels between departments and agencies.

With these points in mind, the indicator of average elapsed times is not provided for individual departments and agencies. The ORR is examining ways to provide a measure that reveals with less ambiguity the extent to which departments and agencies have integrated the RIS process into their policy development processes.

Table 2.2 Compliance by significance and timeliness, 2003-04

<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^a</i>
More significant	18	17	17	94	3.1
Less significant	96	92	88	92	3.9
Total	114	109	105	92	3.8

^a 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. These averages exclude a small number of exceptional cases that would otherwise misrepresent the outcomes.

Source: ORR estimates.

Multiple decision stages

In accordance with the Government's RIS requirements, RISs are required at the decision-making stage for proposals that impact on business. In some (generally significant) cases, there may be more than one decision-making stage. For example, the Government may consider a range of regulatory options to deal with an identified problem. Having made a decision on whether and how it wishes to intervene, the Government may then separately consider implementation options. In 2003-04, two proposals followed such a multi-stage decision-making process. In these cases, of the four RISs required at the various decision-making stages, all were prepared and three were assessed as adequate. At the tabling stage, the two RISs required were prepared and assessed as adequate.

Proposals that restrict competition

Restrictions on competition can impose substantial costs by raising prices, reducing choice and impeding innovation. Reflecting these costs — and to meet the requirements of the National Competition Policy *Competition Principles Agreement* — where a proposal affects business by restricting competition, the RIS should demonstrate that the benefits of restricting competition outweigh the costs, and that the benefits can only be achieved by restricting competition (*A Guide to Regulation*, p. B6).

In 2003-04, none of the more significant proposals were judged to restrict competition, whereas, among those proposals of less significance, six restricted competition. RISs assessed as adequate were prepared for all of these proposals.

Table 2.3 **Compliance at the decision-making stage for proposals that restrict competition, 1999-2000 to 2003-04**

<i>Significance rating</i>	<i>1999-00</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>
More significant	5/6 (83%)	2/7 (29%)	1/3 (33%)	0/2 (0%)	-
Less significant	3/9 (33%)	- -	7/9 (78%)	18/20 (90%)	6/6 (100%)
Total	8/15 (53%)	2/7 (29%)	8/12 (67%)	18/22 (82%)	6/6 (100%)

Source: ORR estimates.

2.2 Compliance by type of regulation

The following table shows RIS compliance by type of regulation (table 2.4). The extent to which the RIS requirements have been met, at both the decision-making and tabling stages, is shown for the various types of regulation.

Table 2.4 **RIS compliance, by type of regulation, 2003-04**

<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) ^b	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 ^c	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 One decision-making stage resulted in the tabling of two instruments (and associated RISs) — the decision-making RIS is recorded against 'Primary legislation'. ^c 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.

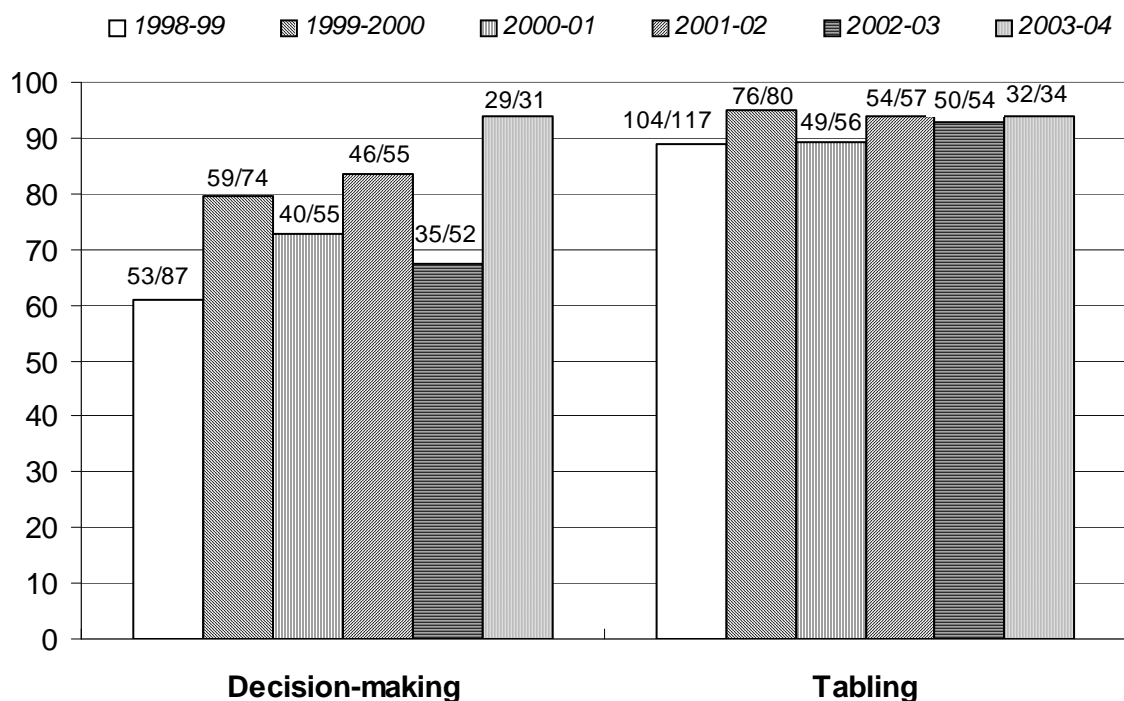
Primary legislation

There were 31 RISs required at the decision-making stage for proposals introduced by primary legislation via Bills (27 per cent of all RISs required). Of these, 29 RISs were prepared and were assessed as adequate (a compliance rate of 94 per cent). This represents a considerable rise in compliance compared with the 67 per cent compliance rate in 2002-03. Adequate RISs were prepared at the decision-making stage for all of the 10 RISs required for significant proposals introduced via Bills in 2003-04 (see appendix A).

At the tabling stage for Bills, 34 RISs were required and 33 were prepared. The 32 RISs assessed as adequate represented 94 per cent of those required (figure 2.1).

Figure 2.1 RIS compliance, Bills, 1998-99 to 2003-04

Per cent



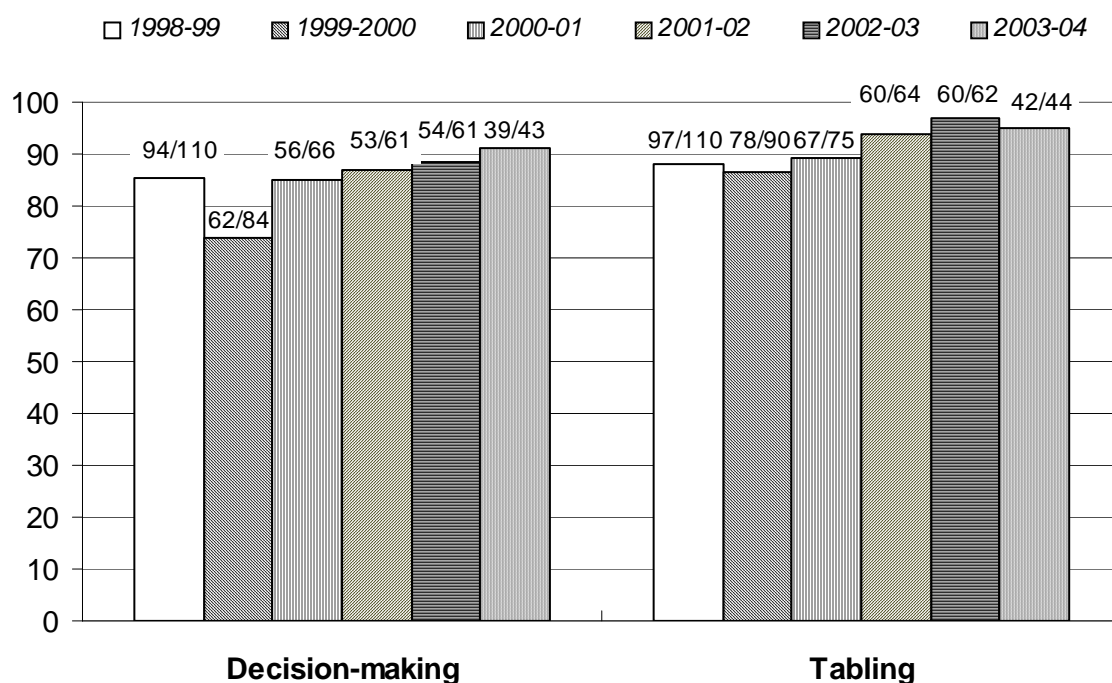
Source: ORR estimates.

Disallowable instruments

Disallowable instruments are subordinate legislative instruments subject to review by the Senate Standing Committee on Regulations and Ordinances and disallowance by the Parliament.

In 2003-04, RISs were required for only about 3 per cent of proposals introduced by disallowable instruments. Of the 43 RISs required at the decision-making stage (38 per cent of all RISs required), 41 were prepared, of which 39 were assessed as adequate (resulting in a compliance rate of 91 per cent). This is comparable with 2002-03 (89 per cent). At the tabling stage, 44 RISs were required, 43 were prepared, and 42 were assessed as adequate (a compliance rate of 95 per cent).

Figure 2.2 RIS compliance, disallowable instruments, 1998-99 to 2003-04
Per cent



Source: ORR estimates.

Non-disallowable instruments and quasi-regulation

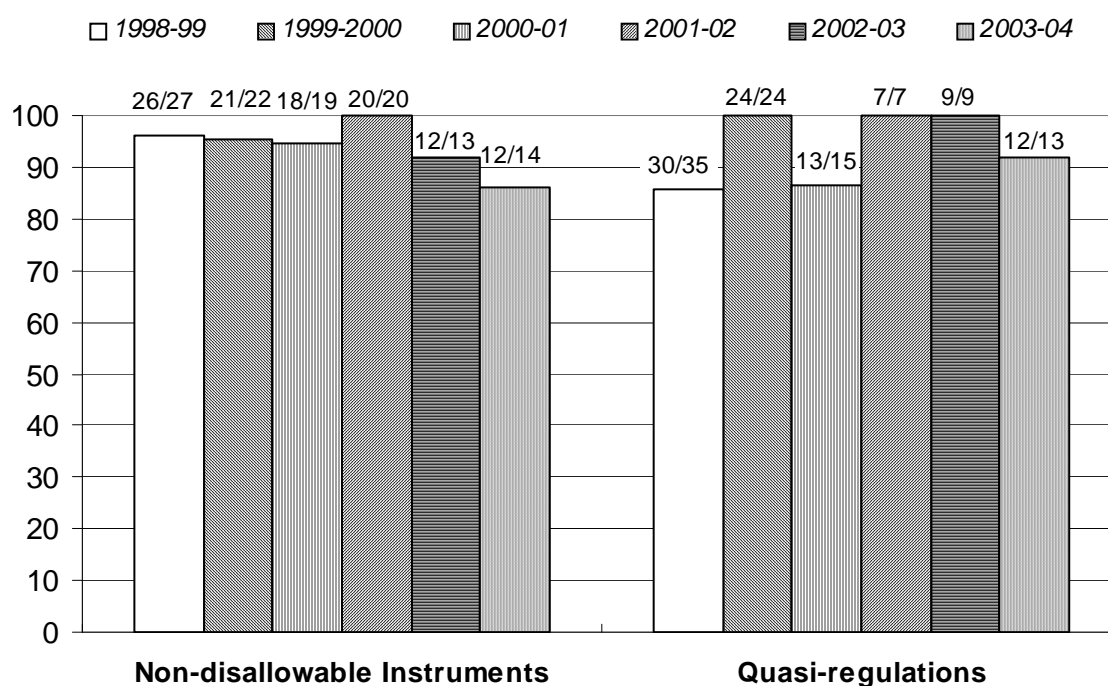
Non-disallowable instruments include all forms of delegated legislation that are not subject to Parliamentary disallowance. In most cases, there is no requirement that these instruments be tabled. Quasi-regulation refers to those rules, instruments and standards where government influences businesses to comply, but which do not necessarily form part of explicit government regulation.

In 2003-04, non-disallowable instruments accounted for 12 per cent, and quasi-regulations for 11 per cent, of RISs required. Departments and agencies reported 14 proposals made via non-disallowable instruments that required a RIS at the decision-making stage. RISs were prepared in all 14 cases, of which 12 were assessed as adequate by the ORR, resulting in a compliance rate of 86 per cent (figure 2.3).

In respect of quasi-regulation, departments and agencies reported 13 proposals that required a RIS at the decision-making stage. In 12 cases, RISs were prepared and cleared as adequate by the ORR, resulting in a compliance rate of 92 per cent (figure 2.3). This is down from 100 per cent compliance in 2001-02 and 2002-03.

Figure 2.3 RIS compliance, non-disallowable instruments and quasi-regulations, 1998-99 to 2003-04

Per cent



Source: ORR estimates.

Treaties

Under the Australian Government’s RIS requirements, a RIS should be prepared at three stages of the treaty-making process — before the formal policy decision to pursue treaty negotiations, prior to Australia signing a treaty and, finally, when the treaty is tabled in Parliament for ratification. (Other countries also require RISs or a RIS-type analysis of the domestic impacts of treaties.)

There was full compliance with the Australian Government’s RIS requirements for treaties in 2003-04. Eight treaties that required RISs were tabled in Parliament. Of these, five required a RIS at each of the three stages. (In three cases, entry into negotiations occurred before the RIS requirements became mandatory.) Five RISs were prepared before the decision to pursue negotiations, eight were prepared before signature and eight were tabled. Each RIS was assessed as adequate by the ORR.

2.3 National regulation-making under COAG's requirements

Where there is agreement between jurisdictions, national regulatory decisions are made by Ministerial Councils and a small number of national standard-setting bodies. The Council of Australian Governments (COAG) *Principles and Guidelines* apply to 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 2004b, p.2)

For the application of the *Principles and Guidelines*, COAG has defined regulation to include:

the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as those voluntary codes and advisory instruments ... for which there is a reasonable expectation of widespread compliance. (COAG 2004b, p.2)

Accordingly, the scope of decisions covered by COAG's requirements is wide and includes agreements on standards and measures of a quasi-regulatory nature — such as codes of conduct — as well as national regulatory approaches. Decisions are implemented through coordinated regulation making by all or several jurisdictions or by the passage of Australian Government regulation.

At the direction of COAG, the ORR has a role in monitoring and reporting on compliance by Ministerial Councils and national standard-setting bodies. A RIS, assessed by the ORR, 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 ORR is required by COAG to assess:

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

The ORR is required to advise the relevant Ministerial Council or national standard-setting body of its assessment.

In addition, COAG's *Agreement to Implement the National Competition Policy and Related Reforms* (COAG 1998) requires the ORR to advise the National Competition Council (NCC) on compliance with the COAG *Principles and Guidelines*. The NCC takes this advice into account when considering its recommendations to the Australian Government Treasurer regarding conditions and

amounts of competition payments from the Australian Government to the States and Territories (see appendix C). The ORR also reports on compliance to COAG's Committee on Regulatory Reform.

As with Australian Government RISs, it is not the ORR's role to advise on policy aspects of options under consideration. The assessment of the merits of a policy proposal remains the responsibility of the relevant Ministerial Council or national standard-setting body.

Between 1 April 2003 and 31 March 2004, 34 regulatory decisions made by Ministerial Councils and national standard-setting bodies required the preparation of a COAG RIS (table 2.5). Of these, 30 adequate RISs were prepared at the decision-making stage (a compliance rate of 88 per cent). Compliance at the consultation stage was lower — adequate RISs were prepared for 82 per cent of proposals.

The ORR identified seven decisions as being of particular significance in their impact on business or the community. For four of these, adequate RISs were prepared — a compliance rate for significant proposals of 57 per cent compared to 88 per cent for all proposals. As table 2.5 indicates, a lower compliance rate for significant matters is evident in most of the reporting periods. More detailed compliance information is provided in appendix C.

Table 2.5 COAG RIS compliance, regulatory decisions made by Ministerial Councils and national standard-setting bodies, 2000-01 to 2003-04^a

<i>Decision-making stage</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>
All proposals	15/21 (71%)	23/24 (96%)	24/27 (89%)	30/34 (88%)
Significant proposals	5/9 (56%)	6/6 (100%)	4/6 (67%)	4/7 (57%)

^a Data for 2000-01 relate to the period 1 July 2000 to 31 May 2001. Data for 2001-02 to 2003-04 relate to the period 1 April to 31 March. There is, therefore, some overlap between the reporting periods for the first two reports. However, for each decision included in both reports, Ministerial Councils were compliant with COAG's requirements.

Source: ORR estimates.

COAG re-endorsed and strengthened the COAG RIS guidelines in June 2004 (COAG 2004a, appendix C).