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## C ORR activities and performance

The objective of the ORR's regulation review activities is to promote regulation-making processes that, from an economy-wide perspective, improve the effectiveness and efficiency of legislation and regulations. The ORR provides advice to approximately 100 regulation-making bodies or regulators, including 60 Commonwealth departments and agencies and about 40 Ministerial Councils and national standard-setting bodies. The ORR aims to provide objective and insightful advice that is timely and useful to government.

### C.1 Activities in 2001-02

The range of activities that the ORR is required to undertake is set down in its Charter (box C.1).

In advising on quality control mechanisms for reviewing and making regulation in 2001-02 (including examining and advising on RISs), the ORR:

- analysed some 709 RIS queries and regulatory proposals from Commonwealth departments and agencies. Of the regulatory proposals reported to have been made or tabled in 2001-02, the ORR advised that 145 proposals required a RIS and provided comments on 130 RISs subsequently prepared;
- continued to work with, and provide assistance to, the Office of Small Business (OSB) in relation to the development of regulatory plans and regulatory performance indicators;
- analysed 29 regulatory proposals considered by Ministerial Councils and national standard-setting bodies and provided advice on 23 RISs which were considered by these decision-making bodies (see appendix A); and
- reported to the National Competition Council (NCC) on the setting of national standards and regulatory action by Ministerial Councils and national standard-setting bodies, for the year to March 2002.

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### Box C.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 RISs prepared by Commonwealth departments and agencies;
- provide training and guidance to officials;
- report annually on compliance with the Commonwealth 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 Treasury, advises the Parliamentary Secretary to the Treasury on legislation review matters.

During the past year, the ORR provided formal RIS training on regulatory best practice to 200 Commonwealth officials. It also provided extensive advice and assistance with preparation of RISs, as needed, on an issue-by-issue basis.

*Regulation and its Review* fulfils the Productivity Commission's and ORR's obligation to report annually on compliance with the Government's regulation review requirements. The report for 2000-01, continued the initiative — begun in 1998-99 — of reporting in greater detail on compliance by portfolio. It also canvassed regulatory issues more broadly, emphasising the importance of RIS requirements to good policy process and high quality regulatory outcomes.

In monitoring and contributing to regulatory reform developments more broadly throughout Australia and internationally during 2001-02, the ORR also:

- organised the annual meeting of regulation review units, representing all States, the ACT and New Zealand, in July 2001, providing a forum for exchange of information among officials from different jurisdictions;
- advised participants at an international conference in July 2001, hosted by the NSW Parliament, on the essential elements of a RIS and regulatory best practice;
- represented Australia at a meeting of the Regulatory Management and Reform Working Party of the OECD in Paris in July 2001, which examined lessons from different countries' experiences with regulatory management and reform;

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- presented papers at the Asia Pacific Economic Cooperation (APEC) and Organisation for Economic Cooperation and Development (OECD) ‘Cooperative Initiative on Regulatory Reform’ workshops in Beijing (China) in September 2001 and Merida (Mexico) in April 2002;
  - presented a paper in March 2002 on the Government’s RIS requirements for international treaties at the Commonwealth Department of Foreign Affairs and Trade conference — Treaties in a Global Environment; and
  - assisted New Zealand Government officials by providing briefing and training in Wellington in July 2001 and April 2002 on RIS processes and lessons from Australia’s experiences with RISs. The ORR provided training about regulatory best practice processes and RISs to 140 New Zealand Government officials during 2001-02. In addition, the ORR also hosted a delegation of officials from New Zealand’s Ministry of Economic Development, who were in Australia to study the Commonwealth’s regulatory review and reform systems.

A restructuring of the ORR, to facilitate a renewed focus on research, was finalised in 2001-02. It is planned to undertake international benchmarking of regulatory review requirements and procedures across selected OECD countries. Future research will also examine systems for measuring outcomes stemming from the RIS and other regulatory quality control processes.

## **C.2 Quality indicators**

As the scope of the ORR’s work covers the whole of government, its staff must be able to understand a wide range of complex regulatory issues. However, the confidentiality of RISs considered by Cabinet limits the extent to which specific matters can be reported publicly.

Evidence of the quality of ORR work is provided by feedback from other government bodies, both those that prepare RISs and those that use them. The most recent client survey results (for 1999-2000) rated the ORR as providing an ‘above average’ service for all aspects of its RIS-related work, including: the ability to understand the regulatory issue being dealt with; clarity of ORR advice; overall competence of ORR staff relative to other departments that respondents dealt with; and the working relationship between departments and agencies, and the ORR. Another client survey of the performance of the ORR is planned for 2002-03.

The ORR surveyed 100 officials who received ORR training in regulatory best practice in 2001-02. Responses indicate that such training was generally well received, with 85 per cent rating the training as either ‘excellent’ or ‘good’ (table C.1). No respondents considered ORR training to be ‘unsatisfactory’.

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**Table C.1 RIS training evaluation in 2001-02**

<i>Evaluation</i>	<i>Number of responses<sup>a</sup></i>	<i>Per cent</i>
Excellent	18	21
Good	56	64
Satisfactory	13	15
Unsatisfactory	0	0
Total	87	100

<sup>a</sup> Includes only those forms returned.

### **C.3 Timeliness**

Timeliness also provides an indication of the ORR's performance. As a general rule, officials preparing a RIS are asked to allow the ORR two weeks to provide advice on the adequacy of RISs. In practice, the ORR provided formal feedback to departments and agencies within five working days for about 80 per cent of all RISs received in 2001-02. Where further redrafting is necessary, additional time may be needed to ensure that an adequate standard is achieved.

However, during 2001-02, there was a large number of instances where departments and agencies requested advice on their RISs within a few days, or even hours. While the ORR was able to meet these requests, such short timeframes make it difficult to give proper consideration to all the issues raised by the RIS.

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 2001-02.

The ORR has also delivered its other outputs in a timely manner. For example, it prepared a report to the National Competition Council 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 12 months to the end of March 2002, was completed on schedule. This assisted the Council in completing its annual third tranche assessment of the compliance of jurisdictions with the requirements of national competition policy.

The timely provision by the ORR of feedback and advice illustrates its commitment to providing an effective and timely service to other areas of government.

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## Indicators of usefulness to government

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 is demonstrated by a range of indicators.

- Compliance with the Government's RIS requirements is improving.
  - Of the 145 regulatory proposals made or tabled in 2001-02 that required preparation of a RIS, 88 per cent complied with the RIS requirements at the decision-making stage. This compares to the 82 per cent RIS compliance rate in 2000-01.
  - Of the 123 regulatory proposals that required a RIS and were tabled in Parliament in 2001-02, 94 per cent complied — higher than the 89 per cent compliance rate achieved in the previous year.
  - For significant regulatory issues, the RIS compliance rate in 2001-02 was 70 per cent, higher than the 60 per cent compliance rate for 2000-01.
  - Although the number of RISs made or tabled in 2001-02 was less than that in 2000-01 — due to the proroguing of Parliament for the Federal election — the total number of queries from departments and agencies regarding regulatory best practice RIS processes remained strong. This suggests that awareness of the RIS requirements among officials remains reasonably high.
- Informal feedback provided by Commonwealth officials generally indicates that departments and agencies find the ORR contribution to be constructive, timely and positive.
  - Where policy development processes in departments and agencies follow the key elements of a RIS — such as the identification of problems and objectives, examination of a range of feasible options and a cost-benefit assessment of each of these options — the preparation of a RIS should generate little additional work. RISs can also assist departments and agencies engage in targeted consultation about regulatory issues. In such cases, RISs document and enhance the transparency of the existing policy-development process.
  - By contrast, where departments and agencies find that preparing a RIS involves considerable additional work, this may be a signal that their internal policy-making processes are not meeting the Government's regulatory best practice requirements. In such cases, regulatory problems and objectives may be poorly defined, a range of feasible options may not be considered, cost-benefit assessments of options may be incomplete and regulatory proposals may be developed without adequate consultation with the community and relevant stakeholders.

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- The ORR contributed to a number of initiatives by Commonwealth departments and agencies to better integrate the RIS process into their policy development systems during 2001-02.
    - The Department of Industry, Tourism and Resources, for example, has sought to increase awareness within the department of the Government's RIS requirements through a concerted effort by its senior management and Cabinet Liaison Office to draw these requirements to the attention of officers, and to encourage officers to contact the ORR early in the policy development process. This process has also been assisted by the development of an internal departmental paper, *A Framework for Considering Business Regulation*, to be used as an in-house reference for all officers in the development and assessment of regulation with an impact on business (see chapter 4).
    - Another example of the integration of the RIS process with an existing policy development process concerns the Australian Broadcasting Authority. When preparing Licence Area Plans for radio and television broadcasts for various regions, the authority releases detailed discussion papers which contain an analysis of the relevant issues and a discussion of options and the views of stakeholders. The ORR has agreed that, with some modification, these documents will satisfy the RIS requirements. In future, it will assess the analysis in these documents instead of requiring the preparation of a separate RIS for each proposal.
    - The ORR is also working with Food Standards Australia and New Zealand (FSANZ) to assist in better integrating RIS processes within its policy development procedures. In 2001-02, a protocol was drafted to clarify working arrangements between FSANZ and the ORR on best practice processes in respect to the Council of Australian Governments (COAG) RIS requirements.
  - The ORR attempted to achieve a better standard of RISs and increase their usefulness to government by gradually raising the adequacy hurdle over time, as agencies have become more familiar with the processes. This can be gauged by the content, detail and quantification in RISs.
    - To test the extent to which minimum standards for RISs have been raised over the last three years, in 2001-02 the ORR re-assessed nine significant RISs from 1998-99. All nine were cleared as adequate by the ORR at the time. However, it was found that four of these RISs would not meet the required minimum standards for such RISs in 2001-02, because they provided insufficient information about the impacts on the community of options considered in the RISs (chapter 4).

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- In terms of quantification, analysis of a sample of Commonwealth RISs considered in the first half of 2001-02 found that 29 per cent employed quantitative measures. Moreover, the propensity to use quantification in RISs was related directly to the significance and impact of proposals. For example, 80 per cent of RISs assessing proposals with a significant impact across large segments of the community included quantitative measures.
  - Reporting on how the RIS process is leading to improved legislation and regulation is constrained by the confidentiality of Cabinet processes.
    - The ORR comments on all aspects of the RIS but does not advocate particular policy solutions or outcomes. Rather, the ORR focuses on the content of the RIS to ensure that the Government's regulatory best practice requirements are met. In many cases, this leads to a more comprehensive assessment of the available options. In some instances, the RIS process has resulted in proposed recommendations being revised before the decision-making stage. This is consistent with the Government's best practice requirements for regulation, which encourage the examination and adoption of alternatives to prescriptive regulation, including self-regulation.
    - Compliance information by portfolio show that several departments and agencies which had been reported in previous years as performing below regulatory best practice have subsequently improved their internal processes during 2001-02, resulting in better regulatory practices and outcomes (see chapter 3).
    - RISs tabled in the Parliament with Memoranda and Explanatory Statements have provided greater transparency regarding the rationale behind regulatory decisions, resulting in the Parliament being better informed. In addition, parliamentarians have drawn on published RISs in debate. For example, in 2001-02, there were 14 separate discussions about particular RISs in debates about regulatory policy issues (three times in the Senate, twice in the House of Representatives and nine times in the work of parliamentary committees).
  - Indicators of the usefulness of the ORR's regulation review activities in promoting public understanding of regulatory best practice issues are found in the use of its reports.
    - Printed copies of *Regulation and its Review 2000-01* were widely distributed and also accessed around 1900 times on the Commission's website in 2001-02. National press coverage occurred on two occasions in 2001-02. Extensive comments and feedback on matters addressed in the report were received from a range of stakeholders, including business groups, academics and international organisations. Furthermore, interest groups used

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information contained in this report, and information contained in individual RISs, in submissions to the Government and in their publications.

- A further 400 copies of the second edition of *A Guide to Regulation* were distributed for use by policy and regulatory officers in Commonwealth departments, agencies, statutory authorities and boards, and other organisations and individuals interested in regulatory reform. In addition, the guide was accessed around 2900 times on the ORR's website during 2001-02. Overall, the ORR website recorded almost 9000 hits in 2001-02, double the number recorded in 2000-01. During the year, a number of example RISs were made available on the website.
- In its submission to the current review of the *Trade Practices Act 1974*, the Australian Bankers' Association used the staff paper, 'Principles of Good Regulation', which was presented at the Commission's conference on achieving better regulation of services (Coghlan 2000).
- The feature on regulation making in the March 2002 edition of *The Primary Report*, a newsletter circulated by the NSW Farmers' Association, drew on *A Guide to Regulation*, and the analysis of RIS compliance and developments in State jurisdictions reported in *Regulation and its Review 2000-01*.
- Further indicators of usefulness are invitations for the Commission's Chairman to address the international conference hosted by the NSW Parliament on regulatory best practice in July 2001 (the paper presented is available on the Commission's website) and for the presentations, domestic and international, made by ORR staff during the year. The ORR's interaction with a range of international organisations, other national governments and other jurisdictions within Australia can generate a range of benefits. For example, the growing harmonisation of regulation-making processes and enhanced communication between officials providing advice about regulations can result in greater consistency in the design and application of regulations used in each jurisdiction. In turn, this can reduce unnecessary regulatory barriers to trade and commerce both internationally and within Australia.
- Independent assessment of the usefulness of the regulation review activities undertaken by the ORR is found in:
  - the decision by the New Zealand Government to establish RIS systems based on those implemented by the Commonwealth Government; and
  - the review of regulation making systems undertaken by the Scrutiny of Acts and Regulations Committee (2002) of the Victorian Parliament, which recommended that features of ORR be used to strengthen and enhance the Victorian Office of Regulation Reform (box C.).

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**Box C.2 An independent perspective on the ORR**

In March 2000 the Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee, Victoria Parliament began an evaluation of the existing Victorian regulatory system and an analysis of regulatory systems in other Australian jurisdictions and in six jurisdictions in the United States. The Committee reported thus:

At the Commonwealth level, the Committee found that the Office of Regulation Review (the Commonwealth ORR) plays a key role of reviewing the RISs prepared by department and agency staff. To avoid any confusion as to whether or not a RIS needs to be prepared, the Commonwealth ORR has been given responsibility for making this decision, thus ensuring a more consistent approach across the Commonwealth Government. The Commonwealth ORR also has responsibility for reviewing RISs before they proceed to Cabinet. The Commonwealth ORR has fostered strong working relationships with department and agency staff, working alongside them to achieve the most appropriate outcome (whether regulatory or non-regulatory). The Committee notes that the Commonwealth ORR also provides regular and ongoing training to department and agency staff, thus ensuring that new and existing staff familiarise themselves and remain up-to-date with the best methods of preparing RISs. The Committee was particularly impressed with the work done by the Commonwealth ORR and would like to see the Victorian ORR similarly strengthen and enhance its role.