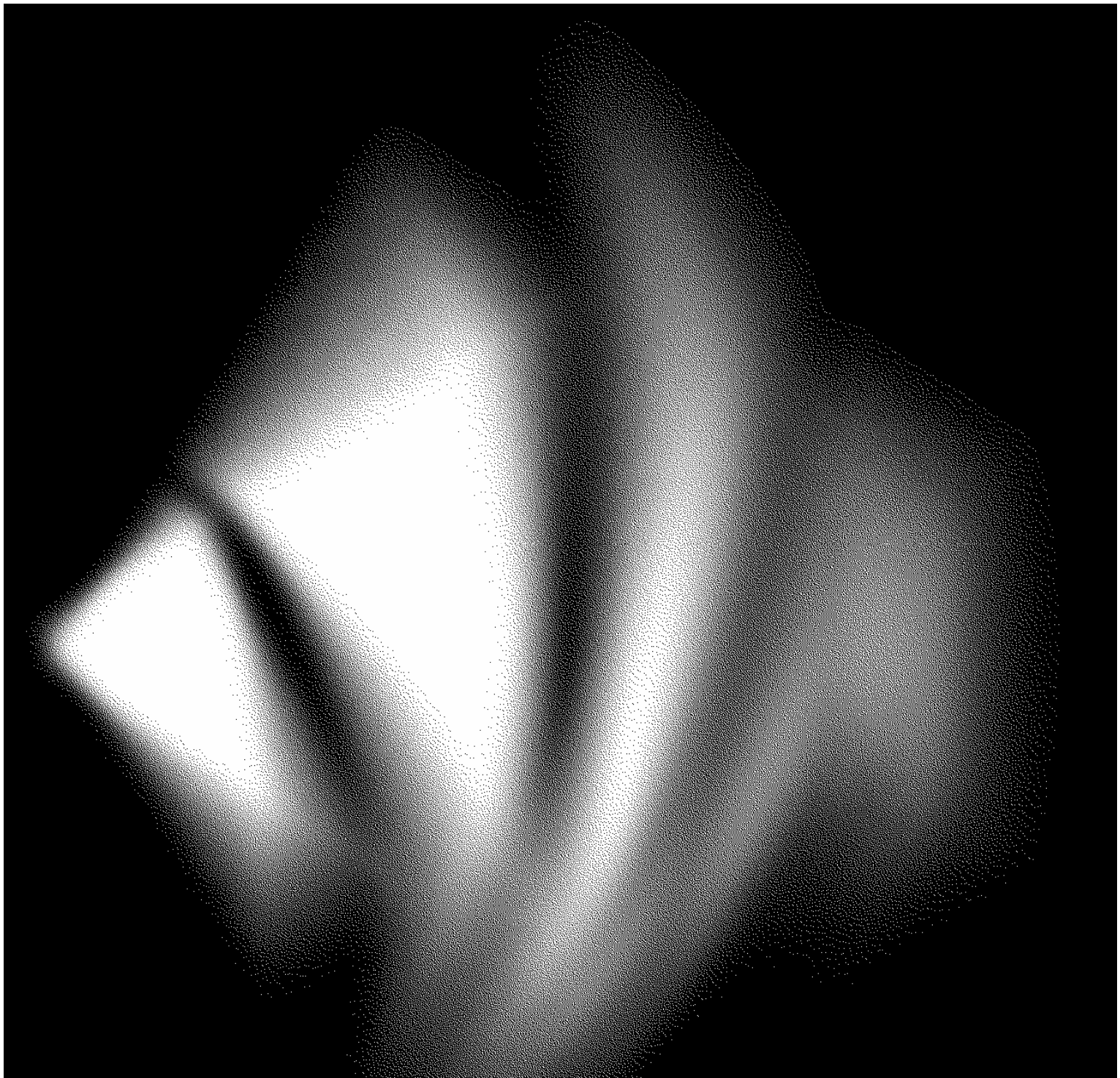




Australian Government
Office of Best Practice Regulation

Best Practice Regulation Report 2006-07

Productivity
Commission
Annual Report Series



COMMONWEALTH OF AUSTRALIA 2007

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The Productivity Commission

The Productivity Commission, an independent agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

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Foreword

In November 2006, as part of its response to the Regulation Taskforce's report *Rethinking Regulation*, the Commonwealth Government strengthened its regulation-making requirements for departments and agencies, including through enhanced regulatory impact analysis and consultation processes.

This is the first annual report under the new arrangements, prepared by the Office of Best Practice Regulation (OBPR) within the Productivity Commission. The OBPR was created to replace and extend the remit of the Office of Regulation Review. This report in turn replaces the previous annual publication *Regulation and its Review*. It forms part of the Commission's annual report series of publications for 2006-07.

It has been an eventful year. Implementation issues associated with bedding down the new arrangements are discussed here, including revisions to the *Best Practice Regulation Handbook*. This report also outlines the enhanced regulatory analysis requirements for the stock and flow of regulation, noting the main differences with previous arrangements. As 2006-07 was a transitional year, compliance with both the new and previous requirements are reported separately.

Since this report was completed, the incoming Labor Government announced that the Office of Best Practice Regulation would move to the new Finance and Deregulation Portfolio.

The Commission is grateful for the extensive cooperation it has received over the years from Commonwealth departments and agencies, ministerial councils and national standard-setting bodies.

Gary Banks
Chairman

November 2007

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Abbreviations

AASB	Australian Accounting Standards Board
ABCB	Australian Building Codes Board
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ACS	Australian Customs Service
AFMA	Australian Fisheries Management Authority
AHMC	Australian Health Ministers Conference
ANZFRMC	Australia New Zealand Food Regulation Ministerial Council
APEC	Asia-Pacific Economic Cooperation
APRA	Australian Prudential Regulation Authority
APVMA	Australian Pesticides and Veterinary Medicines Authority
ARPANSA	Australian Radiation Protection and Nuclear Safety Agency
ASCC	Australian Safety and Compensation Council
ASIC	Australian Securities and Investments Commission
ATC	Australian Transport Council
BCA	Business Council of Australia
BCC	Business Cost Calculator
BIA	Business Impact Assessment
BRO	Better Regulation Office (NSW)
CBA	Cost-benefit analysis
CEPD	Council of Economic Planning and Development
CIA	Competition Impact Analysis
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
CRC	COAG Reform Council

DAFF	Department of Agriculture, Fisheries and Forestry
DEST	Department of Education, Science and Training
DEW	Department of the Environment and Water Resources
DEWR	Department of Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DHA	Department of Health and Ageing
DIAC	Department of Immigration and Citizenship
DITR	Department of Industry, Tourism and Resources
DoCITA	Department of Communications, Information Technology and the Arts
DTRS	Department of Transport and Regional Services
ERA	Economic Regulation Authority (WA)
FACCSIA	Department of Family and Community Services and Indigenous Affairs
FSANZ	Food Standards Australia and New Zealand
FTE	Full-time equivalent
IDC	Inter-departmental Committee
IPART	Independent Pricing and Regulatory Tribunal
LRP	Legislation Review Program (Tasmania)
MCC	Ministerial Council of Corporations
MCCA	Ministerial Council for Consumer Affairs
MCE	Ministerial Council on Energy
NCC	National Competition Council
NRA	National Reform Agenda
NSSBs	National standard-setting bodies
OBPR	Office of Best Practice Regulation
OECD	Organisation for Economic Cooperation and Development
OH&S	Occupational Health and Safety
OMB	Office of Management and Budget (US)
ORR	Office of Regulation Review
PC	Productivity Commission

PIMC	Primary Industries Ministerial Council
RBA	Reserve Bank of Australia
RIA	regulatory impact analysis
RIAS	Regional Impact Assessment Statement
RIAU	Regulatory Impact Analysis Unit (New Zealand)
RIS	Regulation Impact Statement
RPU	Regulation Policy Unit (ACT)
SBDC	Small Business Development Corporation
SBIS	Small Business Impact Statement
SCAG	Standing Committee of Attorney Generals
SCM	Standard Cost Model
SSCRO	Senate Standing Committee on Regulations and Ordinances
VCEC	Victorian Competition and Efficiency Commission
WTO	World Trade Organization

OVERVIEW

Key points

- The past year was a milestone for regulatory governance in Australia. In November 2006, implementation of the Commonwealth Government's enhanced regulatory governance arrangements commenced. Responding to an independent Regulation Taskforce, the Government introduced the enhanced regulation-making framework to improve the analysis of regulatory proposals and the quality of regulation.
 - The Council of Australian Governments also strengthened its regulatory impact analysis requirements for national regulation making and agreed on similar requirements in the states and territories.
- Measures to improve the quality of new regulation at the Commonwealth level include: strengthened requirements to assess costs (including business compliance costs), benefits and risks; adoption of a whole-of-government consultation policy; and strengthened gate-keeping arrangements.
- Review mechanisms have also been introduced to examine and improve the stock of existing regulation.
- Some implementation issues included:
 - clarifying the scope of the new arrangements
 - providing guidance on best practice consultation processes
 - aligning regulatory impact analysis requirements for tax measures with other regulatory proposals.
- To support effective implementation, the OBPR commenced an education and training campaign to ensure that policy officers and other stakeholders are aware of the new requirements.
 - Each department and agency has appointed a senior officer to champion sound policy development processes. These 'Best Practice Regulation Coordinators' are helping to ensure the effective adoption of the enhanced regulatory framework.
- In 2006-07, compliance with the Government's regulatory impact analysis requirements at the decision-making stage for regulation was higher than in previous years.
 - Under the previous RIS requirements, 54 adequate RISs were prepared of 63 required, resulting in a compliance rate of 86 per cent (compared with an average of 80 per cent over the previous three years).
 - Under the enhanced requirements, two separate assessments of business compliance costs were prepared of two required and 15 adequate RISs were prepared of the 16 required, resulting in a compliance rate of 94 per cent. There were also two proposals granted exceptional circumstance status.
- Under the Council of Australian Government's regulatory impact analysis requirements, 31 adequate RISs were prepared of the 33 required at the decision-making stage, resulting in a compliance rate of 94 per cent.

Overview

In November 2006, the implementation of significantly enhanced regulatory governance arrangements commenced at the Commonwealth level. The new arrangements, which draw on the *Report of the Taskforce on Reducing Regulatory Burdens on Business*, seek to strengthen the analysis of regulatory proposals and their subsequent review, and thereby raise the quality of regulation over time.

The objectives of the enhanced processes are to:

- achieve a robust system of regulatory oversight that encourages sound policy development and implementation, by ensuring officials and ministers consider the potential costs and adverse implications, as well as benefits, of regulatory proposals
- ensure that Government maintains appropriate control over decision-making processes and the capacity to implement policy quickly where necessary
- ensure that ultimate responsibility for regulatory quality rests with individual ministers, departments and agencies and other delegated authorities.

Improving the quality of regulation

An efficient regulatory system, which is essential to a well functioning society and economy, depends on having effective processes and institutions for making and administering regulation in all its forms. The Government has adopted a number of initiatives to improve the quality of both the stock and the flow of regulation (detailed in chapter 1).

In relation to the *flow* of new regulation, the main initiatives involve:

- strengthened regulatory impact analysis requirements for proposals, including more comprehensive assessment of business compliance costs, and improved analysis of costs, benefits and risks
- adoption of a whole-of-government consultation policy
- strengthened gate-keeping arrangements.

With regard to the *stock* of existing regulation, systematic and periodic reviews require regulators to consider whether government action is still required and, if so, whether the

current regulation is still the most appropriate measure. Over the years, a number of review mechanisms have been introduced at various levels of government.

The review mechanisms (see chapter 1) include the annual reviews of regulatory burdens on business, reviews of regulations that are subject to sunset clauses, five year reviews of other regulations, reviews under the Competition Principles Agreement, reviews of Council of Australian Governments (COAG) 'hot spots' and regulatory benchmarking across jurisdictions.

Regulation is pervasive and initiatives to improve it are required at all levels of government. While the Commonwealth Government has committed to improving regulation by enhancing its regulation-making framework, in 2007 COAG also strengthened its regulatory impact statement requirements for national regulation making. COAG also agreed to apply these requirements to regulation-making processes in the states and territories (see appendixes C and D).

If Australia is to meet the challenges and opportunities of globally competitive markets, it needs to keep pace with or lead, other countries in improving regulation. Recent initiatives represent an important step forward, but will need to be effectively implemented and sustained. At the same time, other countries are improving their own regulation-making systems. Appendix F provides information on recent international developments.

Implementation issues and challenges

The Office of Best Practice Regulation (OBPR), established within the Productivity Commission as an independent body, has been assigned a central role in improving the quality of regulation by administering the best practice regulation requirements.

The key challenge for the OBPR in 2006-07 was the implementation of the enhanced regulatory impact analysis requirements. The implementation process was guided by a Steering Committee comprised of senior officers from the Departments of the Prime Minister and Cabinet, the Treasury and Industry, Tourism and Resources.

The enhanced requirements (outlined in chapter 1) came into effect on 20 November 2006 and were detailed in a draft *Best Practice Regulation Handbook*. The guidance material was released in draft form to allow testing with departments and agencies during a nine month transition period.

The OBPR sought comment on the draft material and the implementation of the enhanced requirements in a range of forums including meetings with senior officers from each department and agency, known as the Best Practice Regulation Coordinators. Secondees to the OBPR from a number of departments provided feedback on implementing the new requirements and assisted in the revision of the guidance material. The OBPR also met

individually with a number of departments and agencies to advise on the implementation of the requirements and gain feedback. See chapter 2 for more information.

Where it was found that the requirements could be expressed more clearly or effectively, the guidance material was redrafted. The Steering Committee oversaw this process and agreed to the launch of the final Handbook and guidance material in September 2007.

Compliance with regulatory impact analysis requirements

There are significant differences between the previous regulation impact statement (RIS) requirements and the new regulatory impact analysis requirements, including the need for: preliminary assessments of all regulatory proposals to determine the level of regulatory impact analysis required; an assessment of compliance costs and greater use of cost-benefit analysis; a whole-of-government consultation policy; and strengthened gate-keeping arrangements (detailed in chapter 1).

Consequently, compliance is reported separately for two sub-periods — 1 July 2006 to 19 November 2006 under the previous RIS requirements, and 20 November 2006 to 30 June 2007 under the new arrangements (see chapter 3).

Under the previous RIS requirements, 63 RISs were required at the decision-making stage (see table 1). 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. Compliance at the tabling stage was 94 per cent, compared with 86 per cent in 2005-06 and 89 per cent in 2004-05.

Under the enhanced regulation-making framework, 18 RISs were required at the decision-making stage (see table 2). 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. Business Cost Calculator (BCC) reports were prepared in each case, certified by the OBPR at the decision-making stage and published in this period.

**Table 1 RIS compliance, by type of regulation,
1 July to 19 November 2006**

Type of regulation	Decision-making			Tabling ^a		
	prepared	adequate		prepared	adequate	
	ratio	ratio	%	ratio	ratio	%
Primary legislation (bills)	30/33	27/33	82	29/32	27/32	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.

During the transition period to implement the Government's new regulatory impact analysis (RIA) requirements, no green papers or exposure drafts were formally required. However, four exposure drafts of regulations were released for public consultation. Departments and agencies reported 342 preliminary assessments had been undertaken for proposals which required no further regulatory impact analysis.

**Table 2 RIA compliance, by type of regulation,
20 November 2006 to 30 June 2007**

		Primary legislation	Delegated legislation	Quasi-regulation	Treaties	Total
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.

Two proposals were granted exceptional circumstances in 2006-07. The two bills, *Wheat Marketing Amendment Bill 2007* and the *Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007*, require post-implementation reviews in one to two years.

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 had been granted for the proposal.

One regulatory proposal — the *Workplace Relations Amendment (A Stronger Safety Net) Bill 2007* to establish a fairness test for workplace agreements — was non-compliant with the Government's requirements in 2006-07. It was not granted exceptional circumstances from the regulatory impact analysis requirements. Consequently, it requires a post-implementation review within one to two years.

Compliance by significance

The OBPR classifies the significance of regulatory proposals according to the nature and size of the impacts on business and the community. In 2006-07, five RISs were required at the decision-making stage for regulatory proposals identified by the OBPR as having a highly significant impact. Four of these RISs were required under the previous RIS arrangements; all four were prepared of which three were assessed as adequate — a compliance rate of 75 per cent. Under the enhanced regulatory framework, one RIS was required but not prepared. (See chapter 3 for more information.)

Compliance by agency

Of the 18 departments and agencies required to prepare RISs, 11 were fully compliant at the decision-making stage.

For the new regulatory impact analysis requirements, of the nine departments and agencies required to undertake further regulatory analysis (in the form of a Business Cost Calculator report or RIS), eight were fully compliant. (See appendix A for more information.)

National regulation-making

In the year to 31 March 2007, the OBPR identified 33 decisions made by ministerial councils and national standard-setting bodies that required the preparation of a RIS under the COAG *Principles and Guidelines* (see chapter 3).

An adequate RIS was prepared at the consultation stage for 29 decisions, resulting in a compliance rate of 88 per cent (the same as 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 rate in 2005-06.

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

Moving forward

Key tasks in strengthening the regulatory process over the next 12 months involve the continued training of policy officers in the new requirements, improving consultation practices in line with the whole-of-government policy, and raising the level of cost-benefit analysis undertaken in RISs.

Apart from departments and agencies, other organisations influence compliance with the best practice regulation requirements. Consequently, the OBPR will broaden the scope of the awareness program to include ministers' offices and selected non-government organisations.

In addition, the OBPR will continue to provide training and other assistance on the COAG guidelines to organisations responsible for compliance with these requirements.

The key challenge is to achieve cultural change within all governments so that best practice regulation and consultation processes become accepted as routine.

1 Major initiatives to improve regulation

Following the report *Rethinking Regulation* (Regulation Taskforce 2006), the Commonwealth Government has enhanced the regulation-making framework to improve the analysis applied to regulatory proposals and hence the quality of regulation.

The stated objectives in implementing the principles of good regulatory process and consultation (detailed in the *Best Practice Regulation Handbook*) are to:

- achieve a robust system of regulatory oversight that encourages sound policy development and implementation by ensuring officials and ministers consider the potential costs and adverse implications, as well as benefits, of regulatory proposals
- ensure the Government maintains appropriate control over decision-making processes and the capacity to implement policy quickly where necessary
- ensure that ultimate responsibility for regulatory quality rests with individual ministers, departments and agencies, boards, statutory authorities and regulators.

Regulation is pervasive and initiatives to improve it are required at all levels of government. The Commonwealth's initiatives will be less effective if state, territory and local governments are not also committed to improving regulation. The Council of Australian Governments (COAG) has recently strengthened its regulatory impact analysis requirements for national regulation making and for similar arrangements in the states and territories (see appendixes C and E).

1.1 Improving the quality of new regulation

To improve the analysis applied to regulatory proposals and hence the quality of regulation, a three-tiered system has been instituted for assessing all regulatory and quasi-regulatory proposals. To determine which level of analysis is appropriate, a preliminary assessment must be undertaken for all regulatory proposals to establish whether they are likely to involve an impact on business and individuals or the economy.

-
- For proposals that will have *no or low* impacts on business and individuals or the economy, no further regulatory analysis is required.
 - For proposals that are likely to involve *medium* business compliance costs, a quantitative assessment of the compliance cost implications must be carried out using the Business Cost Calculator (BCC) or an approved equivalent.
 - For proposals that are likely to have a significant impact on business and individuals or the economy (whether in the form of compliance costs or other impacts) a more detailed analysis must be undertaken and documented in a Regulation Impact Statement (RIS). If the impacts include medium or significant business compliance costs, the RIS should include a full (quantitative) assessment of these costs using the BCC or an approved equivalent.

Key phases of the regulatory impact analysis cycle

A stylised representation of the Commonwealth's regulatory impact analysis process is shown in figure 1.1. All phases of the cycle may not be appropriate for every regulatory proposal. Also, as a policy develops, feedback loops may be needed. The key phases of the cycle are outlined below. (The *Best Practice Regulation Handbook* provides more detail.)

1. Annual Regulatory Plan

The Government is committed to effectively engaging with business and other stakeholders in developing regulation. To this end, each department or agency is required to develop an Annual Regulatory Plan in consultation with the OBPR. (See *Guidelines for Annual Regulatory Plans* at www.obpr.gov.au.) The Annual Regulatory Plan is required to be published on the agency's website in July each year. It contains information about proposed regulatory activity, including a description of the issue, information about consultation opportunities and an expected timetable.

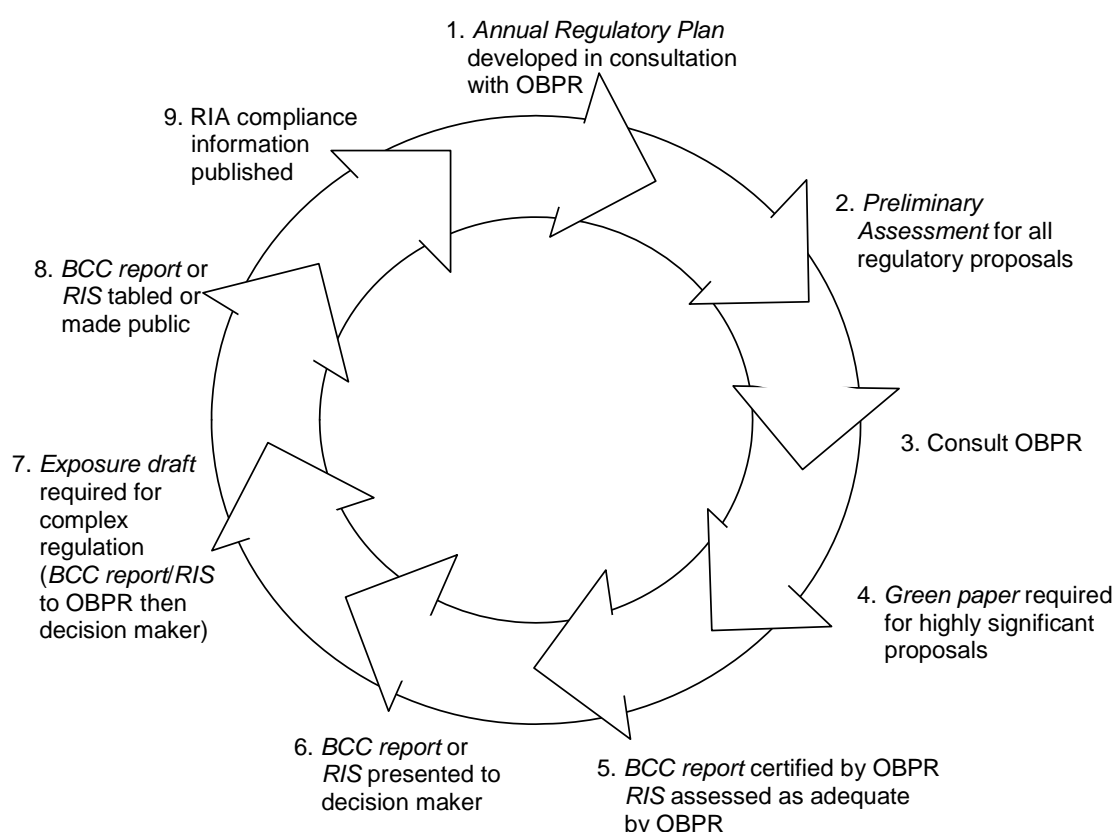
The Plan should include a consultation strategy for all regulatory proposals which require a BCC report or RIS to be prepared in the next twelve months or so. To provide transparency and embed best practice consultation practices, the Plans should address the following.

- What consultation has already occurred on the proposal?
- What is the objective of each consultation round?
- Who will be consulted at each round?
- In what form will consultation occur at each round?

- When will each round of consultation commence?
- How long will the round last?

The *Best Practice Regulation Handbook* provides more information on Annual Regulatory Plans. The OBPR's website (and the Business Consultation website at www.consultation.business.gov.au) provides links to all the Plans.

Figure 1.1 The Government's regulatory impact analysis cycle^a



^a Where a regulatory proposal involves COAG, a ministerial council, a national standard-setting body or a related body, the COAG *Principles and Guidelines* should be used (COAG 2004). COAG requires a RIS for consultation and a RIS for the decision-making stage, which is made public.

2. Preliminary assessment

The new arrangements require the identification of any potential impacts on business and individuals or the economy, which could potentially flow from a regulatory proposal.

The impacts may involve business compliance costs (associated with notification, education, permission, purchase costs, record keeping, enforcement, publication and documentation or procedural) or other impacts (such as potentially affecting the

number and range of business in an industry, altering a business's incentive to compete or impacting on consumers). If the proposal has yet to be included in the Annual Regulatory Plan, a preliminary assessment form (see www.obpr.gov.au) can be used to assess the impacts.

If it is clear that there will be no/low impacts (that is, that any impacts would be trivial or negligible), no further regulatory analysis is required — otherwise the OBPR should be consulted. A preliminary assessment report should be sent to the agency's Best Practice Regulation Coordinator. The OBPR is required to report non-compliance if the preliminary assessment is subsequently found to be incorrect.

3. Consult the OBPR early

Departments and agencies should consult with the OBPR early in the policy development cycle to ensure that the regulatory impact analysis requirements are met. The OBPR works with departments and agencies to gain an understanding of the proposal. The OBPR may then advise that:

- the proposal is likely to have no/low impacts and no further analysis is required
- the proposal is likely to have medium compliance costs and a quantitative assessment of compliance costs should be prepared using the BCC (or an approved equivalent) or
- the proposal is likely to have significant impacts and a RIS should be prepared (box 1.1). An assessment of compliance costs may be required in the RIS.

The OBPR may also advise that a green paper and/or exposure draft of the regulations should be prepared where the impacts are highly significant and/or the regulation is complex.

The OBPR provides support and advice about preparing BCC reports, RISs (including cost-benefit analysis), green papers and exposure drafts of regulations. In line with the policy development process, agencies are encouraged to provide draft documents to the OBPR so it can provide timely advice.

Box 1.1 What is a Regulation Impact Statement?

Regulation Impact Statements (RISs) have been required in varying degrees at the Commonwealth level since the 1980s. In brief, a RIS formalises and provides evidence of the key steps taken as part of a good policy development process. It clearly identifies the fundamental problems that need to be addressed and makes the case why (additional) government action is needed. It includes an assessment of the costs and benefits of each option, followed by a recommendation supporting the most effective and efficient option.

A RIS has seven elements, setting out:

- the problem or issues that give rise to the need for action;
- the desired objectives;
- the options (regulatory and non-regulatory) that may constitute viable means for achieving the desired objectives;
- an assessment of the impacts (costs, benefits, and where relevant, the levels of risks) on consumers, business, government and the community of each option;
- a consultation statement;
- a recommended option; and
- a strategy to implement and review the preferred option.

The elements of a RIS should contain a degree of detail and depth of analysis that is commensurate with the magnitude of the problem and the size of the potential impacts of the proposal. (For more information, see the *Best Practice Regulation Handbook*.)

Source: Australian Government 2007a.

4. Green paper

For highly significant proposals, an initial policy ‘green paper’ must be prepared and made available to relevant parties.

A green paper canvasses most of the elements contained in a RIS. It should identify the problem, outline the objectives, discuss the options (regulatory and non-regulatory), identify the main groups affected by the options and include a preliminary analysis of the impacts. The green paper can be used to ask questions to fill information gaps and illicit specific feedback from stakeholders. The OBPR should be consulted on the preparation of the green paper.

5. BCC report or RIS to OBPR

The BCC report (or approved equivalent) documents the various categories of business compliance costs while the RIS documents the policy development process (box 1.1). The analysis in the BCC report or RIS should feed into decision-making papers such as Cabinet submissions. The OBPR is required to certify the BCC report or to assess the adequacy of the RIS before the decision-making stage. The assessment of the RIS usually involves an iterative process, with the OBPR providing comments to the policy officer.

The OBPR is required to advise decision makers (including Cabinet through its coordination comment) on whether the mandatory use of the BCC (or approved equivalent) has been met and on the adequacy of the RIS.

6. BCC report or RIS to decision maker

The BCC report or RIS is presented to the decision maker, which may be Cabinet, the Prime Minister, Minister(s), board or agency head.

In the absence of exceptional circumstances, as agreed by the Prime Minister, a regulatory proposal with medium compliance costs or significant impacts on business and individuals or the economy cannot proceed to Cabinet or other decision makers unless it has complied with the Government's regulatory impact analysis requirements.

7. Exposure draft

Prior to finalisation, the details of complex regulations should be tested with relevant business and community interests, including through exposure drafts. Consequently, it is appropriate to have a multiple decision-making stage process for complex regulations. The first decision may consider that regulation is the preferred option while a subsequent decision considers the details of implementing complex regulations. The OBPR should be consulted about the exposure draft.

The RIS for the first decision is amended to include the analysis associated with the implementation stage. The amended RIS is then assessed by the OBPR and, if adequate, presented to the decision maker.

8. BCC report or RIS tabled or made public

After a decision is made, the certified BCC report or adequate RIS is tabled in Parliament or otherwise made public.

9. RIA compliance information published

The OBPR is required to report annually on compliance with the Government's regulatory impact analysis and consultation requirements. The *Best Practice Regulation Report* is published around November each year.

Differences between previous and enhanced regulation-making frameworks

In summary, the main differences include:

- six principles of good regulatory process have been formally endorsed
- all regulatory proposals must now undergo a preliminary assessment to determine if further regulatory analysis is required
- even proposals expected to have only 'medium' business compliance costs are required to complete a BCC report
- the requirement for the use of cost-benefit analysis in a RIS has been strengthened
- there is now a whole-of-government policy on consultation
- gate-keeping arrangements have been considerably strengthened.

Some of the detail about the differences follows.

Principles of good regulatory process

As recommended by the Regulation Taskforce (2006), the following six principles of good regulatory process have been endorsed at the Commonwealth level:

- Governments should not act to address 'problems' until a case for action has been clearly established.
- A range of feasible options needs to be identified and their benefits and costs assessed.
- Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements.
- Mechanisms are needed to ensure that regulation remains relevant and effective over time.

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- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

Preliminary assessments

Under the new arrangements, all regulatory proposals must undergo a *preliminary assessment* to establish whether they are likely to involve an *impact on business and individuals or the economy*.

- As mentioned earlier, if there are likely to be *no or low impacts*, the department can self-assess and no further regulatory analysis is required. However, where policy officers are in any doubt, they need to consult the OBPR.
 - The self-assessment process remains an option as under the previous arrangements. However, it should be noted that the threshold for further regulatory analysis has been lowered to cover ‘medium’ business compliance costs.
 - In line with the previous arrangements, at compliance reporting time (when the proposal is tabled or made public) if the department’s self-assessment was found to be incorrect, the OBPR is required to report non-compliance.

Business Cost Calculator reports

Under the new arrangements, if a regulation potentially involves *medium business compliance costs* (and no other impacts) a BCC report (or equivalent) *must* be prepared, although a full RIS is not required.

- The requirement only applies to increases in compliance costs.
- The policy officer prepares a BCC report (certified by the OBPR) for the decision-making stage, which is tabled or made public.

Regulation Impact Statements

Essentially the test for when a RIS is required remains unchanged. A RIS is required for regulations that potentially have a *significant impact on business and individuals or the economy* (whether in the form of compliance costs or other impacts, including a restriction or promotion of competition).

That said, the RIS requirements have been strengthened in the following ways.

- The requirement to assess business compliance costs has been strengthened. If the impacts include medium or significant business compliance costs, the BCC report forms part of the RIS.

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- The requirement to use cost-benefit analysis and, where appropriate, risk analysis in the RIS has been strengthened.
 - The need to assess *existing* regulation and identify scope for rationalisation.

In line with the previous arrangements, once the analysis has been undertaken, a RIS is prepared for the decision-making stage (assessed as adequate by the OBPR) and is tabled or made public.

Consultation policy

The Government adopted a whole-of-government policy on consultation which specifies principles that need to be followed by all agencies when developing regulation. The seven principles for best practice consultation cover continuity, targeting, appropriate timeliness, accessibility, transparency, consistency and flexibility and evaluation and review. Details can be found in the *Best Practice Regulation Handbook*.

As discussed earlier, a requirement for a consultation strategy has also been embedded in Annual Regulatory Plans. Under the new arrangements, if the impacts of the regulation are likely to be highly significant and/or the regulations are complex, a green paper and/or an exposure draft of the legislation (respectively) is required for consultation.

Strengthened gate-keeping

Under the new arrangements gate-keeping has been substantially strengthened.

In the absence of exceptional circumstances as agreed by the Prime Minister, a regulatory proposal with potentially *medium business compliance costs* or *significant impacts on business and individuals or the economy*, cannot proceed to the Cabinet or other decision maker unless it has complied with the regulatory impact analysis requirements.

If a proposal does proceed (either to Cabinet or to another decision maker) without an adequate RIS or BCC report, the resulting regulation must be the subject of a post-implementation review within one to two years. (This applies also even if exceptional circumstances status is granted.)

Enhanced role of OBPR

In line with the enhanced regulation-making framework, the OBPR provides a central role in assisting regulators (departments and agencies) to meet the Government's best practice regulation requirements, and in monitoring and reporting on their performance.

The OBPR offers training and assistance to departments and agencies in preparing RISs and using the BCC to assess compliance costs. The OBPR provides technical assistance and training to officials on cost-benefit analysis and risk analysis. The OBPR also provides advice on preparing Annual Regulatory Plans.

COAG RIS process strengthened

The Council of Australian Governments (COAG) has recently strengthened its regulatory impact analysis requirements for national regulation-making and for similar arrangements in the states and territories. Following its April 2007 meeting, COAG agreed as follows:

... all Governments will establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition by:

- (a) establishing and maintaining "gate-keeping mechanisms" as part of the decision-making process to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made and to the public as soon as possible;
- (b) improving the quality of regulation impact analysis through the use, where appropriate, of cost-benefit analysis;
- (c) better measurement of compliance costs flowing from new and amended regulation, such as through the use of the Commonwealth Office of Small Business' costing model;
- (d) broadening the scope of regulation impact analysis, where appropriate, to recognise the effect of regulation on individuals and the cumulative burden on business and, as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative; and,
- (e) applying these arrangements to Ministerial Councils. (COAG 2007, p. 8)

1.2 Improving the stock of existing regulation

One of the key elements of best practice regulation making is to review regulation once it has been in place for some time. Such reviews ensure that consideration can be given to whether the desired objectives for introducing regulation are being met, whether the impacts are as expected, or whether there have been unanticipated problems.

Reviews of the stock of regulation oblige regulators to consider whether there is still a problem which requires government action. They require consideration of whether the existing regulations are still the appropriate means of dealing with the problem or whether there are more appropriate measures.

The report *Rethinking Regulation* (Regulation Taskforce 2006, p. 173), examined existing regulatory burdens and noted that: ‘*all regulations should be subject to review processes to ensure their continuing appropriateness and effectiveness*’.

A number of review mechanisms have been introduced by governments at different levels over the years. In addition, the Australian Government agreed to additional review mechanisms recommended by the Regulation Taskforce. This section provides a brief overview of these regulation review mechanisms.

Australian Government mechanisms

Annual reviews of regulatory burdens on business

On 12 October 2005, the Australian Government announced the introduction of a new annual review process to examine the cumulative stock of Commonwealth regulation and identify an annual red tape reduction agenda (Howard and Costello 2005).

The reviews, by the Productivity Commission, are being conducted with advance notice over a five year cycle to ensure that all industry sectors are examined and provide greater certainty for business. Like the Regulation Taskforce’s more sweeping review, the sectorally targeted annual regulation reviews will identify Government regulation that is ‘unnecessarily burdensome, complex or redundant, or duplicates regulations in other jurisdictions’. The Commission will develop a list of priority areas and options to alleviate regulatory burdens and identify reforms to enhance regulatory consistency across jurisdictions (Costello 2007).

The five year cycle involves reviewing, in sequence, regulation which mainly impacts on the following areas:

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- Primary sector - 2007
 - Manufacturing sector and distributive trades - 2008
 - Social and economic infrastructure services - 2009
 - Business and consumer services – 2010
 - Economy-wide generic regulation and regulation missed in earlier reviews – 2011.

The first review commenced on 1 April 2007 and was completed at the end of October 2007.

Reviews of regulations with sunset clauses

The *Legislative Instruments Act 2003* (LIA) introduced a comprehensive regime for the making, registration, publication, parliamentary scrutiny and sunseting (or automatic ceasing) of Commonwealth delegated legislation. (Attorney-General's Department 2006, p. 2)

The Legislative Instruments Handbook states that:

The default position is that a non-exempt legislative instrument will sunset after 10 years on either a 1 April or 1 October. The instrument will be treated as though it is repealed from then.

It also states that:

Amendments to a principal instrument will sunset on the same day as the principal instrument. The sunseting date for a legislative instrument will depend on whether the instrument is made before or after 1 January 2005. (Attorney-General's Department 2004, p. 64)

There are some exemptions from the sunseting provisions. The Act also contains provisions for short-term deferral of sunseting of an instrument in limited circumstances and for the continuation of an instrument for a further 10 years subject to Parliamentary resolution.

A list of instruments and provisions of instruments due to sunset will be tabled in Parliament 18 months before the sunseting date. The list is also to be copied to responsible rule-making agencies.

Five-yearly reviews of regulation

Rethinking Regulation (Regulation Taskforce 2006, p. 174) recommended that:

‘... at least every 5 years, all regulations (not subject to sunset provisions) should, following a screening process, be reviewed, with the scope of the review tailored to the nature of the regulation and its perceived performance’.

It further considered that:

‘... a full review would be undertaken, entailing consideration not only of the design and effectiveness of the regulation but also whether alternatives to it would generate greater net benefits’.

The Government accepted this recommendation and as a result, all regulations that are not subject to statutory review or to the sunset provisions of the *Legislative Instruments Act 2003* will be subject to review five years after their introduction. The first tranche of five-yearly reviews are set to commence in 2012.

The first task in implementing this requirement is to identify the stock of regulation that will be affected. The second task is to undertake a preliminary assessment of the impacts of the regulation. This can be done using the Government’s preliminary assessment process for new and amending regulation. If the preliminary assessment suggests that there are compliance cost impacts or significant other impacts associated with the regulation that were not originally identified, or stakeholders have raised concerns about the regulation, it should be subject to further review.

The OBPR, with assistance from the Office of Legislative Drafting, will play a key role in this process, helping departments and agencies to identify the regulations introduced five years earlier and to determine when a preliminary assessment by the department or agency responsible for its introduction should be undertaken. A trial of the approach will be conducted with selected departments and agencies in 2009-10 to identify the scale and scope of the task.

COAG mechanisms

Competition Principles Agreement – reviews of legislation

On 25 February 1994, the Council of Australian Governments (COAG) agreed to the principles of competition policy articulated in the report of the National Competition Policy Review. The Competition Principles Agreement required each party to develop a timetable, by June 1996, for the review and, where appropriate, reform of all existing legislation that restricted competition by the year 2000.

The states and territories placed some 1500 pieces of legislation on the review schedule, whilst the Commonwealth listed about 100 pieces of legislation. The Commonwealth's legislation review schedule not only included legislation which potentially restricted competition, but was expanded to include legislation which may impose costs or confer benefits on business.

The Commonwealth, state and territory governments agreed that significant legislation would be systematically reviewed at least every 10 years.

In 2005-06, the National Competition Council (NCC) reported that:

In aggregate terms, governments reviewed and, where appropriate, reformed around 85 percent of their nominated legislation. (NCC 2006, p. 60)

Following this, COAG agreed that all jurisdictions will recommit to the principles contained in the Agreement (COAG 2006). The Agreement provides for ongoing reviews of legislation placed in the Legislation Review Schedule. Clause 5 (6) of the Agreement requires that:

'Once a Party has reviewed legislation that restricts competition under the principles ... the Party will systematically review the legislation at least once every ten years'. (COAG 1995, p. 5)

In April 2007, COAG agreed that each jurisdiction will complete outstanding priority legislation reviews in accordance with the Agreement public benefit test. Governments will report annually to COAG on their progress in meeting this commitment (COAG 2007a).

'Hot Spots' and Annual Reviews

At the national level, concerns about inconsistent and unnecessarily burdensome regulatory regimes across jurisdictions, led to COAG agreeing, at its February and July 2006 meetings, to take action to address a number of specific 'hot spots' and areas for cross-jurisdictional regulation reform. These areas are as follows:

- Rail safety regulation
- Occupational health and safety
- National trade measurement
- Chemicals and plastics
- Development assessment arrangements
- Building regulation
- Environmental assessment and approvals processes

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- Business name, Australian Business Number and related business registration processes
 - Personal property securities
 - Product safety.

In addition to the ‘hot spots’ reviews, COAG has also established a system of annual reviews. This has been in response to the report of the Regulation Taskforce (2006) and in line with the COAG National Reform Agenda, which focuses on reducing the regulatory burden imposed by the three levels of government. The Regulation Taskforce (2006, p. 171) recommended that:

COAG should consider establishing a series of reviews targeted at areas where there is significant overlap and/or inconsistency between Australian Government and state and territory government regulation.

In February 2006, COAG agreed that each jurisdiction will review existing regulations with a view to encouraging competition and efficiency and streamlining and reducing the regulatory burden on business by:

- initiating at least annual targeted reviews to reduce the burden of existing regulation in its own jurisdiction through a public inquiry and reporting process that provides opportunities for input from a range of stakeholders, including business groups, with each review to identify priority areas where regulatory reform could provide significant gains to business and the community; and
- acting on the recommendations of the reviews referred to above, and co-ordinating reform measures with other jurisdictions if appropriate. (COAG 2006, p. 5)

COAG has also established the COAG Reform Council to report to COAG annually on progress in implementing the National Reform Agenda.

Regulatory benchmarking

The first stage of this study was concluded with the release of the Productivity Commission’s report, *Performance Benchmarking of Australian Business Regulation* on 6 March 2007 (PC 2007). At the request of COAG, the report outlines a common framework for benchmarking, measuring and reporting on the regulatory burden on business, including a range of feasible quantitative and qualitative performance indicators. It also proposes, as a second stage, a program for the first three years of benchmarking.

On 13 April 2007, COAG considered the Commission’s report and agreed to proceed to the second stage of the project. COAG noted that the Commonwealth will fund the benchmarking exercise.

On 5 September 2007, the second stage of the study commenced and is to extend over the next three years. The terms of reference require that stage two examine the regulatory compliance costs associated with becoming and being a business, the delays and uncertainties of gaining approvals in doing business, and the regulatory duplication and inconsistencies in doing business interstate.

To assist with stage two of the project, the Commission has convened a Government Advisory Panel comprising senior officials from all jurisdictions. The panel is to assist in providing advice on the scope of the benchmarking exercise and to facilitate and coordinate data provision. It will also be given the opportunity to scrutinise and comment on preliminary results.

The Commission is to report within 12 months on measures of the quantity and quality of regulation and of the compliance costs associated with business registration requirements. At the conclusion of year three, the Commission is to review the exercise and report on options for the forward program.

Other reviews

The Regulation Taskforce (2006, p. 172-73) noted that:

An important mechanism for improving regulation in Australia has been the many ad hoc reviews of specific policy areas that have taken place over the years, often as a response to perceived problems or changes in circumstances. Recent examples include Productivity Commission reviews of health workforce issues, consumer product safety and regulatory issues in the areas of building regulation, occupational health and safety, workers' compensation, and native vegetation and biodiversity.

These reviews have demonstrated that often there is scope to considerably improve the design and application of regulations to promote better outcomes.

In addition to the formal review mechanisms noted above, there remains capacity for all three levels of government to initiate ad hoc reviews of regulation, including by independent taskforces and standing bodies such as the Victorian Competition and Efficiency Commission and the Productivity Commission. For example, among the reviews proposed in *Rethinking Regulation*, the Productivity Commission has been asked to conduct inquiries into the regulatory framework for the Chemicals and Plastics Industries and Consumer Policy.

2 Implementation issues and challenges

The key challenge for the OBPR throughout 2006-07 was the implementation of the new best practice regulation requirements. These came into effect on 20 November 2006 and were detailed in a ‘draft’ *Best Practice Regulation Handbook*. Complementary guidance material — Users Guide and *Quickstart to Regulatory Impact Analysis* — provided a simple introduction to the initial steps to be undertaken by policy officers when developing regulation.

The guidance material was developed as a whole-of-government initiative with oversight from a Steering Committee comprising senior officers from the Department of the Prime Minister and Cabinet, the Treasury and the Department of Industry, Tourism and Resources. The material was released in draft form to allow testing with departments and agencies and subsequent revision.

The OBPR, on behalf of the Steering Committee, sought comment on the draft material and the implementation of the best practice regulation requirements in a range of forums. Regular meetings were held with Best Practice Regulation Coordinators from all departments and agencies responsible for preparing regulation (see box 2.1). A secure Coordinator’s website was created by the OBPR to provide updates and revised material for comment.

Secondees to the OBPR from the departments of the Treasury, Transport and Regional Services, and Employment and Workplace Relations provided feedback on implementing the new requirements and revising the guidance material.

The OBPR also provided training on the enhanced requirements to almost 900 policy officers from a range of departments and agencies (see below). During this training, policy officers provided useful feedback on the practical application of the regulatory impact analysis requirements. The OBPR also met individually with a number of departments and agencies to advise on the implementation of the new regulation-making framework and sought feedback (see box 2.2). A number of departments and agencies provided written comment on the draft material, which was taken into account in finalising the Handbook and associated guidance.

Box 2.1 **The Best Practice Regulation Coordinators**

In introducing the enhanced regulation-making framework, in September 2006, the Secretary of the Department of the Prime Minister and Cabinet, Dr Peter Shergold, wrote to each department and agency. He requested that each nominate a senior executive to coordinate regulatory matters within their organisation and help oversight the successful bedding down of the new arrangements.

Each Government department and agency responsible for making regulation has appointed a Best Practice Regulation Coordinator. The role of the Coordinator varies across departments and agencies with many taking an advocacy role in encouraging and ensuring compliance with the enhanced requirements. In a meeting in February 2007 the Coordinators discussed and, in consultation with the OBPR, agreed their role in implementing and overseeing the best practice regulation requirements.

In general, the Coordinators have been responsible for leading and managing the successful implementation of the new framework, thus requiring a sound understanding of the new requirements. They can act as a first point of contact for policy officers undertaking regulatory impact analysis and can advise on how to complete the preliminary assessment form and when to contact the OBPR. However, it is not their role to undertake preliminary assessments on behalf of policy officers or to assist in the preparation of regulation impact statements or compliance cost assessments.

In addition they are also responsible for:

- six monthly reporting on compliance with the enhanced requirements to the OBPR
- collecting preliminary assessments and recording agency self-assessments
- requesting and organising regulatory impact analysis training within the department or agency
- managing quality assurance within an organisation and ensuring that preliminary assessments are undertaken where required and the OBPR is contacted where preparation of a regulation impact statement or quantification of compliance cost may be required.

The Coordinators also act as a first point of contact for the OBPR in their department or agency.

Coordinators meet with the OBPR each quarter to discuss matters relating to the roll out of the Government's best practice regulation requirements. At these meetings, Coordinators may raise problems or issues they have encountered or seek more information or clarification of the requirements.

The Coordinators have performed a valuable role in providing feedback to the OBPR on the practical application of the new requirements, highlighted areas where they have been having trouble and areas where the OBPR could improve.

Source: OBPR 2007.

Box 2.2 **The OBPR's bilateral discussions**

To assist in implementing the best practice regulation requirements, the OBPR has met with a large number of departments and agencies over the past year. In general, these discussions focussed on the detail of the new arrangements and how they should be applied to circumstances facing particular organisations. For instance:

- The Australian Prudential Regulation Authority (APRA) organised a meeting with the OBPR in early December 2006 to discuss how the new arrangements applied to their various forms of legislation and regulatory guidance material. APRA has a unique approval process for many of its regulations and through discussions with the OBPR has settled on appropriate processes for ensuring compliance with the enhanced requirements.
- Airservices Australia (recently merged into the Civil Aviation Safety Authority) also contacted the OBPR in December 2006 to organise training for staff in the new arrangements. Airservices Australia make a number of legislative instruments that, on first appearance, would seem to be captured by the preliminary assessment process. After initial meetings with the Best Practice Regulation Coordinator, the OBPR provided training on the new arrangements to fifteen staff responsible for regulating controlled airspace in Australia and clarified which of their activities required assessment under the Government's framework.
- The OBPR also met with the Best Practice Regulation Coordinator and staff from the Australian Customs Service (ACS) to explain the Government's new requirements. Like Airservices Australia, the ACS was unsure of which of its activities required preliminary assessments under the new requirements. Training in the preliminary assessment process, use of the Business Cost Calculator and how to prepare a Regulation Impact Statement was provided to around 20 staff.
- The Australian Securities and Investment Commission (ASIC) releases a wide range of regulatory and guidance material. In early 2007, ASIC met with the OBPR and discussed how the new requirements should be applied to its different types of instruments. Through these and other case by case discussions, ASIC has established a good working knowledge of the enhanced requirements.
- The OBPR met with staff from the Department of Environment and Water Resources in May 2007 to discuss how the Government's regulatory impact analysis requirements would apply to the new arrangements being established for the management of water resources in the Murray-Darling Basin. Through these discussions and subsequent liaison, the OBPR has provided guidance as to which aspects of the water management arrangements are likely to require further regulatory impact analysis.
- Following training sessions for the Australian Communications and Media Authority (ACMA) staff in Canberra, Sydney and Melbourne in early 2007, the OBPR met with ACMA several times (including at the executive/board level) to discuss how the new requirements apply to the agency. The main concern was how the Government's regulatory best practice requirements interact with the ACMA's own specific legislative requirements. In discussions the OBPR and ACMA determined the appropriate level of analysis for different ACMA decisions.

The revised guidance material has benefited from direction provided by the Best Practice Regulation Steering Committee. The Committee oversaw the drafting of amendments to the Handbook and related material and a ‘final’ set of guidance material was launched in September 2007 (box 2.3).

This chapter outlines some of the issues raised with the new requirements and the manner in which the OBPR has addressed these in the final Handbook and associated material.

Box 2.3 *Launch of the Best Practice Regulation Handbook*

On 4 September 2007, the Secretary of the Department of the Prime Minister and Cabinet, launched the Best Practice Regulation Handbook. Dr Shergold made a number of observations about the challenges facing the Government and public service in responding to and meeting the expectations and desires of the community.

He noted that when things go wrong, such as a boating accident or fluctuations in the retail price of petrol:

... the retrospective view is generally marked by disbelief that governments and their officials hadn't regulated to prevent the occurrence. In each such instance there is almost inevitably an outcry demanding stronger legislation with tighter rules, more vigorously enforced.

He observed, as had the Regulation Taskforce, that the expectations of the community are changing and that society is becoming potentially more risk averse and litigious. Against this backdrop, he argued that governments have to work harder at meeting the expectations of the community, ‘that they be protected, even from themselves’, while reducing the burden that this regulation imposes on business and the wider society.

The Australian Government has a multi-pronged approach to meeting this objective. A key component is the enhanced requirements relating to the making of regulation:

Enhanced regulatory impact analysis is a crucial element ... It's the key to preventing unnecessary regulation being made in the first place and in reducing the extent of existing red-tape.

The *Best Practice Regulation Handbook* elucidates these requirements.

Overall the *Handbook* is a remarkably useful document. It provides information on what is required of Government officials and decision-makers in assessing the full impact of regulatory proposals. It is underpinned by two key principles: that governments should not act to ‘fix’ problems until a case for action has been clearly and coherently established; and that a range of feasible policy options, including self-regulatory or co-regulatory approaches, needs to be identified.

Dr Shergold also noted that, under the enhanced regime, the OBPR is not just required to police the requirements. It also plays an important part in assisting agencies with meeting the requirements and in building the capacity of regulatory bodies to undertake regulation impact analysis.

Source: Shergold 2007.

2.1 Implementation challenges

Determining the scope of the new arrangements

Regulation comes in many forms and it can be difficult to delineate with any precision between instruments that are regulatory and those that are not. Clearly ‘black letter law’ which heavily influences the behaviour of business, is regulatory. However, there are a number of ‘voluntary’ or less binding measures which government may use to influence the behaviour of business and individuals. These are known as quasi-regulation. Examples include certain guidance documents involving a level of government enforceability and ‘voluntary’ codes of conduct which government endorses. On the other hand, there are a number of legislative instruments (such as Defence Determinations and financial appropriations) which do not entail obligations for businesses or individuals.

The intent of the best practice regulation requirements is not to capture a particular class of legal instrument. Rather, it is to capture proposals of a regulatory nature which impact on or influence the behaviour of business and individuals or the economy.

In considering the Users Guide and Handbook, a question that was commonly asked by agencies related to what measures required a preliminary assessment under the enhanced framework. In general, these queries seemed to revolve around the definition of a regulatory proposal and in particular the meaning of ‘regulatory’. In preparing the final Handbook, the OBPR sought to give further guidance on these issues drawing on the report *Grey-Letter Law* (IDC on Quasi-regulation, 1997). The Handbook (p. 17) notes that:

Quasi-regulation includes a wide range of rules or arrangements where governments influence businesses and individuals to comply, but which do not form part of explicit government regulation. Broadly, whenever the Government takes action that puts pressure on businesses to act in a particular way, the Government action may be quasi-regulatory.

The Handbook also notes that, in determining whether a proposal is quasi-regulatory, a department or agency should consider whether it:

- seeks to impose obligations on business and individuals or
- provides for a sanction (or negative impact) as a consequence of non-compliance.

While the revised Handbook offers some additional guidance to regulators, it can remain difficult to identify quasi-regulation and the OBPR therefore encourages policy officers to contact it early in the policy development process. A number of agencies have indeed been contacting the OBPR and, through responses to these enquiries, they are developing a better understanding of the nature of quasi-regulation and the types of proposals which are subject to the Government's best practice regulation requirements.

It should be noted that many measures or instruments appear to be quasi-regulatory but do not extend the scope of the law. For instance, some agencies produce plain English descriptions of legislation which business may comply with. However, it is the underlying legislation that creates the obligation on business and it is this legislation, rather than the guidance document, that would be subject to the Government's best practice regulation requirements.

Clarifying the preliminary assessment process

A key element of the enhanced requirements is that all regulatory proposals must undergo a preliminary assessment to determine the appropriate level of analysis and ascertain whether compliance costs should be quantified or a Regulation Impact Statement (RIS) prepared. In undertaking the preliminary assessment, policy officers are asked to consider the likely compliance costs associated with their proposals, as well as any other impacts on business and individuals or the economy.

Where the compliance costs and other impacts are nil or negligible, policy officers can 'self-assess' that no further analysis (in the form of a RIS or quantification of compliance costs) is required. When self-assessing, policy officers are required to state the reasons for believing that the impacts will be low and provide this, as well as a short description of the proposal, to their Best Practice Regulation Coordinator.

In the initial period, departments and agencies experienced a number of difficulties with the preliminary assessment process. These are detailed below along with the steps that the OBPR has taken to address the difficulties.

Confusion about 'other impacts'

In addition to compliance costs, the preliminary assessment requires policy officers to consider the other impacts on business and individuals or the economy. This is, and was always intended to be, a broad definition aimed at capturing the range of proposals which will have significant impacts and may need to be explained and justified in a RIS.

While this definition was set out in the text of the initial Handbook and Users Guide, a summary table and other material in these publications made reference to ‘competition impacts’. A competition checklist, analogous to the compliance cost checklist, was included in the Users Guide and Handbook. This led policy officers in some cases to consider only competition impacts and not whether there were any broader impacts.

To reduce the scope for confusion between competition-related and other cost impacts, the revised Handbook and Users Guide have limited the discussion of competition impacts and emphasised that *all* impacts should be considered when undertaking a preliminary assessment. The competition checklist has been replaced with a wider range of questions aimed at capturing, as far as possible, all relevant impacts.

Confusion about ‘no/low’ impacts

Under the preliminary assessment system, policy officers are allowed to self-assess that no further analysis is required when there are ‘no/low’ compliance costs and other impacts. If the impacts are greater than this, policy officers should contact the OBPR. In the draft material, limited guidance was provided as to the definition of ‘no/low’ or its practical application. As a result, policy officers were uncertain as to when they could self-assess.

Providing clear-cut guidance is difficult as the significance of an impact depends on a range of issues, such as the size and number of businesses involved, their ability to adapt to the proposed changes and the manner in which the changes are implemented. However, the revised guidance material provides greater information to policy officers on how to determine (or self-assess) that no further action is required. For instance, in the case of compliance costs, the Handbook notes that:

In general, compliance costs to business would be low if only a few businesses are affected and the costs are negligible or trivial, for example:

- changes to regulation that are machinery in nature, involving technical changes that will not have an appreciable impact on business and are consistent with existing policy
- there would be a very small initial one-off cost to business and no ongoing costs
- businesses would not need to seek advice about the change from external advisers.

Nevertheless, it can still be difficult for policy officers to determine when the impacts are likely to be negligible and departments and agencies are encouraged to contact the OBPR whenever they are unsure about the size of the likely impacts of a

proposal. In this way, it is more likely that compliance failures associated with incorrect self-assessments can be avoided.

How to undertake a preliminary assessment and self-assess

Another area of uncertainty related to the actual process for undertaking a preliminary assessment. While the new arrangements allowed policy officers to self-assess, there was no particular mechanism and limited guidance about how they should undertake a preliminary assessment. Further, it was ambiguous as to whether policy officers had to use the Quickscan function of the Business Cost Calculator (BCC) in their preliminary assessment.

To assist policy officers undertake a preliminary assessment, the OBPR prepared a preliminary assessment form. An initial version of the form, which was sent to departments and agencies, incorporated the compliance cost checklist (negating the need to use the BCC in a preliminary assessment) and the competition checklist. It allowed policy officers to enter a description of their proposal, answer questions relating to the existence and size of compliance cost impacts and other impacts, and record why they believed there were no/low impacts. Importantly, it clarified that the preliminary assessment should be signed off by the policy officer responsible for submitting the proposal to the decision maker.

While the preliminary assessment form generally worked well, following further feedback from departments and agencies, the OBPR revised the form and released an updated version along with the final guidance material. The revised form incorporates the other impacts checklist in preference to the competition impacts checklist and provides further guidance about what is considered to be no/low. A hardcopy of the form is included with the revised Handbook, while a 'smart' form version can be downloaded from the OBPR website.

In addition to the preliminary assessment form, the related discussion in the Handbook has been revised to clarify the process and incorporate additional guidance as to what 'other impacts' should be considered and when the impacts of a proposal will be nil or low.

The revised guidance material also clarifies the implications of incorrectly self-assessing. That is, in the event that a department or agency self-assesses that no further analysis is required, when in fact the likely impacts of a regulation are significant (or compliance costs are 'medium'), the department or agency will be non-compliant with the Government's requirements and a post-implementation review of the regulation will be required.

Quantifying compliance costs

As part of the best practice regulation requirements, the Government mandated the use of the BCC (or approved equivalent) to quantify compliance costs. The BCC was developed by the Office of Small Business, based on the Standard Cost Model from the Netherlands, to assist officers with limited experience of compliance costs or quantitative techniques to calculate compliance costs. It is an activity based costing method that involves looking at each activity a business must undertake to comply with the proposal. It uses estimates of the time taken, relevant wage costs and the regularity with which the activity must be undertaken, to calculate compliance costs.

Policy officers have experienced a number of difficulties with the BCC. Primarily, it proved difficult to download and install as many Government departments' IT firewalls blocked the software platform on which the program was based. Some policy officers have also had trouble using the program once installed. Some users found it difficult to enter data in an appropriate manner, while others found it difficult to generate reports.

To alleviate downloading problems, the OBPR has made the BCC available on CD and has also worked with departments' IT areas to help ensure that policy officers can use the program. It has also provided training on the use of the BCC to policy officers from a number of departments and agencies. Officers from the OBPR have worked with departments and agencies to assist with the use of the BCC on particular proposals.

The OBPR has also approved the use of alternatives to the BCC for the quantification of compliance costs. Recognising that the important aspect is that compliance costs are robustly estimated (rather than a particular software package being used in their estimation), the OBPR will continue to approve the use of alternatives where these generate reliable estimates.

Another concern voiced with the BCC report and the quantification of compliance costs is that it does not provide the capacity to put compliance costs into context or consider the net impact of the proposal. That is, it provides the decision maker with an indication of the size of the compliance costs associated with a regulation, but does not explicitly allow the department or agency to provide an indication of the countervailing benefits or, for that matter, discuss the consultation process. In future versions of the BCC, the OBPR intends to provide a free text capacity which will allow departments and agencies to provide a brief explanation of the benefits and consultation associated with a proposal. In the meantime, policy officers can provide such material in an attachment to the BCC report. (Where a RIS is

prepared, the BCC merely generates part of the total costs to be identified, along with the benefits.)

Whole-of-government consultation requirements

One of the key findings of the Regulation Taskforce (2006) was the need for much better consultation with stakeholders during the regulatory development process. Recommendation 7.6 of the Regulation Taskforce, which was accepted by the Government, noted that for matters of major significance, an initial policy ‘green paper’ should be made available to relevant parties; and prior to finalisation, the details of complex regulations should be tested with relevant business interests, including through exposure drafts.

This new requirement recognises that several departments and agencies already consult with stakeholders through the use of issues papers, consultation papers and exposure drafts of legislation, although their use is by no means consistent. The Australian Prudential Regulatory Authority, for example, released four exposure drafts of its regulatory instruments for consultation in 2006-07. The Treasury also releases consultation papers and draft exposure legislation for some proposals.

The OBPR has provided more information on these requirements in the revised Handbook. The Handbook provides information about the consultation requirements and strategies for meeting them. In addition to the green paper and exposure draft requirements, a new part of the Handbook details the application of the Government’s seven consultation principles and the need for a consultation plan (including the Annual Regulatory Plan requirements discussed below). It notes that consultation is a continuous process that should encompass all elements of the policy making and review process. It should be undertaken early and feed into decisions made throughout the regulatory development process.

Regulatory Impact Analysis requirements for taxation measures

The application of regulatory impact analysis requirements to tax policy measures has evolved more slowly than for other forms of regulation. Initially, attention was focussed on identifying and quantifying compliance costs – one of the key concerns of business and other stakeholders.

In its report, *An assessment of tax – An inquiry into the Australian Taxation Office*, tabled in the Parliament on 17 November 1993, the Joint Committee of Public Accounts recommended that:

“... the cost of administrative compliance, to all relevant parties, including both direct and indirect costs, should be relevant considerations for any government contemplating legislative change.”

In 1996, in response to this recommendation, the Australian Taxation Office introduced Compliance Cost Impact Statements for tax measures. These statements, prepared after policy approval was obtained, described the nature of the compliance costs business were likely to face as a consequence of the Government’s decision and considered whether compliance costs would be reduced or increased as a result. Compliance costs were rarely quantified.

The requirement to prepare Compliance Cost Impact Statements had not been in place for long when, in November 1996, the Government announced in ‘More Time for Business’, its response to the Small Business Deregulation Taskforce Report, the introduction of a requirement to produce a RIS for regulatory proposal affecting business. At that time, special rules were introduced for tax measures, creating the notion of a ‘tax RIS’ which was not as comprehensive as a RIS for other forms of regulation, but which went further than the existing Compliance Cost Impact Statement. This was done by considering the administrative options (design details) for implementing the Government’s decision and the impacts of those options on compliance and administrative costs.

Following the strengthening of the Government’s regulatory impact analysis requirements in 2006, regulatory impact analysis for tax measures is now more closely aligned with the requirements applying to the development of all other forms of regulation. Where the impacts of a tax measure are limited to a medium increase in compliance costs, these costs must be quantified in a Tax Compliance Cost Report. Where there are significant impacts, a RIS is required.

These RISs need to identify the underlying problem the Government is seeking to address and canvas all feasible options for dealing with it. The impact analysis section should consider all impacts, not just compliance cost impacts. As with other forms of regulation, where consultation may undermine the achievement of the policy outcomes, the OBPR applies a common sense approach when assessing the consultation statement within the RIS.

Gate-keeping arrangements

Under the best practice regulation framework, the Government has introduced strengthened ‘gate-keeping’ arrangements to ensure that all proposals proceeding to the Cabinet have complied with the best practice regulation requirements. The

gate-keeping arrangements are administered by the Cabinet Secretariat, while the assessment of the level of regulatory analysis required is made by the OBPR.

While the formal gate-keeping process applies to proposals going to Cabinet, the Government's best practice requirements also apply to decisions made by ministers, agency heads and boards. As noted in chapter 1, these decision makers and departments and agencies are required to ensure that the best practice regulation requirements are met for these proposals. The decision maker should not allow a proposal to proceed if the requirements have not been met or if they are unsure whether the requirements have been met. If a decision is made where a RIS or quantification of compliance costs would have been required, but is not adequately prepared, the department or agency responsible will be non-compliant with the Government's requirements and will be required to undertake a post-implementation review.

The Prime Minister may grant exceptional circumstances status for a regulatory proposal. In such cases, a post-implementation review (see below for more information) will be required within one to two years after the regulation is introduced.

Post-implementation reviews

The need to prepare a post-implementation review where quantification of compliance costs or preparation of a RIS is required, but is not adequately prepared, is an important change to the regulation-making regime. It arises where there is non-compliance with the requirements or where exceptional circumstances are granted by the Prime Minister. While these were foreshadowed in the draft guidance material, details concerning what should be included in post-implementation reviews were resolved in consultation with the Steering Committee and included in the revised Handbook.

Post-implementation reviews are to be undertaken one to two years after implementation and should be similar in scope to what would have been required in an adequate RIS. However, post-implementation reviews are to focus on the implementation of the policy, rather than the policy decision itself. That is, the review should consider the way in which the policy was implemented, whether the implementation is proving effective in meeting the policy objectives and whether implementation or delivery methods might be adjusted to manage the ongoing delivery of the policy with greater cost effectiveness.

Confusion between requirements under COAG and the Australian Government

In addition to the best practice regulation requirements at the Australian Government level, the OBPR also administers the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (the COAG guidelines). The COAG guidelines are similar to the Australian Government guidelines in that they require the preparation of RISs for significant matters and encourage the use of cost-benefit analysis and quantification of compliance costs.

However, there are a number of important differences. The COAG guidelines require the publication of a consultation RIS prior to a decision being taken, but do not require quantification of compliance costs for proposals likely to result in 'medium' level compliance costs. Importantly, there are no preliminary assessment provisions in the COAG guidelines.

A number of policy officers have mistakenly applied the Australian Government provisions to proposals for ministerial councils and other national standard-setting bodies. In some cases, officers have used the preliminary assessment form to assess the need for a RIS. In most instances, officers have sought advice from the OBPR before finalising the proposal and no instances of non-compliance have resulted from applying the wrong guidelines.

The OBPR will continue to provide training and guidance on both the Australian Government and COAG arrangements to departments and agencies. This will include advice as to which guidelines should be applied to different proposals.

2.2 Moving forward

To assist departments and agencies in understanding and implementing the best practice regulation framework, a transition period was in place until the release of the revised Handbook in August 2007.

With the enhanced requirements now largely bedded down, the OBPR will continue to work with departments and agencies to meet the Government's requirements. Key challenges over the next 12 months include the continued education of policy officers in the new requirements, improving consultation and raising the level of cost-benefit analysis undertaken in RISs.

As always, the main role of the OBPR will continue to be the day-to-day administration of the best practice regulation requirements. This includes advising

departments and agencies as to when they have to quantify compliance costs or prepare RISs, working with policy officers to ensure that the appropriate level of analysis is achieved and reporting publicly on compliance with the new requirements.

Training and education

A key role for the OBPR is training departments and agencies. The OBPR provides training on the best practice regulation requirements, which introduce policy officers to the enhanced requirements, provide an outline of how they differ from the previous regime and detail what officers must do (when developing regulatory proposals) in order to be compliant with the new requirements. The training provides an introduction to the BCC and to preparing RISs. The OBPR also provides more in-depth training in the BCC and in undertaking cost-benefit analysis. The OBPR provided training to almost 900 policy officers in 2006-07 (see appendix D) and will continue to provide training in the future.

Recognising that other organisations have an ability to influence compliance with the best practice regulation requirements, the OBPR will broaden the scope of its program to include ministers' offices and selected non-government organisations. The OBPR will also consider other measures aimed at these organisations with the intention of deepening their understanding of the Government's requirements and improving compliance.

In addition, the OBPR will continue to provide training and other assistance on the COAG guidelines to organisations responsible for compliance with these requirements.

Cost-benefit analysis

In implementing the enhanced regulation-making framework, an important objective of Government is to improve the quality of cost-benefit analysis being undertaken in support of regulation and thereby the quality of regulation made. With this in mind, the revised Handbook contains a more in depth discussion of cost-benefit analysis and the OBPR is encouraging departments and agencies to improve the quality of analysis used in RISs.

To this end, the OBPR has established a separate unit dedicated to assisting and encouraging departments and agencies to undertake cost-benefit analysis. This unit provides cost-benefit analysis training to departments and agencies as requested — 70 officers were trained in 2006-07.

The cost-benefit analysis unit will also be preparing a number of short papers on various aspects of cost-benefit analysis which will be published on the OBPR website. The papers will provide a more detailed discussion of such topics as valuing statistical life and the appropriate choice of discount rates.

Annual Regulatory Plans

Annual Regulatory Plans provide businesses and the community with information about planned changes to Australian Government regulation. Each department and agency responsible for developing regulatory proposals is required to publish an Annual Regulatory Plan on its website each July. Annual Regulatory Plans detail upcoming reviews of regulation and other regulatory activities and indicate when and how stakeholders will be consulted about these activities.

Until last year, the Office of Small Business was responsible for the administration of Annual Regulatory Plans. In responding to the *Rethinking Regulation* report (Regulation Taskforce 2006), the Government embedded the Plans into the best practice regulation framework and shifted responsibility for administering the Annual Regulatory Plan program to the OBPR. The OBPR has issued guidance material advising departments and agencies how to prepare Plans. Some additional guidance was also provided in the revised Handbook.

Looking forward, the OBPR will be working with departments and agencies to ensure that Annual Regulatory Plans are prepared in accordance with the guidance material and meet the objective of providing a useful consultation vehicle for stakeholders and the community. Moreover, the OBPR will report publicly on the preparation and quality of the Plans.

The OBPR will continue to encourage departments and agencies to use the business consultation website as part of their consultation strategy. The business consultation website (www.consultation.business.gov.au) has been established by the Department of Industry, Tourism and Resources. It gives businesses and other stakeholders the opportunity to search a single resource to find information about all relevant Government consultation processes that they may be interested in.

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

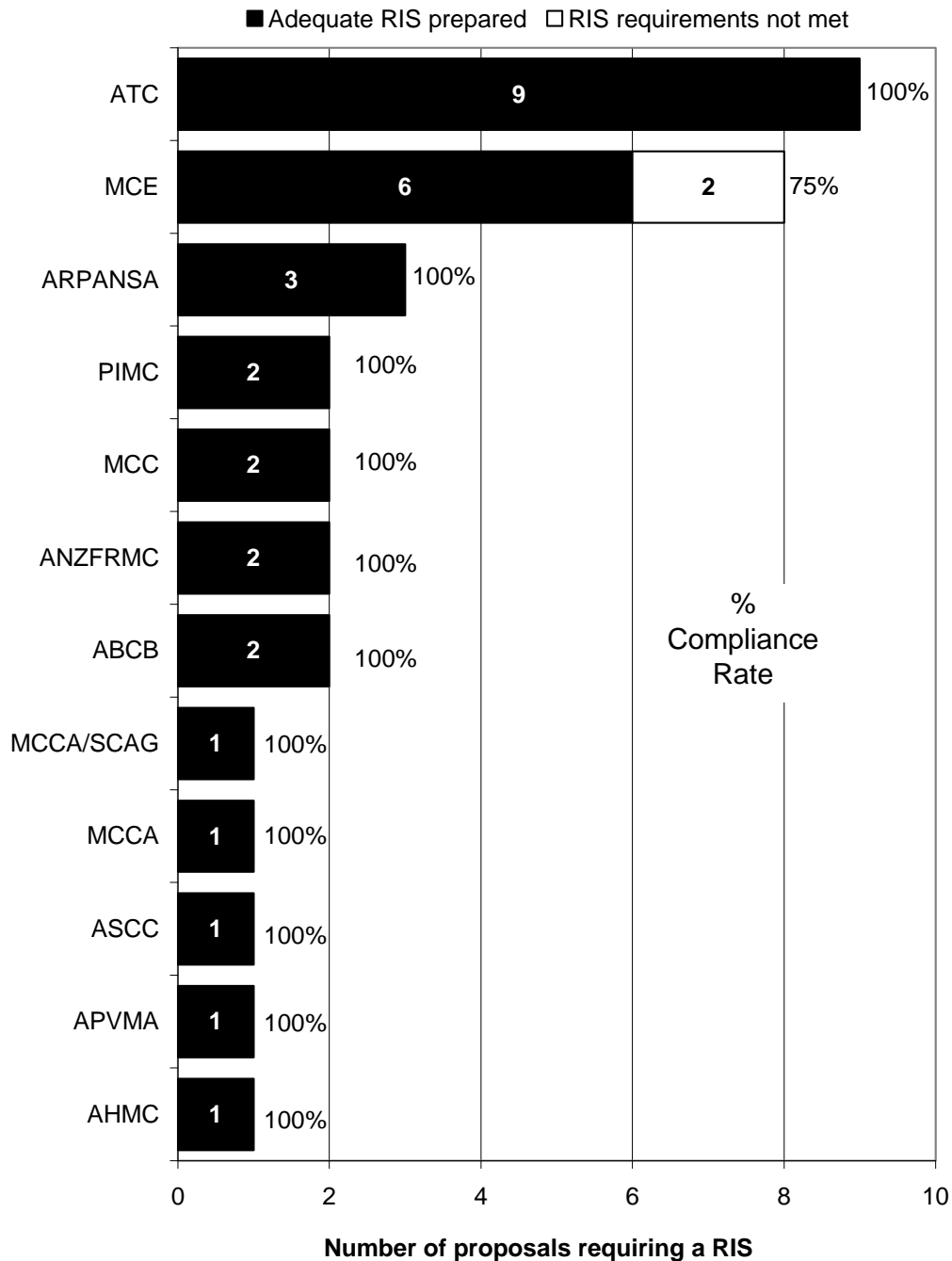
Of the 33 regulatory decisions reported, three were assessed by the OBPR as being highly significant. For these highly significant matters, compliance at the consultation stage was 67 per cent, compared to the 100 per cent compliance rate achieved in 2005-06 (see appendix C for more information). The 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.

A Compliance by portfolio

Enhanced requirements for regulatory impact analysis were introduced in November 2006. Accordingly, compliance by portfolio in 2006-07 is reported separately for the old and the new regulatory regimes. Compliance with the Government's former Regulation Impact Statement (RIS) requirements (1 July – 19 November 2006) was higher than in recent years. Of the 18 departments and agencies required to prepare RISs, 11 were fully compliant at the decision-making stage.

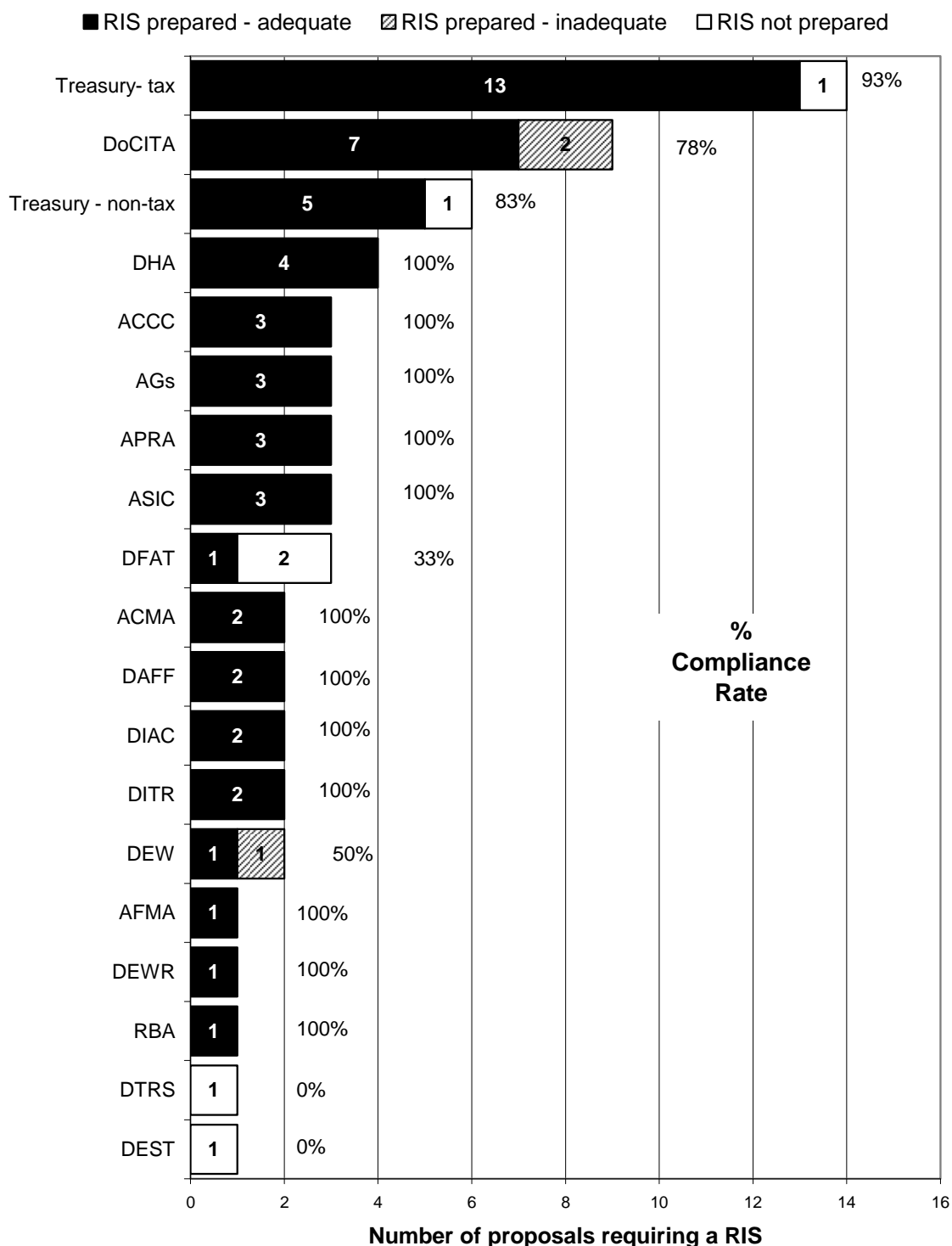
Under the new best practice requirements, (20 November 2006 – 30 June 2007), eight of the nine departments and agencies required to undertake further regulatory analysis (in the form of a Business Cost Calculator (BCC) report or a RIS) were fully compliant.

Compliance by department and agency with the former RIS requirements (decisions made before 20 November 2006) is illustrated in figure A.1. The total length of each bar indicates the number of RISs required to be prepared. The area in black denotes RISs that were assessed as adequate by the OBPR. The shaded area shows the number of inadequate RISs. The area in white shows the RISs that were required but not prepared. The compliance rate for each department and agency is shown at the end of each bar as a percentage of the number of RISs required for that department or agency.

Compliance by department and agency with the Government's new regulatory impact analysis requirements (for decisions between 20 November 2006 and 30 June 2007) is illustrated in figure A.2. The total length of each bar includes the number of RISs and BCC reports required to be prepared, with an indication of the number of RISs and BCC reports that were prepared or not prepared and the number of RISs assessed as adequate or inadequate by the OBPR.

Detailed compliance results by department and agency follow.

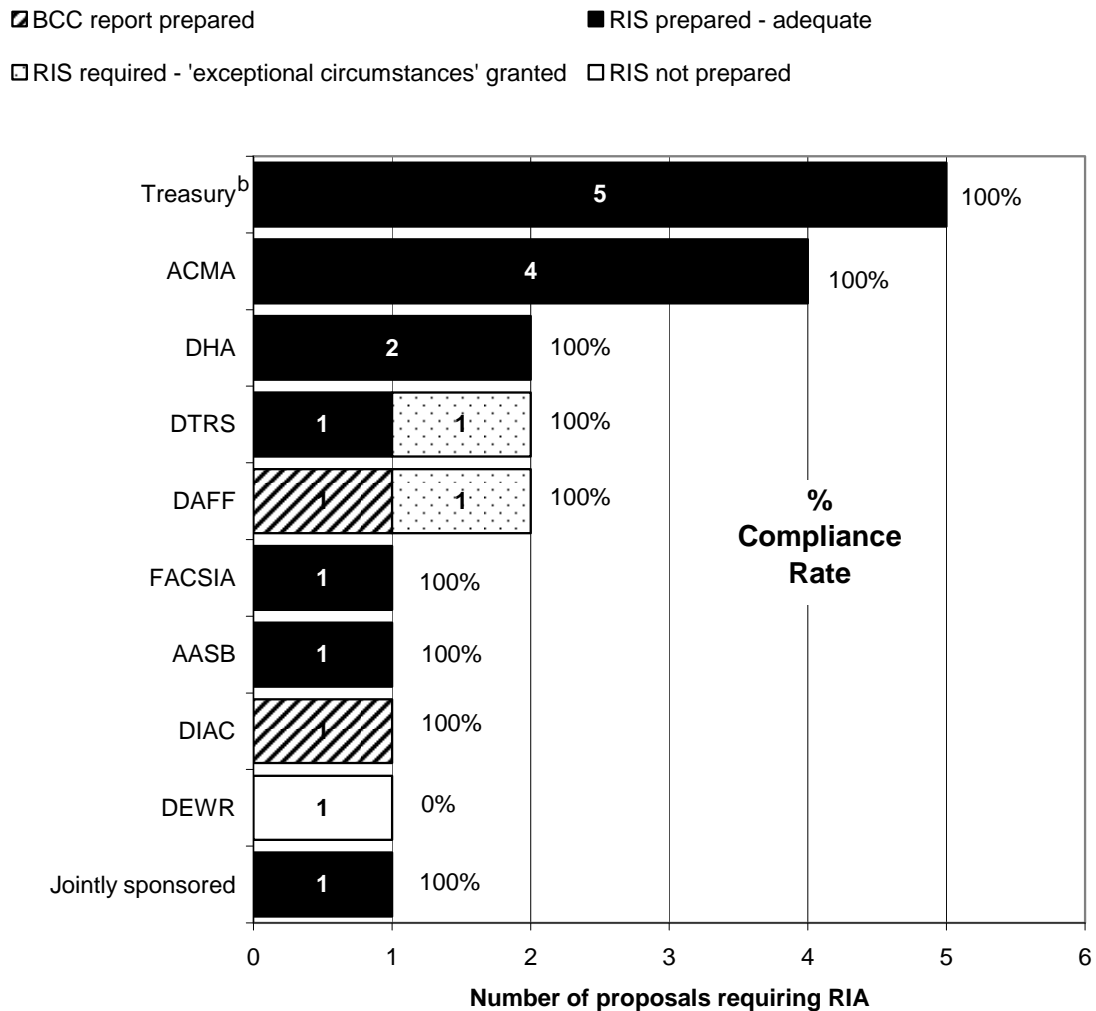
Figure A.1 Compliance with RIS requirements at decision-making stage, 1 July 2006 to 19 November 2006 ^a



^a In 2006-07, a modified RIS process applied to the development of tax proposals. Accordingly, compliance by the Department of the Treasury for tax proposals relates to the period 1 July 2006 to 30 June 2007.

Source: OBPR.

Figure A.2 **Compliance with new best practice requirements at decision-making stage, 20 November 2006 to 30 June 2007^a**



^a Date the Government's enhanced regulatory impact analysis requirements became mandatory.

^b Compliance by the Department of Treasury is reported for both tax RISs and non-tax RISs.

Source: OBPR.

A.1 Agriculture, Fisheries and Forestry

In the Agriculture, Fisheries and Forestry portfolio, the Department of Agriculture, Fisheries and Forestry and the Australian Fisheries Management Authority were required to prepare RISs or BCC reports in 2006-07.

Department of Agriculture, Fisheries and Forestry

The Department of Agriculture, Fisheries and Forestry was fully compliant with the Australian Government's regulatory impact analysis requirements in 2006-07. Under the previous RIS requirements (before 20 November 2006), two RISs were required (for Legislative Instruments) and both were assessed as adequate at the decision-making and tabling stages.

Under the new regulatory impact analysis arrangements, one BCC report was required and certified by the OBPR at the decision and tabling stages. The Department was granted 'exceptional circumstances' by the Prime Minister for the one proposal that required a RIS. Consequently the *Wheat Marketing Amendment Bill 2007* will require a post-implementation review within 1 to 2 years.

Seven preliminary assessments were undertaken for other regulations made or tabled in the reporting period which required no further analysis. The OBPR concurs with the Department's assessment.

Australian Fisheries Management Authority

The Australian Fisheries Management Authority was fully compliant with the Government's regulatory impact analysis requirements in 2006-07. Under the previous RIS requirements, one RIS was required (for a Legislative Instrument) which was assessed as adequate by the OBPR at the decision-making and tabling stages.

Under the enhanced arrangements, 12 preliminary assessments were undertaken for regulations made or tabled in the reporting period which required no further analysis.

A.2 Attorney-General's Department

In 2006-07, the Attorney-General's Department (including the Insolvency and Trustee Service of Australia) was required to prepare RISs for three regulatory proposals (Bills) under the Government's previous RIS requirements. Adequate RISs were prepared for all three proposals at both the decision-making and tabling stages.

Under the new requirements, the Department undertook 24 preliminary assessments for regulations made or tabled in the reporting period which required no further analysis.

A.3 Communications, Information Technology and the Arts

In the Communications, Information Technology and the Arts portfolio, the Department of Communications, Information Technology and the Arts and the Australian Communications and Media Authority were required to prepare RISs in 2006-07.

Department of Communications, Information Technology and the Arts

The Department of Communications, Information Technology and the Arts (DoCITA) was required to prepare nine RISs under the previous RIS requirements in 2006-07. However, only seven were assessed as adequate.

Under the enhanced requirements, the Department undertook 19 preliminary assessments for regulations made or tabled in the reporting period which required no further analysis.

Highly significant matters introduced by the Department in 2006-07 included Media Ownership reforms and Digital Television reforms (see chapter 3).

Table A.1 **DoCITA : RIS compliance by type of regulation, 1 July 2006 – 19 November 2006**

<i>Type of regulation</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	7/7	5/7	7/7	5/7
Legislative instruments	2/2	2/2	2/2	2/2
Total	9/9	7/9	9/9	7/9
<i>Percentage</i>	100	78	100	78

Source: OBPR.

Australian Communications and Media Authority

In 2006-07, the Australian Communications and Media Authority was required to prepare two RISs (for Legislative Instruments) under the previous RIS requirements. Both RISs were assessed as adequate at the decision-making and tabling stages.

Under the new requirements, the four RISs (for Legislative Instruments) required were assessed as adequate at the decision-making and tabling stages. For other regulations made or tabled in the reporting period, 33 preliminary assessments were undertaken which required no further analysis.

A.4 Education, Science and Training

The Department of Education, Science and Training was required to prepare one RIS (for a Bill) under the previous RIS requirements. A RIS was not prepared at the decision-making stage, but was prepared and assessed as adequate at the tabling stage.

A.5 Employment and Workplace Relations

The Department of Employment and Workplace Relations (DEWR) was required to prepare one RIS (for a Bill) under the previous RIS arrangements. One RIS was prepared and assessed as adequate at the decision-making and tabling stages.

Under the enhanced arrangements, the one RIS required was not prepared. Consequently the *Workplace Relations Amendment (A Stronger Safety Net) Bill 2007* will require a post-implementation review within 1 to 2 years. The 18 preliminary assessments undertaken for other regulations made or tabled in the reporting period required no further analysis.

The OBPR assessed the *Workplace Relations Amendment (A Stronger Safety Net) Bill 2007* as a highly significant proposal (see chapter 3).

A.6 Environment and Water Resources

The Department of the Environment and Water Resources (DEW) was required to prepare two RISs under the previous RIS requirements. Of the two RISs prepared, only one was adequate at the decision stage, but both were assessed as adequate at the tabling stage.

Under the new requirements, 14 preliminary assessments were undertaken for regulatory proposals made or tabled during the reporting period that required no further analysis.

Table A.2 **DEW: RIS compliance by type of regulation,
1 July 2006 – 19 November 2006**

<i>Type of regulation</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	1/1	0/1	1/1	1/1
Legislative instruments	1/1	1/1	1/1	1/1
Total	2/2	1/2	2/2	2/2
<i>Percentage</i>	<i>100</i>	<i>50</i>	<i>100</i>	<i>100</i>

Source: OBPR.

A.7 Families, Community Services and Indigenous Affairs

The Department of Families, Community Services and Indigenous Affairs was fully compliant with the Government's requirements in 2006-07.

Under the enhanced requirements, the Department was required to prepare one RIS (for a Bill) which was assessed as adequate at the decision-making and tabling stages. The Department undertook 16 preliminary assessments for regulations made or tabled during the reporting period which required no further analysis.

A.8 Foreign Affairs and Trade

The Department of Foreign Affairs and Trade (DFAT) was required to prepare RISs for one treaty and one quasi-regulatory proposal under the previous RIS requirements. One RIS was prepared and assessed as adequate at the decision-making stage for the quasi-regulatory proposal. For the treaty, RISs were required, but not prepared, at the entry into negotiations and signing stages, although an adequate RIS was prepared for the ratification (tabling) stage.

Under the new requirements, five preliminary assessments were undertaken for regulations made or tabled in the reporting period which required no further analysis.

Table A.3 **DFAT: RIS compliance by type of regulation, 1 July 2006 – 19 November 2006**

<i>Type of regulation</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Quasi-regulations ^a	1/1	1/1	n/a	n/a
Treaties ^b	0/2	0/2	1/1	1/1
Total	1/3	1/3	1/1	1/1
<i>Percentage</i>	33	33	100	100

^a Under the Government's former RIS requirements, there was no formal requirement for RISs prepared for quasi-regulatory proposals to be made public. ^b For reporting on treaties, RISs are required at two decision-making stages – before entry into negotiations and before signature. These requirements are reported above under the decision-making stage.

Source: OBPR.

A.9 Health and Ageing

The Department of Health and Ageing was fully compliant with the Government's requirements in 2006-07. The Department was required to prepare four RISs (for Bills) under the previous RIS requirements which were assessed as adequate at the decision-making and tabling stages.

Under the enhanced arrangements, the Department was required to prepare two RISs. Both were assessed as adequate at the decision-making and tabling stages. The Department undertook 18 preliminary assessments for regulations made or tabled in the reporting period which required no further analysis.

Highly significant matters introduced by the Department in 2006-07 included the Private Health Insurance reform package (see chapter 3).

A.10 Immigration and Citizenship

The Department of Immigration and Citizenship was fully compliant with the Government's requirements in 2006-07. Under the previous RIS requirements, the Department prepared two RISs (for Bills) that were assessed as adequate at the decision-making and tabling stages.

Under the new requirements, one BCC Report was required (for a Bill) and certified by the OBPR at the decision-making and tabling stages. The Department undertook 37 preliminary assessments for regulations made or tabled in the reporting period which required no further analysis.

A.11 Industry, Tourism and Resources

The Department of Industry, Tourism and Resources was fully compliant with the Government's requirements. Under the previous RIS requirements, the two RISs required (for Bills) were prepared and assessed as adequate at the decision-making and tabling stages.

Under the enhanced arrangements, the Department undertook three preliminary assessments for regulations made or tabled in the reporting period which required no further analysis.

A.12 Transport and Regional Services

The Department of Transport and Regional Services did not prepare the one RIS required (for a Bill) at the decision-making stage under the previous RIS requirements. A RIS was prepared and assessed as adequate at the tabling stage.

Under the new arrangements, two RISs were required. One RIS was prepared (for accession to an existing treaty) and was assessed as adequate at the decision-making stage and tabled.¹ The Department was granted 'exceptional circumstances' by the Prime Minister for the second proposal which required a RIS. The *Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007* will require a post-implementation review within 1 to 2 years.

The Department undertook 51 preliminary assessments for regulations made or tabled in the reporting period which required no further analysis.

A.13 Treasury

Within the Treasury portfolio, the Department of the Treasury, the Australian Accounting Standards Board, the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission and the Reserve Bank of Australia were required to prepare RISs during 2006-07. The Department was required to prepare RISs for both tax and non-tax proposals. Tax and non-tax proposals are reported separately here as tax proposals were subject to separate RIS requirements for the whole of 2006-07.

¹ Where Australia participates in the development of a new treaty or international agreement, RISs are required at two decision-making stages (entry into negotiations and signing) of the treaty-making process.

Department of the Treasury (non-tax proposals)

Under the Government's previous RIS requirements, the Department of the Treasury was required to prepare six RISs at the decision-making stage for non-tax proposals, five of which were prepared and assessed as adequate. An adequate RIS was prepared and tabled with the sixth proposal.

Table A.4 **Treasury: RIS compliance by type of regulation, 1 July 2006 – 19 November 2006**

<i>Type of regulation</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	3/4	3/4	4/4	4/4
Legislative instruments	2/2	2/2	2/2	2/2
Total	5/6	5/6	6/6	6/6
<i>Percentage</i>	83	83	100	100

Source: OBPR.

Under the enhanced requirements, five RISs were required and assessed as adequate at the decision-making and tabling stages. For other regulations made or tabled in the reporting period, 17 preliminary assessments were undertaken which required no further analysis.

Table A.5 **Treasury: compliance with enhanced requirements by type of regulation, 20 November 2006 – 30 June 2007**

<i>Type of regulation</i>	<i>Business Cost Calculator report^a</i>		<i>Regulation Impact Statement^b</i>		<i>Green paper^c</i>	<i>Exposure draft^c</i>
	<i>Decision</i>	<i>Tabling</i>	<i>Decision</i>	<i>Tabling</i>		
Bills	-	-	4/4	4/4	-	-
Legislative instruments	-	-	1/1	1/1	-	-
Total	-	-	5/5	5/5	-	-
<i>Percentage</i>	-	-	100	100	-	-

^a BCC reports are required for proposals with medium business compliance costs. ^b RISs are required for proposals with significant impacts on business and individuals or the economy. ^c Green papers and/or exposure drafts are required for highly significant proposals and/or complex regulations.

Source: OBPR

Tax RIS compliance

In 2006-07, tax proposals were subject to separate RIS requirements. These requirements take the policy as given and focus on identifying administrative options for implementation. Under the previous RIS arrangements, RISs were required for seven proposals introduced via Bills and for three double tax agreements.

For Bills, eight tax RISs were required at the decision-making stage (one proposal having two decision-making stages) of which only seven were prepared and assessed as adequate. Six tax RISs were tabled.

Tax RISs for double tax agreements are required at two decision-making stages of the treaty-making process. In 2006-07, three double tax agreements were finalised. The Treasury complied with the first decision-making stage for the three agreements, as in each case the decision to enter negotiations was covered by the Review of International Tax Arrangements. Three tax RISs were prepared and assessed as adequate for the second (signing) stage. These three tax RISs were tabled.

For other tax regulations made or tabled in the reporting period, 13 preliminary assessments were undertaken which required no further analysis.

Highly significant matters introduced by the Treasury in 2006-07 included ‘*A Plan to Simplify and Streamline Superannuation*’ (see chapter 3).

Table A.6 **Treasury: Tax RIS compliance by type of regulation, 1 July 2006 – 30 June 2007**

<i>Type of regulation</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	7/8	7/8	6/7	6/7
Treaties	6/6	6/6	3/3	3/3
Total	13/14	13/14	9/10	9/10
<i>Percentage</i>	93	93	90	90

Source: OBPR.

Australian Accounting Standards Board

The Australian Accounting Standards Board was fully compliant with the Government’s requirements in 2006-07. Under the enhanced requirements, one RIS

(for a Legislative Instrument) was required and assessed as adequate at the decision-making and tabling stages.

Five preliminary assessments were undertaken by the Board for regulatory proposals reported in this period which required no further analysis.

Australian Competition and Consumer Commission

The Australian Competition and Consumer Commission was fully compliant with the Government's requirements in 2006-07. Under the previous RIS requirements, the three RISs required (for Legislative Instruments) were assessed as adequate at the decision-making and tabling stages.

Under the new requirements, the Commission undertook one preliminary assessment for a regulation made or tabled in the reporting period which required no further analysis.

Australian Prudential Regulation Authority

The Australian Prudential Regulation Authority was fully compliant with the Australian Government's RIS requirements in 2006-07. Under the previous RIS requirements, three RISs were required (for Legislative Instruments) and assessed as adequate at the decision-making and tabling stages.

Under the enhanced requirements, the Authority undertook 24 preliminary assessments for regulations made or tabled in the reporting period which required no further analysis.

Australian Securities and Investments Commission

The Australian Securities and Investments Commission was fully compliant with the Government's RIS requirements in 2006-07. Under the previous RIS requirements, the three RISs required were assessed as adequate at the decision-making and tabling stages.

Under the new requirements, the Commission undertook 16 preliminary assessments for regulations made or tabled in the reporting period which required no further analysis.

Table A.7 **ASIC: RIS compliance by type of regulation,
1 July 2006 – 19 November 2006**

<i>Type of regulation</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Legislative instruments	2/2	2/2	2/2	2/2
Quasi-regulation	1/1	1/1	1/1	1/1
Total	3/3	3/3	3/3	3/3
<i>Percentage</i>	100	100	100	100

Source: OBPR.

Reserve Bank of Australia

The Reserve Bank of Australia was fully compliant with the Government's RIS requirements in 2006-07. Under the previous RIS requirements, one RIS (for a Legislative Instrument) was required and assessed as adequate at the decision-making and tabling stages.

A.14 Jointly sponsored proposals

In 2006-07, the Australian Government announced its response to the Productivity Commission's review into the price regulation of airport services. The Departments of the Treasury and Transport and Regional Services prepared a RIS assessed as adequate by the OBPR at the decision-making stage in accordance with the Government's enhanced requirements.

B Compliance by regulatory proposal

This appendix provides the Office of Best Practice Regulation's (OBPR) compliance assessment by regulatory proposal. Regulatory proposals may be introduced or made via bills, legislative instruments, non-legislative instruments, quasi-regulation or treaties. Information on compliance is shown in separate tables for each type of regulation. The first table shows compliance with the Government's previous Regulation Impact Statement (RIS) requirements. The second table shows compliance for proposals under the Government's new regulatory impact analysis requirements.

In 2006-07, 63 RISs were required under the Australian Government's previous RIS requirements at the decision-making stage, while 16 RISs and two BCC reports were required under the new requirements. There were also two proposals granted exceptional circumstances status.

Table **Bills, regulation impact statement assessment by proposal^a**

Title of Bill <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 & Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006				
<i>Implementation of FATF anti-money laundering principles and special recommendations on terrorist financing</i>	Yes	Yes	Yes	Yes
Australian Securities and Investments Commission Amendment (Audit Inspection) Bill 2006				
<i>Enhancements to ASIC's audit inspection powers to seek information from Australian auditors about their compliance with US audit requirements</i>	Yes	Yes	Yes	Yes
Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007				
<i>Mandatory drug and alcohol testing for safety sensitive airline personnel</i>	No	No	Yes	Yes
Bankruptcy Legislation Amendment (Debt Agreements) Bill 2007 & Bankruptcy (Estate Charges) Amendment Bill 2007				
<i>Reform of Part IX of the Bankruptcy Act 1966 (debt agreements)</i>	Yes	Yes	Yes	Yes

Continued next page

Table B.1 continued

Title of Bill <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
Broadcasting Legislation Amendment (Digital Radio) Bill 2007 & Radio Licence Fees Amendment Bill 2007				
<i>Implementation of Digital Radio</i>	Yes	Yes	Yes	Yes
Broadcasting Legislation Amendment (Digital Television) Bill 2006				
<i>Digital Television Reform</i>	Yes	No	No	No
Broadcasting Services Amendment (Media Ownership) Bill 2006				
<i>Media ownership reforms, including relaxation of foreign and cross media ownership laws</i>	Yes	Yes	Yes	Yes
<i>Regional media services</i>	Yes	Yes	Yes	Yes
Communications Legislation Amendment (Content Services) Bill 2007				
<i>Review of Convergent Devices Regulation</i>	Yes	No	No	No
Communications Legislation Amendment (Enforcement Powers) Bill 2006				
<i>Reform of ACMA broadcasting powers</i>	Yes	Yes	Yes	Yes
Copyright Amendment Bill 2006				
<i>Reforms following Fair Use Review of Copyright Exceptions and Digital Agenda amendments</i>	Yes	Yes	Yes	Yes
Corporations Amendment (Insolvency) Bill 2007				
<i>Insolvency Reform Package</i>	Yes	Yes	Yes	Yes
Customs Tariff Amendment (Incorporation of Proposals) Bill 2006				
<i>Amendments to the Enhanced Project By-law Scheme to allow water and power projects to access tariff concessions</i>	Yes	Yes	Yes	Yes
Environment and Heritage Legislation Amendment Bill (No. 1) 2006				
<i>Amendments to assessment and approval processes under the EPBC Act</i>	Yes	No	Yes	Yes
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Bill 2007				
<i>Government response to Review of Part 23 of the Superannuation Industry (Supervision) Act 1993 - compensating loss if fraud or theft occurs</i>	No	No	Yes	Yes
Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2007				
<i>Introduction of an accreditation scheme for radiology and diagnostic imaging services</i>	Yes	Yes	Yes	Yes
Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Bill 2007				
<i>Review of enforcement and offence provisions of the Health Insurance Act 1973 as they relate to pathology services under Medicare</i>	Yes	Yes	Yes	Yes
<i>Amendments to the Health Insurance Act in relation to diagnostic imaging</i>	Yes	Yes	Yes	Yes

Continued next page

Table B.1 continued

Title of Bill <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
Liquid Fuel Emergency Amendment Bill 2007				
<i>Amendments to improve the economic and administrative efficiency of the Liquid Fuel Emergency Act 1984</i>	Yes	Yes	Yes	Yes
Migration Amendment (Employer Sanctions) Bill 2006				
<i>Employer sanctions regarding illegal workers</i>	Yes	Yes	Yes	Yes
Migration Amendment (Maritime Crew) Bill 2007				
<i>Maritime crew visa requirements</i>	Yes	Yes	Yes	Yes
Private Health Insurance Bill 2006				
<i>Reforms to the regulation of private health insurance</i>	Yes	Yes	Yes	Yes
Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006				
<i>Change definitions of 'disease', 'injury', and 'suitable employment' and remove liability of accidents travelling to and from work</i>	Yes	Yes	Yes	Yes
Tax Laws Amendment (2006 Measures No. 7) Bill 2006				
<i>Replace the controlling individual test with a significant individual test for small business subject to Capital Gains Tax</i>	Yes	Yes	Yes	Yes
Tax Laws Amendment (2007 Measures No. 2) Bill 2007				
<i>Venture capital limited partnerships</i>	Yes	Yes	Yes	Yes
Tax Laws Amendment (2007 Measures No. 3) Bill 2007				
<i>Investment in forestry managed investment schemes^b</i>				
<i>First decision</i>	Yes	Yes	..	..
<i>Second decision</i>	No	No	No	No
<i>New withholding arrangements for managed fund distributions to foreign residents</i>	Yes	Yes	Yes	Yes
<i>Distributions to entities connected with a private company and related issues</i>	Yes	Yes	Yes	Yes
Tax Laws Amendment (2007 Measures No. 4) Bill 2007, Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 1) 2007, Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 2) 2007				
<i>Trustee beneficiary reporting rules</i>	Yes	Yes	Yes	Yes

Continued next page

Table B.1 continued

Title of Bill <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
Tax Laws Amendment (Simplified Superannuation) Bill 2006 and related legislation				
<i>A plan to simplify and streamline superannuation – includes reduction of taxing points on superannuation, revised contribution and payment rules, and new self-managed superannuation fund compliance rules</i>	Yes	Yes	Yes	Yes
Telecommunications Amendment (Integrated Public Number Database) Bill 2006				
<i>Introduce/amend Integrated Public Number Database Access Regime</i>	Yes	Yes	Yes	Yes
Trade Practices Legislation Amendment (No. 1) Bill 2007				
<i>Government response to the Senate inquiry into 'The effectiveness of the Trade Practices Act in protecting small business'</i>	Yes	Yes	Yes	Yes

^a Copies of Explanatory Memoranda (which include RISs) for Bills can be found at www.comlaw.gov.au.

^b RISs were required at two decision-making stages for this proposal. .. Not required.

Source: OBPR.

Table B.2 Bills, regulatory impact analysis assessment by proposal ^a

Title of Bill <i>Description of regulatory proposal</i>	<i>Decision</i>		<i>Tabled</i>	
	BCC report certified	RIS adequate	BCC report certified	RIS adequate
Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007 ^b				
<i>Amends the amount of liquids, aerosols and gels taken through international screening points by people flying to and from Australia</i>
Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007, Corporations (Fees) Amendment Bill 2007, Corporations (Review Fees) Amendment Bill 2007				
<i>Refinements to financial services regulation, including rights issues and employee share schemes</i>	..	Yes	..	Yes
<i>Refinement to Financial Services Regulation</i>	..	Yes	..	Yes
Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Bill 2007				
<i>Child care management reforms</i>	..	Yes	..	Yes
Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007				
<i>Government response to the Potts Review – reform of discretionary mutual funds</i>	..	Yes	..	Yes

Continued next page

Table B.2 continued

Title of Bill <i>Description of regulatory proposal</i>	Decision		Tabled	
	BCC report certified	RIS adequate	BCC report certified	RIS adequate
Food Standards Australia New Zealand Amendment Bill 2007				
<i>Amendments to the FSANZ Act (1991) to improve the standard-setting process, including introduction of 'stop the clock' provisions</i>	..	Yes	..	Yes
Industrial Chemicals (Notification and Assessment) Amendment (Cosmetics) Bill 2007				
<i>Amendments to the regulation of products at the therapeutic – cosmetic interface</i>	..	Yes	..	Yes
Migration Amendments (Sponsorship Obligations) Bill 2007				
<i>Employer obligations for foreign workers</i>	Yes	..	Yes	..
Farm Household Support Amendment Bill 2007				
<i>Allow farm dependent small businesses to access 'exceptional circumstances' support</i>	Yes	..	Yes	..
Wheat Marketing Amendment Bill 2007 ^b				
<i>Strengthen the operations and functions of the Wheat Export Authority and deregulate container exports</i>	..	..	..	..
Workplace Relations Amendment (A Stronger Safety Net) Bill 2007 ^c				
<i>Introduce fairness test for workplace agreements</i>	..	No	..	No

^a Copies of Explanatory Memoranda (which include RISs) for Bills can be found at www.comlaw.gov.au.

^b Exceptional circumstances were granted by the Prime Minister and a post-implementation review is required to be conducted within 1-2 years. ^c Exceptional circumstances were not granted by the Prime Minister and a post-implementation review is required to be conducted within 1-2 years. .. Not required.

Source: OBPR.

Table B.3 Legislative instruments, regulation impact statement assessment by proposal^a

Title of Legislative Instrument <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
ASIC Class Order [CO 06/682] Multiple Derivative Issuers				
<i>Modifies the requirement to prepare a Product Disclosure Statement (PDS) and the PDS content requirements where there is more than one licensee deemed to be the issuer of an exchange traded derivative</i>	Yes	Yes	Yes	Yes
Banking (Prudential Standard) Determination No. 12 of 2006, Insurance (Prudential Standard) Determination No. 9 of 2006, Life insurance (Prudential Standard) Determination No. 3 of 2006 (and others)				
<i>Sets prudential standards on outsourcing by authorised deposit-taking institutions, general insurers and life insurers</i>	Yes	Yes	Yes	Yes
Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2006)				
<i>Government response to National Reliability Framework Review</i>	Yes	Yes	Yes	Yes
Consumer Protection Notice No. 4 of 2006 – Consumer Product Safety Standard: Babies’ Dummies				
<i>Declares and varies the 1991 version of the Australian Standard for baby dummies, AS 2432</i>	Yes	Yes	Yes	Yes
Consumer Protection Notice No. 5 of 2007 – Consumer Product Safety Standard: Child Restraint Systems for use in motor vehicles				
<i>Declares and varies the 1995, 2000 and 2004 versions of the Australian Standard for motor vehicle child restraints, AS 1754</i>	Yes	Yes	Yes	Yes
Corporations Amendment Regulations 2007 (No. 6)				
<i>Review of compensation for loss in the financial services sector</i>	Yes	Yes	Yes	Yes
Eastern Tuna and Billfish Fishery Direction No. 2 of 2006				
<i>Closure of the north end of the Eastern Tuna and Billfish Fishery</i>	Yes	Yes	Yes	Yes
Education Services for Overseas Students Act 2000 – National Code 2007				
<i>National code of practice for registration authorities and providers of education and training of overseas students</i>	No	No	Yes	Yes
Environment Protection and Biodiversity Conservation Act 1999 – Proclamation – Cod Grounds Commonwealth Marine Reserve				
<i>Declaration of Cod Grounds Marine Reserve</i>	Yes	Yes	Yes	Yes

Continued next page

Table B.3 continued

Title of Legislative Instrument <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	Adequate
Life Insurance (Prudential Standard) Determinations No. 2 of 2007 – Prudential Standard LPS 220 – Risk Management and No. 4 of 2007 – Prudential Standard LPS 232 Business Continuity Management				
<i>Government response to review of the regulatory framework applicable to life insurance companies – new risk management prudential standards</i>	Yes	Yes	Yes	Yes
Package of insurance and financial sector determinations				
<i>APRA prudential accounting treatment of general insurers in response to adoption of Australian equivalents to international financial reporting standards</i>	Yes	Yes	Yes	Yes
Payment Systems (Regulations) Act 1998 – The Setting of interchange Fees in the EFTPOS System				
<i>Reform of Debit Card Systems in Australia – EFTPOS Interchange Fees</i>	Yes	Yes	Yes	Yes
Policy Statement 184 [PS 184] and ASIC Class Order [CO 06/636] Superannuation: Delivery of product disclosure for investment strategies				
<i>Options for disclosing financial products</i>	Yes	Yes	Yes	Yes
Primary Industries Levies and Charges Collection Amendment Regulations 2006 (No. 5)				
<i>Introduces R&D, marketing and promotion turf industry levy</i>	Yes	Yes	Yes	Yes
Radiocommunications (Transmitter Licences – Auction) Determination 2006				
<i>Allocating apparatus licences</i>	Yes	Yes	Yes	Yes
Telecommunications Numbering Plan Variation 2006 (No. 3)				
<i>Telecommunications Numbering Plan variation to supplement areas of Perth, Adelaide and Northern Territory</i>	Yes	Yes	Yes	Yes
Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999 (Amendment No. 1 of 2006)				
<i>Tightening the Customer Service Guarantee to reduce the ability of carriage service providers to rely unnecessarily on Mass Service Disruption claims for exemption from fault repair and connection timeframes, where events are predictable</i>	Yes	Yes	Yes	Yes
Terrorism Insurance Amendment Regulations 2007 (No. 1) and associated directions				
<i>Government response to review of the Terrorism Insurance Act</i>	Yes	Yes	Yes	Yes
Trade Practice (Consumer Product Safety Standards) (Children's Nightwear and Paper Patterns for Children's Nightwear) Regulations 2007				
<i>Consumer product safety standard for children's nightwear and limited daywear</i>	Yes	Yes	Yes	Yes

Continued next page

Table B.3 continued

Title of Legislative Instrument <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
Trade Practices (Horticulture Code of Conduct) Regulations 2006				
<i>Mandates Horticulture Code of Conduct</i>	Yes	Yes	Yes	Yes

^a Copies of explanatory material (which include RISs) for Legislative Instruments can be found at www.comlaw.gov.au.

Source: OBPR.

Table B.4 Legislative Instruments, regulatory impact analysis assessment by proposal ^a

Title of Legislative Instrument <i>Description of regulatory proposal</i>	<i>Decision</i>		<i>Tabled</i>	
	BCC report certified	RIS adequate	BCC report certified	RIS adequate
AASB 8 Operating Segments				
<i>Introduces internationally equivalent Australian Accounting standards for operating statements</i>	..	Yes	..	Yes
Foreign Acquisitions and Takeovers Amendment Regulations 2006 (Nos. 1, 2 and 3)				
<i>Streamlining Australia's foreign investment regime</i>	..	Yes	..	Yes
Radiocommunications (Electromagnetic Radiation – Human Exposure) Amendment Standard 2007 (No. 1)				
<i>Amends Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003</i>	..	Yes	..	Yes
Telecommunications Numbering Plan Variation 2006 (No. 4)				
<i>Telecommunications Numbering Plan variation to allow for additional numbers in the Geelong and Colac areas</i>	..	Yes	..	Yes
Telecommunications Numbering Plan Variation 2007 (No. 2)				
<i>Telecommunications Numbering Plan variation for West Sector of Melbourne, West Sector of Sydney, Camperdown area, Deloraine area and Bundaberg area</i>	..	Yes	..	Yes
Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007				
<i>Mandates industry standard for telemarketing calls</i>	..	Yes	..	Yes

^a Copies of Explanatory Memoranda (which include RISs) for Bills can be found at www.comlaw.gov.au.

^b Exceptional circumstances were granted by the Prime Minister and a post-implementation review is required to be conducted within 1-2 years. .. Not required.

Source: OBPR.

Table B.5 **Non-legislative instrument, regulatory impact analysis assessment by proposal ^a**

Title of non-legislative instrument <i>Description of regulatory proposal</i>	Decision		Transparency	
	BCC report certified	RIS adequate	BCC report published	RIS published
Direction under Part VIIA of the Trade Practices Act ^b				
<i>Government response to the Productivity Commission's Review on Price Regulation of Airport Services</i>	..	Yes	..	Yes

^a Non-legislative instruments are not tabled. BCC report or RISs must be published on the agency's website.

^b Joint proposal between the Departments of the Treasury and Transport and Regional Services. The RIS also applies to the Airports Amendment Regulations 2007 (No. 1). .. Not required.

Source: OBPR.

Table B.6 **Quasi-regulation, regulation impact statement assessment by proposal**

Title of quasi-regulation <i>Description of regulatory proposal</i>	RIS for decision		RIS for tabling	
	prepared	adequate	prepared	adequate
ASIC - RG 188 Disclosure in reconstructions				
<i>Explains the application of the prospectus provisions of the Corporation Act 2001 to reconstructions or capital reductions involving the issue or transfer of securities</i>	Yes	Yes	..	..
SPARTECA (TCF Provisions) Scheme - Terms and Conditions				
<i>Amendments to TCF scheme under the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)</i>	Yes	Yes	..	..

.. Not required.

Source: OBPR.

Table B.7 Treaties, regulation impact statement assessment by proposal ^a

Title of Treaty		
<i>Stages</i>	<i>RIS prepared</i>	<i>RIS adequate</i>
Agreement with the People's Republic of China on the Transfer of Nuclear Material; and Agreement with the People's Republic of China for Cooperation in the Peaceful Uses of Nuclear Energy		
<i>Entry into negotiations</i>	No	No
<i>Before signature</i>	No	No
<i>Tabling before ratification</i>	Yes	Yes
Convention between the Government of Australia and the Government of the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion and Protocol (Paris, 20 June 2006)		
<i>Entry into negotiations</i>	Yes	Yes
<i>Before signature</i>	Yes	Yes
<i>Tabling before ratification</i>	Yes	Yes
Convention between the Government of Australia and the Government of Finland for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion (Melbourne, 20 November 2006)		
<i>Entry into negotiations</i>	Yes	Yes
<i>Before signature</i>	Yes	Yes
<i>Tabling before ratification</i>	Yes	Yes
Convention between the Government of Australia and the Government of Kingdom of Norway for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion (Canberra, 8 August 2006)		
<i>Entry into negotiations</i>	Yes	Yes
<i>Before signature</i>	Yes	Yes
<i>Tabling before ratification</i>	Yes	Yes

^a Copies of Treaty texts, National Impact Analyses and RISs (where required) can be found at <http://www.aph.gov.au/house/committe/jsct/report.htm>.

Source: OBPR estimates.

Table B.8 Treaties, regulatory impact analysis assessment by proposal ^a

Title of Treaty		
<i>Stages</i>	<i>BCC report certified</i>	<i>RIS adequate</i>
Agreement concerning the establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used in Wheeled Vehicles (Geneva, 28 June 1998)		
<i>Entry into negotiations</i>
<i>Before signature</i>	..	Yes
<i>Tabling before ratification</i>	..	Yes

^a Copies of Treaty texts, National Impact Analyses and RISs (where required) can be found at <http://www.aph.gov.au/house/committe/jsct/report.htm>. .. Not required.

Source: OBPR estimates.

C Compliance with COAG RIS requirements

The Office of Best Practice Regulation (OBPR) is required to report on compliance by ministerial councils and national standard-setting bodies (NSSBs) with the Council of Australian Governments' (COAG's) *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (COAG 2004). This reporting requirement flows from the *COAG Agreement to Implement the National Competition Policy and Related Reforms* (COAG 1995).

The Guidelines require the preparation of a Regulatory Impact Statement (RIS) for 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)

The OBPR has assessed RISs required by COAG at two stages: before they are released for community consultation and prior to a regulatory decision being made. The OBPR advises the decision-making body of its assessment at each stage. The assessment considers:

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

It should be noted that the depth of analysis required for consultation is lower than that at the decision-making stage. In many cases, the RIS for consultation focuses on the identification of the problem, objectives, and a range of feasible options (non-regulatory and regulatory), and a preliminary impact analysis of the options. A RIS for the decision-making stage should reflect the additional information and views collected from those consulted, and provide a more complete and robust impact analysis.

This report covers decisions made between 1 April 2006 and 31 March 2007.

C.1 Recent developments

In April 2007, COAG reiterated its position concerning the regulatory impact analysis process (agreed in February 2006) by including the requirements in its Regulatory Reform Plan, which is a part of its National Reform Agenda (NRA). The COAG (2007a) communiqué noted the following.

COAG has agreed that all Governments will establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition by:

- (a) establishing and maintaining “gate-keeping mechanisms” as part of the decision-making process to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made and to the public as soon as possible;
- (b) improving the quality of regulation impact analysis through the use, where appropriate, of cost-benefit analysis;
- (c) better measurement of compliance costs flowing from new and amended regulation, such as through the use of the Commonwealth Office of Small Business’ costing model;
- (d) broadening the scope of regulation impact analysis, where appropriate, to recognise the effect of regulation on individuals and the cumulative burden on business and, as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative; and
- (e) applying these arrangements to Ministerial Councils.

Regulation refers to the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as to those government voluntary codes and advisory instruments, for which there is a reasonable expectation of widespread compliance.

In keeping with this commitment to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition, COAG agrees that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed
3. adopting the option that generates the greatest net benefit for the community
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:

-
- a. the benefits of the restrictions to the community as a whole outweigh the costs
 - b. the objectives of the regulation can only be achieved by restricting competition
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear
 6. ensuring that regulation remains relevant and effective over time
 7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle
 8. government action should be effective and proportional to the issue being addressed.

Having regard to the above principles, the parties have agreed that regulation impact analysis of the feasible policy options, will, among other things, include an assessment of whether:

- (a) an existing regulatory model is in place outside the jurisdiction that would efficiently address the issue in question
- (b) a uniform, harmonised or jurisdiction-specific model would achieve the least burdensome outcome (or generate the greatest net benefit for the community).

In deciding on whether to adopt a uniform, harmonised or jurisdiction-specific model, governments will have regard to:

- the potential for better regulatory practices to be developed through regulatory competition, innovation and dynamism
- the relative effectiveness and efficiency of the alternative models, including regulatory burdens and any transition costs
- whether the issue is state-specific or national, and whether there are substantial differences that may require jurisdiction-specific responses.

The parties have committed to the actions specified in Appendix C of the communiqué to give effect to the commitments made by COAG and to ensure that the agreed principles flow through into practice.

In accordance with the COAG decision, the OBPR will gradually raise the level of analysis required for COAG related RISs by encouraging the use of formal cost-benefit analysis (CBA) for proposals with significant impacts on businesses or individuals and the economy, and the use of the Business Cost Calculator (BCC) to estimate compliance cost impacts of regulatory proposals. The OBPR will also encourage the maintenance of ‘gate-keeping mechanisms’ and making the impact of regulations transparent to the public.

Benchmarking study

In February 2006 COAG agreed to:

... adopt a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government ... (COAG 2006a, decision 5.3)

The first stage of this project was concluded with the release of the Productivity Commission's report, *Performance Benchmarking of Australian Business Regulation*, in March 2007. The report outlines a common framework for benchmarking, measuring and reporting on regulatory burden on business, including a range of feasible quantitative and qualitative performance indicators.

In April 2007, COAG considered the Productivity Commission's report and agreed to proceed to the second stage of the project. Over an initial three year program the Productivity Commission will develop the potential indicators identified in stage one to compare the compliance costs of regulation in targeted areas across jurisdictions. In year one of the study the Commission will benchmark the compliance costs of various business registration requirements as well as the quality and quantity of regulation.

Regulatory 'hotspots'

In February 2006, COAG also agreed to pursue reform of a number of cross-jurisdictional regulatory 'hotspots'. These regulations had been identified by businesses as imposing excessive burdens, particularly for businesses that operated across multiple states. They cover rail safety regulation; occupational health and safety (OH&S); national trade measurement; chemicals and plastics; development assessment arrangements; and building regulation.

In July 2006, COAG agreed to pursue regulatory reform in a further four 'hotspots': environmental assessment and approvals processes; business names, Australian Business Number and related business registration processes; personal property securities; and product safety.

In April 2007, COAG received a progress report on a number of these reform areas, and the COAG Reform Council (CRC) was established to monitor the implementation of these and under the NRA.

COAG decision RISs were prepared in the year to 31 March 2007 for particular areas of 'hotspots' including:

- building regulations

-
- rail safety regulation reform
 - model rail safety regulations
 - adoption of the Joint FAO/WHO Expert Committee on Food Additives (JECFA) approach for setting maximum residue limits for veterinary chemicals.

See table C2 for more information.

In addition, a consultation RIS was prepared for each of the following matters which have been identified as hotspots:

- review of Australian consumer product safety systems
- test procedures for the determination of the net weight of frozen fish
- national introduction of the average quantity system for the measurement of pre-packed articles
- national code of practice for OH&S induction training in the construction industry (a consultation RIS for this proposal was released in August 2005).

See table C4 for more information.

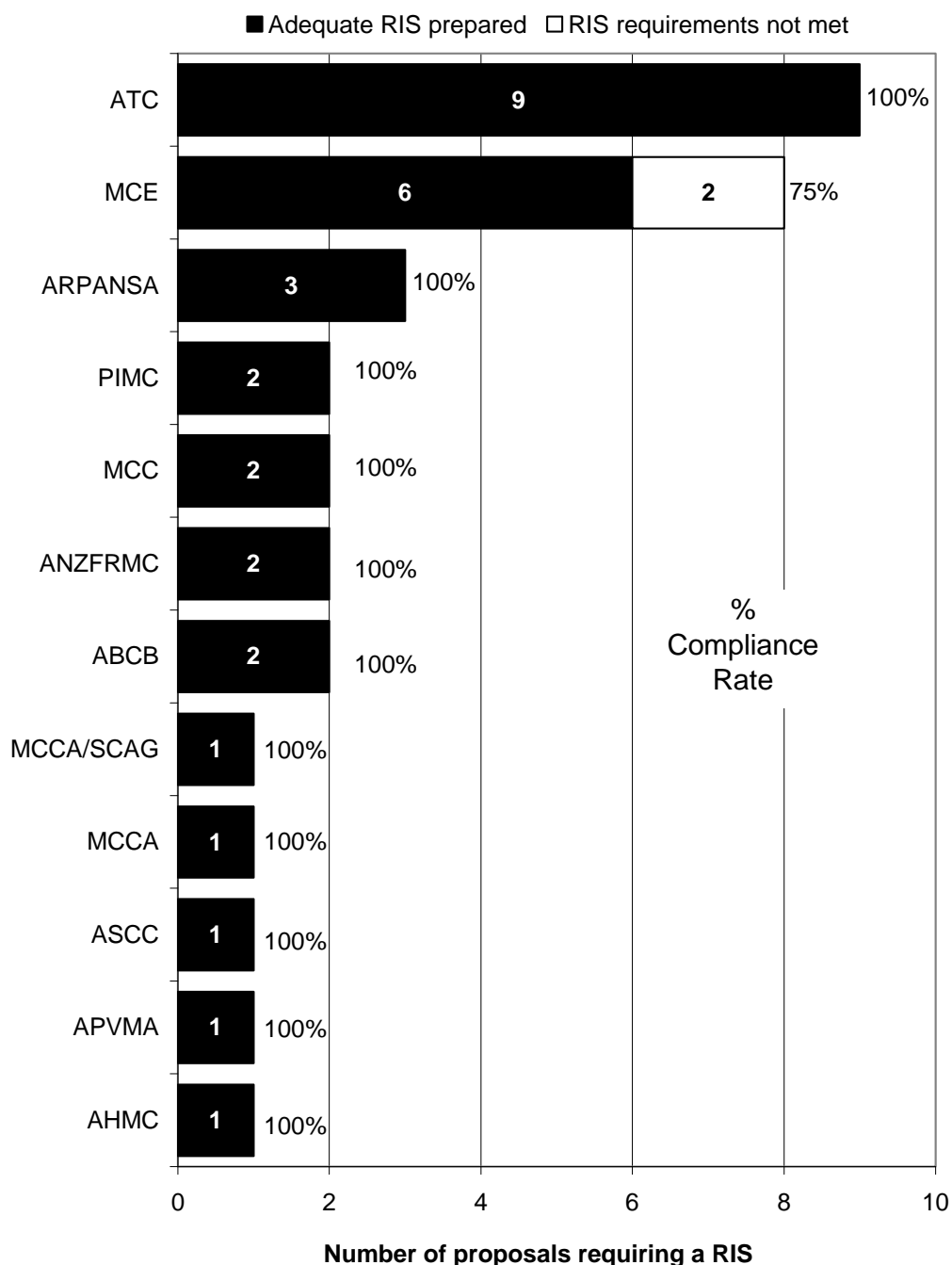
C.2 Overall compliance in 2006-07

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*.

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 C.1 shows the overall compliance at the decision-making stage by COAG decision-making bodies. Section C.3 discusses compliance related issues.

**Figure C.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.

Compliance by significance

The OBPR classifies each regulatory proposal that requires a RIS according to whether it is of greater or lesser significance. The criteria for this broad classification relate to:

1. the magnitude of the problem and the nature of the regulatory proposals; and
2. the scope and intensity of the impacts of the proposal on affected parties and the community.

Classifying regulatory proposals in this way assists in applying COAG's 'proportionality rule', which states that the type and level of RIS analysis should be commensurate with the potential impacts of the proposal.

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. However, the reduction in the compliance rate is due to only one consultation RIS not being prepared. At the decision-making stage, the compliance rate was 100 per cent — a significant improvement on the 50 per cent compliance rate achieved in 2005-06 (see table C.1).

Table C.1 Compliance with COAG RIS requirements 2004-05 to 2006-07

	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 estimates and information provided by ministerial councils and NSSBs.

Commentary on fully compliant highly significant issues

Energy efficiency building standards

On 1 May 2006, the Australian Building Codes Board amended the Building Code of Australia (BCA) to include energy efficiency standards for classes 5-9 non-residential buildings, and to increase the energy efficiency requirements for houses – class 1 and 10 buildings. The proposed regulations have been developed

pursuant to a 2000 agreement between the Australian, State and Territory Governments. The agreed strategy involves both the encouragement of voluntary measures by industry and the introduction of mandatory minimum requirements in the BCA.

These amendments will impact on owners, builders and tenants of new and renovated houses and non-residential buildings such as commercial, industrial and public buildings.

Gas Pipelines Access (South Australia)

On 21 April 2006, the Ministerial Council on Energy endorsed the *Gas Pipelines Access (South Australia) (Greenfields Pipeline Incentives) Amendment Bill 2006*. This Bill was designed to encourage greater interconnection of the gas network to meet the expected increase in demand, improve the reliability and security of gas supplies and promote competition in markets already served by a gas pipeline. It will have a significant impact on gas service providers, up-stream gas producers and major gas users and consumers.

Commentary on non-compliant highly significant issues

Gas access regime – light handed regulation

On 2 June 2006, the Ministerial Council on Energy, in response to the Productivity Commission's *Review of the Gas Access Regime*, agreed to the introduction of a light handed regulatory option. Whilst consultation with interested parties took place on this proposal, a RIS was not prepared for public consultation and the OBPR (then ORR) assessed the MCE as non-compliant at the consultation stage. A RIS was prepared and assessed as adequate at the decision-making stage.

C.3 Compliance by decision

Matters for which COAG's requirements were fully compliant

COAG RIS requirements were met for 29 decisions at both the consultation and decision-making stages in the year to 31 March 2007, as shown in table C.2.

Table C.2 **Cases where COAG RIS requirements were met at both consultation and decision-making stages in 2006-07**

<i>Ministerial council/NSSB and issue</i>	<i>Date of decision</i>
Australian Building Codes Board (ABCB)	
Building Code of Australia (BCA) 2006 Volume One (Class 2 to Class 9 buildings) - include energy efficiency measures for Class 5 to 9 buildings ^a	1 May 2006
BCA: Volume Two (Class 1 and class 10 buildings - housing provisions) - include enhanced energy efficiency provisions	1 May 2006
Australian Health Ministers Conference (AHMC)	
National health security legislation	17 Nov 2006
Australia New Zealand Food Regulation Ministerial Council (ANZFRMC)	
Feasibility study into extending country of origin labelling to selected packaged fruit and vegetable whole food produce	5 May 2006
National food safety audit policy	25 Oct 2006
Australian Pesticides and Veterinary Medicines Authority (APVMA)	
Adoption of the JECFA approach for setting maximum residue limits for veterinary chemicals ^b	9 Feb 2006
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	
Radiation protection standard for occupational exposure to ultraviolet radiation	14 Dec 2006
Code of practice for security of radioactive sources	23 Jan 2007
Code of practice and safety guide for safe use of fixed radiation gauges	25 Jan 2007

(continued next page)

Table C.2 (continued)

<i>Ministerial council/NSSB and issue</i>	<i>Date of decision</i>
Australian Transport Council (ATC)	
Review of the national heavy vehicle accreditation scheme business rules	22 May 2006
Consistency in mass limits for heavy vehicles	22 May 2006
Rail safety legislation reform	2 Jun 2006
Australian road rules 2005 amendment package	13 Sep 2006
Heavy vehicles – increased mass allowance for front axles	13 Oct 2006
National standard for commercial vessels Part F – category 2 fast craft	13 Oct 2006
Model rail safety regulations	Jan 2007
The Australian dangerous goods code and model legislation, 7 th edition	8 Feb 2007
Heavy vehicle driver fatigue reform package	8 Feb 2007
Ministerial Council on Consumer Affairs (MCCA)	
Amendment to the Uniform Consumer Credit Code (UCCC) in response to fringe credit providers	Feb 2007
Ministerial Council for Corporations (MCC)	
Corporations Amendment Bill (No 2) 2006 – rules for shareholder meetings	24 May 2006
Australian Securities and Investments Commission (Audit Inspection) Bill 2006	14 Sep 2006
Ministerial Council on Energy (MCE)	
Gas Pipelines Access (Greenfields Pipeline Incentives) Bill ^a	21 April 2006
Merits review model to review decision making in the electricity and gas regulatory framework	31 May 2006
MCE response to the Productivity Commission's review of gas access regime – coverage test threshold	02 Jun 2006
To mandate the changes in the star rating algorithm to include standby power specified in AS/NZ 2007.2:2005, performance of household electrical appliances – dishwashers: part 2 energy efficiency labelling requirements	13 Dec 2006
To mandate the changes in the star rating algorithm to include standby power specified in AS/NZ 2040.2:2005, performance of household electrical appliances – clothes washing machines: part 2 energy efficiency labelling requirements	13 Dec 2006

(continued next page)

Table C.2 (continued)

<i>Ministerial council/NSSB and issue</i>	<i>Date of decision</i>
Australian Safety and Compensation Council (ASCC)	
National standard for licensing persons performing high risk work	6 Apr 2006
Primary Industries Ministerial Council (PIMC)	
Model code of practice for the welfare of animals – husbandry of captive bred emus	20 Apr 2006
Model code of practice for the welfare of animals – poultry transport	20 Apr 2006

^a Highly significant issues – see commentary above. ^b This was not reported in 2005-06.

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

Matters for which COAG's requirements were not met

COAG RIS requirements were not met at the consultation stage and/or the decision-making stage in four cases, for decisions made between 1 April 2006 and 31 March 2007 (see table C.3).

Table C.3 Cases where COAG RIS requirements were not met at consultation and/or decision-making stage

<i>Ministerial council/NSSB and issue</i>	<i>Date of decision</i>	<i>Compliant at consultation</i>	<i>Compliant at decision</i>
Ministerial Council on Consumer Affairs (MCCA)/Standing Committee of Attorney-Generals (SCAG)			
Uniform regulation of Residential Tenancy Databases	11 Apr 2006	No	Yes
Ministerial Council on Energy (MCE)			
MCE response to the PC review of gas access regime – light handed regulation ^a	02 Jun 2006	No	Yes
Establishment of bulletin board to provide a transparent, real time and independent source of information for gas market participants and governments on the status of natural gas supplies around the country	27 Oct 2006	No	No
Further development of the short-term trading market to provide a mandatory price-based balancing mechanism for wholesale gas trading, for subsequent MCE considerations the next phase of gas market reform	27 Oct 2006	No	No

^a Significant issue – see commentary above.

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

Commentary on other non-compliant issues

Commentary on the RISs for all the highly significant regulatory proposals is provided above. There were three less significant proposals that did not satisfy the COAG RIS requirements.

Gas market – Bulletin Board and Short Term Trading Market for Gas

In October 2006, the Ministerial Council on Energy agreed to:

- the establishment of a Bulletin Board to provide transparent, real time and independent information on the status of natural gas supplies around the country; and
- the development of the design of a Short Term Trading Market which would provide a mandatory price-based balancing mechanism for wholesale gas trading.

These proposals arose out of recommendations in the *Gas Market Development Plan* which was prepared by the Gas Market Leaders Group (GMLG). While a consultation RIS was prepared and assessed as adequate by the OBPR, it was not made public. Consultation was undertaken as part of the *Gas Market Development Plan*. However, as of June 2004, the OBPR's ability to undertake ex-post assessment of processes was limited to cases of genuine emergency, which is not the case here (PC 2005). Therefore, the consultation processes did not satisfy the COAG *Principles and Guidelines* and, accordingly, the OBPR assessed the RIS process as inadequate at the consultation stage.

The OBPR did not receive a RIS for assessment prior to the decision-making stage and, although the OBPR was advised that a RIS was provided to the MCE prior to its decision, this does not satisfy the COAG *Principles and Guidelines*. Therefore, the OBPR assessed this proposal as non-compliant at the decision-making stage.

The OBPR understands that as the Short Term Trading Market proposal is developed it will require subsequent consideration by the MCE. Therefore, there is scope for a further RIS to be prepared for the implementation of the Short Term Trading Market decision to meet the COAG *Principles and Guidelines*.

Residential tenancy database

The consultation stage RIS requirements were not fully complied with for this proposal. While a RIS was prepared for the consultation stage, only targeted consultation with the RIS was undertaken; it was not released for full public

consultation. A decision RIS was subsequently prepared and assessed as adequate by the OBPR.

C.4 Consultation

Gathering information from stakeholders is an important part of the policy development process. Consultation enhances transparency and helps to ensure that the proposed regulation generates the greatest net benefit for the community (taking into account all the impacts) is able to work in practice and is legitimate from the view point of stakeholders.

Consultation is a key requirement of the COAG *Principles and Guidelines*. Table C.4 details the 35 issues for which consultation RISs were prepared and assessed by the OBPR and were still active at 31 March 2007. It is likely that most of these decisions will be reported by the OBPR in 2007-08.

Table C.4 Active RISs assessed for consultation before 31 March 2007 and made public

<i>Ministerial council/NSSB and issue</i>	<i>Date RIS assessed</i>
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	
Code of practice for the safe use of radiation in veterinary science	8 Sept 2005
Radiation protection standard for exposure limits for electric & magnetic fields – 0 Hz to 3 kHz	24 Oct 2006
Australian Safety and Compensation Council (ASCC)	
National code for tilt-up and precast concrete in construction work	03 Aug 2005
National code of practice for OH&S induction training in the construction industry	02 Aug 2005
National code of practice for the prevention of falls in general construction	08 July 2005
National standard for manual tasks and the draft national code for the prevention of musculoskeletal disorder from manual tasks at work	09 Dec 2004
Proposed revisions to the national OHS framework for control of workplace hazardous substances and dangerous goods	28 July 2006

(continued next page)

Table C.4 (continued)

<i>Ministerial council/NSSB and issue</i>	<i>Date RIS assessed</i>
Australian Transport Council (ATC)	
National standard for commercial vessels part C section 6 – stability; and subsection 6A – general requirements	26 Oct 2005
Raising the allowable combination mass for twin-steer vehicles	19 Dec 2005
Engine brake noise	18 May 2006
Australian road rules amendment package 2006	11 Aug 2006
Truck under-run protection devices	05 Oct 2006
National standards for commercial vessels Part C section 3 construction	06 Nov 2006
Heavy vehicle speed compliance	20 Dec 2006
National Standard for Commercial Vessels (NSCV) Part C construction, section 7 equipment, subsection D anchoring systems	27 Mar 2007
Requirements for omnibuses designed for hire or reward (ADR 58)	31 Jul 2006
Standards for omnibus rollover strength (ADR 59)	31 Jul 2006
Occupant protection in buses (ADR 66 & 68)	31 Jul 2006
Environment Protection and Heritage Council (EPHC)	
Investigation of options to reduce the environmental impact of plastic bags	13 Dec 2006
Food Standards Australia New Zealand (FSANZ)	
Development of joint food regulation for sports foods (P236)	14 Feb 2003
Primary production and processing standard for poultry meat (P282)	2 Nov 2005
Nutrition, health and related claims (P293)	3 Nov 2005
Mandatory fortification with folic acid (P295)	23 Jun 2006
Mandatory fortification with iodine (P230)	15 Aug 2006
Labelling requirements for food for catering purposes and retail sale (P272)	21 Nov 2006

(continued next page)

Table C.4 (continued)

<i>Ministerial council/NSSB and issue</i>	<i>Date RIS assessed</i>
Ministerial Council on Consumer Affairs (MCCA)	
Review of Australian consumer product safety system	23 June 2004
National regulation of property investment advice	15 July 2004
National regulation of finance and mortgage brokers	15 Nov 2004
Test procedures for the determination of the net weight of frozen fish	14 Dec 2004
National introduction of the average quantity system for the measurement of pre-packed articles	10 Mar 2005
Review of the system of mandatory comparison rates for finance charges in the Uniform Consumer Credit Code (UCCC)	24 Oct 2005
Ministerial Council on Energy (MCE)	
Energy legislative amendments – pricing principles	02 Nov 2006
Energy legislative amendments – regulatory decision-making covering regulated network entities	02 Nov 2006
Energy legislative amendments – information disclosure	27 Oct 2006
Minimum energy performance standards and alternative strategies for external power supplies	16 Mar 2007

Source: OBPR.

Consultation with New Zealand

In June 2004, COAG asked the OBPR to confer with the Regulatory Impact Analysis Unit (RIAU) in New Zealand on draft consultation RISs, where there are New Zealand impacts and issues, or where a proposal in Australia would affect Trans-Tasman trade. Between 1 April 2006 and 31 March 2007, the OBPR forwarded ten consultation RISs to the RIAU (see table C.5). The RIAU provided comments on the majority of the RISs. These comments were sent by the OBPR to the relevant ministerial councils and NSSBs. In most cases the RIAU's comments were taken into account and, where required, RISs were amended accordingly.

Table C.5 Consultation with New Zealand RIAU

<i>Ministerial council/NSSB and issue</i>	<i>Date consultation RIS sent to RIAU</i>
Australian Transport Council (ATC)	
Requirements for omnibuses designed for hire or reward (ADR 58)	31 Jul 2006
Standards for omnibus rollover strength (ADR 59)	11 Jul 2006
Occupant protection in buses (ADR 66 & 68)	31 Jul 2006
Food Standards Australia New Zealand (FSANZ)	
Mandatory fortification with folic acid (P295)	7 Jul 2006
Mandatory fortification with iodine (P230)	11 Aug 2006
Ministerial Council for Energy (MCE)	
Minimum energy performance standards and alternative strategies for external power supplies	13 Sep 2006
To mandate the changes in the star rating algorithm to include standby power specified in AS/NZ 2007.2:2005, performance of household electrical appliances – dishwashers: part 2 energy efficiency labelling requirements	9 May 2006
To mandate the changes in the star rating algorithm to include standby power specified in AS/NZ 2040.2:2005, performance of household electrical appliances – clothes washing machines: part 2 energy efficiency labelling requirements	9 May 2006
National Resource Management Ministerial Council (NRMMC)	
National system for the prevention of marine pest incursion through ballast water	12 Aug 2006
Australian Safety and Compensation Council (ASCC)	
Proposed revisions to the national OHS framework for control of workplace hazardous substances and dangerous goods	17 Jul 2006

Source: OBPR.

C.5 Improving compliance

The OBPR recognises a need for continued regular contact with secretariats of ministerial councils and NSSBs to ensure ongoing awareness of the scope of the COAG RIS requirements, the required level of analysis and the role of the OBPR. In this context, the OBPR's website has been upgraded to enhance its capacity to provide information on the COAG RIS requirements and the role of the OBPR.

The OBPR also takes an active interest in providing training to staff engaged in regulatory impact analysis. Such training can take various forms, such as OBPR officers providing guidance and assistance to staff working on specific regulatory proposals and providing formal training sessions. For example, during the period from 1 April 2006 to 31 March 2007, the OBPR provided formal training sessions to more than 30 officials involved in the preparation of COAG RISs. In 2007-08, the OBPR intends to increase the level of training it provides to officials. This will include the provision of technical advice on cost-benefit analysis and on the use of the BCC for the measurement of compliance costs.

D OBPR activities and performance

The role of the Office of Best Practice Regulation (OBPR) is to promote efficient and effective legislation and other regulations.

The OBPR provides advice to Government departments and agencies on appropriate quality control mechanisms for the development of regulatory proposals (see the *Best Practice Regulation Handbook*) and provides a similar function for the Council of Australian Governments, ministerial councils and national standard-setting bodies.

In monitoring compliance with the Australian Government's requirements, the OBPR is responsible for determining when further regulatory impact analysis of a proposal is required and the appropriate level of analysis, either in the form of a Regulation Impact Statement (RIS) or a quantitative assessment of business compliance costs. The OBPR provides assistance to approximately 100 Australian Government departments and agencies, ministerial councils and national standard-setting bodies in undertaking regulatory analysis and reports annually on compliance.

Following the introduction of the new regulatory governance arrangements in November 2006, the OBPR is also responsible for managing Annual Regulatory Plans and Regulatory Performance Indicators, promoting the whole-of-government consultation principles and providing technical assistance to officials on cost-benefit analysis and consultation processes. The full range of activities that the OBPR is required to undertake are set out in its charter (box D.1).

Box D.1 **Charter for the Office of Best Practice Regulation**

The role of the Office of Best Practice Regulation (OBPR) is to promote the Australian Government's objective of effective and efficient legislation and regulations. Its functions are to:

- advise Government, departments and agencies on appropriate quality control mechanisms for the development of regulatory proposals and for the review of existing regulations
- examine Regulation Impact Statements and advise whether they meet the Government's requirements and provide an adequate level of analysis, including cost-benefit and risk analysis of appropriate quality
- advise departments and agencies on the Government's requirements for compliance costs assessment, and maintain the Business Cost Calculator as a regulation costing tool
- manage other regulatory mechanisms, including Annual Regulatory Plans and Regulatory Performance Indicators
- promote the whole-of-government consultation principles and provide clear guidance on best practice consultation with stakeholders to be undertaken as part of the policy development process
- provide training and guidance to officials to assist them in meeting the assessment requirements to justify regulatory proposals
- provide technical assistance to officials on cost-benefit analysis and consultation processes
- report annually on compliance with the Government's requirements for Regulation Impact Statements, compliance cost assessment and consultation, and on regulatory reform developments generally
- provide advice to ministerial councils and national standard-setting bodies on Council of Australian Governments guidelines that apply when such bodies make regulations
- monitor regulatory reform developments in the States and Territories, and in other countries, in order to assess their relevance to Australia
- lodge submissions and publish reports on regulatory issues having significant implications.

The OBPR is to focus its efforts on regulations that restrict competition, have a significant impact on business and individuals or involve medium compliance costs. The OBPR is to ensure that the effects on small business of proposed new and amended legislation and regulations are made explicit and given adequate consideration.

Source: Australian Government 2007a, *Best Practice Regulation Handbook*, Canberra.

Activities in 2006-07

Australian Government regulatory activity

In 2006-07, the total number of regulations introduced (2338) was down slightly on the past two years (table D.1). The number of bills introduced was higher (191 in 2006-07 compared with 149 in 2005-06 and 172 in 2004-05) while the number of disallowable instruments was lower.

While the number of queries received by the OBPR was also lower (780 queries received in 2006-07 compared with 948 queries in 2005-06 and 851 queries in 2004-05), the number of proposals requiring a RIS was higher (17.7 per cent of queries received in 2006-07 compared with 13.5 per cent in 2005-06 and 15.7 per cent in 2004-05). In addition, the OBPR advised that quantification of compliance costs (in the form of a BCC report) was required on 25 occasions (3 per cent of queries received). See table D.1.

Table D.1 **Australian Government regulatory activities, 2001-02 to 2006-07**

	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>	<i>no.</i>
Regulations introduced						
Bills	207	174	150	172	149	191
Disallowable instruments ^a	1711	1615	1538	2458	2497	2147
Total introduced	1918	1789	1688	2630	2646	2338
Regulatory assessment workload						
Total number of new queries received by the OBPR ^b	709	861	845	851	948	780
Number requiring further analysis	175	132	169	134	128	163
Proposals finalised in period ^{c d}						
RISs required	145	139	114	85	96	81
RISs prepared	130	120	109	71	79	72

^a The large numbers of disallowable instruments reported since 2004-05 relate, in part, to the re-making of existing delegated legislation (delegated instruments made before 1 January 2005) under the *Legislative Instruments Act 2003*. ^b In 2006-07, the OBPR received 780 queries. Of these, 388 were received before 20 November 2006 and 392 queries were received on or after 20 November 2006. ^c Proposals introduced into Parliament or made into law in the reporting period. ^d In 2006-07, 63 RISs were required for proposals finalised under the previous RIS requirements, while 16 RISs were required (as two proposals were granted exceptional circumstances status) for proposals finalised under the best practice regulation requirements. Two BCC reports were also required under the new arrangements.

Sources: SSCRO (2007), OBPR.

COAG regulatory activity

In advising ministerial councils and national standard-setting bodies on regulatory best practice, the OBPR identified 33 decisions made in the 12 months to 31 March 2007 for which RISs were required. RISs were prepared and assessed as adequate by the OBPR at the consultation stage for 29 proposals and at the decision-making stage for 31 proposals.

The OBPR also reports on regulation making on an annual basis by ministerial councils and national standard-setting bodies to the National Competition Council (see appendix C).

Reporting on compliance

The OBPR provides information on its regulatory review activities through the *Best Practice Regulation Report* (formerly *Regulation and its Review*) which has been part of the Productivity Commission's annual report suite of publications. The report fulfils the Productivity Commission's and the OBPR's obligation to report annually on compliance with the Government's regulation review and reform requirements. *Regulation and its Review 2005-06* was released on 1 December 2006. In the year ending 30 June 2007, there were 2260 requests for the report from the Productivity Commission's website.

Release of new regulatory guidance material and related initiatives

In line with the OBPR's expanded role in assisting departments meet their regulatory obligations, the OBPR has made available a number of tools, publications and guides in print and online at the OBPR website, linked to the Productivity Commission's website (see box D.2).

In November 2006, the OBPR made the Business Cost Calculator available for download on the OBPR website. The Business Cost Calculator is an electronic costing tool designed to assist departments and agencies meet the mandatory requirement to consider business compliance costs for all proposals requiring regulatory impact analysis. As at 30 June 2007, the Business Cost Calculator had been downloaded 1507 times.

Also in November 2006, the OBPR prepared the draft *Best Practice Regulation Handbook*, which replaced the second edition of the former guidance material, *A Guide to Regulation*. Around 1400 copies of the draft Handbook were distributed for use by policy and regulatory officers in all Australian Government departments,

agencies, statutory authorities and boards and to other people interested in regulatory reform. The draft *Best Practice Regulation Handbook* was also made available online. The draft Handbook was complemented with the ready references *Quickstart to Regulatory Impact Analysis* and the *Users Guide to the Best Practice Regulation Handbook*, which were made available in hard copy and were also made available online. The final version of the *Best Practice Regulation Handbook* was launched in September 2007, along with associated guidance material including a preliminary assessment form. The guidance material is available online with a preliminary assessment ‘smart’ form.

In all, the best practice regulation material including the *Best Practice Regulation Handbook*, the Business Cost Calculator, *A Guide to Regulation* and supplementary material were downloaded 79 653 times.

Box D.2 Guidance material issued by the OBPR in 2006-07

Since the Australian Government’s August response to the report of the Regulation Taskforce (2006), the Office of Best Practice Regulation made the following tools and guidance material publicly available in the year ending 30 June 2007:

- *Best Practice Regulation Handbook*, (draft) issued November 2006
- *Quickstart to Regulatory Impact Analysis*, (draft) issued November 2006
- User’s Guide to the *Best Practice Regulation Handbook*, (draft) issued November 2006
- Business Cost Calculator and supplementary materials, re-issued November 2006 (in line with the change in responsibilities from the Office of Small Business)
- Preliminary Assessment Quicksan, (limited release) first issued January 2007
- Coordinators’ website and associated material, including Best Practice Coordinators’ bulletin and information sheets.

In September 2006, the Secretary of the Department of the Prime Minister and Cabinet, Dr Peter Shergold, wrote to each department and agency requesting that they nominate a senior executive officer to coordinate regulatory matters within their organisation and help oversight the successful bedding down of the new arrangements.

Each Australian Government department and agency responsible for making regulation has appointed a Best Practice Regulation Coordinator. The role of the Coordinators varies across departments and agencies with many Coordinators taking a strong advocacy role and encouraging and ensuring compliance with the enhanced requirements.

To assist Coordinators in their role, the OBPR organised a forum for Coordinators to receive information on the new arrangements, discuss their roles and responsibilities, and raise issues arising from the rollout of the new arrangements. The OBPR also developed and made available a website for Coordinators where they can access additional material about the new best practice requirements.

Training

In addition to providing advice and assistance to policy officers to meet the Australian Government and COAG regulatory impact analysis requirements, in 2006-07, the OBPR offered formal training to all departments and agencies. It provided formal training on regulatory best practice to 889 officials from a wide range of departments and agencies:

- 232 senior officials were briefed by the Executive Director and staff of the OBPR on the Government's new requirements
- 532 policy officers received training in the Government's regulatory assessment requirements, including changes to the requirements, how to quantify compliance costs and how to prepare a RIS
- 55 policy officers received specific training on how to use the Business Cost Calculator
- 70 were provided with an introduction to cost-benefit analysis.

Other activities

In monitoring and contributing to regulatory reform developments more broadly throughout Australia and internationally during 2006-07, the OBPR met with officials from:

- the International Monetary Fund
- the Organisation for Economic Co-Operation and Development
- the Legislative Affairs Office of State Council of the Chinese Government
- the Indonesian Ministry of Trade
- the Regulatory Impact Analysis Unit, New Zealand Ministry of Economic Development
- the Investment and Financial Services Association
- the Insurance Council of Australia
- the Australian Public Service Commission

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- State and Territory regulatory impact assessment units
 - the Victorian Competition and Efficiency Commission.

The OBPR also responded to requests for information on Australia's regulatory impact analysis requirements from the Portuguese, Belgian and Japanese governments.

Performance in 2006-07

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

Quality indicators

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

In 2006-07, the OBPR continued its ongoing survey of officials preparing RISs to obtain feedback on how departments and agencies view the OBPR's work performance and the quality of its service in providing advice on the Government's regulatory best practice requirements. The OBPR dispatches evaluation forms after each RIS has been assessed. The response rate in 2006-07 was 77 per cent (compared with 51 per cent in 2005-06). Thirty-three per cent of respondents rated the quality of the OBPR's written and oral advice as 'excellent' (compared with 27 per cent in 2005-06), while 60 per cent rated it as 'good' (compared with 51 per cent in 2005-06). Seven per cent of respondents considered the OBPR's service as 'satisfactory' (compared with 22 per cent in 2005-06). Six respondents offered specific suggestions on how the OBPR could improve the quality of its advice, including:

- more clearly communicating the additional requirements under the new regulatory framework
- having a better understanding of the background to issues
- making its expectations clearer earlier in the process.

As in previous years, the OBPR surveyed the 657 Australian Government officials who received training in regulatory best practice in 2006-07 and 430 responses were received — a response rate of 65 per cent (compared with a response rate of 49 per cent in 2005-06). Trends in training and its evaluation are shown in table D.2.

Table D.2 Australian Government training evaluation, 2002-03 to 2006-07^a

<i>Evaluation</i>	<i>2002-03</i>		<i>2003-04</i>		<i>2004-05</i>		<i>2005-06</i>		<i>2006-07</i>	
	no.	%	no.	%	no.	%	no.	%	no.	%
Total number trained	373		355		209		289		657	
Responses received	250	(67)	272	(77)	154	(74)	178	(49)	430	(65)
Excellent	62	(25)	52	(19)	43	(28)	36	(20)	110	(26)
Good	170	(68)	182	(67)	101	(66)	127	(71)	283	(66)
Satisfactory	19	(7)	38	(14)	9	(6)	14	(8)	37	(9)
Unsatisfactory	0	(0)	0	(0)	1	(1)	1	(1)	0	(0)

^a Excludes officials from State/Territory governments, the New Zealand Government or officials assisting ministerial councils and national standard-setting bodies.

Source: OBPR.

The comparatively large number of officials trained in 2006-07 was associated with the OBPR's increased role in training Government departments about regulatory best practice, and the increased demand from agencies for training resulting from the new regulation-making framework. The responses indicate that the OBPR training was generally well received, with 92 per cent of respondents rating the training as either 'excellent' or 'good' (table D.3).

Table D.3 Regulatory impact analysis training by type, 2006-07^a

	<i>Business Cost Calculator</i>		<i>RIS</i>		<i>Cost-benefit analysis</i>		<i>Total</i>	
	no.	%	no.	%	no.	%	no.	%
Total number trained	55		532		70		657	
Responses received	44	(80)	350	(58)	36	(51)	430	(65)
Excellent	12	(27)	92	(26)	6	(17)	110	(26)
Good	30	(68)	232	(66)	21	(58)	283	(66)
Satisfactory	2	(5)	26	(7)	9	(25)	37	(9)
Unsatisfactory	0	(0)	0	(0)	0	(0)	0	(0)

^a Excludes officials from State/Territory governments or officials assisting ministerial councils and national standard-setting bodies.

Source: OBPR.

OBPR timeliness

The extent to which the OBPR'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 OBPR's timeliness including: the length and quality of the regulatory impact analysis document received; the complexity of the issues/policy proposals canvassed; the familiarity of OBPR staff with the issues covered, including whether the OBPR has had prior contact with the department/agency in relation to the issue; OBPR workloads; and staff availability.

As a general rule, officials preparing RISs are asked to allow the OBPR 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 2006-07, the OBPR provided formal feedback (comments on the first draft of the RIS) to departments and agencies, on average, eight working days after RISs were received. The ORR provided comments on 96 per cent of all (first draft) RISs received within two weeks.

Under the COAG Principles and Guidelines, the OBPR is also required to provide advice on RISs or BCC Reports for ministerial councils and national standard-setting bodies in a timely manner. When asked for advice in two weeks or less, the OBPR provided advice within the specified timeframe on all occasions in 2006-07.

Indicators of usefulness

The usefulness of the OBPR'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.

- 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 and the public being better informed. RISs and the report of the Regulation Taskforce were referred to in Hansard on 36 occasions in 2006-07.¹

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

¹ Issues raised included: the Independent Contractors Bill 2006, the Migration Amendment (Employer Sanctions) Bill 2006, Air Service Agreements.

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- The Australian Government cited compliance data from *Regulation and its Review 2005-06* (PC 2006) in its *National Competition Policy Report 2005-07* (Australian Government 2007b) and these data were also used in policy statements by the Opposition (eg, Rudd 2007, Emerson 2007).
 - The Business Council of Australia (BCA) drew on the 2005-06 report on compiling its own assessment of regulatory reform, *A Scorecard of State Red Tape Reform*. In addition, the BCA stated:

The BCA strongly supports a process of accountability that includes an independent agency like the Office of Best Practice Regulation, which provides oversight of the RIS process and reports on the adequacy of RISs each year in its annual publication *Regulation and its Review*. Transparency and accountability mechanisms are essential for ensuring that regulation-making processes are properly implemented and adhered to. (BCA 2007, p. 5)
 - Data from *Regulation and its Review 2005-06* were also used in WTO Trade Policy Review. (WTO 2007)
 - Approximately 1550 printed copies of *Regulation and its Review 2005-06* were distributed (including copies distributed to each Member of the Federal Parliament) and there was coverage of the report in national newspapers.
 - In the year ending 30 June 2007, there were more than 2200 requests for *Regulation and its Review 2005-06* from the Productivity Commission's website and a total of more than 3900 requests for the previous two reports.

The OBPR also provides information on regulatory best practice via its website. From 1 July 2006 to 19 November 2006, the ORR website received more than 8000 viewing requests. From 20 November 2006 to 30 June 2007, the OBPR website received more than 211 000 viewing requests and the BCC website, which went live in January 2007, received more than 78 000 requests. There were more than 70 000 requests for best practice regulation material (including the draft version of the *Best Practice Regulation Handbook*, released in November 2006 and the BCC). Quickstart was requested more than 6100 times and the Users Guide was requested more than 9700 times. There were more than 35 600 requests for the chapters of the *Best Practice Regulation Handbook* and more than 9300 requests for the appendixes. The COAG Principles and Guidelines were requested more than 1200 times in 2006-07.

E States and Territories

This appendix focuses on the regulatory impact analysis processes in the Australian states and territories in 2006-07.

During this period, regulatory reform was an important undertaking for state and territory governments, with most implementing or continuing regulatory reform programs. In April 2007, COAG reiterated its position concerning the regulatory impact analysis process (see appendix C of this report), by including the requirements in its Regulatory Reform Plan, which is a part of its National Reform Agenda (NRA). The states and territories also committed to the actions specified in the COAG communiqué of April 2007 to ensure that the agreed principles flow through into practice.

During 2006-07 a number of state governments have taken initiatives to reduce red tape. The Victorian and South Australian governments have introduced programs to reduce compliance burdens on businesses specifying targets for reductions. The NSW government conducted an independent review of the compliance burden in the State and established several reviews in specific areas. It has also strengthened the role of the Minister for Regulatory Reform and established the Better Regulation Office. South Australia has adopted the Australian Government's Business Cost Calculator (BCC). Queensland is also considering the use of the BCC. Victoria has adopted the Standard Cost Model (SCM) to estimate administrative cost burdens.

Regulation Impact Statements (RIS) continue to be the most used tool to ensure regulatory quality in Australian jurisdictions. Other measures to improve regulatory quality include stakeholder consultation, mandatory sunset and review provisions, and public reporting of RIS compliance.

E.1 Victoria

Regulatory impact analysis

Victoria has a comprehensive regulatory impact analysis process. This includes a statutory requirement to prepare a RIS where a proposed statutory rule is likely to

impose an appreciable economic or social burden on a sector of the public. In addition, there is a requirement for a Business Impact Assessment (BIA) to be prepared for primary legislation that has a significant impact on business or competition. Where any legislative instrument results in a material change in the administrative burden imposed on businesses and not-for-profit organisations, an SCM measurement is required to be undertaken and the results publicly reported.

Victorian Competition and Efficiency Commission

The Victorian Competition and Efficiency Commission (VCEC) is the independent assessor of RISs, BIAs and SCM measurements. The Commission also conducts public inquiries and investigations into competitive neutrality. The Commission released the following reports in 2006-07:

- *Making the right choices: options for managing transport congestion* (VCEC 2006). The report explored options aimed at improving the efficiency and management of transport congestion in Melbourne, Ballarat, Bendigo and Geelong. The final report was publicly released in March 2007 along with the Government's response, which supported 52 of the 58 options raised by the Commission.
- *Simplifying the menu: food regulation in Victoria* (VCEC 2007a). The Commission's inquiry into food regulation explores ways to simplify the current regulatory environment, clarify roles and expectations for food industry participants at different stages of production, and ensure best practice enforcement of food regulation. The final report was presented to the Government in September 2007. The Government has six months within which to release the final report and issue its response.
- *The Victorian Regulatory System* (VCEC 2007b). This annual survey reports on regulatory developments in each of the Victorian Government business regulators. In April 2007, there were 72 Victorian Government business regulators, responsible for administering 196 Acts and 224 Regulations.
- *Review of the Labour and Industry Act 1958*. The Commission completed a review of the *Labour and Industry Act 1958* and presented the final report to the Government in mid 2007. The Government is expected to release the final report and its response by the end of 2007.
- *The VCEC Annual Report*. The Commission reports annually on its own activities; on compliance with the Victorian Government's best practice processes for making regulations and legislation; as well as the findings of inquiries into matters referred to the Commission by the Government and

compliance with competitive neutrality. The 2006-07 annual report will be released in the latter half of 2007.

Developments in regulatory reform

The Victorian Government announced the *Reducing the Regulatory Burden* initiative in the 2006-07 budget, setting aside \$42 million over four years. This initiative consists of three key commitments:

- cutting the existing administrative burden of regulation by 15 per cent over three years and 25 per cent over five years
- ensuring the administrative burden of any new regulation is met by an ‘offsetting simplification’ in the same or related area
- undertaking a program of reviews to identify the necessary actions to reduce compliance burdens (Government of Victoria 2007, p. 4).

The Better Regulation Unit has been established within the Department of Treasury and Finance (DTF) to co-ordinate the implementation of the *Reducing the Regulatory Burden* initiative across government.

The 2006-07 progress report on the *Reducing the Regulatory Burden* initiative provides provisional estimates that indicate a net reduction in the administrative burden of \$29.64 million per annum (Government of Victoria 2007, p. 12).

During 2006, a new regulator, the Working with Children Check Unit was established within the Department of Justice to administer the requirements of the *Working with Children Act 2005*. In addition, the Victorian Government has merged the Registered Schools Board with the Victorian Qualifications Authority to create a single body, the Victorian Registration and Qualifications Authority, to regulate education and training providers and qualifications in Victoria.

Various Acts and Regulations have also been introduced in Victoria to simplify and consolidate the legislative framework.

- The *Education and Training Reform Act 2006* replaced 12 Acts.
- The *Infringements Act 2006* provided a consistent framework for the issuing and enforcement of infringement notices for offences.
- The *Occupational Health and Safety Regulations 2007* replaced 19 existing sets of regulations.

A review which identified 15 actions that could be taken to streamline the planning permit process, *Streamlining the Planning Process – Cutting Red Tape Review*, was

published in August 2006. As a result of this review, 4000 minor works no longer require planning permits and the Government is proposing to exempt a further 3000 works.

In February 2007, it was announced that the Victorian and NSW Governments will harmonise payroll tax arrangements. Although both States will continue to set their own rates and thresholds, from 1 July 2007 Victoria and NSW will have the same definitions, standardised laws and common eligibility. These reforms are expected to cut red tape for thousands of businesses.

In September 2006, the Treasurer requested that the State Services Authority undertake a *Review of Not-for-Profit Regulation* (the Review). The Review is examining the impact of government regulation and other reporting requirements on the Not-for-Profit sector. The final report is due in the latter half of 2007.

Compliance reporting

The VCEC reports annually to the Treasurer on the nature and extent of compliance with published policies currently applying to government bodies in relation to RISs and BIAs. During the past financial year, the Commission completed 42 assessments of RISs, BIAs and SCM measurements. The Commission's Annual Report for 2006-07, which will be released in the latter half of 2007, provides further information on these assessments.

Resources for regulatory review

Approximately 6.8 full-time equivalent staff within the Commission are responsible for assessing the adequacy of RISs, BIAs and SCM measurements. In total, the VCEC comprises 22.2 full-time equivalent (FTE) staff, including Commissioners. From a total budget of \$2.99 million, the Commission allocated approximately \$780 000 to RIS, BIA and SCM assessment. There are approximately 4.7 full-time equivalent staff within the Better Regulation Unit of DTF.

E.2 South Australia

Regulatory impact analysis

In South Australia, all Cabinet submissions require an assessment of regulatory, business, regional, environmental, family and social impacts. Where the regulatory impact is significant, a RIS must be attached to the submission. Where there is a proposed restriction on competition, the assessment must demonstrate that the benefits outweigh the costs and that the objectives can only be achieved by restricting competition.

In addition, where there is a significant change proposed in relation to services or infrastructure in regional areas, a formal Regional Impact Assessment Statement (RIAS) must be prepared. After Cabinet consideration, RIASs are lodged in Parliament and published on the website of the Office of Regional Affairs.

Developments in regulatory reform

In 2006, the South Australian Government appointed a Minister Assisting the Premier with Cabinet Business and Public Sector Management. One of the roles of the Minister is to improve the quality of regulatory proposals submitted to Cabinet.

Also in 2006, the South Australian Government established a target of reducing red tape by at least 25 per cent by July 2008. This is supported by the following initiatives:

- Mandated use of the Australian Government's Business Cost Calculator (BCC) for all regulatory proposals and any other proposals with an impact on business (to be evaluated after 12 months).
- The creation of a Competitiveness Council, as a sub-committee of the Economic Development Board. This board reports to the Premier on the implementation across government of the initiatives to reduce compliance costs to business of government regulations, and other measures and indices of competitiveness. In addition to a rolling series of industry reviews, the South Australian Government agencies have submitted 'action plans' to the Competitiveness Council that outline their contribution to the Government's overall 25 per cent reduction target. Savings to businesses identified in the plans have been costed, where possible, using the BCC. A scorecard outlining the cost savings to business from red tape reduction initiatives is under development and will be updated quarterly.

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- Changing the requirement for a ‘Small Business Impact Statement’ in Cabinet submissions to a requirement for a ‘Business Impact Statement’ (incorporating use of the BCC).
 - Continuation of the sunset program, whereby all regulations except those detailed in section 16A (Subordinate Legislation Act 1978) expire on 1 September in the year following the tenth anniversary of their promulgation.

Compliance reporting

In the year ending 31 March 2007, there were 301 assessments of regulatory impact reported in Cabinet Submissions, including 10 separate RISs. The Cabinet Office considered that the majority of the assessments were adequate.

As part of the government’s red tape reduction plan, the State Government has committed to publishing an annual Red Tape Report, which will encapsulate the results of the BCC assessments.

Resources for regulatory review

South Australia does not have a Regulatory Review Unit. Impact assessment officers from the Departments of Premier and Cabinet, Trade and Economic Development, Families and Communities, and the Environment and Conservation portfolio, review the assessments of regulatory, business, regional, family and social and environmental impacts of Cabinet proposals. Approximately 3.6 FTEs are allocated to this task across government.

E.3 Queensland

Regulatory impact analysis

In Queensland, proposed subordinate legislation that is likely to impose appreciable costs on the community, or a part of the community, is subject to the preparation of a RIS as prescribed under Part 5 of the *Statutory Instruments Act 1992* (Qld) (the SIA).

In accordance with the principles outlined in the 1995 Competition Principles Agreement (CPA), the Queensland Government requires that all new and amending primary and subordinate legislation that restricts competition is subject to a public benefit test (PBT).

Where proposed subordinate legislation is likely to impose appreciable costs on the community, or part of the community, and contains restrictions on competition, a combined RIS/PBT can be prepared.

Regulatory governance arrangements in Queensland ensure that impact assessment processes for both PBT and RIS requirements are properly enforced. For example, Queensland Treasury is responsible for ensuring that legislation is reviewed in accordance with the CPA. The Queensland Cabinet Handbook requires that departments consult with Queensland Treasury on any proposed legislative restrictions on competition.

The Queensland Office for Regulatory Efficiency, in the Department of Tourism, Regional Development and Industry (formerly the Department of State Development), provides an advisory service to Queensland agencies on the application of RIS requirements prescribed under the SIA. As part of this service, the Department has published RIS guidelines. These guidelines were reviewed and updated in 2005.

Developments in regulatory reform

The Government is progressing the gate-keeping commitments made by Queensland in the Regulatory Reform Plan endorsed by COAG in April 2007 including:

- enhancing current gate keeping arrangements and impact assessment processes — strategies for achieving these are currently under development including a Legislation Development and Review System model to strengthen the current RIS process
- improving consultation arrangements with respect to legislation development and review — strategies for achieving this are also under development, including a whole-of-government consultation protocol with respect to legislation development and review
- developing more robust and user friendly guidelines for regulatory agencies on regulatory development, implementation and review — these guidelines are currently being finalised for government endorsement.

Governance arrangements established are as follows:

- The Queensland Office for Regulatory Efficiency has been established within the Department of Tourism, Regional Development and Industry to lead the development and implementation of the Queensland regulatory reform agenda.
- The Office is currently scoping possible systemic regulatory issues for review as part of its annual review commitments in the Regulatory Reform Plan. A draft

model has been developed for engaging with key government stakeholders to address systemic regulatory issues.

- A Senior Officers Network for Regulatory Reform has been established and is operational. This network is coordinating regulatory reform activities at a whole-of-government level.
- A chemicals and plastics inter-departmental reference group has been established to support Queensland's participation on the Chemicals and Plastics Ministerial Taskforce.
- Working groups to develop strategies for improving the business-government interface have been established. These groups will have a particular focus on:
 - strengthening consultation arrangements and practices to give business a better opportunity to provide input to the development and review of legislation
 - ensuring that businesses are adequately informed of, and have reasonable access to, details of current regulatory compliance obligations
 - raising awareness of business-related products and services, making access to financial assistance programs easier.

Other regulatory reform measures which have been completed include:

- the Red Tape Reduction Stocktake Report 2005-06
- trials of the Australian Government's BCC by six Queensland Government agencies
- action plans on progressing red tape reduction opportunities (identified by business through regulatory reviews undertaken by the Queensland Government during 2005-06) — these plans are currently being considered by the Government.

Consultation

Section 45 of the SIA sets out the process for notifying the community of the availability of the RIS and minimum consultation period.

Section 45(4) states that a period of at least 28 days must be allowed from publication of the notice for public comments on the RIS.

Compliance reporting

Queensland does not have a formal procedure for reporting on compliance with the RIS requirements. However, Section 40(3) of the SIA states that it is the Queensland Parliament's intention that RIS requirements be complied with before subordinate legislation is made. The mechanism for achieving this is a requirement that Directors-General complete a compliance certificate prior to the making of a regulation.

E.4 New South Wales

Regulatory impact analysis

In New South Wales (NSW), the Subordinate Legislation Act 1989 (NSW) requires the preparation of a formal RIS for a proposed statutory rule. That is, the minister responsible must ensure that the guidelines in schedule 1 of the Subordinate Legislation Act are complied with before a statutory rule is made.

The Act requires that the RIS take into account economic and social costs and benefits of proposals, and that costs and benefits be quantified, wherever possible. The objectives of the regulation must be outlined and tested to ensure they are appropriate and not inconsistent with other regulations. Alternative options must also be canvassed.

Further to the requirements of the Subordinate Legislation Act, regulatory impact analysis is required for all new and amending legislation and regulation in NSW, and consultation is recommended.

Developments in regulatory reform

Several independent reviews of the regulatory framework have been undertaken in NSW.

Independent Pricing and Regulatory Tribunal

In late 2005, the NSW Government asked the Independent Pricing and Review Tribunal (IPART) to investigate any unnecessary regulatory burden imposed on business and the community in NSW and to make recommendations to reduce it.

On 5 October 2006, IPART provided the final report of its Investigation into the Burden of Regulation and Improving Regulatory Efficiency to the Government. In that report, IPART made 74 recommendations for reforms to reduce the regulatory burden. Recommendations 1 to 16 focussed on strengthening and reinvigorating regulatory processes to reduce the burden imposed by new regulations, while recommendations 17 to 74 made specific recommendations for reform to existing regulations across a broad range of policy areas.

On 13 February 2007, the NSW Government released its response to recommendations 1 to 16 of IPART's report which included an overview of the Government's new framework for regulation-making and the review of regulation. The reforms included:

- an expanded role for the Minister for Regulatory Reform in relation to minimising regulatory burden and red tape, including providing advice into the Cabinet process and certifying the adequacy of RISs required for significant new or amending legislation and regulations; and
- the establishment of the Better Regulation Office (BRO) to support the Minister in that role, and to ensure that regulations are developed only after best practice RIA has been carried out.

In August 2007, the NSW Government released its response to recommendations 17 to 74 of IPART's report. The Government has undertaken to report on progress of the implementation of IPART's report on a six monthly basis.

The Government's response to IPART's report and more information on the BRO can be found on its website at http://www.cabinet.nsw.gov.au/better_regulation_office.

Review of regulations impacting on small business

On 17 January 2006, the NSW Premier announced a dedicated review of regulation impacting on small business, consisting of a program of rolling reviews of the regulatory and administrative burdens imposed in specific business sectors. The reviews assess identified regulatory burdens that impact on small firms and recommend actions to reduce those burdens. Under this program, reviews have been completed in the:

- motor vehicle retailing and services sector
- accommodation, food and beverages sector
- manufacturing (fabricated metal products, machinery and equipment, and furniture) sector.

Reviews currently underway

At the direction of the Minister for Regulatory Reform, the BRO is undertaking a program of targeted reviews of areas of regulatory concern and excessive red tape. The first of these reviews, into the regulation of shop trading hours, is underway. The issues paper for the review can be found on the BRO website.

The NSW Government also initiated a review of the undue regulatory burdens imposed on Government agencies in 2006. An examination of the central reporting and other requirements of agencies to determine whether those requirements could be achieved more efficiently or removed is underway.

A small business red tape review of the business and professional services sector is also being undertaken.

Future reviews

The NSW Government has committed to undertake ongoing targeted reviews of the regulatory and administrative burden imposed on small firms in specific business sectors in NSW. The NSW State Plan specifies a target of three industry specific red-tape reviews to be completed each year over the next five years. Accordingly, the Government has announced that the next review will be in the rental hiring and real estate services sector.

In addition to major reforms to the assessment processes for new proposals, the NSW Government will strengthen and coordinate the processes for the periodic review of existing regulation. A review clause is also generally included in new, significant legislation. These arrangements will be reviewed and strengthened as part of the recently announced reforms.

Consultation

There is a requirement for public consultation on RISs prepared for principal statutory rules. Consultation also occurs, as considered appropriate, throughout the policy development and regulation-making process.

As part of its recently announced reforms, the BRO is developing a new best practice guide to be followed by policy makers and regulators in the development of all regulatory proposals. The guide will include a whole-of-government consultation policy, to ensure that consultation processes with business and the community are effective and efficient, and tailored to the specific matter at hand.

Compliance reporting

There are currently no formal compliance reporting requirements within NSW. However, the Legislation Review Committee can report to the Parliament on compliance with the RIS requirements under the Subordinate Legislation Act.

The BRO has been tasked with reporting on the NSW Government's performance against best practice regulation requirements. Performance indicators will be developed to take into account the need to create incentives to achieve best practice while ensuring that undue internal government red-tape is minimised. It is envisaged that the reports will provide an annual overview of significant proposals that required the preparation of RISs, the adequacy of such RISs, and an overview of the operations of regulatory processes in NSW.

Sunset clauses

Under the Subordinate Legislation Act 1989, most regulations in NSW are subject to automatic repeal after five years. A RIS is required to support the remaking of a regulation that has been repealed through this process.

Resources and activity

The BRO was established administratively within the Department of Premier and Cabinet (then the Cabinet Office) in January 2007, and is now fully operational.

While the BRO scrutinises regulatory proposals to ensure a quality regulatory process has been undertaken, the quality control process for legislation and regulation making is not solely that team's responsibility. All officers in the Policy Division of the Department of Premier and Cabinet have, as a component of their roles, responsibility for ensuring that regulatory best practice principles are followed, including regulatory impact assessment for all such proposals.

Further, each NSW Government agency has generally assigned a similar role to some or all officers in its legal/parliamentary area, again as a component of their responsibilities. Beyond that, the preparation of new proposals and RISs, and compliance with best practice principles, begins as the responsibility of individual officers in line areas.

E.5 Tasmania

Regulatory impact analysis

Under the Tasmanian Government's Legislative Review Program (LRP), a RIS must be prepared for all proposed primary legislation anticipated to have significant restrictions on competition or significant negative impacts on business.

Proposed subordinate legislation, assessed as imposing a significant burden, cost or disadvantage on any sector of the public, also requires a RIS under the Subordinate Legislation Act 1992 (SLA).

Restrictions on competition are the trigger for the preparation of a RIS for both primary legislation and subordinate legislation. A restriction on competition or an impact on business is considered to be significant where it has economy-wide implications, or where it significantly affects a sector of the economy, including consumers.

Developments in regulatory reform

There have been no new developments during 2006-07. However, a review of the SLA is currently being undertaken with the intent of reducing unnecessary administrative burdens, whilst ensuring that the Act continues to provide a scrutiny process for new and amending subordinate legislation, and to facilitate the removal of outdated or inappropriate subordinate legislation from the statute book. It is anticipated that the Subordinate Legislation Amendment Bill 2007 will be introduced into Parliament in the Autumn 2008 session.

Consultation

It is a requirement of both the LRP and SLA that mandatory public consultation of not less than 21 days be undertaken in respect of primary or subordinate legislation that has been assessed as requiring a RIS. The RIS forms the basis of the public consultation and a copy of the proposed draft primary legislation or draft subordinate legislation must accompany the RIS.

Resources and activity

During 2006-07, the Economic Reform Unit assessed two RISs under the SLA and endorsed a minor assessment statement under the LRP.

There are currently five officers within Tasmania's Economic Reform Unit. All officers undertake regulatory review work and other related tasks. The Unit's budgeted wage cost (including payroll tax, workers compensation premiums and superannuation) for 2006-07 is \$414 122, of which around 70 per cent can be directly attributed to regulatory review work. This proportion, however, will depend on the economic policy and regulatory issues in any given year.

E.6 Western Australia

Regulatory impact analysis

All new legislation, including subordinate legislation that restricts competition must be reviewed in accordance with the Competition Principles Agreement. The Western Australian Department of Treasury and Finance has a gate-keeping role for new legislation being considered by the Western Australian Cabinet, advising Cabinet whether review and consultation requirements have been met.

Cabinet submissions that significantly impact on small business must also be accompanied by a Small Business Statement, and those affecting regional Western Australia must include a Regional Impact Statement.

Developments in regulatory reform

Western Australia is committed to improving its regulatory gate-keeping and review processes, in accordance with its commitment to COAG's Regulatory Reform Plan. This process is yet to be completed. In addition to gate-keeping processes, a number of targeted regulatory reviews of existing regulations have been established or completed in 2007.

Targeted reviews, underway or being completed in 2007, include:

- an economic and regulatory review of land and housing affordability in Western Australia (to be completed by the Department of Treasury and Finance by 31 December 2007 as part of a broader review being facilitated by the Department of Premier and Cabinet)
- an inquiry into the price of bulk water for irrigators (completed by the Economic Regulation Authority (ERA) on 22 June 2007)
- an inquiry on competition in the water and wastewater services sector (to be completed by the ERA by 31 March 2008)

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- an inquiry into school bus operators' charter operations (completed by the ERA on 5 July 2007)
 - an inquiry into developer charges for water services (commencing before the end of 2007)
 - an inquiry into grain marketing arrangements in Western Australia (to commence before the end of 2007)
 - a review of ports and related infrastructure (in accordance with Clauses 4.1 and 4.2 COAG's Competition and Infrastructure Reform Agreement – currently being undertaken by a joint committee consisting of representatives from the Department of Treasury and Finance, the Department of Planning and Infrastructure and the Department of Agriculture and Food).

Consultation

Public consultation is an essential part of all reviews of new legislation or subordinate legislation where that legislation restricts competition. Evidence of public consultation must accompany all Cabinet submissions.

The Small Business Impact Statements (SBIS) must list the small business representatives/associations consulted about the proposal and indicate whether overall they were 'supportive', 'not supportive' or had 'mixed views'. Where appropriate, a brief summary of the nature of the consultation process undertaken with small business may be provided.

Further, the SBIS asks for an estimate of the costs, both direct and indirect, to small business of the proposal, including business compliance costs and red tape.

Compliance reporting

Western Australia does not have formal reporting on compliance with its regulatory gate-keeping arrangements. However:

- the Cabinet Standing Committee on Regional Policy may have a Regional Impact Statement referred to it for further assessment prior to it being considered by Cabinet
- the Small Business Development Corporation (SBDC) closely monitors any Cabinet submissions that impact on small business. Where an SBIS is necessary but not included, or is inadequate, the SBDC may make a report to that effect in its Cabinet comments

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- the Department of Treasury and Finance has a gate-keeping role for all new legislative proposals – either referring these to the Expenditure Review Committee of Cabinet for more detailed consideration or advising Cabinet on their compliance with gate-keeping requirements.

Resources for regulatory review

In the Department of Treasury and Finance, \$350 000 for salaries of four FTEs; and in the Economic Regulation Authority, \$300 000 representing half of the inquiries budget.

E.7 Australian Capital Territory

Regulatory impact analysis

In the Australian Capital Territory (ACT), any policy proposal that may have a regulatory impact requires a RIS to be completed as part of the policy development process. The ACT Government Cabinet Handbook (2007) requires a RIS to be attached to all Cabinet Submissions that have a regulatory impact.

The Legislation Act 2001 formally requires a RIS to be prepared for a proposed subordinate law and disallowable instrument in certain prescribed circumstances. This allows regulations made outside the Cabinet process to be subjected to a RIS analysis.

The Regulation Policy Unit (RPU) within the Department of Treasury is responsible for the regulatory oversight of policy proposals. The RPU offers assistance to departments and agencies in the development of a RIS and assesses all Cabinet Submissions for their compliance with RIS requirements. The ACT Government has published guidelines to assist with the preparation of a RIS.

Developments in regulatory reform

The ACT has commenced a regulatory reform program as part of its COAG commitments. The ACT is examining ways to reform the broader processes around regulatory impact assessment and regulation-making and improve the effectiveness of the requirements for post implementation review. As part of these reforms, the Government is updating the RIS guidelines, enhancing training measures for agencies, examining the Australian Government's gate-keeping arrangements and drawing on Australian Government reforms where appropriate.

Consultation

The ACT's RIS process requires that consultation take place with all affected stakeholders as part of the assessment of new or amending regulations wherever possible. This is consistent with the ACT's whole-of-government consultation policy contained in the ACT Government Community Consultation Manual (2005). The Manual encourages departments and agencies to engage stakeholders in the policy development process and provide feedback to those who have been involved in the consultation process.

E.8 Northern Territory

Regulatory impact analysis

All new legislative proposals must be subject to a Competition Impact Analysis (CIA), unless an exemption is granted.

The requirement to complete a CIA will be triggered if the proposed or amended legislation seeks to:

- govern the entry or exit of firms or individuals into or out of a market
 - control prices or production levels
 - restrict the quality, level or location of goods and services available
- or
- impose significant costs on business or confer advantages to some firms over others, for example, by shielding some activities from pressures of competition.

A quantitative figure for compliance costs is encouraged to be developed as far as possible in each CIA. Where this is not possible, the agency is encouraged to submit plausible costing options or estimates outlining the underlying assumptions. The CIA process affords a measure of efficiency and flexibility in the targeting of resources by allowing for the level and depth of analysis required to be proportionate to the magnitude of the problem and the size of the potential impact of the legislation.

The cost-benefit analysis is not limited to the affected sector alone. Agencies are required to outline the economy wide cost and benefits of the proposed legislation, including the financial, economic, environmental and social impacts. Distributional effects and opportunity costs are also required to be examined in the CIA.

Developments in regulatory reform

The Northern Territory Government commenced a review of its regulatory review framework in 2004. This was subsequently placed on hold pending the outcomes of national processes, including the review of NCP, the *Report of the Taskforce on Reducing Regulatory Burdens of Business* and the development of implementation plans for the best practice regulation component of the National Reform Agenda, endorsed by COAG in April 2007.

Key objectives of the review include alignment of the Territory's regulation review framework with National Reform Agenda commitments, including annual business red tape reviews, and establishing processes for improving the quality and timeliness of regulation impact analysis. The review was completed in June 2007, with findings approved by government in September 2007. Implementation of the review findings has commenced.

Consultation

The CIA Principles and Guidelines state that consultation with potentially affected parties, other agencies, and other levels of government should occur when legislation is being proposed. Public consultation is mandatory where the proposed legislation would have a major impact on the community.

The Guidelines are not prescriptive and allow the agency sponsoring a proposal to decide whether to make the draft CIA available to target groups.

Also required is a consultation statement providing a broad outline of the parties consulted, method used, details of views expressed and how they would be addressed.

Compliance reporting

Aside from the reporting requirements that applied under NCP, the CIA Unit provides bi-annual reports on the operation, compliance and reform progress of the CIA process to the appropriate Northern Territory Government minister (the Chief Minister prior to 1 May 2006 and the Treasurer post 1 May 2006). These reports provide information on the number of CIAs prepared, exemption details, the quality of CIAs, identification of training requirements within agencies, and any suggested process amendments.

Resources and activity

From July 2006 to June 2007, the CIA unit consisted of one full time senior research officer (0.6 full-time equivalent) and one Director (0.15 full-time equivalent) from Northern Territory Treasury.

Salaries and on-costs for the CIA unit for 2006–07 are estimated at approximately \$75 000. However, this excludes time attributed to CIA Committee members in assessing and advising agencies on CIAs.

E.9 Comparisons across jurisdictions

The following tables provide comparisons of the main regulation-making frameworks in Australian jurisdictions.

Table E.1 **Regulatory impact analysis requirements in Australian jurisdictions**

<i>Jurisdiction</i>	<i>Bills</i>	<i>Subordinate Instruments</i>	<i>Quasi-regulation</i>	<i>RIA required for consultation</i>	<i>RIA for decision maker</i>
COAG	✓	✓	✓	✓	✓
Australian Government	✓	✓	✓	✓ ^a	✓
NSW	✓	✓	– ^b	✓	✓
Vic	✓	✓	– ^f	✓	✓
Qld	–	✓	– ^c	✓	✓
SA	✓ ^d	✓ ^d	✓ ^d	✓ ^g	✓
WA	– ^e	– ^e	– ^e	–	–
Tas	✓	✓	✓	✓	✓
ACT	✓	✓	– ^b	–	✓
NT	✓	✓	–	✓	✓

RISs are generally required only when the regulatory proposals impose a significant economic or social burden on business. ^a Under the Australian Government's requirements, for highly significant proposals a green paper is required and/or for complex regulations an exposure draft is required. ^b Not a formal requirement, but agencies proposing quasi-regulation are expected to comply with best practice for regulatory impact assessment. ^c RIS requirements are only applicable to subordinate legislation identified under the *Statutory Instruments Act 1992*. ^d Every cabinet submission is to consider community impacts — which include regulatory, small business, regional, environmental, families and society. ^e Every Cabinet submission is to consider impacts on competition, small business and regional impacts. ^f The requirement to measure and offset material changes in the administrative burden applies to quasi-legislation. ^g Consultation is required only on formal regional impact assessment statements.

Source: OBPR and correspondence from states and territories.

Table E.2 RIS processes in Australian jurisdictions

<i>Jurisdiction</i>	<i>RIS guidelines</i>	<i>Cost-benefit assessment</i>	<i>Report on RIS compliance</i>	<i>Regulatory plans</i>	<i>Sunset clauses</i>	<i>RISs - Local Government</i>
COAG	✓	✓	✓	..	✓	..
Australian Government	✓	✓	✓	✓	–	..
NSW	✓	✓	✓	–	✓	–
Vic	✓	✓	✓	✓	✓ ^c	–
Qld	✓	✓	✓	✓	✓	–
SA	✓	✓	✓	–	✓	✓
WA	–	–	–	–	✓	–
Tas	✓	✓	–	–	✓	✓ ^a
ACT	✓	✓	–	–	–	✓ ^b
NT	✓	✓	✓	–	–	–

.. Not applicable. ^a Under the *Local Government Act 1993* (Tas), the Director of Local Government must issue a certificate of adequacy of the RIS process undertaken by Council before a proposal may progress to full public consultation. ^b Responsible for both state and local government. ^c Under the *Subordinate Legislation Act 1994*, all statutory rules are automatically revoked after 10 years.

Source: OBPR and correspondence from states and territories.

Table E.3 Resources for state and territory regulation review units and related activities, 2006-07^a

<i>Jurisdiction</i>	<i>Full time equivalent staff</i>	<i>Budget \$ (including salary & on-costs)</i>
Victoria	6.8 ^b	780 000
South Australia	3.6	n/a
Queensland	n/a	n/a
New South Wales	n/a	n/a
Western Australia	4.0	650 000 ^d
Tasmania	5.0	286 441 ^c
ACT	1.5	160 000
NT	0.75	75 000

n/a – Not available. ^a In 2006-07, the OBPR had 23.1 full time equivalent staff and a budget of about \$4 million. ^b There are also approximately 4.7 full-time equivalent staff within the Better Regulation Unit of the Department of Treasury and Finance. ^c Directly attributable to regulatory review work. ^d WA, salary budget only.

Source: Information provided by state and territory Regulation Review Units.

F Regulation review and reform: international perspectives

The Office of Regulation Review's annual series *Regulation and its Review*, has included a review of selected international developments in areas of regulatory impact analysis and other measures for ensuring that new regulation is efficient and effective. This report continues the practice.

Overview

Demonstrating that best practice regulation making is an ever-evolving process, most of the English-speaking countries with which Australia typically compares itself and which have comparable regulatory reform programs, specifically the United Kingdom, Canada and New Zealand, have revised their regulatory impact analysis requirements over the 2006-07 period. The European Commission, which has similar comprehensive requirements, is also currently undertaking a review of its requirements.

While the United States has not altered its core regulatory impact analysis processes in the past year, the US government agency involved in promoting good regulation has become concerned that guidance documents in that country are becoming quasi-regulatory and are not being subjected to the same scrutiny as regulation. Hence, it has responded by issuing a policy on good guidance processes.

Within the Asia-Pacific region, regulatory impact analysis requirements are not currently common, especially requirements comparable with those in Australia, but a number of countries are taking steps to introduce regulatory reform programs.

This appendix briefly outlines developments in the United States, United Kingdom, Canada, New Zealand and the European Union, gives a brief state-of-play in regulatory reform in Australia's near neighbours, and identifies recent work undertaken by the Organisation for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) forum on regulatory reform.

United Kingdom

On 14 May 2007 the United Kingdom Cabinet Office introduced a new Impact Assessment Format, which is intended to apply under a transitional arrangement until November 2007, from when it will be applied in full (BRE 2007a). The new format is aimed at increasing transparency and producing better regulation. Emphasis has been placed on conducting the Impact Assessment early in the process of developing regulation, and improving analytical quality and quantification.

The key features of the revised Impact Assessment are:

- a revised template to improve clarity and transparency, including new requirements to summarise both the rationale for government intervention and evidence supporting the final proposal
- an online database of all Impact Assessments to allow greater public scrutiny
- a strengthened Ministerial declaration to bolster the quality of the analysis in Impact Assessments, supported by improved arrangements within departments
- revised guidance for policy makers to make it easier for them to produce quality Impact Assessments focused on the burden of the regulations they are developing
- an increased emphasis on post-implementation review. (Cabinet Office (UK) 2007a, p. 1)

The UK requirements place considerable emphasis on the implementation of regulation. First, the Impact Assessment is required to be updated and republished just prior to the commencement of regulation and, in addition, it is specified that guidance on a regulation should be published 12 weeks before implementation and that all new regulations should commence on one of two specified dates each year, 6 April and 1 October (BRE 2007b).

In addition to the above new requirements the UK launched, on 14 June 2007 a review of the Government's consultation policy (Cabinet Office (UK) 2007b), including consultation in relation to regulatory policy development. Issues being examined by the review include how to achieve greater flexibility in consultation processes — including whether to adopt a principles-based approach — and how to counter 'consultation fatigue'. The UK Cabinet Office notes the value in linking consultation and Impact Assessments, suggesting that 'publishing Impact Assessments as part of consultation exercises has improved the quality both of public consultations and of impact assessments themselves' (Cabinet Office (UK) 2007c, p. 10).

The UK Government's existing consultation principles have been in place since 2001. They were updated in January 2004 and are based on the following six criteria.

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate. (BRE 2005, p. 4)

Departures from the Code of Practice require the authorisation of the responsible government minister or head of the government authority and the expectation is that the reasons for the departure will be explained in the consultation document (Cabinet Office (UK) 2007c).

In July 2007, the UK Government released a paper that identifies further regulatory reforms, *Next Steps on Regulatory Reform* (DBERR 2007). The identified reforms include targeted simplification of regulation, helping business to understand regulation (in particular, the proposal is for a code of practice on good guidance – which appears to have parallels with the US concern with guidance identified above), and embedding transparency and prioritisation into the regulatory system (DBERR 2007).

United States

The US Office of Management and Budget (OMB) issued a Final Bulletin for Agency Good Guidance Practices on 25 January 2007 (OMB 2007). The bulletin was issued in recognition that regulation is frequently broad and principles based, so government agencies increasingly tend to produce guidance material to assist interpretation. The guidance produced may be voluminous and detailed, and may expand on the regulatory rules, yet it is usually subject to less transparent processes than regulations. In particular, the OMB has noted that '[g]uidance can have coercive effects or lead parties to alter their conduct' (OMB 2007, p. 3435), even though it is not legally binding. Hence, the bulletin identifies practices for

developing and using ‘significant’ guidance documents, and requirements for enabling public comment and making guidance documents available to the public.

Canada

The Government of Canada (2007) *Cabinet Directive on Streamlining Regulation* (the Directive) came into effect on 1 April 2007. The Directive introduces new development, implementation, evaluation and review requirements to apply over the ‘regulatory lifecycle’ (Government of Canada 2007, p. 2). The new Directive has arisen from the regulatory process recommendations of the *Smart Regulation: A Regulatory Strategy for Canada* initiative (EACSR 2004) and replaces and builds upon the 1999 *Government of Canada Regulatory Policy* (Government of Canada 1999), which already contained regulatory impact analysis requirements.

The ‘regulatory lifecycle’ approach adopted by the Directive represents a more comprehensive application of process requirements than under the previous policy, with particular emphasis on assessing regulatory proposals at an early stage of the development process. A ‘Triage Framework’ has been introduced for this purpose. The pre-existing requirement for a regulatory impact assessment for new regulatory proposals has been enhanced, in line with the recommendations of the *Smart Regulation* report, to include requirements for a risk assessment as part of identifying and assessing the public policy issues (or problem) and for identification of a measurable policy objective (EACSR 2004; Government of Canada 1999; and Government of Canada 2007). The Treasury Board of Canada Secretariat has also been given a greater role in reviewing regulatory proposals and the quality of analysis undertaken. Streamlined processes apply to regulatory proposals where impacts are less significant.

The pre-existing consultation requirements have been given a new emphasis; in particular, ‘open, meaningful and balanced’ consultation is to be undertaken with affected parties at all stages of the process. It is also a requirement that all regulatory proposals be published in the *Canada Gazette* to invite public comment. A comment period of 30 days is identified as the standard for most cases, but flexibility is permitted.

The Directive itself is to be reviewed within five years of it coming into force.

New Zealand

In New Zealand, a new regulatory impact analysis regime began on 1 April 2007. It is intended to build on the pre-existing regulation impact statement (RIS) requirements with greater emphasis on analysis throughout the regulatory policy development process. At the same time, some streamlining has been undertaken to reduce duplication between RISs and Cabinet papers, and in relation to RISs for tax policy changes. The new regime follows the recommendations of the Quality Regulation Review, which commenced in 2006.

The New Zealand Regulatory Impact Analysis Unit (RIAU) will comprehensively review RISs only where regulatory proposals are ‘likely to have significant impacts on economic growth’ (Dalziel 2006, Executive Summary). All proposals with large impacts on the following factors, whether positive or negative, will be reviewed by the RIAU:

- the ability or incentives of businesses to innovate, invest or operate
- competition in markets, the ability to enter markets, or the structure or make-up of any markets
- the degree of international connection between New Zealand and overseas markets, particularly the single economic market between New Zealand and Australia
- the cost or availability of infrastructure or related services
- the availability of, or access to, finance for business growth. (Dalziel 2006, Recommendations).

In all other cases apart from a selected few, such as where the proposal is novel or contentious or would create inconsistency with the Trans-Tasman Mutual Recognition Arrangement, New Zealand government departments will need to ‘self-regulate’. This means that departments will need to include a statement ‘that they are satisfied that their own analysis, consultation and RIS are adequate and comply with the Code of Good Regulatory Practice’ when submitting Cabinet papers with a RIS (Jones 2007, p. 1). Further incentives to undertake quality analysis are provided by requiring all RISs to be published and requiring discussion documents released prior to preparation of a final RIS to include either specific questions and/or discussion relating to each of the substantive RIS sections, or a draft RIS.

In addition, RISs are required to give greater recognition to the impacts of proposed regulations on the stock of regulation, such as whether the proposal overlaps or duplicates existing regulation (Dalziel 2006).

The business consultation website developed for the Quality Regulation Review is being left in place to give business an ongoing means for providing direct feedback on regulations affecting them (Dalziel 2007a).

New Zealand has also announced that it will trial the Australian Government's Business Cost Calculator, to determine the business compliance cost of proposed regulation, for a two-year period, beginning in the first half of 2008 (Dalziel 2007b).

European Union

The Commission of the European Communities announced 'A strategic review of Better Regulation in the European Union' in November 2006 (European Commission 2006). At the European Commission level, the review calls for an updated simplification programme, including a quantitative target for reduction of administrative burden, independent scrutiny of impact assessments and strengthened enforcement of Community law (European Commission 2006). Noting that some member countries were not addressing these issues, the Commission called for these countries also to act domestically. An Impact Assessment Board, made up of high level officials independent of the policy-making areas, was created in November 2006 to 'offer advice and support in developing a culture of impact assessment inside the Commission' (European Commission 2006, p. 8; European Commission 2007).

An independent external evaluation of the existing impact assessment system was also instigated by the Commission in 2006. The evaluation identified the following areas as priorities for further development: better targeting of significant proposals and applying a proportionate level of analysis; increasing Commissioner and top-level management commitment; capacity building within departments of the Commission; and better integrating the system with the needs of other institutions, such as the European Council and European Parliament (European Commission 2007). The further developed measures for improving the quality of impact assessments will feed into the Spring 2008 Strategic Review of Better Regulation, which will examine both impact assessment processes and the administrative simplification programme (European Commission 2007).

Regulatory reform in our region

Apart from New Zealand, Korea is the most advanced of the countries in our region in terms of introducing regulatory reform programs.

Korea put in place a regulatory reform program following the Asian Financial Crisis in 1997. The program included a target of reducing existing regulation by 50 per cent and mandatory regulatory impact analysis for all new and important regulations. Important regulations are reviewed by the joint government – non-government Regulatory Reform Committee before they can be considered by Cabinet (Lee 2007).

Japan has undertaken several rounds of deregulation since the early 1980s, mainly addressing barriers to trade and investment. The Three-Year Programme for Promoting Regulatory Reform is an annually-updated rolling plan employed by the Japanese government to specify its regulatory reform priorities. The Three-Year Programme agreed to in March 2004, identified introduction of regulatory analysis as a priority, along with continuation of the review of existing regulation and administrative simplification measures, such as e-government (OECD 2004). Regulatory analysis has reportedly been undertaken within each government ministry on a trial basis since October 2004 (OECD 2006b), but it is not clear that a more general regime has been introduced as yet.

Outside of OECD countries, there have been several initiatives to implement a regulatory analysis program. Chinese Taipei has initiated a process to implement a regulatory impact analysis system. On 27 June 2007, the Council for Economic Planning and Development (CEPD) held an ‘International Conference on the APEC-OECD Integrated Checklist on Regulatory Reform’, inviting two OECD experts to meet with related government agencies, and to discuss ideas and concepts related to regulatory impact assessment. The executives of the Research Development and Evaluation Commission have been charged with planning and setting up an information platform and database for regulatory analysis (CEPD 2007).

China has requested, and is presently undergoing, an OECD Regulatory Reform Review. The first working group meeting to initiate the review was scheduled for 12 September 2007. It is intended that the report of the review will make recommendations for improvements to China’s regulatory frameworks, including in relation to capacities, institutions and tools for high-quality regulation (OECD 2007b).

The Organisation for Economic Cooperation and Development (OECD)

The OECD released a report in 2006 summarising best-practice administrative simplification and burden-reduction strategies used across member countries, *Cutting Red Tape: National Strategies for Administrative Simplification* (OECD 2006a).

The report identified the following best practice ‘tools’ that have been used by various OECD countries:

- ex ante measurement of burdens and using this information to trace burdens to their source
- information about the extent of estimated administrative burdens is increasingly being included in Regulatory Impact Analysis prior to the introduction of new regulations
- targets for burden reduction are being set and used to promote simplification in the first place and to monitor progress and maintain the momentum for further simplification and burden reduction
- political oversight of very burdensome measures
- codification remains an important tool for simplification
- information technology is an important tool for reducing burdens, for example, through data sharing, and simplifying licence procedures
- results must be communicated. Measurement can help show that progress has been made. (OECD 2006a, pp. 12-13).

The Red Tape Assessment project takes these strategies a step further through a systematic measuring of the administrative costs faced by businesses and subsequent comparison of findings across OECD countries. The subject of the current project is road freight, with thirteen OECD countries participating in the measurements, using the Standard Cost Model.

The OECD also released a document in February 2007, as part of the *Competition Assessment Toolkit* series, which promotes the integration of competition assessments into regulatory impact analysis (OECD 2007a). It was noted in this document that Australia, the UK, the US and the European Commission already did this and that such a mechanism ‘can help to ensure that competition policy principles are considered at early stages of the broader policy development process’ (OECD 2007a, pp. 2-3). The OECD considers this appropriate as it is in the design of the broad regulatory structure that anti-competitive impacts of regulation can potentially arise.

Asia-Pacific Economic Cooperation Forum

The Asia-Pacific Economic Cooperation (APEC) forum has taken further steps to promote good regulatory practice among member economies. Relevant activities include the Fourth Conference on Good Regulatory Practices of the Standards and Conformance Sub-Committee (Vietnam, September 2006), the Tenth Workshop on

the APEC-OECD Co-operative Initiative on Regulatory Reform (Australia, June 2007) and the work of the Competition Policy and Deregulation Group in sharing information and experience, and promoting discussion in relation to competition policy/law and deregulation.

Consistent with APEC's objective of promoting trade liberalisation, the focus of the Standards and Conformance Sub-Committee of APEC is predominantly on reducing technical barriers to trade through encouraging member countries to align their technical regulation with international standards. The Competition Policy and Deregulation Group has been promoting the *APEC-OECD Integrated Checklist for Regulatory Reform* and a number of APEC member countries have undertaken self-assessments against the checklist over the past year (APEC 2006). Korea and Australia reported their assessments against the Checklist at the Cairns workshop in June 2007. Countries that had reported their assessments a year earlier — Hong Kong China, Chinese Taipei and the United States — reported back on the progress they had made. Indonesia has volunteered to undertake a self-assessment against the Checklist. (See summary of outcomes of the Tenth Workshop on the APEC-OECD Co-operative Initiative on Regulatory Reform, Cairns Australia, June 2007.)

Table F.1 Regulatory impact analysis processes in selected OECD countries, 2005

<i>Country</i>	<i>RIA before adopting new regulation</i>	<i>Cost-benefit assessment</i>	<i>Competition assessment</i>	<i>Report on RIS compliance</i>	<i>Regulatory plans</i>	<i>Sunset clauses</i>
Australia	✓	✓	✓	✓	✓	✓
Canada	✓	✓		✓ ^c	✓	✓
Japan ^a						
Korea	✓	✓	✓		✓	✓
New Zealand	✓	✓ ^b	✓	✓ ^c		✓
Sweden	✓	✓ ^b	✓		✓	
UK	✓	✓	✓	✓	✓	✓
USA	✓ ^b	✓ ^b	✓	✓	✓	✓
EU	✓	✓ ^b	✓	✓ ^c	✓	

.. Not applicable. ^a Japan adopted an regulatory impact analysis system on a pilot basis in 2004. ^b Only for major regulation or other selected cases. ^c Ad hoc basis.

Source: OECD 2006b.

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