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# OVERVIEW

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## Key points

- A well functioning regulatory system is an essential component of a modern society. The Australian Government's RIS processes are intended to contribute to this objective by helping to ensure that proposed regulations are warranted and efficient.
- During 2005-06, an independent Taskforce on Reducing Regulatory Burdens on Business reported on the systemic causes of over-regulation and ways to further improve the quality of regulation. Its recommendations were largely accepted by the Australian Government. As a result, a number of reform measures have been set in train, including a significant strengthening of the RIS requirements.
- The new Office of Best Practice Regulation (OBPR), extending the role of the Office of Regulation Review, will oversee the new requirements. They involve better consultation practices, more rigorous cost-benefit analysis, and quantification of business compliance costs. They will be supported by increased education of officials and stricter gatekeeping arrangements.
- Under the RIS requirements applying in 2005-06, over 2600 regulations were made by the Australian Government of which about 3 per cent required preparation of a RIS.
- The compliance of departments and agencies with the RIS requirements at the decision-making stage of regulatory policy development was lower overall than in previous years:
  - Adequate RISs were prepared for 71 per cent of the regulatory proposals that required them (compared with an average compliance rate of 85 per cent over the previous three years).
  - Of the 21 departments and agencies that were required to prepare RISs, 10 were fully compliant.
- The Council of Australian Governments also strengthened its RIS requirements in 2005-06. Under the arrangements applying in 2005-06, compliance by Ministerial Councils and national standard-setting bodies at the decision-making stage was 76 per cent, somewhat lower than in earlier years.
- Compliance results for 2005-06 demonstrate that there is scope for considerable improvement, both in preparing RISs and in the level of analysis involved. The new RIS requirements are designed to promote improved practices through stricter gatekeeping, combined with enhanced training.
- Key requirements of the new regime fall to departments and agencies to incorporate into their internal procedures. Transitional arrangements will be applied by the OBPR to facilitate the move to the strengthened requirements.

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# Overview

Over a number of years, the annual publication — *Regulation and its Review* — has focussed on regulatory reform issues and documented compliance with the Australian Government's regulatory best practice requirements since their introduction in 1997-98. This report for 2005-06 is the last in that series as the Government has decided on a new set of strengthened requirements to take effect from November 2006.

Compliance information in the report is therefore based on the Government's requirements applying in 2005-06. They involve the preparation of adequate Regulation Impact Statements (RISs) for regulatory proposals being put to government for decision and, after that, for tabling or publication. The report covers:

- compliance outcomes in aggregate and for individual departments and agencies within government portfolios;
- compliance in respect of published RISs for regulatory proposals made into law in 2005-06;
- compliance with the Council of Australian Governments' (COAG) RIS requirements by Ministerial Councils and national standard-setting bodies in making regulatory decisions having a national dimension;
- performance indicators of activity undertaken by the Office of Regulation Review (ORR);
- regulatory reform activity in the States and Territories; and
- international regulation review and reform initiatives focusing on the following selected countries/institutions: United Kingdom, Canada, New Zealand, the Organisation for Economic Cooperation and Development (OECD), and the European Union.

## **Strengthened regulatory assessment requirements**

The new Australian Government requirements build on those previously in place. They continue to apply to all departments and agencies responsible for putting

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forward regulatory proposals for the Government's consideration. In summary, key changes involve:

- more rigorous cost-benefit and risk analysis for the assessment of the likely impacts of proposed new regulation imposed on business;
- improved arrangements for a whole of government approach to consultation with those likely to be affected by proposed regulation;
- the mandated use of the 'Business Cost Calculator' for the systematic assessment of compliance costs;
- tighter gatekeeping arrangements for significant regulatory proposals to ensure compliance with the new requirements; and
- the formation of a new Office of Best Practice Regulation (OBPR) - building on the strengths of the Office of Regulation Review (ORR) — to oversee the requirements, report on compliance, and provide increased technical advice and training to those developing regulatory proposals.

The systemic causes of over-regulation and ways to improve the quality of new or amended regulations were addressed by an independent Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce) appointed by the Government in October 2005. Its report targeted specific regulation (or aspects of regulation) needing to be removed or reviewed and recommended better process requirements for the development of new or amending regulation. Most of its recommendations have been accepted by the Government. Those directed at improving regulatory development processes form the basis of the Government's new requirements.

### **Aggregate RIS compliance in 2005-06**

In 2005-06, 96 RISs were required at the *decision-making* stage. Of these, 79 were prepared and 68 were assessed as adequate by the ORR — a compliance rate of 71 per cent. This compares with an average compliance rate of 85 per cent over the previous three years.

Compliance at the tabling stage (for proposals introduced via bills, legislative instruments and treaties) was 86 per cent, compared to an average compliance rate of 94 per cent over the previous three years.

**Table 1 RIS compliance, by type of regulation, 2005-06**

Type of regulation	Decision-making			Tabling <sup>a</sup>		
	prepared	adequate		prepared	adequate	
	ratio	ratio	%	ratio	ratio	%
Primary legislation (bills)	28/32	19/32	59	28/29	23/29	79
Delegated legislation	45/51	44/51	86	47/51	46/51	90
Quasi-regulation <sup>b</sup>	2/4	2/4	50	n/a	n/a	
Treaties	4/9	3/9	33	5/5	4/5	80
<b>Total</b>	<b>79/96</b>	<b>68/96</b>	<b>71</b>	<b>80/85</b>	<b>73/85</b>	<b>86</b>

n/a – Not applicable. Tabling is not a formal requirement. <sup>a</sup> RIS compliance for the tabling of bills, treaties legislative, and disallowable non-legislative instruments is subject to formal assessment by the ORR. <sup>b</sup> As reported by departments and agencies to the ORR.

Source: ORR estimates.

The significance of each regulatory proposal has been classified by the ORR according to the nature and magnitude of the problem and proposal; and the scope (broad or narrow) and intensity (level or degree) of impacts on affected parties and the community.

In 2005-06, eight RISs were required at the decision-making stage for regulatory proposals that the ORR identified as having a more significant impact on business and/or the community. In seven cases, RISs were prepared; in each case, the RIS prepared was assessed as inadequate (table 2).

**Table 1. Compliance at the decision-making stage by significance, 2001-02 to 2005-06**

Rating	2001-02	2002-03	2003-04	2004-05	2005-06
More significant	7/10 (70%)	6/13 (46%)	17/18 (94%)	2/3 (67%)	0/8 (0%)
Less significant	121/135 (90%)	107/126 (85%)	88/96 (92%)	66/82 (80%)	68/88 (77%)
<b>Total</b>	<b>128/145 (88%)</b>	<b>113/139 (81%)</b>	<b>105/114 (92%)</b>	<b>68/85 (80%)</b>	<b>68/96 (71%)</b>

Source: ORR estimates.

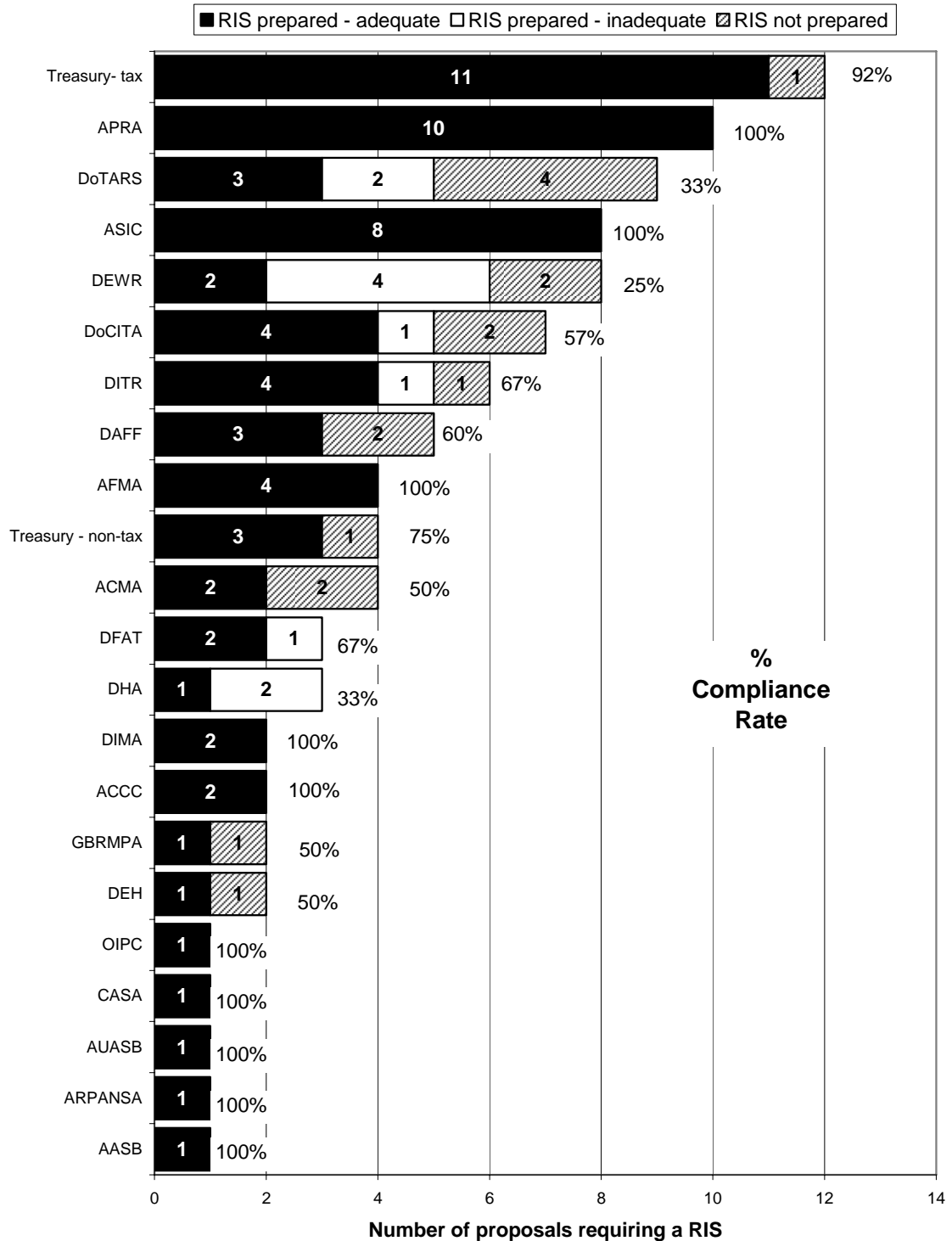
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## **Compliance by departments and agencies**

In 2005-06, 21 departments and agencies developed regulatory proposals that triggered the Government's RIS requirements. Of these, ten were fully compliant at the decision-making stage.

Compliance at the decision-making stage is illustrated in figure 1. There were 28 instances of non-compliance with the Government's requirements: in 17 cases, RISs were not prepared and, in 11 cases, RISs were prepared but were assessed as inadequate by the ORR.

**Figure 1 Compliance with RIS requirements at the decision-making stage, 2005-06**



Source: ORR estimates.

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## National regulation-making

Regulation making also occurs at a national or inter-jurisdictional level, among some 40 Ministerial Councils and several national standard-setting bodies involving the Australian, State and Territory governments. Between 1 April 2005 and 31 March 2006, 34 regulatory decisions made by Ministerial Councils and national standard-setting bodies required the preparation of a COAG RIS. Of these, 30 adequate RISs were prepared at the consultation stage (a compliance rate of 88 per cent) and 26 adequate RISs were prepared at the decision-making stage (a compliance rate of 76 per cent).

The ORR identified four decisions of COAG forums as being of particular significance in their impact on business or the community. Compliance for these decisions was 100 per cent at consultation, and 50 per cent at the decision-making stage (reflecting, in part, the higher level of analysis required by the ORR in COAG RISs at the decision-making stage).

COAG re-visited its RIS requirements in 2005-06 and agreed to strengthen the processes in a number of key areas. These changes are broadly in line with the new Australian Government requirements. In addition, COAG agreed to target specific 'hot spot' areas in need of regulatory reform. Under the auspices of COAG, individual jurisdictions also agreed to improve arrangements to maximise the efficiency of new regulation and avoid unnecessary compliance costs and restrictions on competition.

## Looking forward

Compliance results for the Government's previous RIS requirements are uneven and vary considerably both between and within departments and agencies, and over time. The outcomes clearly demonstrate, however, that there is scope for considerable improvement, both in preparing RISs and in the level of analysis involved.

The new regulatory framework, announced by the Australian Government in response to the Regulation Taskforce report, includes two main streams to promote improved practices:

- an increased focus on education and assistance to officials, through the Office of Best Practice Regulation; and
- stricter gatekeeping arrangements, whereby proposals that have not met the Government's requirements are unable to proceed for a decision or implementation.



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Key requirements of the new regime fall to departments and agencies to embed within their processes. These relate to:

- preparing RISs and compliance cost assessments earlier in the policy development process;
- better consultation with those likely to be impacted by the proposals under development; and
- more rigorous assessments of costs, benefits and risks of available options.

This will not occur overnight. It will require sustained efforts by departments and agencies. To facilitate a smooth transition, the Office of Best Practice Regulation will be providing training in relation to the new requirements and ongoing technical support, including on cost-benefit analysis and use of the Business Cost Calculator. After a six month transitional period, the adequacy thresholds for the analytical and other content of the new processes will be progressively raised as departments and agencies become more familiar with what is required.

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