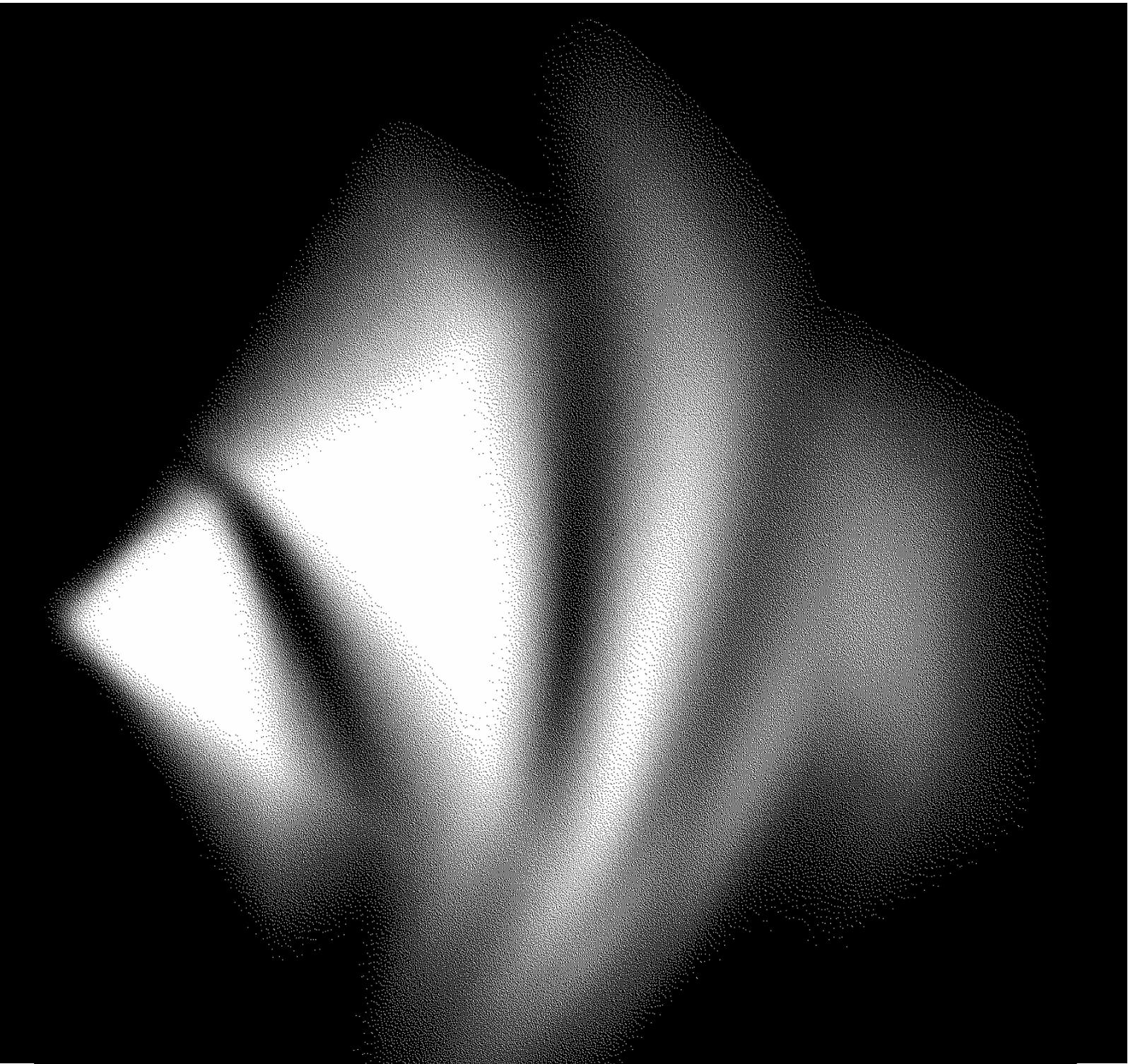




Australian Government  
Productivity Commission

# Regulation and its Review 2005-06

Productivity  
Commission  
*Annual Report Series*



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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.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

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# Foreword

The Productivity Commission is required to report annually on regulation reform and review issues, including compliance by departments and agencies with the Australian Government's Regulation Impact Statement (RIS) requirements. These processes are designed to enhance Australia's regulatory systems and improve regulatory outcomes.

This is the ninth such report and forms part of the Productivity Commission's annual report series of publications for 2005-06. It has drawn on the work of the Office of Regulation Review (ORR), a separate unit within the Commission.

The report provides RIS compliance information in aggregate and for individual Australian Government departments and agencies, as well as Ministerial Councils and national standard-setting bodies. It also outlines regulation reform activity in the States and Territories and selected overseas countries.

During 2005-06, the Australian Government and COAG strengthened their RIS requirements and set in train related reform measures. The next edition in this series will report on compliance under these new arrangements. This report outlines the requirements and the changes being made to embed them, including through the enhancement of the ORR's role as the new Office of Best Practice Regulation. The Australian Government's new requirements focus on improving consultation processes, and analysis of costs and benefits of regulatory proposals, with tighter gate keeping along with increased attention to training and support.

The Commission is grateful for the cooperation of government departments and agencies, Ministerial Councils, and national standard-setting bodies in providing information on their regulatory activities throughout the year.

Gary Banks  
Chairman

November 2006



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# Abbreviations

ABCB	Australian Building Codes Board
ACMA	Australian Communications and Media Authority
AFMA	Australian Fisheries Management Authority
AFPC	Australian Fair Pay Commission
ANZFRMC	Australia New Zealand Food Regulation Ministerial Council
APMC	Australasian Police Ministers' Council
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
BCC	Business Cost Calculator
BIA	Business Impact Assessment
CIA	Competition Impact Analysis
CRR	Committee on Regulatory Reform
COAG	Council of Australian Governments
DAFF	Department of Agriculture, Fisheries and Forestry
DoCITA	Department of Communications, Information Technology and the Arts
DEWR	Department of Employment and Workplace Relations
DEH	Department of the Environment and Heritage
DFAT	Department of Foreign Affairs and Trade
DHA	Department of Health and Ageing
DIMA	Department of Immigration and Multicultural Affairs
DITR	Department of Industry, Tourism and Resources

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DoTARS	Department of Transport and Regional Services
EPHC	Environmental Protection and Heritage Council
ESD	ecologically sustainable development
EU	European Union
FSANZ	Food Standards Australia and New Zealand
GBRMPA	Great Barrier Reef Marine Park Authority
GDP	Gross Domestic Product
IFRS	International Financial Reporting Standards
IPART	Independent Pricing and Regulatory Tribunal
MCCA	Ministerial Council for Consumer Affairs
MCE	Ministerial Council on Energy
MCMPR	Ministerial Council on Minerals and Petroleum Resources
MEPS	Mandatory Energy Performance Standards
MRU	Microeconomic Reform Unit
NCC	National Competition Council
NRA	National Reform Agenda
NSSBs	National standard-setting bodies
OECD	Organisation for Economic Cooperation and Development
OHS	Occupational Health and Safety
ORR	Office of Regulation Review
PIMC	Primary Industries Ministerial Council
PC	Productivity Commission
RIAU	Regulatory Impact Analysis Unit (New Zealand)
RIAS	Regional Impact Assessment Statement
RIS	Regulation Impact Statement
RTF	Regulation Task Force
SBDC	Small Business Development Corporation
SBIS	Small Business Impact Statement
SSCRO	Senate Standing Committee on Regulations and Ordinances
SCM	Standard Cost Model

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UPM NEPM	Used Packaging Materials National Environment Protection Measure
VCEC	Victorian Competition and Efficiency Commission

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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.

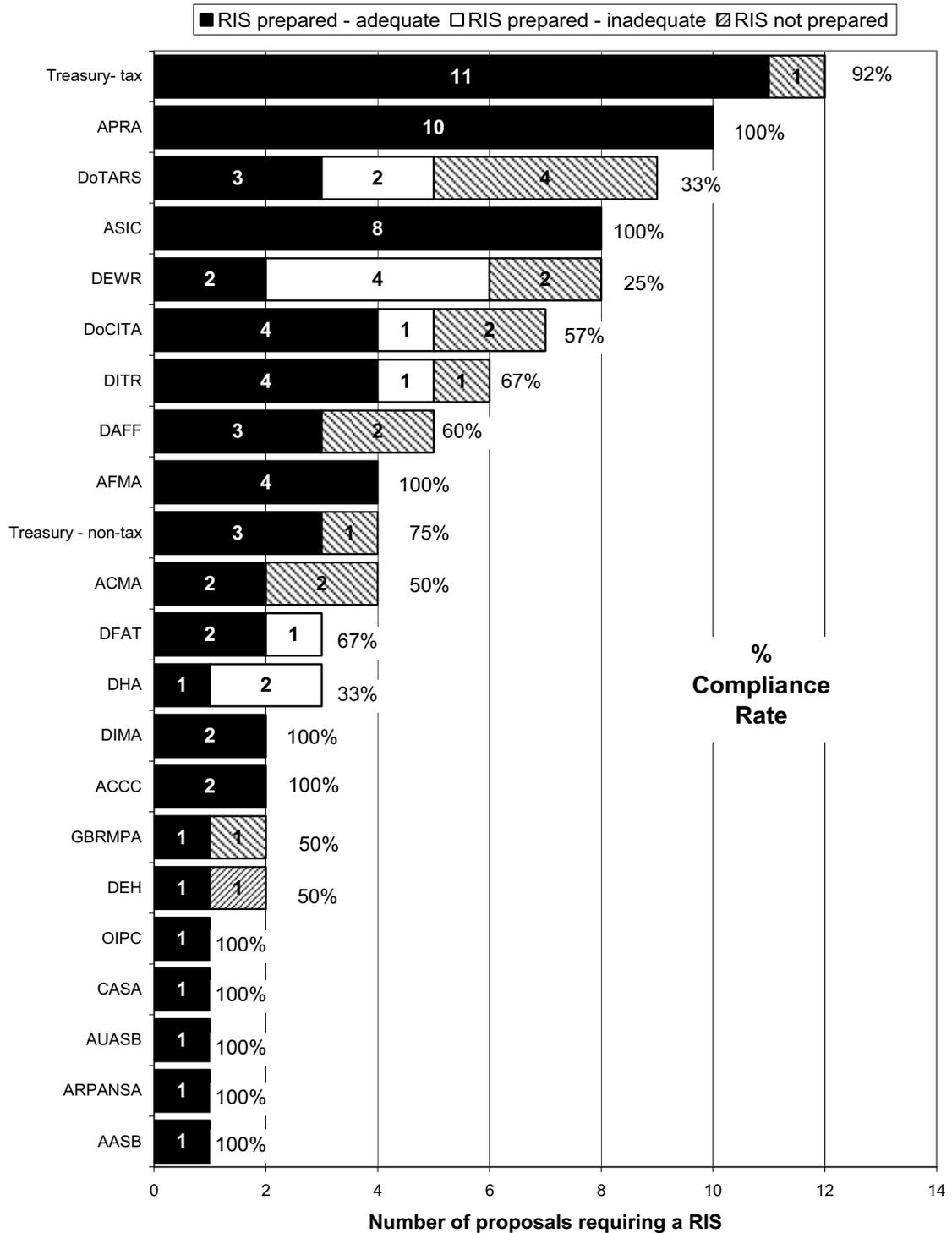
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## **Compliance by departments and agencies**

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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# 1 Initiatives to achieve best practice in regulation

The past year has seen governments take some important initiatives to reduce regulatory burdens on business, and to improve the processes and institutions responsible for regulation. They include in particular, the Australian Government's actions in response to the recommendations of the Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce) and agreement by the Council of Australian Governments (COAG) to bring greater national consistency to some key areas of regulation, as well as to institute some elements of good process in the regulation making of each jurisdiction (see box 1.1).

## Box 1.1 **COAG agreements on regulatory reform February/July 2006**

At the Council of Australian Governments (COAG) meeting in February 2006, COAG agreed to 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. These arrangements include:

- establishing and maintaining 'gatekeeping mechanisms';
- improving the quality of regulatory impact analysis;
- better measurement of compliance costs (such as with the Australian Government's Business Cost Calculator); and
- broadening the scope of regulatory impact analyses to include, where appropriate, the effects of regulation on individuals and the cumulative burden on business.

In addition, all jurisdictions committed to identify and address as a priority those areas where inconsistent and unnecessarily burdensome regulatory regimes are impeding economic activity. COAG agreed to make a 'down payment' on regulatory reduction by taking action to address six specific 'hot spots': namely, rail safety regulation; occupational health and safety; national trade measurement; chemicals and plastics; development assessment arrangements; and, building regulation.

At its July 2006 meeting, COAG agreed to pursue further regulatory reform in the following areas: business registration; development of bilateral agreements under the *Environment Protection and Biodiversity Conservation Act 1999*; personal property securities; and product safety regulation.

Source: Source: COAG 2006.

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The backdrop to these important initiatives has been dramatic growth in regulation in all jurisdictions and the mounting concerns from business and other groups about an escalation in associated compliance burdens (RTF 2006, BCA 2005).

At the Commonwealth level, the changes underway have potentially far-reaching implications for how regulations are made and administered. They include new incentives and disciplines on departments and regulatory agencies, and an enhanced training and oversight role for the ORR as the new Office of Best Practice Regulation (OBPR). This chapter describes these initiatives, particularly relating to the new Office, and notes some matters that are likely to be crucial in ensuring sustained progress.

## **1.1 The Regulation Taskforce**

In October 2005, the Australian Government announced the creation of an independent Taskforce on Reducing Regulatory Burdens on Business. Productivity Commission Chairman, Gary Banks, was appointed to chair the Taskforce, with a secretariat comprising members from several government departments as well as the Productivity Commission (see box 1.2). The Taskforce reported to the Prime Minister and Treasurer on 31 January 2006.

In its Report, which was released by the Government with an interim response in April 2006, the Taskforce endorsed many of business's concerns at the growth of regulation. It noted, for example, that since 1990 the Australian Parliament has passed more pages of legislation than in the nine preceding decades since Federation, and that compliance issues can consume up to 25 percent of senior management time of some large companies.

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### Box 1.2      **Regulation Taskforce Terms of Reference**

The Taskforce will examine and report on areas where regulatory reform can provide significant immediate gains to business.

It will be chaired by Mr Gary Banks, Chairman of the Productivity Commission, and will also include Mr Dick Humphry, the former Managing Director of the Australian Stock Exchange, Mr Rod Halstead, a corporate law expert with Clayton Utz, and Mrs Angela MacRae, a consultant to small business and Chairman of the Independent Contractors Association of Australia.

The Taskforce will:

- identify specific areas of Commonwealth Government regulation which are unnecessarily burdensome, complex, redundant or duplicate regulations in other jurisdictions;
- indicate those areas in which regulation should be removed or significantly reduced as a matter of priority;
- examine non-regulatory options (including business self-regulation) for achieving desired outcomes and how best to reduce duplication and increase harmonisation within existing regulatory frameworks; and
- provide practical options for alleviating the Commonwealth's 'red tape' burden on business, including family-run and other small businesses.

The Taskforce will report by 31 January 2006.

While the Taskforce will focus on areas that are predominantly the responsibility of the Commonwealth Government, it is to identify key areas in which the regulatory burden arises from overlaps with State and Territory legislation. The Taskforce will consult closely with business groups and other stakeholders.

It will be supported by a small whole-of-government secretariat and consult closely with the Secretaries of the Departments of the Prime Minister and Cabinet, Treasury and Industry, Tourism and Resources. The Taskforce's website address is [www.regulationtaskforce.gov.au](http://www.regulationtaskforce.gov.au).

The Australian Government is determined to reduce the burden of regulatory activity. It has already decided to put in place arrangements that will involve a more rigorous use of cost-benefit analysis within government before new regulations are introduced.

*Source:* RTF 2006.

The Taskforce concluded that much regulation, while addressing legitimate social or economic needs, involves unnecessary cost burdens on business and the wider community. Problematic features in the design of regulation highlighted by the Taskforce included:

- unclear or questionable objectives;

- 
- a failure to target the regulation sufficiently — for example, regulation that is too blunt or disproportionate to the problem;
  - undue prescription;
  - excessive reporting or other paperwork requirements;
  - overlap, duplication or inconsistency with other regulations, either within jurisdictions or between jurisdictions;
  - poorly expressed or confusing use of terms, including the use of inconsistent definitions in different regulations; and/or
  - unwarranted differentiation of local regulation from international standards.

The Taskforce made some 150 recommendations for reforms or reviews within a variety of areas of social, environmental and economic regulation. However, it went beyond this, to address what it saw as the underlying causes of the problems. It observed:

Regulation has come to be seen as a panacea for many of society's ills and as a means of protecting people from inherent risks of daily life. Any adverse event — especially where it involves loss of life, possessions, amenity or money — is laid at government's door for a regulatory fix. The pressure on government to 'do something' is heightened by intense, if short-lived, media attention.

In responding to such pressures, governments themselves are often attracted to regulatory solutions, both as a tangible demonstration of government concern and because the costs are typically 'off-budget', diffuse and hard to measure. Moreover, each regulatory solution tends to be devised within individual government agencies. Within such policy 'silos', the cumulative impact of regulation across government is poorly understood and rarely taken into account.

In this climate, a 'regulate first, ask questions later' culture appears to have developed. Even where regulatory action is clearly justified, options and design principles that could lessen compliance costs or side-effects appear to be given little consideration. Further, agencies responsible for administering and enforcing regulation have tended to adopt strict and often prescriptive or legalistic approaches, to lessen their own risks of exposure to criticism. This, in turn, has contributed in some areas to excessively defensive and costly actions by business to ensure compliance. (RTF 2006, p. i & ii)

The Taskforce accordingly made a range of additional recommendations to improve the processes and institutions responsible for regulation (see box 1.3).

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**Box 1.3 Summary of Regulation Taskforce recommendations to address the underlying causes of over-regulation**

**To improve regulation-making:**

- Endorse the principles of good regulatory process;
- Undertake cost-benefit analysis (including risk assessment) of regulatory options;
- Mandate the use of the Business Cost Calculator;
- Departments/agencies to develop skills in cost/benefit analysis;
- Adopt a whole of government policy on consultation regarding regulatory issues;
- For major or complex regulatory issues, prepare a policy “green paper” and/or exposure draft;
- Establish a consultation Website;
- Strengthen the Regulation Impact Statement (RIS) adequacy requirements;
- Tighten “gate-keeping” requirements for regulatory proposals;
- Endorse strengthened requirements for regulation-making;
- Include good process requirements in the *Legislative Instruments Act 2003*;
- Elevate Ministerial oversight to regulatory processes and reforms to Cabinet level;
- Agencies to ensure that regulatory analysis is adequately resourced;

**To ensure good performance by regulators:**

- Provide clear advice to regulators about policy objectives;
- Ministers to emphasise policy objectives in Statements of Expectations;
- Develop broader performance indicators for regulators;
- Establish internal review mechanisms for regulatory decisions;
- Ensure timely merit review of administrative decisions;
- Ensure regulators issue protocols on consultation procedures;
- Establish consultative bodies with Stakeholders;
- Develop a code of conduct covering regulators and regulated entities;
- Establish relationship manager roles in regulators;
- Ensure regulatory appointees have industry experience;

**To avoid overlap and inconsistency:**

- Review areas with significant jurisdictional overlap;
- Develop a framework for national harmonisation of regulation;
- Amend the *Legislative Instruments Act 2003* to provide for 5 year sunset clauses;
- Where RIS requirements are not met, conduct selective post implementation reviews after 1-2 years;
- Assess regulations not subject to sunset clauses every 5 years; and
- Evaluate scope for cross jurisdictional benchmarking of regulatory regimes.

Source: RTF 2006, Chapter 7.

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## 1.2 Australian Government initiatives to improve regulation

The Australian Government, which provided its final response to the Taskforce's report on 15 August 2006, accepted in full (or in part) 158 of its 178 recommendations.

To address the systemic causes of over-regulation and improve the quality of regulations, the Australian Government accepted 27 of the Taskforce's 29 recommendation in this area, including endorsing the following six principles of good regulatory practice:

- establishing a case for action;
- examining alternatives to regulation;
- adopting the option that generates the greatest net benefit to the community;
- providing effective guidance to relevant regulators and affected stakeholders;
- reviewing regulation regularly to ensure that it remains relevant and effective; and
- consulting effectively with stakeholders at all stages of the regulatory cycle.

The Government moved to ensure that these principles were followed by policy departments and by regulators, by strengthening and enhancing existing regulation review and reform processes. A new and enhanced regulatory framework was established which includes mandating higher levels of cost-benefit and risk analysis; making several 'machinery of government' changes; strengthening regulatory 'gatekeeping'; and improving community consultation arrangements.

Specifically, the Australian Government decided that:

- as previously announced by the Government in April 2006, use by government departments and agencies of cost-benefit analysis and, as appropriate, risk analysis in RISs, is to be strengthened. Appropriate levels of RIS and cost-benefit and risk analysis will be mandated;
- the Business Cost Calculator (BCC) (see box 1.4) is to be applied to regulations made by the Australian Government to ensure regulatory compliance costs are considered. The 'Quickscan' function of the BCC will be applied to all

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regulation and further more detailed analysis will be required for proposals with medium compliance costs and significant impacts on business and individuals;<sup>1</sup>

- information indicating the level of regulatory cost to business and individuals and the net benefit to the community should be included in Cabinet submissions;
- new whole-of-government principles on consultation will provide clear guidance to regulators on best practice consultation with stakeholders and the community;
- effective gate-keeping arrangements are to be established by the Cabinet Secretariat (Department of the Prime Minister and Cabinet) to prevent proposals not complying with the Government's regulatory best practice requirements from proceeding for a decision;
- where there are 'exceptional circumstances', as determined by the Prime Minister, the proposal can be considered by Cabinet or other decision-maker, but must be reviewed within 1-2 years; and
- the role of the ORR is to be enhanced by building on its strengths to establish an Office of Best Practice Regulation. This new Office will play a central role in providing a 'one-stop shop' for educating/assisting regulators in applying the principles of best practice regulation, including the new consultation arrangements, and undertaking more rigorous analysis of regulatory proposals. The Office of Best Practice Regulation is to oversee all other regulatory quality tools, including the BCC, Annual Regulatory Plans and Regulatory Performance Indicators. These functions are to be transferred from the Department of Industry, Tourism and Resources.

The grounds for assessing a RIS as inadequate have been broadened to include failure to document existing regulations or to provide an explanation as to why these would not suffice; inadequate cost-benefit and risk analysis; failure to quantify compliance costs of each of the feasible options; and failure to document and analyse applicable international standards.

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<sup>1</sup> COAG has also endorsed use of the BCC and some States, such as South Australia, will apply the BCC to their regulation making processes with the objective of reducing regulatory compliance costs by 25 per cent over the next few years.

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#### Box 1.4 **Business Cost Calculator (BCC)**

The Department of Industry, Tourism and Resources, has developed an interactive costing tool – the BCC – that helps measure the compliance costs of regulation and thus the impact of regulation on business (both large and small).

The tool enables the user to systematically cost the various activities or tasks a business is required to undertake to comply with a particular regulation or policy option. Categories of cost include ‘notification’, ‘education’, ‘permission’, ‘purchase cost’, ‘record-keeping’, ‘enforcement’, ‘publication and documentation’, ‘procedural’ and ‘other’.

The costing tool provides a standardised and streamlined process for a key input to policy development and complements existing regulatory process, such as the RIS.

- The ‘Quickscan’ function of the BCC provides an initial assessment of the extent of likely impacts on business and individuals or the economy.
- Where a RIS is required (see figure 1.1), the BCC report results should be integrated into the RIS.

The availability of an easy-to-use method for investigating compliance costs should encourage policy-makers to assess the compliance burden of both proposed and existing regulations. In so doing, it should also lead to more effective consultation with business to generate the data the model depends on.

### **A three-tiered assessment system**

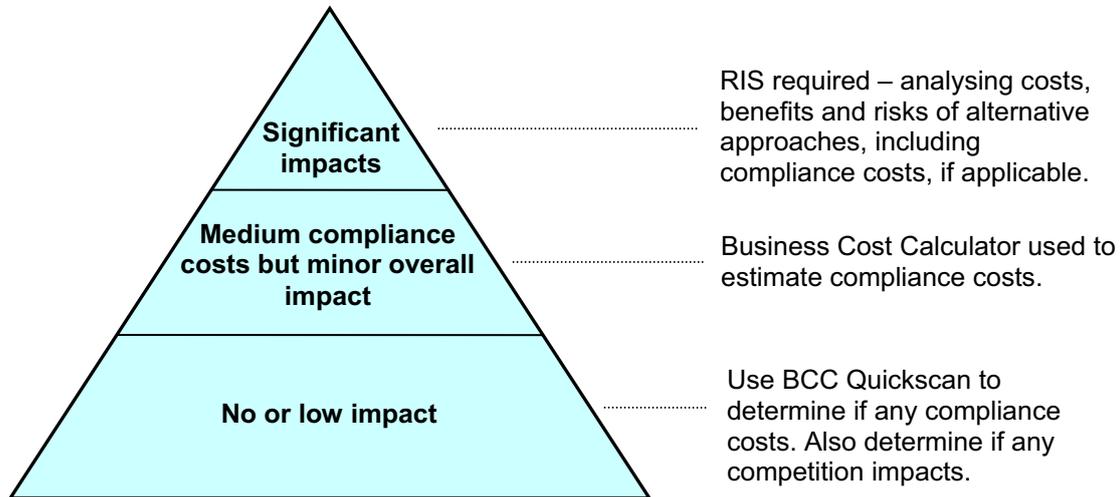
The Australian Government has adopted a three tiered system to assess all regulatory and quasi-regulatory proposals (see figure 1.1).

- All proposals must undergo a preliminary assessment to establish whether they are likely to involve an impact on business and individuals or the economy. This applies whether or not such proposals are to be considered by Cabinet.
- If the preliminary assessment shows that a regulation does potentially involve at least ‘medium’ compliance costs, a full assessment of the compliance cost implications should be carried out and documented in a Business Cost Calculator (BCC) report.
- Regulations that have a significant impact on business and individuals (whether in the form of compliance costs or other impacts) or that restrict competition, must be subjected to more detailed analysis, and ultimately documented in a Regulation Impact Statement (RIS). If the impacts include medium or significant business compliance costs, the BCC forms part of the RIS.

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**Figure 1.1 The assessment pyramid**

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The requirements apply to:

- proposals with regulatory and quasi-regulatory obligations being brought to the Cabinet by ministers;
- letters with regulatory and quasi-regulatory obligations being referred to the Prime Minister by ministers for approval; and
- proposals (regulatory and quasi-regulatory) of ministers, boards, statutory authorities and regulators initiated by other means such as media releases or interviews.

The Government’s best practice requirements for regulation apply to *all* government entities — such as government departments, agencies, statutory authorities and boards — which review or make regulations that have an impact on business and individuals, including agencies or boards with administrative or statutory independence.

### **1.3 The Office of Best Practice Regulation**

The new Office of Best Practice Regulation is to play a central role in promoting and strengthening observance of best practice in the development of regulation.

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This includes providing departments and agencies with assistance, advice and training regarding the new arrangements, including a ‘helpdesk’ to advise on the application of cost-benefit and risk analysis to regulatory proposals. Targeted training for government officials will also focus on the development and implementation of consultation strategies and data collection and quality issues.<sup>2</sup>

The Australian Government’s new requirements for regulatory analysis are set out in the ‘Best Practice Regulation Handbook’. It covers consultation processes, assessment of business compliance costs (using the Business Cost Calculator) and the analysis of other impacts and risks in a RIS. The initial steps to follow are summarised in a companion ‘Users Guide’ and ‘Quickstart to Regulatory Impact Analysis’. These documents have been publicly released in draft form for six months, so that users have an opportunity to provide comment and input on possible operational improvements.

The Office of Best Practice Regulation will also continue to provide independent advice to Ministerial Councils and national standard-setting bodies regarding COAG RIS processes.

A number of steps will need to be taken by the Office of Best Practice Regulation to fully implement relevant decisions, including:

- establishing new guidance material and a new unit to provide an independent ‘helpdesk’ function, including technical advice and training on cost-benefit and risk analysis;
- transferring responsibility for the BCC, Regulatory Performance Indicators and Annual Regulatory Plans from the Department of Industry, Tourism and Resources to the Office of Best Practice Regulation;
- working closely with other areas of government and regulators at different levels. This includes consulting with a Steering Committee comprising senior officials from central agencies which is providing feedback to the Office of Best Practice Regulation in implementing its enhanced role and ensuring the gate-keeping arrangements are effective; and
- recruiting additional staff to carry out the additional functions/responsibilities.

The new requirements will also impose additional responsibilities on Australian Government departments and agencies. For instance, the Government has specifically directed each regulator to develop skills in regulatory cost-benefit and

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<sup>2</sup> Collecting relevant data has traditionally been undertaken by trained researchers. However, this is an activity that all regulators should undertake properly. Many regulators will need to develop better skills and contacts to identify and use relevant data (including understanding uncertainties and limitations).

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risk analysis. A senior executive officer is also being appointed by each regulator, to liaise with the Office of Best Practice Regulation and be responsible for overseeing the application of these new processes in their department/agency.

These new Australian Government arrangements were implemented and came into effect in November 2006. To facilitate a smooth transition, over the first six months the focus will be on assisting departments and agencies understand and implement the new arrangements. The adequacy thresholds for analytical and other content of the new processes will then be progressively raised, as departments and agencies become more familiar with what is required.

The Office of Best Practice Regulation is releasing additional guidance material and providing training for officials in the use of RISs, cost-benefit analysis and the BCC.

### **Implementation challenges**

The new regulation-making arrangements represent a significant enhancement over previous processes and, if effectively implemented and observed, will in time lead to better regulatory outcomes. The fact that departments and agencies have had difficulties complying with the lesser requirements of the past, however, suggests that considerable efforts will be required to meet the new standards. Areas where the bar has been raised include, in particular, the need for more rigorous cost-benefit analysis, with estimation of compliance costs using the BCC, and the requirement to consult effectively, consistent with the principles laid down by the Government. Neither area has been well dealt with to date.

While the capacity of the OBPR to assist agencies in these endeavours will be greater than that of its predecessor — particularly in relation to cost-benefit analysis and the BCC — additional effort (and perhaps resourcing) within departments and agencies will also be needed. However, as the Regulation Taskforce notes, given that the Government's new requirements involve activities that would generally need to be undertaken anyway in pursuit of good public policy, any additional resourcing may be more appropriately seen as rectifying previous under-resourcing.

Related to this, while the OBPR will be active in providing training and assistance to officials, responsibility for good regulatory practice remains with agencies themselves. The OBPR, like the ORR, is required to provide independent assessment of the need for a RIS and of the adequacy of department or agency compliance. Its focus in assisting officials will be on helping them follow good practice, not identifying the best regulatory solutions to areas within their responsibility.

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If anything, the importance of the independence of the Office in its vetting and monitoring roles has been elevated by the Government's decision to prevent regulatory proposals that have not met the best practice requirements, as assessed by the OBPR, from proceeding.

This strengthening of the gatekeeping arrangements will play a crucial role in promoting good process. The Government has recognised this by indicating that the Prime Minister will be the arbiter of whether there are exceptional circumstances that override the obligation to meet the BCC and RIS requirements (such as in the event of an emergency). Early decisions in this area will be very important in conditioning the expectations of ministers and their departments/agencies, ultimately determining the quality of regulatory assessment itself in the future.

For those few cases deemed to be exceptions to the need to have complied with the best practice processes, there is the important default obligation of a post-implementation review within 1-2 years. This provides an important safeguard against unintended costs and consequences of hurried regulatory solutions persisting. It will be important to keep track of such cases and to ensure that adequate reviews are conducted. The OBPR will play a role in monitoring developments.

Equally, the Government's decision to review every five years all regulation that does not already have a sunset provision, will require systems to ensure effective compliance. In cases where the regulation has significant impacts, an independent review may be called for.

Over the next five years, the Productivity Commission will be required to conduct an annual stocktake of regulation that will target key areas requiring attention (see box 1.5). This should be structured to complement the Regulation Taskforce's report in providing a more in-depth assessment across different sectors/industries of any remaining problem areas in the existing stock of regulation. It will also provide an opportunity to monitor actions taken in response to the Regulation Taskforce's report.

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**Box 1.5      Related Productivity Commission studies**

**Annual stocktake**

Targeted regulatory reviews are to be undertaken by the Productivity Commission. This will be a new annual review process, following on from the Regulation Taskforce, to identify an annual red tape agenda. The Productivity Commission will call for public submissions in key areas, based on a direction from the Treasurer.

**Performance Benchmarking**

The Productivity Commission is undertaking a research study on performance indicators and reporting frameworks across all levels of government, to assist the Council of Australian Governments (COAG) to implement its in-principle decision to adopt a common framework for benchmarking, measuring and reporting on regulatory burden on business.

The study has 2 stages. The first stage will develop a range of feasible quantitative and qualitative performance indicators and reporting framework options. Following agreement by COAG, the second stage would apply the preferred indicators, review their operation and assess the results. The Commission is to report on Stage 1 by February 2007.

Similarly, the Productivity Commission's current study for COAG into approaches to benchmarking the performance of all jurisdictions' regulatory regimes — particularly in relation to compliance costs — complements these other initiatives and may assist in promoting good process and minimum effective regulation as sources of competitive advantage for Australia.



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## 2 Compliance with RIS requirements

**In 2005-06, compliance by departments and agencies with the Australian Government's previous Regulation Impact Statement (RIS) requirements was lower at the decision-making and tabling stages than in earlier years. Compliance with COAG's RIS requirements was also lower than in the previous reporting period.**

**Both the Australian Government and COAG have now agreed to strengthen and reorientate their respective RIS processes in 2005-06, through the use of cost-benefit analysis and better measurement of compliance costs.**

### 2.1 Compliance with the Australian Government's previous requirements

When assessing and reporting on compliance with the Australian Government's RIS requirements applying in 2005-06, the ORR 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 (see Box 2.1) and
- the RIS prepared at the decision-making stage was tabled in the Parliament or otherwise made public<sup>1</sup> and the analysis meets adequacy standards.

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<sup>1</sup> In accordance with the Government's RIS guidelines, RISs for proposals introduced via bills, legislative instruments or treaties must be tabled in Parliament with the enabling instrument. While there is no formal requirement for RISs prepared for proposals introduced by other forms of instruments/quasi-regulation to be made public, the ORR encourages departments and agencies to do so.

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### Box 2.1 Adequacy criteria for RISs applying in 2005-06

In 1998, the Government endorsed the following criteria for the ORR to assess whether each RIS met the Government's regulatory best practice requirements.

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

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

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

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

both of which are requirements under the *Competition Principles Agreement* (COAG 1995).

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

*Source:* ORR 1998, p. D 19.

If a department or agency has met these conditions, it has been considered fully compliant with the Government's requirements.

RIS compliance is only reported in *Regulation and its Review* when the instrument implementing a regulatory proposal is tabled in Parliament (in the case of bills, legislative instruments and treaties), or is made (in the case of other forms of instruments and quasi-regulations) into law. Hence, the data reported here do not include regulatory proposals which were decided by the Government in 2005-06, but not introduced into the Parliament or made into law during that period.

### Aggregate 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 compliance rates of 80 per cent in 2004-05 and 92 per cent in 2003-04.

As in previous years, the failure to prepare a RIS accounted for a significant proportion of non-compliance (61 per cent of cases of non-compliance in 2005-06 compared to 82 per cent in 2004-05 and 56 per cent in 2003-04).

With respect to the tabling stage (for proposals introduced via bills, legislative instruments and treaties), compliance was 86 per cent, compared to 89 per cent in 2004-05 and 95 per cent in 2003-04.

Table 2.1 **RIS compliance, 2000-01 to 2005-06**

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
Decision-making stage <sup>a</sup>	129/157 (82%)	128/145 (88%)	113/139 (81%)	105/114 (92%)	68/85 (80%)	68/96 (71%)
Tabling stage <sup>a, b</sup>	118/133 (89%)	116/123 (94%)	113/119 (95%)	82/86 (95%)	59/66 (89%)	73/85 (86%)

<sup>a</sup> The first figure records adequate RISs; the second figure records RISs required. <sup>b</sup> Compliance for regulatory proposals introduced via bills, legislative instruments and treaties (which are subject to formal assessment by the ORR). The number of RISs required at tabling is usually lower because RISs are not required at this stage for quasi-regulations, they may be required at more than one decision-making stage for significant regulatory proposals and they are required at two decision-making stages for treaties.

Source: ORR estimates.

### Significance of regulatory proposals

The ORR has classified the significance of each regulatory proposal according to:

- the nature and magnitude of the problem and proposal; and

- 
- the scope (broad or narrow) and scale (level or degree) of impacts on affected parties and the community.

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

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

**Box 2.2      Classifying the significance of regulatory proposals**

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

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

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

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

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 against the Government’s criteria as inadequate (table 2.2).

**Table 2.2 Compliance by significance, 2005-06**

<i>Significance rating</i>	<i>Required</i>	<i>Prepared</i>	<i>Adequate</i>	<i>Compliance</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>%</i>
More significant	8	7	0	0.0
Less significant	88	72	68	77.0
<b>Total</b>	<b>96</b>	<b>79</b>	<b>68</b>	<b>70.8</b>

Source: ORR estimates.

While comparisons of RIS compliance for more significant and less significant proposals over time should be treated with caution, due to the relatively small number of more significant proposals in some years, in only one of the past five years (2003-04), has compliance for more significant proposals exceeded that for less significant ones.

**Table 2.3 Compliance at the decision-making stage by significance, 2001-02 to 2005-06**

<i>Significance rating</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>2005-06</i>
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.

## Multiple decision stages

In accordance with the Government's RIS requirements, RISs are required at the decision-making stage for proposals that impact on business. In some (generally significant) cases, there may be more than one decision-making stage. In 2005-06, apart from treaties where RISs are always required at more than one decision-making stage, there were two cases of multiple decision-making stages. In one case, RISs were required at three decision-making stages. Two RISs were prepared, and were assessed as inadequate by the ORR. In the other case, two RISs were required, of which only one was prepared. It was assessed as adequate.

## Proposals that restrict competition

Restrictions on competition can impose substantial costs on business and the community by raising prices, reducing choice and impeding innovation. Reflecting these costs — and to meet the requirements of the National Competition Policy *Competition Principles Agreement* — RISs for proposals that affect business by restricting competition should demonstrate that the benefits of restricting competition outweigh the costs, and that the benefits can only be achieved by restricting competition (ORR 1998, p. B6).

In 2005-06, three of the more significant proposals were judged to restrict competition, whereas, among those proposals of less significance, eight restricted competition. RISs were prepared for each of the more significant proposals and for four of the less significant ones (table 2.4). None of the RISs prepared for the more significant proposals were assessed as adequate. Each of the RISs prepared for the less significant proposals was assessed as adequate.

Table 2.4 **Compliance at the decision-making stage for proposals that restrict competition, 2000-2001 to 2005-06**

<i>Significance rating</i>	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
More significant	2/7 (29%)	1/3 (33%)	0/2 (0%)	n/a	n/a	0/3 (0%)
Less significant	n/a	7/9 (78%)	18/20 (90%)	6/6 (100%)	4/7 (57%)	4/8 (50%)
<b>Total</b>	<b>2/7 (29%)</b>	<b>8/12 (67%)</b>	<b>18/22 (82%)</b>	<b>6/6 (100%)</b>	<b>4/7 (57%)</b>	<b>4/11 (36%)</b>

n/a - Not applicable.

Source: ORR estimates.

## 2.2 Compliance by type of regulation

The extent of compliance with the RIS requirements, at both the decision-making and tabling stages, for the various types of regulation is shown below (table 2.5).

**Table 2.5 RIS compliance, by type of regulation, 2005-06**

<i>Type of regulation</i>	<i>Decision-making</i>			<i>Tabling<sup>a</sup></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)	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			
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, legislative instruments and treaties is subject to formal assessment by the ORR. <sup>b</sup> As reported by departments and agencies to the ORR.

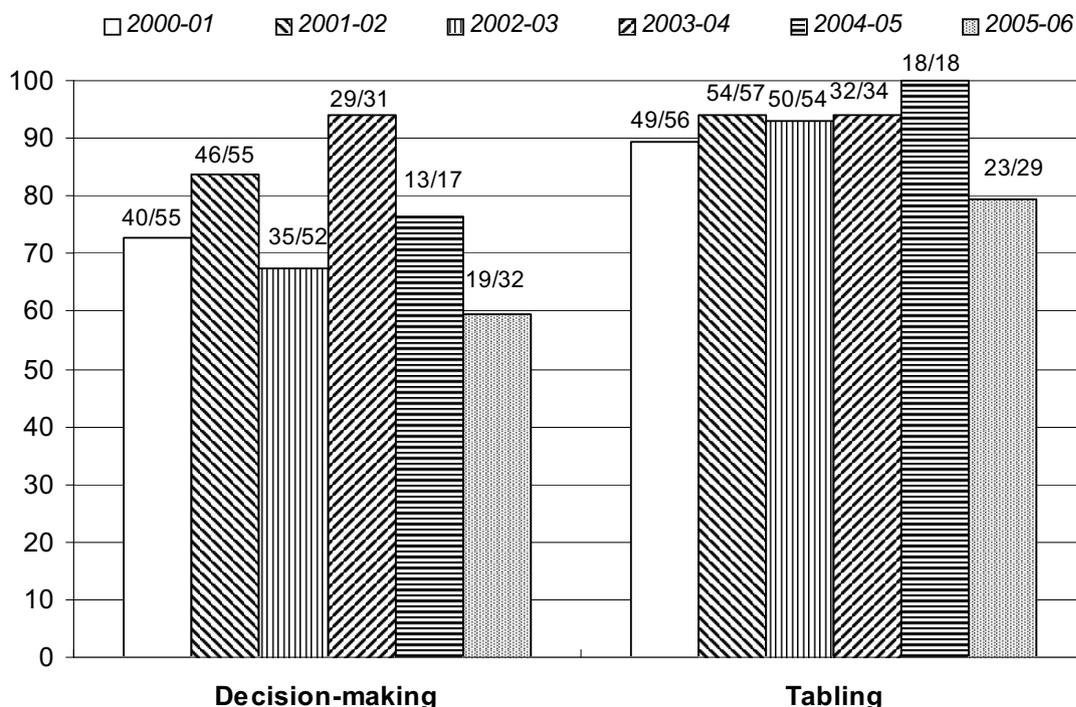
Source: ORR estimates.

## Primary legislation

There were 32 RISs required at the decision-making stage for proposals introduced by bills in 2005-06 (34 per cent of all RISs required). Twenty-eight were prepared, of which 19 were assessed as adequate (a compliance rate of 59 per cent). This compares to compliance rates of 76 per cent in 2004-05 and 80 per cent in 2003-04. Compliance at the tabling stage was 79 per cent (figure 2.1).

**Figure 2.1 RIS compliance, bills, 2000-01 to 2005-06**

Per cent



Source: ORR estimates.

## Delegated legislation

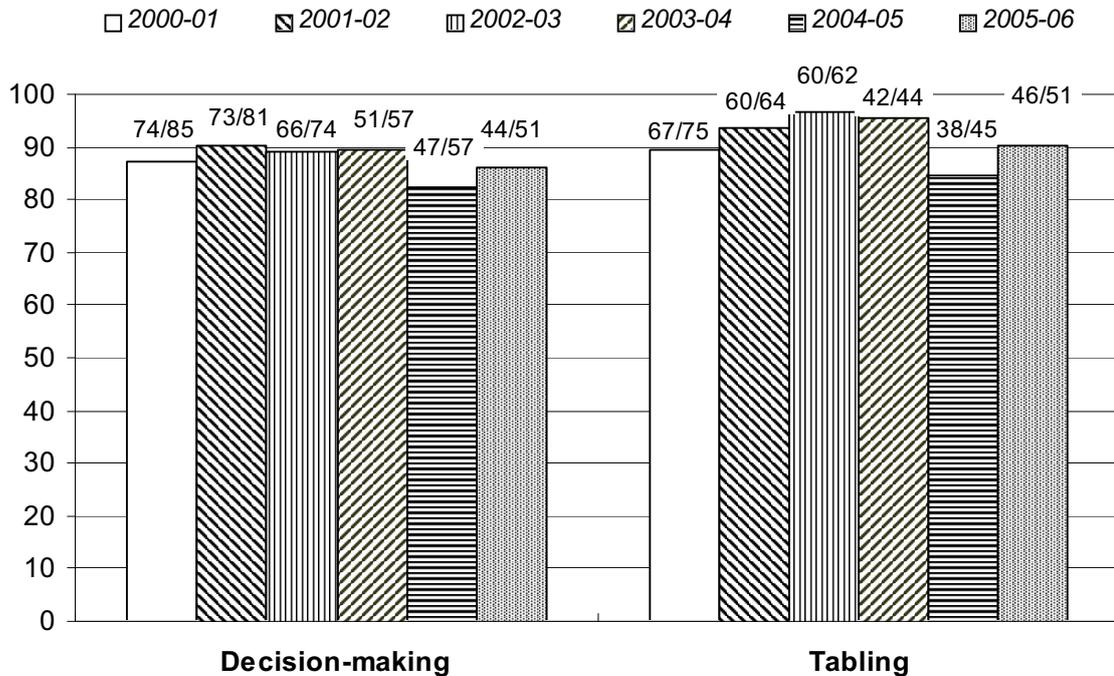
Delegated legislation comprises all rules or instruments that have the force of law and have been made by an authority to which Parliament has delegated part of its legislative power. These instruments may be legislative or non-legislative in nature.<sup>2</sup> An instrument is taken to be legislative if it determines or alters the law, rather than applying it in a particular case, and has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

In 2005-06, 51 RISs were required at the decision-making stage for proposals introduced by legislative instruments (53 per cent of all RISs required). Of these, 45

<sup>2</sup> RISs are generally not required for non-legislative instruments. In the first year of operation of the *Legislative Instruments Act 2003* (2004-05), four instruments were reported to the ORR as being 'non-legislative' instruments.

RISs were prepared and 44 were assessed as adequate (a compliance rate of 86 per cent). Three RISs were prepared after the decision-making stage and tabled.<sup>3</sup>

**Figure 2.2 RIS compliance, delegated legislation, 2000-01 to 2005-06<sup>a</sup>**  
Per cent



<sup>a</sup> Comprises disallowable and non-disallowable instruments made before 1 January 2005 and legislative and non-legislative instruments tabled or made after 1 January 2005 (the date the *Legislative Instruments Act 2003* came into force).

Source: ORR estimates.

## Quasi-regulations

Quasi-regulation refers to the range of rules, instruments and standards whereby government influences business to comply, but which do not form part of explicit government regulation. Examples of quasi-regulation include industry codes of practice, guidance notes, standards, industry-government agreements and accreditation schemes.

Four quasi-regulations made in 2005-06 were reported by departments and agencies to the ORR. RISs were prepared, and assessed as adequate by the ORR, in two cases (a compliance rate of 50 per cent).

<sup>3</sup> One RIS prepared at the decision-making stage was not tabled.

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## Treaties

Under the Australian Government's RIS requirements, a RIS should be prepared at three stages of the treaty-making process — before the formal policy decision to pursue treaty negotiations, prior to Australia signing a treaty and, finally, when the treaty is tabled in Parliament before ratification. Where Australia is considering acceding to an existing treaty, RISs are required prior to accession and when the treaty is tabled in Parliament. (Other countries require a similar analysis of the domestic impacts of treaties.)

Five treaties tabled in Parliament before ratification in 2005-06 triggered the Government's RIS requirements. Four RISs were required at entry into negotiations and five RISs at the signing stage.<sup>4</sup> Of these, one was prepared at entry into negotiations and three were prepared at signing. Three RISs were assessed as adequate (a compliance rate of 25 per cent at entry and 40 per cent at signing). At the ratification stage, five RISs were required. Five RISs were prepared and four were assessed as adequate by the ORR (a compliance rate of 80 per cent).

## 2.3 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 2004b, p.2)

At the direction of COAG, the ORR has had a role in monitoring and reporting on compliance by Ministerial Councils and national standard-setting bodies with these Guidelines. A RIS, assessed by the ORR, is required at two stages: the first for community consultation with parties affected by the regulatory proposal; and the second or final RIS, reflecting feedback from the community, for the decision-making body. At each stage, the ORR is required by COAG to assess:

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

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<sup>4</sup> In one case, entry into negotiations occurred before the Government's RIS requirements became mandatory.

- whether alternatives to regulation have been adequately considered.

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

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 (table 2.6). 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).

**Table 2.6 Compliance with COAG RIS requirements by Ministerial Councils and national standard-setting bodies, 2003-04 to 2005-06 <sup>a</sup>**

	2003-04	2004-05	2005-06
<i>Consultation stage</i>			
More significant	4/7 (57%)	5/6 (83%)	4/4 (100%)
Less significant	24/27 (89%)	15/18 (83%)	26/30 (87%)
<b>Total</b>	<b>28/34 (82%)</b>	<b>20/24 (83%)</b>	<b>30/34 (88%)</b>
<i>Decision-making stage</i>			
More significant	4/7 (57%)	6/6 (100%)	2/4 (50%)
Less significant	26/27 (96%)	15/19 (79%)	24/30 (80%)
<b>Total</b>	<b>30/34 (88%)</b>	<b>21/25 (84%)</b>	<b>26/34 (76%)</b>

<sup>a</sup> Compliance with the COAG *Principles and Guidelines* is published on a 1 April to 31 March basis.

Source: ORR estimates.

For more significant proposals, compliance was 100 per cent at consultation, but only 50 per cent at the decision-making stage (reflecting, in part, the higher level of analysis required for COAG RISs at the decision-making stage).

In February 2006, COAG agreed to improve the quality of regulatory impact analysis through the use of cost-benefit analysis and better measurement of compliance costs (including use of the Business Cost Calculator). More detailed compliance information about regulation making by COAG forums, including RIS compliance, is provided in appendix C.

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## **2.4 Reasons for non-compliance in 2005-06**

The compliance of departments and agencies with the Australian Government's RIS requirements was lower in 2005-06 compared to previous years, at both the decision-making and tabling stages. Compliance for a small number of significant regulatory issues was significantly lower.

RISs were not prepared at the decision-making stage in 17 cases. In five cases the ORR was not consulted and in seven cases the ORR was not consulted until after the decision was made. In five cases, the ORR was consulted before the decision was made, but the ORR did not receive RISs for assessment.

There can be legitimate reasons for not preparing a RIS before a decision is taken to regulate - for example, the need to respond to a genuine emergency. However, such cases are rare and the RIS requirements are sufficiently flexible to respond to them (PC 2004, pp. 8-9).

### **Timeliness**

The analytical framework underpinning a RIS should be used throughout the policy development process. Departments and agencies have been encouraged to integrate the RIS process into their internal policy development processes and consult with the ORR at an early stage. Where departments and agencies consult with the ORR and commence preparation of a RIS early, in most cases the RIS meets adequacy standards.

Where departments and agencies do not consult with the ORR early in the policy development process, there is often insufficient time to address major weaknesses in a RIS before seeking the ORR's final assessment of the RIS for the decision-making stage. In addition, where departments and agencies consult with the ORR and prepare RISs late in the policy development process, the RIS is less likely to make an effective contribution to policy development.

### **Inadequate impact analysis**

Where RISs were prepared but failed the Government's adequacy test, there was typically a lack of adequate and robust cost-benefit data and analysis.

In 2005-06, there were eleven cases where RISs were prepared but assessed by the ORR as being inadequate. In two cases, timeliness may have been a factor, as the RISs were revised and assessed as adequate at the tabling stage. In the other nine cases, RISs were assessed as inadequate because they failed to demonstrate that

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there was a net benefit to the community from the preferred option, failed to adequately quantify the impacts (costs and benefits) of proposals (commensurate with the significance of those impacts), did not provide a rigorous analysis of risk, or failed to quantify compliance costs. More details are provided in appendix A.

The cost of preparing RISs is usually quite small compared to the total budgets of regulatory departments and agencies. For example, in 2005-06 the ORR asked Australian Government regulators preparing a RIS to provide estimates of the number of person days taken to prepare each RIS. On average, each RIS took 14.9 person days to prepare (compared to 13.6 person days in 2004-05). Based on an average wage cost of \$46.50 per hour, the cost of preparing a RIS, on average, was around \$5200. This implies that the total wage cost of preparing 79 Australian Government RISs in 2005-06 was about \$410 500.<sup>5</sup>

This is a rough estimate of the gross cost. Where regulators routinely define policy objectives, consider feasible options and their impacts etc, the additional or incremental cost of preparing a RIS is small, because the RIS simply documents an existing high quality regulatory policy development process. By contrast, the RIS process could generate additional net costs on departments and agencies where there are deficiencies in their regulatory policy making processes.

Some departments and agencies performed well in preparing RISs. Of the twenty-one departments and agencies which were required to prepare RISs for their regulatory proposals in 2005-06, ten complied fully with the RIS requirements and eleven did not. The following complied fully with the RIS requirements:

- Auditing and Assurance Standards Board;
- Australian Accounting Standards Board;
- Australian Competition and Consumer Commission;
- Australian Fisheries Management Authority;
- Australian Radiation Protection and Nuclear Safety Agency;
- Australian Prudential Regulation Authority;
- Australian Securities and Investments Commission;
- Civil Aviation Safety Authority;
- Department of Immigration and Multicultural Affairs; and
- Office of Indigenous Policy Co-ordination.

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<sup>5</sup> These estimates include labour costs within departments and agencies, based on a working day of 7.35 hours, and do not include other costs such as on-costs, capital costs and consultants' fees.

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Elsewhere, there remains room for significant improvement, especially within departments and agencies with systemic poor RIS compliance.

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## A Compliance by portfolio

**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.**

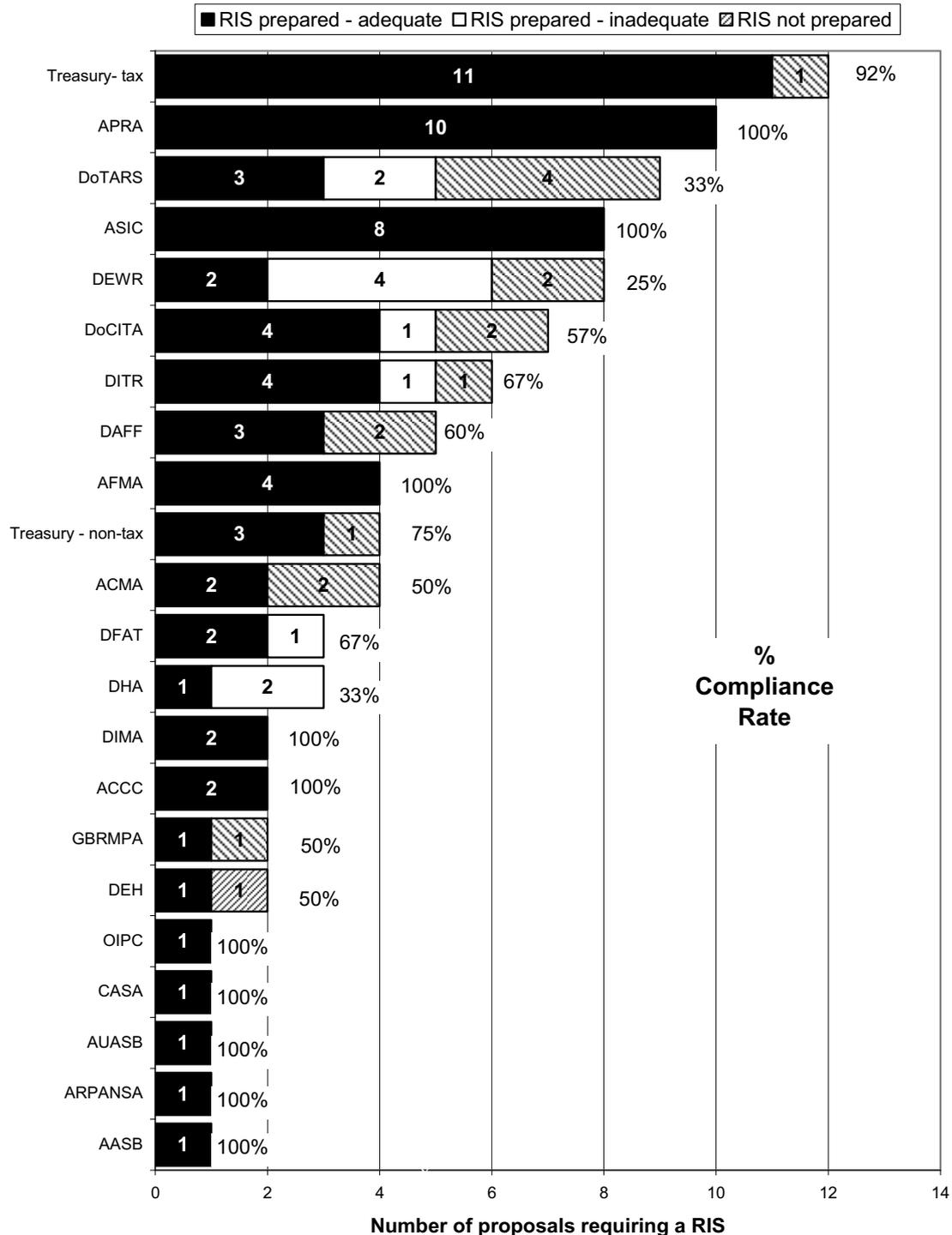
Compliance by departments and agencies with the Australian Government's RIS requirements at the decision-making stage in 2005-06 is illustrated in figure A.1.

- The total length of each bar indicates the number of RISs required to be prepared.
- The area in black denotes RISs that were prepared and assessed as adequate by the ORR.
- The area in white shows the number of RISs that were prepared but assessed as containing an inadequate level of analysis.
- The shaded area shows the RISs that should have been prepared but were not.

The compliance rate for each department and agency, as a percentage of the number of RISs required for that department/agency, is shown at the end of each bar.

Detailed compliance results for departments and agencies follow. A brief description of several significant regulatory proposals is also provided.

**Figure A.1 Compliance with RIS requirements at the decision-making stage, 2005-06 <sup>a</sup>**



<sup>a</sup> When the Government's RIS requirements became mandatory, the Government introduced a modified RIS process for tax proposals. Compliance by the Department of the Treasury is accordingly reported for both tax RISs and non-tax RISs.

Source: ORR estimates.

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## **A.1 Agriculture, Fisheries and Forestry**

The Agriculture, Fisheries and Forestry portfolio includes the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Fisheries Management Authority (AFMA).

### **Department of Agriculture, Fisheries and Forestry**

For the five RISs required to be prepared by the Department for legislative instruments in 2005-06, two were assessed by the ORR as inadequate at the decision-making stage, whereas all five were assessed as adequate at the tabling stage, resulting in compliance rates of 60 and 100 per cent respectively.

### **Australian Fisheries Management Authority**

In 2005-06, the Australian Fisheries Management Authority (AFMA) was fully compliant with the Government's RIS requirements for legislative instruments made within the period, preparing four RISs for legislative instruments that were assessed as adequate by the ORR, at both the decision-making and tabling stages.

## **A.2 Communications, Information Technology and the Arts**

Within this portfolio, the Department of Communications, Information Technology (DoCITA) and the Arts and the Australian Communications and Media Authority (ACMA) were required to prepare RISs in 2005-06.

### **Department of Communications, Information Technology and the Arts**

The Department of Communications, Information Technology and the Arts was responsible for preparing seven RISs at the decision-making stage for regulatory proposals introduced in 2005-06. Five RISs were prepared, of which four were assessed as adequate by the ORR. RISs were not prepared, before entry into negotiations, or before signature, for one treaty ratified in 2005-06. Six RISs, all assessed as adequate by the ORR, were tabled in the Parliament.

**Table A.1 DoCITA: RIS compliance by type of regulation, 2005-06**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>Prepared</i>	<i>adequate</i>
Bills	3/3	2/3	3/3	3/3
Legislative instruments	2/2	2/2	2/2	2/2
Treaties <sup>a</sup>	0/2	0/2	1/1	1/1
<b>Total</b>	<b>5/7</b>	<b>4/7</b>	<b>6/6</b>	<b>6/6</b>
<i>Percentage</i>	<i>71</i>	<i>57</i>	<i>100</i>	<i>100</i>

<sup>a</sup> RISs are required at three stages of the treaty-making process – before entry into negotiations (decision-making stage), before signature (decision-making stage) and before ratification (tabling). In this case, the Department did not contact the ORR until after signature.

Source: ORR estimates.

### Significant matters

In 2005-06, significant matters included the introduction of an ‘operational separation’ regime for Telstra to provide equivalence and transparency of Telstra’s wholesale and retail operations. A RIS was prepared for the decision-making stage, which did not contain a Cost Recovery Impact Statement agreed with the Department of Finance and Administration.

### Australian Communications and Media Authority

The Australian Communications and Media Authority was responsible for preparing RISs for four regulatory proposals introduced via legislative instruments and quasi-regulations in 2005-06. While adequate RISs were prepared for two proposals, RISs were not prepared for the development/registration by the Authority of two industry codes that had a direct impact on business.

**Table A.2 ACMA: RIS compliance by type of regulation, 2005-06**

<i>Regulatory proposals introduced via</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-regulations	0/2	0/2	n/a	n/a
<b>Total</b>	<b>2/4</b>	<b>2/4</b>	<b>2/2</b>	<b>2/2</b>
<i>Percentage</i>	<i>50</i>	<i>50</i>	<i>100</i>	<i>100</i>

n/a - Not applicable. RISs are not required at the tabling stage for proposals introduced via quasi-regulations.

Source: ORR estimates.

## A.3 Employment and Workplace Relations

The Department of Employment and Workplace Relations (DEWR) was required to prepare eight RISs at the decision-making stage in 2005-06. Of these, six were prepared, two of which were assessed as adequate. At the tabling stage, five RISs were required. Four were prepared, of which one was assessed as adequate.

Table A.3 **DEWR: RIS compliance by type of regulation, 2005-06**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills <sup>a</sup>	4/5	1/5	3/3	1/3
Legislative instruments	1/2	0/2	1/2	0/2
Quasi-regulations	1/1	1/1	n/a	n/a
<b>Total</b>	<b>6/8</b>	<b>2/8</b>	<b>4/5</b>	<b>1/5</b>
<i>Percentage</i>	75	25	80	20

<sup>a</sup> One of the Bills, the Workplace Relations Amendment (Workchoices) Bill 2005, involved three major decision points each of which was assessed as requiring a RIS. This Bill is discussed below.

n/a - Not applicable. RISs are not required at the tabling stage for proposals introduced via quasi-regulations.

Source: ORR estimates.

### Significant matters

Among significant matters in 2005-06, was the Workplace Relations Amendment (Workchoices) Bill 2005 (passed in 2005). This involved fundamental changes to the workplace relations system in Australia. Changes included using the corporations power to introduce, as far as possible, a unified national workplace relations system; establishing the Australian Fair Pay Commission (AFPC) to set minimum wages; establishing a set of minimum conditions which, along with the wages set by the AFPC, replace awards as the basis for the 'no disadvantage test' in agreement making; and further restricting allowable matters in awards. The development of the Workchoices reforms was a multi-staged decision-making process, with RISs required at three significant decision points, as well as at tabling of the legislation. RISs were prepared at two decision points and at tabling, but a RIS was not prepared at the third decision point. Overall, the level of cost-benefit and other analysis in the RISs was not considered commensurate with the magnitude of the impacts of the regulatory reforms.

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## A.4 Environment and Heritage

Within the Environment and Heritage portfolio, the Department of the Environment and Heritage (DEH) and the Great Barrier Reef Marine Park Authority (GBRMPA) were required to prepare RISs in 2005-06.

### Department of the Environment and Heritage

The Department of the Environment and Heritage was required to prepare RISs for two proposals. An adequate RIS was prepared for the decision-making stage for one proposal, although it was not tabled. An adequate RIS was prepared at the tabling stage for the other proposal.

Table A.4 DEH: RIS compliance by type of regulation, 2005-06

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	0/1	0/1	1/1	1/1
Legislative instruments <sup>a</sup>	1/1	1/1	0/1	0/1
<b>Total</b>	<b>1/2</b>	<b>1/2</b>	<b>1/2</b>	<b>1/2</b>
<i>Percentage</i>	<i>50</i>	<i>50</i>	<i>50</i>	<i>50</i>

<sup>a</sup> While a RIS was prepared at the decision-making stage for the Environment Protection and Biodiversity Conservation Amendment Regulations 2005 (No. 2), a RIS was not included in the Explanatory Statement at the tabling stage.

Source: ORR estimates.

### Great Barrier Reef Marine Park Authority

The Great Barrier Reef Marine Park Authority was required to prepare RISs for two proposed legislative instruments. Only one RIS was prepared and assessed as adequate at the decision-making stage. At the tabling stage, RISs for both proposals were assessed as adequate.

## A.5 Foreign Affairs and Trade

The Department of Foreign Affairs and Trade (DFAT) was responsible for preparing RISs for one Bill and one treaty during 2005-06. The RIS for the Bill was assessed as adequate at the decision-making and tabling stages. For the treaty-making process, the Department prepared a RIS that was assessed as adequate at

entry into negotiations but the RISs for the signing and ratification stages were assessed as inadequate.

**Table A.5 DFAT: RIS compliance by type of regulation, 2005-06**

<i>Regulatory proposals introduced via</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	1/1	1/1	1/1
Treaties <sup>a</sup>	2/2	1/2	1/1	0/1
<b>Total</b>	<b>3/3</b>	<b>2/3</b>	<b>2/2</b>	<b>1/2</b>
<i>Percentage</i>	<i>100</i>	<i>67</i>	<i>100</i>	<i>50</i>

<sup>a</sup> RISs are required at three stages of the treaty-making process – before entry into negotiations (decision-making stage), before signature (decision-making stage) and before ratification (tabling).

Source: ORR estimates.

## **A.6 Health and Ageing**

Within this portfolio, the Department of Health and Ageing and the Australian Radiation Protection and Nuclear Safety Agency were required to prepare RISs in 2005-06.

### **Department of Health and Ageing**

The Department of Health and Ageing (DHA) was required to prepare three RISs at the decision-making stage in 2005-06 for three proposed bills. Of these, three were prepared and one was assessed as adequate by the ORR. Three RISs were required at tabling, two of which were assessed as adequate by the ORR.

#### **Significant matters**

The ‘Fourth Community Pharmacy Agreement – Location Rules’ proposed a limited easing of the pharmacy location rules while retaining the key elements of the existing rules. The ORR considered the RIS at the decision-making stage was inadequate as it did not demonstrate that the proposal, which restricted competition, provided net benefits to the community and that the proposed restrictions were the only way to meet the Government’s objectives. The ORR considered the RIS at the tabling stage to be inadequate for the same reasons.

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## **Australian Radiation Protection and Nuclear Safety Agency**

In 2005-06, the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) was fully compliant with the Government's RIS requirements for legislative instruments made within the period, preparing one RIS that was assessed as adequate by the ORR, at both the decision-making and tabling stages.

### **A.7 Immigration and Multicultural Affairs**

The Department of Immigration and Multicultural Affairs (DIMA) was required to prepare two RISs for two proposed legislative instruments during 2005-06. For both proposals, adequate RISs were prepared at the decision-making and tabling stages.

### **A.8 Industry, Tourism and Resources**

In 2005-06, the Department of Industry, Tourism and Resources (DITR) was required to prepare six RISs at the decision-making stage for proposed bills. Five RISs were prepared and four were assessed as adequate. Five RISs were required to be prepared at the tabling stage. Of the five prepared by the Department, four were assessed as adequate.

#### **Significant matters**

In 2005-06, significant matters included the proposal to repeal the *Petroleum Retail Marketing Sites Act 1980* and the *Petroleum Retail Marketing Franchise Act 1980*. The repeal of these two Acts was introduced in the *Petroleum Retail Legislation Repeal Bill 2006*, which forms part of the Government's Downstream Petroleum Reform Package (the reform package). As part of this reform package, a mandatory industry code, to be known as the Oilcode, will also be introduced under Section 51 AE of the *Trade Practices Act 1974*.

The RIS prepared for the reform package at the decision-making stage was assessed as inadequate. The RIS did not adequately demonstrate the existence and/or magnitude of the problem and the objectives were not adequately specified. The impact analysis section failed to adequately analyse the costs and benefits of the proposal and suffered from a lack of quantitative information (for example, data on the regulatory compliance costs for the implementation of the Oilcode were not included in the RIS for refiner/marketers, importer/marketers or small businesses). It was not clear from the RIS how the community as a whole would benefit from the Oilcode.

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## **A.9 Prime Minister and Cabinet**

Within the portfolio of the Prime Minister and Cabinet, the Office of Indigenous Policy Co-ordination (OIPC) was required to prepare a RIS in 2005-06.

### **Office of Indigenous Policy Co-ordination**

The Office of Indigenous Policy Co-ordination was fully compliant with the Government's RIS requirements in 2005-06, preparing one RIS at the decision-making stage for one proposal for a legislative instrument. The RIS was assessed as adequate by the ORR, and was tabled in the Parliament.

## **A.10 Transport and Regional Services**

Within the Transport and Regional Services portfolio, the Department of Transport and Regional Services (DoTARS) and the Civil Aviation Safety Authority (CASA) were required to prepare RISs in 2005-06.

### **Department of Transport and Regional Services**

The Department of Transport and Regional Services was required to prepare RISs for nine regulatory proposals at the decision-making stage in 2005-06. Five RISs were prepared, of which three were assessed as adequate. At the tabling stage, of the eight RISs required, the Department prepared five RISs and four were assessed as adequate.

The Department was responsible for preparing two RISs for two treaties. For one of the treaties, the entry into negotiations stage occurred prior to the introduction of the RIS requirements and therefore RISs were only required for the latter two stages. Of the three RISs required at the decision-making stage, one was prepared and assessed as adequate. At the tabling stage, the Department was fully compliant.

Table A.6 **DoTARS: RIS compliance by type of regulation, 2005-06**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	2/2	0/2	1/2	0/2
Legislative instruments	2/4	2/4	2/4	2/4
Treaties <sup>a</sup>	1/3	1/3	2/2	2/2
<b>Total</b>	<b>5/9</b>	<b>3/9</b>	<b>5/8</b>	<b>4/8</b>
<i>Percentage</i>	<i>56</i>	<i>33</i>	<i>63</i>	<i>50</i>

<sup>a</sup> RISs are required at three stages of the treaty-making process – before entry into negotiations (decision-making stage), before signature (decision-making stage) and before ratification (tabling). The entry into negotiations stage for one of the RISs occurred prior to the introduction of the RIS requirements.

Source: ORR estimates.

## Significant matters

In 2005-06, significant matters included increasing security measures for air cargo on passenger transport aircraft which were introduced in the *Aviation Transport Security Amendment Bill 2006*. The Department prepared a RIS at the decision-making stage, which was assessed as inadequate. The RIS did not provide a convincing case that increased air cargo security on international passenger transport aircraft provided a net benefit to the community. The RIS did not define the problem adequately, did not provide a rigorous risk analysis, and did not provide sufficient information on the costs (including compliance costs) and benefits of the various regulatory options. A RIS for this matter was not tabled with the Bill.<sup>1</sup>

## Civil Aviation Safety Authority

In 2005-06, the Civil Aviation Safety Authority was required to prepare one RIS at the decision-making and tabling stages. The RIS was assessed as adequate at both stages.

## A.11 Treasury

Within the Treasury portfolio, the Department of the Treasury, the Auditing and Assurance Standards Board (AUASB), the Australian Accounting Standards Board (AASB), the Australian Competition and Consumer Commission (ACCC), the

<sup>1</sup> The RIS that was tabled with this Bill was for a proposal to create two separate classes of cargo businesses: regulated air cargo agents; and accredited air cargo agents. This proposal has been separately reported in the Department's compliance figures.

Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) were responsible for preparing RISs during 2005-06. 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 RISs are subject to slightly different requirements.

### Department of the Treasury (non-tax proposals)

In 2005-06, the Treasury was required to prepare two RISs for non-tax proposals introduced via legislative instruments at both the decision-making stage and the tabling stage. Both RISs were assessed as adequate against the Government's requirements. In addition, one proposal involved a treaty. In this case a RIS was not prepared at the entry into negotiations stage in 2001. However, an adequate RIS was prepared for the signing and ratification stages.

Table A.7 **Treasury (non-tax): RIS compliance by type of regulation, 2005-06**

<i>Regulatory proposals introduced via</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
Treaties <sup>a</sup>	1/2	1/2	1/1	1/1
<b>Total</b>	<b>3/4</b>	<b>3/4</b>	<b>3/3</b>	<b>3/3</b>
<i>Percentage</i>	75	75	100	100

<sup>a</sup> RISs are required at three stages of the treaty-making process – before entry into negotiations (decision-making stage), before signature (decision-making stage) and before ratification (tabling). In this case a RIS was prepared for only the second of the two decision-making stages.

Source: ORR estimates.

### Department of the Treasury (tax proposals)

Tax proposals are subject to separate RIS requirements. These requirements take the policy as given and focus on identifying administrative options for implementation that maximise effectiveness and minimise compliance burdens. The Treasury was required to prepare 12 RISs for tax proposals at the decision-making stage and the tabling stage in 2005-06. For the decision-making stage, RISs assessed as adequate by the ORR were prepared in 11 cases. In the case of non-compliance at the decision-making stage, part of the proposal was considered to be minor or machinery in nature, therefore not requiring a RIS. However, the Treasury's public consultation process prompted changes to the nature and significance of the

proposal and, consequently, broadened the requirements for a RIS. Adequate RISs were prepared for all 12 proposals at the tabling stage.

**Table A.8 Treasury (tax): RIS compliance by type of regulation, 2005-06**

<i>Regulatory proposals introduced via</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
Bills	9/10	9/10	10/10	10/10
Legislative instruments	2/2	2/2	2/2	2/2
<b>Total</b>	<b>11/12</b>	<b>11/12</b>	<b>12/12</b>	<b>12/12</b>
<i>Percentage</i>	92	92	100	100

Source: ORR estimates.

### **Auditing and Assurance Standards Board**

In accordance with a Strategic Direction from the Financial Reporting Council, the Auditing and Assurance Standards Board developed a package of 35 auditing standards for the purposes of the *Corporations Act 2001*. A RIS was prepared, and assessed as adequate by the ORR at the decision-making stage for the package of standards, and was made publicly available on the Board's website.

### **Australian Accounting Standards Board**

The Australian Accounting Standards Board was fully compliant with the Government's RIS requirements in 2005-06, preparing one RIS at the decision-making stage for one proposal introduced via a legislative instrument. The RIS was assessed as adequate by the ORR, and was tabled in the Parliament.

### **Australian Competition and Consumer Commission**

The Australian Competition and Consumer Commission was required to prepare RISs for two regulatory proposals in 2005-06 in respect of legislative instruments. Both RISs were assessed as adequate at the decision-making and tabling stages.

### **Australian Prudential Regulation Authority**

The Australian Prudential Regulation Authority was assessed to be fully compliant with the Australian Government's RIS requirements for regulatory proposals

involving legislative instruments. APRA prepared 10 RISs, each of which was assessed as adequate for the decision-making stage and the tabling stage.

## Australian Securities and Investments Commission

The Australian Securities and Investments Commission was assessed to be fully compliant with the Australian Government's RIS requirements in 2005-06. ASIC finalised eight regulatory proposals for which RISs were required at the decision-making stage, all of which were assessed as adequate. The RISs prepared for each proposal were also tabled with the relevant legislative instruments in six cases. In one other case, the RIS was not tabled with the legislative instrument but was published on the ASIC website. The remaining proposal was introduced by way of an ASIC Policy Statement, which has been classified as quasi-regulation but is not required to be tabled. A RIS for that proposal was also published on the ASIC website, in line with regulatory best practice.

Table A.9 **ASIC: RIS compliance by type of regulation, 2005-06**

<i>Regulatory proposals introduced via</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	7/7	7/7	7/7	7/7
Quasi-regulations	1/1	1/1	n/a	n/a
<b>Total</b>	<b>8/8</b>	<b>8/8</b>	<b>7/7</b>	<b>7/7</b>
<i>Percentage</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>

n/a - Not applicable. RISs are not required at the tabling stage for proposals introduced via quasi-regulations.

Source: ORR estimates.

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## B Adequacy of published RISs

This appendix provides the ORR's adequacy assessment, under the Australian Government's RIS requirements for 2005-06, of the 84 RISs that were required at the tabling stage in that period.

In accordance with these requirements, a number of criteria were used to determine whether the analysis contained in a RIS was adequate (box 2.1). It should be noted that a strategy was adopted whereby a relatively low RIS adequacy standard was applied in 1997-98 (the first year in which their preparation was mandatory). This was progressively raised each year thereafter as officials became more familiar and experienced with the analytical approach required in RISs.

The following tables record the ORR's assessment of RISs required for proposals introduced via bills, legislative instruments, and treaties tabled in the Parliament in 2005-06. The bills, legislative instruments and treaties are also documented and described (as necessary). Compliance for these forms of regulation was 72 per cent at the decision-making stage and 86 per cent at the tabling stage.

The tables do not include the ORR's assessment of RISs for four quasi-regulations reported to the ORR as made in 2005-06, as there is no formal requirement for these RISs to be published. (As mentioned elsewhere in this report, the ORR nevertheless has encouraged departments and agencies to publish them in line with regulatory best practice.) Compliance for this form of regulation at the decision-making stage was 50 per cent. The tables also do not include the ORR's assessment of RISs that were finalised in 2005-06, but were not yet made public.

**Table B.1 Bills, individual adequacy assessments <sup>a</sup>**

Title of Bill <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
<b>Aboriginal Land Rights (Northern Territory) Amendment Bill 2006</b>				
<i>Implements reforms to the Aboriginal Land Rights (Northern Territory) Act 1976</i>	Yes	Yes	Yes	Yes
<b>Aged Care (Bond Security) Bill 2005</b>				
<i>Prudential regulation of approved aged care providers and repayment of accommodation bonds to residents</i>	Yes	Yes	Yes	Yes
<b>Aviation Transport Security Amendment Bill 2006</b>				
<i>Creates a two-tiered system of regulation for cargo handlers</i>	Yes	No	Yes	No
<i>Increases security measures for air cargo on passenger transport aircraft</i>	Yes	No	No	No
<b>Do Not Call Register Bill 2006</b>				
<i>Establishes a 'Do Not Call' register for consumers to avoid unsolicited telemarketing calls</i>	Yes	Yes	Yes	Yes
<b>Energy Efficiency Opportunities Bill 2005 <sup>b</sup></b>				
<i>Mandatory Energy Efficiency Opportunities Assessment (EEOA) Program</i>	No Yes	No Yes	Yes	Yes
<b>Export Market Development Grants Legislation Amendment Bill 2006</b>				
<i>Review of Export Market Development Grants (EMDG) Scheme</i>	Yes	Yes	Yes	Yes
<b>Health Legislation Amendment (Private Health Insurance) Bill 2006</b>				
<i>Reforms to private health insurance arrangements</i>	Yes	No	Yes	Yes
<b>Health Location Amendment (Pharmacy Location Arrangements) Bill 2006</b>				
<i>Fourth Community Pharmacy Agreement - location provisions</i>	Yes	No	Yes	No
<b>Independent Contractors Bill 2006</b>				
<i>Moves contracting relationships from the realm of employment regulation to commercial regulation</i>	Yes	No	Yes	No

**Table B.1 (cont.)<sup>a</sup>**

<b>Title of Bill</b> <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
<b>Intellectual Property Laws Amendment Bill 2006</b>				
<i>Changes to the Patents Act 1990 to permit 'springboarding' as soon as a patent is approved; i.e. allowing generics manufacturers to start preparing to manufacture drugs before the initial patent expires</i>	Yes	Yes	Yes	Yes
<i>Response to recommendation 15 of the IPCRC report – Section 19 – prior use</i>	Yes	Yes	Yes	Yes
<i>Response to recommendation 18 of the IPCRC report - compulsory licence provisions</i>	Yes	Yes	Yes	Yes
<b>OHS and SRC Legislation Amendment Bill 2005</b>				
<i>Extends coverage under the Occupational Health and Safety (Commonwealth Employment) Act 1991 to employers who obtain a self-insurance licence under the Safety, Rehabilitation and Compensation Act 1988</i>	Yes	Yes	Yes	Yes
<b>Petroleum Resource Rent Tax Assessment Amendment Bill 2006</b>				
<i>Amendments to Petroleum Resource Rent Tax (PRRT) provisions - Introduction of transfer notices</i>	Yes	Yes	Yes	Yes
<b>Petroleum Retail Legislation Repeal Bill 2006</b>				
<i>Downstream Petroleum Industry Policy Framework 2002 - and associated reforms - Petroleum Retail Legislation - Oilcode</i>	Yes	No	Yes	No
<b>Renewable Energy (Electricity) Amendment Bill 2006</b>				
<i>Response to an independent statutory review of the operation of the Renewable Energy (Electricity) Act 2000 (MRET)</i>	No	No	Yes	Yes
<b>Tax Laws Amendment (2005 Measures No. 5) Bill 2005</b>				
<i>"Related Party At Call Loans" - Division 974 of the Income Tax Assessment Act 1997. Amendments to reduce compliance costs/record keeping costs for small business on related entity loans under the debt/equity rules</i>	Yes	Yes	Yes	Yes

**Table B.1 (cont.)<sup>a</sup>**

<b>Title of Bill</b> <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	<i>prepared</i>	<i>adequate</i>	<i>prepared</i>	<i>adequate</i>
<b>Tax Laws Amendment (2006 Measures No. 1) Bill 2006</b>				
<i>Modified foreign source income exemption for temporary residents</i>	Yes	Yes	Yes	Yes
<i>New penalty regime for promoters of tax avoidance schemes and those who do not abide by the terms of a product ruling</i>	Yes	Yes	Yes	Yes
<i>Tax treatment of business 'blackhole' expenditures</i>	Yes	Yes	Yes	Yes
<b>Tax Laws Amendment (Improvements to Self Assessment) Bill (No 2) 2005</b>				
<i>Review of Self Assessment: General Interest Charge and penalties amendments. Also reduces the periods allowed for the amendment of income tax assessments by the ATO</i>	Yes	Yes	Yes	Yes
<b>Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Bill 2005</b>				
<i>Inclusion of film copyrights in effective life depreciation for non-Australian films</i>	Yes	Yes	Yes	Yes
<i>Review of International Taxation Arrangements - Foreign-owned Branches and Other Measures (Report recs 4.11(1)&amp;(2), 3.4(c)&amp;(d) &amp; 5.2)</i>	Yes	Yes	Yes	Yes
<i>Review of loss recoupment rules for companies: introduction of a ceiling for the Same Business Test and revised tracing rules for the Continuity of Ownership test</i>	No	No	Yes	Yes
<b>Tax Laws Amendment (Superannuation Contributions Splitting) Bill 2005</b>				
<i>Splitting of superannuation contributions between couples</i>	Yes	Yes	Yes	Yes
<b>Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005</b>				
<i>Provides for the reimbursement of the costs of industry bodies in developing consumer-related telecommunications industry codes through carrier licence charges</i>	Yes	Yes	Yes	Yes
<b>Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005</b>				
<i>Introduces an operational separation framework for Telstra to provide equivalence and transparency of Telstra's wholesale and retail operations</i>	Yes	No	Yes	Yes

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**Table B.1 (cont.)<sup>a</sup>**

<b>Title of Bill</b> <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
<b>Workplace Relations Amendment (Work Choices) Bill 2005<sup>c</sup></b>				
<i>Workplace Relations Reform</i>	Yes	No		
	Yes	No		
	No	No	Yes	No

<sup>a</sup> Copies of Explanatory Memoranda (which include RISs) for Bills can be found at [www.comlaw.gov.au](http://www.comlaw.gov.au).

<sup>b</sup> Two decision-making stages. <sup>c</sup> Three decision-making stages.

Table B.2 **Legislative instruments, individual adequacy assessments <sup>a</sup>**

Title of legislative instrument <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
<b>AASB 124 - Related Party Disclosures - December 2005</b>				
<i>Merges the requirements of AASB 124 Related Party Disclosures issued in July 2004 and AASB 1046 Director and Executive Disclosures by Disclosing Entities</i>	Yes	Yes	Yes	Yes
<b>Applied Laws (Implementation) Amendment Ordinance 2005 (No 1) (CKI)</b>				
<i>Applies the Gaming Commission Act 1987 (WA) to the Cocos (Keeling) Islands, effectively banning casinos from operating on the island</i>	No	No	No	No
<b>ASIC Class Order [CO 05/1070] General insurance distributors</b>				
<i>ASIC class order relief for the authorisation of distributors of general insurance products</i>	Yes	Yes	Yes	Yes
<b>ASIC Class Order [CO 05/1122] and Policy Statement PS 167 Licensing: Discretionary powers and transition</b>				
<i>ASIC class order relief for providers of generic financial 'calculators'</i>	Yes	Yes	Yes	Yes
<b>ASIC Class Order [CO 05/1195] Oral General Advice Warnings</b>				
<i>ASIC class order relief to simplify oral general advice warnings</i>	Yes	Yes	Yes	Yes
<b>ASIC Class Order [CO 05/1236]</b>				
<i>Review of ASIC relief for pricing provisions in managed investment scheme constitutions</i>	Yes	Yes	Yes	Yes
<b>ASIC Class Order [CO 05/1243]</b>				
<i>ASIC class order licensing exemption for valuers of real estate companies</i>	Yes	Yes	Yes	Yes
<b>ASIC Class Order [CO 05/637] and ASIC Class Order [CO 05/638] <sup>b</sup></b>				
<i>Additional month for first financial reports under Australian equivalents to international financial reporting standards (IFRS) and various minor changes/reliefs related to move to IFRS</i>	Yes	Yes	Yes	Yes
<b>ASIC Class Orders [CO 05/736], [CO 05/737], [CO 05/738], [CO 05/739], [CO 05/740] and Policy Statement [PS 185]: Non-cash payment facilities</b>				
<i>Provides relief from certain requirements for non-cash payment facilities</i>	Yes	Yes	Yes	Yes

Table B.2 (cont.)<sup>a</sup>

Title of legislative instrument <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
<b>Auditing Standards ASA 100, 200, 210, 220, 230, 240, 250, 260, 300, 315, 320, 330, 402, 500, 501, 505, 508, 510, 520, 530, 540, 545, 550, 560, 570, 580, 600, 610, 620, 700, 701, 710, 720, 800, and ASRE 2410</b>				
<i>Package of Auditing Standards developed for the purposes of the Corporations Act 2001</i>	Yes	Yes	Yes	Yes
<b>Australian Meat and Live-stock Industry (Beef Export to the USA - Quota for 2006) Order 2005</b>				
<i>Review of the US and EU beef quota management arrangements</i>	No	No	Yes	Yes
<b>Australian Wine and Brandy Corporation Amendment Regulations 2005 (No. 2)</b>				
<i>Allows the Australian Wine and Brandy Corporation to issue a grape product export licence with different conditions from those of the Food Standards Code</i>	Yes	Yes	Yes	Yes
<b>Banking (prudential standards) determination No. 3 of 2005</b>				
<i>Framework for the prudential supervision of purchased payment facility providers</i>	Yes	Yes	Yes	Yes
<b>Banking (prudential standard) determination No. 1 of 2006: Prudential Standards APS 520 Fit and Proper, Life insurance (prudential standard) determination No. 1 of 2006: Prudential Standard LPS 520 Fit and Proper, and Insurance (prudential standard) determination No. 4 of 2006: Prudential Standard GPS 520 Fit and Proper</b>				
<i>'Fit and proper' requirements for authorised deposit-taking institutions, life insurance companies and general insurers</i>	Yes	Yes	Yes	Yes
<b>Banking (prudential standard) determination No. 2 of 2006 - Prudential Standard APS 510 Governance, Life insurance (prudential standard) determination No. 2 of 2006 - Prudential Standard LPS 510 Governance, and Insurance (prudential standard) determination No. 5 of 2006 - GPS 510 Governance</b>				
<i>New governance requirements for authorised deposit-taking institutions, life insurance companies and general insurers</i>	Yes	Yes	Yes	Yes

Table B.2 (cont.)<sup>a</sup>

Title of legislative instrument <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
<b>Banking (prudential standard) determination No. 3 of 2006, Banking (prudential standard) determination No. 4 of 2006, Banking (prudential standard) determination No. 6 of 2006, and Banking (prudential standard) determination No. 7 of 2006</b> <i>Australian Prudential Regulation Authority prudential accounting treatment for authorised deposit-taking institutions in response to adoption of Australian equivalents to international financial reporting standards</i>	Yes	Yes	Yes	Yes
<b>Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 of 2005)</b> <i>A declaration to impose requirements on Telstra in relation to its ongoing commitment to a local presence in regional, rural and remote Australia</i>	Yes	Yes	Yes	Yes
<b>Casino Legislation Ordinance 2005 (No. 1) (CI)</b> <i>An ordinance to apply the Gaming Commission Act 1987 (WA) to Christmas Island, effectively banning casino operations on the island</i>	No	No	No	No
<b>Civil Aviation Amendment Regulations 2005 (No. 3) CAR 166/166A/167</b> <i>NAS 2C – Aligning pilot landing procedures with US Common Traffic Advisory Frequency model</i>	Yes	Yes	Yes	Yes
<b>Civil Aviation Amendment Regulations 2005 (No. 4)</b> <i>Introduces and defines airworthiness requirements for Light Sport Aircraft</i>	Yes	Yes	Yes	Yes
<b>Consumer Protection Notice No. 6 of 2005 - Consumer Product Safety Standard: Children's Household Cots</b> <i>Introduces a new standard for children's household cots</i>	Yes	Yes	Yes	Yes
<b>Corporations Amendment Regulations 2005 (No. 5)</b> <i>Refinements to the regulation of the financial services industry, as implemented by the Financial Services Reform Act 2001</i>	Yes	Yes	Yes	Yes
<b>Customs (Prohibited Exports) Amendment Regulations 2005 (No. 5)</b> <i>Introduces new export restrictions on high activity radioactive sources</i>	Yes	Yes	Yes	Yes
<b>Eastern Tuna and Billfish Fishery Management Plan 2005</b> <i>Eastern Tuna and Billfish Fishery Management Plan</i>	Yes	Yes	Yes	Yes

Table B.2 (cont.)<sup>a</sup>

Title of legislative instrument <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
<b>Environmental Protection and Biodiversity Conservation Amendment Regulations 2005 (No. 2)</b>				
Establishes a legal framework to control access to, and utilization of, the genetic resources of native species in Commonwealth areas	Yes	Yes	No	No
<b>Great Barrier Reef Marine Park Amendment Regulations 2005 (No. 3)</b>				
<i>Sets out the process for applying for and granting 'special tourism permissions' in the Great Barrier Reef Marine Park</i>	No	No	Yes	Yes
<b>Great Barrier Reef Marine Park Amendment Regulations 2006 (No. 1)</b>				
<i>Regulates the conduct of commercial and recreational users of the Great Barrier Reef Marine Park to minimise the impact of their activities on cetacean (whale and dolphin) populations</i>	Yes	Yes	Yes	Yes
<b>Insurance (prudential standard) determination No. 1 of 2005, Banking (prudential standard) determination No. 2 of 2005, and Financial Sector (Collection of Data) Determination No. 105 of 2005</b>				
<i>New prudential and reporting requirements for lenders mortgage insurance</i>	Yes	Yes	Yes	Yes
<b>Insurance (prudential standard) determination No. 1 of 2006 - Prudential Standard GPS 220 - Risk Management</b>				
<i>Revision of risk management prudential standards for general insurers</i>	Yes	Yes	Yes	Yes
<b>Insurance (prudential standard) determination No. 2 of 2006 - Prudential Standard GPS 230 - Reinsurance Management</b>				
<i>Revision of reinsurance management prudential standards for general insurers</i>	Yes	Yes	Yes	Yes
<b>Insurance (prudential standard) determination No. 3 of 2006 - Prudential Standard GPS 310 - Audit and Actuarial Reporting and Valuation</b>				
<i>Revision of audit and actuarial reporting and valuation prudential standards for general insurers</i>	Yes	Yes	Yes	Yes
<b>Life Insurance (Prudential Rules) Determination No. 2 of 2005 and Life Insurance (Prudential Rules) Determination No. 3 of 2005</b>				
<i>Arrangements for reporting prudential data to APRA by life insurers (including friendly societies) during the transition to IFRS</i>	Yes	Yes	Yes	Yes

Table B.2 (cont.)<sup>a</sup>

Title of legislative instrument <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
<b>Macquarie Island Toothfish Fishery Management Plan 2006</b>				
<i>Macquarie Island Toothfish Management Plan</i>	Yes	Yes	Yes	Yes
<b>Migration Amendment Regulations 2005 (No. 9)</b>				
<i>Extends Working Holiday Maker visas so that overseas visitors can do a total of 6 months' work for mainly regional employers</i>	Yes	Yes	Yes	Yes
<b>Migration Amendment Regulations 2005 (No. 9)</b>				
<i>Changes to Trade Skills Visa</i>	Yes	Yes	Yes	Yes
<b>Petroleum Resource Rent Tax Assessment Regulations 2005</b>				
<i>Methodology to determine a Gas Transfer Price</i>	Yes	Yes	Yes	Yes
<b>Primary Industries (Excise) Levies Amendment Regulations 2005 (No. 5)</b>				
<i>Beef Levy increase</i>	No	No	Yes	Yes
<b>Primary Industries (Excise) Levies Amendment Regulations 2006</b>				
<i>New Rubus (raspberries, blackberries etc) Levy for marketing, promotion and R&amp;D</i>	Yes	Yes	Yes	Yes
<b>Primary Industries Levies and Charges Collection Amendment Regulations 2005 (No. 2)</b>				
<i>Rice Levy increase</i>	Yes	Yes	Yes	Yes
<b>Record of resolutions of the Life Insurance Actuarial Standards Board: actuarial standards incorporating actuarial standards 1.04, 2.04, 3.04, 6.03 and 7.02 (05/12/2005)</b>				
<i>Revision of APRA actuarial standards for life insurance companies, including friendly societies, to reflect revised Life Insurance Actuarial Standards Board standards</i>	Yes	Yes	Yes	Yes
<b>Southern and Eastern Scalefish and Shark Fishery Plan of Management Amendment 2005 (No. 1)</b>				
<i>Introduces individual tradable quotas for certain species in the Southern and Eastern Scalefish and Shark Fishery</i>	Yes	Yes	Yes	Yes
<b>Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 7) and Retirement Savings Accounts Amendment Regulations 2005 (No. 4)</b>				
<i>Reduces the safety and tax avoidance risks of small defined benefit superannuation funds</i>	Yes	Yes	Yes	Yes
<b>Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 9)</b>				
<i>Creates a new licence class for trustees (acting trustees) appointed by APRA under the Superannuation Safety regime</i>	Yes	Yes	Yes	Yes

Table B.2 (cont.)<sup>a</sup>

Title of legislative instrument <i>Description of regulatory proposal</i>	<i>RIS for decision</i>		<i>RIS for tabling</i>	
	prepared	adequate	prepared	adequate
<b>Telecommunications (Standard Form of Agreement Information) Amendment Determination 2006 (No. 1)</b>				
<i>Amends the form and timing of notice to be given to customers when a telecommunications supplier unilaterally varies a Standard Form of Agreement</i>	Yes	Yes	Yes	Yes
<b>Telecommunications Numbering Plan Variation 2005 (No. 4)</b>				
<i>Variation to the Telecommunications Numbering Plan</i>	Yes	Yes	Yes	Yes
<b>Telstra Carrier Charges - Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005</b>				
<i>Regulates charges set by Telstra for certain services from 1 January 2006 to 30 June 2009</i>	Yes	Yes	Yes	Yes
<b>Trade Practices (Consumer Product Safety Standard) (Basketball Rings and Backboards) Regulations 2005</b>				
<i>Requires warning labels on basketball rings and backboards</i>	Yes	Yes	Yes	Yes
<b>Vehicle Standards (Australian Design Rules 2/01, 3/03, 4/04, 5/05, 22/00) 2006</b>				
<i>Amendments to ADRs 2, 3, 4 and 5 relating to side door latches and hinges, seatbelts, seat anchorages and seatbelt anchorages</i>	Yes	Yes	Yes	Yes
<b>Western Tuna and Billfish Fishery Management Plan 2005</b>				
<i>Western Tuna and Billfish Fishery Management Plan</i>	Yes	Yes	Yes	Yes
<b>Workplace Relations Amendment Regulations 2006 (No. 2)</b>				
<i>Amends record-keeping rules under the Workplace Relations Regulations regarding records of employee hours of work</i>	No	No	Yes	No
<b>Workplace Relations Regulations 2006</b>				
<i>Repeals and replaces the Workplace Relations Regulations 1996 to accommodate the amendments to the Workplace Relations Act 1996 introduced by the Workplace Relations Amendment (Work Choices) Act 2005</i>	Yes	No	No	No

<sup>a</sup> Copies of explanatory material (which include RISs) can be found at [www.comlaw.gov.au](http://www.comlaw.gov.au). <sup>b</sup> The RIS was not tabled, but is available on the ASIC website.

**Table B.3 Treaties, individual adequacy assessments <sup>a</sup>**

<b>Title of Treaty</b>	<i>RIS prepared</i>	<i>RIS adequate</i>
<i>Stages</i>		
Agreement between the Government of Australia and the Government of New Zealand in Relation to Mutual Recognition of Securities Offering		
<i>Entry into negotiations</i>	No	No
<i>Before signature</i>	Yes	Yes
<i>Tabling before ratification</i>	Yes	Yes
Agreement on the Promotion of Aviation Safety between The Government of Australia and The Government of the United States of America (Canberra 21 June 2005) [2005] Atnif 8 and Implementation Procedures Treaty		
<i>Entry into negotiations</i>	No	No
<i>Before signature</i>	Yes	Yes
<i>Tabling before ratification</i>	Yes	Yes
Exchange of Letters constituting an Agreement between the Government of New Zealand to Amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) of 28 March 1983		
<i>Entry into negotiations</i>	Yes	Yes
<i>Before signature</i>	Yes	No
<i>Tabling before ratification</i>	Yes	No
International Convention on Civil Liability for Bunker Oil Pollution Damage 2001		
<i>Entry into negotiations</i>	n/a	n/a
<i>Before signature</i>	No	No
<i>Tabling before ratification</i>	Yes	Yes
Universal Postal Union: Seventh Additional Protocol to the Constitution of 10 July 1964, as amended; Convention and Final Protocol; General Regulations, done at Bucharest on 5 October 2004		
<i>Entry into negotiations</i>	No	No
<i>Before signature</i>	No	No
<i>Tabling before ratification</i>	Yes	Yes

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

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## C Compliance with the COAG RIS requirements

Under the Council of Australian Governments (COAG) *Agreement to Implement the National Competition Policy and Related Reforms*, the Office of Regulation Review (ORR) has been obliged to report annually to the National Competition Council on compliance by Ministerial Councils and national standard-setting bodies with COAG's *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. (COAG 2004)

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)

The ORR 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 ORR 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; and
- whether alternatives to regulation have been adequately considered.

This report covers decisions made between 1 April 2005 and 31 March 2006.

### C.1 Recent developments

On 10 February 2006 COAG agreed to:

... 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. (COAG 2006, decision 5.1)

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These arrangements include establishing and maintaining ‘gatekeeping mechanisms’, improving the quality of regulatory impact analysis, better measurement of compliance costs (such as with the Australian Government’s Business Cost Calculator) and broadening the scope of regulatory impact analyses to include, where appropriate, the effects of regulation on individuals and the cumulative burden on business.

These changes will have a direct impact on the quality of RISs prepared and raise the adequacy standard required for COAG RISs at the consultation and decision-making stages. Quantification of compliance costs and use of (where appropriate) cost-benefit analysis will require a greater investment by Ministerial Councils and national standard-setting bodies in developing the skills within their secretariats to assess the options associated with regulatory proposals. It will also require greater efforts by the ORR to offer training in regulatory impact analysis and training in the use of the Business Cost Calculator.

For these reasons, compliance assessments made in 2006-07 may not be directly comparable with compliance assessments made in previous reporting periods (including 2005-06).

Changes to the COAG RIS requirements have occurred in a similar timeframe to the changes made by the Australian Government to its own regulatory quality processes.

## **C.2 Overall compliance in 2005-06**

In the year to 31 March 2006, the ORR identified 34 decisions made by Ministerial Councils and national standard-setting bodies that required the preparation of a RIS under the COAG Principles and Guidelines.

An adequate RIS was prepared at the consultation stage for 30 decisions, resulting in a compliance rate of 88 per cent. This is comparable to the 83 per cent compliance rate at the consultation stage in 2004-05. However, of the 34 decisions reported, an adequate RIS was prepared at the subsequent decision-making stage for only 26 decisions, resulting in an overall compliance rate of 76 per cent, compared to 88 per cent in 2004-05.

The difference in compliance at the two stages partly reflects differences in the standard of analysis required at each stage — the depth of analysis required for consultation is lower than the standard applied to a RIS at the decision making stage. In many cases, the RIS for consultation focuses on the identification of the problem and objectives, and a preliminary assessment of feasible options. The RIS

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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.

Figure C.1 shows the overall compliance at the decision-making stage by COAG agencies. Section C.3 contains a detailed discussion of these figures.

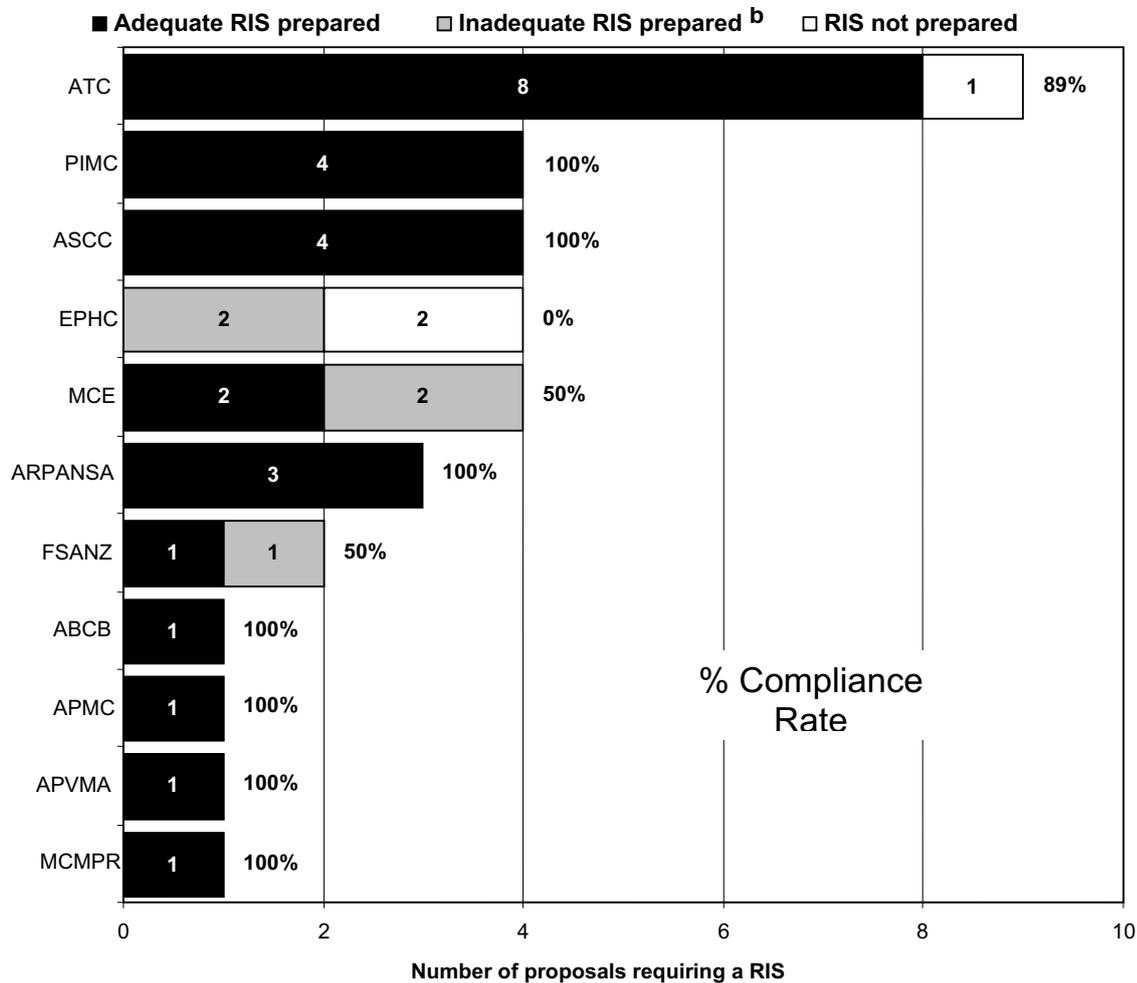
### *Compliance for significant regulatory proposals*

The ORR 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 nature and magnitude of the problem and the regulatory proposals for addressing it; and
2. the scope and intensity of the proposal's impact on affected parties and the community.

Classifying regulatory proposals in this way assists in applying COAG's 'proportionality rule', which states that the extent of RIS analysis should be commensurate with the magnitude of the problem and the likely impacts of any regulatory response.

**Figure C.1 COAG RIS compliance at the decision-making stage, 1 April 2005 to 31 March 2006 <sup>a</sup>**



**a** Australian Transport Council (ATC), Environmental Protection and Heritage Council (EPHC), Australian Safety and Compensation Council (ASCC), Primary Industries Ministerial Council (PIMC), Ministerial Council on Energy (MCE), Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), Food Standards Australia New Zealand (FSANZ), Ministerial Council on Minerals and Petroleum Resources (MCMPR), Australian Pesticides and Veterinary Medicines Authority (APVMA), Australasian Police Ministers' Council (APMC), Australian Building Codes Board (ABCB).

**b** This includes cases where RISs were prepared but not provided to the ORR for assessment

Source: ORR data and information provided by Ministerial Councils and NSSBs.

Of the 34 regulatory decisions reported, four were assessed by the ORR as being of greater significance. For these matters, compliance at the consultation stage was 100 per cent. At the decision-making stage, compliance was 50 per cent, compared to full compliance achieved in 2004-05 (see table C.1).

**Table C.1 Compliance with COAG RIS requirements for decisions made by Ministerial Councils and national standard-setting bodies, 2003-04 to 2005-06**

	2003-04	2004-05	2005-06
Overall compliance			
Consultation stage	28/34 82%	20/24 83%	30/34 88%
Decision-making stage	30/34 88%	21/24 88%	26/34 76%
Compliance for significant regulatory proposals			
Consultation stage	4/7 57%	5/6 83%	4/4 100%
Decision-making stage	4/7 57%	6/6 100%	2/4 50%

Source: ORR data and information provided by Ministerial Councils and NSSBs.

### C.3 Compliance by decision

#### Matters for which COAG's requirements were fully met

Table C.2 shows the 26 decisions which complied with the COAG RIS requirements at both the consultation and decision-making stages in the year to 31 March 2006.

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

<i>Ministerial Council / NSSB</i>	<i>Decision</i>	<i>Date of decision</i>
Australasian Police Ministers' Council (APMC)	Regulation of rifles designed to accept high capacity detachable magazines	14 Oct 2005
Australian Building Codes Board (ABCB)	Building Code of Australia 2005 Volume 1: Energy efficiency measures for Class 2 and 3 and Class 4 parts <sup>a</sup>	1 May 2005
Australian Pesticides and Veterinary Medicines Authority (APVMA)	Revision of manufacturing principles and the Australian code of good manufacturing practice for veterinary chemicals products	7 Oct 2005

(continued next page)

Table C.2 (continued)

<i>Ministerial Council / NSSB</i>	<i>Decision</i>	<i>Date of decision</i>
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	Code of practice for exposure of humans to ionizing radiation for research purposes	27 April 2005
	Code of Practice and Safety Guide for Radiation Protection and Radioactive Waste Management in Mining and Mineral Processing	31 Aug 2005
	Code of Practice and Safety Guide for Radiation Protection in Dentistry	20 Dec 2005
Australian Safety and Compensation Council (ASCC)	Declaration of the <i>National Code of Practice for the Safe Removal of Asbestos 2<sup>nd</sup> Edition</i> ; Declaration of the <i>National Code of Practice for the Management and Control of Asbestos in Workplaces</i> ; Publication of the <i>Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Fibres 2<sup>nd</sup> Edition</i>	7 April 2005
	Declaration of the <i>National Standard for Construction Work</i>	7 April 2005
	Declaration of amendments to the <i>Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment - 1<sup>st</sup> Batch of Fast-Track Chemicals from NICNAS PEC Reports</i>	28 July 2005
	<i>Declaration to the amendments to the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment - 4<sup>th</sup> Batch of Fast-Track Chemicals sourced from the British HSE</i>	28 July 2005
Australian Transport Council (ATC)	Length Limit for B-Doubles	3 June 2005
	Repeal of Australian Design Rule 17/00: Fuel Systems	21 July 2005
	Towing of Trailers by Cranes	1 Oct 2005
	Revision of NSCV Part C Section 5B – Electrical	18 Nov 2005
	Amendment of NSCV Part C Section 7A – Safety Equipment	18 Nov 2005
	Lighting and Braking Standards for Special Purpose Vehicles Type 'Plant'.	1 Dec 2005
	Intelligent Access Program model legislation	1 Dec 2005
Third Heavy Vehicle Charges Determination <sup>a</sup>	1 Mar 2006	
Food Standards Australia New Zealand (FSANZ)	A470 - Formulated Beverages	24 Nov 2005
Ministerial Council on Energy (MCE)	Liquid Fuel Emergency Inter-Governmental Agreement (LFE IGA)	4 Nov 2005
	Accelerate the introduction of Minimum Energy Performance Standards (MEPS) for room air conditioners to 1 April 2006	12 Jan 2006

(continued next page)

**Table C.2 (continued)**

<i>Ministerial Council / NSSB</i>	<i>Decision</i>	<i>Date of decision</i>
Ministerial Council on Mineral and Petroleum Resources (MCMPR)	Guiding principles for Carbon Dioxide Capture and Storage	25 Nov 2005
Primary Industries	Australian Standard for the Hygienic Production of Pet Meat	14 April 2005
Ministerial Council (PIMC)	National Egg Labelling Standards	29 July 2005
	Model Code of Practice for the Welfare of Animals – The Camel	26 Oct 2005
	Model Code of Practice for the Welfare of Animals – The Sheep (Appendix to Model Code – Mulesing)	26 Oct 2005

<sup>a</sup> Significant issues – see commentary below.

Source: ORR data and information provided by Ministerial Councils and NSSBs.

## **Commentary on fully compliant significant issues**

### *Energy efficiency building standards*

On 1 May 2005, the Australian Building Codes Board amended the Building Code of Australia to include minimum energy efficiency standards for non-house residential buildings. This amendment will impact on owners, builders and tenants of new and renovated multi-unit dwellings and residential buildings such as motels, hostels and dormitories.

### *Third Heavy Vehicle Charges Determination*

In March 2006, Australian Transport Ministers voted on a proposed Third Heavy Vehicles Charging Determination. This determination, which was consistent with the COAG transport reform agenda outlined in the 10 February 2006 COAG communiqué, would have involved ‘rebalancing’ heavy vehicle charges to remove identified cross-subsidies between vehicle classes. This would have had significant impacts on owners and users of B-double vehicles in particular. Ministers did not support the proposed determination.

## Matters for which COAG's requirements were not met

Table C.3 indicates that in eight cases the COAG RIS requirements were not met at the consultation stage and/or the decision-making stage between 1 April 2005 and 31 March 2006.

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

<i>Ministerial Council / NSSB</i>	<i>Decision</i>	<i>Date of decision</i>	<i>Compliant at consultation</i>	<i>Compliant at decision</i>
Australian Transport Council (ATC)	Emergency towage	3 June 2005	No	No
Environment Protection and Heritage Council (EPHC)	Endorsement of strengthened National Packaging Covenant	1 July 2005	Yes	No
	Variation to the Used Packaging Materials National Environment Protection Measure	1 July 2005		
	Change to threshold for the Used Packaging Materials National Environment Protection Measure	26 Oct 2005	n/a <sup>a</sup>	No
	National Action Plan on dioxins	26 Oct 2005	No	No
Food Standards Australia - New Zealand (FSANZ)	P292 – Country of origin labelling of food <sup>b</sup>	23 Sept 2005	Yes	No
Ministerial Council on Energy (MCE)	Upgrade of mandatory MEPS for 50 litre mains pressure water heaters <sup>b</sup>	3 May 2005	Yes	No
	Introduction of MEPS for mains pressure water heaters (smaller than 50 litres) and miscellaneous electric hot water heaters from 1 October 2005	3 May 2005	Yes	No

<sup>a</sup> No consultation RIS was required for this decision as it represented a further stage of a multi-stage decision process. <sup>b</sup> Significant issues.

Source: ORR data and information provided by Ministerial Councils and NSSBs.

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## **Commentary on non-compliant significant issues**

### *Country of origin labelling*

On 23 September 2005, the Food Standards Australia-New Zealand Board agreed to the mandatory labelling of country of origin of food to ensure that adequate information is provided about the origin of food products to enable consumers to make informed choices.

A RIS was prepared, and assessed as adequate for consultation. The RIS was revised, after consultation, for the decision-making stage but was assessed as inadequate by the ORR.

The RIS failed the COAG requirement to demonstrate that the benefits of introducing this standard outweighed the costs. The cost-benefit analysis indicated significant transitional costs and also ongoing costs related to the labelling requirements, plus unquantified costs related to trade policy. Yet the evidence provided did not demonstrate that the benefits were commensurate with these costs. New Zealand decided not to adopt the standard.

### *Mandatory energy performance standards for small mains pressure hot water heaters*

An adequate RIS was prepared by the Ministerial Council on Energy at the consultation stage for a proposal to revise Mandatory Energy Performance Standards (MEPS) for small mains pressure electric hot water heaters. However, no RIS for the decision-making stage was provided to the ORR for assessment of this proposal.

## **Commentary on other non-compliant issues**

### *Emergency towage*

On 3 June 2005, the Australian Transport Council (ATC) agreed in-principle to a national approach to ensure a minimum level of emergency towage coverage in strategic regions around the Australian coastline and to provide an appropriate regulatory framework. The approach included a vessel for the northern section of the Great Barrier Reef and the Torres Strait, which currently has no port-based emergency towage services. An in-principle decision was made to proceed with these proposed measures on the basis of full cost recovery from the shipping

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industry subject to completion of a RIS and further consideration of the detail of the measures.

After careful consideration of this matter, the ORR noted that the ATC-prepared RIS was detailed, narrow and specific in nature. The ORR had previously advised that a RIS should be prepared for any in-principle decision that precluded the consideration of broader options (i.e. alternatives to the proposed national framework, such as a range of cost recovery options). As a RIS was not prepared for consultation or final decision prior to the in-principle decision, the ORR assessed the ATC as not meeting the COAG RIS requirements.

### *National Packaging Covenant*

The National Packaging Covenant, originally established in 1999, is an agreement between stakeholders in the packaging supply chain and all spheres of government. It is designed to minimise the environmental impacts arising from the disposal of used packaging, conserve resources through better design and production processes and facilitate the re-use and recycling of used packaging materials. It is underpinned by a Used Packaging Materials National Environment Protection Measure (UPM NEPM) which imposes sanctions on brand holders which do not sign up to and comply with the covenant.

On 1 July 2005, the Environment Protection and Heritage Council (EPHC) endorsed a strengthened version of the Covenant, and also varied the UPM NEPM to support the revised Covenant. The EPHC prepared separate RISs for these two measures, having regard to the fact that a separate NEPM Impact Statement, which could be assessed as the consultation RIS, would in any case be required for the UPM NEPM under the *National Environment Protection Council Act 1994*. The ORR assessed the RIS for the revised Covenant as adequate at the consultation stage, but specified significant improvements which would be required for the RIS to be considered adequate at the decision stage. These included clearer specification of the obligations and actions expected to result from the revised Covenant, and a more soundly based analysis of the likely costs and benefits. As a suitably revised RIS was not provided to the ORR, the EPHC was assessed as non-compliant at the decision stage for this measure.

The ORR assessed the consultation RIS for the variation to the UPM NEPM as inadequate on the grounds that the costs and benefits of the proposed change were not adequately analysed, and that alternatives were not appropriately considered. No RIS was provided to the ORR for assessment at the decision stage.

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On 26 October 2005, the EPHC agreed to a new mechanism for determining whether small businesses are covered by the UPM NEPM. It agreed that businesses with an annual turnover of more than \$5 million would have to comply with the NEPM and businesses with annual turnover less than \$2 million would not have to comply. The Council deferred a decision on whether the UPM NEPM would apply to businesses with turnover between \$2 million and \$5 million, requesting further research. This change triggered the COAG RIS requirements as it affected the population of businesses which are subject to regulation under the NEPM. The decision represented a further stage of a multi-stage decision process, following on from decisions on the Covenant and NEPM. As these decisions had already been the subject of extensive consultation, the ORR concluded that a consultation RIS was not required on the change to the threshold. No RIS was provided for this measure at the decision stage.

#### *National action plan on dioxins*

On 26 October 2005 the EPHC endorsed a National Action Plan on dioxins. The ORR advised that this measure triggered the COAG RIS requirements because it would affect the basis on which government approval was given to new combustion facilities (eg furnaces) or upgrading of existing facilities. No RIS was provided for this measure at either the consultation or decision stage.

#### *Mandatory energy performance standards for small mains pressure hot water heaters*

An adequate RIS was prepared by the Ministerial Council on Energy at the consultation stage for a proposal to revise Mandatory Energy Performance Standards (MEPS) for small mains pressure electric hot water heaters. However, no RIS for the decision-making stage was provided to the ORR for assessment for this proposal.

## **C.4 Consultation**

Consultation is a key requirement of the COAG *Principles and Guidelines*. Table C.4 details the issues for which RISs had been prepared, and assessed by the ORR, at the consultation stage that were still active on 31 March 2006. It is likely that most of these decisions will be reported in 2006-07.

**Table C.4 Active RISs assessed for consultation before 31 March 2006 and made public**

<i>Ministerial Council / NSSB</i>	<i>Issue</i>	<i>Date RIS assessed</i>
Australian Building Codes Board (ABCB)	Proposed protocol for administering building access in the context of the disability standards for access to premises	19 Dec 2003
Australia New Zealand Food Regulation Ministerial Council (ANZFRMC)	National food safety audit implementation framework	1 June 2005
Australian Pesticides and Veterinary Medicines Authority (APVMA)	Adoption of the JEFCA approach to setting maximum residue limits for veterinary chemicals	1 Aug 2005
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	Proposed standard on occupational exposure to ultra violet radiation	8 April 2003
	Code of practice for the safe use of fixed radiation gauges	24 Aug 2005
	Code of practice for the safe use of radiation in veterinary science	8 Sept 2005
	Code of conduct for the security of radioactive sources	16 Mar 2006
Australian Safety and Compensation Council (ASCC)	Revision of the national standard and code of practice for manual handling	9 Dec 2004
	Draft national code for prevention of falls from height in construction (commercial and domestic)	8 July 2005
	National standard for licensing persons performing high risk work	25 July 2005
	National code of practice for occupational health and safety induction training in the construction industry	2 Aug 2005
Australian Transport Council (ATC)	Australian Design Rules (ADR) 62: mechanical couplings	3 Feb 2004
	ADR 35 & 38: commercial vehicle and trailer brake systems	5 Feb 2004
	ADR 8: TTMRA/ADR Review – Standards for safety glazing material	25 May 2005
	Australian road rules seatbelt legislation amendment package	25 July 2005
	Package of amendments to the Australian road rules - including the creation of tramways	2 Aug 2005
	Model rail safety legislation	17 Oct 2005
	Revisions to the business rules for the national heavy vehicle accreditation scheme	19 Oct 2005

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**Table C.4 (continued)**

<i>Ministerial Council / NSSB</i>	<i>Issue</i>	<i>Date RIS assessed</i>
Australian Transport Council (continued)	National standard for commercial vessels Part C Section 6 - stability; and subsection 6A - general requirements	26 Oct 2005
	Mass limits for accredited heavy vehicles	23 Feb 2006
	NSCV Part of section 1 fast craft, subsection 1C	30 Mar 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
Ministerial Council for 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 10 Mar 2005
	National introduction of the average quantity system	
	Review of the system of mandatory comparison rates for finance charges in the Uniform Consumer Credit Code.	24 Oct 2005
Ministerial Council on Energy (MCE)	MCE response to the PC review of gas access regime - greenfields incentives	9 Nov 2005
	MCE response to the PC Review of gas access regime - coverage test threshold	9 Nov 2005
	Merits review for National Energy Market regulation	29 Nov 2005
Primary Industries Ministerial Council (PIMC)	Changes to animal welfare code covering emu farming	14 July 2005

Source: ORR data.

## Consultation with New Zealand

In June 2004, COAG asked the ORR 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 2005 and 31 March 2006, the ORR forwarded five RISs to the RIAU at the consultation stage (see table C.5).

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**Table C.5 Consultation with New Zealand RIAU**

<i>Ministerial Council / NSSB</i>	<i>Issue</i>	<i>Date Consultation RIS sent to RIAU</i>
Australia New Zealand Food Regulation Ministerial Council (ANZFRMC)	Feasibility study into extension of mandatory country of origin labelling	13 Jan 2006
Australian Transport Council (ATC)	TTMRA/ADR Review – standards for safety glazing material (ADR 8)	11 April 2005
Food Standards Australia New Zealand (FSANZ)	A470 – Formulated beverages	13 April 2005
	P292 – Mandatory country of origin labelling	19 Aug 2005
	P293 – Nutrition, health and related claims	15 Sept 2005

*Source:* ORR data.

## **C.5 Improving compliance**

In February 2006, COAG agreed to improve the quality of regulatory impact analysis through the use of cost-benefit analysis and better measurement of compliance costs (including through the use of the Business Cost Calculator).

In 2005-06, the ORR provided training to over 30 officials involved in the preparation of COAG RISs. In 2006-07, the ORR intends to increase the level of training it provides to officials, in support of COAG's decision. This will include the provision of technical advice on cost-benefit analysis and on the use of the Business Cost Calculator for the measurement of compliance costs.

The ORR 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 ORR. In 2006-07 the ORR's website will be upgraded to enhance its capacity to provide reliable and comprehensive information on COAG's RIS requirements and the role of the ORR.

Finally, the ORR will continue to publicise and encourage the adoption of non-mandatory best practice measures by Ministerial Councils and NSSBs, such as publishing final RISs that were considered by decision makers.

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## D ORR activities and performance

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

### D.1 Activities in 2005-06

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

#### Box D.1 Charter of the Office of Regulation Review

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

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

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

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

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

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

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

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

Source: SSCRO (2006). ORR estimates.

While there has been a downward trend in the number of RISs required for proposals finalised each financial year, it was not followed this year. Ninety-six (96) RISs were required at the decision-making stage for proposals that were finalised in 2005-06.<sup>1</sup> In 79 cases, RISs were prepared, and commented on/assessed by the ORR.

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

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## D.2 Performance in 2005-06

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

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

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

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

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

The ORR also:

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

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

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

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

## **Quality indicators**

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

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

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

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

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

**Table D.2 Australian Government RIS training evaluation, 2001-02 to 2005-06 <sup>a</sup>**

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

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

Source: ORR estimates.

## **ORR timeliness**

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

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

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

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

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

## **Indicators of usefulness**

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

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

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

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

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

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

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

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



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## E Regulatory reform in the States and Territories

This appendix focuses on the regulatory processes of the Australian States and Territories. It discusses various changes made during 2005-06 to regulatory impact analysis, developments in regulatory governance, consultation policies, review processes and compliance reporting.

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 evaluation of RIS compliance.

Regulatory reform was an important undertaking for State/Territory governments in 2005-06, with most States and Territories implementing or continuing regulatory reform programs. In February 2006, the States and Territories (in addition to the Commonwealth) agreed to a National Reform Agenda (NRA), which is likely to be the catalyst for further regulatory reform and regulatory coordination in the future. (See appendix C for a discussion of the February 2006 COAG agreement).

### E.1 Victoria

#### *Regulatory Impact Analysis*

Victoria has a comprehensive regulatory impact analysis process. This includes a statutory requirement to prepare RISs where a proposed regulation is likely to impose an appreciable economic or social burden. As a complement to the RIS process there is also an additional requirement for a Business Impact Assessment (BIA) to be prepared, if primary legislation has a significant impact on business or restricts competition. The Victorian Competition and Efficiency Commission (VCEC) is the independent assessor of RISs and BIAs. It also conducts public inquiries and investigations into competitive neutrality.

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### *Developments in regulatory governance*

In May 2006, the Victorian Government announced a regulatory reform initiative in its 2006-07 budget, setting aside \$42 million over four years for:

- cutting the existing administrative burden of regulation by 15 per cent over 3 years, with a target of cutting 25 per cent over the next 5 years;
- ensuring the administrative burden of any new regulation is met by an offsetting simplification in the same area; and
- making available a pool of funds to undertake ‘hot spot’ reviews in areas of undue compliance burden and to reward reduction of the burden.

During 2005, three mergers affecting regulators were implemented:

- Energy Safe Victoria was formed by merging the Office of the Chief Electrical Inspector and the Office of Gas Safety;
- the Legal Services Board and Commissioner have replaced the Legal Practice Board and the Legal Ombudsman; and
- Sustainability Victoria was formed by merging the Sustainability Energy Authority Victoria, which accredited energy rating organisations, with EcoRecycle Victoria, which had no regulatory functions. (Victorian Government 2006)

In addition, the Victorian Government has announced a future merger of the Registered School Board with the Victorian Qualifications Authority. A new regulator, the Working with Children Checks Unit within the Department of Justice, will commence operation in mid 2006 to administer the requirements of the Working with Children Act 2005.

A number of new Acts have also been introduced in Victoria to simplify and consolidate the legislative framework:

- *The Education and Training Reform Act 2006* replaces 12 Acts.
- *The Health Professions Registration Act 2005* replaces 11 Acts.
- *The Infringements Act 2006* provides a consistent framework for the issuing and enforcement of infringement notices for offences.

The Victorian Parliamentary Secretary for the Environment recently led a review to identify opportunities to streamline the planning permit process and made 15 recommendations (Victorian Government 2006).

In 2005-06, the VCEC released the following reports:

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- *The Victorian Regulatory System (2<sup>nd</sup> edition)*. This annual survey reports on regulatory developments in each of the Victorian Government business regulators. In 2006, there were 71 Victorian Government business regulators, responsible for administering 189 Acts and 211 regulations.
  - *Housing Regulation in Victoria: Building Better Outcomes* (VCEC 2006a). The Victorian Government supported 44 of the 47 recommendations made by the VCEC, one of which is to develop cost recovery guidelines. The guidelines should complement the current RIS framework.
  - *Making the right choices: options for managing transport congestion* (VCEC 2006b). The draft report explored 43 options aimed at improving the efficiency and management of transport congestion in Melbourne, Ballarat, Bendigo and Geelong. The final report is to be provided to the Government in late 2006.

### *Compliance reporting*

The VCEC reports annually 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. Its 2005-06 Annual Report will be released in the latter half of 2006. In its last reporting period, the VCEC assessed 33 RISs and 17 BIAs.

### *Resources for regulatory review*

Approximately 3.8 full-time equivalent staff within the VCEC are responsible for assessing the adequacy of RISs and BIAs (based on 2004-05 figures). In total, the VCEC comprises 14.6 full-time equivalent staff, including Commissioners. From a total budget of \$2.39 million, the VCEC allocated approximately \$490,000 to RIS and BIA assessment.

## **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

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restricting competition. The RIS process applies to all new Acts, regulations, mandatory standards and codes.

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

### *Developments in regulatory governance*

In early 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.

The South Australian Government has recently established a target of reducing red tape by at least 25 per cent by July 2008. This is being supported by:

- the creation of a Competitiveness Council, as a sub-committee of the Economic Development Board, which will report to the Premier and the Executive Committee of Cabinet on a regular basis regarding the implementation across government of initiatives to reduce the compliance costs to business of government regulations, plus other measures and indices of competitiveness;
- mandated use of the Business Cost Calculator for all regulatory proposals and any other proposals with an impact on business (to be evaluated after 12 months);
- changing the requirement for a “Small Business Impact Statement” in Cabinet submissions to a requirement for a “Business Impact Statement” (incorporating use of the Business Cost Calculator);
- continuation of the sunset program, whereby all regulations, except those detailed in section 16A of the *Subordinate Legislation Act 1978*, expire on 1 September in the year following the tenth anniversary of their promulgation; and
- a range of projects to inform the process of regulatory planning, including a small business survey to “identify and reduce ‘red tape’ hotspots”, and a July 2005 Review of Government Red Tape and Impediments to Exports.

### *Compliance reporting*

Compliance with the Government’s community impact assessment requirements is reported in South Australia’s annual report to the National Competition Council on

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*Implementation of National Competition Policy and Related Reforms in SA*, and is also reported in the annual report of the Department of the Premier and Cabinet.

#### *Resources for regulatory review*

There are six officers throughout five portfolio agencies whose duties include advising upon the adequacy of the assessments of community impacts. Actual budget figures relating to regulatory review activities are not available.

### **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 Regulatory Impact Statement (RIS) as prescribed under Part 5 of the *Statutory Instruments Act 1992 (Qld)* (the SIA). Where a regulatory proposal is likely to restrict competition, arrangements are also in place to enable a combined RIS/Public Benefit Test document to be prepared.

The Queensland 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 governance*

The Red Tape Reduction Taskforce is the Queensland Government's main business body advising on regulatory reform. In 2005-06, the Taskforce, supported by the Department of State Development, completed the 2004-05 Red Tape Reduction Stocktake. This stocktake identified 26 government initiatives resulting in savings to business of more than \$14 million. Since 1999, savings to business of over \$90 million have been identified through annual stocktakes.

A public review of 'hot spots' for regulatory reform was also undertaken in 2005-06 under the banner of the Taskforce, as well as three industry specific reviews focused on the manufacturing (including food processing and production), retail and tourism sectors. These reviews were aimed at identifying opportunities to improve Queensland's regulatory environment, with the outcomes being intended to inform

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the Queensland Government's future focus on regulation reform and red tape reduction.

At the national level, the Queensland Government is working with the Australian Government and the other States and Territories through the Council of Australian Governments to improve regulatory efficiency.

### *Consultation*

Section 45 of the SIA requires that the preparation of a RIS be notified in the Queensland Government Gazette and in a newspaper(s) likely to be read by people particularly affected by the proposed legislation. 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 formal RIS requirements. However, it is the Queensland Parliament's intention that there is compliance with RIS requirements before subordinate legislation is made.

In order to achieve this, Director-Generals are required to complete a regulation compliance certificate prior to the making of subordinate legislation.

## **E.4 New South Wales**

### *Regulatory Impact Analysis*

In New South Wales, the *Subordinate Legislation Act 1989* (NSW) (SLA) requires the preparation of a formal RIS for a proposed statutory rule. Before a statutory rule can be made, the Minister responsible must ensure that the guidelines in Schedule 1 of the SLA are complied with. Subsequently, regulatory impact analysis is required for all new legislation and regulation in NSW. 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. Also, 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 SLA, regulatory impact analysis is required for all new legislation and regulation in NSW, and consultation is recommended.

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### *Developments in regulatory governance*

In 2005, the New South Wales Independent Pricing and Regulatory Tribunal (IPART) commenced a review of the undue burden of government regulation on business and the community in New South Wales. The review had to identify priority areas in which regulatory reforms could provide significant immediate gains, and develop recommendations to reduce unnecessary regulatory burden on business and the community.

In July 2006, IPART published the draft *Investigation into the burden of regulation and improving regulatory efficiency* report (IPART 2006). The report made a number of draft recommendations for regulatory reform, including recommendations for addressing regulatory process issues to improve the efficiency of regulation. The review also identified inconsistencies, duplication, or overlap between NSW regulations and those of other jurisdictions, including in the areas of occupational health and safety, worker's compensation, environmental assessment, and children's services. The NSW Government is expected to respond to IPART's final report later this year.

On 17 January 2006, the NSW Premier announced a dedicated review of regulation impacting on small business. This review consists of a rolling program of sector-by-sector reviews of regulatory and administrative burdens faced by the small business sector. The reviews will assess identified regulatory burdens that impact on small firms and recommend government actions to reduce those burdens.

In 2006, the NSW Government also initiated a 'Government Red Tape Review' – an internal review of undue administrative burdens imposed on NSW government agencies. Unnecessary administrative requirements and red tape within government can reduce responsiveness and divert public resources from essential front line services.

### *Consultation*

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

### *Compliance reporting*

There are no formal compliance reporting requirements within New South Wales. However, the Legislation Review Committee can report to the parliament on

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compliance with the RIS requirements under the *Subordinate Legislation Act 1989* (NSW).

#### *Resources for regulatory review*

Within the NSW Cabinet Office there is a regulatory reform team. However, the quality control process for legislation and regulation making is not solely that team's responsibility.

Each NSW government agency has generally assigned to an officer responsibility for ensuring that best practice regulatory principles are followed in the preparation of legislation.

## **E.5 Tasmania**

#### *Regulatory Impact Analysis*

Under the Tasmanian Government's Legislative Review Program, a RIS is required to 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 cost, burden or disadvantage on any sector of the public, also requires a RIS under the *Subordinate Legislation Act 1992* (Tas). 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 governance*

A review of the *Subordinate Legislation Act 1992* (Tas) 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.

#### *Consultation*

It is a requirement of both the Legislative Review Program and the *Subordinate Legislation Act 1992* (Tas) that mandatory public consultation of not less than 21

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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 for regulatory review*

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 \$368 288, of which around 60 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*

Western Australia does not have comprehensive RIS requirements. It is the responsibility of each agency to ensure that proposed legislation and the review of existing legislation is conducted in an open and transparent manner.

Cabinet submissions seeking endorsement of regulatory, legislative or policy initiatives that will significantly impact on small business must be accompanied by a Small Business Impact Statement (SBIS). Similarly, Cabinet proposals affecting regional Western Australia must include a Regional Impact Statement.

#### *Developments in regulatory governance*

A number of initiatives, coordinated by the Small Business Development Corporation (SBDC), provide avenues for small business operators and their representatives to raise their views and concerns with the Western Australian Minister for Small Business. These meetings are useful in identifying emerging issues in the State's small business sector, in particular red tape, and include:

- Small Business Ministerial Link Forums, designed to provide small business representatives with the opportunity to discuss a range of issues affecting the sector directly with the Minister; and
- Small Business Roundtables, to complement the Link Forums, specifically designed to provide small business operators with an informal environment to

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raise issues affecting their businesses directly with the Minister. The first Roundtable was held in May 2006.

In addition, as part of the 2005-06 state budget, the Western Australian Government announced a state tax review to shape tax reform over the next five years in consultation with the Western Australian community, and has released an interim report containing preliminary findings on 1 June 2006.

### *Consultation*

The Small Business Impact Statements 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 the SBIS or Regional Impact Statement requirements. 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; and
- the Cabinet Services Branch of the Department of the Premier and Cabinet may decline to accept a Cabinet submission with inadequate material.

## **E.7 Australian Capital Territory**

In the Australian Capital Territory, any policy proposal that may have a regulatory impact and potentially introduce new or amending legislation requires a RIS to be completed as part of the policy development process.

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Specifically, the ACT Government Cabinet Handbook requires a RIS to be attached to all Cabinet Submissions seeking approval for regulatory policy proposals. The Cabinet Handbook was updated and re-issued in September 2005.

The ACT has produced guidelines to assist Government departments and agencies in preparing a RIS (ACT Government 2003). The guidelines incorporate recent trends in regulatory best practice and provides agencies with a process to undertake regulatory cost-benefit analysis for the proposed regulation.

The *Legislation Act 2001* (ACT) also formally requires a RIS to be prepared for subordinate laws and disallowable instruments in certain prescribed circumstances. This allows regulations made outside the Cabinet process also to be subjected to a RIS style of analysis.

To strengthen RIS processes in the ACT, in 2006 the Microeconomic Reform Unit within the Department of Treasury has undertaken in-house training with ACT departments and agencies to increase awareness and compliance.

### *Regulatory Impact Analysis*

A RIS is used in the ACT to analyse all the realistic options in order to best meet the Government's policy objectives.

The Microeconomic Reform Unit (MRU) is responsible for the regulatory oversight of policy proposals. The MRU offers assistance to departments and agencies in the preparation of a RIS and assesses all Cabinet submissions for their compliance with RIS requirements.

### *Consultation*

The ACT's RIS process requires that consultation with all affected and (potentially affected) stakeholders take place as part of the assessment of new or amended regulations. Government departments and agencies are encouraged to involve stakeholders in the policy development process, and provide feedback to those who have been involved in the consultation process.

### *Resources for regulatory review*

Within the MRU the equivalent of one full-time employee is responsible for this work, with an approximate budget for salary and administrative expenses of \$100 000 for 2005-06.

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## **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, controls prices or production levels, restricts the quality, level or location of goods and services available, confers significant costs on business or provides advantages to some firms over others by, for example, 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 it is not possible to do this in a formal manner, the Agency is encouraged to submit plausible costing options or estimates in the statement and outline assumptions made in the development of such figures. 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/benefits of the proposed legislation, including:

- financial/economic;
- environmental; and
- social.

Distributional effects and opportunity costs are also required to be examined in the CIA.

### *Developments in regulatory governance*

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 National Competition Policy and subsequent endorsement of the National Reform Agenda at the COAG meeting on 10 February 2006, and the Australian Government response to the Taskforce on

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Reducing Regulatory Burdens of Business report. The review is now expected to be completed for consideration in late 2006.

Also a priority is aligning the Northern Territory's CIA process with COAG's National Reform Agenda Best Practice Regulation principles. This includes compliance with the priority review and reform areas under the National Reform Agenda commitments.

Administration of the Northern Territory's CIA process was transferred from the Department of the Chief Minister to the Northern Territory Treasury in May 2006.

### *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. A consultation statement is required as part of the CIA, which provides a broad outline of who has been consulted, the method used and details of views expressed by those consulted, and how those views would be addressed.

### *Compliance Reporting*

Aside from the reporting requirements that applied under National Competition Policy, 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 (ie, 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 for regulatory review*

From July 2005 to April 2006, the CIA Unit consisted of two part time policy officers (0.2 full-time equivalent) and one senior policy officer (0.15 full-time equivalent) from the Department of the Chief Minister. From May 2006 to June 2006, 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 NT Treasury.

Salaries and on-costs for the CIA Unit for 2005–6 are estimated at \$73 600 (July – April). Total costs are estimated to remain similar at NT Treasury, however this excludes time attributed to CIA Committee members in assessing and advising Agencies on CIAs.

## E.9 Comparisons across jurisdictions

### *RIS requirements*

Table E.1 **RIS requirements<sup>a</sup> in Australian jurisdictions**

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

<sup>a</sup> RISs are generally required only when the regulatory proposals impose a significant economic or social burden on business. <sup>b</sup> Not a formal requirement, but agencies proposing quasi-regulation are expected to comply with best practice for regulatory impact assessment. <sup>c</sup> The RIS requirements apply if these instruments are called up or referenced in subordinate legislation. <sup>d</sup> Every cabinet submission is to consider community impacts — which include regulatory, small business, regional, environmental, families and society. <sup>e</sup> A SBIS is required to accompany any cabinet submission seeking endorsement of a regulatory, legislative or policy initiative that will significantly impact on small business.

Source: ORR 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	✓	✓	✓	✓	✓	–
Qld	✓	✓	✓	✓	✓	–
SA	✓	✓	✓	–	✓	✓
WA	–	–	–	–	✓	–
Tas	✓	✓	–	–	✓	✓ <sup>a</sup>
ACT	✓	✓	–	–	–	✓ <sup>b</sup>
NT	✓	✓	✓	–	–	–

.. Not applicable. <sup>a</sup> 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. <sup>b</sup> Responsible for both State and local government.

Source: ORR and correspondence from States and Territories.

**Table E.3 Resources for state and territory regulation review units and related activities, 2005-06<sup>a</sup>**

<i>Jurisdiction</i>	<i>Full time equivalent staff</i>	<i>Budget \$ (including salary &amp; on-costs)</i>
Victoria	3.8 <sup>b</sup>	490 000
South Australia	n/a	n/a
Queensland	n/a	n/a
New South Wales	n/a	n/a
Western Australia	n/a	n/a
Tasmania	3.0	220 000
ACT	1.0	100 000
NT	1.0	80 000
Total	8.8	890 000

n/a – Not available. <sup>a</sup> In 2005-06, the ORR had 17.9 full time equivalent staff and a budget of about \$2.8 million. <sup>b</sup> Based on 2004-05 figures.

Source: Information provided by State and Territory Regulation Review Units.



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## F Regulation review and reform: international perspectives

In previous editions of Regulation and its Review, this appendix has reviewed selected international developments in areas of regulatory impact analysis and other measures for ensuring that new regulation is efficient and effective. In line with the activities of the Australian Regulation Taskforce, this year's report focuses on international programs that are aimed at combating the causes of over-regulation. Throughout 2005-06, the United Kingdom, Canada, New Zealand, the European Union and the Organisation for Economic Cooperation and Development have all undertaken reviews to find ways of improving regulatory processes and for measuring compliance costs. Several governments have also committed to regulatory process reforms as a result of these reviews.

### *United Kingdom*

On 22 March 2006, the United Kingdom Better Regulation Executive published a draft Regulator's Compliance Code. The Compliance Code is intended to ensure that all government regulators act only in accordance with established best practices when enacting rules, making standards or dealing with businesses. The code will apply to all government regulators at the policy development process (to minimise over-regulation) and at the point where regulators interact with business (such as when collecting statistics). The code is based on a number of key principles identified in the 2005 Hampton review on regulatory inspections and enforcement, including:

- that regulation be based on open and accountable measures of risk, and that businesses have the opportunity to scrutinise the methodology of regulators;
- that businesses be subject only to purposeful inspection by government regulators;
- that businesses supply required information to government only once;
- that regulators provide quick, clear and accessible advice and guidance on regulations;

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- that regulators support economic progress by not creating unnecessary administrative burdens, reducing incentives to innovate, discriminating between small and large businesses or creating artificial barriers to competition; and
  - that the process of regulating be open and accountable, through published reports and public consultation.

Following consultation, it is intended that the code be introduced into the Parliament as a statutory Code of Conduct, thus establishing the minimum standards acceptable of regulators. The Better Regulation Executive will be responsible for monitoring compliance.

The United Kingdom Government has also continued to participate in a number of EU and OECD initiatives aimed at developing internationally comparable measurements of administrative burdens, particularly through the Standard Cost Model Network. In September 2005, the Government commenced a ‘baseline’ measurement of the compliance cost of regulation on businesses, charities and voluntary organisations. The result of this measurement will be published in 2006. This measurement will allow the Government to better understand the magnitude of compliance costs on business, and target reform initiatives to achieve greater reductions in the regulatory burden.

### *Canada*

In March 2005, the Canadian Government launched *Smart Regulation*, its regulatory reform program. Federal, state and territory and municipal governments committed to undertake a comprehensive review of Canadian regulatory processes and put in place new procedural mechanisms to improve coordination and effectiveness across the jurisdictions. The review targeted the increasing burden of compliance costs on small and medium enterprises, and regulatory conflicts between jurisdictions. The Government has indicated a commitment to report every 6 months on the *Smart Regulation* program.

The second report on *Smart Regulation* was released by the Government in October 2005 and outlined progress on 40 initiatives to reduce the regulatory burden. One key outcome of the review was the establishment of the Paperwork Burden Reduction Initiative. The initiative has three main components: an advisory committee on reducing the regulatory burden, annual reporting of the progress of reducing compliance costs, and a tri-annual survey of regulatory compliance costs. 30 000 Canadian businesses will be surveyed every three years to enable the stock of regulation to be measured, as well as the compliance burden this places on business. In an initial pilot survey by the Canadian Federation of Independent

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Business, regulation was estimated to cost Canadian businesses \$33b (in Canadian dollars) annually (CFIB 2005).

Another key initiative of the *Smart Regulation* program is an increased focus on national regulatory co-operation. Drawing on OECD research into best practice regulation, the Canadian Government has been developing two key policies that will shape the development of future regulation. The *Government Directive on Regulating*, published by the Privy Council Office, will establish the Government's expectations of regulators. The Directive will outline the requirements of instrument choice, public consultation, risk analysis, regulatory co-operation, compliance cost measurement and regulatory review. The *Regulatory Submissions Framework* will ensure that regulatory proposals are subject to the preparation of a Regulatory Impact Analysis Statement. Based on the proportionality principle, the framework will aim to maximise government resources by only requiring a level of analysis commensurate with expected impacts.

### *New Zealand*

In 2006, the New Zealand Government established a Ministerial Review of Regulatory Framework. Similar to the Canadian review, the New Zealand Ministerial Review Council is analysing the causes of over-regulation, with particular focus on small and medium businesses. The aim is to improve the interaction between business and government, reduce overlapping regulations, and identify reform targets in regulatory 'hot spots' such as in the food and beverage, wine, retailing and hospitality, gaming and transport industries. The New Zealand Law Commission will work with the Ministerial Review Council to design regulatory tools to address these target areas.

The Ministerial Review Council will also look at the efficacy of the Regulatory Impact Analysis regime in achieving the government's goal of creating effective regulation. It will examine whether to upgrade the minimum adequacy requirements of Regulatory Impact Analysis statements (RIAs). The review will look at strengthened gatekeeper mechanisms for the Regulatory Impact Analysis Unit (RIAU), including requirements that public consultation be mandatory prior to regulatory decisions being made, and allowing the RIAU to assess RIAs as inadequate if they do not address the current problem, or have not undertaken sufficient cost-benefit analysis commensurate with the impacts of the proposals.

The New Zealand Ministry for Economic Development is also trialling the Business Cost Calculator (BCC) to measure the cost of regulation. The BCC will be used to measure the total compliance cost burden imposed by the Schedules to the *Securities Regulations 1983*. The trial will enable the Government to systematically

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measure the total administrative burden on businesses complying with the *Securities Regulations 1983* and identify aspects of the BCC that may not be relevant to the New Zealand economy or its regulatory processes. This is in line with the endeavours of the European Union, which is undertaking systematic attempts at measuring the compliance costs of regulation using the Standard Cost Model developed by the Netherlands.

### *The Organisation for Economic Cooperation and Development (OECD)*

In 2005, the OECD established the Standard Cost Model Network, an initiative by a number of countries to test the usefulness of the Standard Cost Model (SCM) in measuring the compliance costs of regulation on business. The Network is a result of the OECD's 'Red Tape Scoreboard' project, and aims to use the Dutch SCM in measuring cross-country and cross-policy regulatory costs.

A number of countries in the SCM Network are employing the model to measure the total baseline compliance cost of regulations in their economies. Following the 2005 report that the Netherlands' total cost was €16.4b, the Danish Government used the SCM in 2006 to estimate the total administrative burden on Danish businesses at €4.33b. The UK Government has also used the model to estimate the burden of complying with tax regulations, estimating the total compliance cost at £5b, or approximately 0.41 per cent of GDP.

In 2005, Poland and the Netherlands reported on the use of the SCM in measuring the administrative burden on businesses in the transport sector. This report looked at the applicability of the SCM for making comparable cross-country estimates of compliance costs on businesses. Based on this early work, the OECD Working Party on Regulatory Reform commenced a study of cross-country administrative burdens in the road freight sector, using the SCM methodology. Currently 13 OECD member countries are using the SCM to estimate the regulatory burden on road freight businesses. This report is due to be published towards the end of 2006.

In addition to the SCM Network, the OECD was invited by the Chinese Government in 2005 to undertake a review of the Chinese regulatory environment with a view to recommending best practice regulatory reforms. This is only the second time the OECD has done a review of the processes of a non-member country (following a report on Russia published in 2005). The report will examine:

- the capacities of the Chinese Government and institutions for regulatory reform;
- the level of Chinese market openness, including how consumers can benefit from regulatory reform;

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- potential improvements to competition policy and competitive neutrality with government services; and
  - regulation of specific ‘hotspots’, including electricity, health care, public utilities and transportation.

### *The European Union*

While many European countries are involved in the SCM Network, the European Union itself is continuing to improve its legislative and regulatory processes. In 2005 it passed the *Communication on Better Regulation for Growth and Jobs in the European Union*, its plan for minimising the administrative costs faced by business as a result of EU legislation.

From April 2005, EU legislation has been subject to impact assessment, measuring the economic, social and environmental impacts of regulation. Public consultation is now a standard component of the policy development process, with the EU Parliament giving advanced warning of future regulatory proposals. The EU also intends to provide incentives to member states to improve their national regulatory processes. Countries involved in the SCM Network will advise the EU on the adoption of a common measurement strategy to allow for comparisons of regulatory costs across the economies of the EU.



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