

# Best Practice Regulation Report



**2010 – 11**

OFFICE OF BEST PRACTICE REGULATION (OBPR)

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# Abbreviations

|            |  |
|------------|--|
| AASB       | Australian Accounting Standards Board  |
| ABCB       | Australian Building Codes Board  |
| ACBPS      | Australian Customs and Border Protection Service   |
| ACCC       | Australian Competition and Consumer Commission   |
| ACMA       | Australian Communications and Media Authority  |
| AFMA       | Australian Fisheries Management Authority  |
| AGD        | Attorney-General's Department  |
| AGVET      | Agricultural and Veterinary  |
| AHMC       | Australian Health Ministers' Conference  |
| AHWMC      | Australian Health Workforce Ministerial Council  |
| ANZFRMC    | Australian and New Zealand Food Regulation Ministerial Council                                       |
| APRA       | Australian Prudential Regulation Authority   |
| APS150     | Australian Prudential Standard   |
| ARS150     | Australian Report Standard   |
| ASIC       | Australian Securities and Investments Commission   |
| ATC        | Australian Transport Council   |
| AUASB      | Auditing and Assurance Standards Board   |
| BCC        | Business Cost Calculator   |
| COAG       | Council of Australian Governments  |
| COAG Guide | COAG Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies |
| Customs    | Australian Customs and Border Protection Service   |
| DAFF       | Department of Agriculture, Fisheries and Forestry  |
| DBCDE      | Department of Broadband, Communications and the Digital Economy                                      |
| DCCEE      | Department of Climate Change and Energy Efficiency   |
| DEEWR      | Department of Education, Employment and Workplace Relations  |
| Defence    | Department of Defence  |
| DHA        | Department of Health and Ageing  |
| DIAC       | Department of Immigration and Citizenship  |
| DIT        | Department of Infrastructure and Transport   |
| DPR        | Director Penalty Regime  |
| DRET       | Department of Resources, Energy and Tourism  |
| DSEWPC     | Department of Sustainability, Environment, Water, Population and Communities                         |

|              |  |
|--------------|--|
| FaHCSIA      | Department of Families, Housing, Community Services and Indigenous Affairs |
| Finance      | Department of Finance and Deregulation                                     |
| FSANZ        | Food Standards Australia and New Zealand                                   |
| The Handbook | Best Practice Regulation Handbook  |
| MCE          | Ministerial Council on Energy  |
| MEPS         | Minimum Energy Performance Standards                                       |
| NBN          | National Broadband Network   |
| NSSB         | National standard-setting bodies   |
| OBPR         | Office of Best Practice Regulation   |
| OECD         | Organisation for Economic Cooperation and Development                      |
| PIR          | Post-implementation Review   |
| RIA          | Regulatory Impact Analysis   |
| RIS          | Regulation Impact Statement  |
| SCGR         | Select Council on Gambling Reform  |
| Treasury     | Department of Treasury   |

# Foreword

The Office of Best Practice Regulation (OBPR) is required to report annually on compliance with the Australian Government and the Council of Australian Government (COAG) best practice regulation requirements.

While the OBPR operates within the Deregulation Group of the Department of Finance and Deregulation, the decisions it makes in relation to compliance are independent of the Department and the Minister for Finance and Deregulation.

As in previous years, this report provides information on compliance by Australian Government departments and agencies, ministerial councils and national standard-setting bodies. The report is prepared by the staff of the OBPR, in cooperation with relevant agencies, authorised by the Executive Director of the OBPR and presented to the Minister for Finance and Deregulation as a final report. As an independent assessment by the OBPR of compliance, this report is an important element of best practice regulation processes by both the Australian Government and COAG. Its publication also aids public transparency.

From 1 July 2010, the OBPR has reported compliance on its website, Best Practice Regulation Updates ([ris.finance.gov.au](http://ris.finance.gov.au)), meaning that non-compliance is now effectively reported 'live'. Regulation impact statements and other regulatory policy material is also published on the website. The OBPR will continue to prepare an annual report on compliance with the best practice regulation requirements, however our intention is to focus on live compliance reporting via the website and to publish a less detailed annual report in the future.

The OBPR is grateful for the extensive cooperation it has received during the year from Australian Government departments and agencies, ministerial councils and national standard setting bodies.

**Jason McNamara**  
**Executive Director**  
**Office of Best Practice Regulation**  
**December 2011**





one

# Developments in best practice regulation



one

# one

## Developments in best practice regulation

Implementing the Government's changes to the best practice regulation process has been a priority of the Office of Best Practice Regulation (OBPR) during 2010-11. The main initiatives involved rolling out the revised Best Practice Regulation Handbook, live reporting of compliance on the best practice regulation website, enhanced consultation requirements and the preparation of one page summaries for decision makers.

The number of regulations requiring post-implementation review (PIR) has increased. Consequently, the OBPR will increase its efforts in guiding and assisting agencies undertaking PIRs.

The OBPR has continued to offer training to policy officers advising the Australian Government, ministerial councils and national standard-setting bodies (NSSB).

A number of issues are appearing in Regulation Impact Statements (RIS) across a range of regulatory proposals. The issues related to consumer preferences, the consideration of environmental issues and the treatment of risk. These issues are discussed in further detail in this chapter and provide the focus of OBPR's ongoing policy research.

### 1.1 Implementing revisions to the best practice regulation process

#### Revised Best Practice Regulation Handbook

An updated version of the Best Practice Regulation Handbook (the Handbook) was released in June 2010. The changes to the RIS requirements outlined in the updated Handbook took effect on 1 July 2010.

An important aim of the update was to reduce compliance costs to departments and agencies by making the Handbook more user-friendly and streamlining certain aspects of the system. The clarity of the wording in the Handbook was improved to assist those using it. On the basis of anecdotal feedback and evidenced by the fact that the number of enquiries regarding RIS requirements has declined significantly compared to previous years, this aim appears to have been achieved.

#### Live reporting through the best practice regulation website

The RIS website, Best Practice Regulation Updates (<http://ris.finance.gov.au/>) (the website) is a 'blog-style' facility for publishing RISs and related best practice regulation material. The website started operation from 1 July 2010 but due to the caretaker arrangements preceding the 2010 federal election, full operation was delayed until October of that year. Since then the OBPR has published both Australian Government and Council of Australian Governments (COAG) RISs on the site as soon as practicable after public announcement of the relevant decision, or in the case of COAG consultation RISs, after their release by the policy-making body. Prime Minister's exemptions and non-compliance are also made public on the website as soon as practicable after a regulatory decision is announced.

The purpose of the website is to make all RISs assessed as adequate by the OBPR available in one location, thereby improving transparency surrounding regulatory decision making. The primary target audience is the regulated business and not-for-profit community. Anecdotally, the site has also become a resource for regulation policy makers who use it to identify best practice RISs when they in turn are preparing their own RIS. A usage survey is yet to be undertaken but visits to the site have increased steadily since full operation began.

As well as making RISs more accessible, the website invites stakeholder feedback through a public comment facility or blog. This is intended to help improve the quality of future RISs. Policy relevant feedback is referred to the policy maker and RIS-related feedback is used directly by the OBPR. Although it is still early days and little promotion has occurred, valuable feedback is being provided through this facility.

## Consultation on Australian Government RISs

The OBPR has made a determined effort to improve the transparency and accountability of the Australian Government RIS consultation processes by ensuring agencies comply with best practice consultation principles. This is achieved by giving agencies direct feedback on the quality of consultation in each RIS and by ensuring confidential consultation processes are only used in circumstances where transparency would clearly compromise the public interest.

### RIS one page summaries

A one page summary of the RIS must be prepared for decision makers. The OBPR will prepare the summary for proposals considered by the Cabinet or a committee of the Cabinet. The OBPR prepared 13 such summaries in 2010-11. For other proposals, the sponsoring agency will prepare the summary before it is approved by the OBPR. In such cases the one page summary needs to be approved by the OBPR as a fair, balanced and accurate summary of the adequate RIS.

The summary includes a brief description of the main points of the RIS, including the impacts of the preferred option, the affected stakeholders and the alternative options. It also assesses the extent to which the preferred option reduces business compliance costs and improves productivity growth. It is not necessary to publish the one page summary with the RIS and generally the briefing is a Cabinet-in-Confidence document.

Feedback to the OBPR indicates that one page summaries are particularly useful for decision makers needing to synthesise a large volume of material before reaching a decision.

## 1.2 Post-implementation reviews

Australian Government agencies are required to undertake a PIR of regulation that did not have a RIS, unless the impact was of a minor or machinery nature and the regulation did not substantially alter previous arrangements. The absence of a RIS may be because the RIS was not adequate or the Prime Minister granted an exemption for exceptional circumstances. The PIR is required to commence within one to two years of the implementation of the regulation.

A PIR will be very similar in substance to a RIS. The main difference is that the impact analysis for a PIR should include information about the actual impacts of the regulation, rather than just estimates. Stakeholder consultation should be viewed as essential and will form a key part of a PIR.

The PIR should conclude with an assessment, based on the available evidence, of how effective and efficient the regulation has been in meeting its original objectives. The OBPR allows more flexibility in relation to the form of the PIR, acknowledging that regulation is already periodically reviewed in a variety of manners that may already meet the PIR requirements.

PIRs were amongst the regulatory reforms implemented in August 2006. A PIR is required to commence within one to two years of the implementation of the regulation. As a result, the first PIRs have been completed, and many of the PIRs relating to the regulatory decisions which did not have an adequate RIS in 2007-08 and 2008-09 have commenced. A complete listing of all current PIRs by portfolio is included at Chapter 5.

The number of Prime Minister's exemptions and the number of non-compliant regulations has steadily increased since the introduction of the PIR requirement. In 2007-08 there were three Prime Minister's exemptions from the RIS process and four non-compliant regulatory proposals for which PIRs were required. In 2008-09, those figures increased to six exemptions and eight non-compliant proposals, while in 2009-10, there were fewer exemptions (four) but more non-compliant proposals (12). In 2010-11, the number of PIRs which will be required has increased further to 30 (14 exemptions and 16 non-compliant proposals). Table 1.1 shows PIR numbers by source for the period 2007-08 to 2010-11.

**Table 1.1 PIR numbers 2007-08 to 2010-11**

| Source  | 2007-08  | 2008-09   | 2009-10   | 2010-11   |
|---|----------|-----------|-----------|-----------|
| <b>Compliant - Prime Minister's exemption</b> | 3        | 6         | 4         | 14        |
| <b>Non-compliant</b>                          | 4        | 8         | 12        | 16        |
| <b>Total</b>                                  | <b>7</b> | <b>14</b> | <b>16</b> | <b>30</b> |

The Government's Regulatory Impact Analysis (RIA) framework is designed to ensure that regulation has efficient outcomes and does not create an unnecessary burden of "red tape" on business or the not-for-profit sector. For this reason, it is crucial that those regulatory changes which were not subject to scrutiny under the RIS requirements are subject to a PIR to evaluate the efficiency and effectiveness of the regulation. With the number of PIRs set to increase over the next few years, the OBPR will be shortly providing further written advice to agencies to guide them in preparing PIRs and will be publishing a *Guidance Note on PIRs* on the OBPR website.

### 1.3 Regulatory best practice training

During 2010-11 the OBPR continued to provide regulatory best practice training to departments and agencies. This training is provided as a means of increasing awareness of the best practice regulation requirements and to improve the quality of regulatory analysis.

The OBPR offers an extensive range of training programs designed to increase understanding of the Australian Government and COAG best practice regulation requirements. General RIA training gives participants an outline of the RIA process. Comprehensive RIA training provides participants with an understanding of all aspects of the RIA process, including the preparation of a RIS, and an introduction to cost benefit analysis and the Business Cost Calculator. COAG RIA training is targeted to the needs of ministerial councils and NSSBs. In addition to the formal training sessions, an important day-to-day role of OBPR officers is to provide advice and assistance to policy officers who are actively involved in regulatory activity.

During 2010-11 the OBPR focussed its training effort to address agency specific issues. This tailored training approach included holding more sessions at the agency and, where appropriate, examining RISs previously completed by the agency.

The OBPR provided training to 404 officers during 2010-11, with training provided to 133 policy officers at the OBPR and 271 officers at in-house courses tailored to specific agencies (table 1.2).

Training in 2010-11 was generally well received. At the completion of each training session participants were asked to provide feedback by way of an evaluation form. Feedback was received from 69 percent of the 133 participants with 85 percent rating the training as 'good' to 'excellent' on a four scale rating system.

**Table 1.2 RIA training provided in 2010-11**

| <b>Course</b>  | <b>Course length</b> | <b>Courses provided</b> | <b>Total attendance</b> |
|--|----------------------|-------------------------|-------------------------|
| Comprehensive RIA training seminar                                       | 4 hours              | 3                       | 43                      |
| Overview of the Australian Government RIA requirements and RIS           | 2 hours              | 5                       | 53                      |
| Overview of COAG requirements  | 2 hours              | 2                       | 22                      |
| Overview of COAG requirements and RIS                                    | 4 hours              | 1                       | 15                      |
| Tailored courses provided externally to various departments and agencies | 2-4 hours            | 17                      | 271                     |
| <b>Totals</b>  |                      | <b>28</b>               | <b>404</b>              |

Source: OBPR

## 1.4 Emerging issues

### Consumer preferences

Consumer preferences and the behaviour of consumers are important attributes to take into account when considering a regulatory change. In general, policy makers assume that consumers will behave in a way that is considered to be rational and to optimise an individual's utility. In the context of a RIS, this provides an economic framework for assessing the impact on consumers and the wider community from regulatory change.

However, in practice consumer preferences vary and consumers may value goods and services differently, resulting in alternative views or objectives about what is optimal or desired by consumers. Consumer behaviour may also be influenced by a lack of information, by too much information, or by consumers not behaving in a way that is consistent with standard economic theory. This is especially the case with the greater choice and complexity of certain products and services available to consumers, for example mobile telephone or internet services. Therefore, the actual impact on consumers may differ from the impact considered most likely when a regulatory change is considered or implemented.

Recently, a number of RISs have taken into account consumer behaviour when designing regulatory options or recommending regulatory changes. For example, a RIS on minimum energy performance standards for air conditioners noted that consumers lacked the ability to interpret the available technical information in order to make optimal decisions regarding air conditioner efficiency and operating costs. The RIS concluded that there was no evidence that indicated consumers are predominantly selecting the most efficient products, even though this would be in their long term financial best interests.

The OBPR is interested in consumer preferences and how this issue is considered and applied in relevant RISs, including the impact analysis of a regulatory proposal.

## Consideration of risk in regulatory reform

People's perceptions of risk can change over time and this affects their willingness to tolerate risk. Often there can be a mismatch between the level of risk people are willing to tolerate and the level of risk that may be achievable through regulation.

Although regulation is often an appropriate response to mitigate a potential risk and results in a net benefit to society, regulation can also be costly, unnecessary and inefficient with impacts on the economy and the community that are undesirable.

The relationship between risk and regulation is particularly relevant to the RIS process as it emphasises the importance of employing evidence based risk analysis when preparing a RIS. Risk analysis that addresses the potential magnitudes of unwelcomed events or results and the likelihood of their occurrence can help to determine if a risk needs to be addressed through regulation or if it is reasonable to expect businesses, individuals and the wider community to accept responsibility for managing personal risk. A case study is provided in box 1.1 where the issue of risks is integrated to the consideration of regulatory issues in a RIS on private bushfire shelter standards that was prepared in the wake of the Victorian bushfires in February 2009.

The OBPR aims to promote greater use of evidence based risk analysis by policy makers in the development of regulatory policy.

## Box 1.1 Private bushfire shelters standards

Often regulation intended to reduce risk can have adverse consequences. For example, regulation designed to reduce one kind of risk can actually increase undesirable risk in other areas. Where this occurs the decision to proceed with a regulation will involve an examination of the tradeoffs between the risks being reduced and those being increased or created. An example of this ‘damned if you do, damned if you don’t’ scenario was examined in the COAG RIS: *Proposal to amend the Building Code of Australia to include requirements for private bushfire shelters*.

This RIS examined options for introducing a minimum standard for private bushfire shelters – to be used as a last resort if residents could not flee a bushfire early. The RIS explains how fire safety experts have considerable concerns about whether shelters (even if they are built to a high standard) provide a high guarantee of safety and whether having a government endorsed standard could alter a resident’s decision to flee a bushfire early and instead rely upon a shelter – potentially increasing their chances of death. On the other hand the RIS discussed whether, in the absence of a government standard, residents may build their own poorly constructed shelters therefore increasing the chance of death if the shelters were ever relied upon.

As stated in the RIS:

*The analysis of the options shows that even with a well built shelter the chance of survival may still be low, due to the limited ability for residents to use them properly. Additionally the analysis describes the potential for shelters in some circumstances to be relied upon in place of more effective strategies to survive a bushfire. This problem is theoretically exacerbated through the provision of a government endorsed standard.*

*In introducing any regulation to the market for private bushfire shelters, this potential to affect residents’ perceptions of the risk of bushfire needs to be acknowledged. There is a risk that attitudes and preferences towards other risk reducing strategies (due to the presence of shelters) such as reducing fuel loads, preparing houses against bushfire assault and making decisions about when to leave may also be altered. This has the theoretical potential to increase the number of people who would be categorised as having an ineffective survival strategy.*

*The decision to implement mandatory standards for voluntarily constructed shelters is a judgement on the trade-off between whether the lives saved due to the avoidance of deaths in poorly constructed fire shelters is greater than the lives lost from the inefficient decision to stay and rely on a government-endorsed shelter.*

In the end the RIS concluded that the risk from people dying from poorly constructed shelters was greater than the risk of people dying from the incorrect decision to rely upon a government endorsed shelter, when they really should have fled earlier. As stated in RIS:

*On the basis that there is not great certainty over the extent government endorsement of shelters increases the number of stayers and the more certain knowledge that the chance of survival in a poorly constructed shelter is low, the provision of a minimum standard can be argued to be a less risky option than the option which discourages the use of shelters.*

## Best practice regulation and the environment

Assessing RISs that relate to regulatory proposals to protect the environment forms a large, and increasing, part of the OBPR's workload. In recent years the OBPR has noticed that an increasing proportion of the RISs it assesses have an environmental element and we expect this trend to continue. However, putting a value on environmental impacts is difficult. For example, unlike business compliance costs or product standards, the value that the community places on environmental issues is not readily observable; indeed the lack of an obvious 'price' for the environment contributes to the current level of environmental degradation.

However, this is beginning to change. Over the last 15-20 years, a sophisticated body of economic literature has developed looking at the value that the community places on the environment. There is also a growing realisation by government that assessing the value that the community places on the environment, and therefore the benefits from protecting the environment, is an important part of policy analysis. This is reflected in the Australian Government's draft Biodiversity Policy, which has as one of its principles that 'biodiversity be valued according to its real worth'.

Key regulatory proposals considered in 2010-11 that had a significant environmental element include the regulation of agricultural and veterinary chemicals, fishing area closure and monitoring arrangements and revised renewable energy regulations that brought forward the reductions in the annual solar credits multiplier.

Consistent with this trend the OBPR, together with relevant government agencies, is developing guidance on how best to incorporate environmental valuation into RIA. In this way, environmental policy decisions will be guided by the best available evidence.



two  
Compliance trends



two

# two

## Compliance trends

Both the Australian Government and COAG have best practice regulation requirements in place to ensure that regulation is *effective* in addressing an identified problem, and *efficient* in terms of maximising the benefits to the community, taking account of the costs.

This chapter reports in aggregate on compliance by Australian Government departments and agencies and by COAG, ministerial councils and NSSBs with the best practice regulation requirements.

### 2.1 Role of the Office of Best Practice Regulation

The OBPR administers the Australian Government and COAG best practice regulation requirements. It has a dual role of assisting departments and agencies to meet the requirements and improve the quality of regulatory analysis, and in monitoring and reporting on compliance with the requirements.

In assessing the quality of the regulatory impact analysis, the OBPR does not endorse or support particular regulatory options or outcomes. Rather, its role is to assess whether good regulatory policy development has been followed, in accordance with the processes and requirements outlined in the Handbook or in the COAG *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (COAG Guide).

The OBPR monitors government decision-making processes and seeks to ensure that all regulatory decisions are supported by an appropriate level of impact analysis. Under the revised best practice regulation arrangements that have applied from 1 July 2010 compliance for individual proposals is now reported on the OBPR website as soon as practicable after the decision is announced.

### 2.2 Australian Government's best practice regulation requirements

This publication reports on department and agency compliance with the best practice regulation requirements in 2010-11 and therefore primarily refers to the RIS requirements that commenced on 1 July 2010. However, the 2010-11 Report also includes outstanding regulatory issues assessed under the previous regulatory compliance regime in order to provide the full regulatory compliance picture. Future Australian Government and COAG RIS compliance details will be reported live on the OBPR website with financial year summaries also published online for archival purposes.

The OBPR, in its role of administering the Government's best practice regulation process and reporting on compliance with the requirements, assesses whether:

- a RIS was prepared to inform the decision maker at the policy approval stage and whether the analysis contained in the RIS satisfies the Government's adequacy criteria;
- the RIS prepared at the decision-making stage was published on the OBPR's website, tabled in the Parliament or otherwise made public (transparency stage);

- ‘exceptional circumstances’ were granted by the Prime Minister at the decision-making stage, and if an adequate RIS was not prepared, a PIR is required to commence within one to two years of the implementation date, and
- an Annual Regulatory Plan was published.

To be assessed as adequate, a RIS must contain a degree of detail and depth of analysis that is commensurate with the size of the potential impacts of the proposal. Subject to this overriding principle, the OBPR uses the criteria from the Handbook to assess whether each element of a RIS is adequate (the Handbook can be viewed on the OBPR website).

## 2.3 Australian Government compliance

Compliance with the Australian Government best practice regulation requirements is measured by compliance with the requirement to prepare and publish an adequate RIS, where the Prime Minister granted an exemption, where an adequate PIR was prepared (if required) and by publication of Annual Regulatory Plans.

### Aggregate compliance

For regulatory proposals announced in 2010-11, of the 63 RISs required at the decision-making stage 47 RISs were prepared and assessed as adequate, giving a compliance rate of 75 per cent. The Prime Minister granted exceptional circumstances exemptions in 14 cases. A compliance rate of 84 per cent was achieved in 2009-10 (see table 2.1).

Table 2.1 RIS compliance 2007-08 to 2010-11

| Stage                            | Type of RIA   | 2007-08            |     | 2008-09            |     | 2009-10            |     | 2010-11            |    |
|----------------------------------|---------------|--------------------|-----|--------------------|-----|--------------------|-----|--------------------|----|
|                                  |               | ratio <sup>a</sup> | %   | ratio <sup>a</sup> | %   | ratio <sup>a</sup> | %   | ratio <sup>a</sup> | %  |
| Decision-making stage            | – RISs        | 43/48              | 90  | 45/53              | 85  | 63/75              | 84  | 47/63              | 75 |
|                                  | – BCC reports | 7/7                | 100 | 4/4                | 100 | 2/2                | 100 | n/a <sup>c</sup>   |    |
| Transparency stage <sup>b</sup>  | – RISs        | 41/45              | 91  | 41/49              | 84  | 59/74              | 80  | 45/63              | 71 |
|                                  | – BCC reports | 6/7                | 86  | 4/4                | 100 | 1/2                | 50  | n/a <sup>c</sup>   |    |
| <b>Exceptional circumstances</b> |               | <b>3</b>           |     | <b>6</b>           |     | <b>4</b>           |     | <b>14</b>          |    |

<sup>a</sup> Ratio of adequate RISs and Business Cost Calculator (BCC) reports as a proportion of the total number of RISs and BCC reports required.

<sup>b</sup> The number of RISs required at the transparency stage can be lower than at the decision making stage because some regulations were subject to multiple decision making processes. For example, RISs are required for treaties at two separate decision-making stages.

<sup>c</sup> Under the best practice regulation requirements that apply from 1 July 2010, a RIS is required rather than a BCC report.

Source: OBPR

### Exceptional circumstances

The Prime Minister granted ‘exceptional circumstances’ from the RIS requirements for 14 regulatory proposals. Although a RIS was not prepared for these matters the relevant departments and agencies have complied with the requirements but will need to commence PIRs within one to two years of the regulations being implemented (see table 2.2).

Table 2.2 Proposals granted Prime Minister's 'exceptional circumstances' 2010-11

| <b>Proposal</b>  | <b>Agency</b> |
|--|---------------|
| <b>National Broadband Network implementation plan</b>  | DBCDE         |
| <b>Changes to the Anti-siphoning Scheme</b>  | DBCDE         |
| <b>Woomera protected area</b>  | Defence/DRET  |
| <b>Changes to corporate bond market</b>  | Treasury      |
| <b>Banning home loan exit fees</b>   | Treasury      |
| <b>Allow Australian ADIs to issue covered bonds</b>  | Treasury      |
| <b>Response to Super System (Cooper) Review</b>  | Treasury      |
| <b>Australia's Future Tax System Review - Abolish the entrepreneurs tax offset</b>   | Treasury      |
| <b>Australia's Future Tax System Review - Fringe benefit tax reform of the car fringe benefit rule</b>                       | Treasury      |
| <b>Australia's Future Tax System Review - Expanding the definition of geothermal energy</b>                                  | Treasury      |
| <b>Australia's Future Tax System Review - Minerals Resource Rent Tax</b>   | Treasury      |
| <b>Australia's Future Tax System Review - Not-for-profit – better targeting not-for-profit tax concessions</b>               | Treasury      |
| <b>Australia's Future Tax System Review - Not-for-profit – introducing a statutory definition of 'charity'</b>               | Treasury      |
| <b>Australia's Future Tax System Review - Small business depreciation – accelerated initial deduction for motor vehicles</b> | Treasury      |

Source: OBPR

## Non-compliance

In the absence of 'exceptional circumstances' being granted by the Prime Minister, a regulatory proposal with more than a minor or machinery impact on business or the not-for-profit sector should not proceed to Cabinet (or another decision maker) unless it has complied with the RIS requirements. A PIR is required when a proposal proceeds to the decision maker without an adequate RIS.

In 2010-11, 16 proposals proceeded to the decision maker without the support of an adequate RIS (see table 2.3). Also included in table 2.3, are a further two proposals which were compliant at the decision-making stage but non-compliant at the at the transparency stage. Further details of RIS compliance by portfolio can be found at Chapter 3.

Table 2.3 Australian Government non-compliant proposals 2010-11

| Proposal  | Agency   | RIS Status   |
|---|----------|--|
| <b>Change to disclosure requirements around the transfer of financial assets</b>  | AASB     | A RIS was not prepared for the decision  |
| <b>Telecommunications Service Provider Determination 2010</b>   | ACMA     | A RIS was not prepared for the decision  |
| <b>Management arrangements for Gillnet, Hook and Trap sector of the Southern and Eastern Scalefish and Shark Fishery to protect sea lions</b> | AFMA     | A RIS was not prepared for the decision  |
| <b>Suspension of live cattle exports to Indonesia</b>   | DAFF     | A RIS was not prepared for the decision  |
| <b>Budget - Renewable Energy Target – reduction of the solar credits multiplier.</b>  | DCCEE    | A RIS was not prepared for the decision  |
| <b>Budget - Second decision to reduce the solar credits multiplier</b>  | DCCEE    | A RIS was not prepared for the decision  |
| <b>Maritime Transport and Offshore Facilities Security Amendment Regulations 2010 (No.1)</b>  | DIT      | A RIS was not prepared for the decision  |
| <b>Extension of tripartite deeds</b>  | DIT      | A RIS was not prepared for the decision  |
| <b>Budget - Enhancements from the review of the Australian independent screen production sector</b>   | PM&C     | A RIS was not prepared for the decision  |
| <b>Budget - Farm Management Deposits</b>  | Treasury | A RIS was not prepared for the decision  |
| <b>Budget - Taxation of Financial Arrangements – tax hedging rules</b>  | Treasury | A RIS was not prepared for the decision  |
| <b>Future of financial advice - Requirement for advisers to renew client agreement to ongoing advice fees every two years (opt-in regime)</b> | Treasury | A RIS was prepared for the reform but was not assessed as adequate for the decision-making stage |
| <b>Future of financial advice - Ban on soft dollar benefits over \$300 per benefit</b>  | Treasury | A RIS was prepared for the reform but was not assessed as adequate for the decision-making stage |
| <b>Future of financial advice - Access to scaled financial advice</b>   | Treasury | A RIS was prepared for the reform but was not assessed as adequate for the decision-making stage |

Table 2.3 continued

| Proposal  | Agency   | RIS Status   |
|---|----------|--|
| <b>Future of financial advice - Limited carve-out for basic products from the ban on certain conflicted remuneration structures and best interests duty</b>                   | Treasury | A RIS was prepared for the reform but was not assessed as adequate for the decision-making stage |
| <b>Future of financial advice - Prospective ban on up-front and trailing commissions and like payments for both individual and group risk insurance within superannuation</b> | Treasury | A RIS was prepared for the reform but was not assessed as adequate for the decision-making stage |
| <b>Registration of AGVET chemicals</b>  | DAFF     | An adequate RIS was prepared but did not meet the publication requirement                        |
| <b>Aviation Transport Security Amendments Regulation 2010 (No.2)</b>  | DIT      | An adequate RIS was prepared but did not meet the publication requirement                        |

Source: OBPR

## Publication of Annual Regulatory Plans

Annual Regulatory Plans are designed to provide business and the not-for-profit sector with information about planned changes to Australian Government regulation and make it easier for stakeholders to take part in the development of regulation that is likely to affect them. These plans contain information about proposed regulatory activity, including a description of the issue, information about the consultation strategy and an expected timetable.

Annual Regulatory Plans are published on the website of each agency and the OBPR also publishes the plans on its website.

In 2010-11 all departments and agencies complied with the Annual Regulatory Plan requirements.

## 2.4 COAG best practice regulation requirements

Regulation making also occurs at a national or inter-jurisdictional level among some 40 ministerial councils and NSSBs. In 1995, COAG agreed on a set of principles and guidelines for such activities. In 2007, COAG strengthened these requirements and released the COAG Guide. The major element of the COAG Guide is the preparation of RISs for those national regulatory decisions that:

‘... would encourage or force business or individuals to pursue their interests in ways they would not otherwise have done.’ (COAG Guide, p.3).

COAG requires a RIS to be prepared at two stages: the first for community consultation with parties likely to be affected by the regulatory proposal; and the second or final RIS, reflecting feedback from the community, to assist the decision maker. The final RIS should be made public as soon as possible after the decision is announced. At each stage, the OBPR is required by COAG to assess whether:

- the COAG RIS guidelines have been followed;
- the type and level of analysis in the RIS is adequate and commensurate with the potential economic and social impacts of the proposal; and
- the RIS demonstrates that the preferred option results in a clear net benefit to the community.

## 2.5 COAG compliance

The OBPR identified ten proposals that required the preparation of a RIS under the COAG requirements in 2010-11 (see Chapter 4 for more detail).

At the consultation stage, eight adequate RISs were prepared resulting in a compliance rate of 89 per cent — compared with 71 per cent in 2009-10 (see table 2.4). At the decision making stage, nine adequate RISs were prepared resulting in an overall compliance rate of 90 per cent — compared with 78 per cent in 2009-10. As table 2.4 indicates, the number of COAG RISs in 2010-11 is significantly lower than in previous years, due to elections in some jurisdictions. Further commentary on these proposals is provided in Chapter 4.

**Table 2.4 Compliance with the COAG RIS requirements, 2005-06 to 2010-11**

| Stage                 | 2005-06 <sup>a</sup> |    | 2006-07 <sup>a</sup> |    | 2007-08 <sup>a</sup> |    | 2008-09 <sup>b</sup> |    | 2009-10 |    | 2010-11 |    |
|-----------------------|----------------------|----|----------------------|----|----------------------|----|----------------------|----|---------|----|---------|----|
|                       | ratio                | %  | ratio                | %  | ratio                | %  | ratio                | %  | ratio   | %  | ratio   | %  |
| Consultation stage    | 30/34                | 88 | 29/33                | 88 | 26/27                | 96 | 22/25                | 88 | 29/41   | 71 | 8/9     | 89 |
| Decision-making stage | 26/34                | 76 | 31/33                | 94 | 25/27                | 93 | 24/25                | 96 | 32/41   | 78 | 9/10    | 90 |

<sup>a</sup> Reported on RISs required for decisions made for the period 1 April to 31 March.

<sup>b</sup> Transitional period reports on RISs required for decisions made during the period 1 April 2008 to 30 June 2009.

Source: OBPR





three

## Australian Government compliance by portfolio



three

























































































































