

Best Practice Regulation Report



2009 – 10

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Office of Best Practice Regulation
Deregulation Group
Department of Finance and Deregulation

Tel: 02 6215 1955
Fax: 02 6215 1981
Email: helpdesk@obpr.gov.au
Web: www.obpr.gov.au

Internet

This document is available online at: www.obpr.gov.au

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Acknowledgements

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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
ACT	Australian Capital Territory
AFMA	Australian Fisheries Management Authority
AGD	Attorney-General's Department
AHWMC	Australian Health Workforce Ministerial Council
APC	Australian Packaging Covenant
APEC	Asia-Pacific Economic Cooperation
APRA	Australian Prudential Regulation Authority
APVMA	Australian Pesticides and Veterinary Medicines Authority
ARPANSA	Australian Radiation Protection and Nuclear Safety Agency
ASIC	Australian Securities and Investments Commission
ATC	Australian Transport Council
AUASB	Auditing and Assurances Standards Board
BCC	Business Cost Calculator
BIA	Business Impact Assessment
BRCWG	Business Regulation and Competition Working Group
CBA	cost benefit analysis
CDSR	Canadian Cabinet Government Directive on Streamlining Regulation
CEO	Chief Executive Officer
CMC	Cultural Ministers Council
COAG	Council of Australian Governments
COAG Guide	<i>COAG Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies</i>
DAFF	Department of Agriculture, Fisheries and Forestry
DBCDE	Department of Broadband, Communications and the Digital Economy
DCCEE	Department of Climate Change and Energy Efficiency
DDA	Disability Discrimination Act 1992
DEEWR	Department of Education, Employment and Workplace Relations
Defence	Department of Defence
DEWHA	Department of the Environment, Water, Heritage and the Arts
DFAT	Department of Foreign Affairs and Trade

DHA	Department of Health and Ageing
DIAC	Department of Immigration and Citizenship
DIISR	Department of Innovation, Industry, Science and Research
DITRDLG	Department of Infrastructure, Transport, Regional Development and Local Government
ERA	Economic Regulation Authority (WA)
ESC	Electronic Stability Control
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
Finance	Department of Finance and Deregulation
FSANZ	Food Standards Australia New Zealand
IPART	Independent Pricing and Regulatory Tribunal
LRP	Legislation Review Program (Tasmania)
MBS	Medicare Benefits Schedule
MCC	Ministerial Council for Corporations
MCCA	Ministerial Council on Consumer Affairs
MCE	Ministerial Council on Energy
MCG	Ministerial Council on Gambling
MEPS	Minimum Energy Performance Standards
NEPC	National Environment Protection Council
NRMMC	National Resource Management Ministerial Council
NSSBs	National standard-setting bodies
NSW	New South Wales
NZ	New Zealand
OBPR	Office of Best Practice Regulation
OECD	Organisation for Economic Cooperation and Development
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
PBT	public benefit test
PHIAC	Private Health Insurance Administration Council
PIA	Preliminary Impact Assessment
PRIS	Preliminary Regulation Impact Statement
QA	quality assurance
Qld	Queensland
QORE	Queensland Office for Regulatory Efficiency
RAS	Regulatory Assessment Statement

RBA	Reserve Bank of Australia
RET	renewable energy target
RGU	Regulatory Gatekeeping Unit
RIA	regulatory impact analysis
RIAS	Regulatory Impact Analysis Statement
RIAT	Regulatory Impact Analysis Team (New Zealand)
RIS	Regulation Impact Statement
RMF	Regulation Making Framework
RPC	Regulatory Principles Checklist
RPU	Regulation Policy Unit (ACT)
RRB	Reducing the Regulatory Burden
RTR	Red Tape Reduction Program
RTRG	Red Tape Reduction Group (WA)
SBMC	Small Business Ministerial Council
SCM	Standard Cost Model
SCOA	Standard Chart of Accounts
SGU	Small Generation Unit
TTMRA	Trans-Tasman Mutual Recognition Arrangement
VCEC	Victorian Competition and Efficiency Commission
VGR	Victorian Guide to Regulation
WA	Western Australia
WRMC	Workplace Relations Ministers' Council

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 reports compliance on its website, Best Practice Regulation Updates (ris.finance.gov.au), meaning that non-compliance is now effectively reported 'live'. Regulation impact statements as well as other regulatory policy material will be published on the website. The OBPR will continue to prepare an annual report on compliance with best practice regulation requirements.

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. In particular, the OBPR appreciates the assistance provided by departments and agencies in the drafting of the new Best Practice Regulation Handbook.

Jason McNamara
Executive Director
Office of Best Practice Regulation

November 2010

one

Improvements in the best practice regulation process and major regulatory initiatives



one

one

Improvements in the best practice regulation process and major regulatory initiatives

The Australian Government's Regulatory Impact Analysis (RIA) requirements, together with the Council of Australian Governments (COAG) requirements, constitute a rigorous system for assessing the impact of regulatory proposals. They aim to promote well designed regulation, as well as transparency in decision-making and consultation with stakeholders.

There were two major events in relation to RIA requirements during 2009-10. First, the Organisation for Economic Co-operation and Development (OECD) released a review of Australia's regulatory reforms which included their views on the RIA requirements. Second, the Australian Government announced changes to its RIA arrangements on 17 March 2010, and these changes were reflected in the updated Best Practice Regulation Handbook.

In February 2010, the OECD released a report on Australia's regulatory system titled *Australia, Towards a Seamless National Economy*.

Overall, the OECD report endorsed Australia's regulatory management framework. In particular, the OECD reported that 'Australia owes much of its current economic resilience to its past efforts in terms of regulatory reform, market openness as well as strengthened competition over domestic markets.'¹

1.1 Revised Australian Government RIA arrangements

Although overall compliance remains high, compliance rates have fallen year on year from 90 per cent in 2007-08 to 84 per cent in 2009-10. To address this trend, the Government approved changes to the RIA process that took effect from 1 July 2010.

Some suggestions for improvement were made by external parties. The OECD suggested strengthening the RIA system, most notably by improved consultation. In its Annual Review of Regulatory Burdens on Business, the Productivity Commission proposed a strengthening of the best practice regulation requirements and made a number of key recommendations, some of which have been incorporated into the new regime. The Business Council of Australia also raised concerns about the need for meaningful consultation on the proposals with the most significant impacts on business.

The changes create a more flexible system to better complement decision-making processes and better inform future Government decisions. An ongoing challenge for the Office of Best Practice Regulation (OBPR) will be to encourage a culture of compliance with the RIA requirements among departments and agencies.

¹ OECD 2010a, p.67.

For a Regulation Impact Statement (RIS) to add value, it is important that the decision-maker receives sufficient information expressed in a concise and clear manner in order to increase the likelihood that the option chosen is the best solution to the problem. Similarly, quality RISs increase the transparency of Government decision-making as stakeholders can gain a clearer understanding of why a particular decision was made.

The new system also includes changes designed to improve accountability. The most significant change to the RIA arrangements in this regard is the online RIS register – a single purpose site where RISs will be published, making them easily accessible to the public. Finally, the revised RIA arrangements also aim to improve the quality of consultation by departments and agencies with the relevant stakeholders when forming a policy proposal.

Summary of the important changes to RIA arrangements

Significant changes to regulatory impact analysis requirements during 2009-10 were as follows:

- The OBPR now maintains an online RIS register (see www.ris.finance.gov.au). This measure is designed to enhance transparency with all RISs published on the website shortly after a decision is publicly announced. In addition, the register will identify those proposals which were non-compliant with the Australian Government RIA requirements as well as those which received an 'exceptional circumstances' exemption from the Prime Minister.
- COAG agreed on 16 August 2010 that COAG RISs will also be published on the new online RIS register.
- The online RIS register also provides a blog facility, which allows the public to comment on RISs posted on the register. The OBPR moderates this facility for offensive content, but does not moderate debate. This feature will enable further engagement with the public on regulatory issues.
- Departments and agencies can no longer conduct a Preliminary Assessment and self assess whether a RIS is required. Instead, the OBPR will decide whether a RIS is necessary.
- The threshold for when a RIS is required has been lowered – 'A RIS will be required for all regulatory proposals that have an impact on business or the not-for-profit sector unless the proposal is of a minor or machinery nature'. This means that proposals that previously required a business cost calculator (BCC) report now require a RIS.
- The sponsoring Minister can now write to the Prime Minister or the Cabinet Secretary seeking agreement for the Cabinet (or a Cabinet Committee) to undertake initial discussions on a regulatory proposal without being required to write a RIS, or direct a department or agency as to which options it would like to see analysed in a RIS. This change will assist in making RISs more concise and of more relevance to decision-makers.
- Formal certification of RISs has been introduced. The Secretary/Deputy Secretary from the Department or the Head/Deputy Head from the Agency will be required to certify a RIS before final assessment by the OBPR.
- The stated preferred option in a RIS no longer has to demonstrate the highest net benefit or that benefits will outweigh the costs. Instead, the RIS is required to include a comprehensive analysis of the costs and benefits of all competing options. The reasoning behind the choice of the preferred option and any further recommendations made by the RIS is required to be transparent and consistent with this analysis.

- A one page summary of the RIS will accompany the RIS when presented to the decision-maker. The 'one pager' will contain the key information conveyed by the RIS, including the options considered, key impacts and the preferred option. For proposals where Cabinet is the decision-maker the one pager will be produced by the OBPR; in all other cases, the document will be produced by the department or agency subject to approval by the OBPR.
- A RIS on a specific election commitment will now focus on ways that the commitment can be implemented, rather than examining alternative options.
- A RIS can now be amended prior to publication to incorporate the final decision where this option was not considered in the RIS.

The OBPR conducted significant consultation on the changes to the RIA arrangements. Parties consulted included:

- industry groups;
- representatives from the not-for-profit sector;
- a Steering Group of Deputy Secretaries from departments and agencies;
- consulting firms;
- Best Practice Regulation Coordinators;
- State and Territory Governments; and
- the New Zealand Treasury.

The revised Handbook

An updated version of the Best Practice Regulation Handbook, which formalises the changes mentioned above, was released in June 2010. The changes to the RIA 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 aspects of the system. The clarity of the wording in the Handbook was improved to assist those utilising the Handbook.

1.2 Office of Best Practice Regulation activity in 2009-10

During 2009-10 the OBPR received a total of 1053 queries related to new regulatory proposals. Of these, 998 related to the Australian Government regulatory requirements and 55 related to the COAG requirements. Further regulatory impact analysis was required for 122 Australian Government proposals and 34 COAG proposals. Additional information was sought for 31 Australian Government proposals and four COAG proposals. Overall compliance during 2009-10 for Australian Government proposals was 84 per cent, which was a slight decrease from the compliance rate in 2008-09 of 85 per cent. Overall compliance during 2009-10 for COAG proposals was 71 per cent at the consultation stage and 78 per cent at the decision-making stage, well down from 2008-09 compliance levels of 88 per cent and 96 per cent.

Regulatory best practice training

During 2009-10 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 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 regulatory impact analysis requirements as well as the COAG best practice 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 RIS, and introduction to cost benefit analysis and the Business Cost Calculator. COAG training is targeted to the needs of Ministerial Councils and Standard Setting Bodies. 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 actively involved in regulatory activity.

The OBPR presented training to 224 officers during 2009-10, a reduction from 519 in 2008-09. There were fewer training sessions in the second half of 2009-10 as revised processes were imminent. Additional training sessions are occurring in the first half of 2010-11 to ensure that officials are familiar with the revised requirements.

Training in 2009-10 was 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 84 per cent of the 224 participants with 89 per cent rating the training as 'good' to 'excellent' on a four scale rating system. Table 1.1 provides an overview of the OBPR's training activity for 2009-10.

Table 1.1 RIA training provided in 2009-10

Course	Course length	Courses provided	Total attendance
Comprehensive RIA training seminar	4 hours	6	77
Overview of the Australian Government RIA requirements and RIS	2 hours	6	104
Overview of COAG requirements	2 hours	1	14
Overview of COAG requirements and RIS	4 hours	1	29
Totals		14	224

Source: OBPR.

Best Practice Regulation Coordinators network

The Best Practice Regulation Coordinators network, established in 2007, continues to play a valuable role in implementing the Australian Government's best practice regulation process. Each Australian Government department and agency responsible for making regulation has appointed a senior manager to be a Best Practice Regulation Coordinator. The role of the Coordinator varies across departments and agencies, with many taking an advocacy role to encourage and ensure compliance with the best practice regulation requirements. The Coordinators often act as a first point of contact for policy officers undertaking regulatory impact analysis. They advise the policy officers on when and how to complete a preliminary assessment form and when to contact the OBPR for advice on the need to prepare a RIS or assess regulatory compliance costs.

In addition Coordinators are responsible for:

- providing six-monthly reports to the OBPR on compliance with the best practice regulation requirements;
- collecting preliminary assessments and recording agency self-assessments (until 30 June 2010); and
- organising training on the best practice regulation requirements for their department or agency.

During 2009-10, two meetings of coordinators were held to provide an opportunity to discuss regulatory impact analysis issues.

The OBPR consulted with coordinators during 2009-10 in relation to the updated Australian Government *Best Practice Regulation Handbook*. In May 2010, the OBPR met with Coordinators, to discuss draft changes to the Handbook as well as implementation issues. Comments provided at this meeting were used to finalise the new Handbook.

During 2009-10, the OBPR established the COAG Best Practice Regulation Coordinators Network. While the Network did not formally meet during the period, guidance was provided to coordinators on an as-needs basis and COAG best practice regulation training requirements were conducted by the OBPR with the Network used to advise officials of training opportunities. The first meeting of the COAG Best Practice Regulation Coordinators Network is planned for late 2010.

States and Territories

All Australian state and territory governments have regulatory impact analysis processes in place and RISs continue to be the most common tool to improve regulatory quality. Regulatory impact analysis units in each state and territory administer arrangements.

The OBPR fosters the network of regulatory impact analysis units from each state and territory and New Zealand. Each year the units meet to share experiences and lessons with counterparts in other jurisdictions. On 1 December 2009, the units held their annual meeting in Sydney.

Details about recent developments in the states and territories are provided in Appendix B. Some significant developments in state and territory regulatory processes during 2009-10 include:

- the revision of New South Wales Government's *Guide to Better Regulation*;
- the introduction into the Victorian Parliament of a bill to broaden the RIS requirements to delegated legislative instruments;
- the introduction by the Queensland Government of a new Regulatory Assessment Statement system;
- the implementation of the Western Australian Government's new regulation-making and review processes; and
- the revision of the South Australian Government's *Better Regulation Handbook*.

1.3 Major regulatory initiatives of the Australian Government

Disability (Access to Premises - Buildings) Standards 2010

The Premises Standards support the *Disability Discrimination Act 1992* (DDA) by providing a nationally applicable set of provisions that detail what must be done to provide for non-discriminatory access to public buildings for people with a disability. The Premises Standards establish building standards that comply with the DDA, thereby providing greater certainty for the building industry. Major provisions of the proposed Premises Standards include requirements for accessible entrances, accessible sanitary facilities, provision of lift access to upper storeys, provision of passing and turning spaces in building corridors, improving provision of wheelchair seating spaces and hearing augmentation devices in auditoria, and provision of access to swimming pools with a perimeter of over 40 m in length.

Following a 2001 request to the Australian Building Codes Board (ABCB) to develop technical requirements, an initial proposal was presented to the then Government in 2005. A decision was deferred until after cost benefit analysis was undertaken, which was first presented in early 2006. The decision-making stage RIS was presented to the Government in late 2008, following the resolution of a number of matters. The Attorney-General referred the draft standards to the House of Representatives Standing Committee on Legal and Constitutional Affairs in December 2008, for its review and inquiry. The Committee reported to Parliament on 15 June 2009, after which the Government developed a response and made a final decision. The final standards were tabled on 15 March 2010.

Vertical and horizontal structural separation arrangements for Telstra

The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 introduced a range of measures to improve competition in telecommunications markets by requiring Telstra to functionally separate if it does not voluntarily structurally separate its wholesale and retail businesses.

Telstra could voluntarily choose to structurally separate by creating a new company to which it transfers its fixed-line assets, progressively migrating its fixed-line traffic to the National Broadband Network over an agreed period of time and under set regulatory arrangements, or by selling or ceasing to use its fixed-line assets on an agreed basis.

Functional separation would require Telstra to:

- conduct its network operations and wholesale functions at arm's length from the rest of Telstra;
- provide the same information and access to regulated services on equivalent price and non price terms to its retail business and non-Telstra wholesale customers; and
- put in place and maintain strong internal governance structures that provide transparency for the regulator and access seekers that equivalence arrangements are effective.

The Bill also prevents Telstra from acquiring specified bands of spectrum which it could use for advanced wireless broadband services unless it structurally separates and disposes its hybrid fibre coaxial cable network and its interests in Foxtel. The Bill allows the Minister for Broadband, Communications and the Digital Economy to remove the latter requirements if satisfied that Telstra's structural separation undertaking is sufficient to address concerns about the degree of Telstra's power in telecommunications markets.

The Prime Minister granted 'exceptional circumstances' to these measures and a post-implementation review will be required within one to two years of the legislation entering into force.

Paid Parental Leave Bill 2010

The Department of Education, Employment and Workplace Relations and the Department of Families, Housing, Community Services and Indigenous Affairs were jointly responsible for a RIS on a proposal to introduce a Government-funded Paid Parental Leave Scheme. Under the scheme, the primary carer of a child born or adopted on or after 1 January 2011 will receive parental leave pay of up to 18 weeks at the national minimum wage if they can satisfy work, income and residency tests. The primary carer will generally be the mother of the child, but may be the other parent, or another carer, in exceptional circumstances. An adequate RIS was prepared at the decision-making stage and was tabled with the Paid Parental Leave Bill 2010.

Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010

The Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010 provides for amendments resulting from the agreed negotiations of the Fifth Community Pharmacy Agreement. The Agreement sets out remuneration arrangements for dispensing PBS medicines and provides for the retention of pharmacy location rules. The Agreement operates for a period of five years and is the result of agreed negotiations between the Minister for Health and Ageing and the Pharmacy Guild of Australia.

The pharmacy location rules prescribe location-based criteria that must be satisfied in order to establish a new pharmacy or relocate an existing pharmacy. A RIS was required to be prepared for the renewal or retention of pharmacy location rules as these could entail a restriction on competition. An adequate RIS was not prepared at the decision-making stage. A post-implementation review will be required within 1-2 years of implementation of the rules.

Corporate Reporting Reform

The Corporate Reporting Reform which introduced a three-tiered differential reporting framework for companies limited by guarantee, removed the requirement to prepare parent-entity accounts and replaced the profits test with a solvency-type test for payment of dividends. These reforms were aimed at reducing red-tape, improving accountability and enhancing transparency of disclosures and refining the financial reporting framework. The Government approved the suite of regulations on the 29 June 2010. An adequate RIS was prepared at the decision-making stage.

1.4 Major regulatory initiatives – Ministerial Councils

During 2009-10, the National Environment Protection Council (NEPC) was responsible for two highly significant proposals, the National Waste Policy and the Australian Packaging Covenant.

National Waste Policy

The National Waste Policy – which covers all gaseous, liquid and solid wastes in the municipal, commercial and industrial, construction and demolition waste streams – is in response to the continued growth of waste relative to recycling. The Policy was agreed by Australian, state and territory environment ministers on 5 November 2009. The National Waste Policy sets Australia's waste management and resource recovery directions to 2020, and outlines six key areas of coordinated action that will be implemented within each jurisdiction.

The NEPC did not prepare an adequate RIS at the consultation stage, but did so at the decision-making stage for the National Waste Policy. The decision-making RIS was made public.

Australian Packaging Covenant

The Australian Packaging Covenant (APC) replaced the National Packaging Covenant from 1 July 2010. The APC is an agreement between companies in the supply chain and all levels of government to reduce the environmental impacts of consumer packaging. Participation is voluntary, but companies that choose not to become signatories or fail to comply with the APC will be regulated. The National Environment Protection (Used Packaging Materials) Measure has been varied to align it with the new APC.

The NEPC prepared an adequate RIS for the Australian Packaging Covenant at both the consultation and decision-making stages, and the decision-making RIS was made public.

Energy Efficiency Requirements for Residential Buildings

The ABCB prepared adequate RISs at both the consultation and decision-making stages for a proposal to revise the Energy Efficiency Requirements of the Building Code of Australia for Residential Buildings. The decision-making RIS was made public.

The proposed amendments are designed to improve the thermal performance of a dwelling (an increase in energy efficiency requirements for new residential buildings from 5 stars to 6 stars), the energy efficiency of water heating and the energy efficiency of lighting. The proposed amendments were agreed by the Building Ministers' Forum and announced on 22 January 2010.

two
Aggregate compliance



two

two

Aggregate compliance

Both the Australian Government and the Council of Australian Governments (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 the compliance of Australian Government departments and agencies and COAG, ministerial councils and national standard-setting bodies (NSSBs) with the best practice regulation requirements.

2.1 Role of the Office of Best Practice Regulation

The Office of Best Practice Regulation (OBPR) administers the Australian Government and COAG best practice regulation requirements. It has roles to assist departments and agencies to meet the requirements, to improve the quality of regulatory analysis, and to monitor and report 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 practice has been followed, in accordance with the processes and requirements outlined in the Australian Government's *Best Practice Regulation Handbook* or in the COAG *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*.

The OBPR monitors government decision-making processes and seeks to ensure that all regulatory decisions are supported by an appropriate level of impact analysis.

2.2 Australian Government's best practice requirements

As discussed in Chapter 1, the Australian Government's current best practice regulation requirements came into effect on 1 July 2010. This publication reports on compliance by departments and agencies with the best practice regulation requirements in 2009-10, and as such refers to the requirements that were in place until 30 June 2010.

The OBPR assesses whether:

- a Regulation Impact Statement (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 tabled in the Parliament or otherwise made public;
- a report assessing business compliance costs (a Business Cost Calculator (BCC) report or approved equivalent) was prepared to inform the decision-maker at the policy approval stage (in instances where medium level compliance costs are involved but other impacts are minor);

- the report assessing business compliance costs was tabled in the Parliament or otherwise made public; and
- ‘exceptional circumstances’ were granted by the Prime Minister at the decision-making stage and a post-implementation review is required within one to two years from the implementation date.

Adequacy criteria for Regulation Impact Statements

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 *Best Practice Regulation Handbook* to assess whether each element of a RIS is adequate (see Box 2.1).

Box 2.1 RIS adequacy criteria

1. Problem

The RIS should clearly identify the fundamental problems that need to be addressed. This part of the analysis must:

- present evidence on the magnitude (scale and scope) of the problem;
- document relevant existing regulation at all levels of government, and demonstrate that it is not adequately addressing the problem;
- if the problem involves risk, identify the relevant risks and explain why it may be appropriate for government to act to reduce them; and
- present a clear case for considering that additional government action may be warranted, taking into account existing regulation and any risk issues.

2. Objectives

The RIS should explain the objectives, outcomes, goals or targets of government action.

3. Options

The RIS should identify a range of viable options including, as appropriate, non-regulatory, self regulatory and co-regulatory options. If only one option (apart from the status quo) is considered feasible, the RIS should provide sound justification for considering only two options.

4. Impact analysis

The RIS should provide an adequate analysis of the costs and benefits of the feasible options and:

- identify the groups in the community likely to be affected by each option and specify significant economic, social and environmental impacts on them;
- assess the costs and benefits of all the options, supported by an acceptable level of evidence, where appropriate through a formal cost-benefit analysis;
- assess the impacts on business, particularly small business, and quantify (using the BCC or equivalent approved by the OBPR) the effect of each option on business compliance costs;

- quantify other significant costs and benefits to an appropriate extent, taking into account the significance of the proposal and its impact on stakeholders;
- if an objective of regulation is to reduce risk, analyse the extent to which each option would reduce the relevant risk, and the costs and benefits involved;
- recognise the effect of the options on individuals and the cumulative burden on business;
- document any relevant international standards, and if the proposed regulation differs from them, identify the implications and justify the variations;
- if the proposed regulation would maintain or establish restrictions on competition, demonstrate that the Government's objective can be achieved only by restricting competition; and
- provide evidence to support key assumptions and clearly identify any gaps in data.

5. Consultation

The RIS should:

- outline the consultation objective;
- describe how consultation was conducted (including the stages of the policy development process at which consultation was undertaken, the timeframes given, and the methods of consultation);
- articulate the views of those consulted, including substantial disagreements;
- outline how those views were taken into consideration; and
- if full consultation was not undertaken, provide a reasonable explanation.

The consultation process reported in the RIS should conform with the Government's best practice principles and policy on consultation.

6. Conclusion and recommended option

The RIS should provide a clear statement as to which is the preferred option and why.

The RIS should demonstrate that:

- the benefits of the proposal to the community outweigh the costs; and
- the preferred option has the greatest net benefit for the community, taking into account all the impacts.

7. Implementation and review

The RIS should provide information on how the preferred option would be implemented, monitored and reviewed. Interactions between the preferred option and existing regulation of the sector should be clearly identified.

Source: *Best Practice Regulation Handbook* p. 54.

2.3 Compliance with the Australian Government requirements

Compliance with the Australian Government best practice regulation requirements is measured in two ways: by compliance with the requirement to prepare and publish adequate RISs and BCC reports; and by publication of Annual Regulatory Plans.

Aggregate compliance scores

For regulatory proposals tabled in 2009-10, of the 79 RISs required at the decision-making stage the Prime Minister granted 'exceptional circumstances' in four cases. Consequently, for the 75 decisions requiring a RIS, 63 RISs were prepared and assessed as adequate — giving a compliance rate of 84 per cent. A compliance rate of 85 per cent was achieved in 2008-09 (see Table 2.1).

For the 74 RISs required at the transparency stage, 59 were published for a compliance rate of 80 per cent in 2009-10, which is down from 84 per cent in 2008-09.

Two BCC reports were required in 2009-10. Both were prepared and certified by the OBPR as adequate but one was not published.

Table 2.1 RIA compliance 2007-08 to 2009-10

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

^aRatio of adequate RISs and BCC reports to the total number of RISs and BCC reports required. ^bThe number of RISs required at the transparency stage is lower than at 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.

Source: OBPR.

The Prime Minister granted 'exceptional circumstances' from the regulatory impact analysis (RIA) requirements for four regulatory proposals (see Table 2.2). For these matters departments and agencies have complied with the requirements but will need to commence post-implementation reviews within one to two years of the regulations being implemented.

Table 2.2 Proposals for which exceptional circumstances were granted in 2009-10 post-implementation reviews required

Agency	Regulatory proposal	Date tabled
DBCDE	Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 Structural Separation arrangements for Telstra	15 September 2009
DBCDE	Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010 Requires fibre-to-the-premises infrastructure to be installed in new developments that receive planning approval from 1 July 2010	18 March 2010
Treasury	Tax Laws Amendment (2009 Budget Measures No. 2) Bill and Income Tax (TFN Withholding Taxes (ESS)) Bill 2009 Prevents high income individuals from offsetting deductions from non-commercial business activities against their salary, wage or other income	21 October 2009
Treasury	Tax Laws Amendment (2009 Budget Measures No. 2) Bill and Income Tax (TFN Withholding Taxes (ESS)) Bill 2009 Altering the taxation of employee share schemes	21 October 2009

Source: OBPR.

Preliminary assessments

Departments and agencies conduct a preliminary assessment to determine whether a RIS or BCC report or equivalent is required. In total, 823 preliminary assessments were undertaken in 2009-10, which confirmed that no further regulatory impact analysis in either the form of a RIS or BCC report was required.

Non-compliance

In the absence of 'exceptional circumstances' being granted by the Prime Minister, a regulatory proposal with medium compliance costs or significant impacts on business and individuals or the economy, should not proceed to Cabinet or another decision-maker unless it has complied with the regulatory impact analysis requirements. Post-implementation reviews are required when a proposal proceeds to the decision-maker without an adequate RIS or report assessing business compliance costs. These reviews are required within one to two years from the date of implementation.

In 2009-10, 12 proposals proceeded to the decision-maker without the support of an adequate RIS (see Table 2.3).

Further details of non-compliance by regulatory proposal can be found at Appendix A.

Table 2.3 Non-compliance by proposal, at decision 2009-10

Agency	Regulatory proposal	Date tabled
AASB	<p>Reducing the Financial Reporting Burden: a second tier of requirements for general purpose financial statements</p> <p>Provides a second tier of requirements for general purpose financial statements to reduce the financial reporting burden</p>	30 June 2010
ACMA	<p>Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)</p> <p>Sets out rules that apply to service providers in relation to the supply of premium SMS and MMS services</p>	11 May 2010
AGD	<p>Marriage Amendment Regulations 2009 (No.1) and Marriage Amendment Regulations 2009 (No.2)</p> <p>Amends the Australian Marriage Celebrants Program to increase minimum training and registration requirements</p>	17 August 2009 14 December 2009
DBCDE	<p>Australian Communications and Media Authority (Development of Technical Standards for Domestic Digital Television Reception Equipment) Direction No. 1 of 2009</p> <p>Requires ACMA to determine a technical standard which ensures that domestic digital broadcasting or datacasting equipment has a parental lock capability</p>	16 November 2009
DCCEE	<p>Renewable Energy (Electricity) Amendment Regulations 2010 (No. 3)</p> <p>Enhances the safety and performance of installations of Small Generation Units (SGUs) under the Renewable Energy Target (RET)</p>	21 June 2010
DEEWR/ DIAC	<p>Migration Amendment Regulations 2009 (No. 15)</p> <p>Amends the job skills test requirements for onshore applicants for permanent visas</p>	2 February 2010
DEEWR/ Finance	<p>Australian Government Procurement Statement</p> <p>Requires government contractors and suppliers in TCF industry to be accredited or seek accreditation with the Homeworkers' Code of Practice</p>	Announced on 28 July 2009
DHA	<p>Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010</p> <p>Retention of Pharmacy Location Rules</p>	12 May 2010

DITRDG	Aviation Transport Security Amendment Regulations 2009 (No. 3) Introduces a comprehensive regime for the inspection of all airport staff, goods and vehicles entering and leaving airside at Australian airports	11 November 2009
Treasury	Foreign Acquisitions and Takeovers Amendment Bill 2009 Provides that any foreign investment irrespective of the way it is structured is treated equally under the Foreign Acquisitions and Takeovers Act	20 August 2009
Treasury	Excise Tariff Amendment (Tobacco) Bill 2010 and Customs Tariff Amendment (Tobacco) Bill 2010 Increases the excise and excise-equivalent customs duty rate applying to tobacco, cigars, cigarettes and snuff by 25 per cent	12 May 2010
Treasury	Foreign Acquisitions and Takeovers Regulations 2010 (No. 2) Removes an exemption that applied to temporary residents buying residential real estate in Australia	15 June 2010

Source: OBPR.

Compliance by type of proposal

For the purposes of this report, regulation has been grouped into the following four categories: primary legislation (bills); delegated legislation (legislative instruments and non-legislative instruments); quasi-regulation; and treaties.

Primary legislation is explicit government regulation introduced via bills in Parliament. Delegated legislation comprises all rules or instruments that have the force of law that are made by an authority to which Parliament has delegated part of its legislative power. Such rules or instruments are taken to be regulatory if they determine or alter the law rather than apply it in a particular case.

Quasi-regulation comprises a wide range of rules or arrangements where governments influence businesses to comply but which do not form part of explicit government regulation: for example, a government-endorsed industry code of practice.

Treaties between the Australian Government and overseas governments that are likely to involve domestic regulation are also subject to the Government's best practice regulation requirements. Treaties require RISs to be prepared at two decision-making stages — for entry into negotiations, and for the signing of a treaty.

Compliance with the Government's best practice regulation requirements by type of regulation is shown in Table 2.4. At the decision-making stage, the compliance rate for bills requiring BCC reports was 100 per cent (1/1) and for RISs 86 per cent (19/22); the compliance rate for delegated legislation requiring RISs was 81 per cent (38/47); the compliance rate for BCC reports for quasi-regulation was 100 per cent (1/1); and for treaties the RIS compliance rate was 100 per cent (6/6).

Further information on compliance by portfolio (Australian Government department or agency) is provided in Chapter 3. Information on compliance by proposal (type of regulation) is provided in Appendix A.

Table 2.4 RIA compliance by type of regulation at decision and transparency stage 2009-10^a

		Primary legislation	Delegated legislation	Quasi-regulation	Treaties	Total
Reports on compliance costs						
decision	ratio	1/1	..	1/1	..	2/2
	%	100	..	100	..	100
transparency	ratio	1/1	..	0/1	..	1/2
	%	100	..	50	..	50
Regulation Impact Statements						
decision	ratio	19/22	38/47	..	6/6	63/75
	%	86	81	..	100	84
transparency	ratio	17/23	37/46	..	5/5	59/74
	%	74	80	..	100	80
Exceptional circumstances	no.	4				4

.. Not required. ^aProposals granted exceptional circumstances not included.

Source: OBPR.

Publication of Annual Regulatory Plans

Annual Regulatory Plans are designed to provide business and the community 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 consultation opportunities and an expected timetable.

Annual Regulatory Plans are published on the website of each agency and the OBPR provides links to the plans on its website. From 2010-11, the OBPR will also publish the plans on its website.

In 2009-10, 80 per cent of departments and agencies prepared Annual Regulatory Plans and published them on their website. A list of departments and agencies which published Annual Regulatory Plans is at Table 3.2.

2.4 COAG's best practice requirements

Regulation making also occurs at a national or inter-jurisdictional level by some 40 ministerial councils and standard-setting bodies. In 1995, COAG agreed on a set of principles and guidelines for such activities. In 2007, COAG strengthened these requirements and released the *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (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, for 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 are adequate and commensurate with the potential economic and social impacts of the proposal; and
- the RIS demonstrates that the preferred option results in the greatest net benefit for the community.

2.5 Compliance with the COAG requirements

The OBPR identified 41 decisions that required the preparation of a RIS under the COAG requirements in 2009-10 (see Chapter 4 for more detail).

At the consultation stage, 29 adequate RISs were prepared resulting in a compliance rate of 71 per cent, compared with 88 percent in 2008-09 (see Table 2.5). At the decision-making stage, 32 adequate RISs were prepared resulting in an overall compliance rate of 78 per cent, compared with 96 per cent in 2008-09.

Table 2.5 Compliance with the COAG RIS requirements, 2005-06 to 2009-10^a

	2005-06		2006-07		2007-08		2008-09 ^b		2009-10	
	ratio	%	ratio	%	ratio	%	ratio	%	ratio	%
Consultation stage	30/34	88	29/33	88	26/27	96	22/25	88	29/41	71
Decision-making stage	26/34	76	31/33	94	25/27	93	24/25	96	32/41	78

^aPrevious years (2005-06 to 2007-08) reported on RISs required for decisions made for the period 1 April to 31 March. ^b2008-09 was a transitional period and reports on RISs required for decisions made during the period 1 April 2008 to 30 June 2009.

Source: OBPR.

Non-compliance

COAG's best practice regulation requirements were not met in 12 cases at the consultation stage and in nine cases at the decision-making stage (see Table 2.6). Further commentary on these proposals is provided in Chapter 4.

Table 2.6 COAG: RIS non-compliance in 2009-10

Regulatory decision	Ministerial Council	Date of Decision	Compliant at consultation	Compliant at decision	Final RIS published
Decision to Implement the Health Practitioner Regulation National Law	Australian Health Workforce Ministerial Council	27 August 2009	No	Yes	Yes
Implementation of National Standards for Taxi Drivers	Australian Transport Council	6 November 2009	No	No	No
Trans-Tasman Mutual Recognition Arrangement (TTMRA) – Permanent Exemptions	COAG	Out-of-session	No	No	No
Australian Quality Training Framework – Amendments	COAG	7 December 2009	No	No	No
Indigenous Australian Art Commercial Code of Conduct	Cultural Ministers Council	16 October 2009	No	No	No
Australian Consumer Law – A National Consumer Guarantee Law	Ministerial Council on Consumer Affairs	4 December 2009	No	Yes	Yes
Agreement on principles for adoption on a national basis in relation to corporate liability and the circumstances in which directors may also be liable for corporate fault	Ministerial Council for Corporations	6 November 2009	No	No	No

Energy Bill Benchmarking – Residential Electricity	Ministerial Council on Energy	9 June 2010	Yes	Yes	No
Restriction on the advertising of free bets	Ministerial Council on Gambling	10 July 2009	No	No	No
National principles for the conduct of responsible gaming machine environments	Ministerial Council on Gambling	10 July 2009	No	No	No
National regulatory and legal framework to prohibit provision of commercial credit for gambling by third parties in gaming venues	Ministerial Council on Gambling	10 July 2009	No	No	No
National Waste Policy	National Environment Protection Council	5 November 2009	No	Yes	Yes
Retail tenancy disclosure statement – National core model	Small Business Ministerial Council	29 July 2009	No	No	No

Source: OBPR.

three
Compliance by portfolio



three

three

Compliance by portfolio

Compliance with the Australian Government's best practice regulation requirements for proposals introduced during 2009-10 is reported in this Chapter by portfolio.

In 2009-10, 18 departments or agencies were required to prepare Regulation Impact Statements (RISs) or Business Cost Calculator (BCC) reports. Of these, 10 departments and agencies complied with the requirements and eight did not comply in full. In addition, there were three joint proposals for which RISs were required, of which only one complied with the requirements. Three departments and agencies had no regulatory activity in 2009-10, but from previous years have obligations to complete post-implementation reviews.

The Office of Best Practice Regulation (OBPR) conducts a comprehensive compliance checking process whereby all regulatory proposals that have been made or tabled (via ComLaw or agency websites) are examined to ensure that the regulation-making requirements were met. Departments and agencies assist the OBPR with this process by providing information twice yearly on their compliance with the requirements. Departments and agencies are invited to comment on the OBPR's assessment of their compliance results prior to publishing the results in this report.

Compliance with the requirements at the decision-making stage is illustrated in Table 3.1. Detailed compliance results by department and agency follows. Further information on individual proposals can be found in Appendix A.

Table 3.1 RIA compliance by department or agency 2009-10
(decision-making stage)

Department/ Agency	Business Cost Calculator reports		Regulation Impact Statements		Exceptional circumstances
	ratio	%	ratio ^a	%	
AASB	0/1	0	
ACCC	4/4	100	
ACMA	1/2	50	
AFMA	1/1	100	
AGD	1/2	50	
APRA	2/2	100	
ASIC	11/11	100	
AUASB	1/1	100	
DAFF	7/7	100	
DBCDE	7/8	87.5	2
DCCEE	1/2	50	
DEEWR	2/2	100	
DHA	2/2	100	1/2	50	
DIISR	1/1	100	
DITRD LG	8/9	89	
PHIAC	1/1	100	
RBA	1/1	100	
Treasury	12/15	80	2
DIAC / DEEWR	0/1	0	
Finance / DEEWR	0/1	0	
FaHCSIA / DEEWR	1/1	100	
Total	2/2	100	63/75	84	4

..Not required. ^aRatio of adequate RISs required, excluding 'exceptional circumstances'.

Annual Regulatory Plans

At the beginning of 2009-10, departments and agencies responsible for regulatory changes that may have a significant impact on business were required to prepare an Annual Regulatory Plan and publish it on their website. Table 3.2 lists the departments and agencies that were required to publish an Annual Regulatory Plan and whether one was published.

Annual Regulatory Plans contain information about proposed regulatory activity, including a description of the issue, information about consultation opportunities and an expected timetable. In 2009-10, of the 83 regulatory proposals requiring the preparation of a RIS or BCC report, 41 proposals (49 per cent) were listed in Annual Regulatory Plans.

Table 3.2 Annual Regulatory Plans published in 2009-10, by department and agency

ARP Published
Attorney General's Department
Auditing and Assurance Standards Board
Australian Accounting Standards Board
Australian Communications and Media Authority
Australian Competition and Consumer Commission
Australian Prudential Regulation Authority
Department of Agriculture, Fisheries and Forestry
Department of Broadband, Communications and the Digital Economy
Department of Climate Change and Energy Efficiency
Department of Health and Ageing
Department of Immigration and Citizenship
Department of Infrastructure, Transport, Regional Development and Local Government
Department of Innovation, Industry, Science and Research
Private Health Insurance Administration Council
Reserve Bank of Australia
The Treasury
ARP not published
Australian Securities and Investments Commission
Department of Education, Employment and Workplace Relations
Department of Families, Housing, Community Services and Indigenous Affairs
Department of Finance and Deregulation

Source: OBPR.

In 2010-11, departments and agencies are again required to prepare and publish an Annual Regulatory Plan. In response to the *OECD 2009 Review of Regulatory Reform: Australia*, the Government has decided to strengthen the requirement for agencies to demonstrate that effective consultation has been undertaken for a RIS to be assessed as compliant. Therefore, a consultation plan must be developed and included in the annual regulatory plan of a department or agency. The OBPR will publish department and agency plans on its website, and will report on whether consultation plans were published as part of those plans in the 2010-11 *Best Practice Regulation Report*.

Detailed Compliance Results

3.1 Agriculture, Fisheries and Forestry

Within the Agriculture, Fisheries and Forestry portfolio, the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Fisheries Management Authority (AFMA) were required to undertake regulatory impact analysis in 2009-10.

DAFF complied in full with the best practice regulation requirements in 2009-10 for proposals to:

- determine the national catch allocation for Southern Bluefin Tuna for the 2009-2011 period;
- introduce new arrangements for managing dairy tariff rate quotas to the European Union and the United States of America;
- allow the use of compliance agreements to recognise formally the food safety management systems of importing businesses;
- improve the efficiency and effectiveness of the Australian Pesticides and Veterinary Medicines Authority;
- increase the laying chicken (egg) levy; and
- ratify the World Wide Trade Group Agreement on Requirements for Wine Labelling.

AFMA complied in full with the best practice regulation requirements for the Small Pelagic Fishery Management Plan.

DAFF and AFMA completed 106 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

Table 3.3 DAFF/AFMA: RIA compliance by type of regulation, 2009-10

Type of regulation	Business Cost Calculator Report		Regulation Impact Statement		
			Decision		Tabling
	Decision	Tabling	Prepared	Adequate	
Bills	1/1	1/1	1/1
Legislative instruments ^a	6/6	6/6	5/5
Treaties	1/1	1/1	1/1
Total	8/8	8/8	7/7
<i>Percentage</i>	<i>..</i>	<i>..</i>	<i>100</i>	<i>100</i>	<i>100</i>

.. Not required. ^aIn one case, RISs were required at two decision-making stages.

Source: OBPR.

3.2 Attorney-General's Department

The Attorney-General's Department (AGD) did not comply in full with the best practice regulation requirements in 2009-10.

AGD did not prepare a RIS for a proposal to increase minimum training and registration requirements for marriage celebrants at either the decision-making or tabling stages. AGD is therefore required to conduct a post-implementation review for the Marriage Amendment Regulations 2009 (No.1) and Marriage Amendment Regulations 2009 (No.2) (implemented 3 February 2010). The post-implementation review is required to commence within one to two years of the implementation of the regulations.

AGD complied in full with the RIS requirements for the Disability (Access to Premises Buildings) Standards 2010, which was developed jointly with the Australian Building Codes Board (ABCB).

The Department completed 52 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

3.3 Australian Customs and Border Protection Service

The Australian Customs and Border Protection Service (ACBPS) was not required to undertake regulatory impact analysis for proposals introduced during 2009-10.

Post-implementation reviews from previous years

The ACBPS is required to undertake a post-implementation review for the Customs (Prohibited Imports) Amendment Regulations 2008 (No. 3) implemented in 2008.

3.4 Broadband, Communications and the Digital Economy

The Department of Broadband, Communications and the Digital Economy (DBCDE) did not comply in full with the best practice regulation requirements in 2009-10.

DBCDE was responsible for 10 proposals for which RISs were required at the decision-making stage. DBCDE did not comply with the requirements in relation to one proposal. A post-implementation review is therefore required to be undertaken by DBCDE within one to two years of implementation of the Australian Communications and Media Authority (Development of Technical Standards for Domestic Digital Television Reception Equipment) Direction No. 1 of 2009.

'Exceptional circumstances' exemptions were obtained from the Prime Minister for proposals to:

- improve competition in telecommunications markets by requiring the structural or functional separation of Telstra; and
- require fibre-to-the-premises infrastructure to be installed in new developments that receive planning approval from 1 July 2010.

For the former case, DBCDE is required to commence a post-implementation review of the proposal within one to two years of the implementation of the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009. In the latter case, DBCDE was required by the Prime Minister to prepare a RIS, which was assessed as adequate by the OBPR and tabled.

DBCDE complied in full with the best practice regulation requirements for proposals to:

- reform Part XIB of the *Trade Practices Act 1974* (Competition Arrangements);
- reform Part XIC of the *Trade Practices Act 1974* (Network Access Arrangements);
- strengthen consumer protection regulations in telecommunications; and
- extend retail price controls on Telstra.

DBCDE complied with the best practice regulation requirements at the decision-making stage, but not at the transparency stage, for proposals to:

- introduce a licence area based satellite service to address digital signal deficiencies;
- reissue spectrum licences; and
- provide greater flexibility in the use of spectrum subject to spectrum licensing.

DBCDE completed 20 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

Table 3.4 DBCDE: RIA compliance by type of regulation, 2009-10

Type of regulation	Business Cost Calculator Report		Regulation Impact Statement		
			Decision		Tabling
	Decision	Tabling	Prepared	Adequate	
Bills	6/6	6/6	4/7
Legislative instruments	1/2	1/2	1/2
Total	7/8	7/8	5/9
Percentage	87.5	87.5	55

.. Not required.

Source: OBPR.

Australian Communications and Media Authority

The Australian Communications and Media Authority (ACMA) did not comply in full with the best practice regulation requirements in 2009-10.

ACMA was required to undertake regulatory impact analysis for two proposals in 2009-10 relating to the regulation of mobile premium services.

ACMA prepared a draft RIS for a proposed set of rules that will apply to service providers in relation to the supply of premium SMS and MMS services and submitted this for consideration prior to making its decision to put rules in place. However, the RIS required further work and the revised RIS was not assessed as adequate until after the decision had been made. ACMA is therefore required to undertake a post-implementation review of the Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1) within one to two years of implementation.

ACMA complied with the best practice regulation requirements in relation to the introduction of the Mobile Premium Services Industry Code C637:2009.

ACMA completed 32 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

Table 3.5 ACMA: RIA compliance by type of regulation, 2009-10

Type of regulation	Business Cost Calculator Report		Regulation Impact Statement		
			Decision		Tabling
	Decision	Tabling	Prepared	Adequate	
Legislative instruments	1/1	0/1	1/1
Non-legislative instruments	1/1	1/1	1/1
Total	2/2	1/2	2/2
<i>Percentage</i>	100	50	100

3.5 Climate Change and Energy Efficiency

The Department of Climate Change and Energy Efficiency (DCCEE) did not comply in full with the best practice regulation requirements in 2009-10.

An adequate RIS was required but not prepared for the Renewable Energy (Electricity) Amendment Regulations 2010 (No. 3).

As a consequence, DCCEE will be required to undertake a post-implementation review for this decision within one to two years of implementation.

Post-implementation reviews from previous years

The Department is also required to undertake a post-implementation review of the national Renewable Energy Target scheme which was announced on 3 December 2007.

Table 3.6 DCCEE: RIA compliance by type of regulation, 2009-10

Type of regulation	Business Cost Calculator Report		Regulation Impact Statement		
			Decision		Tabling
	Decision	Tabling	Prepared	Adequate	
Bills	1/1	1/1	1/1
Legislative instruments	0/1	0/1	0/1
Total	1/2	1/2	1/2
<i>Percentage</i>	50	50	50

Source: OBPR review.

3.6 Defence

The Department of Defence (Defence) was not required to undertake regulatory impact analysis for proposals introduced during 2009-10.

Post-implementation reviews from previous years

In 2007-08, Defence was assessed as non-compliant for the Treaty between the Government of Australia and the Government of the United States of America concerning Defence Trade Cooperation (tabled 14 May 2008). The Department is required to commence a post-implementation review of the proposal within one to two years from implementation.

3.7 Education, Employment and Workplace Relations

The Department of Education, Employment and Workplace Relations (DEEWR) complied in full with the best practice requirements in 2009-10. DEEWR prepared adequate RISs for two proposals:

- strengthening the registration process for approved providers of education services to overseas students; and
- amendments to the *Fair Work Act 2009* to enable States to refer workplace relations matters to the Commonwealth that would extend the application of the *Fair Work Act 2009* in those States.

DEEWR completed 28 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

Post-implementation reviews from previous years

DEEWR is required to undertake a post-implementation review on the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* and *Fair Work Act 2009*, which were granted a Prime Minister's exemption from the RIA requirements in 2007-08. The post-implementation review is to commence within one to two years of the date of implementation.

3.8 Environment, Water, Heritage and the Arts

The Department of Environment, Water, Heritage and the Arts (DEWHA) was not required to undertake regulatory impact analysis for proposals introduced during 2009-10. During the year, DEWHA prepared 63 preliminary assessments for which the OBPR agreed that no further regulatory analysis was required.

Post-implementation reviews from previous years

In 2008-09, DEWHA was assessed as non-compliant for the *Resale Royalty Right for Visual Artists Act 2009* and a post-implementation review is required to commence within one to two years of implementation.

3.9 Families, Housing, Community Services and Indigenous Affairs

The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) was not required to undertake regulatory impact analysis for proposals introduced during 2009-10.

FaHCSIA completed 76 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

Post-implementation reviews from previous years

FAHCSIA is required to undertake post-implementation reviews for the following legislation:

- Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 (tabled 7 August 2007);
- Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 (tabled 7 August 2007); and
- Northern Territory National Emergency Response Bill 2007 (tabled 7 August 2007).

The post-implementation reviews are required to commence within one to two years of implementation.

3.10 Foreign Affairs and Trade

The Department of Foreign Affairs and Trade (DFAT) complied in full with the best practice regulation requirements in 2009-10. A RIS was required for the World Wide Trade Group Agreement of Requirements for Food Labelling and the RIS requirements were satisfied for all decision-making stages. DFAT also prepared an entry into negotiation RIS for the India Australia Free Trade Agreement. An adequate RIS was cleared for this proposal.

The Department prepared 7 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

3.11 Health and Ageing

The Department of Health and Ageing (DHA) did not comply in full with the best practice regulation requirements in 2009-10.

DHA did not prepare an adequate RIS at the decision-making stage for the proposal to retain pharmacy location rules.

DHA is required to commence a post-implementation review of the pharmacy location rules within one to two years of the implementation of the decision.

DHA prepared two BCC reports for the decision-making stage for the following proposals:

- Increased Medicare Benefits Schedule Compliance Audits Initiative; and
- Transition arrangements for broadening the scope of the Diagnostic Imaging Accreditation Scheme to include non-radiology services (Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2009).

DHA did not publish the BCC report for the Increased Medicare Benefits Schedule Compliance Audits Initiative.

DHA complied in full with the best practice regulation requirements for a proposal regarding rules and standards for the second stage of the Diagnostic Imaging Accreditation Scheme.

DHA (including the Therapeutic Goods Administration and National Industrial Chemicals Notification and Assessment Scheme) completed 286 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

Table 3.7 DHA: RIA compliance by type of regulation, 2009-10

Type of regulation	Business Cost Calculator Report		Regulation Impact Statement		
			Decision		Tabling
	Decision	Tabling	Prepared	Adequate	
Bills	1/1	1/1	1/1	0/1	0/1
Legislative instruments	1/1	1/1	1/1
Quasi regulation	1/1	0/1
Total	2/2	1/2	2/2	1/2	1/2
<i>Percentage</i>	<i>100</i>	<i>50</i>	<i>100</i>	<i>50</i>	<i>50</i>

.. Not required.

Source: OBPR.

Post-implementation reviews from previous years

DHA is required to conduct post-implementation reviews for the following proposals:

- Tax Laws Amendment (Medicare Levy Surcharge Thresholds) Bill 2008 (tabled 27 May 2008); and
- Australian Inventory of Chemical Substances restriction on the use of certain lead compounds (gazetted 5 February 2008).

The post-implementation reviews are required to commence within one to two years of the implementation of the proposals.

Private Health Insurance Administration Council

The Private Health Insurance Administration Council (PHIAC) complied in full with the best practice regulation requirements in 2009-10. PHIAC prepared an adequate RIS for the *Private Health Insurance (Insurer Obligations) Rules 2009*, which sets minimum requirements for the governance arrangements of private health insurers, specifies appointed actuary requirements and detail reporting and notification requirements for private health insurers.

PHIAC undertook one preliminary assessment for a regulatory proposal introduced in 2009-10 for which no further analysis was required.

3.12 Innovation, Industry, Science and Research

The Department of Innovation, Industry, Science and Research complied in full with the best practice regulation requirements in 2009-10. The Department prepared an adequate RIS for amendments to the Franchising Code of Conduct.

The Department undertook 16 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

3.13 Infrastructure, Transport, Regional Development and Local Government

The Department of Infrastructure, Transport, Regional Development and Local Government (DITRD LG) did not comply in full with the best practice regulation requirements in 2009-10.

A RIS was not prepared at the decision-making stage for the introduction of a comprehensive regime for the inspection of all airport staff, goods and vehicles entering and leaving airside at Australian airports. DITRD LG is required to commence a post-implementation review of the Aviation Transport Security Amendment Regulations 2009 (No. 3) within one to two years of implementation.

DITRD LG complied in full with the best practice regulation requirements for proposals to:

- implement changes to the planning and development regulatory arrangements for leased federal airport sites;
- limit the operations of large marginally noise compliant aircraft (on an airport by airport basis);
- make provisions for the optional fitment of adaptive front lighting systems, emergency stop signals and conspicuity markings to road vehicles;
- implement a requirement that Electronic Stability Control (ESC) be fitted to passenger car and some light passenger/commercial vehicles;
- make provisions for registration plate and label holders for TA (very light) category trailers (either single or two wheeled) having width of not more than 980 mm;
- mandate front underrun impact protection; and
- enable Australian Parts Manufacturers Approval processes for certain aircraft parts to be accepted and recognised by the United States Federal Aviation Administration.

DITRD LG complied with the best practice regulation requirements at the decision-making stage, but not at the transparency stage, for the proposal to introduce new requirements that specifically address adventure flight and air display activities.

DITRD LG completed 40 preliminary assessments for regulatory proposals introduced in 2009-10 for which no further analysis was required.

Table 3.8 DITRDLG: RIA compliance by type of regulation, 2009-10

Type of regulation	Business Cost Calculator Report		Regulation Impact Statement		
	Decision	Tabling	Decision		Tabling
			Prepared	Adequate	
Bills	1/1	1/1	1/1
Legislative instruments	6/7	6/7	5/7
Treaties	1/1	1/1	1/1
Total	8/9	8/9	7/9
<i>Percentage</i>	89	89	78

.. Not required.

Source: OBPR.

Post-implementation reviews from previous years

In addition, DITRDLG is required to undertake post-implementation reviews for the following proposals from previous years:

- Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007 (tabled 14 February 2007); and
- Aviation Transport Security Amendment Regulations 2007 (No. 4) (tabled 26 September 2007).

The post-implementation reviews are required to commence within one to two years of the implementation of the regulations.

3.14 The Treasury

The Treasury did not comply in full with the Australian Government's best practice regulation requirements in 2009-10.

The Treasury was responsible for 15 proposals for which RISs were required at the decision-making stage. Adequate RISs were not prepared for the decision-making stage for the following proposals:

- Foreign Acquisitions and Takeovers Amendment Bill 2009;
- Foreign Acquisitions and Takeovers Regulations 2010 (No. 2); and
- Excise Tariff Amendment (Tobacco) Bill 2010 and Customs Tariff Amendment (Tobacco) Bill 2010.

The Treasury is required to commence post-implementation reviews of these proposals within one to two years of the date of implementation.

The Prime Minister granted 'exceptional circumstances' exemptions for two proposals:

- Tax Laws Amendment (2009 Budget measures No. 2) Bill 2009; and
- Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009 & Income Tax (TFN Withholding Tax (ESS)) Bill 2009.

The Treasury is required to commence post-implementation reviews of these proposals within one to two years of the date of implementation.

Treasury complied in full with the best practice regulation requirements for the following proposals:

- Tax Laws Amendment (Foreign Source Income Deferral) Bill (No. 1) 2010;
- Insurance Contracts Amendments Bill 2010;
- Corporations Amendment (No. 1) Bill 2010;
- Corporations Amendment (Corporate Reporting Reform) Bill 2010;
- Corporations Amendment (Financial Market Supervision) Bill 2010;
- Corporations Amendment (Sons of Gwalia) Bill 2010;
- Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Bill 2010;
- Corporations Amendment Regulations 2010 (No. 5);
- Convention between Australia and New Zealand for avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion;
- Australia-Chile tax treaty; and
- Australia-Turkey tax treaty.

Over the year, The Treasury prepared 81 preliminary assessments for proposals for which no further regulatory analysis was required.

Table 3.9 The Treasury: RIA compliance by type of regulation, 2009-10

Type of regulation	Business Cost Calculator Report		Regulation Impact Statement		
			Decision		Tabling
	Decision	Tabling	Prepared	Adequate	
Bills	7/9	7/9	7/9
Legislative instruments	1/2	1/2	1/2
Treaties	4/4	4/4	3/3
Total	12/15	12/15	11/14
<i>Percentage</i>	80	80	79

Source: OBPR review.

Post-implementation reviews from previous years

Treasury is required to undertake post-implementation reviews for the following proposals which are from years prior to 2009-10:

- amendments to the *Corporations Act 2001* to strengthen the regulatory framework relating to termination benefits for executives;
- three year, 100 per cent guarantee of deposits in authorised deposit-taking institutions;
- threshold on payments made under the Financial Claims Scheme and product coverage under the scheme;
- introduction of private health insurance incentive tiers;
- limits on tax concessions for income earned by Australians working overseas; and
- the reduction in the cap on concessional superannuation contributions.

The post-implementation reviews are required to commence within one to two years of the date of implementation.

Australian Accounting Standards Board

The Australian Accounting Standards Board (AASB) did not comply in full with the best practice regulation requirements in 2009-10.

The AASB was responsible for one proposal for which a RIS was required at the decision-making stage. The AASB did not comply with the best practice regulation requirements for a proposal to reduce the financial reporting burden by introducing a second tier of requirements for general purpose financial statements. A post-implementation review of this proposal is required to be commenced by the AASB within one to two years of the date of implementation.

Over the year, AASB undertook 10 preliminary assessments for which the OBPR agreed that no further regulatory analysis was required.

Australian Competition and Consumer Commission

The Australian Competition and Consumer Commission (ACCC) complied in full with the best practice regulation requirements in 2009-10.

The ACCC was responsible for four proposals for which a RIS was required at the decision-making stage. Adequate RISs were prepared and cleared by the OBPR for these four proposals:

- Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Amendments;
- Consumer Protection Notice No. 1 of 2010: Consumer Product Safety Standard for Vehicle Jacks;
- Consumer Protection Notice No. 2 of 2010: Consumer Product Safety Standard for Portable Ramps for Vehicles; and
- Consumer Protection Notice No. 5 of 2010: Consumer Product Safety Standard: Children's Toys Containing Magnets.

The ACCC undertook a total of nine preliminary assessments for which OBPR agreed that no further regulatory analysis was required.

Australian Prudential Regulation Authority

The Australian Prudential Regulation Authority (APRA) complied in full with the best practice regulation requirements in 2009-10.

During the year, APRA was required to prepare RISs for two regulatory proposals and both RISs were assessed as adequate by the OBPR. The two proposals were:

- proposed extensions to governance requirements for APRA regulated institutions in relation to remuneration matters; and
- Life Insurance (Prudential Standards) Determinations 1 to 4 of 2010.

APRA undertook 32 preliminary assessments for which no further regulatory analysis or a RIS was required.

Australian Securities and Investments Commission

The Australian Securities and Investments Commission (ASIC) complied in full with the best practice regulation requirements in 2009-10.

During the year, ASIC was required to prepare RISs for eleven proposals and all RISs were assessed as adequate. The eleven proposals were:

- Class Order 09/210 – Intra-fund superannuation advice;
- Class Order 10/250 – Internal dispute resolution;
- Class Order 10/321 – Offers of vanilla bonds;
- Regulatory Guide 146 – Licensing: Training of financial product advisers and Regulatory Guide 166 – Licensing: Financial requirements;
- Regulatory Guide 206 – Credit licensing: competence and training;
- Regulatory Guide 207 – Credit licensing: financial requirements;
- Regulatory Guide 209 – Credit lending: responsible lending conduct obligations;
- Regulatory Guide 210 – Compensation and insurance arrangements for credit licensees;
- Regulatory Guide 213 – Facilitating debt raising;
- Regulatory Guide 139 – Approval and oversight of external dispute resolution schemes; and
- Regulatory Guide 165 – Licensing: Internal and external dispute resolution.

ASIC also prepared 43 preliminary assessments for which no further regulatory analysis was required.

Table 3.10 ASIC: RIA compliance by type of regulation, 2009-10

Type of regulation	Business Cost Calculator Report		Regulation Impact Statement		
			Decision		Tabling
	Decision	Tabling	Prepared	Adequate	
Legislative instruments	3/3	3/3	3/3
Non-legislative instruments	8/8	8/8	8/8
Total	11/11	11/11	11/11
<i>Percentage</i>	100	100	100

Source: OBPR review.

Post-implementation reviews from previous years

ASIC is required to undertake a post-implementation review of various decisions made in 2008 relating to class orders which imposed restrictions on short sales of securities. These proposals were granted an exemption by the Prime Minister from the RIS requirements at the time the decisions were made. ASIC is required to commence a post-implementation review within one to two years of the date of implementation.

Auditing and Assurance Standards Board

The Auditing and Assurance Standards Board (AUASB) complied in full with the best practice regulation requirements in 2009-10.

The AUASB was required to prepare one RIS for the re-drafting of the Australian Auditing Standards. An adequate RIS was prepared and published.

The AUASB completed 16 preliminary assessments for which no further regulatory analysis was required.

Reserve Bank of Australia

The Reserve Bank of Australia (RBA) complied in full with the best practice regulation requirements in 2009-10.

The RBA was required to prepare a RIS for the proposal to make amendments to the EFTPOS interchange standard to promote competition and efficiency in the Australian payments system. The RIS was assessed as adequate by the OBPR and published.

3.15 Joint Proposals

Department of Immigration and Citizenship / Department of Education, Employment and Workplace Relations

During the reporting period, the Department of Immigration and Citizenship (DIAC) and the Department of Education, Employment and Workplace Relations (DEEWR) were jointly responsible for the Migration Amendment Regulations 2009 (No. 15) which did not comply in full with the Australian Government's best practice regulation requirements. DIAC and DEEWR will be required to undertake a post-implementation review for the Migration Amendment Regulations 2009 (No. 15). The post-implementation review is to commence within one to two years of the implementation of the regulations.

Department of Families, Housing, Community Service and Indigenous Affairs / Department of Education, Employment and Workplace Relations

DEEWR and FaHCSIA were jointly responsible for one proposal – the introduction of a Government-funded Paid Parental Leave scheme – that required a RIS in 2009-10. An adequate RIS was prepared at the decision-making stage and was tabled with the Paid Parental Leave Bill 2010.

Department of Finance and Deregulation / Department of Education, Employment and Workplace Relations

In 2009-10, Finance and DEEWR were jointly responsible for one proposal which did not comply in full with the Australian Government best practice regulation requirements. A RIS was not prepared at the decision-making stage for a requirement for government contractors and suppliers in TCF industry to be accredited or seeking accreditation with the Homeworkers' Code of Practice. Finance and DEEWR will be required to undertake a post-implementation review for this proposal. The post-implementation review is to commence within one to two years of the implementation of the proposal.

four

Compliance by ministerial council



four

four

Compliance by ministerial council

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

The COAG Guide states that:

If regulatory options are being considered (such as self-regulation where governments expect businesses to comply, quasi-regulation, co-regulation and 'black letter law') then ministerial councils must subject these options to a regulatory impact assessment (RIA) process through the preparation of a draft [consultation] and final [decision] Regulatory Impact Statement (RIS). (COAG Guide, p. 7)

In this context, the COAG Guide defines regulation as:

The broad range of legally enforceable instruments which impose mandatory requirements upon business and the community, as well as those government voluntary codes and advisory instruments for which there is a reasonable expectation of widespread compliance. (COAG Guide, p. 3)

As required in the COAG Guide, the OBPR assesses Regulation Impact Statements (RISs) at two stages: before they are released for community consultation (consultation RIS) and prior to a regulatory decision being made (decision RIS). The OBPR advises the decision-making body at each decision-making stage whether the analysis contained in the RIS meets COAG's adequacy criteria. The OBPR in making its assessment considers the seven elements specified under COAG's RIS guidelines — problem, objectives, options, impact analysis, consultation, evaluation and conclusion, and implementation and review.

It is expected that the level of analysis in a draft [consultation] RIS would be lower than the level of analysis in the final [decision] RIS. This is because the impacts of options are sometimes unclear. The community consultation process is designed to allow interested parties and stakeholders to help identify such impacts. In such cases the OBPR may focus its assessment primarily on the first three parts of the draft [consultation] RIS, the problem, objectives and options section of the RIS. (COAG Guide, p. 8)

The COAG Guide emphasises transparency by requiring RISs to be made public.

After a decision is taken, the final RIS, which should be of a standard suitable for publication, will generally be made public. (COAG Guide, p. 9)

On 16 August 2010, COAG agreed that COAG RISs will be published on the OBPR website.

Compliance by ministerial council and national standard-setting bodies

During 2009-10, 15 ministerial councils and NSSBs made decisions which triggered the COAG best practice regulation requirements. Five Ministerial Councils and NSSBs were fully compliant, while 10 were not (see Table 4.1)

Table 4.1 Compliance with COAG's RIS requirements 2009-10 consultation, decision-making and publishing stage

Ministerial Council/ NSSB	Consultation Stage		Decision Stage		Published	
	ratio ^a	%	ratio ^a	%	ratio ^a	%
ABCB	3/3	100	3/3	100	3/3	100
AHWMC	0/1	0	1/1	100	1/1	100
ARPANSA	3/3	100	3/3	100	3/3	100
ATC	1/2	50	1/2	50	1/2	50
COAG	7/9	78	7/9	78	7/9	78
CMC	0/1	0	0/1	0	0/1	0
FSANZ	1/1	100	1/1	100	1/1	100
MCCA	0/1	0	0/1	0	0/1	0
MCC	2/3	67	3/3	100	3/3	100
MCE	8/8	100	8/8	100	7/8	87
MCG	0/3	0	0/3	0	0/3	0
NEPC	2/3	67	3/3	100	3/3	100
NRMCC	1/1	100	1/1	100	1/1	100
SBMC	0/1	0	0/1	0	0/1	0
WRMC	1/1	100	1/1	100	1/1	100
Total	29/41	71	32/41	78	31/41	76

^aRatio of adequate RISs to total RISs required.

Source: OBPR.

4.1 Australian Building Codes Board

The Australian Building Codes Board (ABCB) complied in full with the COAG best practice regulation requirements in 2009-10. For the three proposals requiring the preparation of a RIS, the ABCB prepared RISs for the consultation and decision stages, which met the COAG adequacy criteria. The RISs related to the following:

- Increasing the stringency of energy efficiency provisions in the Building Code of Australia for residential buildings;
- Increasing the stringency of energy efficiency provisions in the Building Code of Australia for commercial buildings; and
- Increasing the stringency of hot water energy efficiency provisions in the Building Code of Australia for residential buildings.

The final RISs were made public.

4.2 Australian Health Workforce Ministerial Council

The Australian Health Workforce Ministerial Council (AHWMC) did not comply in full with the COAG best practice regulation requirements in 2009-10. The AHWMC made one decision in the reporting period for which a RIS was required. A consultation RIS was not prepared for the proposal to implement the Health Practitioner Regulation National Law, but an adequate RIS was prepared for the decision-making stage and was made public.

4.3 Australian Radiation Protection and Nuclear Safety Agency

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) complied in full with the COAG best practice regulation requirements in 2009-10. For the three proposals requiring the preparation of a RIS, ARPANSA prepared RISs for the consultation and decision stages which met the COAG adequacy criteria. The RISs related to the following:

- Code of Practice and Safety Guide for Radiation Protection in Veterinary Medicine;
- Code of Practice for Radiation Protection in the Application of Ionising Radiation by Chiropractors; and
- National Directory for Radiation Protection Amendment No. 4, 2010 – Solaria.

The final RISs were made public.

4.4 Australian Transport Council

The Australian Transport Council (ATC) did not comply in full with the COAG best practice regulation requirements in 2009-10. The ATC made two decisions in the reporting period for which RISs were required:

- Implementation of National Standards for Taxi Drivers; and
- National Standard for Commercial Vessels Section C6B: Buoyancy and Stability after Flooding.

An adequate RIS was prepared at the consultation and decision-making stages for the national standard for commercial vessels section C6B. The final RIS was made public. RISs were not prepared at the consultation stage or the decision-making stage for the implementation of national standards for taxi drivers.

4.5 Council of Australian Governments

COAG did not comply in full with the COAG best practice regulation requirements in 2009-10. COAG made nine decisions in the reporting period for which RISs were required and complied with the requirements for seven decisions:

- a national approach to maritime safety regulation;
- a national framework for rail safety regulation and investigation;
- a national framework for regulation, registration and licensing of heavy vehicles;
- a national construction code;
- the introduction of a mandatory external complaints and appeals process for international students funded by international education providers;
- a national quality agenda for early childhood education and care; and
- National Framework for Non-Urban Water Metering.

In two cases, adequate RISs were not prepared at either the consultation or decision-making stages:

- permanently exempting goods currently under special exemption from the Trans Tasman Mutual Recognition Arrangement; and
- amending the Australian Quality Training Framework to introduce conditions and standards for initial registration of new providers and strengthening requirements for ongoing registration, including stronger financial viability and fee protection conditions.

4.6 Cultural Ministers Council

The Cultural Ministers Council did not comply in full with the COAG best practice regulation requirements in 2009-10. A RIS was not prepared at the consultation or decision-making stages for the Indigenous Australian Art Commercial Code of Conduct which came into effect in July 2010.

4.7 Food Standards Australia New Zealand

Food Standards Australia New Zealand (FSANZ) complied in full with the COAG best practice regulation requirements in 2009-10. FSANZ was required to prepare RISs for one proposal, a primary production and processing standard for poultry meat. FSANZ prepared RISs for the consultation and decision-making stages that met the COAG adequacy criteria. The final RIS was made public.

4.8 Ministerial Council on Consumer Affairs

The Ministerial Council on Consumer Affairs (MCCA) did not comply in full with the COAG best practice regulation requirements in 2009-10. An adequate RIS was not prepared at the consultation stage, but was at the decision-making stage for the Australian Consumer Law – A National Consumer Guarantee Law regulatory proposal. This RIS was published.

MCCA complied with the best practice regulation requirements for two other decisions made in the reporting period: Australian Consumer Law – Aspects of the New National Product Safety Law; and the Australian Consumer Law – Reforms Based on Best Practice in State and Territory Consumer Laws. Both RISs were published.

4.9 Ministerial Council for Corporations

The Ministerial Council for Corporations (MCC) did not comply in full with the COAG Best Practice Regulation requirements in 2009-10. MCC did not prepare an adequate RIS at the consultation or decision-making stage for its decision to adopt a national approach on principles for corporate liability and the circumstances in which directors may be liable for corporate fault.

4.10 Ministerial Council on Energy

The Ministerial Council on Energy (MCE) did not comply in full with the COAG best practice regulation requirements in 2009-10. While the MCE prepared adequate RISs at both consultation and the decision stage for the eight RISs submitted to the OBPR during the year, one RIS was not made public (Energy Bill Benchmarking – Residential Electricity). The eight decisions for which RISs were required are as follows:

- Minimum Energy Performance Standards (MEPS) for incandescent lamps, compact fluorescent lamps and voltage converters;
- Labelling and MEPS for televisions sold in Australia;
- Updated MEPS for air-conditioners;
- Mandatory disclosure of commercial office building energy efficiency;
- National framework for regulation electricity and gas (energy) distribution and retail services to customers;
- MEPS for gas water heaters;
- Energy bill benchmarking – residential electricity; and
- Energy technical and safety regulations.

4.11 Ministerial Council on Gambling

The Ministerial Council on Gambling (MCG) did not comply in full with the COAG best practice regulation requirements in 2009-10. The MCG made three decisions in the reporting period for which RISs were required:

- Restriction on the advertising of free bets;
- National principles for the conduct of responsible gaming machine environments; and
- National regulatory and legal framework to prohibit provision of commercial credit for gambling by third parties in gaming venues.

Adequate RISs were not prepared at the consultation or decision-making stages.

4.12 National Environment Protection Council

The National Environment Protection Council (NEPC) did not comply in full with the COAG best practice regulation requirements in 2009-10. An adequate RIS was not prepared at the consultation stage but was at the decision-making stage for the National Waste Policy regulations.

The NEPC complied with the best practice regulation requirements at both the consultation and decision-making stages for two other decisions made in the reporting period: extended producer responsibility – television and computers; and Australian Packaging Covenant and Used Packaging Materials National Environment Protection Measure.

The three RISs were all published.

4.13 Natural Resource Management Ministerial Council

The Natural Resource Management Ministerial Council (NRMMC) complied in full with the COAG best practice regulation requirements in 2009-10. The NRMMC made one decision in the reporting period for which a RIS was required: National Water Pricing Principles.

Adequate RISs were prepared at the consultation and decision-making stages. The final RIS was made public.

4.14 Small Business Ministerial Council

The Small Business Ministerial Council (SBMC) did not comply with the COAG best practice regulation requirements in 2009-10. The SBMC made one decision in the reporting period for which a RIS was required. An adequate RIS was not prepared at the consultation or decision-making stages for the decision regarding the retail tenancy disclosure statement (national core model).

4.15 Workplace Relations Ministers' Council

The Workplace Relations Ministers' Council (WRMC) complied in full with the COAG best practice regulation requirements in 2009-10. The WRMC made one decision in the reporting period for which a RIS was required. The RIS for the Model Occupational Health and Safety Provisions met the COAG adequacy criteria at both the consultation and decision-making stages. The final RIS was made public.

4.16 Consultation with New Zealand

In June 2004, COAG asked OBPR to confer with the Regulatory Impact Analysis Unit 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.

In November 2008, the New Zealand Government moved the responsibility for its regulatory management system from the Ministry of Economic Development to its Treasury department's Regulatory Impact Analysis Team (RIAT). More detailed information on New Zealand's regulatory arrangements is provided at Appendix C.

For regulatory decisions made during 2009-10, the OBPR conferred with RIAT on:

- MEPS for incandescent lamps, compact fluorescent lamps and voltage converters;
- updated MEPS for air-conditioners;
- MEPS for gas water heaters; and
- labeling and MEPS for televisions sold in Australia.

Appendix A
Compliance by regulatory proposal



appendix A

Appendix A

Compliance by regulatory proposal

This Appendix provides details on compliance with the Australian Government's best practice regulation requirements by regulatory proposal made or tabled in 2009-10.

Compliance for individual regulatory proposals is shown in separate tables by type of regulation. Regulatory proposals may be introduced or made via primary legislation (bills), delegated legislation (legislative instruments and non legislative instruments), quasi-regulation or treaties. Within this reporting period, no quasi-regulatory proposals required a Regulation Impact Statement (RIS), one required a Business Cost Calculator (BCC) report.

The tables indicate whether a RIS or BCC report was prepared, whether the analysis was adequate and whether the RIS or BCC report was published. Proposals within each table are listed in alphabetical order with sponsoring agency identified.

In 2009-10, 81 regulatory proposals were identified as requiring RIA to be undertaken under the Australian Government's best practice regulation requirements at the decision-making stage. The Prime Minister granted 'exceptional circumstances' in four cases. A further 75 proposals required a RIS and two required a BCC report.

Table A.1 Primary legislation, RIA assessment by proposal Bills^a

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Description of regulatory proposal				
Airports Amendment Bill 2010 [DITRDG]				
Implements changes to the planning and development regulatory arrangements for leased federal airport sites	..	Yes	..	Yes
Agricultural and Veterinary Chemicals Code Amendment Bill 2010 [DAFF]				
First tranche of measures flowing from the Ministerial Partnership review of the efficiency and effectiveness of the APVMA	..	Yes	..	Yes
Broadcasting Legislation Amendment (Digital Television) Bill 2010 [DBCDE]				
Introduces a licence area based satellite service to address digital signal deficiencies	..	Yes	..	No
Corporations Amendment (No. 1) Bill 2010 [Treasury]				
Amends various Acts to change the way people access information kept on company registers	..	Yes	..	Yes
Corporations Amendment (Corporate Reporting Reform) Bill 2010 [Treasury]				
Streamlines entity reporting and provides flexibility for companies to pay dividends	..	Yes	..	Yes
Corporations Amendment (Financial Market Supervision) Bill 2010 [Treasury]				
Provides for the Australian Securities and Investment Commission (ASIC) to supervise trading on financial markets with a domestic Australian market licence	..	Yes	..	Yes
Corporations Amendment (Sons of Gwalia) Bill 2010 [Treasury]				
Reverses the effect of the High Court decision in <i>Sons of Gwalia Ltd v Margaretic</i> relating to the rights of persons bringing claims for damages in relation to shareholdings	..	Yes	..	Yes

Table A.1 Continued

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Education Services for Overseas Students Legislation Amendment Bill 2010 [DEEWR]				
Introduces provisions to strengthen the registration process for approved providers	..	Yes	..	Yes
Excise Tariff Amendment (Tobacco) Bill 2010 and Customs Tariff Amendment (Tobacco) Bill 2010 [Treasury]				
Increases the excise and excise equivalent customs duty rate applying to tobacco, cigars, cigarettes and snuff by 25 per cent	..	No	..	No
Fair Work Amendment (State Referrals and Other Measures) Bill 2009 [DEEWR]				
Enables States to refer workplace relations matters to the Commonwealth that would extend application of the <i>Fair Work Act 2009</i>	..	Yes	..	Yes
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Bill 2010 [Treasury]				
Supports the ability of the Australian Prudential Regulatory Authority to regulate bodies in the financial sector in accordance with prudential laws, and enhances its ability to administer the Financial Crisis Scheme	..	Yes	..	Yes
Foreign Acquisitions and Takeovers Amendment Bill 2009 [Treasury]				
Ensures that any foreign investment irrespective of the way it is structured is treated equally under the <i>Foreign Acquisitions and Takeovers Act 1975</i>	..	No	..	No
Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2009 [DHA]				
Broadens the scope of the Diagnostic Imaging Accreditation Scheme to include non-radiology services - transition to Stage 2	Yes	..	Yes	..
Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010 [DHA]				
Retention of Pharmacy Location Rules	..	No	..	No

Table A.1 Continued

Title of instrument [sponsoring agency] Description of regulatory proposal	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Insurance Contracts Amendments Bill 2010 [Treasury]				
Amends the <i>Insurance Contracts Act 1984</i> in relation to: duty of utmost good faith; 'bundled' workers' compensation contracts; 'bundled contracts'; enabling the use of electronic communication for statutory notices and documents; extending the Australian Securities and Investments Commission (ASIC) powers under the Act.	..	Yes	..	Yes
Paid Parental Leave Bill 2010 [DEEWR/FAHCSIA]				
Introduces a national Government-funded paid parental leave scheme	..	Yes	..	Yes
Radiocommunications Amendment Bill 2010 [DBCDE]				
Spectrum licence reissue	..	Yes	..	No
Amends the <i>Radiocommunications Act 1992</i> to provide greater flexibility in the use of spectrum subject to spectrum licensing	..	Yes	..	No
Renewable Energy (Electricity) Amendment Bill 2010 [DCCEE]				
Amends the Renewable Energy Target scheme to increase the renewable energy targets in the period 2011 to 2019; adds new small-scale displacement technologies to eligibility; extends exemptions from RET liability for self-generators; and mandates an annual review process for Solar Credits uptake	..	Yes	..	Yes
Tax Laws Amendment (Foreign Source Income Deferral) Bill (No. 1) 2010 [Treasury]				
Reforms the foreign source income anti-tax-deferral (attribution) rules which will affect taxpayers with non controlling interests in foreign entities, managed funds, superannuation funds, taxpayers with controlling interests in foreign entities, tax practitioners and other intermediaries	..	Yes	..	Yes

Table A.1 Continued

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009 and Income Tax (TFN Withholding Taxes (ESS)) Bill 2009 [Treasury]				
Prevents high income individuals from offsetting deductions from non-commercial business activities against their salary, wage or other income	..	e/c	..	n/a
Reforms the taxation of employee share scheme	..	e/c	..	n/a
Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 [DBCDE]				
Structural separation arrangements for Telstra	..	e/c	..	e/c
Reform of Part XIB of the <i>Trade Practices Act 1974</i> (Competition Arrangements)	..	Yes	..	Yes
Reform of Part XIB of the <i>Trade Practices Act 1974</i> (Network Access Arrangements)	..	Yes	..	Yes
Strengthening consumer protection regulations in telecommunications	..	Yes	..	Yes
Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010 [DBCDE]				
Requires fibre-to-the-premises infrastructure to be installed in new developments that receive planning approval from 1 July 2010	..	e/c	..	Yes*

^{e/c}Exceptional circumstances were granted by the Prime Minister;

^{..}Not applicable;

^aRISs and BCC reports are included in the Explanatory Memoranda for Bills which can be found at www.comlaw.gov.au.

*The Prime Minister granted exceptional circumstances but required the Department to prepare and the OBPR to assess a RIS before tabling.

**Table A.2 Delegated legislation, RIA assessment by proposal
Legislative Instruments^a**

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Air Navigation (Aircraft Noise) Amendment Regulations 2010 (No. 1) [DITRDLG]				
Introduces new requirements that specifically address adventure flight and air display activities	..	Yes	..	No
Air Navigation (Aircraft Noise) Amendment Regulations 2010 (No. 2) [DITRDLG]				
Limits the operations of large marginally noise compliant aircraft (on an airport-by-airport basis)	..	Yes	..	Yes
Australian Auditing Standards – Redrafted in Clarity Format [AUASB]				
Redrafting of Australian Auditing Standards in ‘Clarity’ format	..	Yes	..	Yes
Australian Communications and Media Authority (Development of Technical Standards for Domestic Digital Television Reception Equipment) Direction No. 1 of 2009 [DBCDE]				
Requires ACMA to determine a technical standard which ensures that domestic digital broadcasting or datacasting equipment has a parental lock capability	..	No	..	No
Aviation Transport Security Amendment Regulations 2009 (No. 3) [DITRDLG]				
Introduces a comprehensive regime for the inspection of all airport staff, goods and vehicles entering and leaving airside at Australian airports	..	No	..	No
Class Order 09/210 - Intra fund superannuation advice [ASIC]				
Covers intra-fund advice provided by superannuation providers to investors	..	Yes	..	Yes
Class Order 10/250 - Internal dispute resolution [ASIC]				
Outlines standards and requirements for dispute resolution procedures for credit	..	Yes	..	Yes
Class Order 10/321 – Offers of vanilla bonds [ASIC]				
Specifies certain offers of ‘vanilla’ corporate bonds to be made under a vanilla bonds prospectus, which has a similar level of content to a transaction specific prospectus	..	Yes	..	Yes

Table A.2 Continued

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Consumer Protection Notice No. 5 of 2010: Consumer Product Safety Standard: Children’s Toys Containing Magnets [ACCC]				
Covers toys containing magnets that may be an ingestion hazard	..	Yes	..	Yes
Consumer Protection Notice No. 1 of 2010: Consumer Product Safety Standard for Vehicle Jacks [ACCC]				
Introduces a revised mandatory standard for vehicle jacks to comply with various construction, performance and marketing requirements outlined in AS/NZS 2693:2003 Vehicle Jacks	..	Yes	..	Yes
Consumer Protection Notice No. 2 of 2010: Consumer Product Safety Standard for Portable Ramps for Vehicles [ACCC]				
Introduces a revised mandatory standard for portable ramps for vehicles with a nominated capacity of up to an including 1.5 tonnes jacks to comply with various construction, performance, and making requirements outlined in AS/NZS 2640:1994 Portable ramps for vehicles	..	Yes	..	Yes
Corporations Amendment Regulations 2010 (No. 5) [Treasury]				
Applies changes to Product Disclosure Statements for managed investment schemes, superannuation products and margin loans	..	Yes	..	Yes

Table A.2 Continued

Title of instrument [sponsoring agency] Description of regulatory proposal	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Dairy Produce Amendment Regulations 2009 (No. 1) [DAFF]				
Introduces new arrangements for managing dairy tariff rate quotas to the European Union and the United States of America	..	Yes	..	Yes
Disability (Access to Premises - Buildings) Standards 2010 [AGD]				
Introduces a Disability Standard for Access to Premises	..	Yes	..	Yes
Foreign Acquisitions and Takeovers Regulations 2010 (No. 2) [Treasury]				
Removes an exemption that applied to temporary residents buying residential real estate in Australia	..	No	..	No
Health Insurance (Diagnostic Imaging Accreditation) Instrument 2010, Health Insurance (Diagnostic Imaging Accreditation - Approved Accreditors) Instrument 2010 and Health Insurance (Diagnostic Imaging Accreditation - Designated Persons) Instrument 2010 [DHA]				
Diagnostic Imaging Accreditation Scheme Stage 2 - rules and standards	..	Yes	..	Yes
Imported Food Control Amendment Regulations 2009 (No. 2) [DAFF]				
Allows the use of compliance agreements to recognise formally the food safety management systems of importing businesses	..	Yes	..	Yes
Marriage Amendment Regulations 2009 (No.1) and Marriage Amendment Regulations 2009 (No.2) [AGD]				
Amends the Australian Marriage Celebrants Program to increase minimum training and registration requirements	..	No	..	No
Migration Amendment Regulations 2009 (No. 15) [DEEWR/DIAC]				
Amends the job skills test requirements for onshore applicants for permanent Visas	..	No	..	No

Table A.2 Continued

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Primary Industries (Excise) Levies Amendment Regulations 2009 (No. 4) [DAFF]				
Increases the laying chicken (egg) levy	..	Yes	..	Yes
Private Health Insurance (Insurer Obligations) Rules 2009 under item 2 of the table in section 333-25 of the Private Health Insurance Act 2007 [PHIAC]				
Sets minimum requirements for the governance arrangements for private health insurers, specifies appointed actuary requirements of private health insurers and detail reporting and notification requirements for private health insurers	..	Yes	..	Yes
Renewable Energy (Electricity) Amendment Regulations 2010 (No. 3) 2010 [DCCEE]				
Enhances the safety and performance of installations of Small Generation Units (SGUs) under the Renewable Energy Target (RET)	..	No	..	No
Small Pelagic Fishery Management Plan 2009 [AFMA]				
Introduces management arrangements for the Small Pelagic Fishery	..	Yes	..	Yes
Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1) [ACMA] [#]				
Sets out rules that apply to service providers in relation to the supply of premium SMS and MMS services	..	No	..	Yes
Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2010) [DBCDE]				
Extends retail price controls on Telstra	..	Yes	..	Yes
Trade Practice (Consumer Product Safety Standard) (Bicycle Helmets) Amendments [ACCC]				
Renews mandatory safety standard for bicycle helmets in Australia	..	Yes	..	Yes
Trade Practices (Industry Codes – Franchising) Amendment Regulations 2010 (No. 1) [DIISR]				
Increases franchisor disclosure on a number of different matters and establish guidance to franchisees and franchisors on conduct during dispute resolution processes	..	Yes	..	Yes

Table A.2 Continued

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Vehicle Standard (Australian Design Rule 13/00 – Installation of Lighting and Light Signalling Devices on other than L-Group Vehicles) 2005 Amendment 3 [DITRDLG]				
Makes provisions for the optional fitment of adaptive front lighting systems, emergency stop signals and conspicuity markings to road vehicles	..	Yes	..	Yes
Vehicle Standard (Australian Design Rule 31/02 – Brake Systems for Passenger Cars and Vehicle Standard (Australian Design Rule 35/03 – Commercial Vehicle Brake Systems) under subsection 7(1) of the Motor Vehicle Standards Act 1989 [DITRDLG]				
Implements a requirement that Electronic Stability Control (ESC) be fitted to passenger car and some light passenger/commercial vehicles	..	Yes	..	Yes
Vehicle Standard (Australian Design Rule 61/02 – Vehicle Markings) 2005 Amendment 1 [DITRDLG]				
Provides for registration plate and label holders for TA (very light) category trailers (either single or two wheeled) having width of not more than 980 mm	..	Yes	..	Yes
Vehicle Standard (Australian Design Rule 84/00 – Front Underrun Impact Protection) 2009 [DITRDLG]				
Mandates front underrun impact protection	..	Yes	..	Yes
2009-2011 SBT Australian National Catch Allocation Determination* [DAFF]				
Determines the national catch allocation for Southern Bluefin Tuna for the 2009-2011 period	..	Yes	..	Yes

..Not required. ^aA RISs and BCC reports are attached to explanatory statements for legislative instruments and can be found at www.comlaw.gov.au. [#]A Regulation Impact Statement was prepared and assessed as adequate after the decision was made and was tabled with the legislative instrument. A post-implementation review will be required within one to two years of implementation. * RISs were required at two decision-making stages for this Determination.

**Table A.3 Delegated legislation, RIA assessment by proposal
Non-legislative Instruments^a**

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Australian Government Procurement Statement [Finance/DEEWR]				
Requires government contractors and suppliers in TCF industry to be accredited or seeking accreditation with the Homeworkers' Code of Practice	..	No	..	No
Banking (prudential standard) determination No. 1 of 2009 – Prudential Standard APS 510 – Governance; Insurance (prudential standard) determination No. 2 of 2009 – Prudential Standard GPS 510 Governance; Life insurance (prudential standard) determination No. 1 of 2009 – Prudential Standard LPS 510 – Governance; Prudential Practice Guide PPG 511 Remuneration [APRA]				
Proposes extensions to governance requirements for APRA regulated institutions	..	Yes	..	Yes
Life insurance (prudential standard) determination No. 1 of 2010 – Prudential Standard LPS 310 – Audit and Related Matters [APRA]				
Determines Prudential Standards LPS 310 Audit and Related Matters (*)	..	Yes	..	Yes
Life insurance (prudential standard) determination No. 2 of 2010 – Prudential Standard LPS 320 – Actuarial and Related Matters [APRA]				
Determines Prudential Standard LPS 320 (*)	..	Yes	..	Yes
Life insurance (prudential standard) determination No. 3 of 2010 – Prudential Standard LPS 510 – Governance [APRA]				
Determines Prudential Standards LPS 510 Governance (*)	..	Yes	..	Yes
Life insurance (prudential standard) determination No. 4 of 2010 – Fit and Proper [APRA]				
Determines Prudential Standard LPS 520 Fit and Proper (*)	..	Yes	..	Yes
Mobile Premium Services Industry Code C637:2009 [ACMA]				
Replaces an industry self-regulatory scheme with a mandatory scheme to improve consumer confidence and industry transparency and compliance	..	Yes	..	Yes

Table A.3 Continued

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Reducing the Financial Reporting Burden: a second tier of requirements for general purpose financial statements [AASB]				
Provides a second tier of requirements for general purpose financial statements to reduce the financial reporting burden	..	No	..	No
Regulatory Guide 146 – Licensing: Training of financial product advisers and Regulatory Guide 166 – Licensing: Financial requirements [ASIC]				
Implements the National Margin Lending Regime	..	Yes	..	Yes
Regulatory Guide 206 – Credit licensing: Competence and training [ASIC]				
Implements the National Credit Law – Competence and training requirements	..	Yes	..	Yes
Regulatory Guide 207 – Credit licensing: Financial requirements [ASIC]				
Implements the National Credit Law – Financial Resources Requirements	..	Yes	..	Yes
Regulatory Guide 209 – Credit Lending: Responsible lending conduct obligations [ASIC]				
Sets out expectations for meeting the responsible lending obligations in Chapter 3 of the <i>National Consumer Credit Protection Act 2009</i>	..	Yes	..	Yes
Regulatory Guide 210 – Compensation and insurance arrangements for credit licensees [ASIC]				
Provides a new guidance note for credit licensees. Sets out how ASIC will administer compensation requirements under the <i>National Consumer Credit Protection Act 2009</i>	..	Yes	..	Yes
Regulatory Guide 213 – Facilitating debt raising [ASIC]				
Provides a new guide for listed entities. Guidance explains conditional relief as applied to ‘vanilla’ bonds	..	Yes	..	Yes

Table A.3 Continued

Title of instrument [sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Regulatory Guide 139 – Approval and oversight of external dispute resolution schemes [ASIC]				
Provides a new guide which explains how external dispute resolution scheme can obtain initial approval from ASIC to operate in the Australian financial system	..	Yes	..	Yes
Regulatory Guide 165 – Licensing: Internal and external dispute resolution [ASIC]				
Provides a new guide which explains what AFS licensees, unlicensed product issuers, unlicensed secondary sellers, registered persons, and credit representatives must do to have a dispute resolution system	..	Yes	..	Yes
The Setting of Interchange Fees in the EFTPOS System [RBA]				
Amends the EFTPOS interchange standard to promote competition and efficiency in the Australian payments system	..	Yes	..	Yes

..Not required. ^aNon-legislative instruments are not tabled. BCCs or RIS must be published on the agency's website⁽¹⁾ Submitted as a single proposal to the OBPR.

Table A.4 Treaties, RIA assessment by proposal

Title of instrument [sponsoring agency] Description of regulatory proposal	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Australia – Chile Tax Treaty [Treasury]				
Entry into negotiations	..	n/a	..	n/a
Before signature	..	Yes	..	n/a
Tabling before ratification	..	Yes	..	Yes
Australia – Turkey Tax Treaty [Treasury]				
Entry into negotiations	..	n/a	..	n/a
Before signature	..	Yes	..	n/a
Tabling before ratification	..	Yes	..	Yes
Convention between Australia and New Zealand for Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion [Treasury]				
Entry into negotiations	..	Yes	..	n/a
Before signature	..	Yes	..	n/a
Tabling before ratification	..	Yes	..	Yes
Implementation Procedures for Airworthiness under the Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America [DITRDLG]				
Entry into negotiations	..	n/a	..	n/a
Before signature	..	Yes	..	n/a
Tabling before ratification	..	Yes	..	Yes
World Wide Trade Group Agreement on Requirements for Wine Labelling, Canberra, 23 January [DAFF]				
Entry into negotiations	..	n/a	..	n/a
Before signature	..	Yes	..	n/a
Tabling before ratification	..	Yes	..	Yes

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

Source: OBPR estimates.

Table A.5 Quasi regulation, RIA assessment by proposal

Title of instrument [sponsoring agency]	Decision		Tabling	
Description of regulatory proposal	BCC report certified	RIS adequate	BCC report published	RIS published
Increased Medicare Benefits Schedule (MBS) Compliance Audits Initiative [DHA]				
Increased MBS Compliance Audits	Yes	..	No	..

.. Not required.

Appendix B
Developments in States and Territories 2009-10



appendix B

Appendix B

Developments in States and Territories 2009-10

Australian States and Territories each have their own regulatory impact assessment processes.

The OECD Review of Regulatory Reform - Australia: Towards a Seamless National Economy, released on 15 February 2010 found that Australia's approach to regulatory reform makes it a role model for OECD countries, with the regulatory management practices of the States and Territories among OECD best practice.

The OECD Review also emphasised the challenge for Australia is to facilitate substantive cultural change to ensure that policy making processes and the actions of regulation-making institutions are genuinely geared to deliver regulation that is efficient, effective and supports well-functioning national markets.

This Appendix reports on developments in the regulatory impact assessment processes in Australia's States and Territories. Much of the information reported has been provided by the States and Territories, which the OBPR has supplemented with additional information from published sources where appropriate.

B.1 New South Wales

Regulatory impact analysis

The NSW Government's Better Regulation Office drives regulatory reform and is an advocate for best practice regulation-making across government. The Office acts as a gatekeeper by reviewing regulatory proposals and advising the Minister for Regulatory Reform on compliance with the better regulation requirements.

In November 2009, the Better Regulation Office revised the *Guide to Better Regulation*. The Guide advises agencies of the requirements for best practice regulation-making and assists them applying the Government's seven 'better regulation' principles to avoid the creation of or reduce existing red tape.

The requirements of the Guide commenced on 1 June 2008 with the NSW Government committed to reviewing the Guide after 12 months of operation. The purpose of the review was to ensure that objectives were being met, to improve and simplify the way the Government's gatekeeping requirements were being implemented and to respond to feedback on the Guide (NSW Government 2009). Key amendments in the revised Guide included:

- greater emphasis on the quantification of impacts and the inclusion of examples showing how impacts can be quantified in practice (this assists monitoring the NSW Government's commitment to reduce red tape by \$500 million by June 2011);
- greater emphasis on the simplification, repeal, reform or consolidation of existing regulation;
- clarification of regulatory proposals that are exempt from the requirements and of the relationship between gate-keeping and the *Subordinate Legislation Act 1989 (NSW)*;

- additional information on preparing and submitting Better Regulation Statements for significant regulatory proposals; and
- making it easier for agencies to demonstrate their compliance with the principles by replacing the need to write a letter to the Minister for Regulatory Reform for Executive Council proposals.

In 2009-10, Better Regulation Office assessed 160 Cabinet Minutes and 335 Executive Council proposals. This included 31 significant proposals that required either a Better Regulation Statement or a national regulatory impact statement.

The NSW Government's *Consultation Policy* was reviewed in November 2009 at the same time as the review of the *Guide to Better Regulation*. The *Consultation Policy* has now been released as a stand alone document rather than being contained within the *Guide to Better Regulation*.

Developments in regulatory reform

In 2009-10, the NSW Government reports that it made good progress to meet its commitment to reduce red tape by \$500 million by June 2011. As of 31 December 2009, NSW had implemented reforms that have contributed \$338 million towards the target. The NSW Government considers itself to be on track to meet the target by June 2011.

As part of this, CEOs of NSW Government agencies are required to submit six-monthly reports to the Better Regulation Office with their plans for red tape reduction, which will help drive regulatory reform and support delivery of the target.

The NSW Government also requires periodic review of Acts of Parliament and Regulations to ensure that they remain effective and efficient. Acts and Regulations are generally reviewed every five years and the relevant review tabled in Parliament. In 2009-10, 11 statutory reviews of Acts were completed and 15 staged repeals of Regulations were undertaken.

Compliance reporting

The Better Regulation Office publishes an annual report which provides details on the activities of the Office as well as an overview of significant regulatory reform achievements made across the NSW Government over the financial year.

In October 2009, *Making it easy in NSW*, the second annual report on the NSW Government's performance in reducing regulatory burden was released. The annual report outlined 120 red tape reforms that saved business, government and the community time and money over the 12 months to 30 June 2009.

Consultation

In 2009-10, the Office introduced a quarterly newsletter, *Red Tape UnWrap*. The newsletter provides the Office an opportunity to engage business stakeholders in current projects and to encourage dialogue with industry leaders. The Office published its first newsletter in July 2009. Three further issues were released in September 2009, December 2009 and March 2010. Issues circulated to date can be found at the Better Regulation Office website.

Red tape reviews

During 2009-10, the Better Regulation Office continued to engage directly with stakeholders, both through its own targeted reviews into specific industry sectors and through stakeholder-initiated contact with the Office on regulatory proposals that are the subject of public consultation by NSW Government agencies.

On direction from the Minister for Regulatory Reform, the Better Regulation Office conducts targeted reviews into specific regulatory areas or industries. In 2009-10, the Office completed four targeted red tape reviews.

Review of NSW Electricity Network Contestable Services

The *Electricity Supply Act 1995* establishes a framework for electricity customers to contract directly with third party service providers to do the work that is necessary to connect them to a distribution network (NSW Government 2010a). The review intended to reduce costs and improve industry efficiency while continuing to ensure safety and reliability on NSW's electricity networks.

The NSW Government has endorsed the final report. The review will result in a stronger accreditation scheme that includes individuals, a more targeted approach to accrediting businesses with particular skills, greater transparency when work is deemed non-contestable and a tougher approach to compliance and enforcement. The reform will reduce costs and improve industry efficiency, while continuing to ensure safety and reliability on NSW's electricity networks (NSW Government 2010a).

Consistent basic financial reporting for the not-for-profit sector

As a result, a national standard chart of accounts (SCOA) will be used to guide the way that all state and federal government agencies require not-for-profit groups to report basic financial information. This will harmonise reporting requests, saving the sector time and money and reduce the regulatory burden. The first stage of the SCOA has state variations because of different fundraising and gaming laws. These variations will be resolved in 2012 (NSW Government 2010b).

Promoting economic growth and competition through the planning system.

Consequent reforms aim to ensure that competition considerations are embedded in the planning system so that opportunities for unnecessary restrictions on competition can be eliminated. The final report was released in April 2010. The Department of Planning and the Better Regulation Office are working on implementing the report's recommendations (NSW Government 2010c).

Taxi licensing and reform

This will simplify taxi licensing structures, provide a more affordable means of entry into the taxi market, and ensure the supply of taxis responds adequately to growth in passenger demand. The reforms were initially announced by the Minister for Transport in October 2009 and in November 2009, the Parliament passed the Passenger Transport Amendment (Taxi Licensing) Bill 2009 (NSW Government 2010d).

Entertainment Industry Act Review

In 2009-10, the Office also worked on reviews into the *Entertainment Industry Act 1989* (NSW) and improving toll road compliance and enforcement.

Responding to the Investigation into the Burden of Regulation and Improving Regulatory Efficiency

In October 2009, the Minister for Regulatory Reform released the fourth and final report on the NSW Government's response to the *Investigation into the Burden of Regulation and Improving Regulatory Efficiency* by the Independent Pricing and Regulatory Tribunal (IPART) in 2006.

The main thrust of IPART's recommendations related to improving regulatory making process and specific issues relating to cross jurisdictional and specific NSW regulatory issues.

Overall the Tribunal's assessment at the time was that the current NSW framework for regulatory process already included the core elements of accepted good regulatory practice and that the challenge was to apply these processes consistently (IPART 2006).

Currently the NSW Government has implemented 62 of the 74 IPART recommendations. The NSW Government reports that the remaining recommendations are on-track to be delivered with several to be addressed through longer-term processes which require inter-jurisdictional action through the Council of Australian Governments.

B.2 Victoria

Developments in regulatory gatekeeping

Victoria has a comprehensive regulatory impact analysis process as detailed in the *Victorian Guide to Regulation* (VGR). This requires:

- a Business Impact Assessment (BIA) to be prepared for primary legislation where there is potential for the legislation to have a significant impact on business or competition; and
- a Regulatory Impact Statement (RIS) to be prepared where a proposed statutory rule is likely to impose a considerable economic or social burden on a sector of the public.

The requirements for a RIS arise from the *Subordinate Legislation Act 1994*. It requires that an assessment of the costs and benefits of regulation and its alternatives be put forward for public consultation.

To strengthen the gatekeeping process, the Victorian Government established the Victorian Competition and Efficiency Commission (VCEC) in 2004 as an advisory body on business regulation reform and opportunities for improving Victoria's competitive position. One of the VCEC's responsibilities is to undertake the independent assessment of BIAs and RISs as well as some measurements of changes in regulatory burden.

Victoria has been undertaking further reforms of its gatekeeping processes. In the Government's Statement of Intentions (February 2009), the Government outlined its intention to amend the *Subordinate Legislation Act 1994*. The proposed changes will increase the number of legislative instruments that will be subject to a RIS. The Subordinate Legislation Amendment Bill 2010 was introduced into Parliament on 24 June 2010 (VCEC 2009a). The Bill proposes to amend the *Subordinate Legislation Act 1994* to broaden the RIS process to delegated legislative instruments that may impose an appreciable regulatory impact on business and the community and to improve public accessibility to all delegated legislative instruments (Premier of Victoria 2010). The intention is to ensure that scrutiny and public consultation on government regulations will be linked to the impacts of the changes rather than the form of the legal instrument by which the regulation is made. If the Bill is passed, these amendments will apply from 2011.

The VCEC identifies areas in which the quality of RISs and BIAs could be improved upon. This includes making RISs more effective consultation documents and identifying a wider range of options to address each of the identified policy problems (VCEC 2009a). In the 2008-09 progress report on the Reducing the Regulatory Burden initiative the Treasurer announced a comprehensive review to Victoria's framework for regulation-making and review. The review includes 'updating the VGR to ensure it incorporates the latest experience in designing efficient regulation' (Government of Victoria 2009). This work is underway and the updated VGR is expected to be released in 2010-11.

Compliance reporting on gatekeeping

The VCEC publishes an annual report that, among other things, reports on compliance with the gatekeeping and regulatory change measurement requirements. In 2008-09, the VCEC assessed 28 RISs, 13 BIAs and five Standard Cost Model (SCM) measurements.

The RIS and BIA processes have led to significant improvements in Victorian regulatory proposals. In many cases, lower cost or more effective alternatives have been identified to achieve the Victorian Government's policy objectives.

For example in one assessment of a BIA, a proposal for accreditation was revised. Under the original proposal, all operators were to be accredited, whereas under the revised proposal, a more targeted approach was adopted, requiring registration of smaller operators, with less frequent compliance burdens, and accreditation of larger operators. As a result of these changes, the costs of the proposal were reduced by around \$70 million over 10 years (VCEC 2009a).

In another assessment of a BIA, the proposal to exempt certain parties from a ban was revised to adjust the threshold, thereby lessening the restriction on competition. Another change was made to require publication of reasons for the exercise of ministerial power to ban certain products (VCEC 2009a).

Effective early engagement with the VCEC improved the regulatory proposals relating to sunset reviews of the *Environmental Protection (Industrial Waste Resource) Regulations 2009* and the *Children's Services Regulations 2009*. The departments responsible for both of these RISs engaged with the VCEC more than 12 months before the regulations were due to sunset. This early engagement enabled these RISs to be used as tools to analyse the costs and benefits of various options, and better shape the proposed regulations (VCEC 2009a).

Developments in reductions of regulatory burden

Reducing the Regulatory Burden (RRB) initiative

In September 2009 the Treasurer of Victoria announced, while releasing the 2008-09 Progress Report on the RRB initiative, an expanded target of reductions in \$500 million per annum in regulatory burden reductions by July 2012 (Government of Victoria 2009). The scope of the target was also expanded to include substantive compliance and delay costs, in addition to administrative costs.

To provide guidance to Victorian departments and public entities on undertaking measurements of changes in regulatory burden within expanded scope of the RRB initiative, the Victorian Government released a Regulatory Change Measurement manual which replaced its earlier SCM manual from 1 January 2010. It includes guidance on measuring substantive compliance and delay costs, as well as administrative costs.

The Victorian Treasurer also reported in September 2009 that the net reduction in administrative burden from initiatives underway was estimated at \$246 million per annum. This means that Victoria is on track to achieve its initial five year target of reducing administrative burden on the business and not-for-profit sectors by \$256 million per annum by July 2011 (Government of Victoria 2009).

The Victorian Government has also made significant progress on its commitment to reduce the number of Principal Acts by 20 per cent by 2010. A total of 530 Principal Acts were repealed to December 2009.

Developments in regulation reform

Victoria uses the sunset provisions of regulations to introduce additional reform. Primary legislation is also periodically reviewed to achieve policy objectives more effectively and efficiently. The RRB initiative also encourages departments to review compliance obligations to achieve outcomes more efficiently.

In addition to the above, inquiries into regulatory areas by VCEC are a major vehicle for examining options for regulation reform in Victoria. The VCEC undertook the following inquiries in 2009-10:

- A Sustainable Future for Victoria: Getting Environmental Regulation Right (VCEC 2009b). As part of the strategy for reducing regulatory burden, the inquiry examined the burdens that environmental regulations impose on businesses. The VCEC final report and Government response were released in January 2010. The report noted that Victoria's environmental regulation provides a range of important benefits and recommended changes that would cut the unnecessary costs to business by \$30-\$48 million per annum. The Government supported the direction outlined in the final report, moving to a more risk-based approach to regulation, as well as introducing an improved framework for evaluating the effectiveness of new and existing environmental regulation.

- **Getting it Together: An Inquiry into the Sharing of Government and Community Facilities** (VCEC 2009c). The inquiry examined the potential for increased sharing of both existing and new government and community facilities in Victoria, including with commercial entities. The final report and Government response were released in March 2010. The inquiry found that shared facilities generally bring benefits, including improvements to service delivery and expanding the scope of services. The Government committed to providing more information to enable greater sharing of facilities.
- **Local Government for a Better Victoria: An inquiry into Streamlining Local Government Regulation** (VCEC 2010a). The inquiry examines the scope for further streamlining of regulation and processes administered by local government. The draft report was released for public consultation in May 2010 and the final report is due to be released, along with the Government's response by February 2011.
- **On Sound Commercial Terms: An Inquiry into Regulatory Impediments in the Financial Services Sector** (VCEC 2010b). The inquiry focused on supporting the competitiveness of the Victorian financial services sector through the identification of regulatory and other impediments and barriers. The draft report was released in March 2010 and the final report, along with the Government's response, is due to be released by December 2010.

B.3 Queensland

Regulatory impact analysis

The Queensland Government has developed an enhanced regulatory development and review system, the Regulatory Assessment Statement (RAS) system, which adds significant rigour, transparency and accountability to the previous impact assessment processes.

The RAS system applies to all regulatory instruments (primary, subordinate and quasi regulation) as well as all government departments, agencies and statutory authorities. The RAS system improves on the previous arrangements by:

- integrating existing RIS and Public Benefit Test (PBT) assessment processes into a single, streamlined process (PBT relates specifically to proposals that potentially restrict competition, and was introduced to meet Queensland's requirements under the National Competition Reforms);
- promoting consideration of regulatory best practice principles at all stages through the regulatory cycle by introducing a Regulatory Principles Checklist;
- introducing a streamlined two level impact assessment effort proportional to the significance of the regulatory proposal including a cost-benefit analysis for all proposals with significant impact;
- strengthening assessment of compliance cost impacts on business, community and government by mandating their quantification, except where negligible or trivial;
- supporting more effective consultation and engagement with key affected stakeholders throughout the regulatory cycle with a minimum consultation period and public notification of consultation opportunities; and
- providing greater transparency and accountability for regulatory outcomes through:
 - providing the Treasurer's Exemption in exceptional circumstances only,
 - requiring a review within two years of significant regulatory proposals where a RAS was not completed, and
 - requiring a review of regulation in its entirety at least every 10 years.

At this stage, application of the RAS system to quasi regulation is limited to industry codes, accreditation schemes and industry-government agreements.

From 31 March 2010, the RAS system has applied to all new and amending regulatory proposals requiring Cabinet consideration where the policy has not been considered by Cabinet or has been considered by Cabinet but requires a reassessment of impacts because of policy changes.

From 1 October 2010, the RAS system will apply to all new and amending regulatory proposals not requiring Cabinet consideration.

The key goals of the RAS system are to:

- improve the quality of information to decision-makers to facilitate good regulation-making;
- build policy development capability and capacity across government by promulgating regulatory best practice; and
- streamline impact assessment requirements and minimise compliance burden on government agencies in complying with the RAS system.

The RAS system involves two levels of impact assessment. The first level is the Preliminary Impact Assessment (PIA) and the Regulatory Principles Checklist (RPC). A PIA is a brief consideration of the significance of the potential impacts (economic, competition, social, environmental and compliance) of a regulatory proposal, quantified where possible, on business, community and government. It assists agencies in identifying whether further impact assessment is necessary. The RPC is a series of prompts enabling agencies to demonstrate that regulatory best practice principles have been considered throughout the development of the regulatory proposal. It is progressively updated as a regulatory proposal is developed.

The second level of impact assessment under the RAS system is a Regulatory Assessment Statement. A RAS involves more in-depth impact analysis (including an appropriate cost benefit analysis) of a regulatory proposal than a PIA and is published for public consultation. The RAS replaces the PIA when a regulatory proposal with significant impacts is submitted for endorsement.

An important part of a RAS is the cost-benefit analysis (CBA). The CBA is a systematic evaluation of all the direct and indirect costs and benefits of a regulatory proposal on the community as a whole. It provides decision-makers with quantitative information about the potential impacts of a regulatory proposal.

The RAS system extends previous legislative requirements by requiring all new regulation commencing after 31 March 2010 (including quasi regulation) be reviewed within 10 years of the regulation's commencement date. Regulation in place before this date must be scheduled for review under an agency's regulatory simplification plan. All regulatory proposals are to be reviewed in their entirety, with the objective being to evaluate the continuing relevance, effectiveness and efficiency of the regulation. Additionally, a post-implementation review must be commenced within two years of the implementation date of any regulation with significant impacts where a RAS was not conducted.

The Queensland Government has developed tools, a number being 'Australia first' initiatives, to assist agencies in facilitating the new regulatory and development review system, including:

- online guidelines that support policy officers in developing regulatory proposals and reviewing regulation in accordance with regulatory best practice principles;
- interactive training modules, that build policy capability and capacity across the Queensland Government;
- an online Compliance Cost Calculator, that assists agencies in assessing the compliance cost impacts from a regulation on business, community and government;
- an online register which provides public access to regulatory assessment statements endorsed for public release, providing greater transparency; and
- a register of key business and community contacts, which provides access by agencies to business and community organisations that can assist in assessing the compliance costs impacts from regulation.

The Queensland Government will review the RAS system by mid-2011 in consultation with departments, agencies and statutory authorities. The review will consider the system's objectives and impacts along with opportunities for improvement post-implementation.

Compliance reporting

Queensland did not have a formal procedure for reporting on compliance with the previous RIS requirements. However, section 40(3) of the *Statutory Instruments Act 1992* (Qld) states it was the Queensland Parliament's intention that there was compliance with RIS requirements before subordinate legislation was made. Similarly, there is no formal procedure for reporting on compliance with the RAS system requirements. However, it is Queensland Government policy that Ministers and Chief Executive Officers are responsible for ensuring agencies under their direction comply with the RAS system and COAG regulatory best practice principles. Ministers also have the responsibility for recommending compliance to any statutory bodies not directly subject to the RAS system.

The Queensland Office for Regulatory Efficiency (QORE) received 280 RIS enquiries, assessed 11 RIS documents and two RAS documents in the 2009-10 financial year. For the same period, at least 25 PBT enquiries were handled and six PBTs were conducted.

Developments in regulatory reform

The Queensland Government has committed to maintaining a competitive regulatory environment that supports Queensland business, community and government in driving innovation, productivity and economic growth for the benefit of all Queenslanders.

The Government's regulatory reform agenda is focused at reducing and streamlining existing regulation, improving the quality of new regulation and achieving a seamless national economy, while strengthening community safeguards and protection with best practice regulation.

Queensland has set an initial target for reducing the compliance burden to business and the administrative burden to government by \$150 million per annum by the end of 2012-13. To achieve this target, the Government has embarked on the Queensland Regulatory Simplification Plan 2009-13. Under the Plan, Government agencies are reviewing their existing stock of regulation, identifying unnecessary and excessive legislative requirements and opportunities to streamline administrative and procurement processes.

First phase regulatory simplification plans have been developed, and the Treasurer has written to key stakeholders to seek feedback on whether the reform directions and initiatives in these plans address the real regulatory issues faced by business and community. These agency regulatory simplification plans are available for public review and comment online. Regulatory simplification plans for the remaining Government agencies will be accessible online by the end of 2010.

To facilitate the overall reform program, the Queensland Government has put in place in 2009-10 a number of innovative initiatives, including:

- guidelines to develop a regulatory simplification plan that support agencies in developing their plans including identification of obsolete regulation and net regulatory savings targets;
- the appointment of dedicated senior officers, known as a Regulatory Reform Champions, in each Government agency to facilitate the agency's successful implementation of the Queensland Smart Regulation Reform Agenda including COAG Business Regulation and Competition reforms;
- working with peak business and community bodies and organisations at the case study level to get to the heart of their concerns (a case study template has been developed to support peak bodies in working with their members to identify regulatory compliance issues and opportunities to reduce the burden to business and community);
- the Shaping Smart Regulation Mailbox which allows business and community the opportunity to provide feedback on areas of unnecessary or excessive regulatory burden and suggestions for improvement; and
- the Get Involved website which offers business and community a central reference point for information on upcoming reviews and consultation opportunities.

At the national level, the Queensland Government has been working with other Australian jurisdictions to deliver a seamless national economy. Under the Council of Australian Governments (COAG) agreement, over 36 business regulation and competition reform areas are being targeted to improve the efficiency and inter-jurisdictional harmonisation of the regulatory environment.

Harmonisation of regulations across Australia in areas such as occupational health and safety, trade licensing and consumer law will contribute to reducing costs incurred by business in dealing with differing and inconsistent regulation across jurisdictions. Reform areas have been selected to drive maximum benefit for the national economy and are to be implemented by 2012-13.

Queensland's progress and performance with the national and state reform agendas are reported through the Smart Regulation Annual Report. This report publicly highlights and promotes the Queensland Government's regulatory reform efforts and achievements to create a regulatory environment that supports better economic, social and environmental outcomes for Queensland.

B.4 Western Australia

The Western Australian Government is committed to the development of better regulation through its Regulatory Impact Assessment process, as well as reducing the burden of existing regulation on businesses and consumers, through its red tape reduction agenda. Ministers are also able to refer existing regulation to the Treasurer, for targeted review by the Department of Treasury and Finance. Addressing regulatory constraints and reducing the level of unnecessary or poorly designed regulations will make a significant contribution to increasing the economic performance and growth prospects of the State.

Regulatory Impact Analysis

In 2009, the WA Government announced a number of reforms to regulation-making and review processes, including the development and implementation of a new best practice system to ensure that negative impacts and costs associated with regulatory proposals are justified and minimised.

The initiative had been implemented in accordance with Western Australia's commitments under COAG to support new and strengthened gatekeeping arrangements to apply to the making of regulation.

COAG has agreed that all Governments would establish effective gatekeeping arrangements "as part of the decision-making process to ensure that the impact of proposed regulatory instruments are made fully transparent to decision-makers in advance of decisions being made and to the public as soon as possible" (Government of Western Australia 2010).

The best practice system, outlined in the *Regulatory Impact Assessment Guidelines for Western Australia*, requires that all new and amending regulatory proposals must demonstrate compliance with Regulatory Impact Assessment (RIA) requirements.

Stage 1 of the RIA process requiring assessment of all regulatory proposals submitted to Cabinet commenced on 1 December 2009. On 1 June 2010, RIA was rolled out to cover all subordinate legislation being made by the Governor in Executive Council. The third stage of the roll out will allow for the assessment of all subordinate and quasi regulation from 1 June 2011.

The Regulatory Gatekeeping Unit (RGU) was established to advise on regulatory best practices and to encourage and report on compliance with RIA. The RGU is responsible for administering and supporting the RIA process by:

- providing information and training to agencies on the requirements and benefits of the RIA process;
- engaging with agencies early in the development of proposals and providing guidance and technical assistance on the completion of a Preliminary Impact Assessment (PIA) and a Regulatory Impact Statement (RIS);
- responding to agencies on each PIA and RIS within the stipulated 10 day timeframe and providing assessment on compliance with RIA;
- referring any proposals with small business impacts to the Small Business Development Corporation;

- commenting on regulatory Cabinet submissions from a RIA perspective;
- providing support documentation and templates to assist agencies in complying with RIA;
- monitoring the development and implementation of regulation to ensure the appropriate RIA analysis is undertaken and improving that analysis over time; and
- producing the RGU Annual Report, on new and amending regulation and compliance with RIA requirements.

In the lead up to rolling out to Stage 2, the RGU undertook a review of its processes, and as part of this review, made minor changes to the RIA Guidelines.

The amendments included:

- the introduction of exceptions to focus the resources of agencies and the RGU on the more complex and significant regulatory issues;
- the introduction of 'effective and appropriate' consultation to acknowledge that in some cases full public consultation may not be possible or appropriate; and
- the introduction of regulatory plans, in addition to the previously approved six monthly compliance reporting, to aid in the regulatory planning within agencies and across Government and to assist in the early appreciation of RIA.

In addition, a Working Group with cross-agency representation has been established to assist in the further examination of RIA operational and implementation issues, including the examination of the application of RIA to the full range of subordinate legislation and quasi regulation.

Compliance reporting

The RGU is responsible for administering and supporting the RIA process by reporting on compliance with RIA. Since 1 December 2009, the RGU has:

- examined over 205 Preliminary Impact Assessments (PIA), of which 174 were assessed as meeting the requirements of the RIA Guidelines (with the remainder still under assessment);
- requested or assessed 14 Consultation and 6 Decision Regulatory Impact Statements (RIS); and
- conducted 30 training sessions, informing 625 agency staff on the RIA process and how to complete a PIA, whilst 486 agency staff received additional training on how to complete a RIS.

The RGU observed that the adequacy of PIA completion has improved since the introduction of the RIA process on 1 December 2009.

Going forward, the RGU intends to publicly release its first full Annual Report mid-to-late 2011. This Annual Report will be based on the period 1 July 2010 to 30 June 2011 and will capture both Stage One and Stage Two of RIA.

Consultation

Effective and appropriate consultation is a key element of the WA Government's regulatory reform framework. Consultation would generally be considered effective and appropriate where businesses and relevant stakeholders, including consumers and in some circumstances the general public, have been consulted to ensure that all affected parties have a good understanding of the issues, options, and their impacts. Agencies are required to ensure the nature and extent of the consultation is commensurate with the magnitude of the issue, and will be required to demonstrate that the method of consultation has met RIS adequacy criteria.

Red Tape Reduction Group

The Red Tape Reduction Group (RTRG) was established in January 2009 to identify and report on opportunities to reduce the burden of existing regulation and red tape on Western Australian business and consumers. In February 2010 the RTRG released its report, *Reducing the Burden*, which contains 107 recommendations for immediate and ongoing red tape reduction. Key recommendations include:

- reforms which aim to reduce the regulatory burden by improving the culture, performance and accountability of government agencies;
- reforms which aim to maintain an impetus and mechanisms for on-going red tape reduction by government; and
- reforms designed to address specific areas of concern raised during the consultation process.

The direct benefits of these reforms to the Western Australian economy are estimated to be at least \$44 million in a single year. The State Government is currently developing its formal response to the report, and is already making progress on some key areas.

Developments in Regulatory Reform

Along with Western Australia's commitment to the COAG regulatory reform program, a number of reviews of existing regulations have been established or completed in 2009-10.

The Economic Regulation Authority (ERA) is currently undertaking an inquiry into Water Resource Management and Planning Charges. Under the terms of reference, the ERA will provide the Government with a range of options and recommendations for the recovery of water resource planning and management expenses. It will also recommend appropriate regulatory arrangements for the setting of service standards and charges.

The ERA is currently conducting its second review of the Railways (Access) Code 2000. Public submissions have been received and both the Draft and Final Recommendation Papers are expected to be released in late 2010.

The ERA is currently inquiring into the effectiveness of the *Chicken Meat Industry Act 1977*. This Act underpins a compulsory collective contracting system between all growers and chicken meat processors and creates a Chicken Meat Industry Committee to oversee the relationship between producers and processors of chicken meat. The ERA's final report and recommendations are due in November 2010.

In September 2009, the Department of Planning released *Planning Makes it Happen – a Blueprint for Planning Reform*. This document sets out the strategic reform of a wide range of planning initiatives designed to improve the Western Australian planning system. The proposed reforms aim to simplify the approvals process, cut red tape, reduce timelines and encourage greater certainty and accountability in the planning process.

In October 2009, the Premier, Colin Barnett, announced the implementation of a streamlined approvals process, facilitated through a new lead agency framework and several legislative reforms. This is a significant step in a series of approvals reforms aimed at providing a more efficient and better coordinated process for responsible development in Western Australia.

In November 2009, the Department of Water released a discussion paper on resources management options, which examines the reasoning behind modernising legislation governing water resource management and water trading and the options available. The impetus for this reform arises from commitments to the National Water Initiative, as well as the need to address impediments under current legislative arrangements for effective water resource management.

In December 2009 the Environmental Stakeholder Advisory Group released its report on the Middle Committee's Review Report on Native Vegetation Clearing. This report advocates a number of improvements to the regulatory framework controlling the clearing of native vegetation in Western Australia.

B.5 South Australia

Regulatory impact analysis

Where policy proposals have significant regulatory impacts, a RIS must be prepared and attached to the Cabinet submission. The RIS includes an assessment of the business, environmental, family and social impacts. The Regulatory Impact Assessment process applies to all categories of regulation, including primary and subordinate legislation, legislative and non-legislative instruments and quasi regulation. Where policy proposals restrict competition, the RIS must demonstrate that the benefits outweigh the costs.

South Australia has mandated the use of the Commonwealth Government's Business Cost Calculator (BCC) to assess the business compliance costs associated with regulatory proposals that will have a significant impact on business.

Since July 2003, where there is a significant change proposed in relation to services or infrastructure in regional areas, a Regional Impact Assessment Statement must be prepared. Regional Impact Assessment Statements are required to be made publicly available and listed in the relevant agency's annual report.

In 2010, the South Australian Government completed the development of a new Better Regulation Handbook, which specifies principles and requirements for regulatory proposals. As part of this, the Government is also considering enhancements to the regulatory gatekeeping arrangements.

The new Handbook requirements in South Australia are similar to the Australian Government's Best Practice Regulation requirements in that they:

- apply to all categories of regulation, including primary and subordinate legislation, legislative and non-legislative instruments and quasi-regulation;
- require the demonstration that the proposal will deliver benefits to the community that outweigh its costs, where proposals restrict competition; and
- require the consideration of both regulatory and non-regulatory options.

Developments in regulatory reform

In April 2009, the Premier of South Australia announced a second target of a \$150 million per annum net reduction in regulatory burden by April 2012. This followed the over-achievement of the first \$150 million target (net reduction in regulatory burden of \$170 million in July 2008).

The scope of both targets includes administrative and substantive compliance and delay costs. Guidelines have been produced to assist South Australian Government Departments and agencies in measuring reductions in regulatory burden.

The Red Tape Reduction Program (RTR) include:

- the allocation of individual agency targets, with Chief Executives made accountable to the Premier for achieving their agency's target;
- a network of Red Tape Champions who are responsible within agencies for preparing red tape reduction plans and six-monthly updating and reporting;
- an independent audit of red tape reduction plans (six-monthly);
- a series of industry reviews (seven) to identify areas for reducing regulatory burdens; and
- rolling five-yearly reviews of regulation of significance to business.

Ernst and Young, appointed to audit the second phase of the RTR, has assessed annual savings to business and the not for profit sector of just over \$111 million as at 30 June 2010. The identified savings are from initiatives currently included in agency red tape reduction plans which are either fully or partially completed, or are in the planning stage.

The second phase of the Red Tape Reduction program represents a more comprehensive approach and focus on reducing both the current 'stock' and future 'flow' of red tape. Having achieved its first round red tape reduction target, in mid-2008 the Government sought to lock in these savings and introduced a new 'offsets' policy which requires new regulatory burdens imposed on business to be offset by further red tape reduction initiatives in certain circumstances. The offsets policy comes into play where a regulatory proposal imposes additional costs on the community, including businesses and not for profit organisations, and where these costs have not been justified to decision-makers. The mechanism for achieving an offset is through an adjustment to the proponent agency's red tape reduction target, thus ensuring a net reduction in (unnecessary) regulatory burden.

The South Australian Government has also initiated a Smarter Business Regulation Project to identify ways by which regulatory processes can be better coordinated. This will include the potential to unify some of the common actions that are shared between different regulatory processes and to remove duplication and overlap on specific issues.

The regulatory and administrative frameworks that govern marine aquaculture, and petroleum and geothermal activities have served as models (case studies) of 'best practice' for regulatory assessment processes. The project draws on these models to identify improvement measures for other sectors.

B.6 Tasmania

Regulatory impact analysis

Under the Government's Legislation Review Program (LRP), 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. In cases where the restriction on competition is of a minor nature, agencies are required to prepare a minor assessment statement, which assesses the costs and benefits of the restriction or restrictions on competition, to justify that the legislation is in the public interest.

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.

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).

Compliance reporting

During 2009-10, three RISs were required to be endorsed by the Economic Reform Unit in the Department of Treasury and Finance, relating to the:

- Environmental Management and Pollution Control (Underground Petroleum Storage Systems) Regulations 2009;
- proposed amendments to the *Workers Rehabilitation and Compensation Act 1988*; and
- proposed amendments to the *Workplace Health and Safety Act 1995*.

Developments in regulatory reform

In addition to Tasmania's active participation in the National Reform Agenda, the Business Tax and Regulation Reference Group was established in November 2008 to enhance communication between the business community and the Government. The Group met three times during 2009-10. In June 2009 the Reference Group made a submission to the Henry Taxation Review (Business Tax and Regulation Reference Group 2009).

Consultation

The Government publicly releases all RISs for proposed primary and subordinate legislation and is required to consider the outcome of this consultation before finalising the proposed legislation.

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

B.7 Australian Capital Territory

Regulatory impact analysis

The *Legislation Act 2001* (ACT) requires a Regulatory Impact Statement (RIS) to be prepared and tabled for a proposed subordinate law or disallowable instrument that is likely to impose an appreciable cost on the community or part of the community. This allows regulations developed outside the Cabinet process to be subjected to a regulatory impact analysis process.

Additionally, the ACT Cabinet Drafting Guide notes that proposals for Government legislation may require a RIS.

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

Compliance reporting

The RPU provides assistance to agencies in preparing RISs. It also takes a role on quality assurance. In 2009-10, approximately 72 Bills were introduced to the ACT Legislative Assembly and 53 subordinate laws were passed. Of the new regulations, RISs were published for six. RPU has assisted and reviewed additional RISs for regulatory proposals which have not been made public.

Developments in regulatory reform

The ACT is committed to COAG regulatory reform processes. The ACT Government, however, is yet to meet the COAG Seamless National Economy National Partnership regulatory reform milestones for 2008-09.

The ACT Government is continuing to review regulatory requirements. Examples of ACT Government reviews in 2009-10 include:

Taxi Industry Review

The Taxi Industry Review critically analyses current arrangements and considers alternative models with regard to competition and performance, operator viability and regulatory effectiveness.

Police Criminal Investigative Powers Review

The Review of Police Criminal Investigative Powers Discussion Paper considers a broad range of police powers and advocates the modernisation and consolidation of those powers into a single piece of legislation. The effect of this approach is to provide the courts, legal practitioners and the community with a single source of legislation for all police criminal investigative powers. The discussion paper also advocates the repatriation of important safeguards for people arrested by police currently listed in the *Commonwealth Crimes Act 1914*.

Review of the Governance Provisions in the Gaming Machine Act 2004

The review will focus on the efficacy and appropriateness of the governance provisions for clubs in the *Gaming Machine Act 2004*.

Review of the Heritage Act 2004

The review will assess the operation of the *Heritage Act 2004* over the last five years. The review will examine how the current heritage assessment framework operates and whether the main objectives of the Act are achieved. The review will also consider compliance issues, consistency with the *Planning and Development Act 2007* and the National Heritage Convention criteria, and the consultation process with the Aboriginal community.

Consultation

The ACT Government has recently undertaken a significant review of its community engagement practices and has developed a framework that promotes a more participatory and strategic approach to consultation. The framework encourages all agencies wherever possible to undertake community engagement in a proactive way early in the decision-making process, so the community can understand the potential implications and impacts of government decisions. A range of initiatives are also underway to engender a more consistent, considered and collaborative approach to community consultation across Government.

A strengthened community engagement process will support the ACT's Regulatory Impact Analysis.

B.8 Northern Territory

Regulatory impact analysis

In 2008, the Northern Territory put in place the Regulation Making Framework (RMF) to replace the Competition Impact Assessment process. The RMF has been designed to:

- increase the quality and rigour of regulation impact analysis;
- reduce inefficient business regulation;
- promote closer integration of best practice regulation-making principles in agency policy development processes;
- improve the efficiency and effectiveness of regulation;
- ensure consistency of regulation across jurisdictions;
- improve the transparency of regulatory decision-making and accountability of regulators; and
- ensure regulation delivers 'net benefits' to the Territory.

The RMF involves a two-stage process comprising a Preliminary Regulation Impact Statement (PRIS), undertaken at the time approval to draft legislation is requested and, if required, a Regulation Impact Statement (RIS), undertaken as part of the regulation development process. A RIS is required only if the PRIS indicates the proposal will have material economic implications. The PRIS like a RIS contains descriptions of the problem, objective and options.

For each RIS, a quantitative assessment of business compliance costs is encouraged, including through the use of the Office of Best Practice Business Cost Calculator. Where this is not possible, the agency is encouraged to submit plausible costing options or estimates outlining the underlying assumptions.

The RIS 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.

Consultation

The Regulation Making Framework 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 preliminary impact assessment available to target groups.

The preliminary impact assessment requires a statement of the proposed public consultation process to be undertaken in order to demonstrate that affected stakeholders will be afforded the opportunity to provide input to the regulation-making process.

Compliance reporting

The Regulation Impact Unit provides assistance and guidance to agencies during the development of a PRIS or a RIS to ensure compliance with RMF requirements before the PRIS or RIS is submitted to the Regulation Impact Committee for formal analysis.

The Regulation Impact Committee is an interdepartmental committee that oversees the Territory's regulatory review process, and ensures that the likely impacts of the proposed regulation are made fully transparent to decision-makers in advance of decisions being made. The Committee comprises representatives from the Departments of the Chief Minister, Justice, Business and Employment; and Northern Territory Treasury.

The Committee oversees the regulation-making process by:

- assessing PRIS's and determining whether proposed regulation should be subject to a RIS;
- assessing the adequacy of any PRIS or RIS against formal best practice regulation principles;
- advising Cabinet of decisions through the issuing of relevant certificates; and
- advising Cabinet on the regulation-making policy framework.

If a PRIS or RIS does not comply with the Regulation Making Framework, this is formally noted by the Committee in the relevant certificate. Regulatory proposals do not proceed to Cabinet in the absence of certification from the Committee.

Appendix C
International developments



appendix C

Appendix C

International developments

The Office of Best Practice Regulation (OBPR) monitors regulatory reform developments in other countries to assess their relevance to Australia.

Some of the more relevant publications on regulatory reform released in the past year are examined in this Appendix. In addition, an examination is made of the ongoing implementation of the significant enhancements to regulatory impact analysis (RIA) arrangements introduced in the United Kingdom, the European Union, New Zealand, Canada, the United States, and the Asia-Pacific Economic Cooperation (APEC).

C.1 Organisation for Economic Cooperation and Development

OECD Review of Australia's Processes for regulation-making and review

In February 2010, the OECD released a report on Australia titled: *OECD Reviews of Regulatory Reform Australia: Towards a Seamless National Economy* (OECD 2010a). In the report, the OECD stated that 'Australia is one of the front-running countries in the OECD in terms of its regulatory reform practices', and that 'Australia represents in many ways a "role model" for OECD countries in its proactive approach to regulatory reform'.

Key points were:

- Mature regulatory settings coupled with a strong fiscal position were key contributors to Australia's performance in weathering the Global Financial Crisis. In particular, the report noted 'Australia's well-regulated and resilient financial sector has limited the direct negative impact of the financial crisis on the economy'.
- Australia had 'an ambitious regulatory reform agenda to build a seamless national economy and build productivity'. The report noted that regulatory reform in Australia was given a high profile with the creation of a portfolio position for the Minister for Finance and Deregulation.
- The Australian Government was described as making 'a significant effort toward regulatory improvement at a Commonwealth level and through the use of Commonwealth-State partnerships'.
- The national reform agenda set up in partnership with Australian States and Territories to harmonise business regulation across jurisdictions was studied. The report acknowledged the Business Regulation and Competition Working Group (BRCWG) which manages the process of coordinating and progressing this regulatory reform.
- Australia's system for regulatory impact analysis was described as amongst 'the most rigorous and comprehensive in the OECD'.
- The use of ex post assessment was described as well integrated into the regulatory process, with 10-year sunset periods for subordinate legislation and scheduled reviews of legislation.
- Australian competition law was described as effective in establishing 'robust and competitive markets'.

While the review of Australia's regulatory settings was positive, the OECD recommended further regulatory reforms. A key challenge for Australian businesses was identified to be dealing with costs associated with inconsistent and duplicative regulatory regimes. Streamlining of regulatory frameworks was identified as a significant factor for competitiveness. The report identified a need to pursue further reform in the transport, energy and infrastructure sectors.

Twenty seven different recommendations were made. Broadly categorised, these related to national regulatory governance, multi-level regulatory governance relating to Federal-State relationships, competition policy and market openness.

Regulatory governance	The eight recommendations made in relation to regulatory governance were concerned with increasing transparency and accountability, strengthening the Best Practice Regulation process, and the use of scheduled reviews to promote continuous improvement.
Multi-level regulatory governance	The four recommendations made in relation to multi-level regulatory governance were concerned with maintaining momentum and further strengthening arrangements and processes to support ongoing regulatory reform.
Competition policy	The eight recommendations in relation to competition policy related to strengthening existing regulatory arrangements, continuing further reviews to identify and target constraints on competition, further supporting private enforcement of commercial law, as well as several more specific measures.
Market openness	The seven recommendations made in relation to market openness were concerned with maintaining momentum with reforms underway to rationalise industry assistance, promote transparency, and harmonise Australian standards with international standards.

In its response to the report, the Australian Government agreed to twenty recommendations, agreed in principle to two, and noted five.

New initiatives agreed to in response to the OECD Review included:

- further improving the Australian Government's engagement with business to identify regulatory reform opportunities and concerns through establishing a formal consultation forum with business and using web 2.0 technologies;
- subject to the agreement of state and territory governments, developing approaches to identifying and managing new regulatory proposals at the local level which could affect the operation of national markets;
- a number of initiatives to improve the effectiveness of RIA; and
- enhancing the transparency of regulation-making by requiring regulatory agencies to report publicly on how they will ensure regulations do not impose unnecessary costs on business.

Indicators of Regulatory Management Systems

Indicators of regulatory reform are collated by the OECD on a periodic basis. The first was published in 1995. The purpose is to compare regulatory quality assurance systems; to measure progress and understand trends over time across countries, and to identify general patterns of regulatory management practice. The most recent set of indicators were collated by the OECD in 2008-09 and published in December 2009 (OECD 2009a).

Key points were:

- Australia was scored highly overall across OECD regulatory management indicators.
- Australia was ranked highest of all countries for requiring justification for regulatory action, and on par with the world leaders for providing training in regulatory reform skills, policy coherence integrating competition and market openness and clarifying and providing due process in rule-making procedures.
- For regulatory impact analysis requirements and enforcement, Australian scores are near the top rankings for RIA processes, and is on a similar level to the United Kingdom, the Netherlands and other European Union countries for appeal, compliance and enforcement issues associated with RIA.
- Australia scored highly on measuring administrative burdens, but below countries which have implemented advanced regulatory burden targets.
- Australia's scores for formal consultation processes improved significantly since 2005, and it is now nearer the top rankings. Australia is still ranked below the top ranked countries, due to the fact that Australia has no post RIA consultation, no minimum consultation period; and does not mandate for regulators to respond in writing to queries.
- Australia improved its score for dynamic processes for evaluation and update of regulations, and ranks above the United Kingdom, the Netherlands and other European Union countries.

The description of indicators also raised issues of the direct comparability of Australia's regulatory framework.

- Australia scored relatively low on licence and permits issues – relating to administrative simplification, one-stop shop, facilitating licences and permits and administrative requirements. Australia's score is in the bottom quarter of countries for these. The reason appears to be that Australia has no national requirements for reviews of licences and permits, no single point for accepting notifications and issuing licences and no "silence is consent" rule. Most licences and permits are issued by the states, territories and local governments.
- Australia also scored relatively low on its access to regulations (i.e. the publication of primary acts and subordinate legislation). While Australia makes primary and secondary legislation public and accessible online within the Commonwealth and the States, the indicator favours countries with consolidated registers of subordinate regulations.

Other Country Reports

Italy: Better Regulation needed to strengthen market dynamics

On 4 May 2010, the OECD released a paper on regulatory reform in Italy (OECD 2010b). The report noted that Italy has continued with reform of product market regulation, and is now comparable to neighbouring countries, such as Germany, Austria and France. Additionally, the OECD noted that Italian authorities have progressed removal of unnecessary laws and made it easier for businesses to start. Efforts to reduce administrative burdens are estimated to have created annual savings to business of over €4 billion. The Antitrust Authority has promoted competition in major infrastructure sectors and increased transparency and consumer choice in many other sectors. However the OECD also noted that further work in reducing the cost of regulation needed to be progressed in the electricity, gas, retail and professional services sectors.

While Italy had taken steps to reinvigorate RIA processes, areas for further improvement included: consolidating mechanisms for quality control and investing more in staffing and training to improve the quality of analysis undertaken and provide better comparison of options. The study suggested a targeted approach of proportional analysis would help build skills and support over time. Consultation with stakeholders was another area for improvement. The report noted the lack of a general requirement for government agencies to consult with stakeholders, and the lack of requirements to publish the results of consultations, identify who was consulted or provide feedback on their views.

Germany: Improve regulation for a more dynamic economy

On 28 April 2010, the OECD released a report on regulatory reform in Germany. The report was published as part of the EU-15 project, designed to assess capacities for effective regulatory management across the EU through individual reviews of fifteen member states covering half the OECD membership.

The report noted Germany's commitment to streamline the regulatory state, reduce bureaucratic machinery and simplify the regulatory environment. The paper discussed current German initiatives to fulfil this commitment, including the programme to reduce administrative burdens on business ("Bureaucracy Reduction and Better Regulation") adopted in 2006, and the establishment of the Federal Chancellery Better Regulation Unit. The OECD report noted that although Germany has already begun simplifying regulations by cutting red tape, more action is needed.

The OECD report made four main recommendations for new regulation.

- First, reinforcing the institutional framework for regulatory policy. The report noted that while there have been important institutional developments to support better regulation since 2004 (when the last OECD review of Germany was conducted), more work was needed to reinforce these. Methods discussed in the report to achieve this included strengthening ex ante impact assessment in the development of new regulation, while continuing with the existing program to reduce administrative burdens.
- Second, broadening consultation with stakeholders. The two most important issues identified in this report were the need for greater transparency and increasing opportunities for wider stakeholder consultation. The report supported establishing a clear and enforceable set of common guidelines for public consultation. In particular, e-consultation was identified as a opportunity to test approaches to solicit greater consultation.

- Third, deepening the level of cooperation between the federal and state governments. The report noted that the German regulatory production system is complex as federal laws are usually implemented by state governments. But there are often disconnects between the two levels. While the report noted that compliance could be high, the actual level of compliance achieved was not monitored.
- Fourth, making impact assessment a key part of effective policy and decision-making. The current approach in operation was considered to be comprehensive on paper, but in practice arrive at a relatively late stage of the law making process, which reduces its effectiveness in influencing the design of regulation.

Other OECD Reports

Regulatory Impact Analysis: A Tool for Policy Coherence, September 2009

This publication brings together recent OECD research and analysis concerning methodological issues and country experiences with RIA. The collected papers cover a number of challenges to the effectiveness of RIA including: systemic factors which influence the quality of RIA, methodological frameworks that can assist RIA to improve regulation, guidance on using RIA to avoid unnecessary regulation of competitive markets; and a review of the use of RIA in the regulation of corporate governance with reference to several OECD countries.

Risk and Regulatory Policy: Improving the Governance of Risk, April 2010

This publication presents recent OECD research and analysis on risk and regulatory policy. The chapters discuss core challenges today. They offer measures for developing, or improving, coherent risk governance policies.

C.2 United Kingdom

A general election was held in the United Kingdom on 6 May 2010 and on 2 June 2010 the Government announced the main elements of its regulatory reform policy. The main elements included:

- a review of all regulations introduced by the outgoing government in the past 12 months;
- the launch on an online forum to discuss which new laws should be scrapped;
- a 'one-in, one-out' pledge to rebalance legislative growth;
- a system of regulatory budgets across government, which means that no new red tape would be introduced without a compensating cut in the costs and burden somewhere else;
- a new Cabinet committee that will lead the Government's drive to reduce regulation impeding growth, particularly regulation of small business. The committee would be chaired by the Business Secretary and is to enforce a new approach to new laws and regulations, ensuring that these costs are being properly addressed across the entire British economy; and
- a new 'challenge group' to come up with innovative approaches to achieving social and environmental goals in a non-regulatory way. This team would work with experts including Richard Thaler, a prominent US-based behavioural economist.

The mechanisms to implement these policies are still being developed. Some underlying thinking about these policies was outlined in a policy paper titled: 'Regulation in the Post-Bureaucratic Age: How to get rid of red tape and reform quangos'. (Conservative Party, 2009).

The paper highlighted the need to adopt a new ('post-bureaucratic') approach to regulation, which would make use of new technologies and insights from social psychology and behavioural economics to 'achieve policy goals in a less burdensome and intrusive way'. Two categories of structural reform were identified to implement this. The first were institutional changes to curb the volume of new regulations and remove existing regulations which are overly burdensome. The second were policy changes to improve the quality and effectiveness of any new regulations, and reflect the latest insights from academic research.

The other coalition partner, the Liberal Democrats, has also announced a commitment to reduce the burden of unnecessary red tape (Liberal Democrats, 2010).

C.3 European Union

In January 2007, the European Commission launched an "Action Programme" to reduce administrative burdens in the European Union by 25% by 2012, using 2005 as a baseline.

In a progress report released in October 2009, the Commission noted that it had finalised its baseline measurement for the 72 acts covered by the Action Programme and 13 priority areas. The overall administrative burden imposed by these acts at the beginning of the measurement period in 2005 was estimated to be around €123.8 billion.

The exercise identified a total of 486 EU information obligations, and more than 10,000 national obligations which transpose or implement these EU obligations. More than 600 national obligations were further observed to go beyond EU requirements.

The communication described the main lessons learned from the EU baseline measurement programme.

- A high proportion of administrative burdens stem from information obligations belonging to a few policy areas – 80% of the total burden measured stemmed from EU regulations relating to taxation and company law. Of these, the ten most important obligations account for more than 77% of the total burden.
- The number of enterprises affected, combined with the frequency of the information provision, is the main driver behind total costs of an information obligation.
- There are wide variations among priority areas in the share of administrative costs corresponding to 'business as usual costs'. Many information provision obligations are not collected in the normal course of business for companies.
- The degree to which an information obligation is perceived by business as irritating is largely uncorrelated to the administrative burdens imposed – this is because SMEs' small size prevents them from fully realising the benefits of using information technology or specialised in-house knowledge for complying with obligations.
- The same obligation imposes on average a higher burden on small to medium sized enterprises.
- An estimated 32 per cent of administrative burdens of EU origin could be the result of the decision of some Member States to go beyond what is required by EU legislation. In part this is because EU information obligations leave considerable discretion relating to implementation to the member states.

The communication also reported that it had made progress in reaching the reduction target. The tally of total measures implemented, proposed or being prepared by the Commission was estimated to represent a possible reduction of up to € 123.8 billion, or 33% of the total estimated burdens of EU origin.

C.4 New Zealand

During this reporting period, the New Zealand Government issued a Government Statement on Regulation and revised its best practice regulation requirements. The report of the Regulatory Responsibility Taskforce on the New Zealand Regulatory Responsibility Bill was also released in this period.

Government Statement on Regulation

On 17 August 2009, the Hon. Bill English, Minister of Finance and the Hon. Rodney Hide, Minister for Regulatory Reform, released the first Government Statement on Regulation. The Statement contained two commitments:

- to introduce new regulation only when the government is satisfied that it is required, reasonable and robust; and
- to review existing regulation to identify and remove requirements that are unnecessary, ineffective and excessively costly.

The commitments seek to change the culture of regulatory decision-making by:

- ensuring that regulation is not the first resort for solving problems;
- requiring greater accountability from agencies for the quality of analysis and consequences of poor implementation; and
- ensuring that regulatory quality is an integral part of policy development.

Revised Regulatory Impact Analysis Requirements

On 3 August 2009, the New Zealand Government agreed to measures to strengthen its regulatory impact analysis process. The measures included:

- requiring the RIS to be prepared before the Cabinet paper and removing the requirement for RISs to recommend a preferred option;
- requiring the preparing agency to certify RISs and disclose critical gaps in analysis, important assumptions and alignment with the NZ Government Statement on Regulation;
- requiring all significant regulatory proposals which do not meet RIA requirements but are ultimately agreed on to be subject to a post-implementation review, in consultation with Treasury;
- requiring ministers to certify in the Cabinet paper that they have considered whether a sponsored proposal is consistent with the expectations set out in the Government Statement on Regulation; and
- clarifying that an agency's opinion on the adequacy of the analysis for non-significant RISs to be done independently of the staff in the agency responsible for preparing the RIS.

The changes were reflected in a revised Regulatory Impact Analysis Handbook published on 2 November 2009, including a Regulatory Impact Analysis template. The handbook also provided for the online publication of regulatory impact statements, which are expected to be published in three ways:

- including a link to the RIS in the press statement announcing any new policy for which a RIS is required;
- being lodged on the responsible department's website, and on the NZ Treasury website; and
- being included in the explanatory note to bills that are introduced into the House.

The revised requirements provide for flexibility of assessment. Independent quality assurance (QA) is undertaken on all RISs. However, where the regulation deals with significant impact or risk, then this formal QA will be undertaken by the Regulatory Impact Analysis Team (RIAT) in Treasury. For all other RISs, the QA will be provided by the authoring agency. Further guidance on QA was provided in April 2009 by the NZ Treasury.

Other Measures to Improve the Stock and Flow of Regulation

Agencies are also required to:

- implement systems to continually and systematically scan existing regulation to identify possible areas for reform or review; and
- provide an annual regulatory plan of known and anticipated regulation.

Report of the Regulatory Responsibility Taskforce

On 9 March 2009, the Minister for Regulatory Reform announced the creation of a Regulatory Responsibility Taskforce to provide independent advice on the Regulatory Responsibility Bill that was considered by the New Zealand Parliament's Commerce Select Committee in 2008. The purpose of the Taskforce was to determine what if any amendments were required for the Bill in order to achieve its objectives. The Taskforce delivered its report on 30 September 2009.

The Taskforce recommended:

- stating the principles of responsible regulation to be advanced by the Bill;
- requiring Ministers to certify that proposed legislation is compliant with these principles;
- giving the courts an ability to make declarations of incompatibility with the specified principles of the Bill;
- requiring the courts to interpret legislation consistently with the principles set out in the Bill if possible; and
- requiring public entities to use best endeavours to regularly review all legislation they administer for compatibility with the principles.

These recommendations were incorporated into a revised bill, which was attached to the report. The Taskforce made a number of non-legislative supporting recommendations, including:

- establishing a permanent group responsible for reviewing both the body of legislation and specific proposed or existing legislation against the principles of responsible regulation and the guidelines issued, undertaking consultation with public bodies where appropriate; and
- making changes to the New Zealand Parliament's Standing Orders to increase parliamentary scrutiny of legislation against legislative quality principles.

The New Zealand Government is considering the Taskforce's report and draft Bill. As part of that consideration, it ran a public consultation process on the Bill from late June to late August 2010. Submitters were asked to consider a series of questions relating to the Bill and regulatory quality more generally, including (among many others):

- whether New Zealand has a problem with regulatory quality;
- whether the draft Bill's proposed approach of testing legislation against a series of principles is likely to improve regulatory quality; and
- the likely effects of giving the courts the ability to make declarations of incompatibility with respect to the principles of responsible regulation.

C.5 Canada

The Canadian Government continued to produce documentation to support the Canadian Cabinet Directive on Streamlining Regulation (CDSR), which came into force on 1 April 2007. The CDSR set out guidance on the federal regulatory process described in the Canadian Statutory Instruments Act. The CDSR further provided for regulatory intervention only after the full range of policy instruments had been reviewed and the effectiveness of the regulatory intervention evaluated.

During the 2009-10 reporting period, the Treasury Board of Canada Secretariat released a revised Regulation Impact Analysis Statements (RIAS) Writer's Guide 2009 to help departments and agencies better understand the regulatory impact analysis requirements of the Cabinet Directive on Streamlining Regulation (CDSR) and to improve the quality of RISs. While the purpose of the guide is to help departments and agencies better understand the CDSR, the guide explicitly does not provide advice on how to analyse regulatory impacts.

C.6 United States

Federal regulatory review in the United States is the responsibility of the Office of Information and Regulatory Affairs (OIRA), which is part of the Office of Management and Budget (OMB). OIRA was created as part of the Paperwork Reduction Act of 1980. OIRA reviews significant regulatory proposals and information collection requests prior to publication in the Federal Register. The principles that it operates under are set out in Executive Order 12866 of September 1993.

In 2009-10, OIRA reviewed 704 rules (both economically significant and non-significant) in an average time of 47 days (Source: reginfo.gov). In its 2010 report to Congress, the OMB reported that during the 2009 Fiscal year, executive agencies made 66 major rules. Of these 16 quantified and monetised benefits and costs, with an estimated \$ 28.9 billion in annual benefits and \$3.7 – \$9.5 billion in annual costs. For 13 rules, the issuing agencies did not provide monetise benefits, costs or budgetary transfers. The remainder of the rules monetised benefits, costs or budgetary transfers to varying extents.

In the report, the OMB recommended three potential reforms to improve regulatory policy and analysis. First, the OMB recommended consideration of empirically informed approaches to regulation, with an emphasis on relevant empirical findings and on disclosure policies, simplification, appropriate default rules, salience and social norms. Second, the OMB suggested consideration of several steps to improve regulatory impact analysis, including clear and distinct presentation of both costs and benefits. Third, the OMB recommended that regulatory impact analysis should be seen and used as a central part of open government. The unifying goal listed in its report was 'to promote data-driven, evidence-based regulation and to select approaches on the basis of empirical findings, rather than intuition, anecdote, or guesswork.'

In June 2010, OIRA released explicit guidance on the use of disclosure and simplification as regulatory tools. In his 2010 Report to Congress, the Director of the OIRA, Dr Cass Sunstien, said the aim was to improve regulatory impact analysis and to increase transparency by promoting clarity with respect to underlying assumptions and anticipated consequences, prominent tabular presentation of costs and benefits, and careful consideration of the comments offered by members of the public on proposed rules.

C.7 Asia-Pacific Economic Cooperation

The Economic Committee of APEC works to promote among other things structural reform within APEC. Structural reform consists of improvements made to institutional frameworks, regulations and government policies so that the efficient functioning of markets is supported and behind-the-border barriers are reduced.

A roundtable discussion was held on strategies for reducing administrative burdens on 25 July 2009. This roundtable was co-organised by the APEC Economic Committee and the OECD. This round table discussion enabled APEC and OECD to exchange views on the good practices for reducing administrative burdens; discuss possible ways for overcoming the existing barriers; share general principles for administrative simplification; and consider the effective institutional conditions for implementing regulatory impact analyses (RIA).

In November 2009, APEC published the 2009 APEC Economic Policy Report. The report discussed the link between structural and regulatory reform, and discussed basic principles of regulatory reform design, including mechanisms and institutions to oversee regulatory reform. Regulatory tools to improve the flow of regulation, such as regulatory impact analysis statements and consultation were discussed. Additionally, systems and processes for improving the stock of regulation were also considered. Measurement tools to chart progress in regulatory reform were considered, as well as an overview of regulatory reform in APEC countries.

An APEC-OECD Symposium was held in Hiroshima on 25 February 2010. The theme of competitiveness was highlighted by the OECD and how regulatory reform has helped Asian economies become more robust and flexible after the 1997 financial crisis.

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