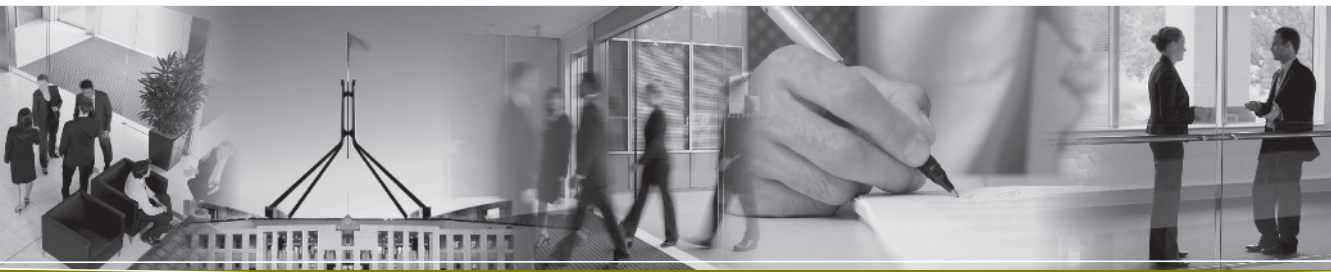




Australian Government

Department of Finance and Deregulation
Office of Best Practice Regulation

Best Practice Regulation Report



2008–09

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Abbreviations

ABCB	Australian Building Codes Board
ACCC	Australian Competition and Consumer Commission
ACS	Australian Customs Service
ACT	Australian Capital Territory
ADIs	Authorised Deposit-taking Institutions
ADR	Australian Design Rules
AFMA	Australian Fisheries Management Authority
AHMC	Australian Health Ministers' Conference
APEC	Asia-Pacific Economic Cooperation
APRA	Australian Prudential Regulation Authority
ARPANSA	Australian Radiation Protection and Nuclear Safety Agency
ASIC	Australian Securities and Investments Commission
ATC	Australian Transport Council
BCC	Business Cost Calculator
BIA	Business Impact Assessment
CIA	Competition Impact Analysis
COAG	Council of Australian Governments
COAG Guide	COAG <i>Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies</i>
CORE	Centre of Regulatory Expertise
CPRS	Carbon Pollution Reduction Scheme
CDSR	Canadian Cabinet Government Directive on Streamlining Regulation
DAFF	Department of Agriculture, Fisheries and Forestry
DBCDE	Department of Broadband, Communications and the Digital Economy
DCC	Department of Climate Change
DEEWR	Department of Education, Employment and Workplace Relations
DEWHA	Department of the Environment, Water, Heritage and the Arts
DFAT	Department of Foreign Affairs and Trade
DHA	Department of Health and Ageing
DIISR	Department of Innovation, Industry, Science and Research
DITRDLG	Department of Infrastructure, Transport, Regional Development and Local Government
DRET	Department of Resources, Energy and Tourism
DTF	Department of Treasury and Finance (WA)
ERA	Economic Regulation Authority (WA)
FSANZ	Food Standards Australia and New Zealand
GWh	Gigawatt hours

LAGs	liquid, aerosols and gels
LRP	Legislation Review Program (Tasmania)
MCC	Ministerial Council of Corporations
MCCA	Ministerial Council for Consumer Affairs
MCDS	Ministerial Council on Drug Strategy
MCE	Ministerial Council on Energy
MEPS	Minimum Energy Performance Standards
MRET	Mandatory Renewable Energy Target
NOHCS	non-operating holding companies
NSSBs	National standard-setting bodies
NSW	New South Wales
NT	Northern Territory
NZ	New Zealand
OBPR	Office of Best Practice Regulation
OECD	Organisation for Economic Cooperation and Development
OIRA	Office of Information and Regulatory Affairs
PBT	public benefit test
PIMC	Primary Industries Ministerial Council
Qld	Queensland
QORE	Queensland Office for Regulatory Efficiency
RBA	Reserve Bank of Australia
RET	renewable energy target
RGU	Regulatory Gatekeeping Unit
RIA	regulatory impact analysis
RIAT	Regulatory Impact Analysis Team (New Zealand)
RIAU	Regulatory Impact Analysis Unit (New Zealand)
RIS	Regulation Impact Statement
RPI	Regulatory Performance Indicator
RPU	Regulation Policy Unit (ACT)
RTRG	Red Tape Reduction Group (WA)
SA	South Australia
SCM	Standard Cost Model
Tas	Tasmania
Treasury	Department of the Treasury
TTMRA	Trans-Tasman Mutual Recognition Arrangement
UK	United Kingdom
VCEC	Victorian Competition and Efficiency Commission
Vic	Victoria
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's and the Council of Australian Government's (COAG) best practice regulation requirements.

As in previous years, this report provides information on compliance by Australian Government departments and agencies, ministerial councils and national standard-setting bodies. By covering a 15 month reporting period for COAG in this report, the reporting period for the two systems will be brought into alignment on a financial year basis. 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 policy transparency.

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

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.

Finally, I would like to thank my predecessor Mrs Su McCluskey who occupied the position of Executive Director for most of this reporting period.

Jason McNamara
Executive Director
Office of Best Practice Regulation

November 2009

one Major regulatory initiatives and the best
practice regulation process



one

one Major regulatory initiatives and the best practice regulation process

There were a number of major developments in regulation policy in 2008-09. Of particular significance was the Council of Australian Government's (COAG) National Partnership Agreement to Deliver a Seamless National Economy. The Agreement covering 27 priority regulatory reforms has the potential to deliver significant productivity benefits to the Australian economy.

The Australian Government announced a number of regulatory initiatives including, the Carbon Pollution Reduction Scheme, the national Renewable Energy Target, and a new national workplace relations system. Regulatory responses were also developed in the financial sector during 2008-09 as part of the Government's response to the Global Financial Crisis.

Compliance by the Australian Government with the best practice regulation requirements fell during 2008-09. At the decision-making stage compliance fell from 90 per cent in 2007-08 to 85 per cent in 2008-09, while the publication of Regulation Impact Statements (RISs) fell from 91 per cent in 2007-08 to 84 per cent in 2008-09. Non-compliant regulatory proposals by the Australian Government during 2008-09 included:

- requiring payment of temporary visa holders' unclaimed superannuation to the Commonwealth when the visa holder has departed Australia;
- requiring shareholder approval of executives' termination benefits exceeding one year's average base salary;
- introducing a three-year, 100 per cent guarantee of deposits in Authorised Deposit-taking Institutions;
- setting a threshold on payments made under the Financial Claims Scheme of \$1 million and specifying the products covered during the first three years of the scheme's operation;
- requiring unit pricing by grocery retailers;
- establishing an inalienable resale royalty right for visual artists;
- the Agreement Establishing the Association of Southeast Asian Nations – Australia-New Zealand Free Trade Area;
- expanding the Renewable Energy Target from 9 500 GWh to 45 000 GWh by 2020;
- updating the regulatory framework for tax agents and Business Activity Statement service providers;
- regulating the non-operating holding companies of life insurance companies;
- introducing a Financial Claims Scheme; and
- introducing crisis management arrangements for distressed financial institutions.

In addition, six regulatory proposals by the Australian Government during 2008-09 were granted 'exceptional circumstances' by the Prime Minister, meaning a RIS was not required but a post-implementation review will be required within one to two years of the regulation being implemented. The proposals included:

- decision on the 2050 cap and the establishment of an emissions trading scheme;

- a new industrial relations system with a focus on collective bargaining in the workplace;
- introducing private health insurance incentive tiers;
- placing limits on tax concessions for income earned by Australians working overseas;
- reducing the cap on concessional superannuation contributions; and
- a package of interim measures relating to bans on the short selling of stocks.

In late 2008 the Office of Best Practice Regulation (OBPR), in consultation with the COAG secretariat, aligned the reporting period for COAG with that of the Australian Government. Compliance with the COAG best practice regulation requirements fell at the consultation stage from 96 per cent in 2007-08 to 88 per cent in 2008-09. However, at the decision-making stage, compliance increased from 93 per cent in 2007-08 to 96 per cent in 2008-09. Non-compliant regulatory proposals under the COAG requirements during 2008-09 included:

- prohibiting the sale of fruit and confectionary flavoured cigarettes;
- unfair contract terms; and
- setting a maximum level of hydrocyanic acid in ready-to-eat cassava chips.

1.1 National Partnership Agreement to Deliver a Seamless National Economy

In 2008-09, COAG agreed to a National Partnership Agreement to Deliver a Seamless National Economy. The agreement seeks to improve Australia's productivity by reducing the cost and removing regulatory barriers to doing business across jurisdictional borders.

The agreement commits the Commonwealth to provide the states and territories with up to \$550 million over five years to facilitate and reward the delivery of 27 priority reforms. Areas of reform covered by the agreement include: uniform occupational health and safety laws; regulation of trustee companies; regulation of consumer credit; personal property securities; environmental assessment and approvals; licensing of tradespeople; product safety regulation; health workforce; and chemicals and plastics regulation. The agreement also commits jurisdictions to eight areas of competition reform and to the ongoing reform of regulatory processes. Reward payments to the states and territories are contingent upon jurisdictions meeting the key milestones set out in the agreement's implementation plan.

A number of these initiatives will require RISs under the Australian Government's or COAG's best practice regulation requirements. Some proposals have already been decided (see chapter 4 on compliance by ministerial council).

Quantifying the benefits of these reforms is difficult. The Productivity Commission (2006) has estimated that the broad competition and regulatory reforms envisaged under the National Reform Agenda agreed by COAG in February 2006, which includes many of the reforms on the Business Regulation and Competition Working Group (BRCWG) agenda, have the potential to increase GDP by two per cent in the long run and reduce compliance costs for businesses and individuals by more than \$8 billion with an equivalent or larger benefit to the economy from a concomitant reduction of efficiency costs.

1.2 Major regulatory initiatives of the Australian Government

Carbon Pollution Reduction Scheme

The Government committed to Australia becoming a full member of the Kyoto Protocol and as part of meeting its protocol obligations, decided to:

- set a target to reduce emissions by 60 per cent on 2000 levels by 2050; and
- establish a national emissions trading scheme by 2010.

The Prime Minister granted 'exceptional circumstances' from the best practice regulation requirements for the decision on the 2050 cap and the establishment of an emissions trading scheme — the Carbon Pollution Reduction Scheme (CPRS).

The detailed design of the scheme and setting of the medium term (2020) emissions cap was subject to extensive consultation as part of the Australian Government's CPRS green paper. Also, the Department of Climate Change was compliant with best practice regulation requirements by preparing a RIS at the decision-making stage prior to the Government's release of the CPRS white paper.

A new national workplace relations system

The *Fair Work Act 2009* creates a new national workplace relations system and implements: safety net minimum terms and conditions (such as maximum weekly hours of work and a right to request flexible working arrangements); a focus on collective bargaining; and a new institutional framework for the administration of the workplace system (comprising an independent statutory body and a Fair Work Ombudsman and unfair dismissal protections for employees).

The Prime Minister granted 'exceptional circumstances' from the best practice regulation requirements for the decision-making stage but agreed that regulatory analysis be included in the Explanatory Memorandum to the Bill. The OBPR did not formally assess the analysis against the best practice regulation requirements but noted that the analysis documented the regulatory implications of the legislative proposals, compared with arrangements that existed under the previous legislative framework.

A post-implementation review is required to commence within one to two years of the full implementation of the *Fair Work Act 2009* on 1 January 2010.

National Renewable Energy Target

The Government designed the national Renewable Energy Target (RET) scheme in cooperation with the states and territories through COAG. Its aim is to bring both the Mandatory Renewable Energy Target (MRET) and existing state-based targets into a single national scheme. The key features of the scheme are:

- an increase to the MRET from 9 500 GWh to 45 000 GWh by 2020 designed to achieve the equivalent of at least 20 per cent of Australia's electricity supply being generated from renewable sources by 2020; and
- the RET will end in 2030, by which time the CPRS will be the primary driver of renewable energy.

The decision to implement the RET was made early in the term of the new Government (announced 3 December 2007) to meet an election commitment. The Department of Climate Change did not prepare a RIS for the decision and is therefore required to commence a post-implementation review of this proposal within one to two years of the implementation of the scheme on 1 January 2010.

Measures to enhance the stability of the Australian financial system

On 2 June 2008, the Treasurer announced a package of measures to further enhance the stability of the Australian financial system. The package included legislation to establish a Financial Claims Scheme for deposit holders in Authorised Deposit-taking Institutions (ADIs) and policyholders in general insurers regulated by the Australian Prudential Regulation Authority. The Financial Claims Scheme allows customers, in the event of an ADIs failure, to quickly recover money in deposit accounts, up to a specified cap, with the remainder to be recovered when the ADI is liquidated. The scheme also provides compensation to policyholders who had valid claims with a failed general insurer.

The package also included changes to broader crisis management arrangements.

Adequate RISs were prepared for the Financial Claims Scheme and the broader crisis management arrangements. However, neither RIS was tabled with the enabling legislation as specified by the best practice regulation requirements.

On 12 October 2008, the Treasurer announced that the Government would guarantee all deposits of Australian banks, building societies and credit unions and Australian subsidiaries of foreign-owned banks, for a period of three years. The guarantee was legislated as part of the Financial Claims Scheme and is to operate without a cap for three years. The Treasurer also announced that the Government would guarantee wholesale term funding for institutions in return for a fee in respect of eligible non-deposit debt obligations of Australian ADIs and foreign-owned subsidiary banks operating in Australia. A RIS was not prepared and the Department of the Treasury is required to conduct a post-implementation review of these measures.

On 24 October 2008, the Treasurer announced changes to the deposit and wholesale funds guarantee scheme. From 28 November 2008, eligible institutions would have to pay a fee for each account holder guaranteed for deposits over \$1 million, with different rates applying depending on the credit rating of the institution. The Treasurer also announced that foreign bank branches would be able to access the guarantee for short-term wholesale funding raised from Australian residents at the same premium that applies to other ADIs. A RIS was not prepared for these changes and a post-implementation review is required.

1.3 Best practice regulation process

In 2008-09, the OBPR received a total of 735 queries in relation to regulatory proposals being made under both the Australian Government and COAG best practice regulation requirements. Of these, 652 were under the Australian Government requirements and 83 were under the COAG requirements.

The OBPR advised that further regulatory impact analysis was required for 85 Australian Government proposals and sought more information on an additional 22 proposals. It advised that 40 proposals required a RIS under the COAG best practice regulation requirements and sought further information on an additional five proposals.

During 2008-09, the OBPR was involved in a number of initiatives to increase the awareness and understanding of the best practice regulation requirements and gain feedback about improving the effectiveness of the process.

Regulatory best practice training program

Training helps to increase awareness of the best practice requirements, assists departments and agencies to comply with the requirements and improve the quality of regulatory analysis.

As part of day-to-day activities OBPR officers provide one-on-one advice to policy officers actively involved in regulatory analysis activity. In addition, the OBPR offers formal training on the Australian Government and COAG regulatory best practice requirements. In late 2008-09, the OBPR began offering dedicated training sessions to officers preparing COAG RISs. The OBPR offers a suite of training packages from high level briefing on the requirements to detailed training on RISs, Business Cost Calculator (BCC) reports and cost-benefit analysis. In addition, the OBPR has a range of training and guidance material available on the Department of Finance and Deregulation website.

Each month the OBPR runs a two hour general training course on regulatory impact analysis (RIA) requirements. Each quarter it provides a half day comprehensive training session on how to prepare a RIS, quantify compliance costs and undertake a cost-benefit analysis. Other training is provided directly to departments and agencies on demand. This includes specialised training with course material tailored to meet the requirements of an individual agency.

The OBPR trained approximately 519 officers in 2008-09 — compared with 462 officers in 2007-08. The OBPR considers that the offer of standardised training on a monthly and quarterly basis has contributed to increased demand for training.

Training in 2008-09 has also been well received. Course participants were asked to evaluate their training using a four scale system from 'unsatisfactory' to 'excellent' — 90 per cent of the 242 people who rated the training session they attended considered the course to be 'excellent' or 'very good'. Table 1.1 provides details on the OBPR's training activity for 2008-09.

Table 1.1 RIA training provided in 2008-09

Course	Course length	Courses provided	Total attendance
Overview of the Australian Government RIA requirements	2 hours	7	116
Comprehensive RIA training seminar	4 hours	5	63
How to prepare a RIS and BCC report	1 hour	19	298
How to use the Business Cost Calculator	1 hour	2	23
Introduction to cost-benefit analysis	1 hour	1	9
COAG best practice requirements	2 hours	1	10
Total		35	519

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 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 in encouraging and ensuring compliance with the best practice regulation requirements. The Coordinators can act as a first point of contact for policy officers undertaking regulatory impact analysis. They can advise 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 business 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;
- organising training on the best practice regulation requirements for their department or agency; and
- managing quality assurance within the organisation for RIA products.

During 2008-09, three Coordinators meetings were held to provide an opportunity to discuss regulatory impact analysis issues. The OBPR also used the forums to relay guidance on specific issues and to establish closer relationships with departments and agencies.

The Coordinators continue to provide valuable feedback to the OBPR on the practical application of the best practice regulation requirements. From the OBPR's perspective, the Coordinators continue to help improve compliance with the best practice regulation requirements and to nurture long term cultural change needed to improve regulation-making processes.

With the agreement of the COAG Secretariat, the OBPR proposed the creation of a similar network of Best Practice Regulation Coordinators for COAG in relation to its best practice regulation requirements. This voluntary initiative has been well received by the secretariats of ministerial councils and national standing-setting bodies and will enable better understanding of COAG's processes and the OBPR's role when developing national or inter-jurisdictional regulation. The OBPR anticipates that it will have the arrangements in place by the end of 2009-10.

States and territories

All Australian state and territory governments have some form of regulatory impact analysis process in place and RISs continue to be the most used tool to ensure regulatory quality. Regulatory impact analysis units in each state and territory administer the 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 their experiences and lessons with counterparts in other jurisdictions. On 13 November 2008, the units held their annual meeting in Canberra.

Of most significance during 2008-09 for state and territory regulatory process was the COAG National Partnership Agreement to Deliver a Seamless National Economy. As part of this agreement COAG committed to continuing the regulatory reform process and reaffirmed their intention to:

- implement by 30 June 2009 specific regulation making and review processes;
- establish and maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition; and
- undertake targeted public annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant net benefits to business and the community.

Details about recent developments in the states and territories are provided in appendix B.

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 a dual role of assisting departments and agencies to meet the requirements and improve the quality of regulatory analysis, and in monitoring and reporting on compliance with the requirements.

In assessing the quality of the regulatory impact analysis, the OBPR does not endorse or support particular regulatory options or outcomes. Rather, its role is to assess whether good regulatory 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* (COAG Guide).

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

2.2 Australian Government's best practice requirements

The Australian Government's current best practice regulation requirements came into effect on 20 November 2006 and were re-affirmed by the Minister of Finance and Deregulation in a statement to Parliament on 17 March 2008.

'The Australian Government's *Best Practice Regulation Handbook*, released in August 2007, sets out best practice regulation requirements ... The Rudd Labor government is committed to not just maintaining but further strengthening these requirements. ...

Compliance with the procedures and processes outlined in the *Best Practice Regulation Handbook* remains mandatory for all Australian government departments, agencies, statutory authorities and boards that make, review or reform regulations. This includes not only 'black-letter law' but also quasi-regulation such as rulings, guidance notes and standards.' (Tanner 2008a)

The OBPR in its role in administering the best practice regulation processes and reporting on compliance with the requirements 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;
- '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;
- a green paper was prepared (for regulatory proposals which were highly significant)¹; or
- an exposure draft was released as a basis for consultation (for complex regulatory proposals).

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.

¹The Government decided on 7 April 2009 that in future Ministers would determine when green papers should be prepared.

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 — through Regulatory Performance Indicators (RPIs) and presentation of compliance scores and statistics.

Regulatory Performance Indicators

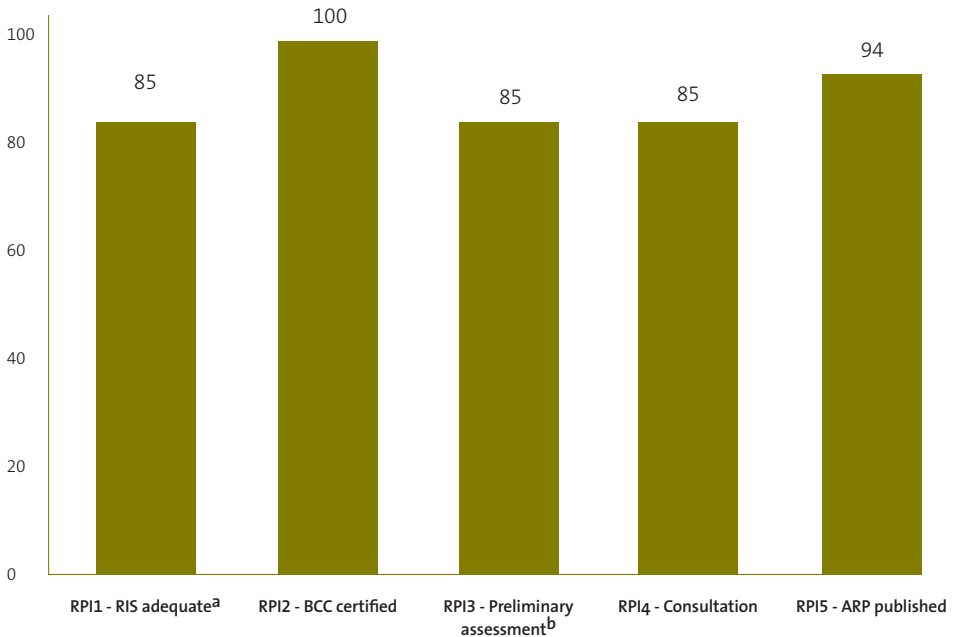
RPIs are designed to measure how effectively the Australian Government meets its commitments to reducing the burden of regulation on business and improving the quality of regulation.

There are currently five RPIs which align with the best practice regulation requirements. The OBPR collects and reports on information against the Government's endorsed performance indicators described below.

- RPI 1** — Proportion of regulations requiring a RIS for which an adequate RIS was prepared.
- RPI 2** — Proportion of regulations requiring a stand-alone assessment of compliance costs (such as a BCC report or equivalent) for which an assessment was provided and certified by the OBPR.
- RPI 3** — Proportion of regulations (requiring a RIS or stand-alone assessment of compliance costs) which met the requirement to undertake a preliminary assessment and consult the OBPR before a decision was made.
- RPI 4** — Proportion of regulations requiring a RIS for which the consultation process, as described in the RIS was adequate.
- RPI 5** — An Annual Regulatory Plan for the introduction and review of regulation was published.

The aggregate RPI results for 2008-09 show good compliance with the BCC requirements but indicate that improvement is needed on other aspects of the regulatory impact analysis requirements.

Figure 2.1 Australian Government RPI scores, 2008-09 percentage



^a Excludes where 'exceptional circumstances' were granted by the Prime Minister or where RISs were prepared for treaties at the entry into negotiations stage. ^b Excludes proposals decided on before 20 November 2006.

Source: OBPR

Aggregate compliance scores

For regulatory proposals tabled in 2008-09, of the 59 RISs required at the decision-making stage the Prime Minister granted 'exceptional circumstances' in six cases. Consequently, for the 53 decisions requiring a RIS, 45 RISs were prepared and assessed as adequate — giving a compliance rate of 85 per cent. A compliance rate of 90 per cent was achieved in 2007-08 (see table 2.1).

Four BCC reports were required in 2008-09. All were prepared, certified by the OBPR and published — giving a compliance rate of 100 per cent, which is an improvement over the previous year.

Table 2.1 RIA compliance 2006-07 to 2008-09

Stage	Type of RIA	2006-07 ratio ^a	%	2007-08 ratio ^a	%	2008-09 ratio ^a	%
Decision-making stage	– RISs	15/16	94	43/48	90	45/53	85
	– BCC reports	2/2	100	7/7	100	4/4	100
Transparency stage ^b	– RISs	15/16	94	41/45	91	41/49	84
	– BCC reports	2/2	100	6/7	86	4/4	100
Exceptional circumstances		2		3		6	

^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 six regulatory proposals. 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).

Table 2.2 Proposals for which exceptional circumstances were granted in 2008-09 post-implementation reviews required

Agency	Regulatory proposal	Date tabled
ASIC	ASIC Class Orders o8/751, o8/752, o8/753, o8/763, o8/764, o8/801, o8/824 Introduces interim bans on naked short selling and covered short selling	22 September 2008
DEEWR	Fair Work Bill 2008 Creates a new industrial relations system with a focus on collective bargaining in the workplace	25 November 2008
DCC	Carbon Pollution Reduction Scheme Bill 2009 Sets a target to reduce emissions by 60 per cent on 2000 level by 2050 and introduces an emissions trading scheme	14 May 2009
Treasury	Fairer Private Health Insurance Incentives Bill 2009, Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2009 and Fairer Private Health Insurance Incentives (Medicare Levy Surcharge - Fringe Benefits) Bill 2009 Introduces private health insurance incentive tiers	27 May 2009
Treasury	Tax Laws Amendment (2009 Budget Measures No. 1) Bill 2009 Limits tax concessions for income earned by Australians working overseas	29 May 2009
Treasury	Tax Laws Amendment (2009 Budget Measures No. 1) Bill 2009 Reduces the cap on concessional superannuation contributions	29 May 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, 662 preliminary assessments were undertaken in 2008-09, 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 2008-09, eight proposals proceeded to the decision maker without the support of an adequate RIS (see table 2.3).

The Agreement Establishing the Association of Southeast Asian Nations – Australia-New Zealand Free Trade Area was non-compliant at the entry into negotiation stage. However, an adequate RIS was prepared for the signing stage and tabled. Consequently a post-implementation review is not required for this regulation.

There was also one non-compliant decision made under the previous RIS requirements — prior to 20 November 2006. A RIS was not prepared by the former Government for the decision to update the regulatory framework for tax agents and Business Activity Statement (BAS) service providers (Tax Agent Services Bill 2008 by the Australian Taxation Office). However, in line with the previous RIS requirements, an adequate RIS was tabled in 2008-09.

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

Table 2.3 Non-compliance by proposal, at decision 2008-09

Agency	Regulatory proposal	Date tabled
Treasury	<p>Temporary Residents' Superannuation Legislation Amendment Bill 2008 and Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008</p> <p>When temporary visa holders leave Australia without taking their superannuation with them, relevant amounts are reportable and payable to the Commissioner as unclaimed superannuation: first decision (former Government)</p>	25 September 2008
Treasury	<p>Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008, Financial Claims Scheme (ADIs) Levy Bill 2008 and Financial Claims Scheme (General Insurers) Levy Bill 2008</p> <p>Introduces a three year, 100 per cent guarantee of deposits in ADIs</p>	15 October 2008
Treasury	<p>Banking Amendment Regulations 2008 (No. 1) and Banking Act 1959 - Declaration of Covered Financial Products</p> <p>Sets a threshold on payments made under the Financial Claims Scheme of \$1 million and specifies the products covered during the first three years of the scheme's operations</p>	10 November 2008
DEWHA	<p>Resale Royalty Right for Visual Artists Bill 2008</p> <p>Establishes an inalienable resale royalty right for visual artists</p>	27 November 2008
DFAT	<p>Agreement Establishing the Association of Southeast Asian Nations - Australia-New Zealand Free Trade Area</p> <p>Entry into negotiations (former Government)</p>	27 February 2009
DCC	<p>Renewable Energy (Electricity) Amendment Bill 2009, and Renewable Energy (Electricity) (Charge) Amendment Bill 2009</p> <p>Expands the Renewable Energy Target from 9 500 GWh to 45 000 GWh by 2020</p>	17 June 2009
Treasury	<p>Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009</p> <p>Requires shareholder approval of executives' termination benefits exceeding one year's average base salary</p>	24 June 2009
Treasury	<p>Trade Practices (Industry Codes - Unit Pricing) Regulations 2009</p> <p>Prescribes an industry code that requires large grocery retailers, online grocery retailers and grocery retailers that voluntarily display unit prices, to use unit pricing when selling grocery items to consumers: first decision</p>	24 June 2009

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 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. In 2008-09, no quasi-regulatory proposals required regulatory impact analysis in either the form of a RIS or BCC report.

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 76 per cent (16/21); the compliance rate for delegated legislation requiring BCC reports was 100 per cent (3/3) and for RISs 93 per cent (26/28); and for treaties the RIS compliance rate was 75 per cent (3/4).

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 2008-09

		Primary legislation	Delegated legislation	Quasi- regulation	Treaties	Total
Reports on compliance costs						
– decision	ratio	1/1	3/3	..	..	4/4
	%	100	100	..	..	100
– transparency	ratio	1/1	3/3	..	..	4/4
	%	100	100	..	..	100
Regulation Impact Statements^a						
– decision	ratio	16/21	26/28	..	3/4	45/53
	%	76	93	..	75	85
– transparency	ratio	13/20	26/27	..	2/2	41/49
	%	65	96	..	100	84
Exceptional circumstances	no.	5	1	..	..	6

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

Source: OBPR

2.4 COAG's best practice requirements

Regulation making also occurs at a national or inter-jurisdictional level among 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 a clear net benefit to the community.

2.5 Compliance with the COAG requirements

In previous years, compliance with the COAG requirements was assessed by the OBPR for the period 1 April to 31 March. In October 2008, the OBPR (with agreement from the COAG Secretariat), aligned the COAG reporting period to that of the Australian Government (1 July to 30 June).

As this is a transitional period, this report covers regulatory decisions made during the period 1 April 2008 to 30 June 2009. The OBPR identified 25 decisions that required the preparation of a RIS under the COAG requirements (see chapter 4 for more detail).

At the consultation stage, 22 adequate RISs were prepared resulting in a compliance rate of 88 per cent — compared with 96 per cent in 2007-08 (see table 2.5). At the subsequent decision-making stage, 24 adequate RISs were prepared resulting in an overall compliance rate of 96 per cent — compared with 93 per cent in 2007-08.

Table 2.5 Compliance with the COAG RIS requirements, 2004-05 to 2008-09^a

	2004-05		2005-06		2006-07		2007-08		2008-09 ^b	
	ratio	%	ratio	%	ratio	%	ratio	%	ratio	%
Overall Compliance										
Consultation stage	20/24	83	30/34	88	29/33	88	26/27	96	22/25	88
Decision-making stage	21/24	88	26/34	76	31/33	94	25/27	93	24/25	96
Compliance for highly significant proposals										
Consultation stage	5/6	83	4/4	100	2/3	67	3/3	100	1/1	100
Decision-making stage	6/6	100	2/4	50	3/3	100	3/3	100	1/1	100

^aPrevious years (2004-05 to 2007-08) reported on RISs required for decisions made for the period 1 April to 31 March. ^bTransitional period 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 at the consultation stage in three cases. In two cases, RISs were later prepared and assessed as adequate 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 2008-09

Ministerial Council/NSSB and issue	Date of decision	Compliant at consultation	Compliant at decision
Australian Health Ministers' Conference (AHMC) and Ministerial Council on Drug Strategy (MCDS) Prohibits the sale of fruit and confectionary flavoured cigarettes by December 2009	18 April 2008	No	No
Ministerial Council on Consumer Affairs Defines 'unfair contract terms'	15 August 2008	No	Yes
Food Standards Australia New Zealand (FSANZ) Sets a maximum level for hydrocyanic acid in ready-to-eat cassava chips	10 February 2009	No	Yes

Source: OBPR

Compliance for highly significant COAG proposals

One of the more significant decisions made during 2008-09 involved the roll-out of smart (electricity) meters.

The Ministerial Council on Energy (MCE) developed a RIS which examined the national mandated roll-out of smart (electricity) meters to geographical areas where the benefits outweigh the costs. The analysis in the RIS indicates that the introduction of smart meters has the potential to lower the cost of delivering services to electricity consumers, including through a delay in the need for investment in increased electricity generation capacity on the network. Weighing against this is the cost of purchasing, installing and running the smart meters. Over the next 20 years, the roll-out of smart meters is estimated to result in a net benefit of between -\$300 million to \$3.3 billion, depending on assumptions made about the responsiveness of demand to differential pricing for electricity.

The MCE complied with the COAG RIS requirements. An adequate RIS was prepared at the consultation stage. It was revised after consultation and assessed as adequate by the OBPR for the decision-making stage. The final RIS was made public in accordance with the COAG RIS requirements.

three Compliance by portfolio



three

three Compliance by portfolio

Compliance with the Australian Government's best practice regulation requirements for proposals introduced during 2008-09 is reported in this chapter by portfolio.

In 2008-09, 17 departments and agencies were required to prepare Regulation Impact Statements (RISs) or Business Cost Calculator (BCC) reports. Of these, 13 departments and agencies complied with the requirements while four were non-compliant. Three departments and agencies had no regulatory activity in 2008-09 but from previous years have obligations to complete post-implementation reviews.

As discussed in chapter 2, the Office of Best Practice Regulation (OBPR) in assessing the quality of the regulatory impact analysis (RIA) does not endorse or support particular regulatory options or outcomes. Rather, its role is to assess whether departments and agencies followed good regulatory practice and undertook analysis commensurate with the significance of the regulatory proposal introduced. (*Best Practice Regulation Handbook*, pp. 12-13)

The 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 a year 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 2008-09 decision-making stage

Department/Agency	Business Cost Calculator reports		Regulation Impact Statements		Exceptional circumstances
	ratio	%	ratio ^a	%	
ACCC	6/6	100	..
AFMA	1/1	100	..
APRA	1/1	100	..
ASIC	3/3	100	1
CASA	4/4	100	..
DAFF	5/5	100	..
DBCDE	1/1	100	..
DCC	1/2	50	1
DEEWR	n/a	n/a	1
DEWHA	1/2	50	..
DFAT	1/2	50	..
DHA	4/4	100	1/1	100	..
DIISR	1/1	100	..
DITDLG	4/4	100	..
DRET	1/1	100	..
RBA	2/2	100	..
Treasury	12/17	71	3
Total	4/4	100	45/53	85	6

.. Not required. n/a Not applicable. ^aRatio of adequate RISs to total RISs required, excluding 'exceptional circumstances'.

Source: OBPR

Regulatory Performance Indicators

Responsibility for collecting information and publication of Regulatory Performance Indicators (RPIs) transferred to the OBPR in late 2006. The RPIs were revised in 2008 to directly align with the best practice regulation requirements which involved consolidating the number of indicators from nine to five (see box 3.1). RPIs measure how effectively departments and agencies have met the following objectives:

- there has been adequate analysis of significant regulatory proposals;
- compliance costs have been assessed as required;
- the agency's procedures for identifying proposals that might require regulatory impact analysis worked effectively;
- the agency has consulted appropriately on significant regulatory issues; and
- the agency used its regulatory plan to inform stakeholders about regulatory proposals.

Box 3.1 Regulatory Performance Indicators

RPI 1 — Proportion of regulations requiring a RIS for which an adequate RIS was prepared.

RPI 2 — Proportion of regulations requiring a stand-alone assessment of compliance costs (such as a Business Cost Calculator report or equivalent) for which an assessment was provided and certified by the OBPR.

RPI 3 — Proportion of regulations requiring a RIS or stand-alone assessment of compliance costs which met the requirement to undertake a preliminary assessment and consult the OBPR before a decision was made.

RPI 4 — Proportion of regulations requiring a RIS for which the consultation process, as described in the RIS was adequate.

RPI 5 — A regulatory plan for the introduction and review of regulation was published.

In 2008-09, the OBPR assessed 16 departments and agencies against the five RPIs with 13 scoring 100 per cent for each relevant RPI². Three departments and agencies scored lower against RPI 1, 3 and 4 because regulatory impact analysis was not undertaken. Fifteen departments and agencies achieved 100 per cent for RPI 5 by publishing an Annual Regulatory Plan. Results against RPIs are shown at table 3.2.

² The Department of Education, Employment and Workplace Relations was granted 'exceptional circumstances' for its only proposal in 2008-09. Consequently, the Department was excluded from the RPI report.

Table 3.2 Regulatory Performance Indicators 2008-09
percentage

Department/Agency	RPI 1	RPI 2	RPI3	RPI 4	RPI 5
	<i>Analysis adequate</i>	<i>BCC report certified</i>	<i>Preliminary assessment adequate</i>	<i>Consultation adequate</i>	<i>Regulatory plan published</i>
ACCC	100	..	100	100	100
AFMA	100	..	100	100	100
APRA	100	..	100	100	100
ASIC ^a	100	..	100	100	100
CASA	100	..	100	100	100
DAFF ^b	100	..	100	100	100
DBCDE	100	..	100	100	100
DCC ^a	50	..	50	50	100
DEWHA	50	..	100	50	100
DFAT ^b	100	..	..	100	100
DHA	100	100	100	100	100
DIISR	100	..	100	100	100
DITDLG	100	..	100	100	100
DRET	100	..	100	100	100
RBA	100	..	100	100	100
Treasury ^a	71	..	71	71	0

.. Not applicable. ^aDoes not include proposals where 'exceptional circumstances' were granted by the Prime Minister. ^bRISs for entry into treaty negotiations are not included.

Source: OBPR

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 2008-09 (table 3.3).

DAFF complied in full with the best practice regulation requirements in 2008-09. The Department prepared five RISs for proposals to:

- strengthen the Australian Wine and Brandy Corporation's Label Integrity Program;
- establish conditions for the commercial live stock export trade with Egypt;
- introduce new levies and charges on pineapple growers; and
- introduce a bilateral agreement to govern market access for Australian wines into the European Union (two RISs).

Table 3.3 DAFF: RIA compliance by type of regulation 2008-09

Type of regulation	Business Cost Calculator reports		Regulation Impact Statements		
	<i>Decision</i>	<i>Tabling</i>	<i>Decision Prepared</i>	<i>Adequate</i>	<i>Tabling</i>
Bills	1/1	1/1	1/1
Legislative instruments	2/2	2/2	2/2
Treaties	2/2	2/2	1/1
Total	5/5	5/5	4/4
<i>Percentage</i>			<i>100</i>	<i>100</i>	<i>100</i>

.. Not required

Source: OBPR

AFMA prepared an adequate RIS, on behalf of the Protected Zone Joint Authority, for the Torres Strait Prawn Fishery Management Plan. The RIS was tabled and published as supporting material to the explanatory statement.

The Department and AFMA prepared 76 preliminary assessments of regulations made or tabled in 2008-09 for which no further regulatory impact analysis was required.

3.2 Australian Customs Services

The Australian Customs Service (ACS) was not required to undertake regulatory impact analysis for the proposals introduced during 2008-09.

Post-implementation reviews from previous years

In 2007-08, ACS was assessed as non-compliant for a proposal to introduce restrictions on the importation into Australia of hand held 'laser pointers' (implemented 1 July 2008). The ACS is required to commence a post-implementation review for this regulation.

3.3 Broadband, Communications and the Digital Economy

The Department of Broadband, Communications and the Digital Economy (DBCDE) complied in full with the Government's best practice regulation requirements in 2008-09. The Telecommunications Legislation Amendment (National Broadband Network Measures No. 1) Bill 2009 introduced obligations on telecommunications carriers and other utilities to provide information to support planning for the National Broadband Network. The Department's RIS met the best practice regulation requirements.

The Department completed 15 preliminary assessments for regulatory proposals introduced in 2008-09 for which no further regulatory impact analysis was required.

3.4 Civil Aviation Safety Authority

The Civil Aviation Safety Authority complied in full with the Government's best practice regulation requirements in 2008-09. All four RISs required to be prepared by the Authority met the best practice regulation requirements. These related to:

- mandating compliance with airworthiness directives issued by a 'state of design';
- mandating the carriage of ADS-B avionics by aircraft able to operate at or above flight levels of 29 000 feet;
- mandating the adoption of safety management systems by regular public transport operators (airlines) and the provision of training for human factors and non-technical skills; and
- giving effect to Part IV of the *Civil Aviation Act 1988* by establishing a framework for the development of drug and alcohol management plans and by introducing a random drug and alcohol testing regime for safety sensitive air personnel.

The Authority completed 30 preliminary assessments for regulatory proposals introduced in 2008-09 for which no further regulatory impact analysis was required.

3.5 Climate Change

The Department of Climate Change (DCC) did not comply in full with the Government's best practice regulation requirements in 2008-09. The Department prepared only one of the two RISs required.

The Department did not prepare a RIS for the decision to implement the national Renewable Energy Target (RET) scheme which expands the target from 9 500 GWh to 45 000 GWh by 2020. The decision to implement the RET was made early in the term of the new Government (announced 3 December 2007) to meet an election commitment. The Department is required to undertake a post-implementation review of this proposal within one to two years of implementation of the scheme on 1 January 2010.

The Department complied with the best practice regulation requirements in relation to the design of the Carbon Pollution Reduction Scheme (CPRS).

The Prime Minister granted 'exceptional circumstances' from the RIS requirements for the decision on the 2050 cap and the establishment of an emissions trading scheme — the CPRS. The Government released a green paper on the detailed design of the CPRS and setting of the medium term (2020) emissions cap. The Department also prepared a RIS prior to the Government's release of the CPRS white paper. On 14 May 2009 the Government introduced the Carbon Pollution Reduction Scheme Bill 2009 to Parliament. On 13 August 2009 the Senate voted against the Bill. Should the CPRS be re-introduced to Parliament and the legislation passed, the Department will need to commence a post-implementation review of the introduction of the scheme within one to two years of its implementation.

Both proposals are highly significant and are discussed in chapter 1.

3.6 Defence

The Department of Defence was not required to undertake regulatory impact analysis for proposals introduced during 2008-09.

Post-implementation reviews from previous years

In 2007-08, the Department 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 of the regulations.

3.7 Education, Employment and Workplace Relations

The Department of Education, Employment and Workplace Relations (DEEWR) complied in full with the Government's best practice regulation requirements in 2008-09.

The Prime Minister granted 'exceptional circumstances' from preparing a RIS at the decision stage for the Fair Work Bill 2008. The Department will be required to prepare a post-implementation review for this proposal within one to two years from implementation.

The Department completed six preliminary assessments for regulatory proposals introduced in 2008-09 for which no further analysis was required.

Post-implementation reviews from previous years

In 2007-08, the Prime Minister granted the Department 'exceptional circumstances' from preparing a RIS for the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008. The Bill, which was passed on 19 March 2008, implemented transitional arrangements to begin the process of phasing out the previous WorkChoices laws. The Department intends to conduct a post-implementation review of this proposal as part of its post-implementation review of the *Fair Work Act 2009*.

3.8 Environment, Heritage, Water and the Arts

The Department of the Environment, Water, Heritage and the Arts (DEWHA) did not fully comply with the best practice regulation requirements in 2008-09. The Department prepared only one of the two RISs required at the decision-making stage (table 3.4).

A RIS was not prepared for the Resale Royalty Right for Visual Artists Bill 2008. This proposal seeks to implement the Government's election commitment to establish an inalienable resale royalty right for visual artists. The Department will need to undertake a post-implementation review for this matter within one to two years of the resulting regulations being implemented.

The Department complied with the best practice regulation requirements for amendments to the Fuel Standard (Petrol) Determination 2001 to establish a fuel grade

ethanol standard and allow up to 10 per cent fuel grade ethanol to be blended with petrol.

DEWHA prepared 15 preliminary assessments of regulations made or tabled in 2008-09 for which no further regulatory impact analysis was required.

Table 3.4 DEWHA: RIA compliance by type of regulation 2008-09

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

.. Not required

Source: OBPR

3.9 Families, Housing, Community Services and Indigenous Affairs

The Department of Families, Housing, Community Services and Indigenous Affairs was not required to undertake regulatory impact analysis for proposals introduced during 2008-09.

Post-implementation reviews from previous years

In 2007-08, the Department was granted 'exceptional circumstances' for the following proposals:

- 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);
- Northern Territory National Emergency Response Bill 2007 (tabled 7 August 2007); and
- Northern Territory National Emergency Response Amendment (Alcohol) Bill 2007 (tabled 7 August 2007).

The Department has commenced post-implementation reviews for these proposals.

3.10 Foreign Affairs and Trade

The Department of Foreign Affairs and Trade (DFAT) did not fully comply with the best practice regulation requirements in 2008-09. The Department did not prepare a RIS for the decision (by the previous Government) to enter into the negotiations on an Agreement Establishing the Association of Southeast Asian Nations — Australia-New Zealand Free Trade Area. DFAT did prepare an adequate RIS for the signing of the treaty, which it tabled in Parliament.

The Department prepared nine preliminary assessments of regulations made or tabled in 2008-09 for which no further regulatory impact analysis was required.

3.11 Health and Ageing

The Department of Health and Ageing (DHA) complied in full with the Government's best practice regulation requirements in 2008-09 (table 3.5).

The Department prepared a RIS for the Aged Care Amendment (2008 Measure No. 2) Bill 2008 which maintains effective regulatory safeguards for high quality care.

The Department also prepared four Business Cost Calculator (BCC) Reports for the following proposals:

- provision for regulating presumed security-sensitive biological agents;
- security-sensitive biological agent standards;
- provision for a national system of public health surveillance to enhance the capacity of the Government to identify, and respond to, public health events of national significance; and
- requirements for procedures related to the collection, processing, storage and issue of human haemopoietic progenitor cells.

The Department undertook 280 preliminary assessments for regulatory proposals introduced in 2008-09 for which no further analysis was required.

Table 3.5 DHA: RIA compliance by type of regulation 2008-09

Type of regulation	Business Cost Calculator reports		Regulation Impact Statements		
	<i>Decision</i>	<i>Tabling</i>	<i>Decision</i>	<i>Tabling</i>	
			<i>Prepared</i>	<i>Adequate</i>	
Bills	1/1	1/1	1/1	1/1	1/1
Legislative instruments	3/3	3/3	..	..	..
Total	4/4	4/4	1/1	1/1	1/1
<i>Percentage</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>

.. Not required

Source: OBPR

Post-implementation reviews from previous years

The Department is required to conduct post-implementation reviews for two regulatory proposals which were assessed as non-compliant with the best practice regulation requirements in 2007-08. These are:

- Tax Laws Amendment (Medicare Levy Surcharge Thresholds) Bill 2008 (tabled 27 May 2008); and
- Australian Inventory of Chemical Substances — which restricts 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 regulations.

3.12 Innovation, Industry, Science and Research

The Department of Innovation, Industry, Science and Research (DIISR) complied in full with the Government's best practice regulation requirements in 2008-09. The Department prepared an adequate RIS for the decision to prescribe the *Owner-Drivers (Contracts and Disputes) Act 2007* (WA) under the *Independent Contractors Act 2006* to align protections in Western Australia with those of New South Wales and Victoria.

The Department undertook three preliminary assessments for regulatory proposals introduced in 2008-09 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) complied in full with the Government's best practice regulation requirements in 2008-09. All four RISs required to be prepared by the Department met the best practice regulation requirements. Three RISs related to new or amended Australian Design Rules (ADR) that:

- remove unique Australian requirements and adopt international standards for steering columns (ADR 10/02);
- allow compliance with the relevant part of Annex 4 of United Nations Economic Commission for Europe Regulation 21 to be adopted as an alternative standard for reducing the injury potential of internal sun visors (ADR 11/00); and
- adds an option to allow NA category (utilities and other light commercial) vehicles to instead comply with the international standard for ensuring safe braking (ADR 35-02).

The fourth RIS related to an amendment to the Aviation Transport Security Regulations 2008 to establish new security measures for air cargo businesses that are not regulated under the Regulated Air Cargo Agent Scheme.

The Department undertook 21 preliminary assessments for regulatory proposals introduced in 2008-09 for which no further analysis was required.

Post-implementation reviews required from previous years

In 2007-08, the Department was granted 'exceptional circumstances' by the Prime Minister for the following two proposals:

- 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).

Post-implementation reviews are required to be commenced within one to two years from implementation of the regulations. Both pieces of legislation may be reviewed as a package as each limit the amount of liquid, aerosols and gels (LAGs) that can be taken through a LAGs screening point at which passengers travelling on an international air service (including any domestic sectors of such a service) are screened for LAGs products.

3.14 Resources, Energy and Tourism

The Department of Resources, Energy and Tourism (DRET) complied in full with the Government's best practice regulation requirements in 2008-09. The Department prepared the RIS required for the Uranium Royalty (Northern Territory) Bill 2008, which seeks to introduce a legislative royalty regime for new uranium mines in the Northern Territory to replace the profits-based royalty regime that is prescribed by Northern Territory law.

The Department completed five preliminary assessments for regulatory proposals introduced in 2008-09 for which no further analysis was required.

3.15 Treasury

Within the Treasury portfolio the following departments and agencies were required to prepare RISs during 2008-09:

- Department of the Treasury;
- Australian Competition and Consumer Commission;
- Australian Prudential Regulation Authority;
- Australian Securities and Investments Commission; and
- Reserve Bank of Australia.

Department of the Treasury

The Department of the Treasury did not fully comply with the best practice regulation requirements in 2008-09 (table 3.6).

- In three cases a RIS was not prepared at the decision-making stage to:
 - require shareholder approval of executives' termination benefits exceeding one year's average base salary;
 - introduce a three-year, 100 per cent guarantee of deposits in Authorised Deposit-taking Institutions; and

- set a threshold on payments made under the Financial Claims Scheme of \$1 million and specify the products covered during the first three years of the Scheme's operation.
- In two cases a RIS was not prepared for the initial decision to regulate but RISs were prepared for subsequent decisions that canvassed implementation options to:
 - require payment of temporary visa holders' unclaimed superannuation to the Commonwealth when the visa holder has departed Australia (the initial decision was announced by the former Government in the 2007-08 Mid-Year Economic and Fiscal Outlook); and
 - require unit pricing by grocery retailers.
- In three cases a RIS was prepared at the decision-making stage but was not subsequently made public:
 - regulate the non-operating holding companies (NOHCS) of life insurance companies;
 - introduce a Financial Claims Scheme; and
 - introduce crisis management arrangements for distressed financial institutions.

The Treasury fully complied with the RIS requirements in relation to seven regulatory proposals that:

- require disclosure of covered short sales;
- harmonise the treatment of debentures and promissory notes;
- introduce Commonwealth regulation of trustee companies;
- regulate the provision of margin loans;
- establish a new national consumer credit regime;
- amend the definition of assessable income to include certain salary sacrificed contributions to superannuation in income tests of means tested government assistance programs; and
- establish and apply the Australian Consumer Law and introduce new penalties, enforcement powers and consumer redress options.

In a further three cases the Prime Minister granted 'exceptional circumstances' from the RIS requirements to:

- introduce private health insurance incentive tiers;
- place limits on tax concessions for income earned by Australians working overseas; and
- reduce the cap on concessional superannuation contributions.

Within the next one to two years the Treasury is required to undertake post-implementation reviews for the three matters for which RISs were not prepared and for the three matters granted 'exceptional circumstances'. The six matters requiring a post-implementation review are:

- 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 Treasury completed 74 preliminary assessments for other proposed regulations that had little or no impact on business and individuals or the economy.

Under the previous regulation impact statement requirements, a RIS for the Tax Agent Services Bill 2008 should have been prepared at the decision-making stage by the Australian Taxation Office. The proposal updates the regulation of tax agents and extends mandatory registration and regulation of entities providing Business Activity Statement (BAS) services on a fee-for-service basis. The decision was made by the previous Government. The Treasury, in line with the previous RIS requirements, prepared a RIS for the tabling stage. The OBPR notes that the Government has announced that a post-implementation review of certain aspects of the regulatory framework will be undertaken three years after implementation.

Table 3.6 Treasury: RIA compliance by type of regulation 2008-09

Type of regulation	Business Cost Calculator reports		Regulation Impact Statements		
	<i>Decision</i>	<i>Tabling</i>	<i>Decision</i>	<i>Prepared</i>	<i>Adequate</i>
Bills	11/14	11/14	8/13
Legislative instruments	1/3	1/3	1/2
Total	12/17	12/17	9/15
<i>Percentage</i>	<i>71</i>	<i>71</i>	<i>60</i>

.. Not required
Source: OBPR

Australian Competition and Consumer Commission

The Australian Competition and Consumer Commission (ACCC) complied in full with the Government's best practice regulation requirements in 2008-09. The six RISs the Commission was required to prepare met the best practice regulation requirements (table 3.7). These related to:

- reduced fire risk cigarettes;
- mandatory safety labelling of treadmills;
- limits on the migration of lead and other certain elements in children's toys;
- updated safety standards for vehicle support stands and hydraulic trolley jacks;
- updated safety standards for flotation toys and swimming aids; and
- a record-keeping-rule for access to Telstra telephone exchanges.

The Commission also completed 38 preliminary assessments for which no further regulatory impact analysis was required.

Table 3.7 ACCC: RIA compliance by type of regulation 2008-09

Type of regulation	Business Cost Calculator reports		Regulation Impact Statements		
	<i>Decision</i>	<i>Tabling</i>	<i>Decision</i>	<i>Tabling^a</i>	
			<i>Prepared</i>	<i>Adequate</i>	
Legislative instruments	5/5	5/5	5/5
Non-legislative instruments	1/1	1/1	1/1
Total	6/6	6/6	6/6
<i>Percentage</i>			<i>100</i>	<i>100</i>	<i>100</i>

.. Not required. ^aTabled or published.

Source: OBPR

Australian Prudential Regulation Authority

The Australian Prudential Regulation Authority (APRA) complied in full with the Government's best practice regulation requirements in 2008-09. The Authority prepared a RIS for a package of amendments to prudential standards to provide for prudential supervision of general insurance groups, which met the best practice regulation requirements.

APRA also completed 48 preliminary assessments for which no further regulatory impact analysis was required.

Australian Securities and Investments Commission

The Australian Securities and Investments Commission (ASIC) complied in full with the best practice regulation requirements in 2008-09. The three RISs prepared met the best practice requirements (table 3.8). These related to:

- group insurance arrangements for sporting bodies;
- guidance on disclosure requirements for unlisted mortgage and property schemes; and
- revised guidance on dispute resolution policies.

ASIC was granted 'exceptional circumstances' by the Prime Minister for a package of interim measures relating to bans on the short selling of stocks. ASIC is required to commence a post-implementation review of these measures within one to two years from implementation.

ASIC conducted 40 preliminary assessments indicating that no further regulatory impact analysis was required.

Table 3.8 ASIC: RIA compliance by type of regulation 2008-09

Type of regulation	Business Cost Calculator reports		Regulation Impact Statements		
	<i>Decision</i>	<i>Tabling</i>	<i>Decision</i>	<i>Tabling^a</i>	
			<i>Prepared</i>	<i>Adequate</i>	
Legislative instruments	1/1	1/1	1/1
Non-legislative instruments	2/2	2/2	2/2
Total	3/3	3/3	3/3
<i>Percentage</i>	<i>100</i>	<i>100</i>	<i>100</i>

.. Not required. ^aTabled or published.

Source: OBPR

Reserve Bank of Australia

The Reserve Bank of Australia (RBA) complied in full with the Government's best practice regulation requirements in 2008-09 for the two RISs it was required to prepare.

These related to:

- the introduction of an access regime for the ATM payments system; and
- the amendment of the Financial Stability Standard to require disclosure of certain information related to securities lending transactions.

The RBA also completed two preliminary assessments for which no further regulatory impact analysis was required.

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 National Standard Setting Bodies* (COAG Guide). The reporting requirement flows from the COAG Agreement to Implement the National Competition Policy and Related Reforms (COAG 1995).

The COAG Guide (p. 7) 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 process through the preparation of a draft [consultation] and final [decision] RIS.

In this context the COAG Guide (p. 3) 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.

As required in the COAG guide, the OBPR assesses 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)

Compliance by ministerial council and national standard-setting bodies

In 2008, the OBPR (with agreement from the COAG Secretariat) aligned the reporting period to that of the Australian Government (1 July to 30 June). As 2008-09 is a transitional year, the reporting period in this chapter covers national regulatory decisions made between 1 April 2008 and 30 June 2009.

Of the 12 ministerial councils and NSSBs required to prepare RISs in 2008-09, eight were fully compliant with COAG's best practice regulation requirements.

Compliance at the consultation and decision-making stage by COAG, ministerial councils and NSSBs, is shown in table 4.1.

Table 4.1 Compliance with COAG's RIS requirements 2008-09^a
consultation and decision-making stage

Ministerial Council / NSSB	Consultation stage		Decision stage	
	ratio ^b	%	ratio ^b	%
ABCB	1/1	100	1/1	100
ARPANSA	1/1	100	1/1	100
ATC	3/3	100	3/3	100
COAG	1/1	100	1/1	100
FSANZ	1/2	50	2/2	100
MCCA	3/4	75	4/4	100
MCC	2/2	100	2/2	100
MCE	7/7	100	7/7	100
PIMC	1/1	100	1/1	100
WRMC	2/2	100	2/2	100
AHMC and MDCS	0/1	0	0/1	0
Total	22/25	88	24/25	96

^aFor the period 1 April 2008 – 30 June 2009 ^bRatio of adequate RISs to total RISs required.

Source: OBPR

COAG's best practice regulation requirements were not met at the consultation stage in three cases. In two cases, RISs were later prepared and assessed as adequate at the decision-making stage (table 4.2).

Table 4.2 COAG RIS compliance, 1 April 2008 to 30 June 2009
non-compliant proposals

Ministerial Council/NSSB and issue	Date of decision	Compliant at consultation	Compliant at decision
Australian Health Ministers' Conference (AHMC) and Ministerial Council on Drug Strategy (MCDS) Prohibits the sale of fruit and confectionary flavoured cigarettes by December 2009	18 April 2008	No	No
Ministerial Council on Consumer Affairs Defines 'unfair contract terms'	15 August 2008	No	Yes
Food Standards Australia New Zealand (FSANZ) Sets a maximum level for hydrocyanic acid in ready-to-eat cassava chips	10 February 2009	No	Yes

Source: OBPR

4.1 Australian Building Codes Board

The Australian Building Codes Board (ABCB) complied in full with the best practice regulation requirements during the period 1 April 2008 to 30 June 2009. For one proposal, the ABCB prepared RISs for the consultation and decision-making stages, which met the COAG adequacy criteria. The final RIS was made public.

The RIS related to the 'Agreement to the adoption of the revised primary Building Code of Australia referenced Australian Standard (AS 3959-2009) *Construction of buildings in bushfire prone areas* (4 March 2009)'. The new national bushfire standard for residential buildings replaces the 1999 Australian Standard referenced in the Building Code of Australia.

4.2 Australian Radiation Protection and Nuclear Safety Agency

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) complied in full with the best practice regulation requirements during the period 1 April 2008 to 30 June 2009. For one proposal, ARPANSA prepared RISs for the consultation and decision-making stages, which met the COAG adequacy criteria. The final RIS was made public. The RIS related to the Code of Practice for Radiation Protection in the Medical Applications of Ionizing Radiation (2 May 2008).

4.3 Australian Transport Council

The Australian Transport Council (ATC) complied in full with the best practice regulation requirements during the period 1 April 2008 to 30 June 2009. The ATC made three decisions in the reporting period for which RISs were required. The RISs were prepared and the OBPR assessed each RIS at the consultation and decision-making stages and

found that they met the COAG adequacy criteria. The final RISs were made public to align with the COAG RIS requirements. The RISs related to the following regulatory decisions:

- National Standard for Commercial Vessels – Part C, Subsection 7B, Communications Equipment (2 May 2008); the new standard is largely a rewrite of the provisions for communications equipment presently in the Uniform Shipping Laws Code and takes account of advancements in radio communications technology which have given rise to new radio communications solutions and to a new distress and safety communications monitoring infrastructure.
- National Standard for Commercial Vessels – Part C, Section 7, Subsection C, Navigation Equipment (2 November 2008); the new standard supersedes the provisions for navigation equipment presently in the Uniform Shipping Laws Code and takes account of advancements in navigation technology to include ‘deemed to satisfy’ equipment carriage options.
- Australian Vehicle Standards Rules 6th Amendment Package (3 March 2009); the amendments are aimed at maintaining the currency of in-service vehicle standards and reflect changes which have arisen from matters such as revised or new external referenced standards and enforcement issues.

4.4 Council of Australian Governments

The Council of Australian Governments (COAG) complied in full with its best practice regulation requirements during the period 1 April 2008 to 30 June 2009. A RIS was required for COAG’s decision of 30 April 2009 to adopt a national licensing system for the following specified occupations:

- air-conditioning and refrigeration mechanics;
- building and building-related occupations;
- electrical;
- land transport (passenger vehicle drivers and dangerous goods only);
- maritime;
- plumbing and gasfitting; and
- property agents.

A RIS was prepared for consultation on the proposal and for COAG’s decision. The RIS met the adequacy criteria at both the consultation and decision-making stages. The final RIS was published along with COAG’s decision.

4.5 Food Standards Australia New Zealand

Food Standards Australia New Zealand (FSANZ) did not fully comply with the best practice regulation requirements during the period 1 April 2008 to 30 June 2009. FSANZ was required to prepare RISs for the following regulatory decisions:

- Mandatory Iodine Fortification for Australia (9 October 2008); and
- Hydrocyanic Acid in Ready-to-Eat Cassava Chips (10 February 2009).

For the proposal to introduce Mandatory Iodine Fortification (bread) for Australia (9 October 2008), a RIS was prepared and assessed as adequate by the OBPR at both the consultation and decision-making stages.

Although FSANZ prepared an analysis report for consultation on the proposal to regulate Hydrocyanic Acid in Ready-to-Eat Cassava Chips it overlooked seeking the OBPR's assessment of whether the report met the COAG Consultation RIS requirements. However, an adequate RIS was prepared for the decision-making stage.

Final RISs for both regulatory decisions were published in line with the COAG best practice regulation requirements.

4.6 Ministerial Council for Consumer Affairs

The Ministerial Council for Consumer Affairs (MCCA) did not comply in full with the COAG best practice regulation requirements during the period 1 April 2008 to 30 June 2009. The Council made four decisions in the reporting period for which RISs were required:

- review of mandatory comparison rates for finance charges in the Uniform Consumer Credit Code (23 May 2008);
- review of Australia's product safety policy (23 May 2008);
- unfair contract terms (15 August 2008); and
- national template regulation for wine labelling, implementing the World Wine Trade Group's Agreement on Requirements for Wine Labelling (2 February 2009);

Adequate RISs were prepared at the consultation and decision-making stages for the review of mandatory comparison rates, national template regulation for wine labelling and the review of Australia's product safety policy in accordance with the COAG best practice regulation requirements.

As part of the proposed national consumer law, the Ministerial Council proposed that it should include a provision that addresses unfair contract terms. A RIS was not prepared for consultation³. An adequate RIS was prepared at the decision-making stage. All final RISs were made public.

4.7 Ministerial Council for Corporations

The Ministerial Council for Corporations (MCC) complied in full with the best practice regulation requirements during the period 1 April 2008 to 30 June 2009. The Council made two decisions in the reporting period for which RISs were required:

- national regulation of trustee companies (7 May 2009 and 17 June 2009); and
- a national consumer law framework including new unfair contract term provisions and new penalties, enforcement and consumer redress powers (27 May 2009 and 17 June 2009).

Adequate RISs were prepared at the consultation and decision-making stages. The final RISs were made public in accordance with the COAG RIS requirements.

³The introduction of unfair contracts terms regulation was considered by the Productivity Commission in its *Review of Australia's Consumer Policy Framework* (April 2008).

4.8 Ministerial Council on Energy

The Ministerial Council on Energy (MCE) complied in full with the best practice regulation requirements during the period 1 April 2008 to 30 June 2009. The MCE made seven regulatory decisions in the reporting period for which RISs were required. The RISs related to the:

- acceleration of the roll-out of smart (electricity) meters (June 2008);
- introduction of Minimum Energy Performance Standards (MEPS) for Chillers (commercial building tower air conditioning systems) (December 2008);
- introduction of MEPS for Set-top Boxes and External Power Supplies (December 2008);
- provision of a Special Exemption under the Trans-Tasman Mutual Recognition Arrangement (TTMRA) for Cabinet Heaters (December 2008);
- provision of a Special Exemption under TTMRA for LPG Gas Appliances (December 2008);
- change to the algorithm for the energy star rating label on household refrigerators and freezers (March 2009); and
- introduction of MEPS for Close Control Air Conditioners (June 2009).

Adequate RISs were prepared at both the consultation and decision-making stages for all proposals. The final RISs were made public.

4.9 Primary Industries Ministerial Council

The Primary Industries Ministerial Council (PIMC) complied in full with the best practice regulation requirements during the period 1 April 2008 to 30 June 2009. The Council made one decision in the reporting period for which RISs were required: Australian Animal Welfare Standards and Guidelines - Land Transport of Livestock (14 October 2008).

An adequate RIS was prepared at the consultation stage. It was revised after consultation and assessed as adequate for the decision-making stage. The final RIS was made public in accordance with the COAG RIS requirements.

4.10 Workplace Relations Ministers' Council

The Workplace Relations Ministers' Council (WRMC) complied in full with the best practice regulation requirements during the period 1 April 2008 to 30 June 2009. The WRMC made two decisions in the reporting period for which RISs were required to be prepared by the Australian Safety and Compensation Council:

- National Code of Practice for the Prevention of Falls in General Construction (29 April 2008); and
- The Australian Code for the Transport of Explosives by Road and Rail – 3rd Edition (3 April 2009).

These RISs met the COAG adequacy criteria at both the consultation and decision-making stages. The final RISs were made public.

4.11 Australian Health Ministers' Conference and Ministerial Council on Drug Strategy

The Australian Health Ministers' Conference (AHMC) and Ministerial Council on Drug Strategy (MCDS) did not comply with the best practice regulation requirements during the period 1 April 2008 to 30 June 2009. The AHMC and MCDS made one decision during the compliance period that required RISs at both the consultation and decision-making stages. A RIS was not prepared for either stage. The RISs related to the regulatory decision that State and Territory Governments would enact regulation and/or legislation to prohibit the sale of fruit and confectionary flavoured cigarettes within their jurisdictions by December 2009.

4.12 Consultation with New Zealand

In June 2004, COAG asked OBPR to confer with the Regulatory Impact Analysis Unit (RIAU) in New Zealand on draft consultation RISs where there are New Zealand impacts and issues, or where a proposal in Australia would affect Trans-Tasman trade.

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 between 1 April 2008 and 30 June 2009, the OBPR conferred with RIAT on the:

- introduction of MEPS for Chillers (commercial building tower air conditioning systems);
- introduction of MEPS for Set-top Boxes and External Power Supplies;
- introduction of MEPS for Close Control Air Conditioners;
- provision of a Special Exemption under the TTMRA for Cabinet heaters; and
- provision of a Special Exemption under the TTMRA for LPG Gas Appliances.

Appendix A Compliance by regulatory proposal



appendix A

Appendix A Compliance by regulatory proposal

This appendix provides details by department and agency on compliance with the Australian Government's best practice regulation requirements by regulatory proposals made or tabled in 2008-09.

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 regulatory impact analysis (RIA) to be undertaken.

The tables indicate whether a Regulation Impact Statement (RIS) or Business Cost Calculator (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 the sponsoring agency identified.

In 2008-09, 63 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 six cases, a further 53 proposals required a RIS and four required a BCC report. In addition one regulatory proposal required a RIS under the former RIS requirements as the decision was made prior to 20 November 2006.

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

Title of Bill [Sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Aged Care Amendment (2008 Measure No. 2) Bill 2008 [DHA]				
Addresses current legislative inadequacies and maintains effective regulatory safeguards for high quality care	..	Yes	..	Yes
Australian Wine and Brandy Corporation Amendment Bill 2009 [DAFF]				
Strengthens the Australian Wine and Brandy Corporation's Label Integrity Program	..	Yes	..	Yes
Carbon Pollution Reduction Scheme Bill 2009^b [DCC]				
Sets a target to reduce emissions by 60 per cent on 2000 levels by 2050 and introduces an emissions trading scheme	..	e/c	..	n/a
Design of the Carbon Pollution Reduction Scheme and medium term target	..	Yes	..	Yes
Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 [Treasury]				
Harmonises the treatment of debentures and promissory notes	..	Yes	..	Yes
Introduces Commonwealth regulation of trustee companies	..	Yes	..	Yes
Regulates the provision of margin loans	..	Yes	..	Yes
Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009^b [Treasury]				
Requires shareholder approval of executives' termination benefits exceeding one year's average base salary	..	No	..	No

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Table A.1 continued

Title of Bill [Sponsoring agency] Description of regulatory proposal	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Corporations Amendment (Short Selling) Bill 2008 [Treasury]				
Disclosure of covered short sales of securities	..	Yes	..	Yes
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Bill 2009 [Treasury]				
Introduces measures to regulate the non-operating holding companies (NOHCS) of life insurance companies	..	Yes	..	No
Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008, Financial Claims Scheme (ADIs) Levy Bill 2008 and Financial Claims Scheme (General Insurers) Levy Bill 2008^b [Treasury]				
Introduces a Financial Claims Scheme	..	Yes	..	No
Introduces a three year, 100 per cent guarantee of deposits in Authorised Deposit-taking Institutions	..	No	..	No
Introduces arrangements for the crisis management of distressed financial institutions	..	Yes	..	No
Fair Work Bill 2008^b [DEEWR]				
Creates a new industrial relations system with a focus on collective bargaining in the workplace	..	e/c	..	n/a
Fairer Private Health Insurance Incentives Bill 2009, Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2009 and Fairer Private Health Insurance Incentives (Medicare Levy Surcharge - Fringe Benefits) Bill 2009^b [Treasury]				
Introduces private health insurance incentive tiers	..	e/c	..	n/a
National Consumer Credit Protection Bill 2009, National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009 and National Consumer Credit Protection (Fees) Bill 2009 [Treasury]				
Establishes a new national consumer credit regime	..	Yes	..	Yes

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Table A.1 continued

Title of Bill [Sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
National Health Security Amendment Bill 2009 [DHA]				
Implementation of provisions for regulating presumed security sensitive biological agents and other amendments to the <i>National Health Security Act 2007</i>	Yes	..	Yes	..
Renewable Energy (Electricity) Amendment Bill 2009 and Renewable Energy (Electricity) (Charge) Amendment Bill 2009^b [DCC]				
Expands the Renewable Energy Target from 9500 GWh to 45 000 GWh by 2020	..	No	..	No
Resale Royalty Right for Visual Artists Bill 2008^b [DEWHA]				
Establishes an inalienable resale royalty right for visual artists	..	No	..	No
Tax Agent Service Bill 2008^c [ATO/Treasury]				
Updates the regulation of tax agents and extends mandatory registration and regulation of entities providing BAS services on a fee-for-service basis	..	No	..	Yes
Tax Laws Amendment (2009 Budget Measures No. 1) Bill 2009^b [Treasury]				
Amends the definition of assessable income to include certain salary sacrificed contributions to superannuation in the income tests of means-tested government assistance programs	..	Yes	..	Yes
Limits tax concessions for income earned by Australians working overseas	..	e/c	..	n/a
Reduces the cap on concessional superannuation contributions	..	e/c	..	n/a

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Table A.1 continued

Title of Bill [Sponsoring agency] Description of regulatory proposal	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Telecommunications Legislation Amendment (National Broadband Network Measures No. 1) Bill 2009 [DBCDE]				
Requires telecommunications carriers and other utilities to provide network information to support planning for the National Broadband Network	..	Yes	..	Yes
Temporary Residents' Superannuation Legislation Amendment Bill 2008 and Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 [Treasury]				
When temporary visa holders leave Australia without taking their superannuation with them, relevant amounts are reportable and payable to the Commissioner as unclaimed superannuation				
first decision:	..	No	..	n/a
second decision:	..	Yes	..	Yes
Trade Practices Amendment (Australian Consumer Law) Bill 2009 [Treasury]				
Establishes and applies the Australian Consumer Law and introduces new penalties, enforcement powers and consumer redress options	..	Yes	..	Yes
Uranium Royalty (Northern Territory) Bill 2008 [DRET]				
New royalty regime for new uranium mines in the Northern Territory	..	Yes	..	Yes

.. Not required. n/a Not applicable. e/c Exceptional circumstances were granted by the Prime Minister. ^aRISs and BCC reports are included in the Explanatory Memoranda for Bills which can be found at www.comlaw.gov.au. ^bPost-implementation review required. ^cDecision made under former RIS requirements (prior to 20 November 2006).

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

Title of Legislative Instrument [Sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
ASIC Class Order o8/1 Group Purchasing Bodies and Regulatory Guide 195 Group Purchasing Bodies for Insurance and Risk Products [ASIC]				
Allows for group insurance arrangements for sporting bodies	..	Yes	..	Yes
ASIC Class Orders 08/751, 08/752, 08/753, 08/763, 08/764, 08/801, 08/824 Covered Short Sales^b [ASIC]				
Interim bans on naked short selling and covered short selling (subject to a limited authorised market maker exemption)	..	e/c	..	n/a
Australian Meat and Live-stock Industry (Export of Live-stock to Egypt) Order 2008 [DAFF]				
Enables a commercial live stock export trade with Egypt on a regulated basis	..	Yes	..	Yes
Aviation Transport Security Amendment Regulations 2008 (No. 2) [DITRDLG]				
Establishes new security measures for air cargo businesses that are not regulated under the Registered Air Cargo Agents Scheme	..	Yes	..	Yes
Banking Amendment Regulations 2008 (No. 1) and Banking Act 1959 - Declaration of Covered Financial Products^b [Treasury]				
Sets a threshold on payments made under the Financial Claims Scheme of \$1 million and specifies the products that are 'covered financial products' in order to provide the coverage of the Financial Claims Scheme for the first three years of its operation	..	No	..	No

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Table A.2 continued

Title of Legislative Instrument [Sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Civil Aviation and Civil Aviation Safety Amendment Regulations 2009 (No. 1) [CASA]				
Amends the Civil Aviation Safety Regulations Part 39 to automatically mandate compliance with airworthiness directives (AD) issued by a 'state of design' (CS 04/05)	..	Yes	..	Yes
Civil Aviation Order 20.18 Amendment Order (No. 1) 2009, Civil Aviation Order 82.1 Amendment Order (No.1) 2009, Civil Aviation Order 82.3 Amendment Order (No. 2) 2009 and Civil Aviation Order 82.5 Amendment Order (No. 2) 2009 [CASA]				
Mandates the carriage of ADS-B avionics by aircraft able to operate at or above flight levels of 29 000 feet	..	Yes	..	Yes
Civil Aviation Order 82.3 Amendment Order (No. 1) 2009 and Civil Aviation Order 82.5 Amendment Order (No.1) 2009 [CASA]				
Mandates the adoption of safety management systems by regular public transport operators (airlines) and the provision of training for human factors and non-technical skills	..	Yes	..	Yes
Civil Aviation Safety Amendment Regulations 2008 (No. 1) and Civil Aviation Amendment Regulations 2008 (No. 1) [CASA]				
Gives effect to Part IV of the <i>Civil Aviation Act 1988</i> by establishing a framework for the development of drug and alcohol management plans and by introducing a random drug and alcohol testing regime for safety sensitive air personnel	..	Yes	..	Yes
Fuel Standard (Petrol) Amendment Determination 2008 (No. 1) [DEWHA]				
Creates a standard to allow up to 10 per cent fuel grade ethanol to be blended with petrol	..	Yes	..	Yes

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Table A.2 continued

Title of Legislative Instrument [Sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Health Insurance (Accredited Pathology Laboratories - Approval) Amendment Principles 2009 (No. 1) [DHA]				
National Pathology Accreditation Advisory Council standard for 'Requirements for Procedures Related to the Collection, Processing, Storage and Issue of Human Haemopoietic Progenitor Cells'	Yes	..	Yes	..
Independent Contractors Amendment Regulations 2008 (No. 1) [DIISR]				
Prescribes the <i>Owner-Drivers (Contracts and Disputes) Act 2007</i> (WA) under the <i>Independent Contractors Act 2006</i> to align protections in WA with those of NSW and Vic	..	Yes	..	Yes
Insurance (Prudential Standard) Determinations No 14 - 17 of 2008 [APRA]				
Amends prudential standards to provide for prudential supervision of general insurance groups	..	Yes	..	Yes
National Health Security Amendment Regulations 2008 (No. 1) [DHA]				
Provides for a national system of public health surveillance to enhance the capacity of the Government to identify, and respond to, public health events of national significance	Yes	..	Yes	..
National Health Security (SSBA) Standards Determination 2008 [DHA]				
Security Sensitive Biological Agent Standards	Yes	..	Yes	..
Primary Industries (Customs) Charges Amendment Regulations 2009 (No. 1), Primary Industries (Excise) Levies Amendment Regulations 2009 (No. 2) and Primary Industries Levies and Charges Collection Amendment Regulations 2009 (No. 1) [DAFF]				
Introduces new levies and charges on pineapple growers	..	Yes	..	Yes

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Table A.2 continued

Title of Legislative Instrument [Sponsoring agency]	Decision		Tabling	
	Description of regulatory proposal	BCC report certified	RIS adequate	BCC report published
Torres Strait Prawn Fishery Management Plan 2008 [AFMA]				
Introduces new management arrangements for the Torres Strait Prawn Fishery	..	Yes	..	Yes
Trade Practice Act 1974 – Consumer Protection Notice No. 1 of 2009 – Consumer Product Safety Standard: Lead and Certain Elements in Children’s Toys [ACCC]				
Imposes limits on the migration of lead and other certain elements in children’s toys	..	Yes	..	Yes
Trade Practices Act 1974 - Consumer Protection Notices No. 2 of 2009 - Consumer Product Safety Standards: Flotation Toys and Aquatic Toys and Trade Practices Act 1974 - Consumer Protection Notices No. 3 of 2009 Swimming Aids and Flotation Aids for Water Familiarisation and Swimming Tuition [ACCC]				
Declares updated safety standards for flotation toys and swimming aids	..	Yes	..	Yes
Trade Practices Act 1974 - Consumer Protection Notice No. 12 of 2008 - Consumer Product Safety Standard: Vehicle Support Stands and Trade Practices Act 1974 - Consumer Protection Notice No. 10 of 2008 - Consumer Product Safety Standard: Trolley Jacks [ACCC]				
Declares updated standards for vehicle support stands and hydraulic trolley jacks	..	Yes	..	Yes
Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008 [ACCC]				
Requires cigarettes to be manufactured so as to reduce their propensity to burn their full length without extinguishment	..	Yes	..	Yes
Trade Practices (Consumer Product Safety Standard) (Treadmills) Regulations 2008 [ACCC]				
Introduces mandatory safety labelling of treadmills	..	Yes	..	Yes

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Table A.2 continued

Title of Legislative Instrument [Sponsoring agency]	Decision		Tabling	
	BCC report certified	RIS adequate	BCC report published	RIS published
Trade Practices (Industry Codes – Unit Pricing) Regulations 2009 [Treasury]				
Prescribes an industry code that requires large grocery retailers, those grocery retailers that operate online, and those grocery retailers that voluntarily display unit prices, to use unit pricing when selling grocery items to consumers				
first decision:	..	No	..	n/a
second decision:	..	Yes	..	Yes
Vehicle Standards (Australian Design Rule 10/02 – Steering Column) 2008 [DITRD LG]				
Removes unique Australian requirements and adopts international standards for steering column design (ADR 10/02)	..	Yes	..	Yes
Vehicle Standards (Australian Design Rule 11/00 – Internal Sun Visors) 2006 Amendment 1 [DITRD LG]				
Allows compliance with the relevant part – Annex 4 of ECE R 21 as an alternative standard for reducing the injury potential of internal sun visors (ADR 11/00)	..	Yes	..	Yes
Vehicle Standard (Australian Design Rule 35-02 – Commercial Vehicle Brake Systems) 2007 Amendment 1 [DITRD LG]				
Adds an option to allow NA category (utilities and other light commercial) vehicles to instead comply with the international standard for ensuring safe braking	..	Yes	..	Yes
.. Not required. n/a Not applicable. e/c Exceptional circumstances were granted by the Prime Minister. ^a RISs and BCC reports are included in the Explanatory Statements for Legislative Instruments which can be found at www.comlaw.gov.au . ^b Post-implementation review required.				

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

Title of Non-legislative Instrument [Sponsoring agency]	Decision		Tabling	
	Description of regulatory proposal	BCC report certified	RIS adequate	BCC report published
Access to Telstra Exchange Facilities, Record Keeping and Reporting Rules, Section 151BU, Trade Practices Act 1974 [ACCC]				
Introduces a new record-keeping rule for access to Telstra exchanges	..	Yes	..	Yes
ATM Access Regime [RBA]				
Imposes an access regime on participants in the ATM payments system	..	Yes	..	Yes
Financial Stability Standards (Disclosure of Securities Lending Transactions) [RBA]				
Require the disclosure of certain information related to securities lending transactions	..	Yes	..	Yes
Regulatory Guide 45 (Mortgage Schemes) and Regulatory Guide 46 (Unlisted Property Schemes) [ASIC]				
Regulatory guides on disclosure requirements for unlisted mortgage schemes and property	..	Yes	..	Yes
Regulatory Guide 139 (Approval and Oversight of EDR Schemes), Regulatory Guide 165 (Licensing: Internal and External Dispute Resolution), ASIC Class Order 09/339 Internal Dispute Resolution Procedures and ASIC Class Order 09/340 External Dispute Resolution Schemes [ASIC]				
Revised guidance on dispute resolution policies	..	Yes	..	Yes

.. Not required ^aNon-legislative instruments are not tabled. BCCs or RISs must be published on the agency's website.

Table A.4 Treaties, RIA assessment by proposal^a

Title of Treaty [Sponsoring agency]	<i>RIS adequate</i>
<i>Stages</i>	
Agreement between Australia and the European Community on Trade in Wine [DAFF]	
Governs market access for Australian wines into the European Union	
<i>Entry into negotiations</i>	Yes
<i>Before signature</i>	Yes
<i>Tabling before ratification</i>	Yes
Agreement Establishing the Association of Southeast Asian Nations — Australia-New Zealand Free Trade Area [DFAT]	
<i>Entry into negotiations</i>	No
<i>Before signature</i>	Yes
<i>Tabling before ratification</i>	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>.

Appendix B Developments in States and Territories



appendix B

Appendix B Developments in States and Territories

At the 29 November 2008 Council of Australian Governments' (COAG) meeting, the Commonwealth and all States and Territories agreed to the National Partnership Agreement to Deliver a Seamless National Economy. As part of this Agreement, COAG agreed there would be 'continued progress on regulatory reform with the objective of all jurisdictions improving the efficiency of regulation'. This continues the regulatory reform process agreed by COAG as part of the National Reform Agenda (February 2006) and involves jurisdictions:

- implementing by 30 June 2009 specific regulation making and review processes;
- establishing and maintaining effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition; and
- undertaking targeted public annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant net benefits to business and the community.

Most States and Territories now have in place programs for targeted annual reviews of existing regulation. Tasmania has established a Business Tax and Regulation Review working group and is considering how best to implement the requirement. Victoria and South Australia have in place red tape reduction programs that set quantitative targets for reducing compliance costs. During 2009 both States announced increases in the targets. New South Wales (NSW) committed to a target for cutting red tape in 2009. Queensland has set a target for regulatory simplification as part of its response to the National Partnership Agreement. Western Australia has also indicated that it has begun examining opportunities for reducing the red tape burden of existing regulation.

This appendix reports on developments in the regulation review regimes 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 has a comprehensive regulatory impact analysis process in place through its gate-keeping system and under the *Subordinate Legislation Act 1989* (NSW).

The gate-keeping system, outlined in the *Guide to Better Regulation* (NSW Government 2008a), requires that all new and amending regulatory proposals must demonstrate compliance with seven 'better regulation' principles. Significant proposals must demonstrate compliance with the principles in a Better Regulation Statement, which is assessed by the Better Regulation Office and certified by the Minister for Regulatory Reform, before the regulatory proposal is considered by decision makers. In 2008-09, the

Better Regulation Office formally assessed 26 Better Regulation Statements as meeting the requirements of the guide.

The *Subordinate Legislation Act 1989* (NSW) requires the preparation of a RIS for all new statutory rules in NSW. RISs consistent with the requirements in the Act also meet the requirements under the *Guide to Better Regulation*.

Compliance reporting

The Better Regulation Office publishes an annual report, *Annual Update: Removing Red Tape in NSW*. The report provides details on the activities of the Better Regulation Office and provides an overview of significant regulatory reform achievements made across the NSW Government.

The Better Regulation Office's first report was released in October 2008 and set out 128 red tape reforms agreed or implemented by the NSW Government from the time of establishment of the Better Regulation Office in January 2007 to 30 June 2008 (NSW Government 2008b).

Developments in regulatory governance

As an outcome of its February 2009 Jobs Summit, the NSW Government has committed to cutting red tape in NSW by \$500 million by June 2011 (Tripodi 2009). To support delivery of the target, CEOs of key NSW Government agencies now have red tape reduction included as a condition in their performance contracts. CEOs will report twice a year to the Better Regulation Office on achievements in cutting red tape over the previous six months, and plans for red tape reduction over the next six months.

Progress in meeting the target will be reported publicly in the Better Regulation Office's *Annual Update* reports and on its website.

Consultation

Effective consultation is a key element of the NSW Government's regulatory reform framework. The NSW Government's *Guide to Better Regulation* includes a whole-of-government consultation policy, which encourages agencies to consult with stakeholders throughout the regulatory development process, and imposes a minimum 28 day consultation period on draft regulatory instruments (NSW Government 2008a).

Over the 2008-09 year, the Better Regulation Office has been more active in its direct engagement with stakeholders, both through its own targeted reviews into specific industry sectors and because stakeholders are increasingly contacting the Office directly about their views on regulatory proposals being consulted on by NSW Government agencies.

The Better Regulation Office's website provides a single up to date reference to consultation processes underway across the government that have regulatory implications.

Red tape reviews

The Better Regulation Office conducts targeted reviews, as directed by the Minister for Regulatory Reform. In 2008-09, the Office completed three targeted red tape reviews into:

- licensing across eleven occupations in NSW, which will result in the removal of seven licences saving more than \$1 million a year in compliance costs;
- the regulation of plumbing and drainage in NSW, which will result in significant reforms to reduce costs, simplify and update regulation, and bring NSW into line with national standards through adoption of the Plumbing Code of Australia; and
- regulatory roles and responsibilities in gasfitting, gas installations and appliances, which will consolidate regulatory responsibility across the sector into one agency, providing a single contact point for industry and consumers and making regulation of the sector clearer and more consistent.

The Office also commenced reviews into NSW electricity network contestable services, the role of the planning system in promoting competition and investment, and the *Entertainment Industry Act 1989* (NSW). These reviews are expected to be finalised in 2009-10.

The NSW Government also reports every six months on progress in implementing the 74 recommendations made by the Independent Pricing and Regulatory Tribunal in its *Investigation into the Burden of Regulation in NSW and Improving Regulatory Efficiency* (IPART 2006). The third progress report was released in April 2009 and shows that the Government has implemented 49 of the 74 recommendations and that all of the remaining recommendations are on-track to be delivered (NSW Government 2009). It is anticipated that several of these will be completed in 2009-10, while others will be addressed through longer-term processes, including those requiring cross-jurisdictional action under COAG.

B.2 Victoria

Regulatory impact analysis

Victoria employs an extensive regulatory impact analysis process. Where a proposed statutory rule is likely to impose a considerable economic or social burden on a sector of the public a RIS is required under statute. To supplement the RIS requirement, the Government requires a Business Impact Assessment (BIA) for primary legislation where there is potential for the legislation to have a significant impact on business. Government agencies must use the Standard Cost Model (SCM) to estimate administrative costs where a regulatory instrument is expected to result in a material change in the administrative burden imposed on businesses and/or not-for-profit organisations. The results of the SCM are published by the agencies.

Compliance reporting

The Victorian Competition and Efficiency Commission (VCEC) independently reviews and assesses RISs, BIAs and SCM reports. The VCEC reports annually to the Treasurer on compliance with the RIA requirements. It also publishes the report. Over the past financial year the VCEC assessed 28 RISs, 13 BIAs and five SCM measurements. Its assessments will be published in its annual report for 2008-09, which is expected to be released in late 2009.

The *Victorian Regulatory System* is an annual survey of Victoria's business regulators. The survey contains a report on regulatory developments and core operational and performance data for each of the Victorian Government business regulators. It supports the Government's regulatory reform initiative by identifying areas of potential regulatory overlap and duplication and helps to improve the effectiveness of public consultation with stakeholders affected by regulation. The 5th edition of the survey was released in May 2009 (VCEC 2009b). It included, for the first time, a report on formal agreements between regulators, both within Victoria and with Australian Government agencies, and the timeliness of individual permit and licensing activities.

Developments in regulatory reform

Through the *Reducing the Regulatory Burden* initiative, the Victorian Government committed to a three year target to cut red tape by 15 per cent and a five year target to cut red tape by 25 per cent. The targets amount to up to \$154 million and \$256 million a year, respectively, in red tape savings. The Department of Treasury and Finance has estimated that the productivity boost from reducing red tape has the potential to expand Victoria's economy by up to \$747 million a year (in 2005-06 prices) by 2016 (Government of Victoria 2009a).

The last two progress reports by the Victorian Treasurer indicate that Victoria is on track to reach its five year target (Government of Victoria 2009b). The *2008-09 Progress Report* noted that due to additional initiatives undertaken in 2008-09 the net reduction in administrative burden was now estimated at \$246 million per annum, up from \$162 million per annum estimated in the *2007-08 Progress Report* (Government of Victoria 2008; Government of Victoria 2009b). Based on the progress made, the Victorian Treasurer announced the target has been revised from \$256 million by July 2011 to \$500 million by July 2012 (Government of Victoria 2009b). At the same time, the scope of the target is being expanded to include substantive compliance and delay costs, in addition to administrative burden costs.

The 2008-09 progress report of the *Reducing the Regulatory Burden* initiative also announced that the Victorian Government would comprehensively review Victoria's framework for regulation making and review, which 'will include updating the *Victorian Guide to Regulation* to ensure it incorporates the latest experience in designing efficient regulation' (Government of Victoria 2009b, p.7).

The Victorian Government has also made significant progress on its commitment to reduce the number of principal Acts of Parliament by 20 per cent by 2010. A total of 153 Acts have been repealed to date, and the Victorian Parliament will consider repealing up to another 100 Acts during 2009.

Consumer Affairs Victoria, one of Victoria's largest business regulators, implemented a 'Better Business Regulation' pilot project in May 2008. The pilot project developed a 'good practice framework' with a self-evaluation tool kit that allows the Department of Justice business regulators to critically examine internal processes and identify gaps between current practices using consistent standards. The project provides an evidence-based approach for longer term decision making and strategic planning, and presents further opportunities for improvements in regulatory development across other Victorian departments. The project was piloted for two regulatory schemes: motor car traders and fundraising registrations. It was then refined and has commenced with the Legal Services Board and Greyhound Racing Victoria. The Department of Justice plans to roll out the project to eight further regulators before the end of 2009 (VCEC 2009b).

The VCEC has also been undertaking two inquiries in 2008-09:

- *A Sustainable Future for Victoria: Getting Environmental Regulation Right* (VCEC 2009a). As part of the strategy for reducing regulatory burden, the inquiry examined the burdens that environmental regulations impose on businesses. The inquiry draft report identified opportunities to improve Victoria's regulatory performance, through reductions in administrative and compliance burdens and reductions in overlap and duplication across Commonwealth, state and local government regulation. The VCEC presented the final report to the Treasurer in July 2009 and the report is expected to be released to the public soon.
- *Getting it Together: An Inquiry into the Sharing of Government and Community Facilities* (VCEC 2009c). The inquiry examines the potential for increased sharing of both existing and new government and community facilities in Victoria, including with commercial entities, and seeks to identify any governance and commercial principles that would apply to sharing facilities. The draft report was released in June 2009 and the final report was presented to the Treasurer in September 2009.

Future developments in regulatory reform

Since the VCEC report *Simplifying the Menu: Food Regulation in Victoria* (VCEC 2007) was released in 2008, the Government has introduced legislation into the Victorian Parliament that aims to simplify the registration process for food businesses and develop a new risk classification system to focus regulatory effort on businesses where food safety risks are greatest. The Government estimates that these changes will save food businesses more than \$20 million each year (Lenders 2008).

The *Subordinate Legislation Act 1994* (Vic.) requires that statutory rules are subject to a RIS process. The RIS process requires that an assessment of the costs and benefits of the regulation and its alternatives is put forward for public consultation. The Premier's *2009 Statement of Government Intentions* states that amendments to the *Subordinate Legislation Act 1994*, scheduled to apply from 2010, will 'extend the regulatory impact statement process to legislative instruments that may impose an appreciable regulatory impact on business and the community; and improve public accessibility to all legislative instruments and statutory rules' (Premier of Victoria 2009). The amendments of the *Subordinate Legislation Act 1994* will seek to ensure that the opportunity for scrutiny and public consultation on government regulations will depend on the impacts of the changes rather than the form of the legal instrument by which the regulation is made.

B.3 Queensland

Regulatory impact analysis

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

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

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

Compliance reporting

Queensland does not have a formal procedure for reporting on compliance with the RIS requirements. However, Section 40(3) of the SIA states that it is the Queensland Parliament's intention that there is compliance with RIS requirements before subordinate legislation is made. The mechanism for achieving this is a requirement that Directors-General complete a compliance certificate confirming compliance with the provisions of Part 5 of the SIA before making a regulation.

The Queensland Office for Regulatory Efficiency (QORE), within the Queensland Treasury, plays a central role in the Queensland Government's regulatory development and review processes, including regulatory impact assessment. QORE assessed 15 RIS documents and handled 259 RIS enquiries in 2008-09.

Developments in regulatory reform

Increasing the momentum on regulatory reform is an important focus of the Queensland Government. This is now occurring on two main fronts: reducing barriers to trade and commerce between Queensland and the rest of Australia; and reducing the regulatory burden on the Queensland business sector.

Smart Regulation Reform Agenda

In December 2008, the Queensland Government, along with other Australian jurisdictions, committed to the National Partnership Agreement to Deliver a Seamless National Economy. Under this agreement, Queensland is implementing regulatory and competition reforms in 36 key areas to improve the efficiency and inter-jurisdictional harmonisation of the regulatory environment. Harmonisation of these regulations across Australian jurisdictions will contribute to reducing costs incurred by business in complying with differing and inconsistent regulation across jurisdictions.

In addition to this national reform agenda, the Government is implementing an innovative five-point action plan under the Queensland Smart Regulation Reform Agenda. A key action will be to reduce the stock of regulation through a phased program

of reviews by agencies of their existing regulation. Other actions include initiatives focussed on improving the quality of new regulation and improving the business-government interface.

These initiatives aim to reduce unnecessary regulatory burdens and improve the effectiveness and efficiency of regulations to deliver productivity benefits and real measurable savings to Queensland business, community and government.

As part of this overall regulatory improvement agenda, the Queensland Government has committed to an initial target of reducing the regulatory compliance burden to business and the administrative burden to government by \$150 million each year by the end of 2012-13.

Smart Regulation Annual Report

The Queensland Government has introduced a new reporting framework for reporting on regulatory reform initiatives and progress – the *Smart Regulation Annual Report*. The annual report replaces the *Red Tape Reduction Stocktake Reports*. Whilst the stocktake reports focused on reporting red tape reduction initiatives with benefits to business only, the new annual reports will widen this to also report on benefits to community and government. It will also capture reform activities that strengthen the regulatory environment using best practice regulation principles, not simply red tape reduction activities.

The *Smart Regulation Annual Report 2007-08* (Queensland Government 2008) reported on Queensland Government regulatory reform initiatives that delivered over \$70 million in savings to Queensland business, community and government. This was achieved from a \$50 million reduction in land tax, resulting from changes to the assessment rules, and other reforms, such as a simplified licensing framework for building supervisors, simplified WorkCover premium payment and assessment processes, and simplified access to social housing.

The 2007-08 annual report also highlights the reviews that have been completed or are currently underway across Queensland Government agencies to identify and address regulatory issues for business and the community. Some examples include: the Property Agents and Motor Dealers Act; Local Government, Sport and Recreation Acts; freedom of information and privacy; child care; vegetation management; biosecurity; and indigenous cultural heritage.

Revised regulatory development processes

In June 2009, the QORE released a revised version of its *Regulatory Impact Statement Procedures and Requirements* guide (Queensland Government 2009). This 2009 guide contains more comprehensive information about the RIS process and RIS requirements under the SIA for Queensland Government agencies.

As part of this revised guide, the QORE now requires all agencies to publish notification of consultation on all RIS and PBT documents, as well as any other significant policy proposal, via the Queensland Government's Get Involved: Have Your Say website.

B.4 Western Australia

The Western Australian Government has made significant progress on various initiatives in best practice regulation announced in January 2009 (Buswell 2009). Collectively, the initiatives aim to reduce the burden of excessive red tape on Western Australian businesses and consumers, and to prevent unnecessary government regulation in the future.

- A Red Tape Reduction Group has been established, to identify and report back to the Economic and Expenditure Reform Committee on opportunities to reduce the burden of existing regulation on small business and consumers.
- Ministers are now able to refer existing regulation to the Treasurer, for targeted review by the Department of Treasury and Finance (DTF).
- A best practice system of reviewing new and amending regulation is being developed and implemented, to ensure that Western Australia meets its COAG commitments. The new system is to be administered by the Regulatory Gatekeeping Unit (RGU) within the DTF.

Red Tape Reduction Group

The Red Tape Reduction Group (RTRG) is tasked with identifying and reporting on opportunities to reduce the burden of existing State regulation and red tape on business and consumers. The RTRG has consulted widely around the State with business (including small and medium sized businesses), industry groups and local governments, and is expected to report to the Treasurer in October 2009.

Regulatory Impact Assessment

The new regulatory impact assessment (RIA) process will ensure that negative impacts and costs associated with regulatory proposals in the future are justified and minimised. This will limit the flow of unnecessary government regulation and improve Western Australia's productivity and competitiveness.

The RGU has made good progress in developing and implementing the State's new RIA process.

- *Regulatory Impact Assessment Guidelines for Western Australia* (RIA Guidelines) have been prepared for and considered by the Government. The preparation of the RIA Guidelines involved extensive consultation with around 50 government agencies, and are designed to implement a gate-keeping process that adds significant value to agencies' policy making.
- Templates for conducting Preliminary Impact Assessments and RISs are being finalised to assist agencies comply with the process.
- Detailed training packages for delivery to Government agencies are in the final stages of development.
- A database has been established to ease recording and public reporting of gate-keeping information.
- A website is being established to ensure public transparency of the gate-keeping process and outcomes. This will provide a single point of access for the public to contribute to gate-keeping reviews of significant regulatory proposals.

Western Australia's new best practice RIA system is aimed at ensuring public consultation, transparency of the regulation-making process, and rigour in analysis. The new system will ultimately cover all new and amending legislation, regulations and quasi-regulations in Western Australia.

The Government of Western Australia approved the gate-keeping processes as contained in the RIA Guidelines in August 2009 for implementation through 2009-10 (Government of Western Australia 2009). Prior to the new process coming on line, the RGU continues to administer the State's existing gate-keeping process, detailed in the *Best Practice Regulation Report 2007-08* (OBPR 2008).

Developments in regulatory reform

Western Australia is committed to improving its regulatory gate-keeping and review processes, in accordance with its COAG commitment. A number of regulatory reviews of existing regulations have been established or completed in 2008-09, targeting the following areas:

- Grain marketing arrangements in Western Australia. A review by the Economic Regulation Authority (ERA), conducted in 2008, recommended full deregulation of grain marketing arrangements in Western Australia. The review concluded that there is little evidence to suggest that single desk marketing results in price premiums to growers. The Government announced in March 2009 that the *Grain Marketing Act 2002* (WA) would be repealed, and exports of barley, lupins and canola deregulated before the start of the 2009-10 harvest. The recent period of partial deregulation has been beneficial in allowing preparation for full deregulation. This will bring Western Australia in line with all other States and the Australian Government's deregulation of bulk wheat exports.
- Inquiry into *Pricing of Recycled Water in Western Australia*. The ERA completed the Inquiry in February 2009. It has recommended that a set of pricing principles for the pricing of wastewater from wastewater treatment plants should be introduced, to create a level playing field for all providers of recycled water. The Government is in the process of finalising its response to the report.
- Inquiry on the *Tariffs of the Water Corporation, Bunbury Water Board (AQWEST) and Busselton Water Board*. The ERA conducts this major pricing inquiry of the State's major water service providers once every three years. Following an extensive public consultation process the ERA released its final report in September 2009.
- COAG Ports Review. The review of ports and related infrastructure is being undertaken by a joint committee consisting of representatives from the Department of Treasury and Finance, the Department of Planning and Infrastructure (now the Department of Transport) and the Department of Agriculture and Food in accordance with clauses 4.1 and 4.2 of the COAG's Competition and Infrastructure Reform Agreement. The review has been finalised and is currently with Government pending final release.
- Amendments to Railways (Access) Code 2000 (WA). The amendments were gazetted in June 2009 and seek to implement the Government's response to recommendations made by the ERA as part of its statutory review of the Railways (Access) Code 2000 (WA). These recommendations include clarifying the rights of access seekers and the right of parties to negotiate access outside of the Railways (Access) Code 2000 (WA).

- Deregulation of retail trading hours. The Retail Trading Hours Amendment Bill 2009 (WA) was introduced to Parliament in 2008-09. The proposed amendments sought to give general retail shops in the metropolitan area the option of opening to 9pm on weeknights should they choose to do so. The Bill was not passed.
- Review of haulage arrangements for Pilbara iron ore railways. During the financial year a discussion paper and draft regime were released for public comment. An interdepartmental committee has finalised its report to Government.

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. Where policy proposals restrict competition, the RIS must demonstrate that the benefits outweigh the costs.

In 2006, South Australia was the first state to mandate the use of the Australian Government's Business Cost Calculator to assist policy makers measure the compliance costs of regulatory proposals on businesses.

In 2009, the South Australian Government is developing a new Better Regulation Handbook, which will specify principles and requirements for regulatory proposals. As part of this, the Government is also considering enhancements to the regulatory gate-keeping arrangements.

Developments in regulatory reform

The South Australian Government's objective is to make the State the most competitive place in which to invest and operate a business in Australia and New Zealand. Implementation of this objective is led by the Competitiveness Council, chaired by the Deputy Premier.

In March 2006, the South Australian Government set a target to reduce red tape for businesses by at least \$150 million a year, in net terms, by mid-2008. By July 2008, the Government had exceeded its target and delivered total net cost savings of \$170 million a year (Government of South Australia 2008). Deloitte, an independent consultant, verified the total net cost savings from the Red Tape Reduction program.

The Red Tape Reduction program defines red tape as the time and money spent by businesses to understand and comply with government regulations, and related processes, and that are above and beyond the daily cost of running a business. This includes:

- paperwork compliance – the cost imposed on business through form filling and providing information.
- non-paperwork compliance – such as human capital investment (staff training and education), physical investment (re-configuration of plant and equipment) or 'capital holding' costs associated with regulation-induced delays in business projects.

- government fees and charges – including permit and licence fees that are intended to recover the cost of administering regulation.
- government processes – requirements that stem from administrative processes.

The Red Tape Reduction program seeks to reduce red tape through an:

- allocation of individual agency targets, with Chief Executives made accountable to the Premier for achieving their agency's target;
- a network of Agency Red Tape Reduction Champions who regularly meet to share ideas and information;
- an independent audit of savings to business; and
- a series of industry reviews to identify areas for reducing regulatory burdens.

In line with the Red Tape Reduction program and its objective of reducing the stock of unnecessary regulation, the South Australian Government completed a comprehensive review of the State Planning and Development system. In 2009, the Government will continue to roll out a package of planning reforms including a new Residential Code to speed planning approvals, provision of faster approval processes for minor matters with many removed from the approval system as well as streamlining merit assessment processes. In a final report to the Government, KPMG estimated that the suite of planning reforms will boost gross state product by as much as \$4.9 billion over five years and reduce red tape costs by \$75.6 million a year. This includes savings to new home buyers to the value of \$16.6 million a year in holding costs (such as interest on loans and rent payable for occupying another premises) as well as savings to industry and developers to the value of \$49.6 million a year in timely approvals, also including reduced holding costs (March 2008).

Following the success of the Red Tape Reduction program, the Government announced in April 2009 that it will maintain its commitment to competitiveness through a new net target of a further \$150 million a year reduction in red tape over three years. A key part of meeting this target will be a new rolling, five-year review of all business regulation. For the review program, agencies will be asked to consider the full operational impact of regulation and the scope to reduce business compliance costs, including how information is provided to businesses to ensure they understand their regulatory obligations, the processes for receiving and responding to enquiries and complaints, and monitoring and enforcement activities to ensure compliance.

The second phase of the Red Tape Reduction program represents a more comprehensive approach and focuses 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.

B.6 Tasmania

Regulatory impact analysis

Under the Tasmanian Government's Legislative 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 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 2008-09, no RISs were required to be endorsed by the Economic Reform Unit in the Department of Treasury and Finance under the LRP.

Developments in regulatory reform

The Tasmanian Government has recently formed the Business Tax and Regulation Reference Group to enhance the communication between the business community and the Government. It has also established a Business Tax and Regulation Review working group and is considering how best to implement a program for targeted annual reviews of existing regulation.

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 1992 (Tas)* 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 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 made outside the Cabinet process to be subjected to a regulatory impact analysis process.

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 all Cabinet Submissions for their compliance with the RIS requirements. The ACT Government has published guidelines to assist with the preparation of RISs.

Consultation

The ACT Government has committed to a revised consultative process that includes increased scrutiny and review by the ACT Assembly and its committees as part of a Parliamentary reform agenda.

Compliance reporting

The RPU provides assistance to agencies in preparing RISs. It also takes a role on quality assurance. In 2008-09 approximately 125 new regulations were passed by the ACT Legislative Assembly. Of these, the RPU advised on RIS processes or reviewed proposed RISs for 22 regulatory proposals. The other proposals were found not to require RISs under the existing regime.

Developments in regulatory reform

The ACT Government is considering proposals to refine the broader processes around regulatory impact assessment and regulation making. This includes updating its RIS guidelines and enhancing training measures to assist and educate agencies in the preparation of RISs. The guidelines are expected to be completed early in 2009-10.

The ACT Government has not yet met the COAG Seamless National Economy National Partnership regulatory reform milestones. The ACT's commitment to the COAG regulatory reform process will continue through 2009-10.

Examples of recent ACT Government review and reform:

Gaming Machine Review. The ACT Government is currently investigating options to allow for the reallocation of gaming machines between venues in the ACT, and is also considering options to reduce the total number of machines in the Territory.

The Government has outlined the reform options in a discussion paper (released 2 June 2009) and has invited submissions from major stakeholders. The Treasurer will

provide the Government with a recommended course of action following consideration of the submissions.

Supermarket Policy Review. The ACT Government appointed Mr John Martin, former Deputy Commissioner of the Australian Competition and Consumer Commission (ACCC) to advise the Government on a range of issues regarding the recommendations of the ACCC's 2008 inquiry into the grocery market in Australia. Recommendations of the inquiry focus on microeconomic reform including land development policy.

Compulsory Third Party Review. The ACT Government has commenced a review which will build on existing reforms to the compulsory third party insurance system that were enacted by the legislative assembly in February 2008 and came into force on 1 October 2008. The review will encompass further examination of compensation methodologies and a detailed assessment of the overall economic and health-related outcomes that the compulsory third party scheme can provide to those who have been injured in a motor accident.

Review of the Unlawful Games Act. The ACT Gambling and Racing Commission finalised its review of the *Unlawful Games Act 1984* in 2009 with the release of a final policy paper in October 2009. The policy paper recommended legislative reform affecting non-commercial gambling activities, but recommended no change for commercial gambling activities. The recommendations, which were accepted by the Government, have formed the basis for the drafting of the Unlawful Gambling Bill 2009, which was introduced to the ACT Legislative Assembly in October 2009.

B.8 Northern Territory

Regulatory impact analysis

All new legislative proposals, including principal and subordinate regulation, must be subject to the Northern Territory (NT) Government's regulation making framework. The framework was introduced in 2008 and replaced the Competition Impact Assessment process.

The regulation making framework involves a two-staged process comprising a preliminary impact assessment to be undertaken at the time approval to draft legislation is requested and, if required, a RIS is undertaken as part of the regulation development process. A RIS is required only if the preliminary impact assessment indicates the proposal will have material economic implications which may not result in net benefits for the community.

For each RIS, a quantitative assessment of business compliance costs is encouraged, including through the use of the Australian Government's 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.

The regulation making framework also requires annual reviews of the stock of regulation, with the aim of reducing unnecessary business compliance burdens. The NT Government is considering a proposal to align the annual reviews of the stock of NT regulation with the 36 national reforms under the National Partnership Agreement to deliver a Seamless National Economy.

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

Under the previous Competition Impact Analysis (CIA) process, the Regulatory Impact Unit provided twice yearly reports on the operation, compliance and reform progress of the Regulation Making Framework process to the appropriate NT Government Minister (the Chief Minister prior to 1 May 2006 and the Treasurer post 1 May 2006). These reports provided information on the number of CIAs prepared, exemption details, the quality of CIAs, identification of training requirements within agencies, and any suggested process amendments.

The NT Government is considering a proposal to establish a similar compliance reporting mechanism for the new regulation making framework.

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 its relevance to Australia. Some of the more relevant Organisation for Economic Cooperation and Development (OECD) 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, Asia-Pacific Economic Cooperation (APEC) and the Republic of Korea.

C.1 Organisation for Economic Cooperation and Development

In June 2009, the OECD released a working paper on Public Governance titled *Multi-Level Regulatory Governance: Policies, Institutions and Tools for Regulatory Quality and Policy Coherence* (OECD 2009a). The publication identifies key policy issues related to multi-level governance, and describes a 'Framework for Analysis of Multi-level Regulatory Governance'. It takes as a basis the concept of high quality regulation described in the OECD *Principles for Regulatory Quality and Performance* (OECD 2005). The report indicates that the most common issues in multi-level governance structures affecting the relationship between the public and the private sector were duplication of rules, overlapping and low quality regulations, and uneven enforcement. It concludes that an analytical framework for multi-level regulatory governance should help to address problems with inter-level regulatory policies.

- In terms of regulatory policies and strategies, the OECD proposes:
 - harmonising regulatory policy;
 - including competition principles at all levels of government; and
 - harmonising vertical co-ordination for regulatory policy between different levels of government.
- In terms of regulatory and policy tools, the OECD proposes:
 - the use of consultation mechanisms as a way to improve transparency at different levels of government;
 - the introduction and use of RIA at sub-national levels of government;
 - reducing administrative burdens at lower levels of government;
 - using alternatives to regulation; and
 - adopting tools to improve implementation, compliance and enforcement of regulations.

In February 2009, the OECD released the publication *Overcoming Barriers to Administrative Simplification Strategies: Guidance for Policy Makers* (OECD 2009b). The publication discusses barriers to implementing administrative simplification strategies and proposes some ideas and good practices to effectively cut red tape. Elements of an administrative simplification strategy included targeting simplification efforts, being aware of institutional design, and implementing tools to develop the strategy, including providing more information and greater use of information communication technology.

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

On 30 October 2008, the Australian Government announced that it had invited the OECD to conduct a peer review of Australia's processes for regulation making and review (Tanner 2008b).

The [r]eview will examine Australian regulatory management frameworks and processes by reference to best practice in other OECD member countries. A comparative assessment will also be made of the quality and regulatory impacts of Australia's competition policy and trade and investment settings. (Tanner 2008b, p.1)

The Australian Government hosted the OECD review in 2009. The review will include Commonwealth-State cross-jurisdictional regulatory reform (Tanner 2008b), and is expected to be released in 2010.

Indicators of Regulatory Performance

The OECD periodically compiles indicators of regulatory quality management systems. The first was published in 1995 and the most recent in 2007. 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. (OECD 2007)

In 2008, the OECD began work on the most recent iteration of 'Indicators of Regulatory Management Systems'. Information on Indicators of Regulatory Management Systems is compiled by the OECD periodically, with information on indicators previously compiled in 1998 and 2005. The indicators are based on member country responses to a detailed questionnaire on regulatory management systems.

The OECD designed the questionnaire in line with the OECD guidelines for good practice in regulatory management, and particularly with the OECD 1995 Recommendation on Improving the Quality of Government Regulation, the 1997 Policy Recommendations on Regulatory Reform and the 2005 Guiding Principles for Regulatory Quality and Performance. The indicators are expected to be published in late 2009.

C.2 United Kingdom

The United Kingdom (UK) Government is continuing its current program of regulatory reform following the Hampton Review in 2005. Significant milestones achieved in this period include:

- the program to reduce administrative burdens;
- monitoring the implementation of the Hampton Review;
- the release of two reports on improving outcomes from health and safety and a review of the planning application process, respectively; and
- the passing of the *Regulatory Enforcement and Sanctions Act 2008*.

Administrative Burdens

The UK Government has progressed with its program to reduce administrative burdens. The Department for Business, Enterprise and Regulatory Reform reported that by the end of 2008, the administrative simplification program had delivered 240 measures to simplify regulation, including employment guidance such as proforma letters and online tools, example risk assessments on how to assess risks in the workplace for 18 types of business, and replacing the Weights and Measures (Packaged Goods) Regulations 1986 with simpler regulations. Total savings from the program are estimated to be £1.9 billion annually. The program included an overall net reduction target of 25 per cent of business regulation. This target is expected to be achieved by 2010. The reduction target is set and delivered by individual agencies within government, with the departments given flexibility in how their target is achieved.

Hampton Implementation Review Reports

The 2005 Hampton Review considered how to reduce unnecessary administration for business. The report sets out key principles of inspection and enforcement to be consistently applied throughout the regulatory system. These principles are:

- regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;
- regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
- no inspection should take place without a reason;
- businesses should not have to give unnecessary information, nor give the same piece of information twice;
- the few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions;
- regulators should provide authoritative, accessible advice easily and cheaply;
- regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work; and
- regulators should recognize that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

In 2006, the Macrory Review considered the main reasons businesses were not complying with existing regulations and considered what could be done to improve compliance. The Macrory Report set out principles and characteristics of an appropriate sanctioning regime. The Report noted that sanctions should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

The Macrory report indicated that regulators should:

- publish an enforcement policy;
- measure outcomes not just outputs;
- justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
- follow up enforcement actions where appropriate;
- enforce in a transparent manner;
- be transparent in the way in which they apply and determine administrative penalties; and
- avoid perverse incentives that might influence the choice of sanctioning response.

The UK Government is conducting a series of ex-post reviews to assess the effectiveness of the implementation of the Hampton principles of better regulation and the characteristics of effective sanctions defined by the Macrory review.

These reviews are being carried out on the work of 36 national regulators, with reports being published on completion of the review. The review process began in 2007. The Hampton Implementation Reviews assess how well regulators are following the Hampton principles of better regulation and the characteristics of effective sanctions defined by the Macrory review.

As at August 2009, around one third of the reviews had been completed.

Implementation reviews released in 2008-09 included:

- Animal Health;
- Medicines and Healthcare Products Regulatory Agency;
- Security Industry Authority;
- The Gambling Commission; and
- The Gangmasters Licensing Authority.

The reviews were carried out using a guide developed by the Better Regulation Executive and the National Audit Office. While the content of the findings is sufficiently diverse to preclude much generalisation, the reviews indicated progress in implementing full compliance with Hampton and Macrory recommendations. Reports and the Guide developed by the Better Regulation Executive and the National Audit Office are publicly available at the website of the Department for Business Innovation and Skills.

In addition to the Implementation Review Reports, the UK Government keeps track of the implementation of the Hampton Review to merge regulators and inspectorates to avoid overlapping regulatory frameworks and reduce the costs for business. The Department reported that 23 of 63 regulators covered by the report have merged in its *Annual Report and Accounts 2008-09*.

Reports

In July 2008, the Better Regulation Executive published *Improving Outcomes from Health and Safety*, a review that considered the impacts of the occupational health and safety regime on workplaces where the overall risk of injury or ill health is low. This aimed to reduce unnecessary burdens on those businesses while reducing injury and ill health, and

increasing public confidence in the UK's health and safety regime as a whole. The review's recommendations were reported to be taken forward by the Health and Safety Executive in the UK Government. (BERR 2009)

In November 2008, an independent review made a series of recommendations to simplify the planning application process. These recommendations included removing some minor planning applications from the planning system altogether. The recommendations are reported to have been welcomed by the UK Government with implementation commencing in 2009 (BERR 2009)

Legislation

In July 2008, the *Regulatory Enforcement and Sanctions Act 2008* was passed. The Act took forward some of the recommendations of the recommendations of the 2006 Macrory Review. The legislation provides for:

- the Local Better Regulation Office to be given statutory powers to promote consistency across local authorities in the way they enforce regulations and work with central government;
- the establishment of a Primary Authority Principle, which places Home and Lead Authority Principles on a statutory footing;
- a framework of administrative sanctions that will allow regulators to tackle non compliance; and
- a duty to be placed on specified regulators to review the burdens they impose, reduce regulation that is unnecessary and unjustifiable, and report on their progress in doing so annually.

C.3 European Union Best Practice Regulation

The European Commission released the *Third strategic review of Better Regulation in the European Union* in January 2009, which reported on the EU's progress with reform in three main areas – simplification of existing legislation, reducing the administrative burden for businesses and improving the quality of new initiatives.

Simplification

Three types of strategies are adopted in the EU for simplifying existing regulation – a simplification rolling programme, codification and withdrawing redundant regulations.

In October 2005, the Commission established a 'simplification rolling programme' that included 100 simplification initiatives for the period to 2008. More initiatives have been added to the programme each year. As at January 2009, the programme consisted of 185 initiatives. The Commission has tabled proposals to simplify 132 of these.

The Commission's strategy for simplifying regulation through codification involves bringing basic law and amendments into one text. In 2008, the Commission reported that it had finalised the codification of 229 Acts out of a total of 436 and 142 Acts have been adopted and published in the Official Journal.

Since 2005, the Commission has conducted an annual exercise to withdraw regulations that are no longer relevant. As at January 2009, a total of 108 regulations were withdrawn.

Removing unnecessary administrative burdens for business

In 2007, the European Council introduced a programme aimed at reducing administrative burdens on business in the EU by 25 per cent in 2012. The Commission identified 42 EU Acts that it considered had the highest potential for reforms to reduce administrative costs. The Commission estimated the Acts impose administrative costs of approximately £115 to £130 billion. A large proportion of these were attributed to taxation and customs and company law.

The Commission has put forward to the European Council and Parliament ‘fast-track’ actions to reduce administrative burdens (defined as immediate measures that are likely to generate significant benefits or reduce irritation through technical changes to existing rules). In 2007 and 2008, 21 FTAs were tabled, in total offering estimated savings of £2.3 billion for European businesses. Progress in adoption has been slower. As at January 2009, five had been adopted.

In addition to the fast-track actions, the Commission also presented the Council with proposals to improve the quality of existing regulation by amending 26 Acts. As at December 2008, 16 proposals have been adopted.

Improving the quality of new initiatives

In January 2009, the Commission released revised *Impact Assessment Guidelines* to improve the quality of new initiatives. The Strategic review highlighted four characteristics of the impact assessment system which are reflected in the Guidelines.

1. Impact assessments are integrated, requiring analysis of benefits and costs addressing all significant economic, social and environmental impacts.
2. Requirements extend beyond initiatives in the annual Legislative and Work programme, covering all initiatives likely to have a significant impact.
3. To ensure impact assessments conform to procedures and quality standards, the Commission has put in place a central quality control function in the form of the Impact Assessment Board (IAB) independent of policy making departments.
4. The Commission noted that all impact assessments and all opinions of the IAB are publicly available once the Commission has adopted the relevant proposal.

C.4 New Zealand

In 2008-09, the New Zealand (NZ) Government:

- began a program of reviews of the effectiveness of important regulatory regimes, particularly those that have a significant impact on productivity;
- committed to introduce an annual Regulatory Reform Bill to make it quicker and easier to remove or simplify unnecessary, ineffective or excessively costly requirements in primary legislation; and
- established an independent regulatory taskforce to investigate the case for, and reform of, a Regulatory Responsibility Bill.

Reviews on the effectiveness of Regulatory Regimes

In February 2009, the NZ Government agreed to a regulatory review programme for 2009. Regulations to be reviewed included the *Building Act 2004*, the *Holidays Act 2003*, the *Overseas Investment Act 2005* and the *Telecommunications Act 2001*. The reviews are expected to deliver a set of feasible options that are the minimum necessary to achieve objectives, having assessed costs, benefits and risks.

Establishment of Independent Regulatory Taskforce

In November 2008, the NZ Government moved the responsibility for New Zealand's regulatory management system from the Ministry of Economic Development to the New Zealand Treasury, expanding its role into three areas:

- the independent assessment of the adequacy of economically significant regulatory proposals against the expected standards for regulatory impact analysis and statements;
- assuming responsibility for setting a prioritised regulatory review programme and coordinating action with other government agencies to deliver on the programme; and
- assuming responsibility for strategy of the regulatory quality system, including redesigning and strengthening the regulatory quality management system to support the government's objective of less and better quality regulation.

In July 2008, the NZ Treasury released a revised *Cost Benefit Analysis Primer*. The purpose of the primer is to improve the quality of policy and spending proposals by providing guidance and to give some indication of how proposals would be considered by the NZ Treasury. The primer is intended for public sector policy and financial analysts. (NZ Treasury 2008b)

In November 2008, the NZ Government released *Guidelines on Regulatory Impact Analysis Requirements*, including a Regulatory Impact Analysis template. The guidelines set out updated RIA requirements and endorsed the 1997 NZ Government Code of Good Regulatory Practice. (NZ Treasury, 2008c)

Regulatory Responsibility Taskforce

The purpose of the Regulatory Responsibility Bill introduced in 2007 was to improve Parliamentary laws and regulations in New Zealand by specifying principles of responsible regulatory management and by applying reporting requirements to the Crown with respect to the principles.

On 9 March 2009, the Minister for Regulatory Reform announced the creation of a Regulatory Responsibility taskforce to provide independent advice on the Bill. The purpose of the taskforce as set out in the terms of reference was to determine what if any amendments were required for the Bill in order to achieve its objectives. The Taskforce is expected to announce its recommendations after September 2009.

C.5 Canada

Canada is in its third year of implementation of the Canadian Cabinet Government Directive on Streamlining Regulation (CDSR). The CDSR establishes how the Federal Government of Canada should make regulations in a way that is transparent and effective.

The Centre of Regulatory Expertise (CORE), created as a result of the CDSR, specialises in risk assessment, cost-benefit analysis and performance assessment and evaluation. Over the three year period 2009-2011, CORE is expected to assist departments by improving regulatory quality, with the goal of reducing the administrative burden relating to regional impact assessment statements and having approximately two-thirds of regional impact assessment statements contain appropriate cost-benefit analysis, regulatory cooperation, consultation, and/or performance measurement.

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. The Office 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 which has been in place since 1993.

In 2008-09, OIRA reviewed 613 rules (both economically significant and non-significant) in an average time of 43 days. (OMB 2009)

New Executive Order on Federal Regulatory Review

On 30 January 2009, President Obama signed a Memorandum for the Heads of Executive Departments and Agencies on Regulatory Review requesting the Director of the Office of Management and Budget to produce a set of recommendations for a new Executive Order on Federal regulatory review. Among other things, the recommendations were to:

- offer suggestions for the relationship between OIRA and other executive agencies;
- provide guidance on disclosure and transparency;
- encourage public participation in agency regulatory processes;
- offer suggestions on the role of cost-benefit analysis;
- address the role of distributional considerations, fairness, and concern for the interests of future generations;
- identify methods of ensuring that regulatory review does not produce undue delay;
- clarify the role of the behavioural sciences in formulating regulatory policy; and
- identify the best tools for achieving public goals through the regulatory process.

On 26 February 2009, the Director of the Office of Management and Budget invited public comment on how to improve the process and principles governing regulation. The cut off for public comment was 16 March 2009.

On 4 March 2009, the Director of the OIRA issued a memorandum for the heads and acting heads of executive departments and agencies. In the memorandum, he clarified that the previous Administration's amendments to Executive Order 12866 had been revoked and that the regulatory review process was restored to the system which was in place between 1993 and 2007. During this period, ORIA reviewed all significant proposed or final agency actions, including significant policy and guidance documents.

C.7 Asia-Pacific Economic Cooperation

The Economic Committee of the Asia-Pacific Economic Cooperation (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.

In August 2008, the Inaugural APEC Structural Reform Ministerial Meeting was held. At the meeting Ministers explored structural reform with a particular focus on regulatory reform, strategies for the successful implementation of reform, including political challenges; and the importance of robust legislative and institutional frameworks.

A range of measures were agreed, including:

- endorsing the Economic Committee's *Good Practice Guide on Regulatory Reform*;
- requesting the Economic Committee to develop a process of voluntary self-reviews of economies institutional frameworks that support structural reforms;
- requesting the Economic Committee to report back to Leaders on progress in implementing APEC's agenda and how the Economic Committee can continue with structural reform initiatives beyond 2010; and
- requesting the Economic Committee to strengthen its capacity building programme on structural reform (APEC Joint Ministerial Statement).

The Economic Committee also agreed to identify three to four priority areas for regulatory reform to improve the business environment, which would ultimately feed into an 'Ease of Doing Business Action Plan' for endorsement at the APEC 2009 meeting in the second half of 2009.

A seminar on regulatory reform aimed at improving the domestic business environment was held in Singapore on 16-17 February 2009. The seminar, which was jointly organised by the Economic Committee and the Investment Experts Group, provided an opportunity for APEC officials and experts to exchange ideas on how to drive effective regulatory reforms to improve the domestic business environment.

The Economic Committee is preparing the 2009 APEC Economic Policy Report will focus on the theme of regulatory reform.

C.8 Republic of Korea

In March 2008, the Government established the Presidential Council for National Competitiveness. The Council is an advisory group to the President that meets monthly to discuss major regulatory reform tasks such as the rationalisation of metropolitan area regulations and the streamlining of industrial complex procedures.

Also in 2008, the Government in partnership with the private sector established a joint regulatory taskforce within the Korea Chamber of Commerce and Industries to address business concerns. This taskforce has a role in assisting the Korean Government with the process of identifying regulatory reform opportunities.

The Korean Regulation Reform Committee revised its manual for Regulation Impact Analysis in 2008 to increase accessibility and effectiveness. The principles for regulatory reform are found in the *Basic Act on Administrative Regulations*.

In 2008, 1 795 regulatory reform tasks were identified, of which 908 were completed before the end the year. The reforms included improvement to corporate ownership structure, enhancement of financial market competitiveness and land efficiency rules. The Government has also flagged several sectors for regulatory reform in 2009. These include labour and management relations, environment, housing, construction and service sectors.

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