

# **Appendix A Australian Government Office of Regulation Review: report on compliance with national standard setting**

This appendix contains the Commonwealth Office of Regulation Review's *Report to the National Competition Council on the setting of national standards and regulatory action: 1 April 2004 – 31 March 2005*. The Office of Regulation Review provided this report to the Council on 29 July 2005.

The Office of Regulation Review works closely with Ministerial councils and other standard-setting bodies, advising them on applying COAG principles and guidelines for setting standards and regulations. The office advises these bodies on the adequacy of their regulatory impact statements before they are circulated to affected parties, and again before the final standard-setting decisions are made. The office's involvement with the Ministerial councils and standard-setting bodies informs the preparation of its report to the Council.

Prior to providing its report to the Council, the office circulated a draft report to Ministerial councils and other national standard setting bodies for comment. The office also provided the draft report to state and territory competition policy units and regulatory review units, and to the New Zealand Government (New Zealand is represented on several of the Ministerial councils and standard setting bodies). This consultation process assists the final report's accuracy and its appraisal of the regulatory impact analysis process undertaken before a decision is made on each new national standard or regulation.

The Office of Regulation Review's report to the Council is discussed in chapter 5.



Australian Government  
Productivity Commission

Report to the  
National Competition  
Council on the Setting of  
National Standards  
and Regulatory Action:  
1 April 2004 - 31 March 2005

*Office of  
Regulation Review*

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# 1 Background to the Office of Regulation Review's report

## 1.1 The COAG requirements

In April 1995, the Council of Australian Governments (COAG) agreed to apply a nationally consistent assessment process to proposals of a regulatory nature considered by all Ministerial Councils and national standard-setting bodies (NSSBs). The agreed assessment process is set out in the COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies (COAG 2004a as amended). These aim to improve the quality of regulation, including through the adoption of good consultation processes as regulation is developed.

The major element of the assessment process is the preparation of Regulatory Impact Statements (RISs). A RIS documents the policy development process, considers alternative approaches to resolve identified problems and assesses the impacts of each option on different groups and on the community as a whole. A COAG RIS should be prepared for proposals having a national dimension which, when implemented by jurisdictions, would result in regulatory impacts.

## 1.2 Decisions covered by the COAG requirements

The application of the COAG Principles and Guidelines is wide in scope. They cover regulatory decisions that:

... would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done ... . (COAG 2004a as amended, p.2)

COAG defined regulation to include:

... the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as those voluntary codes and advisory instruments ... for which there is a reasonable expectation of widespread compliance. (COAG 2004a as amended, p.2)

Accordingly, COAG's requirements cover agreements on standards and measures of a quasi-regulatory nature — such as endorsement of industry codes of conduct — as well as agreements on national regulatory approaches

implemented by legislation, either at the Australian Government or State/Territory level or both.

While there are some 40 Ministerial Councils and a small number of national standard-setting bodies (NSSBs), only around one-third of these make regulatory decisions that require a COAG RIS in any reporting period. This reflects the periodic nature of decision-making processes for most Ministerial Councils and NSSBs, and the fact that some decision-making bodies rarely make decisions of a regulatory or quasi-regulatory nature.

### **1.3 The role of the Office of Regulation Review**

The Office of Regulation Review (ORR) — an autonomous unit within the Productivity Commission — advises decision makers on the application of the COAG Principles and Guidelines and monitors and reports on compliance with these requirements. This includes advising whether a RIS should be prepared and assessing RISs prepared for Ministerial Councils and NSSBs.

COAG has directed the ORR to provide independent advice on regulatory best practice processes. As well as advising on the need for a RIS, the ORR must assess whether RISs meet minimum adequacy standards mandated by COAG, given the significance of the regulatory issues under consideration. The ORR bases its assessments on information provided by Ministerial Councils and NSSBs and on information included in each RIS. In undertaking this role, the ORR does not verify the underlying data or methodology. Nor does the ORR endorse or support particular regulatory options or outcomes. It is the Ministerial Council and NSSB preparing the RIS, not the ORR, which is responsible for the content of RISs.

The ORR assesses RISs at two stages: before they are released for community consultation and again prior to a decision being made. At each stage it advises the decision-making body of its assessment. The ORR's assessment considers:

- whether the Guidelines have been followed;
- whether the type and level of analysis is adequate and commensurate with the potential economic and social impact of the proposal; and
- whether alternatives to regulation have been adequately considered.

In addition, the ORR is required, under COAG's Agreement to Implement the National Competition Policy and Related Reforms (NCC 1998a), to advise the National Competition Council (NCC) on compliance with the COAG Principles and Guidelines. The NCC takes this advice into account when considering its recommendations to the Australian Government Treasurer regarding conditions and amounts of competition payments from the Australian Government to the States and Territories. This report covers the

period 1 April 2004 – 31 March 2005, and is the fifth such report by the ORR to the NCC.

## **2 Recent developments in COAG's requirements for RISs**

### **2.1 Changes to the Principles and Guidelines**

At its meeting on 25 June 2004, COAG decided to make a number of changes to the Principles and Guidelines and also to the Broad Protocols for the Operation of Ministerial Councils, which govern the conduct and reporting mechanisms of Ministerial Councils (COAG 2004b). These changes followed an evaluation of the implementation of the Broad Protocols and General Principles for the Operation of Ministerial Councils (PM&C 2002).

The changes aim to enhance the application of the principles of good regulatory practice by COAG, Ministerial Councils, intergovernmental standard-setting bodies and bodies established by government to deal with national regulatory issues and problems. The following changes were made:

- clarification that the Guidelines apply to COAG, as well as to Ministerial Councils and national standard-setting bodies;
- minor or machinery regulatory matters and 'brainstorming' by Ministers — which is not supported by written submissions outlining regulatory options — are exempt from the RIS requirements;
- clarification that the Guidelines apply to bodies preparing advice to Ministerial Councils/standard-setting bodies;
- clarification that, for multi-staged decision making, follow-up RISs for regulation implementing the original decision will not generally be required unless significant additional regulation is contemplated;
- the National Competition Principles Agreement is explicitly acknowledged;
- the importance of early consultation with the ORR and forward notice of the preparation of a RIS is noted;
- where a trans-Tasman issue is involved, the ORR is to refer the draft RIS for consultation to the ORR's counterpart in the New Zealand Government, the Regulatory Impact Analysis Unit (RIAU), to allow feedback on New Zealand issues and impacts — with such feedback being incorporated into the ORR's advice to Ministerial Councils and NSSBs on the adequacy of RISs;

- clarification that the final RIS for the decision makers is to be provided to the ORR for assessment;
- provision is made for genuine regulatory emergencies, with the ORR able to 'post assess', within 12 months, the briefing material prepared for the decision makers; and
- the independent role of the ORR is clarified, including a reference to the ORR not commenting on the merits of regulatory proposals or supporting any particular jurisdiction.

Changes to the Principles and Guidelines also relate to the content of RISs:

- it is emphasised that the principles of the Trans-Tasman Mutual Recognition Arrangement (TTMRA) must be adequately considered;
- it is clarified that a RIS should consider the impact on business and on the broader community; and
- more robust requirements are included to document compliance costs and small business impacts.

## **2.2 Impact of the changes to COAG's RIS requirements**

A number of the changes clarify existing ORR processes and methodology which have been applied to COAG RISs over the last few years. These changes will assist with the application of the RIS requirements. More fundamentally, COAG's re-endorsement and strengthening of the Principles and Guidelines has increased awareness of the RIS requirements and the importance of compliance with them.

A significant change to the Principles and Guidelines is the requirement for the ORR to confer with the RIAU in New Zealand on draft consultation RISs. As noted above, this applies where there are New Zealand impacts and issues, such as those arising from a proposal to apply a standard in both Australia and New Zealand, or where a proposal in Australia would affect trans-Tasman trade. A key aim of this new requirement is to ensure that the analysis in the consultation RIS reflects potential impacts in both Australia and New Zealand. These changes will also encourage better and earlier dialogue between regulators in each country.

To support the application of this new requirement, the ORR and the RIAU have established a Protocol between the two offices (PC & MED 2004). The Protocol, agreed in September 2004, sets out the operational arrangements for interaction between the ORR and the RIAU in order to meet COAG's requirement. These arrangements include the following:

- identification by the ORR, in consultation with the RIAU as necessary, of any trans-Tasman issues for particular regulatory proposals;
- where a proposal raises trans-Tasman issues, the ORR provides the draft consultation RIS to the RIAU for comments, in particular on the trans-Tasman impacts of the particular regulatory proposal; and
- the ORR advises the Ministerial Council (or standard-setting body) of its assessment of the draft consultation RIS, incorporating any comments from the RIAU.

At the time of reporting to the NCC, the ORR had sent five RISs to the RIAU for comment. The ORR had also discussed with the RIAU the potential trans-Tasman issues and impacts of a number of other ongoing proposals. As none of the five matters had reached the decision-making stage by 31 March 2005, they are not included in this report. For all five matters, the relevant New Zealand Minister is a member of the final decision-making body.

A copy of the Protocol has been provided to the secretariats of all Ministerial Councils and standard-setting bodies, and is publicly available. It is intended that this Protocol will evolve over time to ensure the continued effectiveness and efficiency of these arrangements.

## **2.3 Changes to the Broad Protocols for the Operation of Ministerial Councils**

COAG also agreed to a number of changes to the Broad Protocols for the Operation of Ministerial Councils (COAG 2004c) directed towards improving the operation of Ministerial Council decision-making processes and the coordination of related policy development processes. They include specific requirements for timely meetings of officials prior to meetings of Ministerial Councils, for the timely circulation of final agendas and papers to Ministers, and for copies of minutes from Ministerial Council meetings to be forwarded to the Department of the Prime Minister and Cabinet. The changes are expected to result in Ministerial Council agendas having a greater focus on strategic issues, improved reporting and information flows between Ministerial Councils on key issues and outcomes, and regular reviews by Ministerial Councils of their own functions.



## **3 Reporting on compliance at consultation and at decision**

### **3.1 The focus and scope of the ORR's report**

This report includes an assessment by the ORR of compliance at each of the community consultation and decision-making stages of the policy development process. An assessment of compliance at consultation is included where the final decision was made between 1 April 2004 and 31 March 2005, even where such consultation occurred before 1 April 2004.

Prior to 25 June 2004, in cases where a RIS had not been prepared, the ORR had in some cases undertaken an ex poste assessment of the consultation or decision documentation against COAG's RIS requirements. This approach was adopted as a transitional measure to cover cases where best practice may have been substantively followed, despite a lack of awareness of COAG's RIS requirements.

COAG's June 2004 decision limited the application of ex poste assessment to cases of genuine emergency and has effectively ruled out ex poste assessments for other matters. Therefore, for this reporting period, in the absence of a RIS the ORR has only assessed the relevant documentation ex poste where the consultation or decision occurred before 25 June 2004. Any assessments that the requirements have been met on an ex poste basis are identified in Section 3.3 below. This is a transitional reporting arrangement - future ORR reports will only contain ex poste assessments for cases of genuine emergency.

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

Table 3.1 documents the 19 decisions made during the period 1 April 2004 – 31 March 2005 where the COAG RIS requirements applied and were met at both the consultation stage and the decision-making stage. The table includes a brief description of the regulatory measure, the decision-making body and the date of the final decision.

**Table 3.1 Cases where COAG RIS requirements were met at both the consultation and the decision-making stages**

<i>Measure</i>	<i>Body responsible</i>	<i>Date of decision</i>
1 National Health Assessment Guidelines for Rail Safety Workers	Australian Transport Council	1 April 2004
2 Quality of active constituents used in Agricultural Chemical Products	Australian Pesticides and Veterinary Medicines Authority	1 May 2004
3 Building Codes of Australia 2004 Volumes 1 and 2: reform of the sound insulation provisions	Australian Building Codes Board	1 May 2004
4 Code of Practice and Safety Guide for Portable Density/Moisture Gauges Containing Radioactive Sources	Australian Radiation Protection and Nuclear Safety Agency	18 May 2004
5 Australian Model Code of Practice for the Welfare of Animals – Cattle	Primary Industries Ministerial Council	19 May 2004
6 Introduction of Minimum Energy Performance Standards for Single Phase Refrigerated Air Conditioners and increasing the stringency of requirements for single-phase and three-phase air conditioners	Ministerial Council on Energy	31 May 2004
7 Introduction of Revised Minimum Energy Performance Standards for Electric Motors	Ministerial Council on Energy	31 May 2004
8 Introduction of Minimum Energy Performance Standards for Linear Fluorescent Lamps	Ministerial Council on Energy	31 May 2004
9 Adverse Experience Reporting Program for Agricultural Chemical Products	Australian Pesticides and Veterinary Medicines Authority	1 July 2004
10 Introduction of Minimum Energy Performance Standards for Commercial Refrigeration	Ministerial Council on Energy	12 July 2004
11 National Standard for Recreational Vessels – Safety Equipment	Australian Transport Council	23 July 2004
12 National Directory for Radiation Protection, Edition 1.0	Australian Health Ministers' Conference	29 July 2004
13 Implementation Plan for the National Mine Safety Framework	Ministerial Council on Mineral and Petroleum Resources	29 July 2004

(Continued on next page)

**Table 3.1 (continued)**

<i>Measure</i>	<i>Body responsible</i>	<i>Date of decision</i>
14 Australian Design Rule ADR 18/03 – Standards for Instrumentation	Australian Transport Council	1 August 2004
15 Amendments to the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment: Exposure Standard for Crystalline Silica	National Occupational Health and Safety Commission	1 October 2004
16 Approved Criteria for Classifying Hazardous Substances	National Occupational Health and Safety Commission	1 October 2004
17 National Standard for Commercial Vessels – Part E: Operational	Australian Transport Council	19 November 2004
18 Ensuring the Enduring Good Manufacturing Practice Compliance of Overseas Veterinary Manufacturers	Australian Pesticides and Veterinary Medicines Authority	17 February 2005
19 Australian Design Rules — Post 2006 Light and Heavy Vehicle Emission Standards	Australian Transport Council	1 March 2005

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

### **3.3 Matters for which COAG's requirements were partially met**

During the period 1 April 2004 – 25 June 2004, there was only one matter for which COAG's RIS requirements applied and were partially met. This was COAG's decision of 25 June 2004 to endorse the National Water Initiative. A RIS was not prepared at the earlier consultation stage. However, a Discussion Paper was prepared and released by the Senior Officials' Group on Water. The ORR assessed the Discussion Paper, after its release, as substantively following regulatory best practice in line with COAG's requirements. A RIS was prepared at the decision-making stage, and assessed as adequate by the ORR.

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

Table 3.2 indicates that, during the period 1 April 2004 – 31 March 2005, the COAG RIS requirements were not met at the consultation stage and/or the decision stage in four cases.

Commentary on the individual decisions, including the reasons why the matters were considered to be non-compliant, is provided below the table. In all of these cases the decision-making body appears to have been aware of COAG's requirements and either did not contact the ORR at the appropriate time or did not follow the advice provided by the ORR.

**Table 3.2 Cases where COAG RIS requirements were not met at the consultation and/or the decision-making stage**

<i>Measure</i>	<i>Body responsible</i>	<i>Date of decision</i>	<i>Compliance consultation</i>	<i>Compliance decision</i>
1 Regulation of pre-market assessment for biomarker maintenance claims	Australia and New Zealand Food Regulation Ministerial Council	28 May 2004	No	No
2 National regulation of ammonium nitrate	COAG	25 June 2004	No	Yes
3 Amendments to the regulation of firearm use by the security industry	Australasian Police Ministers' Council	30 June 2004	No	No
4 National Plumbing Code of Australia	National Plumbing Regulators Forum	December 2004	No	No

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

### 3.5 Commentary on non-compliant matters

#### Regulation of pre-market assessment for biomarker maintenance

On 28 May 2004, the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) decided that biomarker maintenance claims on food were to be regulated in the same way as for biomarker enhancement claims<sup>1</sup>; that is, manufacturers would be required to apply to Food Standards Australia New Zealand (FSANZ) for approval of a biomarker maintenance claim prior to releasing the product onto the market. This led to changes to the Council's Policy Guidelines on Nutrition, Health and Related Claims.

<sup>1</sup> A biomarker is one indicator of a person's risk of developing a serious disease, For example, blood cholesterol is a biomarker for the risk of heart disease. (Australia and New Zealand Food Regulation Ministerial Council, 2004, p 5) An example of a biomarker maintenance claim is "This food is low in saturated fat which, as part of a diet low in saturated fat, may help to maintain a healthy blood cholesterol level". (Food Standards Australia New Zealand, 2004, page 40)

These Guidelines are taken into consideration by FSANZ in progressing the development of a standard for nutrition, health and related claims on food.

The ORR advised the secretariat that a COAG RIS may be required and requested relevant documentation on the proposal going to Ministers to confirm this advice. The documentation was not provided to the ORR either before or after the Ministers' decision. Nor was a RIS prepared for consultation on the proposal or for the decision by Ministers.

## National regulation of ammonium nitrate

On 25 June 2004, COAG agreed to regulate access to ammonium nitrate on a national basis. This followed a review of the regulation, reporting and security around the storage, sale and handling of hazardous materials relevant to counter-terrorism. COAG's agreement will result in the establishment in each jurisdiction of a licensing regime for the use, manufacture, storage, transport, supply, import and export of ammonium nitrate. The regime will ensure that ammonium nitrate is only accessible to persons who have demonstrated a legitimate need for the product, are not a security concern and who will store and handle the product safely and securely.

A COAG RIS was not prepared for consultation on the proposal. However a RIS, assessed as adequate by the ORR, was prepared for the decision-making stage.

## Amendments to the regulation of firearm use by the security industry

On 30 June 2004, the Australasian Police Ministers' Council (APMC) agreed to further regulate the use of firearms in the private security industry. While preliminary contact was made with the ORR, the APMC did not prepare a RIS at either the consultation or the decision-making stage.

Since this decision was made, the Council secretariat has met with the ORR to agree a range of strategies that will lead to the integration of the COAG RIS requirements and the Council's operating practices.

## National Plumbing Code of Australia

In December 2004, the National Plumbing Regulators Forum (NPRF) agreed to the National Plumbing Code of Australia. The Code sets out technical provisions for plumbing and drainage installations in Australia. It also sets out requirements for the use of plumbing materials and products and the

process for certification and authorisation of materials and products that require statutory authorisation.

The adoption of the Code by a State or Territory government could be subject to the variation or deletion of some of its provisions, or the addition of extra provisions. Any provision of the Code may be overridden by, or subject to, State and Territory legislation. Therefore, adoption of the Code is essentially voluntary for each State and Territory. However, there is a reasonable expectation that its promotion by the NPRF on behalf of each State and Territory government could be interpreted as requiring full or partial compliance. As such, the ORR assessed that the Code was quasi-regulatory and required a RIS.

The NPRF prepared a draft RIS for consultation. The ORR assessed this draft as inadequate because it did not meet the COAG requirements and provided comments to address this inadequacy. However, the RIS was not developed further before public release. Nor was a RIS prepared for the final decision-making stage.

## **4 Trends in compliance with COAG's RIS requirements in the year to 31 March 2005**

### **4.1 At the consultation stage**

While COAG requires a RIS at both consultation and at decision making, the RIS requirements make it clear that the depth of analysis in the consultation RIS need not be as great as in the RIS for decision makers. In many cases, the focus of the consultation RIS will be on identification of the problem and objectives and a preliminary assessment of feasible options. The RIS for the decision-making stage should reflect the additional information and views collected from those consulted, and provide a more complete and robust impact analysis.

In relation to decisions covered by this report, compliance at consultation was less than at the decision-making stage. This is notwithstanding the preliminary nature of the RIS required for consultation.

An adequate consultation RIS was prepared for 83 per cent of matters. This result is slightly above the 82 per cent compliance rate achieved in the previous reporting period.

### **4.2 At the decision-making stage**

Of the 24 decisions by Ministerial Councils and national standard-setting bodies reported during the year to 31 March 2005, compliance with COAG's requirements was 88 per cent. This is the same as the RIS compliance rate for the previous reporting period.

### **4.3 For significant regulatory matters**

As discussed in earlier ORR reports to the NCC, an important consideration in measuring RIS compliance — and changes in compliance over time — is the degree of significance of the decisions made in each period. The ORR has classified each regulatory proposal that requires a RIS as of greater or lesser significance. The criteria for this classification are based on:

- the nature and magnitude of the problem and the regulatory proposals for addressing it; and

- the scope and intensity of the proposal's impact on affected parties and the community.

Classifying regulatory proposals in this way provides a better basis on which to apply the 'proportionality rule' that the extent of RIS analysis should be commensurate with the magnitude of the problem and the likely impacts of any regulatory response.

Of the 24 regulatory decisions reported here, six were assessed by the ORR as of greater significance according to the above criteria. They are as follows:

- the decision of 1 May 2004 by the Australian Building Codes Board to amend the Building Codes of Australia to introduce construction standards aimed at reducing residential amenity problems caused by the transition of sound between units in multi-unit dwellings. This amendment will impact on owners, builders and tenants of new and renovated units in multi-unit dwellings;
- the decision by the Ministerial Council on Energy on 31 May 2004 to revise Minimum Energy Performance Standards for 3-phase electric motors. This aims to increase energy efficiency and reduce greenhouse gas emissions;
- the further decision by the Ministerial Council on Energy on 12 July 2004 to introduce new performance standards for commercial refrigeration cabinets. This has similar aims to that for the Council's decision on electric motors;
- the decision of 1 October 2004 by the National Occupational Health and Safety Commission to amend the National Exposure Standard for Crystalline Silica in the workplace. The amendment establishes a lower exposure standard for workers exposed to respirable quartz in the workplace. Silica dust is a common by-product of work activity in a range of industries including mining, quarrying, iron and steel foundries, and construction;
- the agreement by COAG, on 25 June 2004, to the National Water Initiative covering a range of measures to achieve greater compatibility across jurisdictions and the adoption of best-practice approaches to water management nationally; and
- on 25 June 2004, COAG also agreed to the national regulation of ammonium nitrate involving the establishment in each jurisdiction of a licensing regime for the use, manufacture, storage, transport, supply, import and export of ammonium nitrate.

The RISs for all but the last decision were compliant with COAG's requirements at both the consultation and decision-making stages and contained a level of analysis commensurate with the significance and impact of the proposal (one of these — the National Water Initiative — had qualified compliance at consultation). For the last decision — national regulation of



ammonium nitrate — the COAG requirements were not met at the consultation stage, but were met at the decision-making stage.

In summary, the compliance results for the six matters of ‘greater significance’ are 83 per cent at consultation and 100 per cent at decision making. While comparisons from year to year are only indicative given the relatively small number of significant matters in each reporting period, the ORR notes that compliance for the current period is significantly higher than the 57 per cent at consultation and 57 per cent at decision making in the previous reporting period.

## 5 Trends in RIS compliance: 2000-01 to 2004-05

Table 5.1 summarises compliance results for all proposals covered by the ORR's five reports to the NCC.

**Table 5.1 COAG RIS compliance for regulatory decisions made by Ministerial Councils and NSSBs, 2001-01 to 2004-05a**

	2000-01	2001-02	2002-03	2003-04	2004-05
Compliance (qualified and full) at the consultation stage	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	28/34 <b>82%</b>	20/24 <b>83%</b>
Compliance (qualified and full) at the decision-making stage	15/21 <b>71%</b>	23/24 <b>96%</b>	24/27 <b>89%</b>	30/34 <b>88%</b>	21/24 <b>88%</b>
<i>Compliance (qualified and full) for significant regulatory proposals</i>					
Consultation stage	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	4/7 <b>57%</b>	5/6 <b>83%</b>
Decision making stage	5/9 <b>59%</b>	6/6 <b>100%</b>	4/6 <b>67%</b>	4/7 <b>57%</b>	6/6 <b>100%</b>

*n/a* not available. <sup>a</sup> Data for 2000-01 relate to the period 1 July 2000 to 31 May 2001. For subsequent years, data relate to the period 1 April to 31 March, in line with a change in the reporting period as requested by the NCC. In relation to assessments for 2003-04, matters where RIS requirements were reported as partially met were treated as compliant for purposes of consistency with reporting in previous reporting periods.

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

Given the small numbers with which to make comparisons over time, the trends are indicative only. However, broad compliance issues have been identified, as discussed below.

### 5.1 Compliance issues emerging over time

Examining patterns of non-compliance, and also the characteristics of Ministerial Councils and NSSBs that have been fully compliant, can shed some light on RIS compliance issues.

Table 5.2 lists in alphabetical order the twelve Councils/NSSBs that have not been fully compliant with COAG's requirements between 2000-01 and 2004-05. The table sets out (on the left hand side) for each decision-making body the number of decisions in each reporting period that have been compliant compared to the total number of decisions requiring a RIS (on the right hand side). For example, a result of 0/1 would illustrate that one RIS was required and that the RIS requirements were not met in this case.

**Table 5.2 COAG RIS compliance for Ministerial Councils and NSSBs with one or more non-compliant decisions between 2000-01 and 2004-05**

<i>Council/NSSBs</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>
<i>Compliant<sup>a</sup>/total decisions made</i>					
Australasian Police Ministers' Council	-	-	0/1	-	0/1
Australia and New Zealand Food Regulation Ministerial Council <sup>c</sup>	1/3	3/3	4/4	1/2	0/1
Australian Health Ministers' Advisory Council	0/1	-	-	-	-
Australian Transport Council	6/7	7/7	8/8	15/15	5/5
Council of Australian Governments <sup>b</sup>	2/2	-	-	-	2/2
Ministerial Council on Consumer Affairs	0/1	1/1	0/1	-	-
Ministerial Council on the Australian National Training Authority	0/1	-	2/2	-	-
Ministerial Meeting on Insurance Issues	-	-	0/1	1/2	-
National Environment Protection and Heritage Council <sup>d</sup>	-	2/2	-	0/1	-
National Plumbing Regulators' Forum	-	-	-	-	0/1
Standing Committee of Attorneys-General	-	-	-	0/1	-
Standing Committee of Attorneys-General (Censorship)	-	0/1	-	-	-

<sup>a</sup> Compliant decisions include those reported as partially compliant. <sup>b</sup> For one matter covered by the 2004-05 report, COAG was non-compliant at the consultation stage, hence is included in this table. <sup>c</sup> On 1 July 2002 this Council replaced the Australia New Zealand Food Standards Council. <sup>d</sup> COAG agreed on 8 June 2001 to the creation of the National Environment Protection and Heritage Council, comprising the National Environment Protection Council (NEPC), the environment protection components of the Australian and New Zealand Environment and Conservation Council (ANZECC), and the Heritage Ministers' Meetings.

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

Although the numbers are small, table 5.2 illustrates that variations in compliance appear not only between Ministerial Councils/NSSBs but also between decisions taken by individual Ministerial Councils/NSSBs over time.

From the ORR's experience with individual decisions of these Ministerial Councils/NSSBs, the main reasons for non-compliance include:

- a poor understanding of COAG's requirements and the broad scope of their application;

- a poor understanding of the regulatory impacts of national decision making;
- a lack of contact with the ORR before consultation takes place on regulatory proposals and also prior to decision making; and
- a lack of follow-up on ORR advice.

More fundamentally, both the patchy nature of compliance by some of these decision-making bodies and the specific reasons for non-compliance tend to suggest that COAG's RIS requirements have not been incorporated into their operating practices.

Table 5.3 sets out comparable data for the thirteen Ministerial Councils and NSSBs that have been fully compliant over the period of the five reports.

**Table 5.3 COAG RIS compliance for Ministerial Councils and NSSBs fully compliant with COAG's RIS requirements between 2000-01 and 2004-05**

<i>Council/NSSB Compliant/total decisions made</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>
Australian Building Codes Board	-	2/2	2/2	1/1	1/1
Australian Health Ministers' Conference	-	-	2/2	1/1	1/1
Australian Pesticides and Veterinary Medicines Authority <sup>a</sup>	-	-	-	-	3/3
Australian Radiation Protection and Nuclear Safety Agency	-	1/1	1/1	-	1/1
Austrroads	-	1/1	-	-	-
Food Standards Australia New Zealand	-	-	-	1/1	-
Gene Technology Ministerial Council	-	-	-	1/1	-
Ministerial Council on Energy <sup>b</sup>	2/2	4/4	-	1/1	4/4
Ministerial Council on Mineral and Petroleum Resources <sup>c</sup>	1/1	-	-	-	1/1
National Occupational Health and Safety Commission	-	1/1	-	6/6	2/2
Primary Industries Ministerial Council <sup>d</sup>	1/1	1/1	5/5	2/2	1/1
Tourism Ministers' Council	1/1	-	-	-	-
Workplace Relations Ministers' Council	1/1	-	-	-	-

<sup>a</sup> The Australian Pesticides and Veterinary Medicines Authority was formerly the National Registration Authority. <sup>b</sup> COAG agreed on 8 June 2001 to the creation of a new Ministerial Council on Energy. This subsumed the energy component of the Australian and New Zealand Minerals and Energy Council (ANZMEC). <sup>c</sup> COAG agreed on 8 June 2001 to the creation of a new Ministerial Council on Minerals (subsequently known as the Ministerial Council on Mineral and Petroleum Resources), which comprised the mineral component from ANZMEC. <sup>d</sup> The Primary Industries Ministerial Council was created in 2001, subsuming primary industries policy from the Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ) and the Ministerial Council on Forestry, Fisheries and Aquaculture (MCFFA).

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

A number of these bodies make regulatory decisions infrequently (table 5.3), yet they have been fully compliant with the COAG requirements.

Further, a number of the decision-making bodies listed in table 5.3 have adopted regulatory best practice beyond the formal COAG requirements, by making public the final RIS for decisions. As noted in the ORR's fourth

report, these bodies include the Australian Building Codes Board, the National Occupational Health and Safety Commission and the Gene Technology Ministerial Council (PC 2004, page 83). Food Standards Australia New Zealand also follows this practice. The public release of final RISs prepared for the decision-making stage of the policy development process demonstrates their commitment to regulatory best practice and transparent policy development processes.

## **5.2 Improving compliance**

COAG's decision in June 2004 to re-endorse and strengthen the Principles and Guidelines, and to more clearly specify the governance requirements of Ministerial Councils, is expected to increase the awareness of Ministers, decision makers and officials with the requirements over time and to improve decision-making processes generally.

The compliance outcome for this period combined with earlier periods suggests a range of strategies is required to improve compliance with COAG's regulatory best practice processes.

With respect to regulatory decision making, where it appears that there are problems in consistently meeting COAG's requirements, the ORR proposes in its next report to identify those Councils and standard-setting bodies where there appear to be systemic issues in achieving compliance with COAG's RIS requirements.

The ORR recognises a need for continued regular contact with secretariats of Ministerial Councils/NSSBs to ensure ongoing awareness of the scope of the COAG RIS requirements, the required level of analysis and the role of the ORR. In addition, the ORR's website will continue to be enhanced to ensure that it remains a reliable and comprehensive source of information on COAG's RIS requirements and the role of the ORR.

Training of officials is another way to maintain awareness of the requirements. In addition to the 50 Ministerial Council and NSSB officials that were trained in the previous reporting period, the ORR provided training to over 100 officials in the current reporting period. The ORR will continue this training effort in the coming period, with a focus on those decision-making bodies where compliance has been uneven or poor.

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

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# Appendix B National Competition Policy contacts

For further information about the National Competition Policy, please contact the National Competition Council or the relevant Australian Government, state or territory competition policy unit.

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