The Parliament of the Commonwealth of Australia

Report 447

EPBC Act, Cyber Security, Mail Screening, ABR and Helicopter Program

Review of Auditor-General Reports Nos 32-54 (2013-14)

Joint Committee of Public Accounts and Audit

March 2015
Canberra

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Foreword

On Thursday 25 September 2014, the Joint Committee of Public Accounts and Audit (JCPAA) resolved to review five Australian National Audit Office (ANAO) reports: Report No. 42, *Screening of International Mail*; Report No. 43, *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*; Report No. 48, *Administration of the Australian Business Register*; Report No. 50, *Cyber Attacks: Securing Agencies' ICT Systems*; and Report No. 52, *Multi-Role Helicopter Program*.

Two key themes emerging across these reports were the importance of agencies taking an appropriate risk based approach and also, where appropriate, working cooperatively with others to achieve common objectives. A risk based approach enables agencies to effectively identify and target risks, and promotes more efficient resource allocation. Collaborative partnerships, whole-of-government approaches and cross-agency delivery of government programs (including with the states and territories) can also contribute to more effective program delivery and policy outcomes.

Report No. 42, *Screening of International Mail*, noted that, while all incoming international mail is subject to border controls, the Department of Agriculture and the Australian Customs and Border Protection Service cannot and do not screen all mail received—rather, the border agencies seek to take a targeted approach that identifies the mail considered to be at higher risk. Since 2008-09, each agency has developed risk based strategies for targeting and screening higher risk cohorts of mail on arrival. However, neither agency was able to demonstrate the effectiveness of these strategies. The Committee found that these agencies have begun to respond to the ANAO's recommendation on this area. Having moved to a selective process of screening and re-assessed the criteria for 'high-risk' items, a period of re-adjustment can be expected. Nonetheless, the Committee notes data sets that would be of assistance in targeting items are still rudimentary. The Committee also made two recommendations with regard to ensuring that Customs was conforming to international best practice and the state of cooperative arrangements with other countries concerning identification of illicit firearms shipments.

Report No. 50, *Cyber Attacks: Securing Agencies' ICT Systems*, assessed selected agencies' compliance with the mandatory top four mitigation strategies and related controls outlined in the Australian Signals Directorate's Information Security Manual (ISM). The ANAO commented that agency processes and practices had not been sufficiently responsive to the ever-present and ever-changing risks to which government systems are exposed. The Committee was concerned that, of the seven agencies audited, not a single agency was found to be fully compliant with the top four mitigation strategies and related controls in the ISM at the time of audit and none of the agencies was expected to achieve full compliance by the mandated target date of July 2014.

Similarly, regarding Report No. 52, *Multi-Role Helicopter Program*, the Committee supported the ANAO's assessment that there is still a need for the Department of Defence to better manage the inherent risks in complex acquisition programs. The Committee was also was concerned that the DMO was not adequately monitoring the realised Australian Industry Content in its acquisition and sustainment contracts. At over $4 billion, the Multi-Role Helicopter (MRH90) Program is to acquire 47 helicopters and their support system for the Australian Defence Force.

In terms of Report No. 43, *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*, the Committee emphasised the need for the Department of the Environment to demonstrate that it is more effectively targeting its compliance monitoring activities to areas of greatest risk to matters of national environmental significance. The Committee also found that it will require a sustained effort from Environment to ensure ongoing improvements to its compliance framework in the transition to and establishment of new one-stop-shop arrangements. The department will need to take a leadership role and establish strong collaborative partnerships with the states and territories to ensure effective delivery of the EPBC Act compliance monitoring function under the new arrangements. Similarly, concerning Report No. 48, *Administration of the Australian Business Register*, the Committee emphasised that whole-of-government objectives cannot be achieved without the close cooperation of the Commonwealth entities involved.

A risk based approach and working cooperatively with others to achieve common objectives are two key themes of the recent *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and Public Management Reform Agenda (PMRA). Priority areas for stages two and three of the PMRA include a new risk framework, better facilitation of 'joined-up' government and cooperative arrangements, and an improved Commonwealth performance framework. The JCPAA has indicated that it may conduct a future inquiry into the Commonwealth performance framework as part of the continuing implementation of the PGPA Act and PMRA. The Committee also remains strongly interested in the

development of more effective cooperative arrangements and approaches to risk across the Commonwealth.

On a separate matter, the Committee resolved to seek answers from the Department of Human Services (DHS) to a number of questions regarding the findings of ANAO Report No. 40, *Trials of Intensive Service Delivery*. The Committee noted the department's assurance that the decision to close the trials early — to assist DHS in achieving savings associated with the efficiency dividend — was taken in accordance with guidance from the Department of Finance and consistent with the Government's policy agenda. However, in support of concerns raised by the ANAO, the Committee pointed to the need for greater clarity and consistency in the Finance guidance regarding the application of the efficiency dividend.

I thank Committee members for their deliberation on these matters. I also thank those who appeared at public hearings for assisting the JCPAA in its important role of holding Commonwealth agencies to account for the efficiency and effectiveness with which they use public monies.

Dr Andrew Southcott MP
Chair

Membership of the Committee

Chair	Dr Andrew Southcott MP	
Deputy Chair	Mr Pat Conroy MP	
Members	Ms Gai Brodtmann MP	Senator Cory Bernardi
	Mrs Jane Prentice MP	Senator Hon Kate Lundy
	Mr Craig Laundy MP	Senator Dean Smith
	Mr Andrew Giles MP	Senator Chris Ketter
	Dr Peter Hendy MP	Senator Bridget McKenzie
	Mr Michael Sukkar MP (to 10/02/15)	
	Mr Angus Taylor MP	
	Mr Tim Watts MP	
	Mr Ken Wyatt AM MP (from 10/02/15)	

Committee Secretariat

Secretary	Ms Susan Cardell
Inquiry Secretary	Dr Kate Sullivan
Research Officers	Dr Andrew Gaczol
	Ms Casey Mazzarella
	Ms Samantha Leahy
Administrative Officer	Ms Tamara Palmer
	Ms Yvonne Lee

Terms of reference

On Thursday 25 September 2014, the Joint Committee of Public Accounts and Audit resolved to review the following audit reports in detail:

- Audit Report No. 42 (2013-14) Screening of International Mail
- Audit Report No. 43 (2013-14) Managing Compliance with *Environment Protection and Biodiversity Conservation Act 1999* Conditions of Approval
- Audit Report No. 48 (2013-14) Administration of the Australian Business Register
- Audit Report No. 50 (2013-14) Cyber Attacks: Securing Agencies' ICT Systems
- Audit Report No. 52 (2013-14) Multi-Role Helicopter Program

List of abbreviations

ABN   Australian Business Number

ABR   Australian Business Register

ANAO   Australian National Audit Office

ASIC   Australian Securities and Investments Commission

ATO   Australian Tax Office

BNR   Business Names Register

EPBC Act   *Environment Protection and Biodiversity Conservation Act 1999*

GST   Goods and Services Tax

IT   Information technology

KPI   Key performance indicator

SBR   Standard Business Reporting

MNES   matters of national environmental significance

ICT   information communications and technology

ASD   Australian Signals Directorate

CSOC   Cyber Security Operations Centre

AGD   Attorney-General's Department

ISM   Australian Government Information Security Manual

PSPF   Protective Security Policy Framework

ABS   Australian Bureau of Statistics

Customs   Australian Customs and Border Protection Service

AFSA   Australian Financial Security Authority

DFAT   Department of Foreign Affairs and Trade

DHS   Department of Human Services

SES   Senior Executive Service

List of recommendations

1 Introduction

Recommendation 1

The Committee recommends that the Department of Finance review and update its guidance regarding the application of the efficiency dividend so that:

- policy and guidelines regarding the efficiency dividend are clearly outlined in a single dedicated document

- there is clarity and consistency regarding the intention of the efficiency dividend and the measures that agencies may or should take to meet the efficiency dividend

2 Screening of International Mail

Recommendation 2

The Committee recommends that the Department of Agriculture and the Australian Customs and Border Protection Service review international methods in screening international mail to ensure Australia conforms to international best practice and report results of that analysis to the Joint Committee of Public Accounts and Audit.

Recommendation 3

The Committee recommends that the Australian Customs and Border Protection Service report to the Joint Committee of Public Accounts and Audit no later than six months after the tabling of this report on the:

- existing state of cooperative arrangements with other countries regarding identification of illicit firearms shipments

- what discussions/negotiations are underway with other countries to strengthen existing arrangements

3 Managing Compliance with EPBC Act Conditions of Approval

Recommendation 4

The Committee recommends that the Department of the Environment report back to the Joint Committee of Public Accounts and Audit, within six months of the tabling of this report, on its continued progress:

- implementing the Australian National Audit Office (ANAO) recommendations in Report No. 43 (2013-14)

- implementing improvement initiatives for managing compliance under its business improvement program

- implementing the new one-stop-shop assurance framework, including:

    ⇒ details of how the development of this framework has been informed by the findings and recommendations of ANAO Report No. 43 (2013-14)

    ⇒ the sample size and ratio selected for compliance review

    ⇒ staff breakdown, including how many staff are allocated to legacy compliance activities and how many allocated to one stop assurance

    ⇒ details of any staff, including their employment level, who have been deployed to state offices to oversee the compliance activities by state governments

- implementing up-to-date guidance material that reflects better practice regulatory considerations

Recommendation 5

The Committee recommends that the Australian National Audit Office (ANAO) consider including, in its schedule of performance audits for the next 12-18 months, a follow-up audit of the Department of the Environment's management of compliance with *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) conditions of approval, with a particular focus on:

- the effectiveness of the department's ongoing implementation of the ANAO recommendations in Report No. 43 (2013-14)

- the department's management of compliance under the new one-stop-shop arrangements, including the effectiveness of the department's one-stop-shop assurance framework as regards this area

- the effectiveness of the department's reporting against appropriate performance measures relating to activities undertaken to monitor compliance with EPBC Act conditions of approval

- whether there has been a reduction in business compliance costs against projected savings under the one-stop-shop arrangements, as managed by the department

- the department's guidance material, IT systems and record management practices for the compliance monitoring function under the new one-stop-shop arrangements

Recommendation 6

The Committee recommends that the Department of the Environment take a leadership role in its governance arrangements concerning management of compliance with *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) conditions of approval, particularly in the context of the new one-stop-shop arrangements, by demonstrating effective reporting against appropriate performance measures.

4   Administration of the Australian Business Register

Recommendation 7

The Committee recommends that the Australian Taxation Office work more closely with the Australian Securities and Investments Commission, the Department of Industry and the Department of Treasury on the administration of the Australian Business Register (ABR), to make it easier for business to interact with government by:

- reducing entry points to government

- developing and implementing registration and reporting mechanisms that are efficient and convenient for business

- simplifying business access to information and services offered by government

- reviewing and updating the information technology supporting the ABR

5   Cyber Attacks: Securing Agencies' ICT Systems

Recommendation 8

The Committee recommends that the seven agencies audited by the ANAO achieve full compliance with the top four mitigation strategies and related controls in the Information Security Manual as soon as possible. Further:

- each agency should produce a clear and detailed plan of necessary activities, including a definitive date of compliance

- agencies that do not expect to achieve full compliance before August 2015 should notify the Committee – the Committee may then seek an explanation of why full compliance is not expected to be achieved, as well as the mitigation strategies the agency has put in place

Recommendation 9

The Committee recommends that the Australian National Audit Office consider including regular audits, in its schedule of performance audits, of Commonwealth agencies' compliance with the top four mitigation strategies and related controls in the Information Security Manual as well as Commonwealth agencies' overall security posture.

6   Multi-Role Helicopter Program

Recommendation 10

The Committee recommends that the DMO allocate adequate resources to measure the delivered Australian Industry Content in its acquisition and sustainment contracts. Considerations should be given to publishing these figures either through the Portfolio Budget Statements or the Major Projects Report.

1

Introduction

Background to the review

1.1   The Joint Committee of Public Accounts and Audit (JCPAA) has a statutory duty to examine all reports of the Auditor-General that are presented to the Australian Parliament, and report the results of its deliberations to both Houses of Parliament. In selecting audit reports for review, the Committee considers:

- the significance of the program or issues raised in audit reports
- the significance of audit findings
- the arguments advanced by the audited agencies
- the public interest arising from the report

1.2   On 25 September 2014, the Committee considered Australian National Audit Office (ANAO) performance reports Nos 32-54 of 2013-14. The Committee selected five reports for further review and scrutiny at public hearings:

- Audit Report No. 42 (2013-14), *Screening of International Mail*, Department of Agriculture, and Australian Customs and Border Protection Service
- Audit Report No. 43 (2013-14), *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*, Department of the Environment
- Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, Australian Taxation Office, Australian Securities and Investments Commission, and Department of Industry
- Audit Report No. 50 (2013-14), *Cyber Attacks: Securing Agencies' ICT Systems*, across agencies

- Audit Report No. 52 (2013-14), *Multi-Role Helicopter Program*, Department of Defence and Defence Materiel Organisation

1.3   Public hearings for the reports were held on:

- 23 October 2014 (Audit Reports Nos 43 and 48)
- 24 October 2014 (Audit Reports Nos 50 and 52)
- 30 October 2014 (Audit Report No. 42)

1.4   The Committee also resolved to seek answers from the Department of Human Services (DHS) to a number of questions regarding the findings of ANAO Report No. 40 (2013-14), *Trials of Intensive Service Delivery*. Committee comments on Audit Report No. 40 (2013-14) are below.

The Committee's report

1.5   This report of the Committee's review of a number of audit reports draws attention to key issues raised in the original reports, as well as at public hearings and in agency submissions. Where appropriate, the Committee has commented on unresolved or contentious issues, and made recommendations.[1]

1.6   The report is structured as follows:

- Chapter 2: Audit Report No. 42 2013-14, *Screening of International Mail*, Department of Agriculture, and Australian Customs and Border Protection Service
- Chapter 3: Audit Report No. 43 2013-14, *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*, Department of the Environment
- Chapter 4: Audit Report No. 48 2013-14, *Administration of the Australian Business Register*, Australian Taxation Office, Australian Securities and Investments Commission, and Department of Industry
- Chapter 5: Audit Report No. 50 2013-14, *Cyber Attacks: Securing Agencies' ICT Systems*, across agencies
- Chapter 6: Audit Report No. 52 2013-14, *Multi-Role Helicopter Program*, Department of Defence and Defence Materiel Organisation

1.7   The following appendices provide further information:

- Appendix A—List of submissions
- Appendix B—List of public hearings and witnesses

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1   Note on references: references to the Committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and official *Hansard* transcript.

1.8 Each chapter of this report should be read in conjunction with the relevant ANAO report.

Performance Audit Report No. 40 (2013-14) Trials of Intensive Service Delivery

1.9 As discussed above, the Committee resolved to seek answers from DHS to a number of questions regarding the findings of ANAO Report No. 40 (2013-14), *Trials of Intensive Service Delivery*. The Committee received the department's response to its questions on 17 November 2014.[2]

Committee review

1.10 The ANAO found that the administration of the intensive service delivery trials by DHS was generally effective, but noted that the trials were closed early. The audit report stated that, on 15 January 2014, the Minister for Human Services agreed to the department's proposal for the early closure of the two trials, to assist the department to achieve savings associated with the Efficiency Dividend.[3]

1.11 The ANAO commented on the circumstances regarding the early closure of the trials, describing this course of action as 'not consistent with the purpose of the new policy measure or the Efficiency Dividend,' and stating that:

> In the absence of agreement by Cabinet or senior Ministers, it is unusual that an agency would truncate a program funded as a new policy measure to delivery savings to contribute to meeting the Efficiency Dividend.[4]

1.12 In its submission, DHS refuted the ANAO's assessment, assuring the Committee that:

> The decision to cease the trials early was made in accordance with guidance from the Department of Finance, and is consistent with the Government's policy agenda to identify and realise efficiency improvements in departmental expenditure and to seek more efficient means of carrying out government business.[5]

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2 See Department of Human Services, *Submission 9*.

3 Australian National Audit Office (ANAO), Audit Report No. 40 (2013-14) *Trials of Intensive Service Delivery*, p. 13.

4 ANAO, Report No. 40 (2013-14), p. 17.

5 Department of Human Services (DHS), *Submission 9,* p. 6.

1.13   DHS justified its actions, stating that the objectives of the trials had been met:

> The department considered that the objectives of the trials to test service delivery models were achieved and there was no further value for money in continuing the trials.[6]

1.14   DHS assured the Committee that the department had considered 'various forms of guidance and advice from the Department of Finance (Finance)' in relation to early closure of the two trials. This included 'advice regarding the use of departmental appropriations, the Budget Process Operational Rules, guidance in relation to the application of the efficiency dividend, and advice direct from Finance officials.'[7]

Committee comment

1.15   The Committee encourages clarity, transparency and consistency regarding the use of public monies and supports the ANAO and the Auditor-General's role in upholding these values. As such, the Committee feels that any concerns raised by the ANAO should be carefully considered by the Committee.

1.16   The Committee notes DHS' assurances that the decision to close the trials early was taken in accordance with guidance from the Department of Finance and is consistent with the Government's policy agenda. However, the Committee remains concerned by the ANAO describing DHS' action as 'unusual' and inconsistent with the purpose of the efficiency dividend.

1.17   The Department of Finance is responsible for the review and maintenance of policy and guidance regarding the efficiency dividend. The Committee believes that it is important to reconcile the understanding of the intention of the efficiency dividend with the measures that agencies may or should take in order to meet the efficiency dividend.

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6   DHS, *Submission 9*, p. 2.

7   DHS, *Submission 9*, p. 3.

Recommendation 1

1.18   **The Committee recommends that the Department of Finance review and update its guidance regarding the application of the efficiency dividend so that:**

- **policy and guidelines regarding the efficiency dividend are clearly outlined in a single dedicated document**
- **there is clarity and consistency regarding the intention of the efficiency dividend and the measures that agencies may or should take to meet the efficiency dividend**

2

Performance Audit Report No. 42 (2013-14)

Screening of International Mail

Introduction

2.1   Chapter 2 discusses the Joint Committee of Public Accounts and Audit
(JCPAA) review of Australian National Audit Office (ANAO) Report
No. 42, *Screening of International Mail*. The chapter comprises:

  ■ an overview of the report, including the audit objective, criteria and
    scope; audit conclusion; and audit recommendations

  ■ Committee review

  ■ Committee comment

Report overview

Background

2.2   In 2012–13, around 180 million international mail items arrived in
Australia. While all incoming international mail is subject to border
controls, Department of Agriculture (Agriculture) and Australian Customs
and Border Protection Service (Customs) cannot and do not screen all mail
received. Rather, the border agencies seek to take a targeted approach that
identifies the mail considered to be at higher risk. Adopting a risk‑based,
targeted approach is consistent with the agencies' views that the vast

majority of mail is compliant with legislative requirements, and that screening all international mail would be costly and resource intensive.[1]

2.3   Agriculture has identified a range of goods that pose a biosecurity risk, including particular seeds and grains, and veterinary therapeutics. For Customs, the predominant risks are illicit drugs and firearms. Both agencies appreciate, however, that there is a balance to be struck between managing these risks and facilitating legitimate trade and travel.

2.4   Different import streams also present different risks. Agriculture and Customs (the border agencies) consider that international mail items pose a lower risk when compared with air and sea cargo because mail items are generally smaller consignments and intended for domestic use. The management of risks in any one stream is necessarily influenced by the availability of resources and the risks that each agency seeks to manage.

2.5   In 2012–13, Agriculture reported that it screened around 35 million mail articles (around 19 per cent of all mail), which resulted in the seizure of 27,608 items carrying quarantine risks. Customs reported that it screened around 46 million items (around 25 per cent of all mail) and seized 67,123 prohibited imports. The number of seizures by Agriculture has declined by 75 per cent since 2006–07, while Customs seizures have increased by 190 per cent over the same period.[2]

Audit objective, criteria and scope

2.6   The audit's objective was to assess the effectiveness of Agriculture's and Customs' arrangements for the targeting and screening of incoming international mail to identify prohibited and restricted goods. In order to form a conclusion against the audit objective, the ANAO adopted the following high level criteria:

- appropriate administrative arrangements support each agency's international mail program
- methodologies for targeting international mail are effective
- screening and examination arrangements for incoming international mail items are effective
- processes are in place to measure and report the performance of the international mail programs

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1   ANAO, Audit Report No. 42, (2013-14), *Screening of International Mail*, p. 14.
2   ANAO, Audit Report No. 42, (2013-14), *Screening of International Mail*, p. 15.

Audit conclusion

2.7   Achieving and maintaining a balance between border control and facilitating the flow of international mail is a challenge for Agriculture and Customs. The volume of international mail, particularly parcels and other larger items, continues to increase. In 2012–13, Australia received around 180 million international mail items and to screen and examine all consignments would be costly, resource intensive, and impede the flow of mail. Nevertheless, some international mail will contain quarantine risk material or prohibited imports, and a small proportion of these items may pose a serious risk to the Australian public. It is therefore necessary for Agriculture and Customs to have adequate processes in place to identify those mail items that are more likely to carry higher risk non-compliant goods and deal with them appropriately.

2.8   Prior to 2008–09, the border agencies screened all incoming international mail. Since then, each agency has sought to encourage voluntary compliance by educating the public about quarantine and customs requirements, and has developed risk-based strategies for targeting and screening higher risk cohorts of mail on arrival. However, neither agency is able to demonstrate the effectiveness of these strategies. They also gain limited assurance from their 'leakage' survey (Agriculture) and sampling program (Customs) in relation to the number of detections missed in unscreened mail.

2.9   Agriculture's targeting model is statistically based, nationally consistent and reflects the work undertaken by the department since 2011 to improve its understanding of risk in the mail environment. Initial targeting analysis (undertaken in 2011) estimated that the department could expect to seize around 72 per cent of targeted high-risk quarantine material. Agriculture advised that this work was an early move into what was considered an innovative risk profiling methodology and that its seizure rate estimate was ambitious, and required optimal operational conditions. The ANAO's analysis of the Agriculture's 'leakage' survey data indicated that it has substantially under achieved against this estimate as only around 19 per cent of high risk quarantine material was seized between August 2012 and May 2013. The department was unable to fully explain the wide variance between its estimated and actual seizures, but subsequently advised that it reviewed its targeting priorities in late 2013, although these are yet to be implemented.[3]

2.10   Customs' targeting approach, which it describes as 'intelligence-led risk-based', is more devolved and is based on an assessment of risk by each

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3   ANAO, Audit Report No. 42, (2013-14), *Screening of International Mail*, p. 17.

gateway manager, taking into account a range of inputs including seizure data and national intelligence reports. However, in practice, targeting decisions were often not documented, did not align with risk analysis, were inconsistent between gateways, and incompatible with analysis provided in the national intelligence reports, providing little assurance that Customs is adequately and consistently targeting high risk mail cohorts. Further, Customs does not assess the effectiveness of its targeting strategy. Rather, it considers that an increase in seizures from 23,009 in 2006-07 to 67,123 in 2012–13 reflects improved targeting processes. The ANAO's analysis of data indicated that around only 13 per cent of prohibited imports arriving in international mail were seized in 2012–13. Customs advised that it now considers the implementation of its sampling program was flawed, raising questions about the integrity of its sampling data.[4]

2.11   Agriculture aims to screen only the mail that is targeted as a result of its risk analysis and the processes employed by each gateway facility are generally consistent. In contrast, Customs adopts a more flexible approach, with gateways sometimes screening untargeted mail, and at other times not screening targeted cohorts. There is no guidance to support, or visibility by Customs' management of, these different screening practices.

2.12   The absence of a 'leakage' target however, means that the agencies have not determined whether the estimated outcome of their respective targeting and screening methodologies represents an acceptable level of missed detections. Both agencies have advised that they are reviewing their survey and sampling methodologies. As neither agency has developed appropriate deliverables, key performance indicators and targets, the agencies do not adequately report their performance against their stated outcomes and objectives. External reporting by both agencies provides little insight for key stakeholders into the effectiveness of international mail operations. In addition, the collection of performance data relating to screening activities, particularly for Customs, requires review, if the actual number of mail items screened is to be reported accurately against its target volumes.

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4   ANAO, Audit Report No. 42, (2013-14), *Screening of International Mail*, p. 18.

ANAO recommendations

2.13   ANAO has made three recommendations:

Recommendation No.1

To improve the targeting in international mail and to support informed and consistent decision making, the ANAO recommends that the *Australian Customs and Border Protection Service*:

- reviews its targeting model and clearly outlines its risk assessment framework and priorities;

- underpins targeting decisions with sound analysis and documentation; and

- reviews its sampling program and targeted campaigns to better assess risks in unscreened mail, as well as the effectiveness of its screening processes.

Australian Customs and Border Protection Service response: *Agreed*

Recommendation No.2

To improve its screening and examination processes, including control and accountability for seized prohibited imports, the ANAO recommends that the *Australian Customs and Border Protection Service* reviews its:

- screening practices for articles ordinaire, and develops guidance to support the consistent application of these practices; and

- processes for recording seized prohibited imports in the Detained Goods Management System so that delays in accounting for these items can be minimised.

Australian Customs and Border Protection Service response: *Agreed*

Recommendation No.3

To better measure and report the effectiveness of their intervention strategies for the international mail program, the ANAO recommends that the Department of Agriculture and the *Australian Customs and Border Protection Service:*

- develop and report against deliverables, key performance indicators and targets that assess the achievement of the program's outcome; and

- develop guidance to support the implementation of a consistent approach to collecting and reporting of accurate screening data by the gateway facilities.

Department of Agriculture response: *Agreed*
Australian Customs and Border Protection Service response: *Agreed* [5]

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5   ANAO, Audit Report No. 42, (2013-14), *Screening of International Mail*, pp. 28-9.

Agency responses

2.14   The audit report was provided to Agriculture and Customs, along with extracts to the Australian Federal Police (AFP) and Australia Post. Agriculture, Customs and the AFP have provided formal responses which are included at Appendix 1 of the audit report, and Agriculture also provided a summary response as below.

> The Department of Agriculture (the department) considers the report and findings provide a basis for further improvements to the risk based management of biosecurity in international mail. As noted in the report, international mail is currently estimated to have an overall compliance rate with quarantine regulations of 99.9 per cent.
>
> In an environment with over 186 million approaching mail items per year, the department's challenge is to identify biosecurity risk material in less than 0.1 per cent of arriving mail. The department's risk management approach has been implemented over recent years to concentrate resources in the areas of highest risk. The department's deployment of risk mitigation and targeting measures will continue to be refined with increased knowledge, understanding and experience of risk in this pathway.
>
> The department is working closely with the University of Melbourne through the *Centre of Excellence for Biosecurity Risk Analysis (CEBRA)* on two key projects to further improve the targeting of biosecurity risk in the international mail pathway. These involve the spatial analysis of delivery addresses for intercepted mail items, with the objective of improving interception rates for certain classes of mail and, the examination of end-point surveys in international mail.[6]

Committee review

2.15   Representatives of the following agencies gave evidence at the Committee's public hearing on Thursday 30 October 2014: the ANAO; Department of Agriculture; and the Australian Customs and Border Protection Service. Customs also provided two submissions to the Committee's inquiry. A number of themes made themselves apparent during testimony including:

- challenges in the screening process

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6   ANAO, Audit Report No. 42, (2013-14), *Screening of International Mail*, pp. 26-7.

- the changing criteria of high-risk items
- anti-corruption practices
- international best practice

The screening process

2.16   The Committee noted that a more selective screening process rather than one where everything is examined, plus the huge volume of mail arriving, is a great challenge to the border agencies. Agriculture observed:

> In 2013-14, about 186 million mail items arrived in Australia in the form of letters, express mail service, parcels and other articles… A huge challenge for both agencies directly relates to the absence of pre-arrival information compared to other pathways into Australia. As a result of the lack of information, our screening process is largely manual and performed in real time at the four international gateway facilities.[7]

> …it is a really manual intensive process. Even when Australia Post talk about the numbers of items that come in, they do it by an estimation, because we get no electronic reporting on the items... The way Australia Post estimate is by volume and weight so, in terms of the accuracy of those numbers, no, we do not have that data set.[8]

> The things that matter most to us in the mail environment are seeds. Seeds have the propensity to carry viruses et cetera. You cannot see them. You cannot look at a seed and automatically say, 'That one's a bad one'. That is a difference between us and other border agencies: what we are looking for is quite often not visible...We basically try to shrink down, as science enables us, what we need to target as a priority.[9]

2.17   In one of its submissions to the Committee, Customs described its reform measures to strengthen capability at the border. These include:

- clearer identification of targets
- thorough documentation and mapping of the targeting model and risk assessment framework to identify areas of inconsistency

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7   Ms Rona Mellor, Deputy Secretary, Department of Agriculture, *Committee Hansard*, 30 October 2014, p. 2

8   Ms Raelene Vivian, First Assistant Secretary, Compliance, Department of Agriculture, *Committee Hansard*, 30 October 2014, p. 5.

9   Ms Rona Mellor, Deputy Secretary, Department of Agriculture, *Committee Hansard*, 30 October 2014, p. 3

- revised relevant governance materials to ensure consistency of operational practice
- improved methodology for collection and reporting of screening statistics
- a comprehensive, joint sampling program with Agriculture to be in place by mid-2015.[10]

Criteria for 'high–risk' items changed

2.18   Given the large number of items arriving, Agriculture re-assessed what was a 'high-risk' item. An approach was devised by Agriculture to stream-line the process thus allowing the border agencies to concentrate more effectively on items likely to be of interest. This in turn has effected the numbers of seizures reported. Ms Hinder from Agriculture described the circumstances around changes to criteria of high-risk items and therefore the change in the numbers of items seized:

> During the course of the year, the amount of items that we looked at diminished because of the changes of the nature of the biosecurity risk... Therefore it was not necessary for us to be able to target and intervene to screen those items in the mail pathway. So the amounts of what we were looking at contributed to our screening process. Because those goods came out during the course of the year, we would expect to see an exponential change in the amounts of goods that we were seizing, because we no longer needed to screen and assess them. … There was one point in that process, in November 2011, that changed our data profile.

> The next part that changed our data profile occurred in early 2012, again covering the period where we had that performance indicator. We made the decision that beef jerky, various other dairy products, protein powders, infant formulas, soups, processed and whole-egg products, certain types of pate, finfish, types of coffee, prawn based food products, meat floss and, surprisingly, turf and elephant dung in resin posed a negligible biosecurity risk. Therefore, we were not targeting and screening to be able to identify those products. Again, because of the reduction in what we were doing in that targeting and screening, we would see an exponential reduction in terms of our seizure rates…

> Our scientific assessment led us to the fact that that cohort of material that I discussed indicated a much reduced biosecurity

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10   *Submission 5.2*, Australian Customs and Border Protection Service, p.1.

risk. Therefore, our methods to target, profile, screen and seize changed exponentially.[11]

Anti-corruption practices

2.19   The ANAO reported that the AFP had advised that it had not identified any instances of corruption in international mail, but considered that the risk of corruption of criminal penetration may have similarities to other import streams, where investigations have shown that officers working at the border have been involved in illegal activities. In response, Customs and Agriculture explained the mechanisms they had to seek out corruption including being subject to requirements of the Commission for Law Enforcement Integrity. Agriculture responded:

> In the Commonwealth government there is the Commission for Law Enforcement Integrity, which has jurisdiction over certain activities in the Commonwealth. In our case it has jurisdiction over a range of activities within the department, bearing in mind that this department is not a border agency. It performs functions of risk management at the border. It also provides policy advice to the Minister for Agriculture, for example. Some of our functions are within the jurisdiction of the Commission for Law Enforcement Integrity. The good practice for agencies that have potential risks—which many do; it is not just in the border environment or any of our environments—is to conduct assessments of risk, as you do: corruption risk assessments, fraud risk assessments, security risk assessments et cetera. My department is active in assessing its risk and in having reporting mechanisms internally, and my secretary will report appropriately to the Commission for Law Enforcement Integrity if issues do arise. So we do have quite mature processes. They are well-managed in the department, with direct lines to the senior executive, and we have a positive relationship with the Commission for Law Enforcement Integrity.[12]

2.20   Customs responded:

> …instances of corruption in Australian Customs and Border Protection and the response to that by the organisation have been well documented and recorded. We are subject to the requirements of the Commission for Law Enforcement Integrity as

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11   Ms Nicola Hinder, Assistant Secretary, Pathway Compliance, Department of Agriculture, *Committee Hansard*, 30 October 2014, p. 4.

12   Ms Rona Mellor, Deputy Secretary, Department of Agriculture, *Committee Hansard*, 30 October 2014, pp. 6-7.

> well, and any instances of corruption that meet the requirements and thresholds are reported to them. Within the organisation itself we have a professional standards and integrity division who run activity around the understanding of the current risk and threat environment as well as conduct investigations, sometimes in concert with ACLEI, in order to uncover and deal with any instances of corruption…
>
> We have drug and alcohol testing within the organisation. We also have a requirement for mandatory reporting of any activity that officers may come across in the line of their duty. We also have a requirement to complete an operational security assessment on joining the organisation, and that is renewed and changes its requirements as you move within the organisation in terms of the required security levels. In addition to that, if there is a security requirement because of the level of information that you are able to access, there are additional requirements from the Australian government which we would need to comply with.[13]

International best practice

2.21   The Committee was curious as to how Australian agencies compared with their foreign counterparts on the screening of international mail. Customs responded:

> I do not know that I am a personal expert in world's best practice, but certainly in my experience with other law enforcement agencies and the interactions with partners, particularly our close partners—the US, Canada, New Zealand and the UK—I would say we are very much on a par.[14]

2.22   Agriculture responded that they believed, from a biosecurity perspective at least, Australia and New Zealand represented world best practice.

> From a biosecurity perspective, I think Australia's screening and New Zealand's screening are probably the highest in the world, and that reflects the environment and the agricultural communities that we are protecting. We probably do a lot more in New Zealand and Australia in terms of protecting agricultural interests and environmental interests than any other country.[15]

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13   Mrs Karen Harfield, National Director Intelligence, Australian Customs and Border Protection Service, *Committee Hansard*, 30 October 2014, p. 7.

14   Mrs Karen Harfield, National Director Intelligence, Australian Customs and Border Protection Service, *Committee Hansard*, 30 October 2014, p. 7

15   Ms Rona Mellor, Deputy Secretary, Department of Agriculture, *Committee Hansard*, 30 October 2014, pp 7-8.

2.23   Nonetheless, a concession was made that international comparisons may not be simple. In response to a question from Senator Ketter – 'do we benchmark ourselves against international jurisdictions?', Agriculture responded:

> It is a good point. We do not. We do not compare seizure rates with other countries because the profile of their risk is quite different. New Zealand and Australia are different from a biosecurity perspective, but we are the most similar in the world in terms of our attitude to, and our systems and processes for, biosecurity because of the contribution that our environment and our agriculture make to our economies. We go a little harder than a lot of countries on biosecurity. And it is difficult to get that information because the way they profile and how they manage is a little different.[16]

Cooperation regarding illicit firearms

2.24   The importation into Australia of illicit firearms is of concern to the Committee and the ANAO report appeared to indicate that information on firearms importation was being reported on only an ad-hoc basis. In response Customs explained that:

> Where illicit firearms come through international mail, that information is always provided to Australia Post as a matter of course. As you know, the mail stream is not allowed to carry firearms under UPU [Universal Postal Union] regulations. Therefore, we let them know.

> Where innocent firearms are found, they are referred through our investigation areas to the AFP. They become matters for investigation; those matters are not taken up by Australia Post. I think that illicit-licit split was not made clearly. But definitely, illicit firearms are always referred and we are looking at strengthening that process. I do agree that instances were found by Australia Post where that was not happening, so we have tightened up that process.[17]

2.25   Customs explained that loopholes existed in some of the sender countries that, unfortunately, there was little Australian authorities could do:

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16   Ms Rona Mellor, Deputy Secretary, Department of Agriculture, *Committee Hansard*, 30 October 2014, p. 8.

17   Mr Jagtej Singh, National Manager Technology Management, Australian Customs and Border Protection Service, *Committee Hansard*, 30 October 2014, p. 10.

[any potential illegalities or danger with regard to the firearms imports] are taken up with vendor postal authorities on the other end. But, unfortunately, the declarations could be anything on the package. No-one actually opens a package and sees what is in that package. It is rarely declared as a firearm. So it is almost impossible to enforce that. So they only have people making statements at the other end on the phone about what they are putting in. There is no check through that security process at all.[18]

Committee comment

2.26   The Committee notes that the border agencies have already begun to respond to the ANAO's recommendations and the Australian Customs and Border Protection Service anticipates that a comprehensive, joint sampling program with Agriculture will be in place by mid-2015.[19] Having moved to a selective process of screening and having re-assessed its criteria for 'high-risk' items, a period of re-adjustment can be expected. Nonetheless, the Committee notes that data sets that would be of assistance in targeting items are still rudimentary. Indeed, Agriculture concluded that such data sets are still 'some years away'.[20] The Committee encourages the prompt development of such data sets to assist the agencies in their tasks.

2.27   The Committee also notes the agencies' responses that current anti-corruption practices are guided by the Commission for Law Enforcement Integrity. Both agencies appeared confident that their arrangements to monitor and combat corruption are mature and effective. While the Committee is encouraged by this, we also understand that complacency can be the result of such confidence and that continued vigilance remains important – especially when dealing with issues such as illicit drugs and firearms importation.

2.28   When questioned on international best practice and Australia's relative standing, both agencies seemed very quick to present their work as conforming to such practice. Yet neither agency offered any particular evidence to support their assertions. The Committee believes Agriculture and Customs should review Australia's methods of screening

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18   Mr Jagtej Singh, National Manager Technology Management, Australian Customs and Border Protection Service, *Committee Hansard*, 30 October 2014, p. 10.

19   *Submission 5.2*, Australian Customs and Border Protection Service, p.1.

20   Ms Raelene Vivian, First Assistant Secretary, Compliance, Department of Agriculture, *Committee Hansard*, 30 October 2014, p. 6.

international mail compared to other nations to confirm Australia is conforming to international best practice.

Recommendation 2

2.29 **The Committee recommends that the Department of Agriculture and the Australian Customs and Border Protection Service review international methods in screening international mail to ensure Australia conforms to international best practice and report results of that analysis to the Joint Committee of Public Accounts and Audit.**

2.30 Finally, the Committee is gratified to hear that Customs have tightened their processes with regard to illicit firearms. There remains, however, the concern that packages sent from overseas are not accurately declared. Although this falls under the authority of other jurisdictions the Committee would like further information on what cooperative arrangements are being sought by Customs with other countries in terms of identifying illicit firearms shipments.

Recommendation 3

2.31 **The Committee recommends that the Australian Customs and Border Protection Service report to the Joint Committee of Public Accounts and Audit no later than six months after the tabling of this report on the:**

- **existing state of cooperative arrangements with other countries regarding identification of illicit firearms shipments**
- **what discussions/negotiations are underway with other countries to strengthen existing arrangements**

3

Performance Audit Report No. 43 (2013-14)

Managing Compliance with EPBC Act Conditions of Approval

Introduction

3.1   Chapter 3 discusses the Joint Committee of Public Accounts and Audit (JCPAA) review of Australian National Audit Office (ANAO) Report No. 43, *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*, Department of the Environment (2013-14). The chapter comprises:

- an overview of the report, including the audit objective, criteria and scope; audit conclusion; and audit recommendations and agency response
- Committee review
- Committee comment

Report overview

3.2   The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), administered by the Department of the Environment (Environment), is the Australian Government's primary legislation to protect Australia's environment and conserve its biodiversity.

3.3   Part 3 of the EPBC Act prohibits the undertaking of an action (project, development, activity) without approval from the Minister for the Environment that is likely to have a significant impact on matters of

national environmental significance (MNES). Proponents (such as landholders, developers and miners) are required to refer their proposed actions to the Minister, via the department, to determine whether approval of the action is required under the EPBC Act.

3.4   In circumstances where the Minister decides an action requires approval (that is, the action is a 'controlled action'), an environmental assessment of the action must be undertaken. The Minister will then decide, under Part 9 of the EPBC Act, whether to approve the controlled action and the types of conditions, if any, to impose. Proponents are required to comply with the conditions attached to approved controlled actions. Compliance with approval conditions 'underpins the effective operation of Part 9 of the EPBC Act and the public's confidence that approved actions will not detrimentally affect MNES'.[1]

3.5   Since the enactment of the EPBC Act in 2000, the Australian Government has approved over 600 controlled actions under Part 9, many with conditions attached that are designed to ensure MNES are not adversely impacted by the controlled actions.[2] As at September 2013, there were almost 8,000 conditions attached to approved controlled actions that were established to protect around 1,300 MNES.[3]

Audit objective, criteria and scope

3.6   The objective of the audit was to assess the effectiveness of Environment's regulation of proponents' compliance with Part 9 of the EPBC Act. To form a conclusion against the audit objective, the ANAO adopted the following high-level criteria:

- a structured risk management framework to assess and manage compliance risks has been developed;
- a risk-based compliance program to effectively communicate regulatory requirements and to monitor compliance with regulatory objectives has been implemented;
- arrangements to manage non-compliance are effective; and
- appropriate governance arrangements are in place to effectively support EPBC Act Part 9 regulation.[4]

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1   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*, Department of the Environment, Commonwealth of Australia, p. 12.

2   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 15.

3   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 15.

4   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, pp. 14-15.

Audit conclusion

3.7   The ANAO made the following audit conclusion:

> … Environment is responsible for regulating controlled actions approved under Part 9 of the EPBC Act. Environment's regulatory activities involve the monitoring of proponents' compliance with conditions attached to approved controlled actions … However, nearly 14 years after the enactment of the EPBC Act, Environment is yet to establish mature administrative arrangements to effectively discharge its regulatory responsibilities in relation to approved controlled actions. As a consequence, the assurance that the department has regarding proponents' compliance with action approval conditions, which are designed to address the risks posed to MNES, is limited …
>
> The extent of the shortcomings in, and challenges facing, Environment's regulation of approved controlled actions—particularly in relation to compliance monitoring—does not instil confidence that the environmental protection measures considered necessary as part of the approval of controlled actions have received sufficient oversight over an extended period of time.[5]

Audit recommendations and agency response

3.8   Table 3.1 sets out the recommendations for ANAO Report No. 43 and Environment's response.[6]

Table 3.1   ANAO recommendations, Report No. 43 (2013-14)

1	To better assess and manage the risks to matters of national environmental significance posed by approved controlled actions, the ANAO recommends that the Department of the Environment develop and implement an annual program of compliance activities having regard to: • a structured approach to collect, retain and regularly analyse, compliance intelligence; and • the identification and regular review of relevant risk factors for approved controlled actions. **Environment's response**: *Agreed.*
2	To strengthen compliance monitoring of approved controlled actions, the ANAO recommends that the Department of the Environment: • transfer approved controlled actions to the compliance monitoring area at the time of their approval, unless a specific need has been identified for the assessment branches' retention of the actions; and

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5   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, pp. 15-17.

6   For details of Environment's response to the ANAO's recommendations, see ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, pp. 54-55, 81, 97-98, 119-120, 122-123.

	• establish, and monitor adherence to, appropriate protocols and procedures to help ensure that approved controlled actions retained by the assessment branches are transferred to the compliance monitoring area once the specific need has been addressed. **Environment's response**: *Agreed.*
3	To improve the management of risks to compliance and matters of national environmental significance, the ANAO recommends that the Department of the Environment: • review standard operating procedures and reinforce the need for staff to document the assessment and/or approval of material submitted by proponents of approved controlled actions; • better target monitoring activities towards those approved controlled actions that pose the greatest risks to matters of national environmental significance; and • develop and resource a coordinated program of compliance monitoring activities, monitoring inspections and compliance audits. **Environment's response**: *Agreed.*
4	To improve processes for responding to instances of non-compliance, the ANAO recommends that the Department of the Environment: • reinforce to staff the need for all instances of non-compliance by proponents of approved controlled actions to be recorded centrally; and • improve the documentation of reasons for enforcement decisions, including the key factors considered when an appropriate response was determined. **Environment's response**: *Agreed.*
5	To improve the governance and oversight of the compliance monitoring function, the ANAO recommends that the Department of the Environment: • implement improvements to IT systems and records management practices, to address identified gaps and enhance functionality; • improve the frequency and coverage of management reports in relation to compliance monitoring activities, outputs and outcomes; and • develop and report against appropriate performance measures that relate to the activities undertaken to monitor compliance with the EPBC Act. **Environment's response**: *Agreed.*

Committee review

3.9   Representatives from Environment gave evidence at the Committee's public hearing on 23 October 2014.

3.10   As discussed below, the Committee focused on four key issues regarding the ANAO report findings and evidence provided at the public hearing:

■ Environment's management of compliance with EPBC Act conditions of approval

■ departmental initiatives to improve management of compliance

- one-stop-shop arrangements
- governance arrangements

Managing compliance

3.11   The following key aspects were of interest concerning Environment's management of compliance with EPBC Act conditions of approval: overall management of compliance, responding to non-compliance and risk management.[7]

Overall management of compliance

3.12   The Auditor-General summed up the ANAO's concerns with Environment's overall management of compliance with EPBC Act conditions of approval, as follows:

> … nearly 14 years since the enactment of the act, the environment department was yet to establish mature administrative arrangements to effectively discharge its regulatory responsibilities in relation to approved controlled actions. As a consequence, the assurance the department has regarding proponents' compliance with action approval conditions, which are designed to address risks posed to matters of national environmental significance, is limited …
>
> The increasing workload on the department's compliance monitoring staff over time had resulted in it adopting … a generally passive approach to monitoring proponents' compliance with most approval conditions … The extent of the shortcomings in and challenges facing the environment department's regulation of approved controlled actions, particularly in relation to compliance monitoring, did not instil confidence that the environment protection measures considered necessary as part of the approval of controlled actions, have received sufficient oversight over an extended period of time.[8]

3.13   The ANAO report found that Environment's regulation of proponents' compliance with conditions requiring the submission, approval and/or publication of plans and compliance returns had 'generally been

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7   As discussed in the next section, 'Departmental initiatives to improve managing compliance', it is noted that Environment has implemented, and is continuing to implement, strategies designed to improve its compliance management framework and address the ANAO's performance audit recommendations concerning this matter— see Environment, *Submission 1*, for a list of these activities.

8   Mr Ian McPhee, Auditor-General, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 1.

inadequate', with the ANAO's examination of 64 approved controlled actions (10 per cent, as at September 2013) indicating:

- numerous overdue plans and returns—22 plans relating to 10 controlled actions (15.6 per cent) and 18 compliance returns relating to nine controlled actions (14.1 per cent) were overdue for submission by proponents (many of which had been overdue for more than 18 months, including eight plans that the department was not aware were overdue);

- retention of evidence demonstrating the appropriate assessment of submitted plans and returns was generally poor—the department retained only partial or limited evidence of its assessment of 41 of the 67 approved plans (61.2 per cent). In addition, the department retained only limited evidence of its assessment of 36 of the 84 plans, reports and compliance returns (42.9 per cent) not requiring approval; and

- a significant proportion of unpublished plans and returns— 13 of the 51 plans, reports and compliance returns (25.5 per cent) requiring publication could not be located on proponents' websites as at December 2013.[9]

3.14   The ANAO report noted that, for most approved controlled actions, Environment had 'not actively monitored proponents' compliance with their approval conditions' and, as a consequence, Environment has 'limited awareness of the progress of many approved controlled actions'.[10] The department had retained 'limited evidence' of active monitoring for 44 controlled actions (68.8 per cent of the actions examined), with conditions designed to protect 93 MNES under the EPBC Act.[11] The ANAO report further observed that Environment's guidance material supporting its compliance framework was 'not current' and did not address 'numerous better practice regulatory considerations'.[12]

Responding to non-compliance

3.15   The Auditor-General observed that Environment had adopted a 'generally passive approach' to managing non-compliance with EPBC Act conditions of approval—in many cases, 'instances of proponent non-compliance were

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9   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, pp. 20-21.

10   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 80.

11   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 21.

12   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 22.

… not identified by staff or were identified but not referred for assessment and possible enforcement action'.[13]

3.16   More specifically, the ANAO report found that:

> Although many unreported instances of non-compliance were of a technical nature … they can nonetheless have an impact on the effectiveness of environmental safeguards. Of the 151 instances of non-compliance detected by the ANAO from an examination of approved controlled actions, information had not been retained to evidence that compliance monitoring staff had referred 88 instances (59.5 per cent) relating to 20 approved controlled actions (31.3 per cent of actions examined) to the section responsible for investigating non-compliance … or that they had been centrally recorded.[14]

Risk management

3.17   Robust risk assessment processes, informed by timely analysis of compliance intelligence, underpin an effective regulatory regime. Risk assessments can be used to develop compliance strategies that target the greatest compliance and environmental risks. The Auditor-General observed that Environment 'was not well placed to demonstrate that it was effectively targeting its compliance monitoring activities to the areas of greatest risks'.[15]

3.18   More specifically, the ANAO report found that Environment was 'yet to establish an effective compliance intelligence capability to collect, store and analyse compliance intelligence'.[16] The report further found that:

> While the department has identified a small number of risk factors against which all approved controlled actions are to be assessed, it is yet to identify an appropriate set of relevant factors against which risks can be assessed and ranked. The risk assessments of approved controlled actions, required since late 2011 were not prepared for 40 per cent of actions examined by the ANAO and, where prepared, the assessments often contained errors and have not been updated over time.[17]

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13   Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 1.

14   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 22.

15   Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 1.

16   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 16.

17   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 18.

3.19   A targeted approach to managing compliance can also assist in promoting cost-effectiveness and limiting the regulatory burden. As the ANAO report noted, a risk-based approach to compliance monitoring 'helps to ensure that limited regulatory resources are targeted toward the controlled actions that pose the greatest risk and to limit the regulatory burden on compliant proponents'.[18]

Departmental initiatives to improve managing compliance

3.20   Environment has implemented, and is continuing to implement, strategies designed to improve its compliance management framework and address the ANAO's performance audit recommendations concerning this matter. As the Auditor-General noted:

> Environment has acknowledged the shortcomings in its regulation of approved controlled actions and has initiated a broad program of work to address the shortcomings over recent years, including those identified from earlier reviews and from this audit.[19]

3.21   The ANAO report further observed that:

> Environment is … implementing strategies to address shortcomings in its compliance framework, with an estimated completion date of August 2014.
>
> As part of a coordinated and strategic approach to regulatory compliance, the department has also committed to risk-assessing its regulatory priorities so that it can better determine compliance resourcing needs across the department and to improve internal management reporting of departmental regulatory activities.[20]

3.22   Mr Malcolm Thompson, Deputy Secretary, Environment, confirmed that the department had 'accepted the recommendations of the audit'—'we consider this a timely audit review. We have welcomed the findings, we are acting on them and we take it seriously'.[21] Mr Thompson further stated that a 'number of issues raised in the audit itself and during the audit and the subsequent recommendations were previously identified by the department and action had already commenced to address them'.[22] In

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18   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 49.

19   Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 2.

20   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, pp. 96-97.

21   Mr Malcolm Thompson, Deputy Secretary, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 2.

particular, Environment pointed to the implementation of its business
improvement program:

> The department has made significant improvement in its
> compliance and enforcement capacity since 2012. A business
> improvement program has been implemented which significantly
> increases the department's ability to target its resources to projects
> that pose the highest risk to matters of national environmental
> significance, which of course is the focus of the Environment
> Protection and Biodiversity Conservation Act.[23]

3.23   The department's submission to the inquiry further confirmed that the
        business improvement program had 'already been implemented to
        address the majority of the recommendations from the ANAO audit …
        with the remaining recommendations due to be addressed by the end of
        2014'.[24] Environment pointed to a number of initiatives as part of this
        program (some completed and others currently underway) specifically
        directed at improving its compliance management framework and
        addressing the ANAO's recommendations, including:

- an 'assurance framework', with an 'internal audit currently being
  conducted by Ernst & Young' to track 'ongoing efforts and
  implementation of the improvements'

- implementation of a 'risk-based case prioritisation model based on the
  Australian Crime Commission practice to focus investigations on
  highest risk cases'

- development of a 'risk-based prioritisation model, NESTRA' (the
  National Environmental Significance Threat Risk Assessment model,
  developed in collaboration with the Commonwealth Scientific and
  Industrial Research Organisation), which focuses the department's
  monitoring activities on approved projects posing the highest risk

- implementation of a 'compliance and enforcement management system
  to track and coordinate investigations and intelligence gathering'

- 'significantly increasing resources to support post-approval activities'[25]

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22   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 2. There was
     some discussion in the ANAO report about the extent to which Environment had improved
     regulatory performance in this area over the period examined by the audit— see ANAO,
     Report No. 43, *Managing Compliance with EPBC Act Conditions of Approval*, p. 25 and p. 123.

23   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 2.

24   Environment, *Submission 1*, p. 1.

25   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 2. See
     Environment, *Submission 1*, for a full list of the various elements and implementation dates of
     the department's business improvement program and for a full list of the department's work,
     as at October 2014, to address the ANAO's recommendations, including due dates and

3.24   In addition to these business improvement initiatives, Environment highlighted that the department had 'significantly increased … proactive engagement of approval holders to educate and encourage voluntary compliance'.[26] By way of example, Environment noted that, since January 2012, the department had 'undertaken more than 191 variations to conditions to assist proponents with voluntary compliance'.[27] Environment also provided further details about its progress in implementing a targeted risk-based approach to managing compliance:

> After the ANAO audit, we agreed to a range of recommendations, and they were to implement a risk based process. We have now undertaken a risk assessment with CSIRO and it has a range of risk factors. It considers the risk the project would pose to the environment. It also has an element of the risk that the proponent poses in not complying with their conditions. So it has a risk-and-consequence scale, which gives us a total risk. We have a team of officers now who go in and do checks of those projects, from the highest risks down …

> On top of that, we do site inspections and check annual compliance reports. We use directed audits more frequently now. That is a function where a delegate of the minister or the minister can direct a proponent to go and get a third party to come in and audit the entire suite of conditions.[28]

One-stop-shop arrangements

3.25   As noted in the ANAO report, the Government is establishing a one-stop-shop for environmental approvals under the EPBC Act. Under proposed arrangements, the assessment and approval of most projects against Commonwealth environmental requirements, which are currently undertaken by Environment, would be undertaken by the states/territories using existing processes once accredited. The states and territories would also be responsible for monitoring and enforcing

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completion dates, pp. 1-8. See also the department's *Compliance Monitoring Plan 2014-15*, http://www.environment.gov.au/epbc/publications/compliance-monitoring-plan-2014-15 (accessed November 2014).

26   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 2.

27   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 2. Environment further confirmed that these variations had not weakened conditions attached to EPBC Act approvals and that to do so would be in breach of the act—see Mr Shane Gaddes, Assistant Secretary, Compliance and Enforcement Branch, Environment Assessment and Compliance Division, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 4.

28   Mr Gaddes, Environment, *Committee Hansard*, Canberra, 23 October 2014, pp. 3-4. In terms of how many of the controlled actions were being actively monitored, Mr Gaddes confirmed that the department would 'actively monitor the top 100 highest-risk projects', p. 4.

proponents' compliance with EPBC Act conditions of approval for actions they approve.[29]

3.26   The Committee was therefore interested in Environment's future arrangements, as part of the one-stop-shop, for managing compliance with EPBC Act conditions of approval, with a particular focus on the department's:

- ongoing implementation of the ANAO recommendations under these new arrangements, with the possibility of a follow-up ANAO audit of this area

- implementation of a new one-stop-shop assurance framework

- efforts in limiting the regulatory burden on compliant proponents and business compliance costs

Ongoing implementation of ANAO recommendations and possible follow-up ANAO audit

3.27   The implementation of the one-stop-shop arrangements under the EPBC Act will mean that, as more projects become subject to that policy, fewer projects will require compliance monitoring by Environment. The number of approved controlled actions monitored by the department will therefore peak during 2014-15 and gradually reduce over subsequent years as actions are completed.[30] However, as the ANAO clarified, 'the department will still have responsibility for all controlled actions that are approved under current arrangements' and, given that 'some of those activities extend over many years', a compliance program will be in place for a reasonably lengthy period of time.[31]

3.28   The Committee was therefore interested in establishing what impact the transition to the one-stop-shop arrangements might have on Environment's ongoing implementation of the recommendations from the ANAO report.

3.29   The ANAO emphasised that it had 'crafted the recommendations on the basis that they would still have relevance in the context of the different policy setting if that was to be implemented' and confirmed that there should not be 'any impact of that arrangement on the department's ability

29   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 14. The policy will be implemented through bilateral agreements between the Australian Government and each state and territory.

30   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 14.

31   Mr Mark Simpson, Acting Group Executive Director, Performance Audit Services Group, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 3.

to implement the five recommendations made in the audit report'.[32] Environment confirmed that:

> In practice, we will still have a legacy of compliance activity to undertake … and we will continue to do that assiduously under a one-stop-shop environment.[33]

> We do not see that one-stop-shop policy as inconsistent with being able to achieve those objectives.[34]

3.30   In terms of managing compliance under the new arrangements, the Auditor-General noted that he was 'encouraged' that the department were being 'guided by the experience of the audit to inform their own approach in dealing with the states'—'that is positive, and I appreciate what I think is a fairly positive response by the department to the report overall'.[35] The Auditor-General further pointed to the potentially 'complicated arrangement' under the one-stop-shop—'when you are looking to other parties to take on responsibilities under the legislation and to take on a more monitoring role and getting feedback from the performance … I think it is rather challenging'.[36] Accordingly, the Auditor-General signalled that there would be benefit in programming a future audit to follow up on this matter:

> I have thought it is an audit that in a couple of years time, if the one-stop shop arrangements come into place, we would probably program, to just see how the department has managed these arrangements, because it is a crucially important area—and the department accepts that. In this Federation, when the Commonwealth seeks to work with the states, sometimes we do wonderfully well and other times we do not do quite as well. I think we might say to the committee: we will make a note to program a future audit so we can follow this up and see how the arrangements work in the new world and how successful the department has been in addressing these issues under the new model.[37]

3.31   Mr Thompson, Deputy Secretary, Environment, confirmed that:

> We want to be ready for that. I would also add that ANAO scrutiny will not be the only scrutiny the department will be under

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32   Mr Simpson, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 3.

33   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 2.

34   Mr Dean Knudson, First Assistant Secretary, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 3.

35   Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 6.

36   Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 October 2014, pp. 6-7.

37   Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 7.

> in relation to this. There is an enormous amount of scrutiny
> around ensuring that the implementation of the one-stop shop
> works and that we get it right, including from the business
> community, because we do not want to create additional risk for
> them if it is done badly. In that sense, the incentives are aligning
> around trying to make this work, and we will do our best to do
> that.[38]

3.32   In terms of a follow-up audit, the Auditor-General further pointed to a
       newly revised ANAO better practice guide on administering regulation,[39]
       noting that '[w]e will be guided by that too in the context of the auditor's
       normative model to see just how the department has done its
       implementation of that. We will take that on board'.[40] It was noted that a
       follow-up audit might also look at how the one-stop-shop arrangements
       had limited the regulatory burden on compliant proponents and business
       compliance costs against projected savings.

New one-stop-shop assurance framework

3.33   Environment highlighted that, under the one-stop-shop arrangements, its
       compliance activity would shift to more of an assurance framework, to
       ensure the states and territories undertake the necessary compliance for
       projects they have approved. The department further confirmed that the
       ANAO report was informing its design of the one-stop-shop assurance
       framework:

> … we are using the ANAO report to inform our own design of the
> assurance framework that we have within the one-stop shop. The
> one-stop shop and the arrangements that we have with the states
> are obviously negotiated outcomes, so we are working with the
> states to identify what we think are the other standards that they
> should be meeting by way of their processes and the outcomes
> that we are seeking to achieve.[41]

3.34   Environment explained that the assurance framework for the one-stop-
       shop had three major elements:

> … one is that we are going to be focused on working with states to
> be able to [ensure] that they can demonstrate that the appropriate
> process is followed—so, making sure that the standards of the
> legislation are upheld through state processes. Second of all,

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38   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 7.
39   ANAO, *Administering Regulation: Achieving the Right Balance*, Better Practice Guide, June 2014.
40   Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 8.
41   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 2, p. 6.

> ensuring that the outcomes that were expected are actually achieve[d]—so beyond process and focus on outcomes. The third is we are building in an escalated process for dispute resolution between ourselves and the state should any matter arise.[42]

3.35   It was confirmed that, under the one-stop-shop arrangements, the states and territories would have responsibility for managing compliance for projects they had approved but that there would still be 'Commonwealth responsibility for the national system overall':

> While there is accreditation of states, it has to be done within that framework and the minister is responsible for ensuring that framework is met. That will always remain the case. What is different is that the states will take on responsibility for making the approval decision …
>
> On the compliance space … the fundamental responsibility is with the states, but … a similar assurance framework exists in effect over the compliance space, where, yes, there is that possibility of the Commonwealth stepping in. It is not our intended objective that that will be a regular course … The objective is to work with the states to make sure that they are not only undertaking the assessments and the approvals in the appropriate way but also doing the compliance and enforcement. That will be our primary focus, but the system does allow for Commonwealth interventions as required, in both those spaces.[43]

3.36   Environment therefore noted that there would be a range of 'checks and balances' in place under the assurance framework and the one-stop shop policy, and audits would be a 'routine' part of that—'[i]f we were to receive a credible allegation that the state was not enforcing conditions then we would still have the capacity to go in and investigate that to determine whether it was a breach of the bilateral approvals agreement'.[44]

Limiting regulatory burden and business compliance costs

3.37   There was interest in how implementation of the compliance monitoring framework under the one-stop-shop arrangements might assist in limiting

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42   Mr Knudson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 2.

43   Mr Knudson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 3, p. 6.

44   Mr Gaddes, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 3. Environment further emphasised that there were dispute resolution procedures in place under the assurance framework, as well as 'some of the reserve rights that the Commonwealth retains in the specific area of compliance', with the minister able to 'call in a project individually if there was an issue during the assessments phase' and a 'reserve power to cancel the agreement for an individual project', Mr Knudson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 8.

the regulatory burden on compliant proponents and business compliance costs. Environment noted that:

> We have been … thinking about how we ensure that matters of national environmental significance are protected while reducing the burden of compliance on business. We are balancing both of those things. Clearly, the act requires us to favour the former rather than the latter but, as modern administrators, we want to do both, and that is clearly part of the government's agenda.
>
> In that context, one of the things that we have reflected on is, in the conditions that we have imposed on approvals, we have often gone for quantity—we have listed a lot of conditions at a greater level of detail than arguably is required. That is something that we have reflected on and are trying to work through currently on whether we can do that better and frame the conditions more at the outcomes level.[45]

3.38   Environment further commented that it had completed 'a fair amount of quantification of the benefits to industry from moving to the one-stop shop, and our conservative estimate there is about $426 million a year':

> That is due to the delay that happens, because the states will make their decision, and we wait to see what conditions they put in place, what residual requirements are necessary to put in place, and that delay is a big driver of that $426 million. We have not done the same analysis on the post-approval work.[46]

3.39   Environment explained that it had recently completed a pilot with some companies in the approvals area but the next phase, to prepare for a possible rollout, would be to 'quantify exactly that, if we took an outcomes based approach on the approval space but also on the post-approval work … what sort of savings would that realise, while not lowering environmental standards'.[47]

3.40   The ANAO noted that Environment's implementation of a risk based approach to managing compliance could assist in promoting better targeting of resources:

> In relation to the audit report, we are not saying the department needs to do more compliance work necessarily and place a greater burden on industry or proponents. Essentially what we are saying is … they need to improve their compliance intelligence capability so they can direct their limited resources … poorly designed

45   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 7.

46   Mr Knudson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 7.

47   Mr Knudson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 7.

regulation places an impact on proponents but also places an impact on governments because somebody has to follow up on them. What we are trying to encourage is much more targeted checks. Ideally, you focus your effort on those proponents that pose the greatest risk and you lighten the load on the others that have demonstrated over time an ability to comply. That is the key message that we are trying to give through the audit report.[48]

Governance arrangements

3.41   The ANAO report noted that regulation of the broad range of controlled actions approved under the EPBC Act requires 'appropriate governance … to position Environment to effectively manage its regulatory responsibilities and build stakeholder and public confidence'.[49] Key aspects of an agency's governance arrangements include its performance framework and key performance indicators (KPIs), and resource management practices, including staffing, IT systems and records management.

3.42   The Auditor-General observed that performance information being captured relevant to the EPBC Act's compliance monitoring function had been 'limited' and this had 'hindered the department's governance of this function and adversely impacted on its ability to publicly report relevant performance information'.[50]

3.43   More specifically, the ANAO report found there would be benefit in Environment developing KPIs that 'directly relate to the monitoring of regulatory compliance undertaken by the department under all parts of the EPBC Act'.[51] The report further noted that the 'limited information that Environment has included in its annual reports in relation to its EPBC Act Part 9 compliance activities does not provide stakeholders with sufficient information on which to determine the extent to which these activities are appropriate or sufficient to protect MNES'.[52]

3.44   Environment outlined its progress to date in responding to the ANAO report recommendation concerning its governance arrangements.[53]

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48   Mr Simpson, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 8.

49   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 99.

50   Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 1.

51   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 117.

52   ANAO, Audit Report No. 43 (2013-14), *Managing Compliance with EPBC Act Conditions of Approval*, p. 24.

53   See Environment, *Submission 1*, pp. 7-8.

3.45   There was interest in what KPIs the department was using to monitor outcomes in the protection of MNES. Environment explained that:

> … we are on that journey … to push the department and ourselves … as many agencies around the world are, to try and focus more on environmental outcomes, which have traditionally been difficult, partly because of the costs associated with monitoring at broad scale, especially on a continent like Australia and partly because different people attach different values to the environment, either economic or scientific et cetera, but also because some of the impacts can be quite distant in a dynamic or a time sense from when the action was taken.[54]

3.46   In particular, the department noted that, '[i]n relation to the management plans that are often approved for the projects themselves, there are individual KPIs that will seek to identify not just process outcomes but environmental outcomes'.[55] Environment pointed to a range of other initiatives relevant to this area, including the scientifically based threatened-species process, 'which identifies on an ongoing basis when species are becoming at risk, endangered or critically endangered'; state-of-the-environment reporting, 'which happens every five years and is expert based and an independent assessment of the state of Australia's environment'; and the latest data from natural resource management bodies across the country, undertaking 'detailed planning and monitoring of what is happening across the nation'.[56] Environment further emphasised that 'one of the things that is fundamentally [embedded] into the one-stop-shop agreements is the public provision of information on individual assessments':

> What happens right now is that parts of that information are not, as a default, necessarily made public. We are trying to reverse that so that it is in the public domain. We think that is really an important element in terms of providing community confidence and transparency around approvals so that you can have academics, community groups, et cetera go in and see what the raw data was on an individual project, and so that provides another level of assurance.[57]

3.47   There was also interest in the staff resources being allocated for compliance activities under the pre and post one-stop-shop arrangements. Environment provided further details on its previous and current staff

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54   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 5.
55   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 4.
56   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 4, p. 5.
57   Mr Knudson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 5.

resource allocations for compliance monitoring.[58] In terms of the post one-stop-shop arrangements, the department confirmed that 'those specific allocation decisions have not been made yet. But it is very much under consideration'.[59] However, the department noted that it was 'reallocating responsibilities':

> Over the course of three years we are reducing numbers by about 25 per cent, and those reductions in staff are being experienced across all divisions. At the same time, that sort of reduction requires, as we have been doing in the context of some of the responses to the ANAO report, a redesign of your business. How can you do your business with fewer people and do it better? The risk based approach we are taking to compliance now is a very useful way to target those areas of compliance, those companies and those projects that we are most concerned about. That is an example … it does not necessarily mean lots more resourcing; it just means better using the resources that you have got.[60]

3.48   As Environment further explained, 'when approved projects start going through the one-stop shop process and they are then monitored by the states, our workload in that area will reduce over time.'[61] The department therefore confirmed that it would consolidate some of the compliance areas for its regulatory activities—'[t]hey currently sit in two divisions and we will consolidate them into one division'.[62]

Committee comment

Managing compliance and departmental improvement initiatives

3.49   Proponents' ongoing compliance with approved conditions underpins effective operation of the EPBC Act. The Committee therefore notes the seriousness of the Auditor-General's findings concerning Environment's management of compliance with EPBC Act conditions of approval.[63]

3.50   The Committee is encouraged that Environment has taken action in this area, to improve its management of compliance and address the ANAO's recommendations. The Committee acknowledges the broad program of work undertaken to date by the department as part of its business

58   Mr Gaddes, Environment, *Committee Hansard*, Canberra, 23 October 2014, pp. 8-9.

59   Mr Knudson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 8.

60   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 9.

61   Mr Gaddes, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 9.

62   Mr Thompson, Environment, *Committee Hansard*, Canberra, 23 October 2014, p. 8.

63   Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 October 2014, p. 1.

improvement program—in particular, the implementation of a risk-based approach to managing compliance and the development of an assurance framework to coordinate and track ongoing implementation of its improvement initiatives. The Committee is also pleased to note the department's development of a one-stop-shop assurance framework to assist with managing compliance under the new arrangements and that the design of this framework is being informed by the ANAO report findings and recommendations.

3.51 However, the Committee emphasises that it will require a sustained effort from Environment to ensure ongoing implementation of improvements in this area in the transition to, and establishment of, the new one-stop-shop arrangements. The Committee therefore points to the need for Environment to continue to demonstrate that it is improving its overall management of compliance with EPBC Act conditions of approval. In particular, Environment needs to continue to develop and resource a coordinated program of compliance monitoring activities. It also needs to continue to demonstrate that it is more effectively targeting its compliance monitoring activities to areas of greatest risk to MNES.

Recommendation 4

3.52 **The Committee recommends that the Department of the Environment report back to the Joint Committee of Public Accounts and Audit, within six months of the tabling of this report, on its continued progress:**

- **implementing the Australian National Audit Office (ANAO) recommendations in Report No. 43 (2013-14)**

- **implementing improvement initiatives for managing compliance under its business improvement program**

- **implementing the new one-stop-shop assurance framework, including:**

  ⇒ **details of how the development of this framework has been informed by the findings and recommendations of ANAO Report No. 43 (2013-14)**

  ⇒ **the sample size and ratio selected for compliance review**

  ⇒ **staff breakdown, including how many staff are allocated to legacy compliance activities and how many allocated to one stop assurance**

  ⇒ **details of any staff, including their employment level, who have been deployed to state offices to oversee the**

> **compliance activities by state governments**
>
> ■ **implementing up-to-date guidance material that reflects better practice regulatory considerations**

One-stop-shop arrangements

3.53   Under the new one-stop-shop arrangements with the states and territories for environmental approvals under the EPBC Act, the number of approved controlled actions monitored by Environment will peak during 2014-15 and gradually reduce over subsequent years as actions are completed. The Committee understands that the department will retain responsibility for all controlled actions approved under current arrangements and that, given some of those activities extend over many years, Environment will still have a legacy of compliance activity to undertake. The Committee was pleased to note the department's confirmation that the one-stop-shop arrangements will not impact on Environment's implementation of the recommendations from the ANAO report and, further, that the department is using the recommendations to inform the design of its new assurance framework for compliance activity under these arrangements, to ensure that the states and territories can demonstrate appropriate processes are being followed.

3.54   However, the Committee emphasises that it will require a sustained effort from Environment to ensure ongoing implementation of improvements in this area in the transition to, and establishment of, the new one-stop-shop arrangements. Accordingly, the Committee agrees with the Auditor-General that there would be merit in the ANAO conducting a future audit to follow up on this matter.[64] The Committee believes that a follow-up audit might also usefully consider how the one-stop-shop arrangements, as managed by Environment, had reduced business compliance costs against projected savings. A follow-up audit could further look at the effectiveness of the department's reporting against appropriate performance measures relating to activities undertaken to monitor compliance with EPBC Act conditions of approval.

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64   The duties of the JCPAA do not authorise the Committee to direct the activities of the Auditor-General—see s8(1A) of the *Public Accounts and Audit Committee Act 1951*. In terms of the one-stop-shop arrangements, the JCPAA is not requesting that the Auditor-General undertake a performance audit of a Commonwealth partner (state/territory) under s18B(1)(a) of the *Auditor-General Act 1997*.

Recommendation 5

3.55   **The Committee recommends that the Australian National Audit Office (ANAO) consider including, in its schedule of performance audits for the next 12-18 months, a follow-up audit of the Department of the Environment's management of compliance with** *Environment Protection and Biodiversity Conservation Act 1999* **(EPBC Act) conditions of approval, with a particular focus on:**

- **the effectiveness of the department's ongoing implementation of the ANAO recommendations in Report No. 43 (2013-14)**

- **the department's management of compliance under the new one-stop-shop arrangements, including the effectiveness of the department's one-stop-shop assurance framework as regards this area**

- **the effectiveness of the department's reporting against appropriate performance measures relating to activities undertaken to monitor compliance with EPBC Act conditions of approval**

- **whether there has been a reduction in business compliance costs against projected savings under the one-stop-shop arrangements, as managed by the department**

- **the department's guidance material, IT systems and record management practices for the compliance monitoring function under the new one-stop-shop arrangements**

Governance arrangements

3.56   The Committee notes that appropriate governance arrangements need to be in place to effectively support EPBC Act regulation, including a robust performance monitoring and reporting framework. The Committee agrees with the ANAO that performance information being captured by Environment relevant to the EPBC Act's compliance monitoring function needs to be improved. This in turn will improve the department's public reporting of relevant performance information in its annual reports. Annual reports are an important accountability mechanism for agencies to report their performance to the Parliament and the public.

3.57   In particular, the Committee notes that KPIs need to be developed that directly relate to the monitoring of compliance undertaken by the department under all parts of the EPBC Act, including the frequency of risk-based monitoring of approved controlled actions and whether management plans and compliance returns have been assessed/approved

within set timeframes. The Committee further emphasises the need for KPIs to focus on outcomes rather than process.

3.58   The Committee welcomes Environment's progress in this area to date, including the department's response to the ANAO recommendation concerning its governance arrangements.[65]

3.59   However, the Committee emphasises that the department will need to maintain its momentum in this area, in ensuring it continues to adopt an outcomes focus and rigorous KPIs for managing compliance in the transition to the new one-stop-shop arrangements. The Committee also points to the usefulness of the ANAO better practice guides in this context, including the recently revised guides on *Public Sector Governance: Strengthening Performance through Good Governance* (June 2014) and *Administering Regulation: Achieving the Right Balance* (October 2014).

Recommendation 6

3.60   **The Committee recommends that the Department of the Environment take a leadership role in its governance arrangements concerning management of compliance with *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) conditions of approval, particularly in the context of the new one-stop-shop arrangements, by demonstrating effective reporting against appropriate performance measures.**

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65   See Environment, *Submission 1*, pp. 7-8.

4

Administration of the Australian Business Register

Introduction

4.1   Chapter 4 discusses the Joint Committee of Public Accounts and Audit
(JCPAA) review of Australian National Audit Office (ANAO) Report
No. 48, *Administration of the Australian Business Register*, Australian Taxation
Office (ATO), Australian Securities and Investments Commission (ASIC),
Department of Industry (Industry) (2013-14). The chapter comprises:

- an overview of the report, including the audit objective, criteria and
scope; audit conclusion; and audit recommendations
- Committee review
- Committee comment

Report overview

4.2   The Australian Business Register (ABR) is a database of the information
provided by businesses when they register for an Australian Business
Number (ABN), a unique business identifier. It was established under the *A
New Tax System (Australian Business Number) Act 1999* to support the
implementation of the Goods and Services Tax (GST) and to provide a
single entry point for business interactions with government that could:

- support businesses to comply with regulatory requirements

- facilitate business access to information and assistance from all government agencies

- allow business with changed details to notify multiple government agencies[1]

4.3   Since the ABR was established, multiple reviews, including an ANAO audit in 2007-08, have found that administration of the ABR and its broader objectives could be improved.

4.4   The ATO and its partner agencies have established a range of additional initiatives to enhance the operation of the ABR and achieve its whole-of-government objectives. This has included the introduction of:

- an ABR Advisory Board, by the ATO, to oversee strategic planning and development of the register

- AUSkey, an electronic authentication system managed by the ATO which supports secure access to a range of online government services, including the ABR

- Standard Business Reporting (SBR), specialised software supported by the ATO which enables businesses to prepare and submit government forms directly from their computer to participating government agencies

- the national Business Names Register (BNR), a register of business names managed by ASIC which replaced eight similar state and territory services (businesses must have an ABN to register a name)

- the *ABNLookup* service, a website enabling the public to look-up businesses' ABNs which is managed by Industry on behalf of the ATO (this arrangement is scheduled to expire in January 2015)

4.5   The ABR, AUSkey and SBR are administered by the Business Reporting and Registration area of the ATO and are hosted by the agency's IT infrastructure. Whole-of-government objectives of the ABR are supported by the ATO in partnership with other government entities, including the ASIC and Industry. This arrangement is overseen by the Commissioner of Taxation in fulfilment of his separate and distinct role as the ABR Registrar.[2]

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1   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, pp. 13, 16-17.

2   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 17, 100.

Audit objective, criteria and scope

4.6   ANAO Performance Audit No. 48 (2013-14) assessed the effectiveness of the administration of the ABR by:

- examining the appropriateness of governance and administrative arrangements in place, particularly within the ATO, ASIC and Industry to support the objectives of the ABR

- appraising strategies underway to improve business interaction with government and facilitate greater use of ABR across government agencies

- assessing the systems and processes used to manage, distribute and collect ABR data and ensure its integrity

4.7   Agencies within scope of the audit included the ATO, ASIC and Industry.[3]

Audit conclusion

4.8   The ANAO identified three key issues with the administration of the ABR and related initiatives, as discussed below.

Whole-of-government objectives of ABR

4.9   The ANAO found that ABR's whole-of-government objectives had not been achieved:

> The use and applications of ABNs and ABR data, for the purposes of administering the GST and broader tax and administrative systems, are well established. However… there has been limited progress in achieving whole-of-government objectives for the ABR. There also continues to be acknowledged problems with the integrity of ABR data, particularly regarding the number of entities on the register and incomplete and inaccurate entity information on the ABR. These shortcomings undermine the operation of the ABR as providing the 'single source of truth for whole-of-government business registrations'. Accordingly, some 14 years after establishing the ABR, little real progress has been made by the ATO, in conjunction with ASIC, Industry and the Treasury, in achieving the goal of making it easier for business to deal with government through reducing business reporting and registration requirements and entry points to government.[4]

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3   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 16.

4   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 17.

Oversight and differentiation of ABR within ATO

4.10   The ANAO established that the Commissioner of Taxation did not receive ABR specific reports in his role as Registrar, raising 'doubts' that he is kept 'appropriately informed of the operations of the ABR'.[5]

4.11   The ANAO observed that ABR is not yet guided by a formal governance charter which 'assigns the roles and responsibilities of managers', despite its finding in 2007-08 that the governance structure of the ABR had 'been allowed to atrophy and be replaced by the ATO governance structure'. Additionally, executive reporting of the ABR remained insufficiently 'distinct' from the core business of the ATO and performance monitoring continued to reflect the routine management activities of the ATO and not achievement against the whole-of-government objectives of the ABR.[6]

ABR data management and integrity

4.12   The ANAO considered the ABR information technology (IT) system to be fragmented and complex, limiting the achievement of the register's whole-of-government objectives. Data is managed across five ATO IT systems, each accessed by different users for different purposes and each updated at different times, resulting in variations between the data held on each system. Furthermore, the backlog of IT projects relating to the ATO's other responsibilities and the current period of budgetary constraint makes it unlikely that ABR IT system reform will be prioritised and approved in the short term.[7]

4.13   The ANAO affirmed that the ATO had no internal service standards or agreements in place to support the IT arrangements for the ABR or the availability of services for ABR stakeholders.[8]

4.14   Further, the ANAO noted that management of the *ABNLookup* service is due to transition from Industry to an alternative arrangement established by the ATO from January 2015. However, there was no evidence that the ATO executive had considered the matter or that the agency was sufficiently prepared to take on management of the service.[9]

4.15   In the 2012 and 2013 federal budgets the ATO received additional funding to implement ongoing programs to address issues and risks relating to the accuracy of ABR data. However, as the ANAO remarked, the baseline costs

5   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 55.
6   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 19, 48, 55.
7   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 21, 70.
8   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 71.
9   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 67.

of administering the ABR had not yet been established. Therefore the ATO could not provide assurance that the activities instigated at this time would be ongoing.[10]

4.16 Lastly, the ATO had streamlined its arrangements for suppling ABR data to partner agencies through the introduction of simple terms and conditions agreements. However, while this approach reduced the compliance burden on ATO staff and partner agencies, it also provided 'very few checks and balances on ABR partner agencies' access to and use of ABR non-public data'. The ANAO noted that the ATO executive had endorsed a proposal to mitigate the risks associated with this approach. The ATO committed to conduct compliance reviews of up to 15 partner agencies each year to assess whether ABR data is being used appropriately.[11]

ANAO recommendation

4.17 To make it easier for business to deal with government, the ANAO recommended that:

> the Registrar of the ABR works with the Australian Securities and Investments Commission, the Department of Industry and the Department of the Treasury to:
> - review the entry points to government
> - and develop and implement the most effective and efficient delivery mechanism for businesses to meet their registration and reporting requirements, and to access information and services from government.[12]

4.18 All agencies agreed to the recommendation.

Committee review

4.19 Representatives of the following agencies gave evidence at the Committee's public hearing on Thursday 23 October 2014:

- Australian Taxation Office
- Department of Industry
- Australian Securities and Investments Commission

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10 ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 72, 82.

11 ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 87, 90.

12 ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 112.

4.20   The Committee was princibly concerned with how the ATO and its partner agencies use the ABR to make it easier for business to deal with government by providing a single entry point for interactions such as reporting and registration. Discussion at the hearing pursued this subject and also examined the following related topics: the Business Names Register, the oversight and differentiation of the ABR within the ATO, and ABR data management and integrity.

Whole-of-government-objectives of ABR

4.21   As previously noted, the ABR was introduced in 1999 to support the roll-out of the GST, and more broadly to make it easier for business to interact with government by introducing a single entry point for interactions.[13]

4.22   At the hearing the ANAO reported that, since the audit, the ATO and its partner agencies have been 'progressing initiatives' to realise the whole-of-government objectives of the ABR. However, it cautioned that without close cooperation between the agencies it remained unlikely that any substantial progress will be made:

> It is important for these agencies to work more closely together, as without a cohesive approach and a strong focus on the business user, it is unlikely that progress will be made in achieving whole-of-government objectives of the ABR and related services.[14]

4.23   The ATO and ASIC agreed, and reaffirmed their commitment to achieving the whole-of-government objectives of the ABR. They acknowledged that historically progress has been 'slow' and assured the Committee that they were now 'working together' to rectify this.[15] Although the agencies did not have a 'firm position' on how best to meld the ABR and BNR to achieve a single entry point for business, the ATO did outline three options under consideration:

- A 'virtual organisation', where the public may apply for a business name and number through a single web-based entry point, but the management and operation of the BNR and the ABR would remain split between the ATO and ASIC.

- An inter-agency team to provide 'common leadership' across the two services, which would be responsible for coordination activities and setting strategic direction.

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13   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 13.

14   ANAO, *Submission 2*, p. 2.

15   Mr Mark Jackson, Deputy Registrar (ABR), Business Reporting and Registrations, ATO, *Committee Hansard*, 23 October 2014, p. 13; ASIC, *Submission 3*, p. 2.

- A 'structural organisation', completely amalgamating the ABR with the BNR.[16]

4.24   When specifically questioned regarding the timeframes for this work the ATO stated that a way forward and real progress should be evident within approximately twelve months:

> There are all sorts of questions to be asked and answered. I would anticipate that, within twelve months or so, we would not only have a pretty clear position on where we are going but we would be well down the track of doing things.[17]

4.25   In the meantime, the ABR remains one of several business entry points to government. The ATO is endeavouring to reduce the requirement for businesses to provide the same information to multiple government agencies by promoting the use of ABR data by other public entities. It is working with a number of state and territory governments interested in adopting the register as their primary source of business registration and is assisting the New Zealand Department of Innovation to develop a New Zealand business number. The two agencies are investigating the possibility of 'cross-recognition of registration' so that companies registered in Australian would not have to re-register to trade in New Zealand and vice versa.[18]

4.26   In addition, Industry advised the Committee that they are contributing to an investigation into e-governance and the digital economy in relation to achieving the ABR's whole-of-government objectives. The investigation is being managed by the Department of Prime Minister and Cabinet and is examining how the affairs of individuals and businesses converge online.[19]

Business Names Register

4.27   On 13 May 2014, the Australian Government announced a scoping study to investigate future ownership options for ASIC's registry functions, including the Business Names Register (BNR).[20] The Department of Finance is managing the study in collaboration with the Department of

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16   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, p. 13.

17   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, pp. 15-16.

18   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, p. 15.

19   Ms Sue Weston, Deputy Secretary, Department of Industry, *Committee Hansard*, 23 October 2014, p.15.

20   Minister for Finance, *Delivering a smaller, more rational government*, http://www.financeminister.gov.au/media/2014/mr_2014-36.html (retrieved 05/11/2014).

Treasury and is expected to report to government in time for findings to be considered in the context of the 2015-16 federal budget.[21]

4.28   ASIC reported that it is engaged with the scoping study team and has provided advice in relation to the linkages and data sharing arrangements in place between the BNR, the ABR and other government initiatives and agencies. It considers there to be 'substantial benefits' associated with commercialising ASIC's registry functions:

> Our Chairman did not actually suggest that it needed to be privately owned, but he did suggest that there would be benefits in commercialising this business… From a government budgeting point of view, the implementation of technology can be very expensive. We see that there are substantial benefits in this type of business being focussed on as a business, which is to officially register companies and businesses and make that information available – in our case, primarily for public identification purposes, not just for government purposes.[22]

4.29   The ATO did not consider the possible commercialisation of the BNR to be a major impediment to realising a single entry point for business interactions with government. However, it refrained from speculating on how this arrangement could operate as the parameters and issues have not yet been clarified by the scoping study:

> Until we are clear on what the boundaries might be, how the systems might work or whether there are issues that are going to cause a problem, it is quite hard to say… There is nothing that stands out to me as being unsolvable but it is a little unclear at the moment.[23]

Oversight and differentiation of ABR within ATO

4.30   In its opening statement the ANAO repeated concerns raised in its audit report regarding the adequacy of ABR reporting to the Registrar and the differentiation of the register within the ATO:

> …there was also scope to strengthen the planning, reporting and resource allocation supporting the ABR to enable appropriate

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21   Mr Greg Tanzer, Commissioner, ASIC, *Committee Hansard*, 23 October 2014, p. 17; Department of Finance, *Scoping Study: Terms of Reference*, http://www.finance.gov.au/procurement/scoping-studies/scoping-study-terms-of-reference-australian-securities-and-investments-commission-asic-registry-business/ (retrieved 05/11/2014).

22   Mr Tanzer, ASIC, *Committee Hansard*, 23 October 2014, p. 17.

23   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, p. 18.

differentiation from the ATO's administration of the tax and superannuation systems.[24]

4.31   The ATO responded that both the Registrar and the Minister are 'pretty comfortable' with current reporting mechanisms and consider them sufficient to provide satisfactory oversight of the ABR.[25] It explained that the Commissioner of Taxation is briefed on the operation of the ABR, both as part of the agency's normal governance process and in relation to the ABR Advisory Board:

> …the Registrar is briefed several times a year in preparation for the ABR Advisory Board to lay out the key issues that are emerging in the operation of the register, things we intend to put forward to the Advisory Board for comment and review, and to allow the Registrar to bring his personal perspective to bear and to include in that process. I think between the normal and natural governance processes of the organisation and the particular meetings around the Advisory Board and its meetings and the preparation, the minutes and the other advice that is provided directly to the Registrar from time to time, he is kept very well informed of the operation of the register.[26]

4.32   Following on from the ANAO's concerns, the Committee questioned whether it remained appropriate for the Commissioner of Taxation to perform the role of ABR Registrar. The ANAO replied that 'different organisational models could be part of the solution'; however a review of the current arrangements would be necessary to identify the structure best suited to government and business interests.[27] The ATO observed that efficiencies underpinning the current arrangements would be lost if the two roles were separated:

> …it is a decision of practicality, avoiding duplication and multiplicity of agencies, but also recognising there is a tight link between this business registration activity and the interaction between business and the tax system, which is a fairly significant part of business interaction with government.[28]

4.33   The ATO acknowledged that managing the ABR from within the agency does bring the register into proximity with tax administration; however it argued that this does not necessary preclude adequate differentiation

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24   ANAO, *Submission 2*, p. 2.

25   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, p. 12.

26   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, p. 12.

27   Mr Ian McPhee, Auditor-General, ANAO, *Committee Hansard*, 23 October 2014, pp. 13-14;

28   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, p. 13.

between the register and the agency's other functions. Moreover, the ATO pointed out that since the audit it has further distinguished the ABR by refining the strategic direction of the area which administers it. The Business Reporting and Registration area has adopted four new key performance indicators (KPIs) focused beyond the processes that support the administration of tax and towards the realisation of outcomes for business. The KPIs include:

- a complete and single source of business information for government planning and service delivery
- improved business productivity and competitiveness through reducing business costs
- streamlined online interactions between business and government, including a single business entry point
- consistent information exchange standards for business, including digital data across government[29]

ABR data management and integrity

4.34   Enduring issues with the management and integrity of ABR data were also examined by the Committee during the hearing. The ANAO reported that 'there continues to be problems with the integrity of ABR data, particularly regarding the number of entities on the register and incomplete and inaccurate entity information'.[30]

4.35   The ATO acknowledged that 'more work could be done about the accuracy of the register' but explained that the maintenance of ABR data is a complex and resource intensive process. It reported that approximately 704,000 entities were registered in 2013, a further 530,000 registrations were cancelled and the details of approximately 4.5 million entities were updated. The ATO summarised the issue as follows:

> The register is, though, a fairly large activity if I could call it that… Keeping all this information up to date, making sure that people who need a registration can get one efficiently and that those who should not have one no longer have it is an activity that does consume a fair bit of our effort.[31]

4.36   Nonetheless, the ANAO stated that 'more needs to be done to strengthen the operation of the ABR'. It reiterated its audit finding that prior to 2012-13 the ATO 'had undertaken only limited assurance activity to assess if ABN holders were compliant with requirements for registering or

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29   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, p. 16.

30   ANAO, *Submission 2*, p. 2.

31   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, pp. 13-14.

maintaining their ABN status' and as a result 'incomplete or inaccurate entity information' remains in the register.[32]

4.37   The Committee also considered the following three issues of interest, although they were not discussed at length during the hearing:

- the protection of suppressed ABR data
- the future of ABR IT infrastructure
- the future of the *ABNLookup service*

4.38   In its audit report, the ANAO encouraged the ATO to consider a review of its processes for safeguarding the confidentiality of suppressed ABR data:

> There would be merit in the ATO reviewing the administration of ABNs where information has been suppressed, to provide confidence that any risk associated with ABR partner agencies not being notified has been appropriately managed.[33]

4.39   The Committee noted this finding in the context of evidence presented by the ATO that more than 450 agencies regularly or periodically receive ABR data sets which they use for everything from policy development, infrastructure planning, service delivery and emergency responses.[34]

4.40   Further, the Committee recognised the ANAO's conclusions concerning the future of IT supporting the ABR. The ANAO reported that, while the tax office has begun work to improve these systems, it remains unclear how they will be developed in future:

> While recent system changes have improved aspects of the register, the limited strategic planning… means there has been no clear direction for systems planning and development… As there is already a significant backlog of IT projects relating to the ATO's revenue collection and other responsibilities, it will be difficult for further system changes to the ABR to gain priority and approval in the near term.[35]

4.41   The ANAO also noted that the ATO has no service standards in place to support IT arrangements for the ABR or the availability of services to partner agencies.[36]

4.42   In contrast, ASIC provided evidence that it has amended its own IT systems to 'mitigate the impact of unscheduled ATO system outages' on the businesses' access to the BNR. It also reported that it is working with

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32   ANAO, *Submission 2*, p. 2.

33   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 22.

34   Mr Jackson, ATO, *Committee Hansard*, 23 October 2014, p. 14.

35   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 71.

36   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 71.

the ATO to improve the integrity of data held on the BNR. This year ABNs were added to more than 350,000 of the records grandfathered to ASIC in 2012 from the state and territory registers it replaced. According to ASIC, this measure 'increased the total number of ABNs in the BNR to 1.3 million, or around 65 per cent of total registrations'.[37]

4.43   Lastly, the Committee notes the ANAO's finding that the ATO has not undertaken sufficient planning for the future of the *ABNLookup service*:

> The ATO is not sufficiently prepared to transition the *ABNLookup* service from Industry to ATO management by January 2015, and there is no evidence that the ATO Executive has considered the matter…Given that the *ABNLookup* service is an integral part of the ABR services to the public and business community, there would be merit in the ATO better defining its position on the future management of the service, including allowing for an appropriate lead-in time for a transition to other arrangements.[38]

4.44   At the hearing, Industry noted that the cost of managing the *ABNLookup* service has increased as 'inflation and other costs' rise; however, the future of this service was not discussed in detail.[39]

Committee comment

4.45   The Committee is disappointed that, some 14 years after the introduction of the ABR, its whole-of-government objectives are still far from being achieved. The ABR has not been developed to provide a single entry point for business interactions with government and there is no evidence to indicate that the register has, either directly or indirectly, reduced entry points to government.[40]

4.46   As the agency responsible for the operation and management of the ABR, the Committee believes ATO leadership will be critical to realising a single entry point to government and reduced reporting and registration requirements for business. The Committee notes there are a number of options under consideration to achieve a single entry point for business. It considers the Commissioner of Taxation in his role as Registrar as central to this and therefore notes with some concern the ANAO's 'doubts' that

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37   ASIC, *Submission 3*, p. 2.

38   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, pp. 67-8.

39   Mr Graham Tanton, General Manager, Department of Industry, *Committee Hansard*, 23 October 2014, p. 12.

40   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 23.

the Registrar is 'kept appropriately informed of the operations of the ABR'.[41] In light of this, the Committee supports the ANAO's finding that 'reporting mechanisms for the ABR to the Registrar could be strengthened'.[42]

4.47   However, the Committee also acknowledges that the ATO has begun taking steps to better align administration of the ABR with the register's original whole-of-government objectives. New key performance indicators adopted by the Business Reporting and Registration area responsible for the ABR prioritise improved outcomes for business, and the Committee commends the ATO for this achievement.

4.48   The Committee notes that little evidence was provided at the hearing regarding the ability of the ATO's IT infrastructure to continue to support the operation of the ABR and achieve its broader objectives into the future. Further, the Committee notes that data management and integrity issues pose a risk to public confidence in the register.

4.49   The Committee appreciates that the complex and resource intensive nature of the current arrangement is, in some measure, a legacy issue arising from the varied requirements of the different agencies accessing the ABR. However, the Committee considers it essential that the ATO monitor the performance of its infrastructure to ensure it can continue to facilitate the ABR's whole-of-government objectives and does not become an impediment to these goals. This will require the ATO to work more closely with Industry and ASIC to affirm that the complementary services operated by these partner agencies remain well supported by the ATO's systems.

4.50   While all organisations are clearly committed to making it easier for business to deal with government, they need to work more closely together to coordinate their efforts to reduce entry points, reporting and registration requirements. The Committee deems it is essential that the ATO foster closer working relationships with its partner agencies.

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41   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 54.

42   ANAO, Audit Report No. 48 (2013-14), *Administration of the Australian Business Register*, p. 20.

Recommendation 7

4.51   **The Committee recommends that the Australian Taxation Office work more closely with the Australian Securities and Investments Commission, the Department of Industry and the Department of Treasury on the administration of the Australian Business Register (ABR), to make it easier for business to interact with government by:**

- **reducing entry points to government**
- **developing and implementing registration and reporting mechanisms that are efficient and convenient for business**
- **simplifying business access to information and services offered by government**
- **reviewing and updating the information technology supporting the ABR**

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Performance Audit Report No. 50 (2013-14)

Cyber Attacks: Securing Agencies' ICT Systems

Introduction

5.1   Chapter 5 discusses the Joint Committee of Public Accounts and Audit (JCPAA) review of the Australian National Audit Office (ANAO) Report No. 50 *Cyber Attacks: Securing Agencies' ICT Systems*. The chapter comprises:

■ an overview of the report, including audit objective, criteria and scope, audit conclusion and audit recommendations

■ Committee review

■ Committee comment

Background

5.2   The protection of Australian government information communications and technology (ICT) systems and data is an important responsibility of all Commonwealth agencies. The Australian Signals Directorate (ASD) estimated that, between January and December 2012, there were over 1790 security incidents against Australian government agencies. Of these

security incidents, 685 were considered serious enough to warrant a response from the Cyber Security Operations Centre (CSOC).[1]

5.3   Agencies are required to have effective protective security arrangements in place to ensure that the functional capacity of the agency and 'official resources and information the agency holds in trust, both from and for the public, and those provided in confidence by other countries, agencies and organisations, are safeguarded.'[2]

5.4   The Attorney General's Department (AGD) is responsible for the development and refinement of the *Protective Security Policy Framework* (PSPF) that 'promotes the most efficient and effective ways to secure the continued delivery of Government business.'[3] ASD is responsible for the production of the *Australian Government Information Security Manual* (ISM). The ISM is the standard which governs the security of government information and ICT systems; it complements the PSPF.[4]

5.5   In 2010, ASD developed a list of 35 strategies to assist agencies to achieve the desired level of control over their ICT systems and mitigate the risk of cyber intrusions. ASD advised that, if fully implemented, the top four mitigation strategies would prevent at least 85 per cent of targeted cyber intrusions to an agency's ICT systems. In April 2013, the PSPF was amended, mandating the full implementation of the top four mitigation strategies by July 2014.[5]

5.6   In November 2014, the Prime Minister announced a review of Australia's cyber-security strategy 'to better protect Australia's networks from cyber attack.' The review, which is expected to report before May 2015, 'will explore how industry and government can work together to make our online systems more resilient against attacks. The Cyber Security Review will be led by the Department of Prime Minister and Cabinet and be assisted by a panel of experts.[6]

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1   ANAO, Audit Report No. 50 (2013-14), *Cyber Attacks: Securing Agencies' ICT Systems*, p. 12.

2   Attorney General's Department (AGD), 'Directive on the security of Government business', *Protective Security Policy Framework* (PSPF) <http://www.protectivesecurity.gov.au/pspf/Pages/Directive-on-the-security-of-Government-business.aspx> accessed 26 November 2014.

3   AGD, 'Directive on the security of Government business', PSPF, accessed 26 November 2014.

4   Australian Signals Directorate (ASD), *Information Security Manual* (ISM) <http://www.asd.gov.au/infosec/ism/> accessed 5 November 2014.

5   ANAO, Audit Report No. 50 (2013-14), pp. 13-14.

6   Mr Tony Abbott MP, Prime Minister of Australia, 'Cyber Security Review' Media Release, 27 November 2014, < https://www.pm.gov.au/media/2014-11-27/cyber-security-review-0> accessed 1 December 2014.

Report Overview

Audit objective, criteria and scope

5.7   The audit objective was to assess selected agencies' compliance with the mandatory top four mitigation strategies and related controls in the ISM, as well as considering agencies' overall security posture. In addition, the audit assessed the accuracy of agencies' self-assessment reports regarding compliance against the ISM controls.[7]

5.8   The mitigation strategies audited were:

- application whitelisting
- patching applications
- patching operating systems
- minimising administrative privileges

5.9   The following seven agencies were selected by the ANAO:

- Australian Bureau of Statistics (ABS)
- Australian Customs and Border Protection Service (Customs)
- Australian Financial Security Authority (AFSA)
- Australian Taxation Office (ATO)
- Department of Foreign Affairs and Trade (DFAT)
- Department of Human Services (DHS)
- IP Australia[8]

5.10   The agencies were selected based on the character and sensitivity of the information managed by the agency. This is summarised in Table 5.1.

Table 5.1   Key information collected, stored and used by the selected agencies

Agency	Economic information	Policy and regulatory information	National security information	Program and service delivery	Personal information
ABS	◆				◆
Customs			◆	◆	◆
AFSA	◆	◆			◆
ATO	◆	◆			◆
DFAT	◆	◆	◆	◆	◆
DHS				◆	◆
IP Australia		◆		◆	

7   ANAO, Audit Report No. 50 (2013-14), p. 16.

8   ANAO, Audit Report No. 50 (2013-14), p. 15.

Audit conclusion

5.11   The audit found that the selected agencies had not yet achieved full compliance with the mandatory top four mitigation strategies and that none of the selected agencies was expected to achieve full compliance by the target date of July 2014.[9]

5.12   The ANAO found that the selected agencies' overall ICT security posture provided a 'reasonable level of protection from breaches and disclosures of information from internal sources,' but that there were, 'vulnerabilities remaining against attacks from external sources'.[10] The ANAO commented that 'in essence, agency processes and practices have not been sufficiently responsive to the ever-present and ever-changing risks that government systems are exposed to.'[11]

Audit recommendations

5.13   Table 5.2 sets out the recommendations for Audit Report No. 50 (2013-14).

Table 5.2   ANAO recommendations – Audit Report No. 50 (2013-14)

1	To achieve full compliance with the mandatory ISM strategies and related controls, the ANAO recommends that agencies: a. complete activities in train to implement the top four ISM controls across their ICT environments; and b. define pathways to further strengthen application whitelisting, security patching for applications and operating systems, and the management of privileged accounts. **Selected agencies' response**: *Agreed.*
2	To reduce the risk of cyber attacks to information stored on agency databases, the ANAO recommends that agencies strengthen logical access controls for privileged user accounts to the database by eliminating shared accounts, recording audit logs and monitoring account activities. **Selected agencies' response**: *Agreed.*
3	To strengthen their ICT security posture, the ANAO recommends that agencies: a. conduct annual threat assessments across the ICT systems, having regard to the Top 35 Mitigation Strategies – as proposed by the Australian Signals Directorate; and b. implement periodic assessment and review by the agency security executive of the overall ICT security posture. **Selected agencies' response**: *Agreed.*

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9   ANAO, Audit Report No. 50 (2013-14), p. 17.

10   ANAO, Audit Report No. 50 (2013-14), p. 18.

11   ANAO, Audit Report No. 50 (2013-14), p. 18.

5.14   Due to the risk of disclosing sensitive information about agency ICT
systems, the ANAO departed from its usual practice of identifying
agencies on individual issues and instead addressed security weaknesses
at an aggregate level.[12] The ANAO presented its findings in the context of
a matrix which indicated agencies' overall level of protection against
internal and external threats, as a consequence of the steps taken to
implement the top four strategies and IT general controls. The ANAO
referred to this matrix as the *Agency Compliance Grade*; it can be found
below at Figure 5.1.[13] The *Agency Compliance Grade* indicates where
agencies are positioned in terms of ICT security zones; the zones are
explained below in Table 5.3.
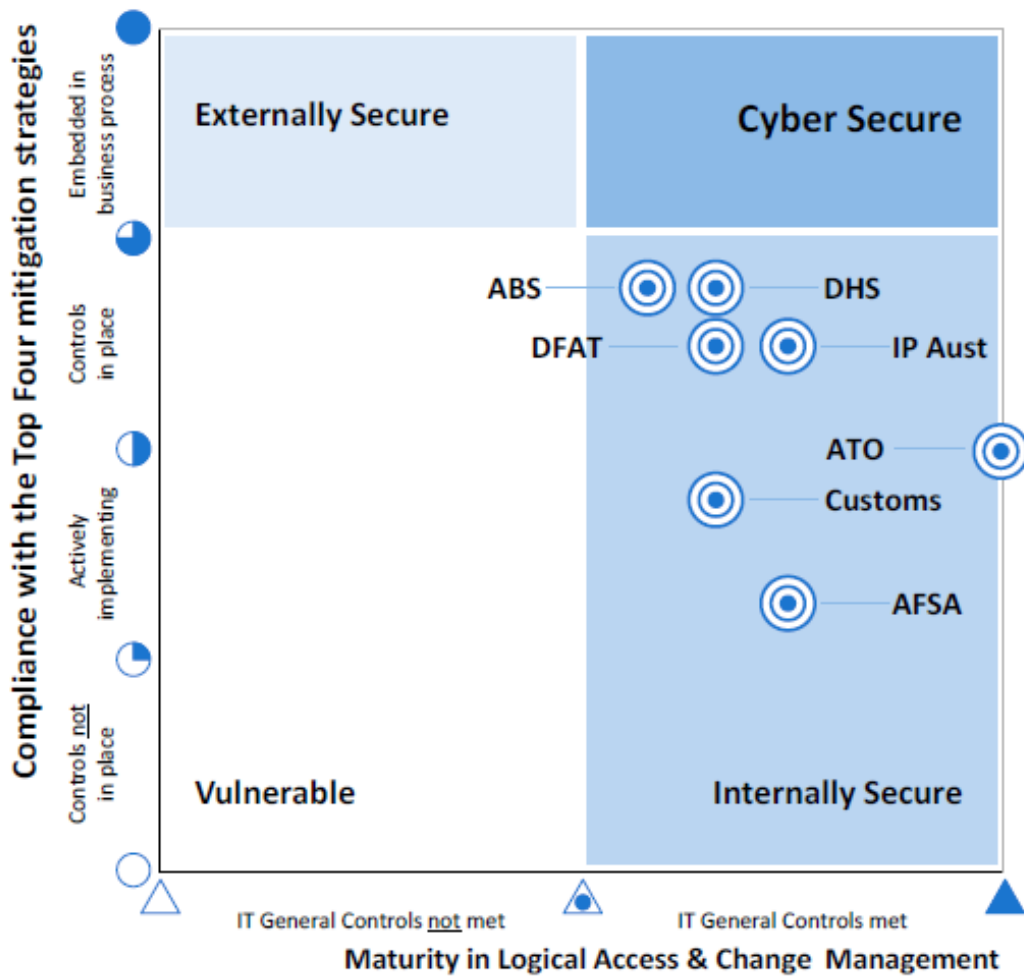
Table 5.3   Definition of ICT security zones

Zone Scheme	Definition of ICT security zones
Vulnerable Zone	High-level exposure and opportunity for external attacks and internal breaches and disclosures of information. • Systemic weakness across the ICT environment relating to protection of information and systems from external attacks and internal breaches and disclosures. • ISM and IT general controls not in place, or inconsistently implemented across the system.
Externally Secure Zone	Reasonable level of protection from attacks and intrusions from external sources – but vulnerabilities remain to breaches and disclosures from internal sources. • Top Four ISM strategies and replated controls in place across 80% or more of the agency's ICT systems and are embedded in (or working towards) business processes.
Internally Secure Zone	Reasonable level of protection from breaches and disclosures of information from internal sources – but vulnerabilities remain to attacks from external sources. • IT general controls from logical access and change management are met by the agency.
Cyber Secure Zone	High-level protection from external attacks and internal breaches and disclosures of information. • Top Four ISM strategies and related controls in place across 80% or more of the agency's ICT systems and IT general controls for logical access and change management are met by the agency.

Source   ANAO Audit Report No. 50 (2013-14), p. 49.

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12   ANAO, Audit Report No. 50 (2013-14), p. 45.
13   ANAO, Audit Report No. 50 (2013-14), p. 19.

Figure 5.1   Agency Compliance Grade: summary assessment of agencies' compliance with top four mandatory strategies and related controls, and overall ICT security posture

Source   ANAO Audit Report No. 50 (2013-14), p. 20.

Committee review

5.16   The ANAO report stated that the unauthorised access and misuse of government information can have wide-reaching impacts on national security, the economy, personal privacy, and the integrity of data holdings. As such, the protection of ICT systems and information, from both internal and external security risks, is a key responsibility of government agencies.[14]

5.17   The ANAO found that, whilst the security controls of the selected agencies provided a reasonable level of protection from breaches and disclosures of information from internal sources, agencies did not have sufficient protection against cyber attacks from external sources[15] (see also Figure 5.1).

5.18   The Committee focused on several areas of interest:

- compliance with the top four mitigation strategies
- IT general controls
- planned improvement activities
- improving security posture
- accountability and reporting

Compliance with top four mitigation strategies

5.19   The ANAO found that the selected agencies had not achieved full compliance with the mandated top four mitigation strategies at the time of audit, and were not expected to achieve full compliance by the target date of July 2014.[16] The four strategies – application whitelisting; patching applications, patching operating systems; and administrator privileges – are discussed below.

Application whitelisting

5.20   Application whitelisting is a control that protects a system from unauthorised applications. The ISM advises that an application whitelist (a list of trusted executables[17]) is a more practical and secure method of securing a system than an application blacklist (a list of bad executables to be prevented from running).[18] The ISM states that application whitelisting

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14   ANAO, Audit Report No. 50 (2013-14), p. 17.

15   ANAO, Audit Report No. 50 (2013-14), p. 21.

16   ANAO, Audit Report No. 50 (2013-14), p. 81.

17   An executable is a file that runs a program when it is opened; it executes code or a series of instructions contained in the file.

18   ASD, 2014 *Australian Government Information Security Manual: Controls*, p. 164.

is 'an effective mechanism to prevent the compromise of a system resulting from the exploitation of vulnerabilities in an application or from the execution of malicious code.'[19]

5.21   The ANAO noted that the deployment of application whitelisting across desktops was a priority activity for all of the selected agencies. The ANAO found that, of the seven agencies:

- five agencies had application whitelisting strategies, policies and rules in varying states

- three agencies had implemented whitelisting across their desktop systems

- two agencies were actively deploying strategies for their desktop systems

- one agency was actively implementing application whitelisting across its servers.[20]

5.22   The ANAO commented that application whitelisting was 'in general hastily deployed by agencies', with some agencies using 'audit only mode' to record executables in use across the system and that:

> Agencies did not tend to review and remove unauthorised executables, which is the better practice approach. The agencies adopted file path-based rules to enforce policy, which is the 'weakest' of the available rules to secure a whitelist.[21]

Patching applications and operating systems

5.23   Security patching[22] involves the periodic deployment of software releases designed to fix problems with existing software. The ISM states that 'applying patches to operating systems, applications and devices is a critical activity in ensuring the security of systems.'[23] It is rated by the ASD as one of the most effective security practices that an agency can perform.[24]

5.24   Security patches should be deployed within a timeframe that is proportionate with the severity of the threat/risk. The ISM states that agencies must apply all security patches as soon as possible and that for security vulnerabilities assessed as 'extreme risk' agencies must apply the

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19   ASD, *2014 Australian Government Information Security Manual: Controls*, p. 164.

20   ANAO, Audit Report No. 50 (2013-14), p. 64.

21   ANAO, Audit Report No. 50 (2013-14), p. 81.

22   A patch is a piece of computer code that is inserted into an existing program to fix problems or to improve usability and performance.

23   ASD, *2014 Australian Government Information Security Manual: Controls*, p. 158.

24   ASD, *2014 Australian Government Information Security Manual: Controls*, p. 158.

security patch or mitigate the vulnerability (if there is no patch available) within two days.[25]

5.25   The following deployment timeframes for security patches are recommended by the ASD, based on risk:

- extreme – within 48 hours

- high – within two weeks

- medium – within three months

- low – within one year[26]

5.26   The ANAO noted that 'a responsive and effective security patch strategy relies on a lifecycle of: preparedness; vulnerability identification and patch acquisition; risk assessment and prioritisation; patch testing and deployment; and verification.'[27]

Patching applications

5.27   The ANAO found that three of the seven agencies did not deploy any security patches for applications between May to August 2013, during 2013, or since the last upgrade of the applications sampled by the ANAO; whilst another three agencies conducted security patching on an '*ad hoc* basis'. The ANAO found that only one agency consistently deployed security patches for the sampled applications whilst also remaining within the vendors' recommended timeframe based on the threat assessment.[28]

5.28   Agencies reported difficulties in patching or installing the latest version of an application within the required two day timeframe. The ANAO reported that:

> Agencies expressed concerns about the risk of hastily upgrading an application into the production environment without a comprehensive systems test – a test and release cycle that usually required a much longer time period than two days.[29]

5.29   The ANAO acknowledged that there may be practical challenges to overcome in applying security patches to applications, but that, despite this, agencies will experience additional risk exposures the longer they delay implementation.[30]

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25   ASD, *2014 Australian Government Information Security Manual: Controls*, p. 159.

26   ANAO, Audit Report No. 50 (2013-14), p. 70.

27   ANAO, Audit Report No. 50 (2013-14), p. 82.

28   ANAO, Audit Report No. 50 (2013-14), p. 71.

29   ANAO, Audit Report No. 50 (2013-14), p. 72.

30   ANAO, Audit Report No. 50 (2013-14), p. 73.

Patching operating systems

5.30   The ANAO found that four of the seven agencies deployed security patches for operating systems within the timeframes recommended by ASD. The three other agencies advised that they used alternative patching practices due to:

- lack of regular maintenance windows for server environments

- competing business and 24/7 operations activities

- a preference to upgrade the operating system in the context of the next release version and when systems and integration testing has been completed by the agency.[31]

5.31   The ANAO found that all of the selected agencies conducted risk assessments and scheduled the deployment of the latest version of the operating system, for either desktops or servers, within the ASD's recommended timeframes.[32]

5.32   Overall, the ANAO commented that 'while the selected agencies understood the importance of adhering to a patching strategy and policy, they generally adopted an *ad hoc* approach to applying the lifecycle.'[33]

Administrator privileges

5.33   Administrative privileges are the highest level of permission and allow users to configure, manage and monitor a system. A user with administrative privileges can make any change and retrieve almost any information from a system.[34] The risks this poses are noted in the ISM, which states that 'privileged accounts are targeted by adversaries as these can potentially give full access to the system.'[35]

5.34   The ISM prescribes that administrative privileges should be allocated to separate administrative accounts, which should be controlled, logged, monitored and auditable. These accounts, and the level of privileges attached to each, should be limited to only those users who require them and the passphrases for the accounts should be audited regularly. Furthermore privileged accounts must not be allowed access to the internet or email.[36]

5.35   The ANAO found that user access rights were governed by documented policies, which considered job requirements and business needs, in all of

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31   ANAO, Audit Report No. 50 (2013-14), p. 75.

32   ANAO, Audit Report No. 50 (2013-14), p. 76.

33   ANAO, Audit Report No. 50 (2013-14), p. 82.

34   ANAO, Audit Report No. 50 (2013-14), p. 77.

35   ASD, 2014 *Australian Government Information Security Manual: Controls*, p. 159.

36   ASD, 2014 *Australian Government Information Security Manual: Controls*, pp. 201-201.

the selected agencies. However, in all cases, the ANAO observed that practices to restrict privileged accounts access did not align with agency policies, resulting in non-compliance with the ISM.[37] The ANAO also found that agency practices regarding passphrases for privileged user accounts did not align with agency policies, resulting in non-compliance with the ISM.[38]

5.36   The ANAO found that all of the selected agencies had separate accounts for administrative and standard use. However, one agency used shared administrator accounts for a database group policy. The agency advised the ANAO that it did this because it was more efficient to share an account amongst the ICT team for routine system maintenance work. However, the ANAO noted that the agency did not have a method of attributing actions undertaken by such accounts to specific personnel, which impacted upon accountability and 'introduced a high and avoidable level of risk.'[39]

5.37   The ANAO commented that, in the case of privileged user accounts, such as those with administration rights over IT systems, 'audit logs were captured to facilitate monitoring and accountability.'[40] However, the ANAO noted that 'agencies invested little or no effort in monitoring or reviewing the logs of actions by privileged users.'[41]

IT general controls

5.38   IT general controls refer to the policies and procedures that address an agency's identified system risks. This can include: controls over ICT governance; ICT infrastructure; security and access to operating systems and databases; application acquisition and development; and program change procedures.[42] The ANAO noted the importance of IT general controls, stating that:

> An effective IT general controls framework is an essential prerequisite for securing systems against cyber attacks. It creates layers of protection for critical systems elements against internal source threats and establishes a foundation for implementing controls directed against external source threats, including the mandated ISM strategies and related controls.[43]

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37   ANAO, Audit Report No. 50 (2013-14), pp. 79-80.
38   ANAO, Audit Report No. 50 (2013-14), p. 81.
39   ANAO, Audit Report No. 50 (2013-14), pp. 79-80.
40   ANAO, Audit Report No. 50 (2013-14), p. 82.
41   ANAO, Audit Report No. 50 (2013-14), p. 82.
42   ANAO, Audit Report No. 50 (2013-14), p. 83.
43   ANAO, Audit Report No. 50 (2013-14), p. 83.

5.39   The ANAO found that agencies' logical access control and change management processes were, 'generally well positioned to deal with internal source threats,'[44] but noted that most of the agencies could improve the control of access to databases. The ANAO commented that:

> While other layers of control can compensate for weaknesses in this regard to some extent, this is an issue that requires early attention, so as to reduce the risk of external attacks and internal breaches and disclosures of information stored on agency databases.[45]

Planned improvement activities

5.40   The ANAO assessed the selected agencies' plans to achieve compliance by July 2014. The ANAO assessed activities that were underway by November 2013; had demonstrable design deliverables; and were assessed as having a low level of risk regarding deployment by July 2014.[46]

5.41   The ANAO found that, even when taking these planned improvement activities into consideration, none of the selected agencies was likely to achieve full compliance with the mandatory ISM controls by July 2014.[47] The ANAO presented its findings, comparing each agency's observed compliance grade and planned state, on page 56 of the ANAO Report.

5.42   The Committee sought an update from some of the selected agencies regarding when agencies expected to have cyber security embedded in their business processes. Mr Stephen Haywood, National Manager for Security, Risk and Assurance Branch, Customs assured the Committee that they have a framework in place, stating that:

> We have dedicated resources to things like patching. We have a 'vulnerability board' that meets monthly, around managing that risk around patching, which is ongoing. We report to the CEO on a monthly basis. So I think that we have that in place now, and certainly we are in a better position than we were.[48]

5.43   The ATO stated that:

> Out of the four mandatory controls – the top four – we are expecting to be compliant with the whitelisting one by the end of this year; we will be substantially compliant in patching, based on a risk based approach, mid-next year; and through access controls,

44   ANAO, Audit Report No. 50 (2013-14), p. 99.
45   ANAO, Audit Report No. 50 (2013-14), p. 99.
46   ANAO, Audit Report No. 50 (2013-14), p. 57.
47   ANAO, Audit Report No. 50 (2013-14), p. 57.
48   Mr Stephen Haywood, Customs, *Committee Hansard*, Canberra, 24 October 2014, p. 19.

> once again, substantially compliant and embedded in our business
> processes by mid-next year.[49]

5.44   DHS stated that:

> Human Services have committed to complete the whitelisting. We
> are compliant on the desktops but we have some technical
> difficulties with the Unix Solaris service…we have committed to
> do the access control by 2015 and the patching by 2016.[50]

5.45   The ANAO reported that the selected agencies advised of a number of
factors affecting their security posture and level of compliance with the
mandatory four mitigation strategies, including:

- competing operational priorities
- resource restrains
- accessing specialist skills[51]

5.46   Major General Stephen Day, Deputy Director, Cyber and Information
Security, ASD, advised the Committee that the selected agencies' inability
to achieve compliancy by July 2014 was not surprising:

> The view that the top four might be implemented by the middle of
> this year was, I would offer, optimistic. I think that all agencies
> have started implementing them, but some have got systems that
> do not allow some of those mitigation measures to be put in place.
> Defence, for example, will have to totally redo its operating
> system, and that will take some years…[The findings] did not
> surprise me and I think it will take some years before we are at a
> relatively mature state.[52]

5.47   DHS highlighted the challenge of implementing patches without
compromising the quality and consistency of its services:

> You cannot patch your operating system unless you have patched
> your database, unless you have patched your application. Given
> that we in Human Services, in an active 24/7 shop, we cannot just
> take everything down and patch. We have to take this very
> carefully and very slowly through the patching levels.[53]

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49   Mr Daniel Keys, Assistant Commissioner, Enterprise Solutions and Technology, Australian
Taxation Office, *Committee Hansard*, Canberra, 24 October 2014, p. 19.

50   Mr Gary Sterrenberg, Chief Information Officer, DHS, *Committee Hansard*, Canberra, 24
October 2014, p. 19.

51   ANAO, Audit Report No. 50 (2013-14), p. 52.

52   Major General Stephen Day, Deputy Director, Cyber and Information Security, ASD,
Committee Hansard, Canberra, 24 October 2014, p. 15.

53   Mr Gary Sterrenberg, Chief Information Officer, DHS, *Committee Hansard*, Canberra, 24
October 2014, p. 19.

5.48   The ANAO acknowledged that agencies may experience practical issues, but reaffirmed the importance of defining clear pathways through the problems and adopting a prudent, risk-based approach whilst seeking to achieve full compliance.[54]

Improving agencies' security posture

5.49   Security posture is defined by the ANAO as agencies' 'exposure to external and internal threats and vulnerabilities – and how well they are positioned to address threats and vulnerabilities.'[55] The agencies' compliancy grades (see Figure 5.1) reflect their ICT security posture as at November 2013, illustrating the individual agencies' exposure to cyber attacks and their readiness to combat cyber threats.[56]

5.50   The ANAO found that, based on their stage of implementation of the top four mitigation strategies and IT general controls, the selected agencies' overall ICT security posture provided:

> A reasonable level of protection from breaches and disclosures of information from internal sources, with vulnerabilities remaining against attacks from external sources to agency ICT systems.[57]

5.51   The ANAO stated that security awareness and initiatives are a 'shared responsibility' and that well prepared agencies, 'adopted a mutual obligation approach towards security awareness, responsibility and accountability.'[58] The ANAO highlighted the importance of an agency's internal security culture:

> You need to have the right internal culture within the entity so that everybody is pulling together and it is not just the security people – those tasked day to day with security responsibilities – trying to operate a system on their own…it is almost axiomatic that when you have people pulling together internally they are more security aware. You are likely to have a better outcome, it is fair to say.[59]

5.52   The ANAO noted that, although there is no mandatory requirement that senior management of a particular level be involved in ICT security, all

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54   Dr Tom Ioannou, Group Executive Director, Performance Audit Services Group, ANAO, *Committee Hansard*, Canberra, 24 October 204, p. 19.

55   ANAO, Audit Report No. 50 (2013-14), p. 101.

56   ANAO, Audit Report No. 50 (2013-14), p. 101.

57   ANAO, Audit Report No. 50 (2013-14), p. 18.

58   ANAO, Audit Report No. 50 (2013-14), p. 25.

59   Dr Tom Ioannou, Group Executive Director, Performance Audit Services Group, ANAO, *Committee Hansard*, Canberra, 24 October 204, p. 17.

agencies have a requirement for a head of security and a head of IT security.[60]

Cyber Security Operations Centre

5.53   The Cyber Security Operations Centre (CSOC) was established as an initiative of the Defence White Paper to mitigate the cyber threat to Australia's national security.[61] The CSOC is administered by ASD and is answerable to the Cyber Security Operations Board (CSOB), a secretary-level board chaired by the Attorney-General's Department.[62] The CSOC brings together the resources and expertise of a range of government agencies:

> It has the cybersecurity capabilities from the ASD, it has the Cyber Espionage Branch from ASIO [Australian Security Intelligence Organisation] there, it has the Computer Emergency Response Team from the Attorney-General's Department in there and it has elements of the Australian Federal Police and the Australian Crime Commission as well. In other words, it is pooling together the nation's key cybersecurity capabilities.[63]

5.54   The CSOC has the capacity to provide 'close and personal assistance' to 'make a real difference' to approximately 10 agencies per year. The CSOB has selected approximately 40 government organisations – based on their function, the information they collect, their attraction to foreign intelligence services – and categorised them into high, medium and low risk.[64]

5.55   The CSOC works in partnership with secretaries and SES officers to examine an agency's systems, providing tailored and ongoing advice as they work to improve their systems. The Secretary of AGD, together with one or two officers from the intelligence community, meet with the secretaries and SES officers of agencies that have been categorised as 'high risk' to 'explain the threat'.[65]

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60   Dr Tom Ioannou, Group Executive Director, Performance Audit Services Group, ANAO, *Committee Hansard*, Canberra, 24 October 204, p. 17.

61   ASD, Cyber Security Operations Centre, <http://www.asd.gov.au/infosec/csoc.htm>, accessed 12 November 2014.

62   Major General Stephen Day, Deputy Director, Cyber and Information Security, ASD, *Committee Hansard*, Canberra, 24 October 2014, p. 15.

63   Major General Stephen Day, Deputy Director, Cyber and Information Security ASD, *Committee Hansard*, Canberra, 24 October 2014, p. 15.

64   Major General Stephen Day, Deputy Director, Cyber and Information Security, ASD, *Committee Hansard*, Canberra, 24 October 2014, p. 15.

65   Major General Stephen Day, Deputy Director, Cyber and Information Security, ASD, *Committee Hansard*, Canberra, 24 October 2014, p. 15.

Accountability and reporting

5.56   The PSPF Mandatory Requirement GOV-7 requires agencies to undertake an annual security assessment against the mandatory requirements detailed in the PSPF and report their compliance with the mandatory requirements to the relevant portfolio Minister. In addition to reporting to their portfolio Minister, agencies are required to provide a copy of this report to the AGD and the ANAO. [66]

5.57   Agencies must also advise any non-compliance with mandatory requirements to: ASD, for matters relating to the ISM; Australian Security Intelligence Organisation (ASIO), for matters relating to national security; and the heads of any agencies whose people, information or assets may be affected by the non-compliance.[67]

5.58   The ANAO examined the selected agencies' self-assessment compliance reports and found that, in all cases, agencies reported non-compliance for one or more of the mandatory requirements.[68] Five of the seven agencies reported their compliance against each specific control in a narrative statements and/or a 'traffic light' report. Two of the agencies made general statements of compliance against the information security requirements in the PSPF.[69]

5.59   ASD and AGD work together to assess and report on Commonwealth agencies' implementation of the top four controls and their overarching strategies. Furthermore, ASD intends to conduct annual surveys, collating detailed information from agencies to assist agencies to meet reporting requirements.[70]

Reporting Breaches

5.60   The PSPF Mandatory Requirement GOV-8 requires agencies to ensure they have appropriate procedures for reporting and investigating security incidents and taking corrective action, in accordance with the provisions of the *Australian Government protective security governance guidelines – Reporting incidents and conducting security investigations*.[71] These guidelines 'amplify the PSPF governance requirements relating to incident reporting

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66   AGD, *Securing Government Business: Protective security guidance for executives*, version 1, 21 October 2014, http://www.protectivesecurity.gov.au/pspf/Pages/SecuringGovernmentBusinessProtectiveS ecurityGuidanceforExecutives.aspx accessed 26 November 2014, p. [12].

67   AGD, *Securing Government Business: Protective security guidance for executives*, p. [12].

68   ANAO, Audit Report No. 50 (2013-14), p. 24.

69   ANAO, Audit Report No. 50 (2013-14), p. 55.

70   ASD, 2014 *Australian Government Information Security Manual: Controls*, p. 121.

71   AGD, *Securing Government Business: Protective security guidance for executives,* p. [12].

and investigative procedures and better practice that agencies should apply to meet the requirements of GOV-8.'[72] The guidelines state that:

> Agencies are required to report suspected cyber security incidents to [ASD] including:
>
> - suspicious or seemingly targeted emails with attachments or links
> - any compromise or corruption of information
> - unauthorised hacking
> - any viruses
> - any disruption or damage to services or equipment, and
> - data spills.[73]

5.61   Major General Day told the Committee that last year approximately 2,100 attempts against government systems were reported to or detected by the CSOC.[74]

Agency reporting policies

5.62   The Committee asked some of the selected agencies to outline their reporting policies and processes following either an internal or external breach. DHS stated that:

> We have…[an] internal protocol, where on identification of a threat or exposure, that information is raised by the chief information security officer to [the Chief Information Officer, who then briefs] the secretary. The secretary then has a subgroup of the executive part of the internal cyber group which assesses the implication of the threat and determines the actions and the additional officers that need to be brought in. In most recent cases, the view has been taken that external agencies like ASD will be informed of what we know at the time of the threat and, depending on the circumstances, we involve the AFP at early stages to make sure we have sufficient forensics and so they can have the best possible information to take it further, should they wish to.[75]

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72   AGD, *Australian Government protective security governance guidelines – Reporting incidents and conducting security investigations*, 2011, p. 1.

73   AGD, *Australian Government protective security governance guidelines – Reporting incidents and conducting security investigations*, 2011, p. 7.

74   Major General Stephen Day, Deputy Director, Cyber and Information Security, ASD, *Committee Hansard*, Canberra, 24 October 2014, p. 15.

75   Mr Gary Sterrenberg, Chief Information Officer, DHS, *Committee Hansard*, Canberra, 24 October 2014, p. 16.

5.63   The ATO outlined its reporting policy and processes and highlighted its IT Security Incident Response program, stating that:

> All ATO IT Security incident reporting is cascaded to the key operational and security committees within the ATO for full transparency and oversight. Government policy requires the ATO to report significant breaches, which the ATO does mainly through close collaboration with the Australian Signals Directorate Cyber Securities Operations Centre. The ATO has a strong 24x7 IT Security Incident Response program, which consists of IT security incident reporting, response and monitoring, all supported by formal processes. These processes are clearly documented, embedded within mandatory organisational policy and cascaded throughout the ATO so that the required members of the critical response team can act effectively and efficiently. The ATO's Incident Response capability has been recognised with an award from the Australian IT Security response organisation AustCERT.[76]

5.64   Customs discussed its proactive Security Operations Centre, stating that:

> The Australian Customs and Border Protection Service (ACBPS) operates a proactive Security Operation Centre (SecopsCen) which utilises a range of specialist security tools integrated into a Security Information & Event Management (SIEM) system. This system is based on similar technology and processes used by the Australian Signals Directorate (ASD) Cyber Security Operations Centre (CSOC). In all cases the incident is advised to the ACBPS Strategic Border Command Centre who assesses the incident in the context of national border security operations. The ACBPS SecOpsCen is the single source of truth for all reported or detected security incidents, not just cyber incidents. The ACBPS has close collaboration with the ASD CSOC on matters that relate to vulnerabilities, threats, methods and practices. This close collaboration with ASD provides the ACBPS with expert guidance and or resources to assist with the matter.[77]

5.65   The Department of Defence (Defence) informed the Committee that all breaches are reported to the Defence Security Authority through a standard reporting process. Defence noted that the specifics of their reporting processes are sensitive but assured the Committee that they have dedicated teams of highly specialised, well trained operators who:

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76   Australian Taxation Office (ATO), *Submission 9*, p. 1.
77   Australian Customs and Border Protection Service (Customs), *Supplementary Submission 5.1*, p. 1.

monitor Defence's cyber environment; conduct vulnerability scanning and assessments; and provide advice and assistance to their capability delivery areas 'to ensure that security is an essential element of everything we do.'[78]

Committee comment

5.66   The Committee is keenly aware of the importance of ensuring that the ICT systems of Australian government agencies are adequately protected from both internal and external threats. The Committee is concerned that, of the seven agencies audited, not a single agency was found to be fully compliant with the top four mitigation strategies and related controls in the ISM at the time of audit and none of the agencies was expected to achieve full compliance by the mandated target date of July 2014.

5.67   The Committee acknowledges the comments from ASD and the selected agencies regarding the challenges that many agencies have faced and will continue to face when implementing these strategies. However, the Committee agrees with the ANAO's comments that:

> Where agencies are unable to comply fully with mandatory Government requirements within a specified timeframe, it is important that they develop a clear timetable and process to establish a path to compliance and guide implementation.[79]

5.68   As such, the Committee feels that agencies should be seeking to achieve full compliance as soon as possible, and have a clear and detailed plan providing a definitive date by which they will achieve compliance.

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78   Department of Defence (Defence), *Submission 7*, p. 1.
79   ANAO, Audit Report No. 50 (2013-14), p. 57.

Recommendation 8

5.69   **The Committee recommends that the seven agencies audited by the ANAO achieve full compliance with the top four mitigation strategies and related controls in the Information Security Manual as soon as possible. Further:**

> ■ **each agency should produce a clear and detailed plan of necessary activities, including a definitive date of compliance**

> ■ **agencies that do not expect to achieve full compliance before August 2015 should notify the Committee – the Committee may then seek an explanation of why full compliance is not expected to be achieved, as well as the mitigation strategies the agency has put in place**

5.70   The Committee commends the ANAO for its audit of the selected agencies' ICT systems and its considered approach to reporting its findings. In particular, the Committee points to the ANAO's follow up with each selected agency, which included a detailed issues paper, addressing specific findings for each agency. The Committee further commends the ANAO for providing detailed and tailored briefings and presentations regarding the general and specific findings of the report to agencies' senior executives and ICT officers.[80]

5.71   The Committee notes Major General Day's comments that 'one of the problems we have at the moment is whether people are actually aware that there is a threat, let alone knowing what to do about it and then actually doing something about it…it is not just about technology; it is also about people.'[81] The Committee believes that the ANAO's audit has assisted agencies to understand the vulnerabilities of their ICT systems and the ways in which they can improve the security of their systems.

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80   IP Australia, *Submission 6*, p. 2.

81   Major General Stephen Day, Deputy Director, Cyber and Information Security, ASD, *Committee Hansard*, Canberra, 24 October 2014, p. 15.

Recommendation 9

5.72 **The Committee recommends that the Australian National Audit Office consider including regular audits, in its schedule of performance audits, of Commonwealth agencies' compliance with the top four mitigation strategies and related controls in the Information Security Manual as well as Commonwealth agencies' overall security posture.**

5.73 The Committee supports the CSOC and its work providing personal assistance and tailored advice to agencies as they improve the security of their ICT systems. The Committee commends the collaborative nature of the CSOC and its pooling of the cybersecurity capabilities of ASD, the Cyber Espionage Branch of ASIO, the Computer Emergency Response Team from the Attorney-General's Department, the Australian Federal Police and Australian Crime Commission.

5.74 The Committee encourages all Commonwealth agencies to work closely with the CSOC to ensure that their ICT systems are adequately protected from internal and external threat and all breaches are reported and addressed without delay.

6

Performance Audit Report No. 52 (2013-14)

Multi-Role Helicopter Program

Introduction

6.1   Chapter 6 discusses the Joint Committee of Public Accounts and Audit
        (JCPAA) review of Australian National Audit Office (ANAO) Report
        No. 52, *Multi-Role Helicopter Program*. The chapter comprises:

- an overview of the report, including the audit objective, criteria and
  scope; audit conclusion; and audit recommendations

- Committee review

- Committee comment

Background

6.2   At a budgeted cost of just over $4 billion, the Multi‑Role Helicopter
        (MRH90) Program is to acquire 47 helicopters and their support system
        for the Australian Defence Force (ADF).[1]

6.3   The program involves the acquisition of a single helicopter type to meet
        multiple capability requirements, and it is being implemented as part of
        Defence's AIR 9000 Program. The capability requirements include:

- troop lift helicopter operations from Royal Australian Navy (RAN)
  ships

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1   ANAO, Audit Report No. 52 (2013-14), *Multi-Role Helicopter Program*, p. 13.

- utility helicopter operations to enable the Australian Army to respond swiftly and effectively to any credible armed lodgement on Australian territory

- more likely types of operations in Australia's immediate neighbourhood[2]

6.4   In pursuing the acquisition, the then Australian Government recognised that ADF helicopters would be instrumental in the planned expansion of the ADF's amphibious deployment and sustainment capability.[3]

6.5   In June 2005, Defence signed an acquisition contract with Australian Aerospace for the supply of twelve MRH90 and for an interim support system. The interim support system did not include important MRH90 support elements such as an electronic warfare self-protection support cell, a ground mission management system, a software support centre, an instrumented aircraft with telemetry, and Full Flight and Mission Simulators. These support elements are critical for providing training and the ability to operate off ships. They were removed from the MRH90 acquisition contract to ensure AIR 9000 Phase 2 remained within its approved budget, and were added to the contract through later amendments, and at additional cost. In July 2005, Defence signed an MRH90 sustainment contract and a Strategic Partner Program Agreement with Australian Aerospace.[4]

Management arrangements

6.6   The Chief of Army is the lead Capability Manager for all of the ADF's MRH90 fleet. The Chief of Navy has capability management responsibilities for the six MRH90 assigned to Navy. These officers are responsible for overseeing and coordinating all elements necessary to achieve the MRH90's full level of operational capability by the government agreed date.[5]

6.7   The Defence Materiel Organisation (DMO) MRH90 Program Office is located in Canberra and is responsible for the acquisition of the MRH90 aircraft and their transition into service. The DMO's MRH90 Logistics Management Unit is located in Brisbane, and at the time of the audit was merging with the Armed Reconnaissance Helicopter (ARH) Logistics

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2   ANAO, Audit Report No. 52 (2013-14), *Multi-Role Helicopter Program*, p. 13.
3   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 13.
4   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 16.
5   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 18.

Management Unit to form the Reconnaissance and Mobility Systems Program Office (RAMSPO).[6]

6.8   Australian Aerospace is the Authorised Engineering Organisation (AEO) for sustainment of the MRH90, and has overall Systems Program Office (SPO) responsibility for a range of services normally undertaken by a DMO SPO. Australian Aerospace is the Approved Maintenance Organisation (AMO) for MRH90 Operational Maintenance at the Army Aviation Training Centre in Oakey, Queensland, and for MRH90 Retrofit and Deeper Maintenance at its MRH90 assembly facility in Brisbane. Two other maintenance organisations have been formally accredited by the Director General Technical Airworthiness as AMOs for the MRH90 aircraft: Army's 5th Aviation Regiment (Townsville); and Navy's 808 Squadron (Nowra).[7]

6.9   Army and Navy operational units provide overall MRH90 fleet management in terms of flying operations and safety management, fleet-usage coordination and management of aircraft serviceability. At the time of the ANAO audit, 27 MRH90 aircraft had been accepted.[8]

Report overview

Audit objective, criteria and scope

6.10   The ANAO Performance Audit No. 52 (2013-14) objective was to assess progress in delivering the MRH90 aircraft to the ADF through AIR 9000 Phases 2, 4 and 6, within approved cost, schedule and performance parameters. The timeline covered by the ANAO audit extended from the MRH90 Program's requirements definition phase in 2002, to progress achieved by April 2014.[9]

6.11   The audit approach closely followed the systems engineering processes that Defence uses to manage the capability lifecycle of projects. The ANAO did not intend, nor was it in a position, to conduct a detailed analysis of the full range of engineering issues being managed within the MRH90 Program. Rather, the audit focused on the MRH90 Program's progress thus far in establishing the management structures and processes

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6   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 18.
7   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 19.
8   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 19.
9   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 19.

used to deliver the aircraft within approved cost, schedule and performance parameters. [10]

6.12   The high-level criteria developed to assist in evaluating Defence's performance were:

- the requirements definition phase of the MRH90 Program, acquisition strategies and plans, and capability development policy and processes should be in accordance with internal Defence systems engineering procedures

- the criteria used in the tender evaluation and selection process should reflect the approved capability identified through the requirements definition phase

- the acquisition phase of the MRH90 Program, and test and evaluation leading to system acceptance, should meet the required technical, operational and safety regulatory requirements

- the process involved in certifying the aircraft's safety and fitness for service should meet the required technical, operational and safety regulatory requirements

- MRH90 sustainment arrangements should enable the aircraft to achieve agreed operational readiness requirements within approved budgets.

- Agencies within scope of the audit included the ATO, ASIC and the Department of Industry[11]

Audit conclusion

6.13   Following MRH90 trials in April and May 2012, the Navy reported impressive handling and that the aircraft showed considerable potential for embarked operations. Defence informed the ANAO that the MRH90 aircraft has shown that it has the potential to offer greater capability in some areas than the Black Hawk and the Sea King. However, the MRH90 remains subject to a range of design rework in order to operate in high-threat environments.[12]

6.14   By March 2014, over $2.4 billion had been spent acquiring and sustaining the MRH90, with 27 delivered. However, the MRH90 Program was running four years behind schedule, with the first Operational Capability milestones yet to be achieved. Considerable work remains to implement and verify some design changes, and to adjust operational tactics,

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10   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 19.

11   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 16.

12   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 21.

techniques and procedures, in order to develop an adequate multi-role helicopter capability for Army and Navy operations.[13]

6.15   The ANAO stated that the difficulties experienced are primarily a consequence of program development deficiencies and acquisition decisions during 2002-06. That period included requirements definition, the source selection process and the establishment of acquisition and sustainment contracts. The MRH90 Program's history shows that when these crucial stages of program development are not appropriately performed, then there are likely to be serious and potentially long-term consequences for capability delivery and expenditure.

6.16   The ANAO concluded that Defence's helicopter capability requirements definition was inadequate, did not properly inform the source selection process, and led to gaps in contract requirements. Defence also did not effectively assess the maturity of the MRH90 and S-70M Black Hawk aircraft designs, and the potential implications of immaturity, during the source selection process and to inform the development of contracts. Further, the acquisition and sustainment contracts established by Defence did not contain adequate protections for the Commonwealth.[14]

6.17   In the ANAO's view, the decision in 2004 by the then Australian Government to approve the acquisition of the MRH90 aircraft, instead of the initial Defence recommendation that the S-70M Black Hawk aircraft be acquired for Phases 2 and 4, has had significant implications as a consequence of:

■   unforseen immaturity in the MRH90 system design and the support system

■   the continuing need to modify some design elements to meet multi‑role capability requirements

■   the high cost of sustaining the aircraft[15]

6.18   Since 2007, when Australian Aerospace delivered the initial aircraft, Defence has applied a range of strategies (which remain ongoing) directed at addressing aircraft deficiencies and achieving better contractual outcomes for the aircraft's acquisition and sustainment. They have included the DMO suspending acceptance of aircraft, listing the MRH90 as a 'Project of Concern', and re-negotiation of the acquisition and sustainment contracts. The ANAO stated that ongoing management attention in Defence with acquisition, sustainment and capability management responsibilities remains necessary for the MRH90 Program

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13   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 22.

14   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 22.

15   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 22.

to provide an acceptable and affordable capability for Army and Navy operations in a reasonable timeframe. [16]

6.19   Successive Defence reviews have highlighted that risk can be decreased through 'Military Off-The-Shelf' (MOTS) solutions. The ANAO has also observed that schedule delay in the acquisition phase of Defence projects has resulted where the capability solution approved by government was not adequately investigated in terms of its technical maturity, including the issue of whether an option is truly 'Off−The−Shelf' or developmental in some respect. The program's risk mitigation strategy was based on the acquisition of a MOTS solution, which is a sound and well−proven strategy. However, this strategy was not applied at the time the then Government pursued an accelerated *AIR 9000* Phase 2 acquisition decision. The two options under consideration remained in the development phase of the production lifecycle, and were not yet MOTS aircraft. This led to the MOTS strategy being written out of the *AIR 9000* Phases 2, 4 and 6 specifications, but with no compensating or more appropriate risk mitigation strategies. Following the commitment to procure the MRH90 aircraft, Defence has had to manage a range of systems development issues, many of which have not been resolved, or have been resolved at additional cost.[17]

6.20   The ANAO stated that Defence's inability to maintain the MOTS strategy highlights the need to consider the ideal timing of capability acquisition in formulating acquisition strategy. Developing new military helicopters or upgrading existing models involves a lengthy process of design, prototype construction, test and evaluation, airworthiness certification and full−rate production approval. The ANAO maintained that there are clear advantages in acquiring helicopters after the aircraft are certified and full−rate production has commenced, because operational test and evaluation outcomes should have been factored into the design; technical and operational airworthiness issues should have been resolved; and support system arrangements established to ensure the specified level of operational availability is achieved.[18]

6.21   On this occasion the recommendations of the Defence procurement process for the acquisition of this helicopter capability were not adopted by the then Government. The ANAO concluded that while it is open to government to decide on the acquisition of Defence capability and to have regard to wider strategic considerations, any significant uncertainties in

16   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 23.

17   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 31.

18   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 32.

relation to key factors on which decisions are likely to be based should be drawn to the attention of government.[19]

6.22   The ANAO concluded that the shortcomings in the MRH90 Program requirements, and the lack of recognition of aircraft immaturity, resulted in the acquisition and sustainment contracts containing inadequate protections for the Commonwealth. These contracts also did not provide effective performance incentives, measurement and feedback systems. These key components have had to be negotiated into the acquisition and sustainment contracts at a time when the Commonwealth had reduced bargaining power; that is, following the signing of the decade‑long acquisition and sustainment contracts. The sustainment contract involves a model whereby functions normally performed by a DMO SPO are instead the responsibility of the MRH90 acquisition and sustainment Prime Contractor; a model which is considered to offer potential efficiencies but also involves some risks. The ANAO maintained that should a similar model be adopted for future major capital equipment programs, sufficient attention should be given from the outset to the development of appropriate performance incentives and related performance management approaches.[20]

ANAO recommendation

6.23   ANAO did not make recommendations in this report, as Defence already has relevant management processes in place. 'The key issue for Defence is to consistently apply these processes to the standards required'.[21]

Agency responses

6.24   Defence's response to the audit report is set out below:

> Defence welcomes the ANAO audit report on the Multi-Role Helicopter (MRH90) Program. This extensive report demonstrates the complex nature of Australia's helicopter replacement program which is integral to the Australian Defence Force and its conduct of combined operations. The report accurately highlights a number of challenges that Defence faces in transitioning from its current 3rd generation helicopters to 4th generation platforms.
>
> Defence has made significant progress towards increasing efficiencies and maximising combat capability over a decade of continuous force mobility improvements and acquisitions. The

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19   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 32.

20   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 17.

21   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 30.

experience gained from the MRH90 acquisition program stands Defence in good stead for acquisitions not only of helicopter systems, but across other capability acquisitions as well. In particular, DMO has learned substantial lessons in establishing and maturing a sustainment support system, by both Defence and industry; contract management; and accurate assessment of the maturity of proposed capability solutions.

Defence acknowledges that there is scope to realise further improvements in the MRH90 capability and anticipates continued maturity to the sustainment arrangements with associated benefits to cost of ownership. Defence is committed to managing the complexities of its mission and appreciates the regular reviews undertaken by the ANAO.[22]

6.25   Australian Aerospace's summary response is set out below:

It is acknowledged that introduction of the MRH90 has been protracted for the reasons discussed in the Extract but Australian Aerospace is of the view that the aircraft is now gaining strong pilot support as a capable and safe aircraft by virtue of its modern avionics and advanced performance and flight characteristics. Australian Aerospace and its NHI Partner are committed to working with Defence on improvements to the cabin and related role equipment which will make the MRH90 a potent battlefield capability for the Australian Army and Royal Australian Navy in the future. As the Extract points out, significant changes to the MRH90 sustainment construct were agreed through Deed 2 and these arrangements are now showing very positive trends in Demand Satisfaction Rates and flight hours achieved. Australian Aerospace is confident that the issues with the MRH90 Program identified in the Extract are well known and are being addressed as quickly as possible in order to deliver the required capability for the ADF, in a cost effective way for the life of type of the helicopter.[23]

Committee review

6.26   Representatives of ANAO, the Department of Defence ('Defence') and Defence Material Organisation (DMO) gave evidence at the Committee's

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22   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 49.
23   ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p. 50.

public hearing on Friday 24 October 2014. As discussed below, a number of themes were discussed during that testimony, including:

- Military Off The Shelf
- issues with new platforms
- European and United States decision making
- sustainment and spares

Military Off The Shelf (MOTS)

6.27   Although there is a general agreement that a functioning MOTS solution to a capability requirement is desirable, it is not as simple as first appears. DMO CEO, Mr Warren King, observed:

> Absolute true MOTS are projects like the C17. It is a production line. It has got all the air navigation equipment that you need. It has potentially tens or hundreds of a unit in service. You buy it and bring it into service. They are typically under budget and typically ahead of schedule.
>
> There are very few that fit into that entire MOTS, and so you come back down the path of 'When are you actually moving into the area of significant change?' or 'When are you in the area of not as mature as you thought?' In this case, clearly the manufacturers presented that this was a mature capability. You have to make a judgment about that in the circumstances. The degree of that uncertainty, to my mind, is the risk in these projects.[24]

6.28   Although a platform or capability may be MOTS and thus deliverable at a predictable price and timetable that does not necessarily mean it is the best option as it may not possess the entire range of specifications that is required. LTGEN Caligari observed:

> That is the problem when you go MOTS. When you go MOTS, you get what the MOTS wants to deliver, not necessarily what you want. So, when we test, we often test against what they say they are going to deliver if it is not an essential. If we make it essential and we want it tested against and we want our specification, it is no longer MOTS or it becomes less MOTS. You understand that sort of dilemma. There is the problem.[25]

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24   Mr Warren King, Chief Executive Officer, Defence Materiel Organisation, *Committee Hansard*, 24 October 2014, p. 1.

25   Lieutenant General John Caligari, Chief of Capability Development Group, Department of Defence, *Committee Hansard*, 24 October 2014, p. 11

Issues with new platforms

6.29   Newly developed platforms and capability may be better suited to
       Australia's needs, but while some issues can be foreseen, every problem
       cannot be accounted for. DMO CEO, Mr Warren King, observed:

> …when you have a genuine MOTS solution, people doing risk
> analysis will have hundreds if not thousands of risks. 'I wanted
> the door blue but it's only green.' It will be very specific. When
> you have a new design that is not yet done, you get fewer risks.
> Why? The answer is: because you do not know what they are yet.
> One that maybe not this committee but other committees have
> looked at is a project we had to cancel, which was the LCM2000.
> In that one, we looked at a new design and an off-the-shelf design;
> the off-shelf did not meet our operational requirements but
> somehow, magically, this new design would. We went for the
> new design and, of course, as the reality emerges of the new
> design, the risks emerge as well. But you cannot predict them in
> advance.[26]

6.30   Mr King also explained that while newly developed projects almost
       always go over time and over budget, there are still occasions when this
       was a more desirable path to take. When asked if there had ever been a
       project with a significant developmental element to it delivered on time
       and within budget, Mr King responded:

> Almost never, but that is not to say you should not do it. The hard
> part, from my point of view—because I have to provide the
> government with an independent assurance about the risks they
> are taking on a decision—is to have a quantifiable basis for
> analysing that risk. It starts to become very complex to do. For
> example, if it is a new project that involves putting something in a
> very constrained volume—aircraft or submarines—it is
> automatically going to have a higher risk than if it is on the back of
> a truck.
>
> Trying to do that, and I used this term the other night at estimates,
> which I borrowed—the 'conspiracy of optimism'—in an
> environment when you are decision making, it is very hard to be
> the voice saying, 'I urge caution.' We have this exact problem at
> the moment with the discussion around submarines.[27]

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26   Mr Warren King, Chief Executive Officer, Defence Materiel Organisation, *Committee Hansard*,
     24 October 2014, p. 4.
27   Mr Warren King, Chief Executive Officer, Defence Materiel Organisation, *Committee Hansard*,
     24 October 2014, p. 3.

6.31   Mr King further explained that while developmental platforms may incur extra costs, be delayed and even produce gross frustration that doesn't necessarily mean that the eventual outcome is marginal. Sometimes those 'projects of concern' can ultimately be a significant success:

> I have a headline from a paper in 2004 that says, 'Bushmaster is symptomatic of everything that goes wrong in a Defence project,' or words to that effect. The point is that we went ahead and developed it, and today more than 50 vehicles have been blown up by IEDs and not one solider has been killed. Sometimes you just have to pursue ambitions. A Wedgetail, which is the bane of my whole DMO life, is now in operations supporting our Super Hornets in coalition operations in the Middle East. So is MRTT [Multi Role Tanker Transports].   In fact I am going to write a book, *Projects of Concern in Operations*, because, although it creates great stress on everybody, they are now serving the nation's need. FFG7s [Royal Australian Navy Frigates] were a project of concern. They have been operational, since upgrade, for the last 10 years.[28]

European and US decision making

6.32   One issue not foreseen during the selection process was the difference in the decision making process between companies based in Europe and that United States.

6.33   The MRH90 is ultimately the product of NH Industries, which in turn is collaboration between AgustaWestland (32%), Airbus Helicopters (31.25%), Airbus Helicopters Deutschland (31.25%) and Fokker Aerostructures (5.5%).[29] This is an international arrangement between Italy, the Netherlands, France and Germany.

6.34   The alternative airframe, the Black Hawk S-70M, is manufactured by Sikorsky Aircraft Corporation[30] which in turn is a subsidiary of United Technologies Corporation.[31] Both are based in the United States.

6.35   On this occasion the US decision making process was faster than the European process resulting in a hindsight conclusion that perhaps the

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28   Mr Warren King, Chief Executive Officer, Defence Materiel Organisation, *Committee Hansard*, 24 October 2014, p. 6.

29   NH Industries website: <http://www.nhindustries.com/site/en/ref/Partnership_22.html> accessed 3 November 2014.

30   Sikorsky Aircraft Corporation webpage: <http://www.sikorsky.com/About+Sikorsky/For+Investors> accessed 3 November 2014.

31   United Technologies Corporation webpage: <http://www.utc.com/Our-Company/Corporate-Governance/Pages/default.aspx> accessed 3 November 2014.

Sikorsky Black Hawk would have been the better option to pursue. LTGEN Caligari observed:

> As it has turned out here, the Black Hawk development worked out better than the European one, for the reasons Warren [King] pointed out, but who was to know that at the start? We are looking at two big industrial bases. We have to pick what we think is the capability we want, and then decide if it is worth the risk on whether they will develop it in certain lines. This is not us taking a risk; this is the world taking a risk. This is not us niche building; this is us joining in on another international development process.[32]

6.36   CEO DMO, Mr Warren King, also observed:

> Why did the other helicopter get to be more mature, more quickly? The answer is that the industrial base from which we procured this helicopter is very complex and does not lead to quick decision making or quick resolutions of problems; whereas the other industrial base—the US industrial base, for example, that is attuned to producing a helicopter for the US that is fully supportable—turns out to be more responsive.

> One of the things, in my opinion, that we did not see here is effectively that a lot of the military industry in Europe is complicated by a military industrial base, as opposed to a singular focus on getting that military capability into service. So decision making is hard, profit generation is cascaded, supply chains are very complex, project engineering resolution is very slow.[33]

Sustainment and spares

6.37   The Committee noted the exorbitant cost of spares. The ANAO report noted that by May 2011, DMO found the MRH90 spares to be significantly more expensive than equivalent spares purchased for the Black Hawk helicopters. One particular example was the plastic plug, which costs $2.18 through the US supply chain, but cost $753.30 when acquired from Australian Aerospace – the Airbus Group's Australian subsidiary.[34]

6.38   The ANAO requested Defence advice on the result of audits or cost investigations carried out to assess the extent of such price differentials.

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32   Lieutenant General John Caligari, Chief of Capability Development Group, Department of Defence, *Committee Hansard*, 24 October 2014, p. 5.

33   Mr Warren King, Chief Executive Officer, Defence Materiel Organisation, *Committee Hansard*, 24 October 2014, pp. 3-4.

34   *Committee Hansard*, 24 October 2014, p. 6 and ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p 193.

Defence informed the ANAO in April 2014 that no audits or cost investigations that include the cost of role equipment had been undertaken.[35] In response, DMO CEO Warren King responded:

> I cannot explain why and I do not know our commitment there…
> The only… comment I can make to this is that this whole situation
> is making me very angry. I have asked people to represent me in
> Europe, in my team and other people, and I have called in the
> companies, including the CEO, and I put an example in front of
> him of a $38 or $32 item… coming in at over $3,000 through their
> supply chain.

> I am not defending this situation at all. I do not know why we did
> not do the audit. My team has worked incredibly hard to get this
> new deed in which will deliver really significant savings. But I
> have said to European industry that, in my opinion as the CEO at
> DMO, in my role there, there is a whole question mark over their
> ability to recognise several key issues… But for us at the other side
> of the world it means we are slow at getting our spares, we do not
> get them at what I think is a reasonable price and, quite frankly,
> any further offers from that industry base will be viewed very
> conservatively...[36]

6.39   Re-negotiated agreements have resulted in some improvements in the issues surrounding the high costs of the spares. RADM Dalton explained:

> As part of the work-up to agreeing the final deed, we actually do
> have far greater visibility. We now have audit rights into all,
> including the principal subcontractors. We have visibility now
> inside the three prime commercial entities that make up the
> original equipment manufacturer for the NH90, which is a
> consortium that crosses country boundaries in Europe. We now
> have greater visibility than the owning governments in Europe
> across the boundaries. We do have much better visibility now
> than we had had pre-deed.[37]

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35   *Committee Hansard*, 24 October 2014, p. 6 and ANAO, Audit Report No. 52, (2013-14), *Multi-Role Helicopter Program*, p 193.

36   Mr Warren King, Chief Executive Officer, Defence Materiel Organisation, *Committee Hansard*, 24 October 2014, pp. 6-7.

37   Rear Admiral Anthony Dalton, Acting General Manager, Joint Systems and Air, Defence Materiel Organisation, *Committee Hansard*, 24 October 2014, p. 8.

Committee comment

6.40   The Committee's discussion with representatives from DMO, Defence and ANAO demonstrated to the Committee that all three organisation are aware of the issues surrounding the MRH90 project. With regard to Defence and DMO, it appears they are aware of the issues and are taking what measures are available to them to rectify as best as possible the project's shortfalls.

6.41   The Committee recognises that much of what is currently causing difficulty is the result of decisions made about ten years ago. Since that time, Defence and DMO have improved their performance in the area of acquisition and sustainment. Since the publication of the 'Kinnaird Report'[38] in 2003 the 'schedule slip' of DMO overall projects has almost halved.[39] Also, since 2007-08 the joint ANAO/DMO Major Projects Report has been published annually and reviewed by the JCPAA, contributing to greater oversight of Defence's acquisition projects. As has the establishment of the 'Projects of Concern' process which has increased Defence and DMO focus on problem projects, including through increased Ministerial oversight. The recommendations of the 'Mortimer Review' have also improved materiel acquisitions, notably through independent advice from the CEO DMO to Government at second pass.

6.42   Nonetheless, the Committee believes that there still appears to be much to be done. In its opening statement to the Committee the ANAO assessed that there is still a need for Defence to better manage the inherent risks in complex acquisition programs.[40] Further, the ANAO stated that while Defence already has relevant management processes suitable for defining capability requirements, formulating cost-effective major capital equipment acquisition strategies, and delivering program outputs, the key issue for defence is to consistently apply these processes to the required standard.[41]

6.43   The Committee was concerned to discover that the DMO was not adequately monitoring the realised Australian Industry Content promised in the contract. The ANAO found that:

> Defence informed the ANAO that it validates AIC activities under the acquisition and sustainment contracts by examining invoices

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38   The 'Defence Procurement Review – 2003',
        <http://www.defence.gov.au/publications/dpr180903.pdf> accessed 4 November 2014.

39   Mr Warren King, Chief Executive Officer, Defence Materiel Organisation, Committee Hansard, 24 October 2014, p. 4.

40   ANAO, *Submission 2.1.*, p. 5.

41   ANAO, *Submission 2.1.*, p. 5.

and accounting documentation. However, Defence has not
assessed the value of the AIC activities actually delivered.[42]

6.44   The Committee considers that the Department of Defence and DMO
should publish annually figures on Australian Industry Content in its
acquisition and sustainment contracts.

Recommendation 10

6.45   **The Committee recommends that the DMO allocate adequate resources
to measure the delivered Australian Industry Content in its acquisition
and sustainment contracts. Considerations should be given to
publishing these figures either through the Portfolio Budget Statements
or the Major Projects Report.**

Dr Andrew Southcott MP
Chair

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42   ANAO, Audit Report No. 52 (2013-14), *Multi-Role Helicopter Program*, p. 199.

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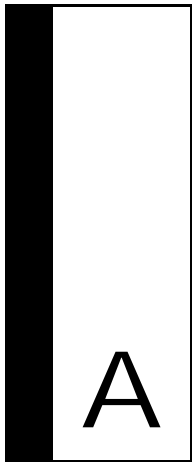
Appendix A – Submissions

1	Department of the Environment
2	Australian National Audit Office
2.1	Australian National Audit Office
2.2	Australian National Audit Office
3	Australian Securities and Investments Commission
4	Defence Materiel Organisation
5	Australian Customs and Border Protection Service
5.1	Australian Customs and Border Protection Service
5.2	Australian Customs and Border Protection Service
6	IP Australia
7	Department of Defence
8	Australian Taxation Office
9	Department of Human Services

B

Appendix B – Public Hearings

Thursday 23 October 2014

Department of the Environment

      Mr Malcolm Thompson, Deputy Secretary

      Mr Dean Knudson, First Assistant Secretary

      Mr Shane Gaddes, Assistant Secretary

Australian National Audit Office

      Mr Ian McPhee, Auditor-General

      Mr Mark Simpson, Executive Director

      Mr Grant Caine, Senior Director

      Ms Jane Whyte, Senior Director

Australian Taxation Office

      Mr Mark Jackson, Deputy Registrar

      Mr John McAlister, Assistant Registrar

Australian Securities and Investments Commission

      Mr Greg Tanzer, Commissioner

      Ms Rosanne Bell, Senior Executive Leader

      Ms Liesl McKay, Senior Executive

Department of Industry

      Ms Sue Weston, Deputy Secretary

      Mr Graham Tanton, General Manager

      Mr Mike Sibly, General Manager

      Mr Malcolm Young, Solutions Architect

Friday 24 October 2014

Department of Defence

> Major General Jeffery Sengelman
>
> Lieutenant General John Caligari
>
> Mr Geoffrey Brown, Chief Audit Executive

Defence Materiel Organisation

> Mr Warren King, Chief Executive Officer
>
> Rear Admiral Anthony Dalton
>
> Brigadier Andrew Mathewson

Australian National Audit Office

> Mr Ian McPhee, Auditor-General
>
> Dr Tom Ioannou, Group Executive Director
>
> Mr Stuart Turnbull, Executive Director
>
> Mr Ray McNally, Senior-Director
>
> Mr David Grey, Executive Director
>
> Mr Alex Doyle, Senior Director

Australian Customs and Border Protection Service

> Mr Andrew Choules, Director
>
> Mr Stephen Hayward, National Manager
>
> Mr Anthony O'Connor, National Manager

Australian Taxation Office

> Mr Daniel Keys, Assistant Commissioner

Department of Human Services

> Mr Gary Sterrenberg, Chief Information Officer
>
> Mr Colin McLean, Chief Information Security Officer

Australian Signals Directorate

> Major General Stephen Day, Deputy Director

Thursday 30 October 2014

Australian Customs and Border Protection Service

> Mrs Karen Harfield, National Director Intelligence
>
> Mr Jagtej Singh, National Manager

Department of Agriculture

Ms Rona Mellor, Deputy Secretary

Ms Raelene Vivian, First Assistant Secretary

Ms Nicola Hinder, Assistant Secretary

Dr Andrew Robinson, Deputy Director

Australian National Audit Office

Ms Barbara Cass, Group Executive Director

Dr Tom Clarke, Executive Director

Ms Alison Roach, Senior Director