

Performance Audit Report No. 3 (2015-16)

Regulation of Great Barrier Reef Marine Park Permits and Approvals

- 3.1 Chapter 3 focuses on the Joint Committee of Public Accounts and Audit (JCPAA) inquiry into Australian National Audit Office (ANAO) Report No. 3 (2015-16), *Regulation of Great Barrier Reef Marine Park Permits and Approvals*, Great Barrier Reef Marine Park Authority (GBRMPA). The chapter comprises:
- inquiry context and background
 - ANAO report overview
 - Committee review of evidence
 - Committee comment

Inquiry context and background

- 3.2 In recognition of the environmental significance of the reef, the Australian Government established the Great Barrier Reef Marine Park (Marine Park) under the *Great Barrier Reef Marine Park Act 1975* (GBRMP Act).¹ The Marine Park was established to provide for the long term protection and conservation of the environment, biodiversity and heritage values of approximately 344,000 square kilometres of the Great Barrier Reef region.

¹ The regulatory framework for the Marine Park includes the GBRMP Act and a number of subsidiary legislative instruments: the GBRMP Zoning Plan 2003; Plans of Management; and the GBRMP Regulations 1983.

Subsequently, in 1981, the Great Barrier Reef was declared a World Heritage Area.

- 3.3 GBRMPA was established in 1975 under the GBRMP Act. The GBRMP Act prohibits the conduct of particular activities in the Marine Park without a permit granted by GBRMPA, including most commercial activities; operation of jetties, marinas, pontoons, and moorings; significant works, such as dredging and spoil dumping; and educational and research programs.² GBRMPA and the Queensland Parks and Wildlife Service operate a joint application and assessment process for permit requests covering the Marine Park and Queensland's Great Barrier Reef Coast Marine Park. Under current arrangements, GBRMPA assumes the lead role in the assessment of joint permits, although delegates from each jurisdiction are required to approve the permits.³
- 3.4 GBRMPA assesses approximately 400 permit applications each year. Over 10 years from 2004–05 to 2013–14, 4296 permits (excluding permit transfers) were issued, containing 6337 individual permissions.⁴ As at August 2014, 1334 permits containing 2408 individual permissions were current – 85.8 per cent related to tourism operations (1488), operating a facility or mooring (311) and research activities (267).⁵ Monitoring of permit holders' compliance with permit conditions is undertaken through a combination of desk-based compliance monitoring and targeted site inspections by GBRMPA's Environmental Assessment and Protection (EAP) Section, and vessel, aerial and land-based patrols/surveillance by GBRMPA and its partner agencies⁶ under the Joint Field Management Program. At any one time, GBRMPA and its partner agencies are responsible for monitoring the compliance of approximately 1300 permit holders. In the period from July 2012 to June 2014, there were 76 reported breaches of permit conditions, which resulted in 59 investigations.⁷ (See

2 ANAO, *Regulation of Great Barrier Reef Marine Park Permits and Approvals*, Audit Report No. 3 (2015-16), p. 13.

3 Most visitors to the Marine Park do not require a permit for recreational activities, and most recreational and commercial fishing activities in the Marine Park are subject to state permits and licences issued by Fisheries Queensland outside of the joint permitting system, ANAO, Audit Report No. 3, p. 13, p. 42.

4 Each permit may contain one or more individual permissions. While permit approvals for new applicants are generally issued for one year, multi-year permits are available for those seeking replacement of an expiring permit, ANAO, Audit Report No. 3, p. 13.

5 ANAO, Audit Report No. 3, pp. 13-14.

6 Including Border Protection Command, Queensland Boating and Fishing Patrol, and the Queensland Police Service. The Field Management Compliance Unit, funded under the program, comprises officers from GBRMPA and QPWS.

7 ANAO, Audit Report No. 3, p. 15. (See Table 7.1, p. 113, for investigation results.)

the ANAO report for a detailed description of the Marine Park permit system.)

ANAO report overview

Audit objective, scope and criteria

3.5 The ANAO's audit objective was to assess the effectiveness of GBRMPA's regulation of permits and approvals within the Great Barrier Reef Marine Park.⁸ To form a conclusion against this objective, the ANAO adopted the following high-level criteria:

- an effective process to assess permit applications and attach enforceable conditions has been established;
- a structured risk management framework to assess and manage compliance risks has been implemented;
- an effective risk-based compliance program to communicate regulatory requirements and to monitor compliance with permit conditions and regulatory objectives has been implemented; and
- arrangements to manage non-compliance are effective.⁹

3.6 The ANAO reviewed GBRMPA's files and records,¹⁰ accompanied departmental staff on compliance monitoring activities and assessed the controls for two relevant IT systems. Staff from GBRMPA, and staff of QPWS assigned to the Joint Field Management Program, were also interviewed, and the views of relevant stakeholders sought.¹¹

ANAO overall conclusion

3.7 Overall, the ANAO report concluded that:

identified shortcomings in GBRMPA's regulatory processes and, more particularly, its regulatory practices have undermined the effectiveness of the permitting system as a means of managing risks to the Marine Park. These shortcomings were identified across a broad range of GBRMPA's regulatory activities, including

8 ANAO, Audit Report No. 3, p. 39.

9 ANAO, Audit Report No. 3, p. 39. The ANAO examined GBRMPA's assessment of permit applications against Commonwealth requirements only.

10 The ANAO examined samples of permit application assessments and monitoring of current permits over the period July 2012 to June 2014, and all 'breach of permit' enforcement actions over the period July 2012 to June 2014, ANAO, Audit Report No. 3, p. 39.

11 This included eight responses from permit holders (from 152 requests) and 17 responses from general stakeholders (from 67 requests), as well as two unsolicited responses, ANAO, Audit Report No. 3, p. 40.

its assessment of permit applications, monitoring of permit holder compliance and response to non-compliance.¹²

ANAO recommendations and agency response

3.8 Table 3.3 sets out the recommendations from ANAO Report No. 3—GBRMPA agreed to all five recommendations without qualification.¹³

Table 3.3 ANAO recommendations, Report No. 3 (2015-16)

1	To improve the processing of Marine Park permit applications, the ANAO recommends that GBRMPA: <ul style="list-style-type: none"> (a) review and finalise standard operating procedures and administrative guidance for the permit application and assessment process (b) reinforce to staff the need to document whether permit application assessment requirements have been addressed
2	To improve the rigour of permit application assessment and decision-making processes, the ANAO recommends that GBRMPA: <ul style="list-style-type: none"> (a) prepare and revise permit application and risk assessment templates to better address assessment considerations and risks relevant to the various permit types (b) reinforce to staff the importance of preparing assessment reports for delegates that adequately address regulatory assessment requirements
3	To improve the effectiveness of permit conditions used to manage risks to the Marine Park from permitted activities, the ANAO recommends that GBRMPA periodically review the adequacy of standard permit conditions
4	To improve the effectiveness of permit compliance monitoring, the ANAO recommends that GBRMPA: <ul style="list-style-type: none"> (a) develop and enhance standard operating procedures for undertaking compliance monitoring activities (including in relation to post-approval reporting requirements) (b) implement a coordinated, risk-based program of compliance monitoring activities
5	To improve processes for responding to instances of permit non-compliance, the ANAO recommends that GBRMPA: <ul style="list-style-type: none"> (a) update and finalise guidance documentation for managing non-compliance (b) reinforce to staff the need for all instances of non-compliance by permit holders to be reported and recorded in the Compliance Management Information System (c) document the reasons for key decisions taken during permit investigations, including whether to investigate incidents and enforcement decisions (d) verify that enforcement action has been undertaken prior to the closure of investigations

¹² ANAO, Audit Report No. 3, p. 15.

¹³ For details of GBRMPA's response to the ANAO's recommendations, see ANAO, Audit Report No. 3, pp. 23-24, pp. 125-126.

Committee review of evidence

- 3.9 The Committee's key sources of evidence for this inquiry were the ANAO's audit report, evidence given by representatives from the ANAO and GBRMPA at the Committee's public hearing on 11 February 2016, and submissions from agencies and industry (see details of public hearings and submissions at Appendixes A and B).
- 3.10 The Committee also investigated relevant public sector frameworks, and past reviews, reports and audits as detailed below.

Key audit themes and relevant public sector frameworks

- 3.11 A key audit theme emerging from the Committee's inquiry into ANAO Report No. 3 is effective risk management in the context of better practice administration of regulation. Key frameworks here are the relevant sections of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and PGPA Rule 2014, and associated guidance. As the primary piece of Commonwealth resource management legislation, the PGPA Act establishes a single system of governance and accountability for public resources. In particular, s16 of the PGPA Act, supported by the *Commonwealth Risk Management Policy* (2014), requires agencies to establish appropriate systems for the management of risk. In terms of GBRMPA's regulation of Marine Park permits, this includes implementation of a structured risk management framework to assess and manage compliance risks, and an effective risk-based compliance program to communicate regulatory requirements and monitor compliance with permit conditions. Another key reference is the ANAO Better Practice Guide on *Administering Regulation: Achieving the Right Balance* (2014).¹⁴

Relevant reviews, reports and audits

- 3.12 There have been a range of reviews, reports and audits concerning GBRMPA and the Marine Park, including:
- ANAO Report No. 33, *Commonwealth Management of the Great Barrier Reef* (1998)
 - ANAO Report No. 8, *Commonwealth Management of the Great Barrier Reef Follow-up Audit* (2003)

14 See also Department of Prime Minister and Cabinet, *Australian Government Guide to Regulation* (2014). Chapter 1 further discusses risk management in the Commonwealth public sector as a key audit theme across the three ANAO reports covered by the Committee's report.

- GBRMPA, *Great Barrier Reef Outlook Report 2014 (2014)*, *Great Barrier Reef Region Strategic Assessment (2014)* and *Great Barrier Reef Region Strategic Assessment: Program Report (2014)*
- Senate Environment and Communications References Committee, *Management of the Great Barrier Reef (September 2014)*
- Australian and Queensland Governments, *Reef 2050 Long-Term Sustainability Plan (March 2015)*

Key issues

- 3.13 The Committee focused on four matters regarding the ANAO report findings and evidence provided at the public hearing and in submissions to the inquiry:
- implementation of ANAO recommendations and stakeholder consultation
 - permit application processing, assessment and approval
 - managing compliance
 - responding to non-compliance

Implementation of ANAO recommendations and stakeholder consultation

- 3.14 Two previous audits of GBRMPA have been undertaken.¹⁵ During the Committee's inquiry, the ANAO raised no issues regarding implementation of recommendations from these reports.
- 3.15 GBRMPA agreed to all five recommendations from the latest ANAO audit. At the public hearing and in its submission to the inquiry, GBRMPA provided an update on implementation of these recommendations – each of which is discussed in the relevant sections below.¹⁶ Importantly, the Auditor-General noted that GBRMPA had 'acknowledged weaknesses in its permit assessment and compliance management ... and commenced work on a number of initiatives to strengthen existing practices'.¹⁷
- 3.16 GBRMPA emphasised that a project to strengthen the permissions system had commenced prior to the ANAO audit (the ANAO report was

15 ANAO Report No. 33, *Commonwealth Management of the Great Barrier Reef*, 1998, and ANAO Report No. 8, *Commonwealth Management of the Great Barrier Reef Follow-up Audit*, 2003.

16 Implementation progress is tracked through GBRMPA's Audit Committee, as well as its board and Executive Management Group, GBRMPA, *Submission 1*, p. 5. GBRMPA's *Corporate Plan 2015–2020* also reflects the ANAO recommendations, ANAO Report No. 3, p. 24.

17 Mr Grant Hehir, Auditor-General, ANAO, 'Opening statement by Auditor-General', *Submission 3*, p. 2.

completed in August 2015), in response to commitments in its 2014 *Great Barrier Reef Region Strategic Assessment: Program Report*:

The 2014 Great Barrier Reef strategic assessment and program report had already highlighted improvements were needed to reduce duplication and to improve rigor, consistency and transparency in our permission system. Prior to the audit, we had initiated a project to do this work and with the results of the audit and the advice from the ANAO, we were readily able to incorporate those into the project and implement the recommendations of the audit report to better address risks and regulatory requirements.¹⁸

- 3.17 GBRMPA noted that it had therefore ‘already identified the need to strengthen its permissions system through commitments in the ... *Program Report* and commenced “strengthening permissions system” activities as part of its 2014-15 work program’, with the ANAO audit recommendations then being rolled into this project.¹⁹ Actions undertaken during 2014-15 included reviewing policies, drafting guidelines and updating risk assessments, implementation of changes to ensure all alleged non-compliance is recorded and managed through the Compliance Management Information System, and development of a training program on the permissions system.²⁰
- 3.18 GBRMPA also outlined its two-tranche timeline for implementation of improvements to the permit system over four years.²¹ The first tranche is due for implementation on 1 July 2017 and the second tranche in 2020.²² An important component of this work is GBRMPA’s *Strengthening Permissions Compliance Action Plan 2015-2020* (September 2015) and *Annual Permissions Compliance Plan 2015-16* (October 2015), which are intended to deliver outcomes including an ‘enhanced process to identify, develop and apply enforceable permission conditions in order to manage risks to the Marine Park’ and an ‘enhanced risk-based program for the assessment of

18 Dr Russell Reichelt, Chairman, GBRMPA, *Committee Hansard*, 11 February 2016, p. 1. GBRMPA’s *Great Barrier Reef Region Strategic Assessment: Program Report* (2014) included an assessment of its permit system and made commitments to progressively strengthen relevant policies, guidance material and support tools, ANAO, Audit Report No. 3, p. 37.

19 ANAO, Audit Report No. 3, pp. 23-24.

20 ANAO, Audit Report No. 3, p. 24.

21 Mr Bruce Elliot, General Manager, Biodiversity Conservation and Sustainable Use, GBRMPA, *Committee Hansard*, 11 February 2016, p. 1.

22 GBRMPA, *Submission 1*, pp. 4-5.

regulatory risks so enforcement resources and consequential actions can be efficiently, effectively and proportionately targeted'.²³

- 3.19 There was interest at the public hearing in further exploring GBRMPA's implementation timeframe for its project to strengthen the permit system, as well as progress to date. Of particular interest was why this process appeared to be taking such a lengthy period of time, with the project due to be completed in 2020, some six years after the 2014 *Great Barrier Reef Region Strategic Assessment: Program Report* had originally identified the need for improvements in the permit system and action in response to this report had commenced. GBRMPA responded that the 'work has begun', but 'essentially, there were no new people to do it':

Our dilemma is that we had to take people off processing permits to improve the permit system, because we are also handling a general tightening of staff numbers and things that has occurred right across the APS. Essentially, there were no new people to do it, but to actually improve the system you have to take some people away to do that.²⁴

- 3.20 GBRMPA had reduced overall staffing levels by 17 full-time equivalents (FTE) in the 2014-15 financial year in response to the completion of non-ongoing programs and ongoing efficiencies.²⁵ Three out of around 21 FTE in GBRMPA's permit section – some 14 per cent – had been shifted from permit approvals to improving the permit framework and GBRMPA 'added additional funding to that section for some contract work to be done'.²⁶ GBRMPA also explained that its two-tranche approach to implementation would enable any changes made to the permit system, 'be they regulatory changes, policies, guidelines', to be introduced in 'lump sum so that it does not have a continuous change for the permittees ... But the work to prepare for each of those tranches takes a little bit of time'.²⁷ GBRMPA confirmed that some projects were due to be completed by the end of this financial year and progress was 'on target against the project plan'.²⁸

23 GBRMPA, *Strengthening Permissions Compliance Action Plan 2015-2020* (September 2015), p. 4 – see Senate Standing Committee on Environment and Communications Legislation, GBRMPA: Answer to Question on Notice No. 154, Supplementary Budget Estimates 2015-16, 19 October 2015.

24 Dr Reichelt, GBRMPA, *Committee Hansard*, 11 February 2016, p. 2.

25 GBRMPA, *Submission 1.2*, p. 1. The following efficiency dividends have been applied to GBRMPA: 2014-15 financial year: \$289 000; and 2015-16 financial year: \$540 000, GBRMPA, *Submission 1.2*, p. 1.

26 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 2.

27 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 1.

28 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, pp. 1-2.

3.21 The ANAO noted that GBRMPA's response to the audit recommendations was 'encouraging' – 'the response to the report itself outlined a number of initiatives that the authority was implementing. They were encouraging given some of the areas that we had identified'.²⁹ However, the ANAO pointed to the need for GBRMPA to more rapidly progress some of the 'easy win type activities' and 'quicker initiatives', to generate efficiencies that could then provide added momentum in terms of the overall process to improve the permit system:

The weaknesses we have identified were pretty much across the continuum of regulatory activity from the initial receipt of applications through until investigations at the other end. There is a large body of work in front of the authority ... they have put a plan in place and they are looking to do that in tranches. From our perspective, we would be looking for some of those easy win type activities but also some of the quicker initiatives such as guidance and procedures. What we did notice from the authority is that they tried to establish as an efficient a process as possible, so they put in place templates, template risk assessments and template assessments. Some of those were not quite tailored well enough to enable people to use them as they currently are, so some more work in that space should generate some efficiencies, which ... will then be able to be built into the process.³⁰

3.22 There was also interest in how GBRMPA was consulting with stakeholders on changes to the permit system. Telstra's submission to the Committee's inquiry emphasised the importance of stakeholder consultation on this matter, noting that it is in the 'interest of all stakeholders for ... guidance and procedures to be made publicly available and for stakeholders to have an opportunity to comment on relevant provisions'.³¹ GBRMPA confirmed that its consultation with stakeholders was ongoing,³² and that it had recently completed a two-month public consultation period that had also targeted primary stakeholders – 'as part of the project we consulted quite heavily with our stakeholders on their views in terms of some of these issues which were raised in the audit and the efficiencies we are trying to gain'.³³ GBRMPA explained that it had regularly consulted on this matter through a range of

29 Mr Mark Simpson, Executive Director, Performance Audit Services Group, ANAO, *Committee Hansard*, 11 February 2016, p. 4.

30 Mr Simpson, ANAO, *Committee Hansard*, 11 February 2016, p. 4.

31 Telstra, *Submission 2*, p. 2.

32 Dr Reichelt, GBRMPA, *Committee Hansard*, 11 February 2016, p. 6.

33 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, pp. 5-6.

formal mechanisms as well, including reef advisory committees on tourism and Indigenous management, and 12 local marine advisory committees with representatives from tourism, fishing, recreation and local government.³⁴ It had also met regularly with the tourism industry and the Queensland Ports Association.³⁵

Permit application processing, assessment and approval

- 3.23 The Auditor-General concluded that, 'while GBRMPA has well-established arrangements for processing and assessing permit applications', there were 'weaknesses in the quality and completeness of assessments caused by fragmented and incomplete guidance for staff, incomplete records, insufficient consideration of assessment requirements and limited assurance from quality control processes'.³⁶
- 3.24 The ANAO findings regarding permit application processing focused on improved guidance materials and documentation. A summary of the relevant key points from the ANAO report is set out below:
- **Guidance materials:** While GBRMPA has produced a range of guidance materials to underpin its processing of permit applications, the materials are fragmented and unclear in parts and do not clearly address all relevant requirements³⁷
 - **Documentation:** over half of the assessment checksheets (56 per cent) examined by the ANAO were incomplete ... which increases the risk that relevant information was not obtained to inform the delegate's decision on whether to grant or refuse a permit³⁸
- 3.25 The ANAO findings regarding permit application assessment focused on improved templates and assessment reports. A summary of the relevant key points from the ANAO report is set out below:
- **Assessment and risk templates:** While the template-based assessments [for routine permit applications] took into account many requirements, they were, in general, not sufficiently tailored to address all applicable requirements – particularly discretionary considerations. Similarly, the customised assessments prepared for non-routine applications also took into account most, but not all, mandatory and discretionary regulatory requirements³⁹

34 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 6.

35 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 6.

36 Mr Hehir, ANAO, 'Opening statement by Auditor-General', *Submission 3*, p. 1.

37 ANAO, Audit Report No. 3, p. 17.

38 ANAO, Audit Report No. 3, p. 18, p. 51.

39 ANAO, Audit Report No. 3, pp. 18-19.

- **Assessment reports:** assessment reports prepared for delegates did not incorporate all relevant information to inform the delegate's decision to issue or refuse a permit⁴⁰
- 3.26 The ANAO findings regarding permit approval focused on improved standard permit conditions and documentation. A summary of the relevant key points from the ANAO report is set out below:
- **Standard permit conditions:** While most permit conditions have been satisfactorily designed to address many of the identified high and medium-rated risks to the Marine Park environment, some conditions do not sufficiently address identified risks⁴¹
 - **Documentation:** Overall ... the basis on which delegates have decided to grant or refuse a permit have been appropriately documented ... [but] the basis on which the delegate decided to grant a permit for an activity posing high risks to the Marine Park [to dump dredge spoil off the coast of Abbot Point] was not fully documented until one and a half months after the initial decision had been made⁴²
- 3.27 The ANAO made three recommendations regarding GBRMPA's permit application processing, assessment and approval.
- 3.28 On the ANAO's recommendation that GBRMPA improve permit application processing by finalising standard operating procedures and administrative guidance, and documenting whether permit application assessment requirements have been addressed (Recommendation 1), GBRMPA confirmed that a project is 'well underway to develop guidelines for permit applications and assessments. The draft guidelines are planned for public consultation in mid-2016'.⁴³ Further, internal training on the new guidelines is scheduled for early 2017, and training in more detailed operating procedures will be rolled out progressively during 2017.⁴⁴ GBRMPA also noted that, as the agency moves towards a more fully automated system of managing the permissions application assessment process, it will become 'easier to ensure all requirements have been addressed during the assessment process'.⁴⁵
- 3.29 On the ANAO's recommendation that GBRMPA improve permit application assessment by revising permit application and risk assessment templates to better address risks relevant to the various permit types, and

40 ANAO, Audit Report No. 3, p. 19.

41 ANAO, Audit Report No. 3, p. 20.

42 ANAO, Audit Report No. 3, p. 79.

43 GBRMPA, *Submission 1*, p. 1.

44 GBRMPA, *Submission 1*, p. 2.

45 GBRMPA, *Submission 1*, p. 2.

prepare assessment reports for delegates that adequately address regulatory assessment requirements (Recommendation 2), GBRMPA noted that it is in the 'initial development stages of producing an online application system, which will link directly to the Reef Management System database to allow more efficient processing of applications' and is 'updating the risk assessment report template to explain why each criterion was deemed relevant or irrelevant'.⁴⁶ Further, GBRMPA is 'proposing making consideration of all assessment criteria mandatory, as recommended by the audit report', and the 'risk assessment framework is currently under review to bring it into alignment with the agency's broader risk management framework', with this work anticipated to be completed by June 2016 so that public consultation can occur.⁴⁷

3.30 On the ANAO's recommendation that GBRMPA improve permit approval processes by periodically reviewing the adequacy of standard permit conditions used to manage risks from permitted activities, (Recommendation 3), GBRMPA noted that work in this area is 'ongoing', including updating the assessment report template and procedures to draw delegates' attention to any special permit conditions or changes to standard permit conditions, and ensure delegates clearly document reasons for making decisions at the time the decision is made.⁴⁸ Additional permit conditions are also being considered to better manage certain risks, and letter templates are being progressively updated to ensure the decision notice highlights any permissions that were not granted, or any changes to conditions where a permit allows an existing use to continue.⁴⁹

3.31 The public hearing further explored the timeliness of GBRMPA's permit application assessment. Comments provided to the ANAO by permit holders and general stakeholders identified permit assessment timeliness as an area of concern.⁵⁰ Similarly, Telstra's submission to the inquiry observed that the permit process would 'benefit from the introduction of mandated timeframes surrounding the permit decision making process'.⁵¹ The ANAO report noted that 'assessment of permit applications by GBRMPA has not been timely' and that 'over the period from July 2012 to June 2014, GBRMPA achieved its 60-day target timeframe for assessing routine applications in 57 per cent of cases (413 of the 720 routine

46 GBRMPA, *Submission 1*, p. 2.

47 GBRMPA, *Submission 1*, p. 2.

48 GBRMPA, *Submission 1*, p. 3.

49 GBRMPA, *Submission 1*, p. 3.

50 ANAO, *Audit Report No. 3*, p. 19. See also Mr Simpson, ANAO, *Committee Hansard*, 11 February 2016, p. 5.

51 Telstra, *Submission 2*, p. 2.

- applications), with a further 81 applications taking between 120 days and around two years to complete'.⁵²
- 3.32 GBRMPA confirmed it no longer had a key performance indicator (KPI) for 60 days (12 weeks) and was currently advising permittees that its average assessment time for a Level 1 permit is 16 weeks: 'it has actually been around 16 weeks for the last couple of years, and it will probably remain there until such time as we start to see the efficiencies of the work that we are doing right now'.⁵³ GBRMPA explained that the average permit assessment time had therefore not effectively changed – 'it is still what it was, so that 57 per cent is probably because it was already 16 weeks in reality. We have checked the statistics back several years. It has been 14 to 16 weeks probably for the last four or so years'.⁵⁴ Reasons for the average 16-week processing time included that 'we had to take people off processing permits to improve the permit system ... Another reason is that the numbers of ... level 2 permits have gone up'.⁵⁵
- 3.33 As to current outcome reporting against the performance target of a 16-week average permit assessment time, since 1 January 2015 GBRMPA had received 239 Level 1 permit applications, with 190 (79 per cent) being decided within the 16 week timeframe.⁵⁶ GBRMPA noted that it expects the 16-week KPI to 'improve as the efficiencies being implemented as part of our program to strengthen our permissions system are realised'.⁵⁷ As GBRMPA further commented, 'we have already started to implement an online permit system which will allow for permittees to more simply put their applications in ... so our whole permit decision process will become quicker ... the efficiencies that we are looking at doing at the moment ... will allow us to bring that down to more reasonable time frames'.⁵⁸
- 3.34 There was interest in what a revised permit assessment KPI might be as result of these efficiencies. However, Mr Bruce Elliot, General Manager, GBRMPA, responded:

52 ANAO, Audit Report No. 3, p. 19.

53 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 2.

54 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 2.

55 Dr Reichelt, GBRMPA, *Committee Hansard*, 11 February 2016, p. 2.

56 GBRMPA, *Submission 1.1*, p. 1. (It was noted that this figure does not include Level 1 applications received in December 2015, which have yet to be finalised because the 16-week timeframe has not yet been reached, p. 1.) Permit applications are graded by GBRMPA on a four-point scale based on the risk that the proposed activity poses to the Marine Park. Permit assessment templates are used for Level 1 (routine) permits, representing over 90 per cent of all permit applications, and permit application assessments are customised for higher level (non-standard) permits, ANAO, Audit Report No. 3, p. 43.

57 GBRMPA, *Submission 1.1*, p. 1.

58 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, pp. 1-2.

It is not a question I can answer at the moment because we have not really got a feel for how these efficiencies we are looking at at the moment will tighten things up. For example, the permits online system: it will not accept an application until all of the fields have been filled in and, therefore, we have sufficient information to do the processing. That will mean that it will obviously be at least 30 days because of the native title notification, and we also have to do an assessment against it and make sure that that assessment is double-checked by a manager or supervisor.⁵⁹

3.35 GBRMPA concluded that, 'in theory, we could get down to that KPI of 60 days, but the other thing it will depend on is the volume we have coming in at any one time'.⁶⁰ On this point, it was clarified that the permit application workflow 'tends to be seasonal' – 'we tend to have less at the end of the calendar year and we tend to have more in the middle of the calendar year, so it does go through a cycle each year'.⁶¹ On whether GBRMPA's staffing was correspondingly seasonal, Mr Elliot explained that, 'no, staffing is consistently flat. We can surge if we need to, because there are other people in the agency who understand our permit system and who have worked there before'.⁶²

3.36 As to why a 60-day (12-week) KPI had originally been established, given an actual average permit assessment time of 16 weeks, Mr Elliot, responded: 'I cannot answer that question, because the KPI was probably set at a time, and was probably sitting there for some years without people reviewing it, but I would say that that KPI of 60 days was probably unachievable and probably will be unachievable for quite some time'.⁶³ GBRMPA Chairman, Dr Russell Reichelt, further observed:

this is the type of thing that our strategic assessment prior to the audit highlighted maybe three years ago. It really called us to radically overhaul this system, and that is what we had already begun, and I think the ANAO have correctly pointed out, firstly, that we are on the right track but that we need to do more. So we acknowledge that we need to improve it, but the KPI was established prior to the strategic assessment.⁶⁴

3.37 There was interest in further understanding the critical path running through the permit approval process that had resulted in a 16-week

59 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 3.

60 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 3.

61 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 3.

62 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 3.

63 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 2.

64 Dr Reichelt, GBRMPA, *Committee Hansard*, 11 February 2016, p. 2.

timeframe for permit assessment as opposed to a 60-day (12-week) timeframe. GBRMPA explained that there is a minimum processing timeframe of 30 days, and the processing time starts from the moment the application is lodged, even if the application is incomplete:

the minimum that can occur is 30 days because there is the mandatory native title notification, and that is a process that takes 30 days. The other thing that tends to create most of the time – and this problem will be solved by our online application system that we are developing at the moment – is when we receive an application, it often does not have sufficient information for us to do an assessment on it. We have to have enough information to do an assessment against the mandatory and discretionary criteria in our regulations. So we spend a lot of time going backwards and forwards to the ‘permittee’ to source the additional information we need. That is one of the things that does slow it down ...

If we started the clock when we had all information necessary to do an application, it would be a significantly shorter period of time.⁶⁵

- 3.38 Another area of interest was the potential economic impact of permit approval delays. GBRMPA clarified that, ‘if it is a continuation of a permit, there is no impact because our legislation allows that as long as they put the application in before their permit expires, their permit can continue to be used on their existing permit until the continuation is processed’.⁶⁶ GBRMPA further emphasised that new applications ‘get priority’,⁶⁷ and that it also received ‘other short notice applications’ – ‘with the potential for coral bleaching on the Great Barrier Reef this year, we have had a flood of research permit applications. They all have to be processed reasonably quickly because they relate to this summer. Recently we have had one for a desalination plant at Palm Island because of water shortages. Obviously we are going to do that one as quickly as we can’.⁶⁸ GBRMPA also confirmed its policy of encouraging early consultation, prior to an organisation making a permit application.⁶⁹

65 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 3.

66 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 4.

67 Dr Reichelt, GBRMPA, *Committee Hansard*, 11 February 2016, p. 4.

68 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 4.

69 Dr Reichelt, GBRMPA, *Committee Hansard*, 11 February 2016, p. 5.

Managing compliance

- 3.39 The Auditor-General concluded that, 'in general, permit monitoring undertaken collectively by GBRMPA and its partner agencies has been insufficient to determine permit holders' compliance with conditions'.⁷⁰
- 3.40 The ANAO findings regarding compliance intelligence, risk assessment and managing compliance focused on developing standard operating procedures for compliance monitoring and implementing a risk-based approach. A summary of the relevant key points from the ANAO report is set out below:
- **Standard operating procedures and risk-based approach:**
Improved monitoring of permit holders' compliance with post-approval reporting requirements and the establishment of a risk-based program of supplementary monitoring would better position GBRMPA to manage the risks posed to the Marine Park by permitted activities ... GBRMPA ... did not initiate or conduct monitoring activities, on a risk basis, for 104 permits (89.7 per cent) examined by the ANAO over the period from July 2012 to July 2014.⁷¹
- 3.41 On the ANAO's recommendation that GBRMPA improve permit compliance monitoring by enhancing standard operating procedures and implementing a risk-based program (Recommendation 4), GBRMPA pointed to the development of its *Strengthening Permissions Compliance Action Plan 2015-2020* (September 2015) and *Annual Permissions Compliance Plan 2015-16* (October 2015), noting that these plans will deliver an enhanced permission compliance program, including ongoing development of guidelines and prioritisation of risks.⁷²

Responding to non-compliance

- 3.42 The Auditor-General concluded that, 'until recently, many instances of permit holder non-compliance were not identified by GBRMPA staff and not recorded centrally for assessment and possible enforcement action'.⁷³ Further, 'limited guidance for investigators when determining appropriate enforcement responses to non-compliance, when coupled with poorly documented reasons for enforcement actions, makes it difficult for GBRMPA to demonstrate the basis for its enforcement decision-making'.⁷⁴

70 Mr Hehir, ANAO, 'Opening statement by Auditor-General', *Submission 3*, p. 1.

71 ANAO, Audit Report No. 3, pp. 21-22.

72 GBRMPA, *Submission 1*, p. 3.

73 Mr Hehir, ANAO, 'Opening statement by Auditor-General', *Submission 3*, p. 1.

74 Mr Hehir, ANAO, 'Opening statement by Auditor-General', *Submission 3*, pp. 1-2.

3.43 The ANAO findings regarding responding to non-compliance focused on improved guidance materials, record-keeping, documentation and timeliness. A summary of the relevant key points from the ANAO report is set out below:

- **Guidance materials:** While GBRMPA is working to develop revised compliance policy, strategy and guidance documentation, the material developed to date is generally in draft form and does not address all fundamental regulatory requirements⁷⁵
- **Record-keeping:** many instances of non-compliance that were evident from permit monitoring activities undertaken by the EAP Section were not reported to the FMCU and, as a result, were not recorded in the Compliance Management Information System (CMIS) to enable analysis and assessment for potential enforcement action⁷⁶
- **Documentation and timeliness:** extended timeframes were required to finalise a significant proportion of investigations ... In general, the documentation of enforcement decision-making in relation to permit-rated non-compliance has been poor ... there were a small number of cases (related to the education of permit holders) where the investigations were closed despite enforcement action not having been undertaken⁷⁷

3.44 On the ANAO's recommendation that GBRMPA improve its response to permit non-compliance by finalising guidance documentation, recording non-compliance in the Compliance Management Information System, documenting reasons for key decisions and verifying enforcement action has been undertaken prior to closure of investigations (Recommendation 5), GBRMPA noted that implementation of the *Strengthening Permissions Compliance Action Plan 2015-2020* (September 2015) includes milestones tied to the delivery of improvements in enforcement.⁷⁸ Development of permissions compliance guidelines was 'ongoing', with individual guidelines progressed on a risk basis.⁷⁹ GBRMPA is also finalising its whole-of-agency compliance management policy, due for release in 2016.⁸⁰ Other actions included delivery of a training program to improve identification of non-compliance; updating of electronic systems used to monitor and report compliance, to include specific permissions compliance fields; and updating of the Compliance

75 ANAO, Audit Report No. 3, p. 22.

76 ANAO, Audit Report No. 3, p. 22.

77 ANAO, Audit Report No. 3, p. 23.

78 GBRMPA, *Submission 1*, p. 4.

79 GBRMPA, *Submission 1*, p. 4.

80 GBRMPA, *Submission 1*, p. 4.

Management Information System to support capture and management of permissions compliance incidents.⁸¹ Compliance Management and Investigation Procedures have also been updated to include requirements for documenting the decision making process, and a procedure for recording investigation outcomes, differentiating between those matters that do and do not proceed to prosecution.⁸²

Committee comment

- 3.45 The Committee notes the seriousness of the Auditor-General's overall conclusion, that shortcomings in GBRMPA's regulatory processes and, more particularly, its regulatory practices have undermined the effectiveness of the permit system as a means of managing risks to the Marine Park.⁸³ Further, these shortcomings were identified across a broad range of GBRMPA's regulatory activities, including its assessment of permit applications, monitoring of permit holder compliance and response to non-compliance.⁸⁴
- 3.46 The Committee is strongly concerned about this finding, given the environmental, social and economic significance of the Great Barrier Reef Marine Park and its World Heritage listing.
- 3.47 The Committee noted that GBRMPA had acknowledged weaknesses in its permit assessment, compliance management and response to non-compliance – and has made some progress in implementing the ANAO audit recommendations. The Committee was pleased to note GBRMPA's current stakeholder consultation process on this matter, including through formal mechanisms.⁸⁵
- 3.48 Overall, however, the Committee is of the view that GBRMPA needs to accelerate its current timeline for implementation of improvements to its regulatory processes and practices – where this is appropriate and will not negatively impact on assessment and compliance processes and outcomes. GBRMPA's two-tranche project to strengthen the permit system is due to be completed in 2020, some six years after GBRMPA's 2014 *Great Barrier Reef Region Strategic Assessment: Program Report* had originally identified the need for improvements. Accordingly, future milestones are distant

81 GBRMPA, *Submission 1*, p. 4.

82 GBRMPA, *Submission 1*, p. 4.

83 Mr Hehir, ANAO, 'Opening statement by Auditor-General', *Submission 3*, p. 1.

84 Mr Hehir, ANAO, 'Opening statement by Auditor-General', *Submission 3*, p. 1.

85 Dr Reichelt, GBRMPA, *Committee Hansard*, 11 February 2016, p. 6; and Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 6.

and progress, while having been made, might be more rapidly advanced. As the ANAO noted, while GBRMPA's response to the audit recommendations has been 'encouraging', it needs to more rapidly progress some of the 'easy win type activities' and 'quicker initiatives', such as guidance and procedures.⁸⁶

- 3.49 GBRMPA's resource constraints are acknowledged.⁸⁷ The Committee appreciates that GBRMPA is under resource pressures and has already reprioritised staff from an assessment to an improvement role. The Committee understands that implementation by GBRMPA of its *Strengthening Permissions Compliance Action Plan 2015-20* should better place the agency to target its limited resources to those risks posing the greatest threat to the Marine Park.⁸⁸ The action plan is intended to deliver outcomes including an 'enhanced risk-based program for the assessment of regulatory risks so enforcement resources ... can be efficiently ... targeted'.⁸⁹ As the ANAO Better Practice Guide on *Administering Regulation: Achieving the Right Balance* states, risk management is an 'integral component of good regulatory administration' and can be used to support the 'efficient allocation of available resources'.⁹⁰ Further, GBRMPA and the ANAO both noted that as system improvements are realised this will generate efficiencies that can be built into the overall process.⁹¹ Accordingly, with the Committee's recommendation to GBRMPA to appropriately accelerate its project to strengthen the permit system, comes the Committee's acknowledgment that there will be a requirement here for either further Commonwealth funding or further targeted risk management.

Recommendation 2

- 3.50 **To improve the effectiveness of the permit system as a means of managing risks to the Great Barrier Reef Marine Park, the Committee recommends that the Great Barrier Reef Marine Park Authority (GBRMPA):**

86 Mr Simpson, ANAO, *Committee Hansard*, 11 February 2016, p. 4.

87 Dr Reichelt, GBRMPA, *Committee Hansard*, 11 February 2016, p. 2. See also GBRMPA, *Submission 1.1*, p. 1 and *Submission 1.2*, p. 1.

88 ANAO, *Audit Report No. 3 (2015-16)*, p. 91.

89 GBRMPA, *Strengthening Permissions Compliance Action Plan 2015-2020* (September 2015), p. 4 — see Senate Standing Committee on Environment and Communications Legislation, GBRMPA: Answer to Question on Notice No. 154, Supplementary Budget Estimates 2015-16, 19 October 2015.

90 ANAO Better Practice Guide, *Administering Regulation: Achieving the Right Balance* (2014), p. 14.

91 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, pp. 1-2; Mr Simpson, ANAO, *Committee Hansard*, 11 February 2016, p. 4; and GBRMPA, *Submission 1.1*, p. 1.

- **appropriately accelerate its projected timeframe, currently planned over two tranches in 2017 and 2020, for implementation of the audit recommendations in ANAO Report No. 3 and other improvements identified by GBRMPA as part of its project to strengthen the permit system**
- **report back to the Committee within six months with details of new implementation dates and milestones, and how the accelerated timeframe will be achieved**

- 3.51 A particular issue that emerged during the Committee's inquiry process was concern regarding the timeliness of GBRMPA's permit assessments (covering processing, assessment and approvals). The ANAO found that GBRMPA has only met its 60-day (12-week) timeframe for assessment of routine permits in 57 per cent of cases.⁹² At the public hearing, GBRMPA confirmed that its current average assessment time for routine permits is 16 weeks, which is what it had actually been for the last four years.⁹³
- 3.52 Although it is far from ideal that assessments have been taking longer than expected, the Committee is pleased to note GBRMPA is now communicating a more realistic timeframe to stakeholders and has started implementing an online permit application system which will help speed up the assessment process.⁹⁴
- 3.53 However, the Committee points to the need for more meaningful and well defined performance information and targets for permit assessment timeframes.⁹⁵ Such performance information could consist of individual targets for each stage of processing, assessment and approval, as well as a target that clearly communicates when stakeholders should expect to be informed of the outcome of their application. The Committee suggests that any targets set should be adjusted over time to reflect improvements in permit assessment timeliness, such as after implementation of the new online application system.

Recommendation 3

- 3.54 **To improve the effectiveness of the permit system as a means of managing risks to the Great Barrier Reef Marine Park, the Committee recommends that the Great Barrier Reef Marine Park Authority implement more effective performance information, including targets,**

92 ANAO, Audit Report No. 3 (2015-16), p. 19.

93 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, p. 2.

94 Mr Elliot, GBRMPA, *Committee Hansard*, 11 February 2016, pp. 1-2.

95 The new Commonwealth performance framework, established under the PGPA Act, and associated PGPA Rule and resource management guidance are important references here.

for permit application processing, assessment and approval timeframes, and continue to monitor and publicly report on performance outcomes in this area.

- 3.55 The Committee notes the Auditor-General's observation of weaknesses in the quality and completeness of assessments caused by fragmented and incomplete guidance for staff, incomplete records, insufficient consideration of assessment requirements and limited assurance from quality control processes.⁹⁶
- 3.56 Of particular concern to the Committee was the Auditor-General's conclusion that, in general, permit monitoring undertaken collectively by GBRMPA and its partner agencies has been insufficient to determine permit holders' compliance with conditions and that, until recently, many instances of permit holder non-compliance were not identified by GBRMPA staff and not recorded centrally for assessment and possible enforcement action.⁹⁷
- 3.57 Where permits are assessed and issued but compliance is inadequately monitored and non-compliance inadequately enforced, this undermines the regulatory system and raises concerns about risks to the reef. Future regulatory activity needs to be focused on both process and outcomes – the Committee therefore welcomes GBRMPA's update on how it is implementing the ANAO's recommendations on compliance matters.⁹⁸
- 3.58 However, given the issues identified across the continuum of GBRMPA's regulatory activities – including permit application assessment, compliance management and response to non-compliance – the Committee is of the view that GBRMPA should report back to the JCPAA on implementation of the ANAO recommendations across each of these specific areas. The Committee does not take reporting back lightly – the administrative burden of this has been considered – but at stake here is improved management of risks to the Great Barrier Reef Marine Park.

Recommendation 4

- 3.59 **To improve the effectiveness of the permit system as a means of managing risks to the Great Barrier Reef Marine Park, the Committee recommends that the Great Barrier Reef Marine Park Authority report back to the Committee at 18 months from the tabling of the Committee's**

96 Mr Hehir, ANAO, 'Opening statement by Auditor-General', *Submission 3*, p. 1.

97 Mr Hehir, ANAO, 'Opening statement by Auditor-General', *Submission 3*, p. 1.

98 See GBRMPA, *Submission 1*, pp. 1-5, and evidence from GBRMPA officials at the public hearing, *Committee Hansard*, 11 February 2016.

report, on:

- **whether it has met the new implementation dates and milestones as previously advised to the Committee in response to recommendation 1**
- **specific implementation details and dates achieved on the following:**
 - ⇒ **for permit application processing, assessment and approval – finalisation of standard operating procedures, guidance materials, and improvements in: documentation by officials, templates, assessment reports and standard permit conditions**
 - ⇒ **for compliance management – finalisation of standard operating procedures and implementation of a risk-based program**
 - ⇒ **for response to non-compliance – finalisation of guidance materials and improvements in: identification of non-compliance, records management, documentation by officials and verification of enforcement action having been undertaken prior to closure of investigation**