



**Australian Government**  
**Department of the Environment**

**Dr Gordon de Brouwer PSM**  
**Secretary**

Ref: EC15-000239

Ms Susan Cardell  
Committee Secretary  
Joint Committee of Public Accounts and Audit  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Ms Cardell

The Joint Committee of Public Accounts and Audit (JCPAA) tabled *Report 447 EPBC Act, Cyber Security, Mail Screening, ABR and Helicopter Program: Review of Auditor-General Reports Nos 32-54 (2013-14)* on 2 March 2015.

Recommendation 4 of Report 447 sought an update from the Department of the Environment within six months of the report being tabled. The Committee specifically requested an update on the department's progress in implementing the business improvement programme addressing the recommendations in the Australian National Audit Office (ANAO) Report No. 43 (2013-14) as well as an update on the assurance framework associated with the One-Stop Shop reforms for environmental approvals under the *Environment Protection and Biodiversity Conservation Act 1999*.

I am pleased to advise that the department has made considerable progress implementing the business improvement programme and addressing the issues identified in the ANAO report. To ensure the ANAO recommendations were effectively addressed, the department contracted Ernst and Young to conduct an internal audit of the implementation of the business improvement programme in December 2014. This audit provided recommendations to improve the department's response to the ANAO report as well as additional recommendations to improve the department's compliance framework more broadly.

A comprehensive summary of the department's response to the ANAO recommendations is provided at **Attachment A**. A key element of the department's response to the audit reports was the development and implementation of a compliance quality assurance framework. The assurance framework was implemented in early 2015 and includes contemporary standard operating procedures, strategic planning, risk assessment and performance reporting to the department's executive.

With respect to the status of the One-Stop Shop reforms for environmental approvals, the respective roles and responsibilities of Commonwealth and state and territory governments under the One-Stop Shop reform will be set out in approval bilateral agreements. These agreements require legislative amendments before the Commonwealth enters into a binding agreement with a state or territory government. While draft approval bilateral agreements have been negotiated with Queensland, New South Wales, Australian Capital Territory, Tasmania, South Australia and Western Australia, legislative amendments have not been progressed at this time and consequently no approval bilateral agreements have been finalised.

When the approval bilateral agreements become operational, state and territory governments will have sole responsibility for approving projects and enforcing approval conditions for projects covered by an approval bilateral agreement. At this time, the department will commence an oversight role, ensuring that each jurisdiction is meeting its agreed commitments and maintaining high environmental standards. This will be achieved through the assurance framework embedded in the agreements, which provides for reviews, audits, regular reporting, data sharing and escalated dispute resolution. In advance of this, the Commonwealth is working with state and territory governments to increase their readiness to effectively implement the agreements. The key elements of the assurance framework under the One-Stop Shop reforms are:

- Mechanisms to address performance assurance and outcomes assurance, escalated dispute resolution processes and risk assessment.
- A Senior Officers Committee with the capacity to select individual projects for audit or additional scrutiny under the approval bilateral agreement.
- Transitional support with Commonwealth officers embedded in each state or territory.

Oversight of the agreements will be conducted by the department's Environment Standards Division. In 2015-16 there will be around 30 staff available within this division to undertake those functions.

A further detailed response in relation to the implementation of the One-Stop Shop Assurance framework is at **Attachment B**. In the absence of any operational approval bilateral agreements, the department's ability to report on the implementation of the assurance framework is premature.

If you require further information regarding the department's response to these audits, please contact Mr Shane Gaddes, Assistant Secretary of the Compliance and Enforcement Branch on 02 6274 2760.

Yours sincerely



Gordon de Brouwer

4 September 2015

**Attachment A:** Work to address recommendations from ANAO audit Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval, as at August 2015.

**Attachment B:** Implementation of the One-Stop Shop reforms for environmental approval

**Attachment C:** EPBC Act Part 9 and Sea Dumping Act 2014/15 Compliance Monitoring Plan



**Work to address recommendations from ANAO audit *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*, as at August 2015**

**Attachment A**

Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
1	<p><b>ANAO Audit Recommendation 1</b></p> <p>Collect, retain, analyse compliance intelligence</p> <p>Identification and regular review of risk factors for approved controlled actions</p>	<p>Enhance and promote the intelligence function which already exists within the department.</p>	<p>Due: 30 July 2014</p> <p>Completed: 30 July 2014</p>	<p>A departmental intelligence working group has been established and intelligence standard operating procedures have been developed.</p> <p>The department's regulatory intelligence capacity will also be enhanced through becoming a member of the National Border Targeting Centre in 2015.</p>
2		<p>The department will finalise its EPBC Act compliance communication strategy.</p>	<p>Due: 30 June 2014</p> <p>Completed: 16 June 2014</p>	<p>Communications strategy has been completed, and agreed to by the department's Executive. For 2015-16, a compliance and enforcement communication plan with stakeholders has been developed.</p>
3		<p>Develop or update specific standard operating procedures across the division, in consultation with the department's intelligence team, to;</p> <ul style="list-style-type: none"> <li>i. Identify the type of intelligence material that should be capture and reported on.</li> <li>ii. Identify the type of intelligence that should be used to inform in decision making.</li> </ul>	<p>Due: 30 June 2014</p> <p>specific procedures approved</p> <p>Completed: 30 June 2014</p>	<p>The department met its commitment to ANAO to develop or update procedures by 30 June 2014.</p> <p>In accordance with the Compliance and Enforcement quality assurance framework, procedures are reviewed and</p>

Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
4		The department will implement a quality assurance framework to ensure that the relevant intelligence resources are utilised in regulatory decision making and that a continuous improvement process is applied.	Due: 30 September 2014 – implement an assurance framework Status: developed and implemented in February 2015	updated at least annually; all procedures were reviewed by 30 June 2015 to ensure currency.  The department has developed and implemented a Quality Assurance Framework to maintain contemporary standard operating procedures, embed strategic planning and risk assessment in compliance processes and ensure performance reporting to the department's Executive.
5	<b>ANAO Audit Recommendation 2</b> Transfer approved controlled actions to compliance monitoring Establish and monitor protocols for transfer of controlled actions	The division will review existing procedures which provide the mechanism and criteria to transfer approved projects to the Compliance and Enforcement Branch.	Due: 30 June 2014  Completed: 30 June 2014	By 30 June 2014, all legacy projects were transferred to the Compliance branch for monitoring.  There is now weekly reporting to senior executive of the Environment Standards Division to ensure project transfers are occurring in a timely fashion.
6		The department will implement a quality assurance framework to ensure that the relevant procedures are implemented, reviewed and updated on a regular basis.	Due: 30 September 2014 – implement an assurance framework Status: developed and implemented in	In accordance with the quality assurance framework, all procedures were again reviewed and updated where relevant by 30 June 2015 to ensure currency.



Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
7	<p><b>ANAO Audit Recommendation 3</b></p> <p>Develop procedures and document submitted assessment/approval material.</p> <p>Target monitoring to approvals with high risk to matters of national environmental significance.</p> <p>Develop a programme of monitoring activities, inspections, and audits.</p>	<p>In collaboration with CSIRO, the department is currently developing a National Environmental Significance Threat and Risk Assessment tool to enable to managers to strategically target their regulatory effort within existing and future resource constraints. The risk indicators used to inform the assessment tool are being identified by the department's intelligence team and in consultation with CSIRO and relevant line areas within the division.</p>	<p>February 2015</p> <p>Due: 30 June 2014 risk assessment tool implemented</p> <p>Completed: 30 June 2014</p>	<p>A proactive compliance monitoring plan has been implemented. The risk assessment tool informs the priorities of the department's Annual EPBC Compliance Monitoring Plan. The 2014-15 plan (<b>Attachment C</b>) is available from the department's website.</p> <p>For 2015-16, the risk assessment tool risk indicators have been refined based on intelligence and outcomes achieved through implementing the 2014-15 plan. The 2015-16 Annual EPBC Compliance Plan is currently being finalised.</p>
8		<p>The department is implementing an approved compliance monitoring strategy.</p>	<p>Due: 30 July 2014</p> <p>Strategy finalised 21 February 2014.</p> <p>Status: implementation ongoing</p>	<p>The 2014-15 compliance monitoring strategy was approved on 21 February 2014. The strategy includes a range of business improvement initiatives as well as targeting high risk projects.</p> <p>The strategy, along with the department's risk model, informs</p>

Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
9		The department will implement a programme developing or updating specific procedures to ensure consistent practices are employed to manage approved projects.	Due: 30 June 2014 specific procedures approved  Completed: procedures reviewed and updated by 30 June 2014. Ongoing maintenance and updating (part of assurance framework).	the Annual EPBC Compliance Monitoring plan.  Through 2015-16, the strategy will be reviewed and updated.  Over 60 procedures are now in place across the Compliance and Enforcement Branch of the department. These include procedures for management of assessment and approval documentation, compliance monitoring, intelligence gathering and investigations.  In accordance with the quality assurance framework, all procedures were reviewed and updated where relevant by 30 June 2015 to ensure currency.
10		Develop supporting procedures for the implementation of the assessment tool.	Due: 30 June 2014  Completed: 30 June 2014	Relevant procedures were completed by 30 June 2014 and again, in accordance with the quality assurance framework, reviewed and updated by 30 June 2015.
11		Ensure relevant procedures are updated to ensure they are considerate of a risk based approach to decision making consistent with the assessment	Due: 30 June 2014  Completed: 30 June	Relevant procedures completed by 30 June 2014.

Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
		tool.	2014	In accordance with the quality assurance framework, all procedures were again reviewed and updated where relevant by 30 June 2015
12		The department will develop a 2014-15 Annual compliance plan following the implementation of the risk assessment tool.	Due: 30 July 2014 develop and implement an annual compliance plan  Completed: 30 July 2014	Informed by the risk assessment tool and the compliance monitoring strategy, the plan includes a programme for monitoring, inspection, and audit activities which take into account the risk assessments contained in the assessment tool. The plan has been approved by senior management.  The 2014-15 plan is available from the department's website.  Informed by refined assessment tool risk indicators and outcomes of the 2014-15 plan ( <b>Attachment C</b> ), the 2015-16 Compliance Monitoring Plan is currently being finalised, informing EPBC operational compliance monitoring KPIs and strategic priorities in 2015-16.
13		The department will implement an assurance	Due: 30 September	The assurance framework which



Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
		<p>framework to ensure that the assessment tool and the annual compliance plan are implemented and reviewed.</p>	<p>2014 – implement an assurance framework Status: developed and implemented in February 2015</p>	<p>has been implemented provides the governance to ensure standard operating procedures are contemporary, strategic planning occurs in a timely fashion, risk assessments inform operational priorities and regular performance reporting to the division's executive occurs.</p>
14	<p><b>ANAO Audit Recommendation 4</b> Record non-compliance by proponents centrally Improve documentation of reasons for enforcement decision</p>	<p>The department's current practice is to report all identified non-compliance to the EPBC compliance section through the compliance email in-box.  The department is currently updating relevant procedures to clearly articulate this process of reporting intelligence and allegations of non-compliance.</p>	<p>Due: 30 June 2014 specific procedures approved  Completed: 30 June 2014</p>	<p>Record keeping practices were already in place at time of completion of audit.  These practices have been strengthened through contemporary standard operating procedures.  The department's Compliance and Enforcement Management database is used to collect and analyse non-compliance records.</p>
15		<p>Through the business improvement coordinator the department will implement and/or enhance existing training and awareness programmes, to ensure the outcomes of the monitoring strategy are met.</p>	<p>Due: 30 September 2014 – develop training and awareness programme Status: implementation</p>	<p>In accordance with the quality assurance framework, a branch-wide capability analysis is maintained to ensure staff maintain the correct qualifications and undertake the correct training  For 2015-16 the Compliance and</p>

Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
16		The department will implement an assurance framework to ensure procedures are implemented, reviewed and updated on a regular basis	ongoing  Due: 30 September 2014 – implement an assurance framework  Status: developed and implemented in February 2015	Enforcement Branch has updated its induction training package for new starters.  The department met its commitment to ANAO to develop or update procedures by 30 June 2014.  In accordance the Compliance and Enforcement Quality Assurance framework, procedures are reviewed and updated at least annually; these procedures were all reviewed by 30 June 2015 to ensure currency.
17	<p><b>ANAO Audit Recommendation 5</b></p> <p>Improve IT systems and record management practices</p> <p>Improve frequency and coverage of management reports</p> <p>Report against performance measures for compliance monitoring activities</p>	The Compliance and Enforcement Branch, is in consultation with the Department's ICT branch, to identify opportunities for enhancements to relevant compliance monitoring ICT systems. These enhancements will facilitate more informative reporting of compliance monitoring activities.	Due: 30 September 2014  Status: implementation ongoing	The department has implemented improvements to its EPBC approvals database, Chapter 4 database following the ANAO audit. These improvements have assisted compliance officers in determining the timeliness of actions required by the conditions of approvals.  In addition to these improvements, the department is currently finalising the replacement of these legacy

Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
				<p>bespoke systems with an enterprise wide solution, Microsoft Dynamics.</p> <p>Other improvements to IT infrastructure supporting compliance and enforcement activities will occur in the longer term. The department has contracted a consultant to conduct a compliance, enforcement and intelligence capability review. Outcomes of this review will be integral in developing department-wide enterprise architecture to support compliance, enforcement and intelligence capabilities.</p>
18		<p>The department will implement an assurance framework to ensure the branch and section risk registers and procedures are implemented, reviewed and updated on a regular basis. This framework will include regular reporting to senior managers.</p>	<p>Due: 30 September 2014 – implement an assurance framework</p> <p>Status: developed and implemented in February 2015</p>	<p>The assurance framework provides the governance to ensure standard operating procedures are contemporary, strategic planning occurs in a timely fashion, risk assessments inform operational priorities and regular performance reporting to the division's executive occurs.</p>
19		<p>The department will develop the 2014-15 annual compliance plan following the implementation of</p>	<p>Due: 30 July 2014 develop and</p>	<p>Informed by the assessment tool and the compliance monitoring</p>



Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
		the assessment tool.	implement annual compliance plan. Completed: 30 July 2014	<p>strategy, the plan includes a programme for monitoring, inspection, and audit activities which take into account the risk assessments contained in the assessment tool. The plan has been approved by senior management.</p> <p>The 2014-15 Plan (<b>Attachment C</b>) is available from the department's website.</p> <p>Informed by the refined assessment tool risk indicators and outcomes of the 2014-15 plan, the 2015-16 compliance monitoring plan is being finalised.</p>

# Response to One stop Shop recommendations from Joint Committee on Public Accounts and Audit Attachment B

JCPAA Recommendation	Department response
<p>Details of how the development of this framework has been informed by the findings and recommendations of ANAO Report No. 43 (2013-14)</p>	<p>The One-Stop Shop assurance framework will be embedded in operational approval bilateral agreements between the Commonwealth and each state and territory.</p> <p>The assurance framework would operate somewhat differently to the department's existing compliance and enforcement obligations under the EPBC Act, which were the focus of ANAO Report No. 43 (2013-14). It is anticipated that the operation of the assurance framework will be facilitated by the business improvement initiatives that are already underway in response to the ANAO Report, such as the ongoing updates and improvements to the department's databases, ICT and risk management systems.</p> <p>Key elements of the assurance framework include:</p> <ul style="list-style-type: none"> <li>• <b>Performance assurance:</b> including audits of selected projects, transitional and five yearly reviews of agreements, and reporting mechanisms to enable the Australian Government to fulfil its reporting obligations under the EPBC Act and internationally.</li> <li>• <b>Outcomes assurance:</b> through improved information management and data sharing between jurisdictions, along with public release of all audits, reviews and reports will be made publicly available. This will enable the Commonwealth, as well as the community, to evaluate how the states and territories are meeting the environmental standards of the EPBC Act</li> <li>• <b>Escalated dispute resolution process:</b> to resolve any issues between the Australian Government and the state or territory at the lowest possible level. This will be facilitated by a Senior Officers Committee and embedded officers, where necessary. In a 'worst case' scenario, the Commonwealth will have the capacity to 'call in' a project for separate assessment/approval.</li> <li>• <b>Risk Assessment:</b> the department's National Environmental Significance Threat and Risk Assessment tool has been adapted to allow managers to strategically target their regulatory effort within existing and future resource constraints. Recent improvements to the assessment tool have allowed the risk model to be utilised for proactive monitoring of assessment activities as well as compliance activities.</li> </ul>

JCPAA Recommendation	Department response
<p>The sample size and ratio selected for compliance review</p>	<p>The Commonwealth, through the Senior Officers Committee, will have the capacity to select individual projects for audit or additional scrutiny under the approval bilateral agreement. There is no set sample size or ratio for a given year at this time.</p>
<p>Staff breakdown, including how many staff are allocated to legacy compliance activities and how many allocated to one stop assurance</p>	<p>Oversight of approval bilateral agreements, along with legacy compliance activities, will be undertaken by compliance and enforcement and assessment staff. In 2015-16 there will be around 30 staff available to undertake those functions.</p>
<p>Details of any staff, including their employment level, who have been deployed to state offices to oversee the compliance activities by state governments</p>	<ul style="list-style-type: none"> <li>• The Commonwealth has undertaken to support the implementation of all aspects of assessment and approval bilateral agreements through the placement of embedded officers in relevant jurisdictions. These embedded officers are in addition to other transitional support mechanisms available, such as the provision of expert advice. <ul style="list-style-type: none"> <li>○ One embedded officer (EL1) is currently in place with the ACT.</li> <li>○ One embedded officer (EL1) is currently in place with Queensland.</li> <li>○ Two embedded officers (EL1 and EL2) are scheduled to be placed with NSW in the last quarter of 2015.</li> <li>○ Negotiations with other states are ongoing.</li> </ul> </li> </ul>





**Australian Government**  
**Department of the Environment**

*Environment Protection and Biodiversity Conservation Act 1999  
and the Environment Protection (Sea Dumping) Act 1981*

# **Compliance Monitoring Plan 2014–15**



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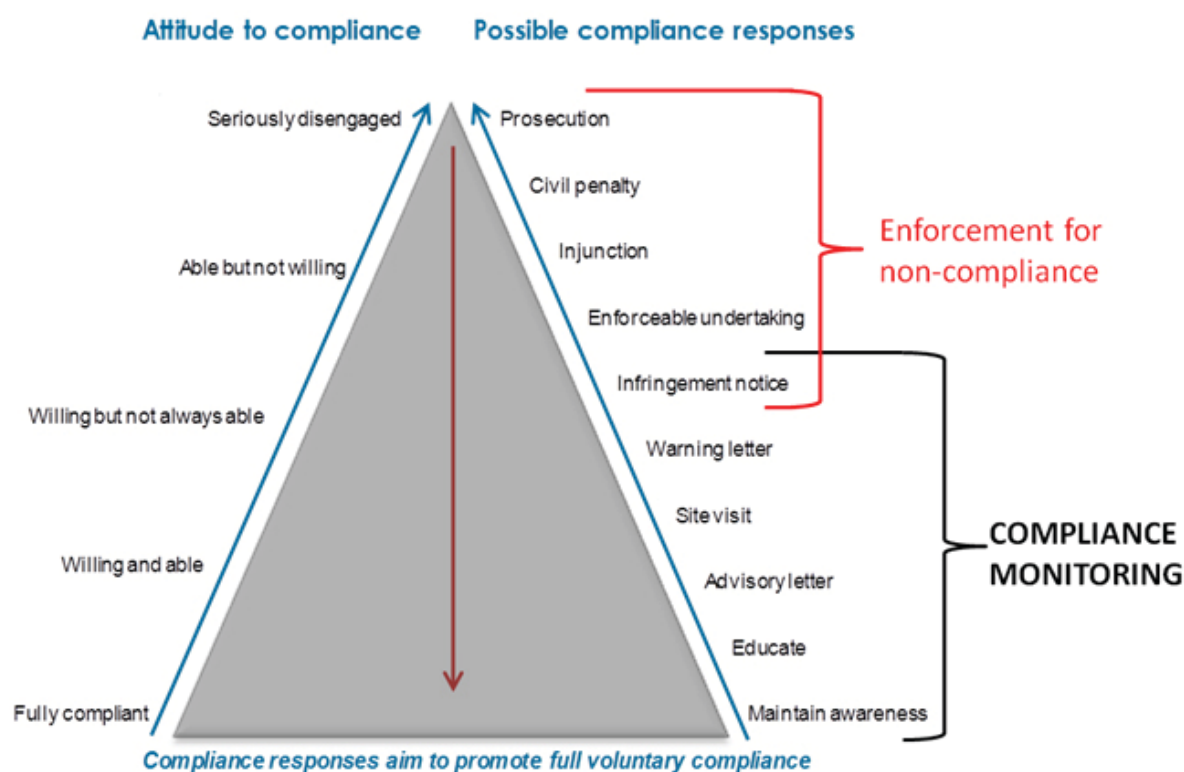
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# 1. Compliance Monitoring overview

The federal Department of the Environment (the Department) is responsible for a range of regulatory functions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Environment Protection (Sea Dumping) Act 1981* (SD Act). The functions span the key operational regulatory activities that are common to most Australian Government regulators and include referrals and assessments, compliance monitoring and compliance and enforcement activity to prevent or address non-compliance.

A core regulatory function is **Compliance Monitoring**. Compliance Monitoring is making sure that approval holders\* take actions in line with approval conditions\*. By making sure that approval holders take actions in line with conditions, we ensure that regulated actions do not have unacceptable impacts on Australia's protected environment, heritage, and marine areas.



\* In this document, the term 'approval' (e.g. in relation to 'approval holder', 'approval condition' or 'condition') refers collectively to (1) approval of a Controlled Action (where approval conditions are imposed), (2) a referral decision that an action is Not a Controlled Action if Undertaken in a Particular Manner (where particular manner requirements are imposed), and (3) approval of a sea dumping proposal (where permit conditions are imposed).

Compliance Monitoring under the EPBC Act and SD Act involves:

- educating people whose activities may cause environmental harm
- helping people to meet requirements under national environmental law
- investigating unlawful or environmentally damaging activities
- enforcing Australia's national environmental law.

Compliance Monitoring begins when the assessment phase is finished and an approval holder becomes obliged to comply with conditions. It occurs as periodic desktop reviews, from receiving information about a potential non-compliance or as a result of receiving a document for approval or an annual compliance report or certificate. Compliance Monitoring also involves working closely with approval holders and conducting audits, site visits and inspections.

The regulatory pyramid above shows the types of activities involved in Compliance Monitoring work and the typical attitudes of approval holders this work is targeted at. Our Compliance Monitoring work is designed to ensure that the majority of approval holders do the right thing.

**This Annual Compliance Plan informs the regulated community, co-regulators and other stakeholders of our achievements in 2013–14, and objectives in 2014–15, for our Compliance Monitoring activities.**



## 2. Scope of this Compliance Monitoring Plan

The Compliance Monitoring activities described in this Plan apply to projects that have been approved under the EPBC Act or SD Act. A brief description of these Acts is provided below. This Plan does *not* apply to projects that will be subject to the Australian Government's planned One-Stop-Shop for environmental approvals. The implementation of One-Stop Shop will mean that as more projects become subject to the assurance framework under that policy, fewer projects will require Compliance Monitoring by the Department.

The Australian Government's One-Stop Shop for environmental approvals will streamline environmental assessment and approval processes by reducing duplication between the Australian Government and states and territories. Importantly, this will be achieved while maintaining the high environmental standards under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The policy is being implemented through bilateral agreements between the Australian Government and each state and territory. State and territory assessment and approval processes that meet the standards of the EPBC Act can be accredited under the agreements, removing the need for a separate Commonwealth approval for those processes.

The Australian Government remains responsible for ensuring that the objects of the EPBC Act are met and environmental standards are maintained. Assurance mechanisms are built into the approval bilateral agreements, including audits, transitional and five yearly reviews, and commitments to transparency in state decision making processes.





## Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is Australia's national environmental law. The EPBC Act provides a strong legal framework to protect and manage Australia's land and marine biodiversity, threatened species, ecosystems, environment and heritage—'matters of national environmental significance'.

Under the EPBC Act, actions that are likely to have a significant impact on matters of national environmental significance must be approved before they can proceed.

Once a project has been referred, several outcomes are possible. Outcomes that involve imposing conditions or other requirements are when projects are deemed a 'Controlled Action' (CA) or 'Not a Controlled Action if Undertaken in a Particular Manner' (NCAPM).

Compliance Monitoring primarily targets approved CA projects and NCAPM projects.

## Environment Protection (Sea Dumping) Act 1981

The *Environment Protection (Sea Dumping) Act 1981* (SD Act) provides a legal framework to regulate the loading and dumping of waste at sea. The SD Act also fulfils Australia's international obligations under the London Protocol to prevent marine pollution by controlling dumping of wastes and other matter.

Under the Sea Dumping Act, the Commonwealth aims to minimise pollution threats by prohibiting ocean disposal of waste considered too harmful to be released in the marine environment and regulating permitted waste disposal to ensure environmental impacts are minimised.

### 3. The policy context for Compliance Monitoring

The Department's Compliance Monitoring program is consistent with international and national standards for best practice regulation, as well as relevant Departmental policy.

The Australian National Audit Office Better Practice Guide for Administering Regulation (ANAO, 2014) contains national standards for best practice regulation. The Organization for Economic Cooperation and Development's Best Practice Principles for Regulatory Policy Regulatory Enforcement (OECD, 2014) contain international standards.

At the Departmental level, we undertake our Compliance Monitoring activities in accordance with the EPBC Act Compliance and Enforcement Policy (2013) and the Department's overarching Regulatory Policy (2013). These policies describe our approach to, and the principles that guide, compliance and enforcement activities, including Compliance Monitoring. The policies promote a consistent, transparent and fair approach to compliance and enforcement activities, and provide guidance for stakeholders and the wider community about how we detect and address potential contraventions of the EPBC Act and SD Act (as well as other legislation we administer).

Among other things, the policies state our commitment to promote and support responsible self regulation. Our Compliance Monitoring activities are the primary mechanism for delivering on this commitment. These activities include engaging with approval holders who are generally compliant (or willing to be) and providing education, information and advice.



This helps to:

- remove barriers to compliance and overcome factors that encourage breaches of conditions (e.g. lack of awareness about how to meet requirements or confusion with other regulators)
- identify and address potential breaches before they occur
- detect breaches when they do occur.
- In cases where breaches of approval conditions are detected, Compliance Monitoring staff can take low-level enforcement action by issuing infringement notices (if warranted). Serious breaches are referred for investigation and enforcement action as appropriate.

Copies of the EPBC Act Compliance and Enforcement Policy (2013) and the Department's (overarching) Compliance and Enforcement Policy (2009) are available on the Department's website—[www.environment.gov.au](http://www.environment.gov.au)

## 4. Compliance Monitoring achievements in 2013–14

The 2013–14 year was a period of both operational achievement and significant business improvement for the Department’s Compliance Monitoring function.

Our operational achievements took the form of targeted stakeholder engagement and effective Compliance Monitoring activity.

We also undertook a series of business improvement activities that will improve our ability to detect breaches, reduce the likelihood that approval holders will breach conditions and will ultimately ensure better protection for Australia’s environment and heritage.

### Our operational achievements in 2013–14 included:

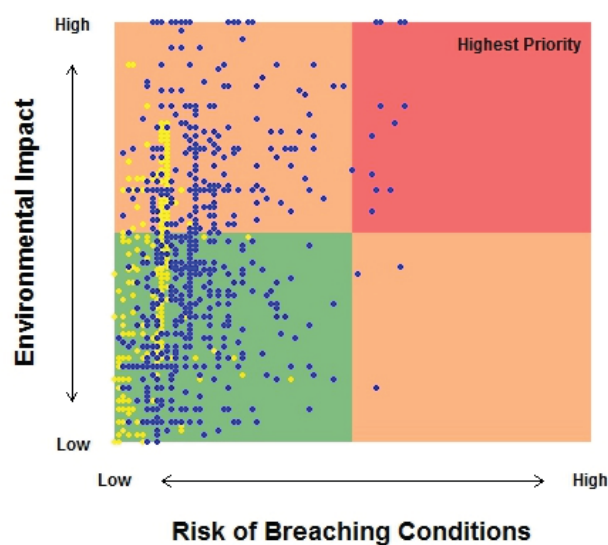
- By the end of 2013–14 we were monitoring compliance with requirements for almost 1000 Not a Controlled Action—Particular Manner projects, more than 750 Controlled Action projects and more than 30 sea dumping permits.
- We conducted more than 70 site visits to monitor compliance with requirements.
- We completed 8 audits with another 13 underway.
- We directed independent audits of each of the three major coal seam gas projects in southeast Queensland (Santos, APLNG and QGC).
- We detected more than 60 instances of potential non-compliance.
- We issued six penalty infringement notices for breaches of approval conditions.

### Our business improvement achievements in 2013–14 included:

- With the assistance of the CSIRO, we developed and implemented a risk-based project-prioritisation model based on the practice used by the Australian Tax Office. The model is called the National Environmental Significance Threat and Risk Assessment (NESTRA). This

means we now focus our Compliance Monitoring resources towards those projects that pose the greatest risk to the environment and can reduce the regulatory burden on projects that are low risk or people who consistently do the right thing.

- We standardised our business practices. We now have more than 60 standard operating procedures that clearly describe our internal processes and help ensure they are consistently applied to our compliance and enforcement activities.
- Our assessments and approvals databases have new capabilities and improved functions. This means that monitoring and reporting of approved actions is more accurate and better tracked.
- Our planning was made more rigorous and now includes establishing short and medium-term priorities based on systematic reviews of compliance data. This means that we can target our monitoring and education efforts on emerging environmental issues and industry sectors.



Our NESTRA model helps us to prioritise projects based on risk of breaching conditions and potential environmental impact.



## 5. Compliance Monitoring risk focus for 2014–15

An important aspect of best practice regulation is that it must be risk-based (ANAO, 2014; OECD, 2014). The Department's business improvement achievements in 2013–14 have significantly improved how we deliver on this requirement. At the individual project level, we take a risk-based approach by using a risk-prioritisation method that includes a NESTRA assessment. At the sector level, we take a risk-based approach by defining our **risk focus**.

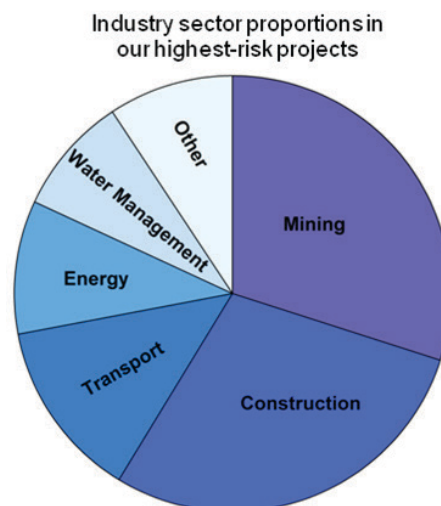
We define our **risk focus** by analysing data to identify our **regulatory scope**, and use the experience and knowledge of our monitoring, compliance and enforcement officers to proactively identify **common issues and challenges** that are likely to arise. The Organization for Economic Cooperation and Development (OECD, 2014) has endorsed the method of using data analysis and officers' experience as complementary indicators of risk.



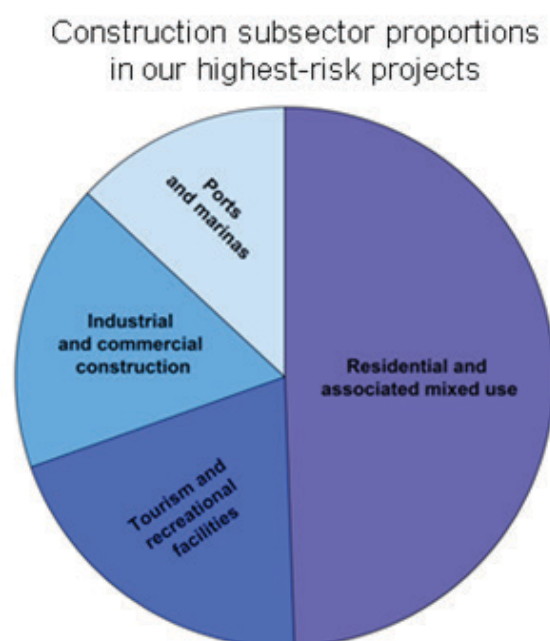
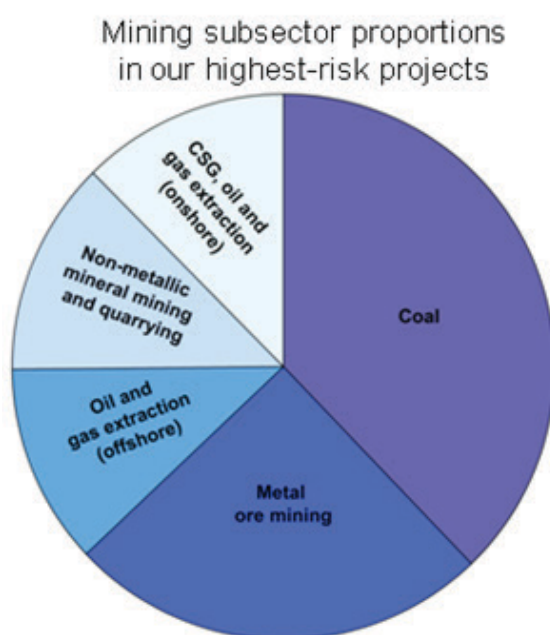
### a. Data analysis and regulatory scope

The Department's Compliance Monitoring function has a broad regulatory scope. This means that we deal with a diverse range of projects across a variety of industry sectors. Examples of sectors we commonly deal with include agriculture, forestry, construction, mining and water management, to name just a few.

Data analysis for 2014–15 indicates that the group of projects that pose the greatest risk to the environment cover nine industry sectors. Some sectors make up a larger proportion of this group than others. While we focus our effort on the highest-risk projects regardless of sector, by far the two most significant sectors are the mining and construction sectors which together represent almost two thirds of the projects that pose the greatest risk to the environment.



We can do similar analyses within each sector to reveal the most significant subsectors. For example, in the mining sector the most significant subsector is coal mining which represents more than a third of all projects in that sector. For the construction sector, the most significant sector by far is residential which represents around half of all projects.



## b. Sector-specific issues and challenges

Our broad regulatory scope means that we encounter a diverse range of issues and challenges that can lead to breaches of conditions. The issues and challenges we encounter differ greatly in their complexity, level of public interest and resources required to address them. Furthermore, different sectors and subsectors tend to present different groups of issues and challenges.

Analysing our data and understanding our regulatory scope means we can improve our risk-prioritisation by being able to identify where common issues and challenges are likely to arise in the year ahead.

This allows us to develop treatments at a sector level and apply consistent approaches to dealing with these issues. The sections below set out some of the common issues and challenges we expect to face in 2014–15.

## Common mining sector issues and challenges

- Ensuring approval holders meet commitments for water management in Coal Seam Gas and coal mining operations.
- Ensuring approval holders remain compliant with ongoing requirements under conditions when commencement or progress of a project depends heavily on market conditions.
- Maintaining mitigation, avoidance and/or offset standards for mines that may be expanded.
- Addressing and minimising the impact of legacy issues for decommissioned mines that may be reopened.
- Ensuring approval holders maintain adequate records to determine compliance with disturbance limits for fauna habitat and threatened ecological communities.
- Addressing and appropriately responding to public interest, especially for ‘green field’ projects.

## Common construction sector issues and challenges

- Ensuring approval holders and contractors apply environmental protection measures in line with approval conditions and management plans, particularly as they apply to vegetation clearing limits.
- Ensuring approval holders enact appropriate arrangements to maintain environmental protection and management prior to ‘moving on’ after completion of the project.

## Common transport sector issues and challenges

- Ensuring any variations to the footprint or alignment or roads or components resulting from design changes after approval do not result in additional impacts or poorer outcomes for protected matters.
- Ensuring approval holders correctly apply and monitor measures to maintain or improve connectivity across linear infrastructure (e.g. fauna crossings).

## Common energy sector issues and challenges

- Dealing consistently and efficiently with multiple approved projects that form part of a larger action (e.g. energy projects that involve multiple infrastructure construction including power stations, substations, transmission lines, or pipelines).
- Addressing and appropriately responding to public interest, especially for controversial projects such as the development of coal seam gas fields or wind farms.

## Common water management sector issues and challenges

- Ensuring approval holders maintain, and remain compliant with, discharge or exceedence limits.
- Ensuring that we can accurately account of the influence of factors that are outside the control of approval holders. This particularly includes climatic factors like major rainfall events and the standards for maintenance of pipeline infrastructure draining to sewerage treatment plants.

## Common issues and challenges across all sectors

- Ensuring approval holders establish legal protection over offset sites (e.g. conservation covenants) in a timely manner, particularly when the covenant mechanism relies on legislation or policy at the state or territory government level.
- Ensuring approval holders apply valid and scientifically robust methods when developing management plans or monitoring programs.
- Ensuring approval holders meet requirements for compliance reporting. In particular, we will ensure that approval holders maintain appropriate records and provide adequate information to demonstrate compliance (or reveal non compliance) with conditions.
- Ensuring approval holders meet deadlines for requirements under conditions (e.g. submission of management plans, offsets or compliance reports).
- Ensuring approval holders understand the requirements of conditions and that we address any confusion at the outset. In particular we will ensure that approval holders understand the requirements surrounding transfer of approvals, and when certain conditions may apply or cease to apply.
- Ensuring we help approval holders to understand the difference between us and co-regulators (e.g. state government environment or planning departments), particularly where the approval holders also have to meet requirements under approvals administered by co-regulators.



## 6. Compliance Monitoring objectives in 2014–15

Our priorities for 2014–15 relate to both operations and ongoing business improvement.

Operational priorities are strongly linked to the implementation of our new risk-based prioritisation model. Business improvement priorities will support our operational work.

### a. Operational objectives

Our primary operational goal is to undertake strategically-targeted Compliance Monitoring while maintaining the necessary capacity for responsive monitoring activities.

Strategic monitoring will be guided by risk-based prioritisation. Responsive monitoring will occur through the ongoing receipt of information including compliance and audit reports required under approval conditions or reports of potential non-compliance.

#### **The objectives for strategic monitoring in 2014–15 will be to ensure that:**

- Each new project that enters the Compliance Monitoring phase is subject to risk-based prioritisation that includes a NESTRA assessment. This will ensure that we engage with approval holders of high-risk projects at the earliest possible stage and encourage compliance at the outset.
- The risk-based prioritisation of existing projects is kept up-to-date based on the ongoing receipt of new information. This will ensure the Compliance Monitoring effort directed to existing projects remains appropriate as projects progress or circumstances change.
- Strategic monitoring effort is directed to the highest-risk projects and industry sectors, following risk-based prioritisation. This ensures we continue to target Compliance Monitoring activities at those projects that pose the greatest risk to the environment, with the associated benefits of ensuring our activities are cost effective and that we reduce the regulatory burden on projects that are low risk or people who consistently do the right thing.
- Our stakeholder engagement activities are directed to the highest-risk projects and industry sectors, having regard to our regulatory scope and the common issues and challenges likely to arise across different sectors. This will proactively address issues and challenges at a sector level which will help to minimise non compliance across sectors.
- Our audit program targets high risk Controlled Action projects (we expect to undertake 10–12 new audits in 2014–15). These activities will help develop a detailed understanding of how well conditions and requirements are being understood and applied which will contribute to improving the effectiveness of our operations.
- At least 20% of high risk Controlled Action projects will be subject to a site inspection to verify compliance with approval conditions. This will assist with developing effective working relationships with approval holders for high-risk projects and gaining a first-hand understanding of what approval holders are doing to mitigate or avoid significant impacts on matters of national environmental significance.

- At least 20% of high risk Not a Controlled Action—Particular Manner projects will be subject to a desktop review to verify compliance with requirements. This will ensure that proponents correctly implement particular manner requirements so the projects do not have significant impacts on matters of national environmental significance.
- 20% of active Sea Dumping permits will be subject to a desktop review to determine compliance with permit requirements. This will ensure that sea dumping activities do not have unacceptable impacts on Australia's marine environment.

**The objectives for responsive monitoring in 2014–15 will be to ensure that:**

- All annual compliance reports received from approval holders are scrutinised and, where necessary, claims made in those reports are verified.
- All reports of potential non-compliance are investigated in accordance with our existing processes and policies.



## b. Business improvement objectives

The 2013–14 business improvement activities are part of an ongoing process that will continue to improve our ability to detect breaches, reduce the likelihood that people or companies will breach requirements and will ultimately ensure better protection for Australia's environment and heritage. Further improvements are planned for 2014–15 to build on the progress that has already been made.

**The business improvement objectives for 2014–15 will be to:**

- Continue to implement and refine our risk-based prioritisation processes, including the NESTRA model. This will allow targeted allocation of resources to particular industry sectors, locations or matters of national environmental significance and increase monitoring efficiency.
- Develop additional guidance for, and in consultation with, the regulated community to assist people or companies to comply with requirements. This will include guidance on developing and submitting management plans and annual compliance reports.
- Develop additional guidance for Compliance Monitoring staff to support decision-making capability and encourage appropriate and consistent practices. This will include guidance for responding to non-compliance with requirements.
- Develop a quality assurance framework which includes performance benchmarks and regular process reviews. This will mean ongoing improvement in our Compliance Monitoring activities and how we use our compliance and enforcement powers.

## 7. Further information

For further information about Compliance Monitoring under the EPBC Act and SD Act please visit the Department's website—[www.environment.gov.au](http://www.environment.gov.au)

Alternatively please contact the Community Information Unit on 1800 803 772.

For further information on the policy context of Compliance Monitoring please refer to Section 10 of our EPBC Act Compliance and Enforcement Policy, available on our website.

The documents specifically referred to in this document include:

- Department of the Environment Regulatory Policy (2013)
- EPBC Act Compliance and Enforcement Policy (2013)
- ANAO (2014) Australian National Audit Office Better Practice Guide—Administering Regulation
- OECD (2014), OECD Best Practice Principles for Regulatory Policy—Regulatory Enforcement and Inspections





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