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Joint Committee of Public Accounts and Audit

Answer to Question on Notice

Department/Agency: Australian National Audit Office

Inquiry: Regulatory Activities: Inquiry into Auditor-General's Reports 33, 47, 48 (2019-20) and 5 and 8 (2020-21)

Committee Member: Mr Hill MP, Deputy Chairman, JCPAA

Type of question: Hansard, 4 March 2021

Date set by the committee for the return of answer: 19 March 2021

Number of pages: 1

Question

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Mr Hill: The very narrow question—there are MOG templates and guidance and all that kind of stuff. The thing that concerned me also—and it's a small issue, but it could be a significant issue in other contexts—is: is it explicit in the machinery-of-government transfer guidance that responsibility for implementation of an outstanding ANAO rec should also be transferred, because that also seemed to kind of fall into abeyance? It came off the audit committee register in PM&C and didn't appear on the audit committee register in AGD until, magically, about one month after you published your prospective audit program—which I know strikes fear in the heart of most agencies, because they all look at what the Auditor-General might come looking for. So, is there a minor systemic issue there?

Ms Mellor: I couldn't comment without referring to the guidelines, which we can do.

Mr Hill: Could you take that on notice?

Ms Mellor: Yes, absolutely.

ANAO Response: The June 2016 Machinery of Government Changes: A Guide for Agencies does not address the need for agencies to consider in their planning and implementation of machinery of government changes the transfer of responsibility for actioning 'in-progress' or not yet completed recommendations from ANAO audits or Parliamentary inquiries. This is a gap in the guidance that is developed by the Department of Finance and Australian Public Service Commission.

The guide does address, in paragraph 9, the responsibility of the losing agency to provide the gaining agency information following a detailed examination of all aspects of the functioning being transferred, including unfinished audits.

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Question

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Mr HILL: Does the ANAO have documentation about each of the conditions and how they were erroneous in relation to the 79 per cent of approvals that were assessed as containing non-compliant conditions?

Mr White: Yes, obviously, we have the work papers. I think that footnote 95 there gives a few examples of those. For example, missing dates for implementation of conditions being completed for processes was one where I think there were around half a dozen or 10 examples within the work that we did. We weren't looking at missing full stops, for example, we were looking at key parts of the documentation.

Mr HILL: Okay, so things that were actually important to be able to hold someone to account for a permit condition or to undertake compliance and so on?

Mr White: That was our view.

Mr HILL: Can you provide us with the document that assesses that—that sits behind the report?

Mr White: I'll take that on notice.

ANAO Response:

Table 1, below, provides a breakdown of the types of issues identified by the ANAO when assessing conditions of approval. The table also notes whether the issue was assessed as a non-compliance with the department's procedural guidance or as an administrative or clerical error.

Table 1: Results from ANAO analysis of conditions of approval

Type of administrative or clerical error or non-compliance with procedural guidance (ANAO categorisation)	Procedural guidance requirement?	Number of approvals with at least one condition subject to this issue
No timeframes for completion of condition, such as submission of plans or documents to the department	Y	10
Condition doesn't specify that it is the approval holder / person taking the action who must perform the action	Y	11
State or other federal approval conditions not referenced clearly and in accordance with requirements	Y	3
Use of the term 'should' instead of 'must' or 'will'	Y	1

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Condition doesn't specify where the action is to be performed	Y	2
Reference to location on map unclear or uses other terms than labelled on map	Partial ^a	13
Key terms without definitions (including those that have been bolded to indicate a defined term) or not clearly defined in a way that provides certainty about what is required	Partial ^b	13
Plans not required to be implemented	N	2
Typographical errors potentially impacting the intended meaning of the condition	N	2
Total approvals with at least one error^c		34
Total approvals examined		43

Note a: Procedural guidance requires clear details about where activities are to be done.

Note b: Procedural guidance requires the list of definitions to be the same as those that have been bolded in the text of the approval, so as to indicate a defined term. Procedural guidance also requires that appropriate language be used to provide sufficient certainty about what is required to comply with the condition, and that conditions avoid the use of vague words where it is open to interpretation as to whether a requirement has been met.

Note c: Approvals can be subject to more than one type of error or non-compliance with procedural guidance.

An example of an approval with conditions that were non-compliant with procedural guidance or subject to administrative or clerical errors, and the impact of those conditions on the department's ability to determine non-compliance, is provided in Case Study 3 of the report.

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Ms Mellor: I think this audit demonstrates the importance of it. Sometimes entities say that we're down in the weeds, carrying our clipboards and banging on about record keeping and that it creates red tape et cetera. That sort of noise sometimes comes from our disposition around the importance of record keeping. But, when you're regulating something as important as this and you're setting rules within your regulation about what documentation must be kept, it's because there's a risk. This is, as many areas of Commonwealth regulation are, a highly contestable space with very strong interests within it. It was very disappointing from an auditor's perspective to see that rules that were set about good record keeping and documentation around decision-making actually hamstrung us in proceeding down some of the audit routes that we would have done. You come to dead ends when there's nothing there. So the nature of your questions about the outcomes of that are hard for us to answer in the absence of documentation that needed to be there. But this audit report is a case study in some of the questions over recent weeks, particularly ones the chair has asked us, about record keeping. This is where the rubber hits the road. Record keeping is not about being audited. It's not about 'tick and flick' rules; it's about the quality of decision-making in highly contestable regulatory spaces.

Mr HILL: Particularly where compliance or enforcement and so on may well be required—

Ms Mellor: Correct.

Mr HILL: in these things to protect the environment. Can you take on notice and provide us with full details of those 26 approvals that were assessed and which of the 23 did not have this document?

Ms Mellor: We can take it on notice.

ANAO Response:

This question would require the Auditor-General to provide additional information about audit evidence that was not included in the audit report.

The ANAO examined this sample of 26 approvals only to assess whether the department had followed its procedural guidance to align conditions of approval with risk to the environment, in accordance with the audit criteria. The audit report, therefore, contained only the information relevant to the department's processes not to the substantive decision. The full details of the approvals for this sample were not examined (including those which did not have the required documentation) or identified in the audit report, as that information was not considered material to forming an opinion on whether the department appropriately implemented its procedural guidance.

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The legislative framework of the *Auditor-General Act 1997* includes requirements for natural justice and protection of sensitive information when publishing audit reports. Under this framework, audited entities and others can trust that the Auditor-General and the ANAO will treat them fairly and will protect sensitive information obtained during the audit process. It could circumvent the requirements of the framework if specific details around audit evidence were provided to Parliament outside of an audit report, without giving entities an opportunity to provide comments around issues of sensitivity or argue that the information may be contrary to public interest.

On this basis the Auditor-General considers that the requested information is best sought from the Department of Agriculture, Water and the Environment.