



Australian Government

**Department of Agriculture,
Water and the Environment**

Submission to the Joint Committee of Public Accounts and Audit inquiry:

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

1 March 2021

Contents

Overview	3
Background	3
Progress since the audit.....	4
Implementing the audit recommendations.....	4
Delivery on commitments.....	4
<i>Improved IT systems</i>	<i>4</i>
<i>Uplift of Environmental Compliance Regulation</i>	<i>5</i>
<i>Effective oversight.....</i>	<i>5</i>
<i>Appropriate management of conflicts of interest.....</i>	<i>5</i>
<i>Comprehensive training for staff.....</i>	<i>5</i>
<i>Performance measurement</i>	<i>6</i>
<i>Quality assurance.....</i>	<i>6</i>
<i>Quality control for conditions</i>	<i>6</i>
<i>Accurate record of public comments.....</i>	<i>7</i>
<i>Improving efficiency.....</i>	<i>7</i>
<i>Environmental Offsets</i>	<i>7</i>
Conclusion.....	7

Overview

The Department of Agriculture, Water and the Environment is pleased to present this submission to the Joint Committee of Public Accounts and Audit: Inquiry into Regulatory Activities in relation to the 'Auditor-General Report No.47 of 2019–20 Referrals, Assessments and Approvals of Controlled Actions under the *Environment Protection and Biodiversity Conservation Act 1999*' (the audit).

The Department has accepted the findings of the audit and agreed to implement all eight audit recommendations.

Since publication of the audit report, the department has moved quickly to implement a series of early measures to address key areas for improvement. The department has also put in place a comprehensive forward program of work that directly addresses the audit findings and recommendations and will drive best practice improvements for efficient and effective regulation.

The department's progress to date demonstrates our commitment to fixing the strategic and systemic issues in our systems and processes. Key long-term initiatives include significant investment in new IT solutions, which cuts across multiple audit recommendations.

Background

On 25 June 2020, the Australian National Audit Office (ANAO) tabled in Parliament its performance audit assessing the department's administration of referrals, assessments, and approvals of controlled actions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (Auditor-General Report No.47 of 2019–20).

The audit covered the period between 1 July 2015 and 30 June 2019, prior to the Government's more recent commitments to bust congestion for environmental regulation and fast track the assessment of major projects.

The audit findings were critical of the department's performance in areas such as governance and oversight, business systems, quality assurance, and reporting on performance. The audit findings also emphasised the need to: strengthen the processes for collection and use of regulatory information (including compliance intelligence); conduct a risk assessment of non-compliance; improve governance and oversight arrangements; develop performance measures and efficiency indicators; and introduce a quality assurance framework to drive consistent and legally robust decision making. The department has accepted all eight of the audit's recommendations.

The audit also acknowledged the department's progress to improve its efficiency and effectiveness to ensure it remains a trusted environmental regulator. For instance, the department had introduced a range of measures in response to its 2016 Regulatory Maturity Review to strengthen compliance capability, which included implementation of a Compliance Framework, Compliance Policy, and Compliance Plan which sets out the department's priority compliance outcomes for 2019-23.

Progress since the audit

The Government is continuing to support the efficient and effective delivery of environmental assessments and approvals under the EPBC Act, providing additional funding to reduce unnecessary delays and to ensure environmental assessments can be completed efficiently in accordance with legislative requirements. This investment has significantly accelerated environmental approvals, while continuing to ensure our environment is protected. Assessment timeframes have improved from 19 per cent of key decisions made on time in the December quarter 2019 to 99 per cent on time in the December quarter of 2020.

Implementing the audit recommendations

By accepting the recommendations of the audit, the department has committed to ensuring it is an efficient and effective regulator through building on processes already underway and establishing new ones where needed.

In addition to the initial progress made in delivering the government's agenda for on time environmental approvals, and work already conducted from previous reviews, the department has commenced a rapid program of work to address the eight recommendations made in the audit.

To ensure effective oversight, the department has established a steering committee chaired by the Deputy Secretary of the Environment and Heritage Group. The steering committee includes senior executives from the department's Environment Approvals Division, Compliance Division and Biodiversity Conservation Division, and independent oversight of an external member.

Further, a new branch has been established in the Environment Approvals Division with a focus on delivering the program of work to address the audit recommendations.

Delivery on commitments

Improved IT systems

The Government is implementing a national digital transformation program for environmental assessments and approvals, which will be tested through an initial partnership with the Western Australian Government.

This program will deliver user-focused digital platforms that support integrated assessment systems and data across jurisdictions and a national data repository to store and share biodiversity information.

This will allow faster access and more comprehensive data for environmental assessments and enable the Government to better measure conservation outcomes.

Uplift of Environmental Compliance Regulation

The department has commenced discovery activities which will inform an overarching Information Strategy to create a framework and strengthen processes for the collection and use of regulatory information, including compliance intelligence.

Significant reforms in technology and information workflows are also underway to assist in delivering more efficient and effective compliance outcomes:

- IT systems
 - we are finalising a discovery phase for a case management IT solution which will allow significantly streamlined processes for compliance activities.
- Greater intelligence
 - Further investment in intelligence will allow for greater oversight of illegal activity in environmental and wildlife crime.
- In-field technology and software
 - The use of modern technology, such as drones, allows compliance staff to cover more ground quicker and with greater confidence and clarity.

The department has also engaged an external expert to carry out an independent Environmental Compliance Regulatory Risk Review which will provide systematic assessment and prioritisation of risk across the Department's regulatory regimes.

Noting that the recently released Independent review of the EPBC Act makes a range of recommendations about compliance under the Act, the final report for this project could further inform government decisions and directions for compliance.

Effective oversight

A new Environmental Approvals Division Board commenced operation in October 2020 to improve the oversight of referrals, assessments and approvals, which directly addresses governance issues raised in the audit report.

Appropriate management of conflicts of interest

A conflict of interest register for environmental approvals is now place and a mandatory declaration process has been established for all staff in the Environment Approvals Division. This register is regularly reviewed by senior executive. All declared conflicts of interest, where applicable, must have an agreed management plan in place to manage any risks posed by the conflict.

Comprehensive training for staff

The department has a comprehensive mandatory training program in place.

In response to the audit, the department has implemented arrangements to ensure that staff complete mandatory training.

A training register has been established and mandatory training requirements for staff in the Environment Approvals Division are now in place. This training register includes new training modules for senior executives and experienced assessment officers.

A conflict of interest training module has also been developed and is now mandatory for staff in the Environment Approvals Division to complete.

Performance measurement

A performance measure for environmental approvals was reinstated in 2021 Corporate Plan:

'Statutory timeframes are met 100% of the time for EPBC Act referral, assessment and approval decisions and the backlog of decisions is cleared'.

Dramatic improvements have been made to assessment timeframes, from 19 per cent of key decisions made on time in the December quarter in 2019 to 99 per cent on time in the December quarter in 2020.

The Backlog of overdue key decisions has been reduced to 11 decisions across 11 projects. This compares with 78 decisions across 57 projects at 1 January 2020.

The department is now engaging external expertise to assist with the preparation of a Performance Framework for the Environmental Approvals Division, in line with the Commonwealth Regulator Performance Framework and best practice approaches to performance reporting.

Quality assurance

Work to prepare a Quality Assurance Framework for referrals, assessments and approvals under the EPBC Act is well progressed.

The framework will provide ongoing assurance that procedural guidance is implemented consistently and that the quality of decision-making is appropriate.

The framework has been developed by external quality assurance experts to ensure it reflects best practice international quality assurance standards, is fit-for-purpose and provides a roadmap for implementation and uplift in quality assurance maturity over time.

Implementation of the framework will consist of an ongoing program of continuous improvement of quality outcomes over time and is expected to commence mid-2021.

Quality control for conditions

During the audit, the ANAO looked at a sample of projects and found some errors in conditions that were administrative and clerical in nature.

- While the errors found are regrettable, they do not affect the legality of these past decisions.

The department has accepted responsibility for the findings of the audit report and has commenced work to strengthen quality controls for approval conditions. In the short term, we are strengthening the current quality control processes by updating guidance material for condition writing. In the medium term we are engaging external expertise to provide the department with options for a new process for quality control that is in line with best regulatory practice.

The work being undertaken is future focussed.

- The audit recommendations did not require the department to address the administrative errors identified.
- Rather, recommendation 7 requires that the department improve its quality controls for approval conditions, to ensure a higher standard of decisions in the future.

The department is now prioritising its future performance through implementation of the audit recommendations, rather than looking back at past decisions.

Accurate record of public comments

The department has made substantial progress on the development of a system to ensure public comments are accurately recorded and stored.

Improving efficiency

A triage framework has been prepared and piloted and is expected to be finalised and implemented by the end of this financial year.

The framework will help guide the allocation of resources and processes undertaken in assessments to drive more efficient and effective delivery of assessments and approvals in a strategic risk-based manner.

Environmental Offsets

Work is progressing to scope the requirements for a geospatial environmental biodiversity offset system to record offsets approved under the EPBC Act.

The database would contain consolidated offset information in a single system and provide greater transparency of the locations of EPBC Act approved offsets to the public.

Conclusion

Good regulation requires continuous improvement and periodic system health checks. The audit findings provide a useful road map for the department to improve its administration.

The department is fully committed to addressing the audit recommendations and the substantial work undertaken to date is evidence that the department is focussed on improving the efficiency and effectiveness of administration of the EPBC Act.

The department will continue to progress work on the remainder of the actions to address the audit findings and recommendations. Given its high priority, this work will have the oversight of the dedicated senior level steering committee.