



Submission to the Joint Committee of Public Accounts and Audit Review of ANAO Report into Managing Compliance with *Environmental Protection and Biodiversity Conservation Act 1999 Conditions of Approval*.

Introduction

1. The Department of the Environment has made significant improvements in its compliance and enforcement capacity since 2012. A business improvement programme has been implemented which significantly increases the Department's ability to target its resources at the projects that pose the highest risk to matters of national environmental significance.
2. The business improvement programme has already been implemented to address the majority of the recommendations from the ANAO audit *Managing Compliance with Environmental Protection and Biodiversity Conservation Act 1999 Conditions of Approval*, with the remaining recommendations due to be addressed by the end of 2014.

The Audit

3. On 18 June 2014, the ANAO tabled their audit report *Managing Compliance with Environmental Protection and Biodiversity Conservation Act 1999 Conditions of Approval*. The objective of the audit was to assess the effectiveness of the Department of the Environment's regulation of proponents' compliance with Part 9 of the EPBC Act
4. The ANAO's examination focused on the regulatory period from July 2010 to December 2013. The audit made 5 recommendations aimed at increasing the department's 'proactive management of regulation', particularly in relation to monitoring proponent compliance.
5. In summary, the report stated that the Department has not been well placed to demonstrate that it is effectively targeting its compliance monitoring activities to the areas of greatest risk. Of particular note to the department were the findings in relation to intelligence gathering and the need for prompt project transfer for compliance monitoring, consistent responses to non-compliance and better information technology systems.
6. In responding to the audit report, the Department acknowledged that there had been shortcomings in compliance monitoring of environmental conditions, accepted and implemented the recommendations of the report.
7. A list of the ANAO audit recommendations and commitments made by department in response to them is at (**Attachment A**). This list identifies actions that have already been completed.

The Department's response

8. The Department accepted the ANAO's recommendations and is well placed to implement them. A number of the issues raised during the audit, and the subsequent recommendations made by the ANAO report, were previously identified by the Department and action had already commenced to address them.
9. For example, since August 2011, there has been a significant increase in approvals monitoring capacity. This increase allows greater oversight of approved projects. More compliance monitoring and increased tracking of how approved projects are progressing against requirements will mean better use of the department's compliance and enforcement powers.
10. This increase in resources has complemented the development and implementation of a comprehensive business improvement programme, which the Department began implementing in 2012. An assurance framework, which includes an internal audit currently being conducted, to track our ongoing implementation of the improvements has also been developed.
11. Key elements of this business improvement programme include:

In 2012

- Implementing the Compliance and Enforcement Management System (CEMS) to track and coordinate investigations and intelligence gathering.
- Significantly increasing resources to support post approval activities. This included more management oversight.

In 2013

- the assessments and approvals database (EASy/Chapter 4) was implemented within the compliance and enforcement branch to better track statutory requirements of EPBC Act approved projects.
- implemented a risk-based Case-Prioritisation Model, based on the Australian Crime Commission practice, to focus investigations on highest-risk cases.

In 2014 - completed

- implemented a strategic risk-based prioritisation model (NESTRA), developed in collaboration with CSIRO and based on the Australian Tax Office practice, to focus the Department's monitoring activities on those approved projects posing the highest risk.
- updating 63 standard operating procedures to ensure a systematic approach to the Department's compliance and enforcement activities.
- Restructuring the Department's compliance and enforcement branch to ensure a more targeted focus of monitoring compliance with approval requirements of those projects which provide the greatest risk to matters of national environmental significances.

In 2014 – currently underway and to be completed by end of 2014

- enhancing the Department's assessments and approvals database (Chapter 4 & EASy) to enable more accurate monitoring and reporting of approval decisions.
- publishing the Department's first annual compliance monitoring plan for approved EPBC Act approved projects and Sea Dumping permits.
- updating the standard administrative conditions included in approval decision notices to incorporate lessons learnt over the past 12 months. Implementation of these updates will include training of staff to assist with the drafting of approval conditions.
- reviewing and updating the policy and procedures for approval of authorised officers appointed under the EPBC Act. Authorised officers play a key part in compliance monitoring activities.
- improving the Department's data holdings for approval conditions, environmental offsets, associated species and other matters protected under the EPBC Act.
- releasing guidelines to assist stakeholders with the preparation of environmental management plans and annual compliance reports.

12. In addition to these business improvement initiatives, the Department has also significantly increased its proactive engagement of approval holders to educate and encourage voluntary compliance – an activity that was not reflected in the ANAO report. For example, since January 2012, the Department has undertaken more than 191 variations to conditions to assist proponents with voluntary compliance.

13. The Department has increased cost effectiveness and efficiency of audit activities through initiating a programme of directed independent audits, rationalising audit coverage via desk top reviews and disseminating audit internal learnings and recommendations to the relevant areas to enable further improvements to business processes.

14. Over the same period the Department has also significantly increased its proactive management of regulation. For example, since 2012, the Department has issued 20 infringement notices for breach of conditions, directed 15 proponents to undertake independent audits of their actions and has commenced varying conditions of approvals in response to breaches. In contrast, prior to 2012, there were only 4 infringement notices and no directed audits.

Work to address recommendations from ANAO audit *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*, as at October 2014

Ref	Relevant audits and recommendations	Department commitment in response to ANAO at the completion of the audit	Due date/ Completed	Comments
1	ANAO Audit Recommendation 1 Collect, retain, analyse compliance intelligence	Enhance and promote the intelligence function which already exists within the Department.	Due: 30 July 2014 Completed: 30 July 2014	Internal training was conducted by 30 July 2014.
2	Identification and regular review of risk factors for approved controlled actions	the Department will finalise its EPBC Act compliance communication strategy.	Due: 30 June 2014 Completed: 16 June 2014	Communications Strategy has been completed and agreed by the departments Executive on 16 June 2014.
3		Develop or update specific Standard Operating Procedures (SOP's) across the division, in consultation with the Department's intelligence team, to; i. Identifying the type of intelligence material that should be capture and reported on. ii. Identifying the type of intelligence that should be used to inform in decision making.	Due: 30 June 2014 specific SOPs approved Completed: 30 June 2014	SOPs reviewed and updated for intelligence activities and approvals monitoring.
4		The Department will implement an 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: Ongoing	The Department is currently finalising the Assurance Framework. An internal audit by Ernst & Young is being conducted as a part of this process in Q2 2014-15. The internal audit will test the effectiveness of the department's implementation of the ANAO's recommendations.
5	ANAO Audit Recommendation 2 Transfer approved controlled actions to compliance monitoring Establish and monitor protocols for transfer of controlled actions	The division will review existing SOPs which provides 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. Weekly reporting to Senior Executive has been established to ensure the transfers are monitored regularly by the

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				executive.
6		The Department will implement an assurance framework to ensure that the relevant SOPs are implemented, reviewed and updated on a regular basis.	Due: 30 September 2014 – Implement an Assurance framework Status: Ongoing	The department is currently finalising the Assurance Framework. An internal audit by Ernst & Young is being conducted as a part of this process in Q2 2014.
7	ANAO Audit Recommendation 3 Develop SOPs and document submitted assessment/approval material. Target monitoring to approvals with high risk to MNES. Develop program of monitoring activities, inspections, and audits.	In collaboration with CSIRO, the Department is currently developing a National Environmental Significance Threat and Risk Assessment (NESTRA) to enable to managers to strategically target their regulatory effort within existing and future resource constraints. The risk indicators used to inform NESTRA are being identified by the Department's intelligence team and in consultation with CSIRO and relevant line areas within the division.	Due: 30 June 2014 NESTRA implemented Completed: 30 June 2014	NESTRA has been completed and implemented
8		The Department is implementing an approved compliance monitoring strategy.	Due: 30 July 2014 Strategy finalised 21 February 2014. Status: Implementation ongoing	The Strategy was approved on 21 February 2014. The strategy includes targeting high risk projects identified through NESTRA.
9		The Department has implemented a program of developing or updating specific SOPs to ensure consistent practises are employed to manage approved projects.	Due: 30 June 2014 specific SOP's approved Completed: SOPs reviewed and updated by 30 June 2014. Ongoing maintenance and updating (part of assurance framework).	SOPs include management of assessment and approval documentation. Over 60 SOPs are now in place addressing the management of approved projects.

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10		Develop supporting SOP for the implementation of NESTRA.	Due: 30 June 2014 Completed: 30 June 2014	Relevant SOPS completed by 30 June 2014.
11		Ensure relevant SOPs are updated to ensure they are considerate of a risk based approach to decision making consistent with NESTRA.	Due: 30 June 2014 Completed: 30 June 2014	Relevant SOPS completed by 30 June 2014.
12		The Department will develop a 2014/15 Annual compliance plan following the implementation of NESTRA.	Due: 30 July 2014 develop and implement an annual compliance plan Completed: 30 July 2014 – Public version to be developed	The plan includes a program for monitoring, inspection, and audit activities which take into account the risk assessments contained in NESTRA. Program has been approved by Senior Management.
13		The Department will implement an assurance framework to ensure that NESTRA and annual compliance plan are implemented and reviewed.	Due: 30 September 2014 – Implement an Assurance framework Status: Implementation ongoing	The department is currently finalising the Assurance Framework. An internal audit by Ernst & Young is being conducted as a part of this process in Q2 2014-15.
14	ANAO Audit Recommendation 4 Record non-compliance by proponents centrally Improve documentation of reasons for enforcement decision	The Department current practise is to report all identified non-compliance to the EPBC compliance section through the compliance email in-box. The Department is currently updating relevant SOPs to clearly articulate this process of reporting intelligence and allegations of non-compliance.	Due: 30 June 2014 specific SOP's approved Completed: 30 June 2014	Record keeping practices already in place at time of completion of audit. SOPs reviewed and updated. Compliance and Enforcement Management System database used to collect and share non-compliance records.
15		Through the business improvement coordinator the Department will implement and/or enhance existing training and awareness program, to ensure the outcomes of the Monitoring Strategy are met.	Due: 30 September 2014 – Develop training and awareness program	The Department has an approved project to improve the reporting capabilities of the Chapter 4 database.

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			Status: Implementation ongoing	The Compliance and Enforcement Branch is also part of a working group to replace legacy bespoke systems with Microsoft Dynamics, an enterprise wide solution.
16		The Department will implement an assurance framework to ensure SOPs are implemented, reviewed and updated on a regular basis	Due: 30 September 2014 – Implement an Assurance framework Status: Implementation ongoing	The department is currently finalising the Assurance Framework. An internal audit by Ernst & Young is being conducted as a part of this process in Q2 2014-15.
17	ANAO Audit Recommendation 5 Improve IT systems and record management practices Improve frequency and coverage of management reports Report against performance measures for compliance monitoring activities	The Compliance and Enforcement Branch, is in consultation with the Departments 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 an approved project to improve the reporting capabilities of the Chapter 4 database. The changes are currently in the test environment and it is anticipated they will be rolled out in November 2014. The Compliance and Enforcement Branch is also part of a working group to replace legacy bespoke systems with a Microsoft Dynamics, an enterprise wide solution.
18		The Department will implement an assurance framework to ensure the Branch and section Risk Registers and SOPs are implemented, reviewed and updated on a regular basis. This framework will include regular reporting to senior managers.	Due: 30 September 2014 – Implement an Assurance framework Status: Implementation ongoing	Many SOPs include record keeping and management practices. In particular the <i>Record keeping and filing</i> SOP and the <i>Project transfer and set up</i> SOP. The department is currently finalising the Assurance Framework. An internal audit by Ernst & Young is being conducted as a part of this process in Q2

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				2014-15.
19		The Department will develop the 2014/15 annual compliance plan following the implementation of NESTRA.	Due: 30 July 2014 Develop and implement annual compliance plan. Completed: 30 July 2014	The plan includes a program for monitoring, inspection, and audit activities which take into account the risk assessments contained in NESTRA. Program has been approved by Senior Management.