

Regulation of Commonwealth Radiation and Nuclear Activities

Audit Report No. 30, 2004–05

Introduction

- 3.1 The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) is charged with protecting the health and safety of people and the environment from the harmful effects of radiation. The chief executive officer (CEO) of ARPANSA has powers to regulate Commonwealth activities involving radiation sources and nuclear facilities, including nuclear installations.¹
- 3.2 Entities must be authorised under licence if undertaking activities involving radiation sources or facilities.² A licence is issued after an application for the proposed activity is determined to be compliant with the *Australian Radiation Protection and Nuclear Safety Act 1998* (the ARPANS Act) and the *Australian Radiation Protection and Nuclear Safety Regulations 1999* (the ARPANS Regulations).

1 Australian National Audit Office (ANAO), Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.13.

2 The ARPANS Act covers *controlled persons*, that is: a Commonwealth entity; a Commonwealth contractor; a person in the capacity of an employee of a Commonwealth contractor; or a person in a prescribed Commonwealth place. The ANAO's report refers to controlled persons as entities.

- 3.3 Compliance with legislative requirements is monitored by ARPANSA. Where an entity is not compliant with the ARPANS Act and Regulations, ARPANSA has a range of enforcement options available to it to enable the protection of the health and safety of people and the environment from the harmful effects of radiation.

The audit

- 3.4 The ANAO's audit objective was to assess ARPANSA's management of the regulation of Commonwealth radiation and nuclear activities to ensure the safety of their radiation facilities and sources. The audit examined ARPANSA's:
- key governance arrangements supporting the regulatory function;
 - recovery of regulatory costs;
 - licensing processes;
 - monitoring of compliance; and
 - management of non-compliance and unlicensed activity.
- 3.5 The audit was in response to an Order of the Senate requesting that the ANAO investigate aspects of ARPANSA's licensing processes.³
- 3.6 The audit report was tabled on 2 March 2005.

Overall audit conclusion

- 3.7 The ANAO concluded that improvements were required in the management of ARPANSA's regulatory function. While initial under-resourcing impacted adversely on regulatory performance, ARPANSA's systems and procedures were still not sufficiently mature to adequately support the cost-effective delivery of regulatory responsibilities.
- 3.8 In particular, deficiencies in planning, risk management and performance management limited ARPANSA's ability to align its regulatory operations with risks, and to assess its regulatory effectiveness.
- 3.9 The ANAO also found that procedures for licensing and monitoring of compliance had not been sufficient, particularly as a licence continued in force until it was cancelled or surrendered. Arrangements did not adequately support the setting of fees in a user-pays environment, nor

3 Senate Hansard, No .8, Thursday, 29 August 2002, p. 3997.

ARPANSA's responsibilities for transparently managing the potential for conflict of interest.

- 3.10 ARPANSA recognised the need to address these gaps, and advised that it intended to review and improve the business processes supporting its regulatory function to address this audit's recommendations.

ANAO recommendations

- 3.11 The ANAO made the following recommendations:

Table 3.1 ANAO recommendations, Audit report no. 30, 2004-05

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| 1. | That ARPANSA's Corporate and Branch plans address key priorities and strategies for delivering regulatory outcomes. This would include clearer articulation of objectives and prioritisation of those objectives. <i>ARPANSA response: Agreed</i> |
| 2. | That ARPANSA develop key performance indicators and targets for the regulatory function that inform stakeholders of the extent of compliance by controlled persons, and of ARPANSA's administrative performance. <i>ARPANSA response: Agreed</i> |
| 3. | That ARPANSA enhance its risk management framework to identify risks to achievement of regulatory outcomes, mitigation strategies to manage those risks, residual risks, and a process of systematic monitoring of residual risks and their treatment. <i>ARPANSA response: Agreed</i> |
| 4. | That ARPANSA strengthen management of the potential for, or perceptions of, conflict of interest, in accordance with legislative responsibilities, by: <ul style="list-style-type: none"> • ensuring adequate documentation of all perceived or potential conflicts of interest; • taking action to better manage the conflict of interest arising from its regulatory role in respect of its own sources and facilities; and • implementing and ensuring compliance with instructions issued. <i>ARPANSA response: Agreed</i> |
| 5. | That ARPANSA: <ul style="list-style-type: none"> • review and assess performance against customer service standards in its customer service charter; and • systematically action and report on all complaints received. <i>ARPANSA response: Agreed</i> |
| 6. | That, in order to provide assurance that cost recovery is consistent with better practice and Government policy, ARPANSA: <ul style="list-style-type: none"> • develop a policy framework to guide its cost recovery arrangements; and • have sufficiently reliable data, and analysis, on cost elements to support management decisions on cost recovery—such analysis should include the alignment of fees and charges with the costs of regulation for particular groups of clients or types of licences, to the extent that this is cost-effective. <i>ARPANSA response: Agreed</i> |
| 7. | That ARPANSA enhance guidance to applicants to better reflect the requirements of the ARPANSA Act and Regulations and, in particular, to provide guidance on the statutory matters that the CEO must take into account. <i>ARPANSA response: Agreed</i> |

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8. That ARPANSA introduce appropriate systems to ensure its application processing complies with the requirements of the ARPANS Act and Regulations.

ARPANSA response: Agreed

9. That ARPANSA enhance its licence application assessment processes by ensuring that:
- guidance to staff explicitly addresses specified statutory matters that the CEO must take into account; and
 - regulatory assessment reports provided to the CEO on each application explicitly address the extent to which an application addresses these matters.

ARPANSA response: Agreed

10. That ARPANSA develop a risk-based decision-making process for the use of additional licence conditions. This would require clear procedures and documentation addressing, inter alia, why and how conditions will be applied, monitoring of those conditions, and their costs and benefits.

ARPANSA response: Agreed

11. That ARPANSA develop and implement a central database for the management of applicant and licence-holder information.

ARPANSA response: Agreed

12. That ARPANSA monitor the timeliness of licence approvals against service standards, and report on this in its annual report.

ARPANSA response: Agreed

13. That ARPANSA develop and implement an explicit, systematic and documented overall strategic compliance framework that:
- identifies and articulates the purpose, contribution, resourcing and interrelationships of the various compliance approaches;
 - is based on systematic analysis of the risk posed by licensees and the sources and facilities under their management; and
 - targets compliance effort measures in accordance with assessed licensee risk.

ARPANSA response: Agreed

14. That, to facilitate licensee understanding of and compliance with their obligations, ARPANSA revise or replace the Licence Handbook to address identified weaknesses.

ARPANSA response: Agreed

15. That ARPANSA enhance its reporting guidelines by:
- implementing procedures to keep the guidelines up to date;
 - specifying the level of supporting evidence required in reports;
 - providing feedback to licensees on reports; and
 - seeking client feedback on its guidelines.

ARPANSA response: Agreed

16. That ARPANSA monitor compliance by licensees with reporting requirements.

ARPANSA response: Agreed

17. That ARPANSA develop standard procedures, for the consideration and assessment of reports, that address:
- processes to provide assurance that licensee reports are appropriately assessed and acted upon; and
 - the collation and monitoring of reported information for risk management purposes.

ARPANSA response: Agreed

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18. That ARPANSA establish a systematic, risk-based framework for compliance inspections that includes:
- an integrated inspection program based on systematic and transparent assessment of the relative risks of facilities and hazards;
 - inspection reporting procedures that clearly assess the extent of licensee compliance with licence conditions;
 - recording of report findings in management information systems, to facilitate future compliance activity, and analysis of licence compliance trends;
 - accountable and transparent procedures for discretionary judgements, where compliance inspections vary from standard procedures; and
 - reporting on ARPANSA's performance in conducting inspections.

ARPANSA response: Agreed

19. That, in order to provide greater assurance that failures to meet licence conditions are dealt with and reported appropriately, ARPANSA:
- develop internal systems, policies and procedures to support a consistent approach to defining non-compliance and breaches;
 - have a robust framework to support a graduated approach to enforcement action; and
 - maintain a database of non-compliance and enforcement actions taken and their resolution.

ARPANSA response: Agreed

The Committee's review

3.12 The Committee held a public hearing to examine this audit report on Monday 12 September 2005. Witnesses representing ARPANSA appeared at the hearing, as well as representatives from the ANAO.

3.13 The Committee took evidence on the following issues:

- Regulatory business processes;
- Departmental oversight;
- Licensing;
 - ⇒ Guidance to applicants
 - ⇒ Acceptance of applications without a fee
 - ⇒ Unsupported assessments
 - ⇒ Additional licence conditions
 - ⇒ Licensee reporting
 - ⇒ Incident or ad hoc reports
 - ⇒ Quarterly reports
 - ⇒ Annual reports
 - ⇒ Guidance to licence holders

⇒ ARPANSA's consideration of reports

- Monitoring;
 - ⇒ Non-compliance
 - ⇒ Unlicensed activity
 - ⇒ Identifying prohibited activity
 - ⇒ Inspections
 - ⇒ Enforcement and reporting
- Conflict of interest;
- Cost recovery;
- National uniformity; and
- Complaints.

3.14 ARPANSA provided a submission to the inquiry, which included an implementation schedule setting out the proposed timeframe in relation to each of the 19 ANAO recommendations. The stated intention was for all recommendations to be addressed by March 2006. This implementation schedule is reproduced at Appendix E. ARPANSA further informed the Committee that as of 26 May 2006 all recommendations have been addressed and are in the process of being implemented.⁴

3.15 The Committee feels it is important, before further discussion, to make clear that ARPANSA's responsibility is limited to Commonwealth licences. Therefore ARPANSA does not have responsibility for the private sector, State or Territory entities (eg. hospitals) as these licensing arrangements come under the jurisdiction of the State and Territory government regulatory functions.

Regulatory business processes

3.16 The ANAO found that the size and scope of the regulatory function were underestimated when ARPANSA was set up in 1998 and resources were allocated to the organisation.

3.17 Although initial underresourcing was bound to impact adversely on regulatory performance, the ANAO asserts that by the time of the audit, ARPANSA's systems and procedures were 'still not sufficiently mature to

4 Pers. Comm. Rhonda Evans, Director Regulation and Policy, ARPANSA. 26 May 2006.

adequately support the cost-effective delivery of regulatory responsibilities'. In particular, deficiencies were cited in planning, risk management and performance management which 'limit ARPANSA's ability to align its regulatory operations with risks, and to assess its regulatory effectiveness'.⁵

3.18 ARPANSA's objectives and activities were not prioritised in terms of specific action and accountabilities, and performance measurements were weak in terms of responsibility and follow-up.

3.19 On establishment, ARPANSA also had a large backlog of licences to activate. It was caught up in such a heavy workload that the underlying planning processes were overlooked. The Committee recognises that an organisation can become consumed by its workload to the extent that planning and regulatory functions get overlooked. ARPANSA needs to step back, clearly identify its core business and equate appropriate priority to the issues of regulation and consistently review these operations.

3.20 ARPANSA's response to the audit included the statement that:

ARPANSA acknowledges the work of the ANAO in this audit and agrees that the business processes supporting its regulatory functions need improvement. A formal review has been established to recommend changes to business processes and to oversee their implementation. The review will act upon all the ANAO recommendations.

The review will be directed by an SES officer recruited from outside ARPANSA and reporting to the CEO. It will consult stakeholders and staff. There will be an external consultative group of people with relevant expertise and backgrounds to advise the review.⁶

3.21 The senior executive of ARPANSA and the leader of the review team appeared before the Committee at a public hearing. The Committee feels that the response from ARPANSA has been a genuinely positive one. The CEO has agreed that there were not only resource issues but also that there is a need for the organisation to reconsider the way it prioritises its work.

3.22 This Committee agrees that ARPANSA needs to commit to making such changes and also to ensuring that the changed culture will continue.

5 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.18.

6 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, Appendix 6: Agency response. p.92.

- 3.23 ARPANSA's inconsistencies in key regulatory processes and documentation can be partially attributed to a lack of corporate guidance for ARPANSA staff or published policies and frameworks to underpin the work of the organisation.
- 3.24 ARPANSA has an overarching Corporate Plan which articulates ARPANSA's role: its principal aim, strategic planning framework, and focus on outputs for the next three years. This is supported by branch and section plans.
- 3.25 The ANAO found the nature and purpose of the Regulatory Branch plan (which contains tasks, timelines and responsibilities) was not well articulated. Of the 41 objectives, some were not clearly specified or varied substantially in scope. In addition, the objectives were not prioritised or allocated resources.
- 3.26 As the ANAO asserts:
- Management of a large number of objectives, without prioritisation, risks diffusing both strategic direction and operational implementation. In particular, it does not provide a clear distinction between those objectives necessary to meet ARPANSA's legislative obligations, and those that contribute in other ways (eg. to ARPANSA being more efficient or effective).⁷
- 3.27 While the Committee is confident that the technical expertise of the scientists at ARPANSA is of a very high level and that their understanding of the importance of safety and appropriate mechanisms to ensure that the community is safe is beyond doubt, there is concern that the management ability within the organisation is deficient. There appears to be a focus on scientific issues to the detriment of the management framework required for smooth operation of the regulatory processes.
- 3.28 ARPANSA's CEO, Dr John Loy, admitted that:
- ...it is a fair criticism in that our focus has certainly been on getting radiation protection and nuclear safety right as a technical assessment, a scientific assessment and as an engineering judgment. We have not, until recently, focused as much attention on systematising our management. ... the way we tended to do things was to incrementally develop policies and approaches. Often we failed to finish them off in the sense of formalising them, documenting them and making sure they were fully implemented

7 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.38.

and so forth. So I think the criticism that we had not – and have not yet – arrived at a fully mature management system of the regulation is fair.⁸

- 3.29 ARPANSA's CEO is appointed by the Governor-General as a statutory officer and the position has no performance indicators other than that the Act is implemented.⁹ The current CEO was initially appointed to the position for a five-year period which was then renewed for a further five years from 2004. ARPANSA resides within the Australian Government Health and Ageing portfolio.
- 3.30 The Committee notes that the technical knowledge needed for ARPANSA's research and other scientific functions is different from the expertise needed to regulate appropriately. The Committee feels that ARPANSA has, to date, not had the necessary management direction required for a regulator. Technical competency alone is not sufficient to ensure an appropriate regulatory environment, particularly in an area which is of such concern to the general public. There has to be clear documentation that assures everybody - including the Australian public - that the work of the regulator has been done and the appropriate protections are in place.
- 3.31 ARPANSA agreed that management and assessment should be separated out from the scientific process in order to give a clearer and stronger organisational focus on the management of regulation, supported by technical assessment and scientific advice. They also recognised that, to this end, a new regulatory management information system bringing together all the licence holders and the different forms of licence to track the history of each licence holder and their performance is required:
- ... we cannot fully and adequately deal with the issue of risk based regulation without building and applying a new information system that will allow us to analyse the risks we are endeavouring to regulate and to ensure that the system is useful and used by licence holders as well as by ARPANSA staff. We are commencing a major project in this area.¹⁰

8 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA21.

9 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA21.

10 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA3.

- 3.32 ARPANSA's new strategic regulatory framework, setting out the fundamental ways ARPANSA seeks to achieve regulatory outcomes, has been incorporated into the ARPANSA 2005/08 Corporate Plan and a more strategic Regulatory Branch Business Plan has also been prepared.¹¹
- 3.33 The Committee is concerned that there have been no proper standards or procedures in the organisation, and applauds the decision to develop a regulatory management information system. With appropriate stand alone systems in place and guidance provided by documentation, a CEO with extensive management experience should be able to run the assessment and monitoring functions of ARPANSA without requiring any particular technical knowledge.
- 3.34 Accordingly, the Committee makes the following recommendations:

Recommendation 4

- 3.35 **The Committee recommends that ARPANSA's new information system include standards and procedures for ARPANSA's regulatory functions, and appropriate guiding documentation to ensure that the information system is correctly and consistently utilised to ensure accurate tracking.**

Recommendation 5

- 3.36 **The Committee recommends that the Minister for Health re-examine the process for appointment to the position of CEO of ARPANSA. In particular, the process needs to seek a person with management expertise sufficient to manage the technical expertise that exists within the organisation.**

Departmental oversight

- 3.37 As previously stated ARPANSA resides within the Australian Government Health and Ageing portfolio.
- 3.38 ARPANSA informed the Committee that although people in the Department of Health and Ageing were aware of the ANAO's report, they

11 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2005*, p.1.

were not involved in ARPANSA's formal review to act on the ANAO's recommendations:

They were given an opportunity during the first stage of this project to make any comments or provide any information in relation to current processes. The department chose not to do that but they have asked to be kept informed of progress at the moment.¹²

3.39 The JCPAA has previously examined another agency within the Health and Ageing portfolio. The Therapeutic Goods Administration (TGA) was examined¹³ following a critical ANAO audit into the regulation of non-prescription medicinal products.¹⁴

3.40 Given the issues raised in these two separate audits, the Committee emphasises the importance of the Department of Health and Ageing providing an adequate level of monitoring and support to its portfolio agencies. This is particularly so with agencies such as ARPANSA and TGA which have significant roles in terms of the health and safety of the Australian public.

3.41 Accordingly, the Committee makes the following recommendation:

Recommendation 6

The Committee recommends that the Department of Health and Ageing review and report on their obligations and efforts regarding the monitoring and support of agencies within the portfolio.

Licensing

3.42 One of ARPANSA's key regulatory activities is licensing. Licences are issued for a source or for a facility, to authorise a controlled person to

12 Mr Brandt, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA.21.

13 JCPAA, *Report 404 - Review of Auditor-General's Reports 2003-2004 Third & Fourth Quarters; and First and Second Quarters of 2004-2005*, October 2005. Chapter 12: Audit Report No. 18, 2004-2005.

14 Australian National Audit Office, *Audit Report No. 18 2004-05, Regulation of Non-prescription Medicinal Products, Department of Health and Ageing and the Therapeutic Goods Administration*, December 2004.

undertake activities that would otherwise be prohibited under the ARPANS Act and Regulations. Depending on the circumstances, entities may require a source licence, a facility licence or both.

- 3.43 Under the ARPANS Act, licensing decisions ultimately rest with the CEO, or the CEO's delegate. The CEO has not delegated this power. The Act lists the statutory matters that must be taken into account by the CEO in a licensing decision. A licence continues in force until it is cancelled or surrendered, reinforcing the need for robust and systematic licensing processes and monitoring of compliance.

Guidance to applicants

- 3.44 ARPANSA provided guidance to licence applicants through a guide document and application packs. However, the ANAO found that this guidance did not explicitly ask applicants to address the statutory matters against which they would be assessed. Consequently, applicant documentation was often found to correlate poorly with the ARPANSA legislation and clarification was required from applicants during the assessment process.
- 3.45 The Committee was concerned to hear that ARPANSA provided a guide which applicants were required to address, but to which ARPANSA did not refer when assessing those applications.

Licensee advice to the ANAO confirmed that they considered the guidelines did not adequately specify the level of detail required in reports. Licensees also advised that they were not provided with feedback on the quality of reports submitted. Overall, ARPANSA does not monitor satisfaction with such guidance.¹⁵

- 3.46 In response to the ANAO report, ARPANSA stated that:

The intention of the applicant guidance provided by ARPANSA is to draw out how ARPANSA reviewers will assess information provided by the applicant ... so as to inform the CEO of the findings that are open for him to make about that material. Once he has made his findings of fact, it is then the responsibility of the CEO to consider issues of relevance and weight in his overall decision making process.

It is to be expected that, at least for applications of any complexity, there will be a need for ARPANSA reviewers to seek clarification

15 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.71.

and additional information from applicants. This is not indicative of a flaw in the application process rather it is a common occurrence in review of applications in the wider context of administrative decision making.¹⁶

- 3.47 When questioned by the Committee, ARPANSA asserted that the information contained in applications and staff advice has been sufficient when assessing applications against the statutory matters:

The statutory matters are matters 'to be taken into account' in my licensing decisions ... The taking into account of the statutory matters flows from assessment of the information identified in Schedule 3, Parts 1 and 2 of the Regulations in the light of the internationally accepted framework of radiation protection and nuclear safety.¹⁷

- 3.48 In response to the ANAO report, the application pack is currently being reviewed and enhanced, however it still does not explicitly ask applicants to address the statutory matters against which they are to be assessed. Rather, the application packs and guides focus on the plans and arrangements with which licence holders are required to comply. ARPANSA feels that the information sought through the application pack is sufficient for assessors 'to fully consider the statutory requirements'.¹⁸

Acceptance of applications without a fee

- 3.49 The ANAO stated that:

Some 60 per cent of applications accepted for assessment have been processed without a fee. Accepting applications without a fee is a breach of ARPANS legislation.¹⁹

- 3.50 The Committee was very concerned to hear that ARPANSA was found to be in breach of its own legislation.

- 3.51 ARPANSA assured the Committee that although 'the fee did not come at the time of the application, as the Act said it should [it] was subsequently

16 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, Appendix 6: Agency response. p.93.

17 ARPANSA, Submission no. 3. p.3.

18 ARPANSA, Submission no. 3. p.4.

19 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.16.

collected.²⁰ Further, Dr Loy assured the Committee that the system has since been modified so that licence applications are no longer accepted without the fee upfront, and that all ARPANSA staff are aware of this requirement.

3.52 As ARPANSA explained:

... in the first instance, until we had made an assessment and made a decision on the licence, these licence holders were effectively not regulated at all. Until we brought them into the system by making the assessment and the decision, they were outside of it.²¹

Unsupported assessments

3.53 The Committee was very concerned to find that a major regulatory authority was operating without a robust procedure for its assessments of applications, as revealed by the ANAO's finding that:

The bulk of license assessments – some 75 per cent – were made without the support of robust, documented procedures. Assessments of applications were supported by draft procedures only, which staff were not required to follow.²²

3.54 Most of the assessments reviewed by the ANAO were made prior to June 2003, which was when ARPANSA finalised standard operating procedures (SOPs) addressing receipt; assessment and recommendation; and issuing of a licence:

Previously, ARPANSA had draft procedures only. The draft procedures did not provide guidance on a number of matters, such as:

- form of letters to applicants (for example, acknowledgement of applications);
- entering applicant information on information systems;
- the correct form for a regulatory assessment report to the CEO; and

20 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA.17.

21 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA18

22 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.16.

- how to undertake, record and document site visits and inspections.

In addition, there was no formal requirement for the draft procedures to be followed.²³

3.55 The ANAO reported that:

In reviewing applications, staff are guided by the *Regulatory Guideline on Review of Plans and Arrangement* [and] may also have regard to relevant codes or standards of practice, international best practice and public submissions.²⁴

3.56 However, while these sources address many key aspects of radiation and nuclear safety, they:

are not explicitly aligned to the legislative matters that the CEO must take into account in making a decision. In particular, the guideline on plans and arrangements - the primary assessment guideline - does not specifically address the statutory matters specified in the legislation.²⁵

3.57 This increased the risk that the matters specified in the ARPANS Act and Regulations may not be consistently or adequately addressed in reports and recommendations to the CEO. Dr Loy told the Committee that:

the issue that we are still grappling with a little bit is the difference between matters to be taken into account on the one hand and the information required of the applicant on the other and how to get that balance right.²⁶

3.58 ARPANSA responded to the Committee by saying that the process 'was not ad hoc, but certainly we have strengthened those procedures and we can do further work on them'.²⁷ Dr Loy described the path of an assessment as having involved an assessment officer, possible review by a

23 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.53-54.

24 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, pp.55-56.

25 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.56.

26 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA15.

27 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA15.

section head, review by the branch head, review by the legal adviser and then the CEO, providing 'fairly consistent scrutiny of licence applications'.

- 3.59 ARPANSA's new standard operating procedures (SOPs) have now been implemented. In response to Committee questioning on whether or not training had been provided to ensure that staff operate effectively within the procedures, ARPANSA stated:

Yes, certainly. I really do not think the assessment procedures could be subject to quite the same criticism now as they were then. That is not to say that they could not still be improved, of course.²⁸

- 3.60 The Committee was also concerned at the appearance of a lax attitude in ARPANSA's licensing or regulation due to their clients being government agencies or government funded organisations. Dr Loy appeared before Senate estimates in June 2005, where he stated (regarding the specific case of costs for the assessment of the construction licence for the OPAL reactor) that 'the costs were underrecovered from the client [ANSTO] but they have not been underrecovered from the government'²⁹ as ANSTO is a government funded organisation. The Committee requested assurance from ARPANSA that the approach to regulation was no different than it would be if they were dealing with private entities.

- 3.61 Dr Loy responded that:

In terms of assessment and our general treatment of licence holders, we take the duties given to us by the act seriously. I do not think we resile because they are government agencies that we are regulating.³⁰

- 3.62 The Committee accepts that ARPANSA recognises their licensing and regulatory responsibilities are serious even though their clients are government agencies.

Additional licence conditions

- 3.63 Licences issued by ARPANSA for source dealings and facility conducts are accompanied by a framework of licence conditions. The standard
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28 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA.18.

29 Dr Loy, **Budget Estimates**, Community Affairs Legislation Committee, *Senate Estimates*, Thursday, 2 June 2005, pp. CA90-91.

30 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA.16.

licence conditions, and special licence conditions relating to general plans and arrangements for managing safety, have been set out in the 'General Handbook'. This handbook previously formed part of the licence.

3.64 ARPANSA explained to the Committee that:

The aim of the Licence Conditions Handbooks [was] to assist licence holders by bringing together in one place the licence conditions imposed by the Act, the Regulations and the CEO at the time of issuing the licence; providing a single reference point in relation to licence holder obligations, rights and responsibilities; and ensuring consistency in licence conditions between licence holders. ...[it] was never intended to be a substitute for the licence holder's obligation to understand the legislative framework and the licence holder's obligations under the legislation.³¹

3.65 ARPANSA has advised that it now issues new and revised licences which explicitly include Standard Licence Conditions in a schedule forming part of the licence, rather than by reference to the Handbook. In addition:

The Licence Handbook is currently being revised with the intention of the Handbook being a general reference to legislative requirements and ARPANSA licensing processes.³²

3.66 At the time of the ANAO audit, ARPANSA had not rejected any applications for a licence; it had, however, imposed additional special conditions on all licences issued:

Some of these conditions appear to be significant aspects of recognised international best practice, which is a necessary requirement for a licence.

ARPANSA advised that it does not consider that these applicants were deficient in demonstrating *radiation protection and nuclear safety*. However, ARPANSA does not have systematic arrangements in place to provide assurance that special conditions are not being used to overcome deficiencies within applications.

Nor does ARPANSA provide guidance to its staff on the circumstances under which a licence condition is appropriate, and the scope and application of licence conditions.³³

31 ARPANSA, Submission no. 3. p.5.

32 ARPANSA, Submission no. 3. p.5.

33 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.16.

3.67 ARPANSA responded that:

There is a distinction between the matters of fact relevant to a decision to award a licence and subsequent imposition of licence conditions on a licence. Apart from those licence conditions that are mandated by the Act and the Regulations, the CEO has a power to impose additional licence conditions. ARPANSA does not accept the suggestion in the ANAO report that additional licence conditions were used to address fundamental deficiencies in applications. Rather the purpose of these additional licence conditions was to provide an impetus to the licence holders to upgrade the plans and arrangements to modern standards and to encourage a culture of continuous improvement in relation to particular licence holders.³⁴

3.68 The Committee was surprised to note that of all the licence applications that had been received by ARPANSA, none were rejected. In response to Committee questioning, ARPANSA asserted that no applications were accepted as a *fait accompli*. Rather, with the exception of straightforward applications, the assessment process always involves ARPANSA assessors asking questions and providing feedback to the licence applicant, seeking more information and adding this to the initial application.

There is a kind of subtext to the idea that we have not refused a licence – the idea that we should have. In another sense, however, the Commonwealth has been undertaking activities using radiation and nuclear facilities for many years. It is not surprising that they were doing that in a manner that met the conditions of the act.³⁵

3.69 Subsequent information provided by ARPANSA stated that:

The use of additional licence conditions is now relatively rare as the licensing or pre-existing activities have been completed. A paper on the role of additional licence conditions will be prepared by the end of November 2005.³⁶

34 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, Appendix 6: Agency response. pp. 93-94.

35 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA.4.

36 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2905*, p.3.

- 3.70 ARPANSA informed the Committee in May 2006 that the paper is now expected to be prepared by the end of June 2006.³⁷
- 3.71 The Committee accepts ARPANSA's confidence in the appropriateness of its assessment of applications and the use of additional licence conditions. However the Committee feels that wider public confidence in the process could be achieved by ensuring all additional information gathering and special condition usage is centrally documented, ideally within the new information system.
- 3.72 In addition, ARPANSA must provide appropriate guidance to its staff on special licence conditions including their scope and application.
- 3.73 It is ARPANSA's responsibility to provide assurance that special conditions are not being used to overcome deficiencies within applications.
- 3.74 Accordingly, the Committee makes the following recommendations:

Recommendation 7

- 3.75 **The Committee recommends that a checklist of standards required for granting a licence be prepared, as part of the new information system, that identifies when all conditions have been met and a licence can be granted.**

Recommendation 8

- 3.76 **The Committee recommends that ARPANSA provide appropriate guidance to its staff on the circumstances under which a licence condition is appropriate, and the scope and application of licence conditions.**

Licensee reporting

- 3.77 The ARPANS Act and Regulations impose a number of reporting requirements on licensees and so ARPANSA requires licence holders to submit *incident or ad hoc reports* (where there has been an unanticipated

37 Pers. Comm. Rhonda Evans, Director Regulation and Policy, ARPANSA. 26 May 2006.

operational occurrence or an accident,³⁸ to be submitted within specified times), *quarterly reports* (to be submitted within 28 days of the end of the quarter) and *annual reports* (at least once each financial year).³⁹

- 3.78 The Committee was concerned at the level of licensee compliance with the reporting requirements and by ARPANSA's monitoring of this compliance, as reported by the ANAO.

Incident or ad hoc reports

- 3.79 The ANAO found some incidents, or changes to inventories, which were either not reported within the time required by the reporting guidelines, or not reported at all.⁴⁰

Quarterly reports

- 3.80 The ANAO reported that the number of quarterly reports received by ARPANSA had increased substantially in recent years. This was attributed in part to the requirement that all licensees submit reports. Prior to March 2004, quarterly reports were only required where there was a change in circumstances.
- 3.81 Despite the increasing number of reports, ARPANSA was not able to advise if all licensees were meeting reporting requirements as there was no systematic process for monitoring reporting. This included there being no benchmark or target number of expected reports and no routine collection of the number of reports.⁴¹ ARPANSA, therefore, does not have the data to enable it to assess licensees' compliance with quarterly reporting requirements.
- 3.82 The ANAO considered that a more systematic approach, including recording and monitoring of the submission of reports, was needed to ensure that quarterly reports contributed to compliance monitoring and management, as required.

38 Abnormal occurrences can occur for a number of reasons, and do not necessarily indicate a breach or poor management by the licensee.

39 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, pp.67-68.

40 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.69.

41 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.70.

3.83 ARPANSA advised the Committee that it has:

developed a comprehensive electronic reporting proforma and accompanying guidance document for prescribed facilities and source licence holders. This includes 'nil' returns which are still reported quarterly. Reminders about compliance reporting obligations are sent to licence holders quarterly.⁴²

3.84 In 2005 ARPANSA published online Quarterly Reporting Proformas for license holders, supplemented by new 'Guidance for Licence Holder Quarterly Reporting' to assist entities in identifying the types of information which should be included in quarterly reports, and advising of the nature and scope of changes and incidents that need to be reported to APANSA.⁴³

Annual reports

3.85 As reported by the ANAO:

The ARPANS Act and Regulations require that *all* licensees report to ARPANSA at least once each financial year.⁴⁴

3.86 ARPANSA does not routinely identify how many annual reports should be received, the timeliness or extent to which they are submitted. As with the other types of reports, the ANAO also found considerable under-reporting by licensees in terms of annual reports.

3.87 The ANAO found that:

ARPANSA has not articulated and enforced the reporting requirements of licensees⁴⁵... Further, the fourth quarterly report is often treated as sufficient to meet the requirement for an annual report, notwithstanding that these are separate requirements.⁴⁶

3.88 ARPANSA conceded that:

A small amount of under-reporting previously occurred in relation to annual reviews of plans and arrangements by licence holders

42 ARPANSA, Submission no. 3. p.4.

43 URL: http://www.arpansa.gov.au/hold_comp.cfm Updated by Australian Radiation Protection and Nuclear Safety Agency - 3 August 2005

44 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.70.

45 For example, ARPANSA advised that it does not seek reports from some source licence holders.

46 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.71.

with small, low hazard inventories. Reporting by licence holders of more hazardous facilities has, in general, been good.⁴⁷

- 3.89 The ANAO asserted that 'ARPANSA does not monitor or assess the extent to which licences meet reporting requirements.'⁴⁸

Overall, the ANAO found that some entities are not fully complying with reporting requirements. ARPANSA lacks supporting procedures for monitoring reporting and for addressing non-reporting or late reporting.⁴⁹

- 3.90 The ANAO therefore recommended that ARPANSA monitor compliance by licensees with reporting requirements.

- 3.91 ARPANSA responded to the Committee that 'recent quarterly reports do clearly report on this compliance.'⁵⁰ ARPANSA also informed the Committee that:

The Regulatory Management Information System, currently being developed by ARPANSA will include a facility to generate a report of licence holders who have not provided a quarterly or annual report. This report will be run quarterly, and all licence holders who have not provided a report, as a condition of their licence, will be followed up.⁵¹

- 3.92 The Committee is pleased to see the improvements planned in the area of licensee reporting, as one of ARPANSA's key compliance approaches.

Guidance to licence holders

- 3.93 The ANAO described guidelines on reporting which had been developed by ARPANSA to facilitate licensee reporting. These guidelines were incorrectly described as draft, despite having been finalised.⁵²

- 3.94 The guidelines were found to be consistent with the ARPANS Act and Regulations. However, they did not clearly articulate some of the ARPANS Act and Regulations' reporting requirements; were out of date
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47 ARPANSA, Submission no. 3. p.4.

48 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.17.

49 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.71.

50 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2905*, p.4.

51 ARPANSA, Submission no. 3. p.4.

52 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.71.

and did not reflect recent changes to reporting practices;⁵³ and did not specify a standard format for reports (resulting in markedly varied reports in terms of issues addressed and level of detail provided and therefore limiting ARPANSA's ability to extract consistent, and sufficient, information to inform it about licensees' compliance).⁵⁴

- 3.95 ARPANSA's licensees advised the ANAO that they considered the guidelines did not adequately specify the level of detail required in reports and that they were not provided with feedback on the quality of reports submitted. However, ARPANSA did not monitor satisfaction with the reporting guidance it provided.
- 3.96 The ANAO recommended that ARPANSA enhance its reporting guidelines and seek client feedback on them.
- 3.97 ARPANSA informed the Committee that:

The reporting guidelines have been revised and enhanced. There will be further consultation with licence holders on the new guidelines in the next quarter. Arrangements for regular feedback are being addressed.⁵⁵

ARPANSA's consideration of reports

- 3.98 ARPANSA advised the ANAO that reports are reviewed against obligations contained in the licence and the Licence Handbook. The regulatory branch informs the CEO if there are any issues arising from the licensee's report.
- 3.99 The ANAO found that ARPANSA did not provide guidance to staff on matters to be considered in reports, or the circumstances under which the report should be raised with the CEO in order to support the assessment. ARPANSA advised it was developing draft policies and standard operating procedures (SOPs) to address this.
- 3.100 The Committee agrees with the ANAO's assessment that the:
- absence of a systematic and transparent approach to managing reports reduces assurance that reports are consistently and

53 for example the requirement for entities to submit *nil return* quarterly reports was not included

54 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.71.

55 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2905*, p.4.

appropriately analysed and that the target level of licence compliance is occurring.⁵⁶

- 3.101 In response to the ANAO's recommendation to develop standard procedures for the consideration and assessment of reports, ARPANSA commented that the enhancement of the management information system will assist in achieving this, as will progress against the other recommendations relating to reporting.⁵⁷

Monitoring

- 3.102 Under the legislation, the CEO of ARPANSA monitors compliance of controlled persons with the ARPANS Act, whether or not they hold a licence.

- 3.103 As Dr Loy explained to the Committee:

The licence holder has the obligation to take all reasonable steps to prevent breaches and accidents. My role as regulator is to see that they are doing that... But it is not my job to do it for them.⁵⁸

- 3.104 The ANAO report describes prohibited activity under the ARPANS Act and Regulations as including unlicensed activity and non-compliance with licence conditions. ARPANSA's approaches to promoting and monitoring compliance included facilitating entities' awareness of ARPANSA's role and of their responsibilities; issuing a *Licence Handbook* to licensees; reporting by licensees; and undertaking inspections.

- 3.105 As the ANAO reports:

ARPANSA does not specify the role or emphasis to be given to the various compliance approaches. As well, its approaches have largely focused on self-regulation, and on identifying non-compliance by licence holders. That is, ARPANSA does not have

56 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.73.

57 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2905*, p.4.

58 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA13-14.

an explicit framework or a strategy for it to identify prohibited activity by non-licensed entities.⁵⁹

3.106 This means that ARPANSA often relies on notifications by others to identify unlicensed activity. The Committee agrees with the ANAO that ‘a more systematic approach to the risk of prohibited activity by non-licensed entities is warranted in order to identify mitigation measures.’⁶⁰ An overarching compliance policy is needed to assure that non-compliant and prohibited activity is being identified in a structured manner, in accordance with the ARPANS Act and Regulations.

3.107 The ANAO considered that the absence of an overall, risk-based, compliance framework reduced assurance that the compliance effort was directed to areas of greatest risk in a cost-effective manner. It therefore recommended ARPANSA develop and implement an explicit, systematic and documented overall strategic compliance framework that:

- identifies and articulates the purpose, contribution, resourcing and interrelationships of the various compliance approaches;
- is based on systematic analysis of the risk posed by licensees and the sources and facilities under their management; and
- targets compliance effort measures in accordance with assessed licensee risk.⁶¹

3.108 The ARPANSA response to the ANAO report stated that:

...ARPANSA acknowledges the need for there to be an overall compliance framework and policy, but this needs to be developed in the light of the experience gained from the careful application of the law to particular factual circumstances affecting an individual licence holder or other category of controlled person.

Reporting by licensees and the monitoring of compliance through inspections are, as noted in the ANAO report, key activities within the compliance framework. ARPANSA has been systematising its efforts in these areas and the regulatory review will continue with this process in the light of the ANAO recommendations. In

59 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.64.

60 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.64.

61 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.65. (Recommendation 13)

particular, it will address how to take an appropriately risk-based approach to establishing a program of compliance inspections.⁶²

- 3.109 The list of *Action taken/to be taken by ARPANSA in response to the ANAO recommendations*, stated that to develop such a framework, it firstly needed to address ANAO recommendations 7, 14, 15, 16 and 18.⁶³
- 3.110 The Committee believes that addressing overall compliance in parallel with the other work being done on the issue, would provide a stronger, more uniform and more timely impact than to wait until after the other recommendations have been responded to.
- 3.111 The ANAO report found that 'deficiencies in planning, risk management and performance management limited ARPANSA's ability to align its regulatory operations with risks, and to assess its regulatory effectiveness.'⁶⁴
- 3.112 The Committee questioned ARPANSA as to why the agency's risk profile did not include the risks of ARPANSA not adequately addressing unlicensed activity or non-compliance by licence holders.
- 3.113 ARPANSA responded that while generally accepting the critique made by the ANAO, the risk of 'Licensed Bodies Performance' was identified in the ARPANSA risk profile dated December 2003.

The key controls and management strategies to address this risk were seen as:

- Fully documented and robust licensing processes
- Inspection program and processes
- Compliance audit and enforcement powers.

The risks associated with unlicensed activity were considered in the ARPANSA critical success factors during the risk identification process. These risks were assessed to be low by regulatory officers.⁶⁵

62 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, **Appendix 6: Agency response**. p.94.

63 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2905*, p.3.

64 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.66.

65 ARPANSA, Submission no. 3. pp.1-2.

- 3.114 Licensees are responsible for complying with the conditions of their licences. The Committee agrees with the ANAO that despite this:
- ... it is good regulatory practice to aid licensees' understanding of their obligations and responsibilities, and to make them aware of how to conform appropriately to licence conditions and other requirements.⁶⁶
- 3.115 In order to improve licensee understanding, ARPANSA has conducted presentations for some licensees. These presentations however have focused on the 'major licensees, who manage the bulk of facilities and sources' and there was 'no explicit strategy for communicating requirements to smaller entities.'⁶⁷
- 3.116 Although the presentations were found to have appropriately addressed issues such as the requirements of the legislation, the role of ARPANSA, and important definitions, they did not address some major compliance risks.
- 3.117 The ANAO described as largely informal ARPANSA's decisions on when, and to whom, to give presentations and that there was no overall schedule for the presentations.
- 3.118 The Committee is concerned that due to there being no structured approach, ARPANSA does not provide all entities with the same opportunities when it comes to understanding their obligations and responsibilities.
- 3.119 The ANAO reported that during the process of their audit, ARPANSA had established a Regulatory Compliance Working Group to address the management of its compliance approach, and was developing a Regulatory Compliance Policy to address the role of promotion and education activities.

Non-compliance

- 3.120 The ANAO report stated that:

ARPANSA does not have a systematic and documented analysis of the likelihood and consequences of various risks for a given licence, such as potential misuse of sources or poor management

66 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.66.

67 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.66.

by licensees. In particular, there is no systematic risk ranking of licence holders that considers the likelihood and the consequences of non-compliance, which can be used to provide a consistent basis for deciding the compliance effort to be devoted to particular entities or sources.⁶⁸

3.121 ARPANSA advised the ANAO that the effort spent on compliance monitoring is roughly proportional to the level of hazard associated with the facilities and sources under licence.

3.122 ARPANSA told the Committee that:

the ANAO feels we did not put enough attention to in monitoring and assessing performance. I would accept that that has been valid at least during those times when we had this very large workload of assessment of licence applications.

... I do not think there was no monitoring. There may not have been as much as there should have been or could have been, but it was not as if there was no monitoring.⁶⁹

3.123 The ANAO found that ARPANSA did not have a policy or other guidance addressing the use of the powers it has to address non-compliance and unlicensed activities by controlled persons. This is despite ARPANSA having been responsible for enforcement since 1999.

In practice, ARPANSA has managed non-compliance with entities through a variety of means: on-site meetings, correspondence and emails.⁷⁰

3.124 The ANAO noted that for the incidences of identified non-compliance which they reviewed, 'ARPANSA generally took prompt action to raise concerns with licensees. Most licensees also responded promptly and took corrective action.'

3.125 However, the Committee agrees with the ANAO conclusion that the absence of policy guidance 'increases the risk that enforcement action may

68 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.65.

69 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p.PA18.

70 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.79.

not be consistent with the legislation, or undertaken on an equitable and risk-managed basis.⁷¹

Unlicensed activity

3.126 ARPANSA does not have a strategy for identifying prohibited activity by non-licensed entities.⁷² The ANAO noted that:

... ARPANSA's enforcement actions have focused on non-compliance by licence holders. This reflects its approach to compliance, which is predominantly focused on identifying licence holders who have not complied with conditions of licences ... That is, there have been few actions against entities undertaking unlicensed activities.⁷³

Identifying prohibited activity

3.127 ARPANSA's licensed entities are required to submit an *incident or ad hoc report* within a specified timeframe, where there has been an abnormal occurrence or a breach of licence conditions. These reports are addressed within the section on licensing above.

3.128 In addition, ARPANSA undertakes inspections to assess licensee compliance with licence requirements (see below).

3.129 The ANAO identified that ARPANSA does not have an explicit framework or a strategy for it to identify prohibited activity by non-licensed entities. Rather, in practice, it relies on notifications by others to identify unlicensed activity.

3.130 The Committee agrees with the ANAO that a 'more systematic approach to the risk of prohibited activity by non-licensed entities is warranted in order to identify mitigation measures'.⁷⁴

3.131 ARPANSA informed the Committee that:

Prior to the enactment of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act) and the *Australian Radiation*

71 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.79.

72 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.17.

73 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.79.

74 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.64.

Protection and Nuclear Safety Regulations 1999, all Commonwealth agencies were canvassed as to whether they undertook activities that needed to be licensed under the Act. In 1999, all agencies were sent information about the legislative requirements and the agencies' responsibilities under the legislation so as to determine which agencies had controlled apparatus, material or facilities. All agencies which responded advising that they controlled items which were required to be licensed under the Act have been licensed, with various conditions attached to those licences depending on individual circumstances.⁷⁵

3.132 The ANAO suggested that a similar process should be undertaken again to ensure entities without a licence do not possess any radiation sources or facilities.

3.133 ARPANSA is presently developing a strategy to address the possibility of unlicensed activities, which includes correspondence to all Commonwealth agencies providing information in relation to the requirement to have certain radiation sources licensed under the Act, and seeking information on whether such sources are under the control of those agencies. ARPANSA also plans to undertake audits in relation to Commonwealth entities to verify that the returns from those agencies are accurate.⁷⁶

3.134 Following questioning from the Committee as to the possibility that public health and safety had been compromised by the lack of attention to unlicensed activity to date, Dr Loy responded:

Taking into account the outcomes from the activities in 1998 and 1999, and knowing the range of responsibilities undertaken by Commonwealth entities that may involve application of radiation, I judge that public health and safety is unlikely to have been compromised.

...Any unlicensed activities are likely to be for use of low hazard apparatus such as mail or baggage X-ray machines for security purposes, or non-ionizing apparatus such as ultraviolet lamps. Such apparatus are generally of negligible risk to the public.⁷⁷

3.135 However, ARPANSA conceded that there may still be Commonwealth entities with unlicensed sources which is why they are taking the action outlined above.

75 ARPANSA, Submission no. 3. p.2.

76 ARPANSA, Submission no. 3. pp.1-2.

77 ARPANSA, Submission no. 3. p.4.

Inspections

- 3.136 ARPANSA undertakes inspections to verify that entities are complying with their licences.
- 3.137 Despite annual report information and guidance to staff advising that the schedule of inspections should be risk-based, the ANAO found that ARPANSA does not have an overall program of inspections that takes account of the relative risk of each licensee. Instead, development and maintenance of inspection schedules is by individual Regulatory Branch staff members.⁷⁸
- 3.138 ARPANSA described the process of developing inspection schedules:
- Schedules for inspection of licence holders are based on the ranking, by ARPANSA officers, of the risk to people and the environment associated with the radioactive material, apparatus or facility covered by the licence. The risk “consequence” is determined from the hazard level of the source or facility and is assessed during the review of a licence application by ARPANSA staff. The risk “likelihood” is determined by ARPANSA from the level of control exercised by the licence holder over the licensed activity, commensurate with the hazard level. The assessment of likelihood is based on the licence holder’s plans and arrangements for achieving safety, and modified by the licence holder’s compliance record assessed from compliance reporting, ARPANSA inspections and incidents and accident records.
- The inspection schedules are developed by the regulatory officers, reviewed by Section Managers and approved by the Director of the Regulatory Branch.⁷⁹
- 3.139 Information on planned inspections or outcomes against the plan is not collated or readily available resulting in management being unable to monitor implementation or performance of these inspections.
- 3.140 Although inspection outcomes are documented in reports to the CEO, the extent and nature of reporting was found to vary markedly and some reports did not clearly state whether a licensee was in compliance with their licence conditions.⁸⁰

78 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.75.

79 ARPANSA, Submission no. 3. p.5.

80 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.77.

- 3.141 The Committee was concerned to hear that the process of developing schedules and documenting inspections seemed to be ad hoc in nature. This in turn raises concerns that that the system is not effectively monitoring the compliance of licensees as it should.
- 3.142 ARPANSA advised the Committee that as a result of the regulatory review process flowing from the ANAO report, ARPANSA is seeking a more systematic and overall process of regulatory risk management. This is expected to rely heavily on the Regulatory Management Information System, currently being developed.
- 3.143 In addition ARPANSA's risk assessments will be adjusted where necessary in light of information presented in quarterly and annual reports, through inspections and through the investigation of any accidents or other identified licence condition breaches.⁸¹

Enforcement and reporting

- 3.144 The ARPANS Act and Regulations carry powers to address non-compliance and unlicensed activity by controlled persons. The CEO is empowered to amend, suspend or cancel a licence, give directions to the licensee, apply for an injunction or recommend prosecution.⁸²
- 3.145 As mentioned earlier, the ANAO found that ARPANSA has to date undertaken few actions against unlicensed entities undertaking prohibited activities as its enforcement actions have focused on non-compliance by licence holders.
- 3.146 The ANAO stated that ARPANSA does not have a policy or other guidance addressing use of enforcement powers, including a process for escalating its enforcement approach. In its place, ARPANSA has managed non-compliance with entities through a variety of means including on-site meetings, correspondence and emails.⁸³
- 3.147 ARPANSA provided the following description to the Committee of their processes when a breach of the conditions of a licence is identified:

A licence is issued with conditions determined by the Act and regulations, and [the CEO] may impose additional conditions on a particular licence ... Often when we undertake an inspection of a

81 ARPANSA, Submission no. 3. p.6.

82 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.79.

83 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, pp.79-80.

licence holder the inspectors will draw attention to matters where a licence holder is in breach. It may be as simple as they are not displaying the licence in the workplace through to the situation where they are not managing the particular source in the way they said they would in the licence application. Often my approach is to say, 'My inspectors have identified this potential breach or non-compliance; what is your response?' If the licence holder responds by saying, 'I have demonstrated how I have remedied this matter,' I normally would not proceed to make any formal finding of a breach in such a circumstance. It is a matter of the licence holder having remedied the breach. ... [The breach] is recorded in our files, in the knowledge that we have. I do not formally make a finding of a breach if it is a matter of a lower order and it is remedied. In other cases I have, and do, proceed to making a formal finding of a breach where I consider the matter to be more significant and if I feel that making that formal finding will improve the licence holder's continuing commitment to following the licence conditions. It is true that I have been feeling my way a little in this area of what is the most effective way of enforcing compliance.⁸⁴

- 3.148 The ANAO described ARPANSA's action on incidents of identified non-compliance as generally being prompt in raising concerns with licensees. Most licensees were also prompt to responded and take corrective action.
- 3.149 However the Committee agrees that policy guidance for the use of ARPANSA's enforcement powers is still essential in order to ensure that enforcement action is equitable and consistent with the legislation.
- 3.150 ARPANSA is required under the ARPANS Act and Regulations to report any breach of licence conditions to Parliament.
- 3.151 ARPANSA has reported only one designated breach to Parliament. This is notwithstanding that there have been a number of instances where ARPANSA has detected non-compliance by licensees.
- 3.152 ARPANSA advised the ANAO that the two terms 'breach' and 'non-compliance' were synonymous:

The use of the alternatives is rather a product of the fact that the Act talks of 'monitoring compliance' on the one hand and 'breach' on the other.

84 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, pp.PA4-5.

The practice [by ARPANSA staff] has developed of referring to it as non-compliance rather than breach.⁸⁵

- 3.153 In response to the ANAO's report, ARPANSA described their approach to non-compliance as follows:

ARPANSA operates on the basis of providing procedural fairness to any controlled person whose interests are affected by a preliminary view that they are in breach of the Act or Regulations. Hence, initial views about 'non-compliance' are put to controlled persons, including the factual basis upon which that view of possible 'non compliance' has been formed. Very often, the controlled person will respond with acceptable actions and in those circumstances, whilst a breach may have occurred, the rectification of that breach usually means that subsequent enforcement action is not required.⁸⁶

- 3.154 While ARPANSA may consider some non-compliance minor, the ANAO noted that other examples have had implications for safety. In addition, legal advice obtained by the ANAO held that non-compliance, such as in the example listed in the report,⁸⁷ is a breach of licence conditions. Further it should be classified as such and reported to the Parliament in accordance with the ARPANS Act and Regulations.⁸⁸

- 3.155 The Committee is concerned by the ANAO identification of instances where there has been a failure to report and act properly on breaches. This raises questions as to whether enough is being done to ensure that there are adequate controls in place for reporting and for the re-issuing of licenses.

- 3.156 The ANAO considers that more comprehensive reporting of non-compliance, whether or not deemed to be a breach, was warranted to provide greater assurance to Parliament and other stakeholders that ARPANSA is discharging its responsibilities effectively.⁸⁹

85 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p 80.

86 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, Appendix 6: Agency response. p.94

87 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, Table 6.1, page 81.

88 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.81

89 ANAO Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.82.

- 3.157 The Committee strongly agrees that there is a need for more comprehensive reporting of non-compliance.

Recommendation 9

- 3.158 The Committee recommends that ARPANSA provide a quarterly report to the Parliament on licence breaches including incidences of non-compliance. This requirement should include a short statement to the Parliament even where no breaches have occurred.**

- 3.159 The ANAO recommended steps for ARPANSA to take in order to provide greater assurance that failures to meet licence conditions were dealt with and reported appropriately. ARPANSA responded that a matrix of responses to potential situations would be developed to 'provide a consistent and appropriate graduated regulatory response ... known to all licence holders'.⁹⁰ The regulatory action taken is to be recorded on a central database and monitored.

- 3.160 The Committee feels that within this matrix it is important to clarify the responses as appropriate to the level of breach, particularly when the safety of people is put at risk.

- 3.161 Additionally, the Committee recognises that the CEO is formally the decision maker however consideration should be given to appropriate delegation in terms of having someone other than the CEO deal with the interaction for lower level breaches.

90 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2905*, p.5.

3.162 Accordingly, the Committee makes the following recommendation:

Recommendation 10

3.163 **The Committee recommends that ARPANSA includes in its matrix of responses to breaches:**

- **clarification of responses appropriate to differing levels of breach, particularly when the safety of people is at risk; and**
- **an appropriate system of delegation for dealing with breaches from less severe up to the CEO for serious breaches.**

This matrix is to be included in the quarterly report to Parliament on licence breaches.

Conflict of interest

3.164 The issue of conflict of interest is specifically addressed in the ARPANS Act to address parliamentary concern that the regulatory function be managed independently of the range of commercial services ARPANSA provides to Commonwealth, State, Territory and private sector organisations. The CEO is required to take all reasonable steps to manage conflict of interest between the regulatory function and the CEO's other functions.⁹¹

3.165 ARPANSA's Chief Executive Instructions (CEI) guide staff on what constitutes a conflict of interest and how it should be handled, including the requirement that where the CEO has given written advice to an entity on any issue of radiation protection or services, this advice must be maintained in a register. The ANAO found that ARPANSA had not established such a register.⁹² The CEI did not require the response to a potential or perceived conflict to be documented.

91 ANAO, Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.41.

92 ANAO, Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.41.

3.166 The ANAO gave specific examples of the potential for conflict of interest and the means of managing it not being documented, and stated that:

The licensing of ARPANSA's own activities, in particular, warrants more robust governance arrangements.⁹³

3.167 The CEO of ARPANSA advised the committee that:

... the issue of conflict of interest has not proved as problematic as [we] first thought that it might. The existence of established guidance through the Radiation Protection Series and other national publications and a number of private sector bodies able to supply radiation protection advice and services has meant that ARPANSA advice has not needed to be sought on matters affecting regulated entities to the extent initially expected.⁹⁴

3.168 ARPANSA concedes that despite being generally satisfied that the approach set out in the CEI is adequate, conflict of interest remains an issue and as such, the CEI is being reviewed and will be updated to take into account the ANAO's comments. Following this, ARPANSA staff will be notified to comply fully with this Instruction and training will be provided where appropriate.

3.169 The revised CEI is expected by the end of August 2006.⁹⁵

3.170 ARPANSA asserts that the legal requirements for self-licensed material or apparatus are the same as for other licence holders and that there is no exemption for ARPANSA from the requirement for a licence. Compliance with such licences is also monitored by the Regulatory Branch in the same way as for other licence holders. However, the CEO advised that, in order to increase the transparency of ARPANSA's self licensing processes:

ARPANSA is currently negotiating with a State radiation regulator to be involved in undertaking compliance inspections of ARPANSA facilities and contributing to inspection reports which would form part of the submissions to me in relation to those sources and facilities. ... the participation of an independent radiation regulator in the recommendations to me will reduce any perception of conflict of interest. ⁹⁶

93 ANAO, Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.42.

94 ARPANSA, Submission no. 3. p.3.

95 Pers. Comm. Rhonda Evans, Director Regulation and Policy, ARPANSA. 19 July 2006.

96 ARPANSA, Submission no. 3. p.3.

- 3.171 The Committee is pleased that ARPANSA has recognised the need to mitigate any perception of conflict of interest and hopes that the revised CEI and the inclusion of the Victorian State regulator⁹⁷ as an independent radiation regulator in the self-licensing process will, as the ANAO stated, 'strengthen management of the potential for, or perceptions of, conflict of interest, in accordance with legislative responsibilities.'⁹⁸

Cost recovery

- 3.172 On its establishment, ARPANSA was required to establish user-pays initiatives in regard to its regulatory costs as soon as possible, in order to meet the Government's requirements that entities regulated should bear the costs of such regulation. ARPANSA's costs of regulation include the licensing process and ongoing management of licensee compliance with licence conditions. ARPANSA is empowered to charge license application fees under the ARPANS Act and regulations and annual license charges under the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*.⁹⁹

- 3.173 ARPANSA explained the initial situation as:

...when we were set up, although the government said, 'Thou shalt cost recover,' they also said, 'In the first instance, here's some money to be going on with as you introduce cost recovery.'

[This was not the Nuclear Safety Bureau funds], this was further funds. There were funds made available in the first instance, so cost recovery was phased in. We then moved to full cost recovery.¹⁰⁰

- 3.174 ARPANSA described the approach being used at the time of the ANAO audit as having been phased in over a short period of time following implementation of the legislation:

97 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2905*, p.1.

98 ANAO, Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.42.

99 ANAO, Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.45.

100 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA.11-12.

The schedules of application fees and annual licence charges set out in the regulations were established by dividing the best estimate of the total costs of regulation by the projected level of activities in relation to nuclear installations, prescribed radiation facilities, and radiation sources.

The application fees and annual licence charges were established in 1999 and 2000 based upon *a priori* estimates of the time, about the degree of *direct regulatory activities* that would be required by each category of licence, together with an allocation of *supporting regulatory activities* and ARPANSA's standard indirect costs allocation. The fees and charges were generally increased in 2004 ... simply based upon increased costs since 2000.¹⁰¹

- 3.175 ARPANSA acknowledged that the link between the charges imposed and the regulatory activity was an estimate, and that it had not been reviewed in the light of experience and further information.¹⁰² Further, the system was described as not encouraging licence holders to improve their safety performance as the only way for a Commonwealth entity to reduce the charges it was paying was to reduce the number of facilities or sources it used.¹⁰³
- 3.176 As recommended by the ANAO, ARPANSA prepared a draft policy framework on cost recovery setting out the basis for the current fees and charges and future models for cost recovery. This draft policy was provided to the Committee.¹⁰⁴ ARPANSA has said that where possible it follows the *Australian Government Cost Recovery Guidelines (July 2005)* whilst bearing in mind that those Guidelines exempt cost recovery from other Government agencies.¹⁰⁵
- 3.177 As part of the new approach, ARPANSA is using software to record and cost regulatory activity in relation to individual licence holders. This is to form the basis of a more transparent recording of regulatory costs by licence holder and by source and facility licence.¹⁰⁶

101 ARPANSA, Exhibit No. 3. p.6.

102 ARPANSA, Exhibit No. 3. p.9.

103 ARPANSA, Exhibit No. 3. p.10.

104 Australian Radiation Protection and Nuclear Safety Agency, '*Recovering the Costs of Regulation of Commonwealth Entities under the Australian Radiation Protection and Nuclear Safety Legislation*' - *Draft Policy Framework*. September 2005. Exhibit No. 3.

105 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2905*, p.2. and ARPANSA, Exhibit No. 3. p.3.

106 ARPANSA, Submission No. 3. Attachment *Action taken/to be taken by ARPANSA in response to the ANAO recommendations as at 24.10.2905*, p.2.

By the end of 2005-2006, ARPANSA should have a great deal more information available on regulatory resource usage and how it relates to individual licence holders and to the different charging categories... This information will feed into a review of ARPANSA's system for setting application fees and annual licence charges.¹⁰⁷

3.178 The ANAO reported that initially ARPANSA's funding base included appropriation funding transferred from the former Nuclear Safety Bureau (NSB), to subsidise fees to major licensees, which were incorporated into the overall ARPANSA appropriation. However, ARPANSA had not 'clearly defined whether an equivalent, or other amount, of appropriation funding [was] still used to subsidise fees in general for the costs of particular licence applications, or used for other purposes'.

3.179 ARPANSA advised the Committee that historically:

the government was funding the Nuclear Safety Bureau, which 'regulated' the HIFAR at Lucas Heights. So when that task was taken up by ARPANSA, the NSB appropriation for the regulation of the HIFAR continued. So, instead of ANSTO having to pay a licence fee, it was reduced by that NSB appropriation.¹⁰⁸

3.180 The Committee was told that although fees were still being subsidised by the NSB funds at the time ARPANSA appeared before them, this was 'fading' and not expected to continue to occur:

There is the issue of the NSB appropriation that we need to clear off the table in the future, but it has been an issue in the past that we have not fully cost-recovered because we still had an appropriation prior to that that was for the regulation of HIFAR.¹⁰⁹

3.181 The Committee is pleased to see that ARPANSA is working towards a system that will allow for more accurate monitoring of regulatory activities and resource usage relating to individual licence holders and different categories, which in turn will form the basis for a more transparent system for setting application fees and annual licence charges.

107 ARPANSA, Exhibit No. 3. p.11.

108 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA12.

109 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA25.

National uniformity

- 3.182 State and Territory Government activities and private undertakings are regulated by State and Territory radiation laws, while since 1999 Commonwealth agencies have been covered by the regulatory framework provided by the ARPANS Act and the formation of ARPANSA.
- 3.183 Given that there must be similarities in the regulation function of the States and that of ARPANSA, the Committee is concerned at the low level of commonality between the State and Federal approaches to dealing with licences, including uniformity of standards and best practice for regulating radiation activities and compliance levels. The Committee feels that despite ARPANSA's clients being commonwealth agencies, or at least working on a commonwealth site, it is important that regulation of nuclear safety activities across the nation is as consistent as possible.
- 3.184 The role of ARPANSA's Radiation Health Committee is to:
- advise the CEO and the Radiation Health & Safety Advisory Council on matters relating to radiation protection, including formulating draft national policies, codes and standards for consideration by the Commonwealth, States and Territories.¹¹⁰
- 3.185 ARPANSA advised that the regular meetings of this committee (three times a year) allowed ARPANSA the opportunity to work closely with the States and learn from each other regarding best practice for regulation.¹¹¹
- 3.186 Under the Act, the CEO is responsible for the promotion of uniformity and consistency between the Commonwealth and the States.
- 3.187 ARPANSA also stated that:
- the Commonwealth jurisdiction is actually also quite different for regulation than the States. There are different clientele entirely. If you are in the States your view of radiation regulation is that it is medical ... It is about industrial radiographers in certain industries. In the Commonwealth it is quite a different thing.¹¹²

110 URL: <http://www.arpansa.gov.au/rhc.htm> Updated by Australian Radiation Protection and Nuclear Safety Agency - 3 June 2005

111 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA10.

112 Dr Loy, ARPANSA. Committee Hansard, Joint Committee of Public Accounts and Audit, *Review of Auditor-General's reports tabled between 18 January and 18 April 2005*, Monday, 12 September 2005, p. PA10.

3.188 The Committee feels that ARPANSA should look more closely to the experience of the existing State agencies, which have been operating for a longer time period, for areas where the Commonwealth regulator could draw on their structures and practices in improving their own and in creating greater national uniformity. This is particularly so in terms of licensing and levels of compliance.

3.189 Accordingly, the Committee makes the following recommendations:

Recommendation 11

3.190 **The Committee recommends that ARPANSA's relationship with the relevant State and Territory bodies be strengthened to facilitate sharing of information in terms of uniform national standards for licensing and compliance monitoring of radiation sources and nuclear facilities.**

Recommendation 12

3.191 **The Committee recommends that the CEO of ARPANSA and the Radiation Health Committee more transparently fulfil their roles of formulating national policies, codes and standards for Commonwealth, States and Territories, by reporting on progress in the ARPANSA annual report.**

Complaints

3.192 The ANAO reported that ARPANSA had a documented process for recording and actioning complaints lodged by customers or members of the public; however, the Regulatory Branch did not maintain a complaints register, as required by ARPANSA's *Quality Assurance Manual*. Also, information on complaints was not managed and assessed for the purpose of monitoring and performance management (including reporting in annual reports); and the ANAO found several instances where written complaints were not reported in ARPANSA's annual report.¹¹³

113 ANAO, Audit Report No. 30, 2004-2005, *Regulation of Commonwealth Radiation and Nuclear Activities*, Commonwealth of Australia, p.43.

3.193 ARPANSA informed the committee that:

The Regulatory Branch took the view that keeping information about complaints and their resolution on licence holder and subject files met the intent of the Chief Executive Instructions (CEI). The Regulatory Branch now maintains a complaints register. Summary information from this register, and information in relation to the resolution of the complaints, will be reported in future Annual Reports.¹¹⁴

3.194 In line with the above undertaking, the 2004–05 ARPANSA Annual Report includes a table summarising ‘*Details of complaints received for ARPANSA activities in 2004–05.*’¹¹⁵

3.195 The Committee is satisfied that the above response, combined with appropriate quality assurance procedures should address the concerns expressed by the ANAO regarding the maintenance of a complaints register and accurate reporting on complaints resolution in the annual report.

114 ARPANSA, Submission no. 3. p.2.

115 Commonwealth of Australia, *Annual Report of the Chief Executive Officer of the Australian Radiation Protection and Nuclear Safety Agency 2004–05*, 2005, p. 69.

