



Australian Government

Department of the Environment

Environment Protection and Biodiversity Conservation Act 1999
(Parts 7, 9 & 10)

Environment Protection (Sea Dumping) Act 1981

Compliance Monitoring Program 2015–2016



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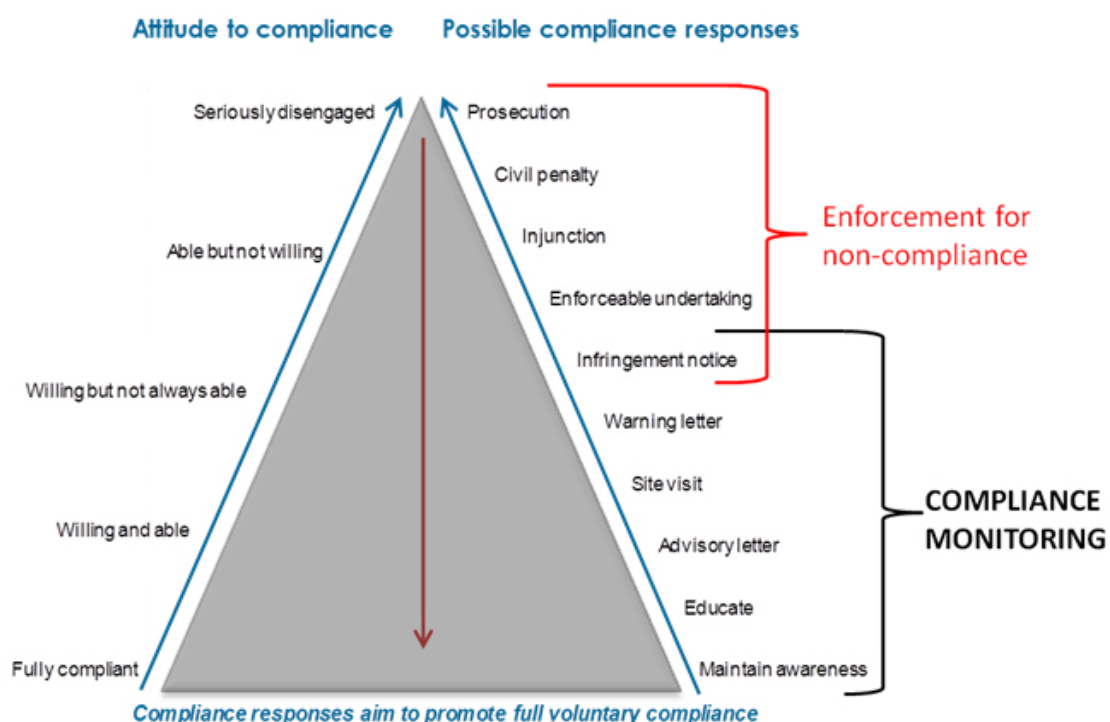
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1. Compliance Monitoring Overview

The federal Department of the Environment (the Department) is responsible for a range of regulatory functions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Environment Protection (Sea Dumping) Act 1981* (SD Act). The functions span the key operational regulatory activities that are common to most Australian Government regulators and include referrals and assessments, Compliance Monitoring and compliance and enforcement activity to prevent or address non-compliance. A core regulatory function is Compliance Monitoring. Compliance Monitoring is making sure that approval holders take actions in line with approval conditions. By making sure that approval holders take actions in line with conditions, we ensure that regulated actions do not have unacceptable impacts on Australia's protected environment, heritage, and marine areas.

Compliance Monitoring under the EPBC Act and SD Act involves:

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



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

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

This Annual Compliance Monitoring Program informs the regulated community, co-regulators and other stakeholders of our achievements in 2014–15, and objectives in 2015–16, for our Compliance Monitoring activities.



2. Scope of this Compliance Monitoring Program

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

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



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

The Australian Government remains responsible for ensuring that the objects of the EPBC Act are met and environmental standards are maintained. This will be achieved through a comprehensive assurance process involving:

- Developing and implementing quality standards.
- Embedding Department of the Environment officers within State agencies to assist with consistency and robustness in decision making processes.
- Regular meetings of senior officers to measure performance and resolve issues.
- Audits to ensure standards and objectives are being met.
- Review of performance and public reporting.

Environment Protection and Biodiversity Conservation Act 1999

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

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

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

Compliance Monitoring primarily targets approved CA projects and NCAPM projects.

Environment Protection (Sea Dumping) Act 1981

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

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

3. Our Regulatory Posture

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

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

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

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

This helps to:

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

In accordance with the Department's Compliance and Enforcement Policies, where there is an identified breach of approval conditions, the Department is able to use a range of compliance and enforcement responses proportionate to the situation and nature of the breach.



For example where an approval holder has self reported an administrative breach, such as the late publication of an annual compliance report on the company's web site, the Department may issue a letter of warning for this instance of non compliance.

For repetitive non compliances, where a non compliance has led to environmental harm or where an approval holder does not engage with the Department in relation to a breach of approval conditions, escalated compliance responses may be used. These include directed variations to approval conditions to require stricter regulatory controls of an action and/or issuing financial penalties through infringement notices. Examples of activities that may lead to these types of compliance responses include failing to comply with administrative conditions on numerous occasions, or where a monitoring program was not implemented.

Serious or negligent breaches of the Act can result in civil or criminal proceedings; these matters are referred for investigation and enforcement action as appropriate.

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

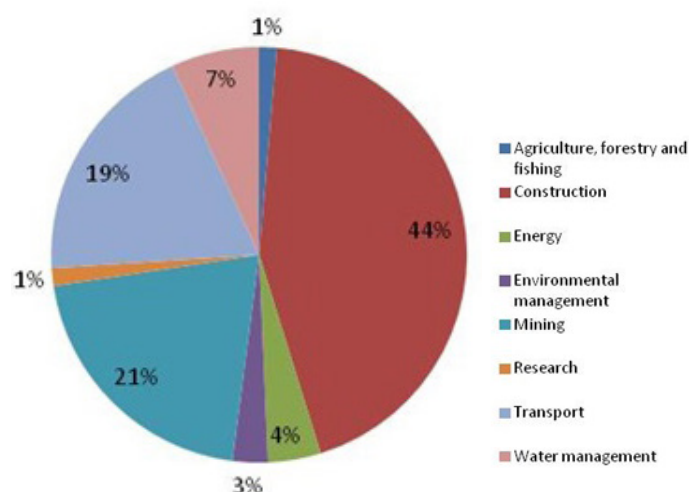
4. Compliance Monitoring Achievements in 2014–15

The 2014–15 year was a period of both operational achievement and significant business improvement for the Department's Compliance Monitoring function. Our operational achievements took the form of targeted stakeholder engagement and effective Compliance Monitoring activity.

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

Our operational achievements in 2014–15 included:

- 1,753 EPBC Act approved projects (766 CAs and 987 NCAPMs), 9 strategic assessments and 30 sea dumping permits were subject to Compliance Monitoring activities
- 77 projects were subject to a Compliance Monitoring inspection to verify compliance with conditions of approval
- 120 annual compliance reports and monitoring reports were reviewed
- 9 sea dumping permits (30% of all active permits) were reviewed for compliance with permit conditions
- Compliance plans were developed to focus on those projects identified as representing the highest risk to nationally listed matters
- We detected 73 instances of non-compliance
- In response to lower level non-compliance, the Department directed variations to conditions and management plans, and issued warnings and formal cautions. In response to higher level non-compliance, or in instances of repeated non-compliance by approval holders, the Department issued infringement notices (5 were issued in 2014–15) and directed audits (1 audit was directed in 2014–15 due to non-compliance)
- 13 audits were completed, including those for three major coal seam gas projects in southeast Queensland (Santos, APLNG and QGC).



Our business improvement achievements in 2014–15 included:

- We made further improvements to our IT systems to support more effective monitoring of projects
- All approved projects were reviewed in the context of our risk-based project-prioritisation model, the National Environmental Significance Threat and Risk Assessment (NESTRA) tool. NESTRA informs the Department's Compliance Monitoring focus on those projects that pose the greatest risk to the environment and can reduce the regulatory burden on projects that are low risk for people who consistently do the right thing
- We initiated an offset mapping project to confirm that environmental offsets have been secured in accordance with approval conditions
- We developed an overarching Assurance Framework based on best practice to enable us to monitor and manage compliance for strategic assessments.



5. Compliance Monitoring Focus for 2015–16

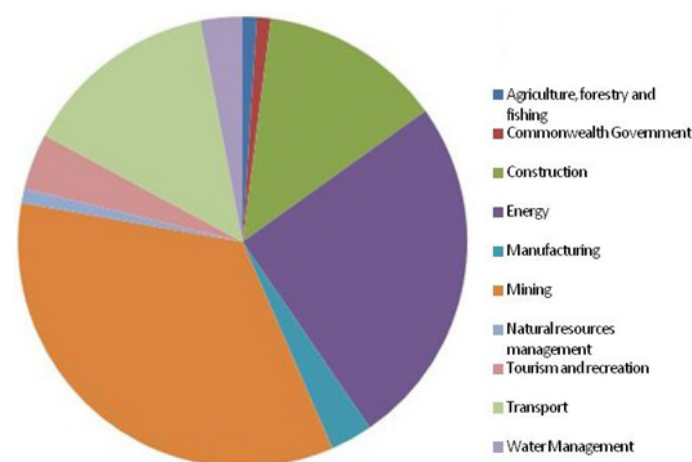
An important aspect of best practice regulation is that it must be risk-based (ANAO, 2014; OECD, 2014). The Department's business improvement achievements have significantly improved how we deliver on this requirement. At the individual project level, we take a risk-based approach by using a risk-prioritisation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

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

5a. Data analysis and regulatory scope

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

Data analysis for 2015–16 indicates that the group of projects that pose the greatest risk to the environment cover ten industry sectors. Some sectors make up a larger proportion of this group than others. While we focus our effort on the highest potential risk projects regardless of sector, by far the most significant sectors are the mining, energy, construction and transport sectors which together represent almost 90% of the projects that pose the greatest risk to the environment.



We can do similar analyses within each sector to reveal the most significant subsectors. For example:

- Mining—our analysis has identified the coal mining sub-sector as posing the greatest potential risk to the environment
- Construction—our analysis has identified the residential construction sub-sector as posing the greatest potential risk to the environment
- Energy—our analysis has identified the onshore oil and gas extraction sub-sector as posing the greatest potential risk to the environment.

5b. Sector-specific issues and challenges

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

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

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

Common mining sector issues and challenges

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



Common construction sector issues and challenges

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

Common transport sector issues and challenges

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

Common energy sector issues and challenges

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

Common water management sector issues and challenges

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

Common issues and challenges across all sectors

- Establishing legal protection over offset sites (e.g. conservation covenants) in a timely manner, particularly when the covenant mechanism relies on legislation or policy at the state or territory government level
- Applying valid and scientifically robust methods when developing management plans or monitoring programs
- Meeting requirements for compliance reporting. In particular, we will ensure that approval holders maintain appropriate records and provide adequate information to demonstrate compliance (or reveal non compliance) with conditions
- Meeting commitments in management plans. We will record key dates for deliverables and monitor projects to ensure approval holders comply with their stated commitments and obligations in approved management plans
- Understanding the requirements of conditions and that we address any confusion at the outset. In particular we will ensure that approval holders understand the requirements surrounding transfer of approvals, and when certain conditions may apply or cease to apply
- Helping approval holders to understand the difference between our role and that of co-regulators (e.g. state government environment or planning departments), particularly where the approval holders also have to meet requirements under approvals administered by co-regulators.

6. Compliance Monitoring Objectives in 2015–16



Our priorities for 2015–16 relate to both operations and ongoing business improvement.

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



6a. Operational objectives

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

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

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

- At least 20% of all NESTRA high risk-rated projects are to be subject to a Compliance Monitoring inspection. At least one project, of any risk category, in the vicinity of a high risk-rated project will be subject to a Compliance Monitoring inspection
- Development of compliance plans for all NESTRA high-risk projects and for all projects subject to a Compliance Monitoring inspection, irrespective of their NESTRA risk rating
- Development of assurance plans for all approved strategic assessments

- All annual compliance reports and monitoring reports for NESTRA high risk rated projects will be subject to review. All reports for strategic assessments will be reviewed
- At least 20% of all active sea dumping permits will be subject to desktop review
- Strategies will be developed and implemented to engage with priority sectors to proactively encourage compliance with approval conditions. These sectors include Construction, Mining, Transport and Energy.
- Strategies will be developed to work with co-regulators in priority regions to ensure compliance with approval conditions, and to ensure efficient engagement with approval holders. Priority regions include:
 - NSW—Hunter Valley, Gunnedah, Lithgow, and Northern Coastal NSW.
 - QLD—Central inland and coastal QLD.
 - WA—Greater Perth and Pilbara.
- At least 10 EPBC approvals or Sea Dumping permits will be subject to an audit.
- Audit guidelines for approval holders will be published.
- The offset mapping project will be implemented, with data made available to the public via the Department's website.

The objectives for responsive monitoring in 2015–16 will be to ensure that:

- All identified non-compliance in annual compliance and monitoring reports, and all allegations of non-compliance, will be appropriately actioned in accordance with applicable SOPs.
- Any audit findings of non-compliance will be appropriately actioned in accordance with applicable SOPs.

6b. Business improvement objectives

The 2014–15 business improvement activities are part of an ongoing process that will continue to improve our ability to detect breaches, reduce the likelihood that people or companies will breach requirements and will ultimately ensure better protection for Australia's environment and heritage. Further improvements are planned for 2015–16 to build on the progress that has already been made.



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

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

7. Further information

For further information about Compliance Monitoring under the EPBC Act and SD Act please visit the Department's website—
www.environment.gov.au

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

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

The documents specifically referred to in this document include:

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



