



Australian Government

Department of the Environment and Energy

Response to the Regulatory Maturity Project Final Report



October 2016

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Images

Front cover: Solar array at Lajamanu (Dragi Markovic)

Back cover: Birdlife of the Diamantina National Park at sunset in the channel country of South West Queensland

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Introduction

The Department of the Environment and Energy administers a diverse range of legislation to protect the environment, support sustainable development, give effect to obligations under international conventions and treaties, and implement specific national priorities. Many of these responsibilities are delivered through regulation, which set requirements to guide the activities of businesses and individuals.

The Department is committed to ensuring our regulatory systems are effective and efficient, and deliver the benefit to the community that the Government and Parliament intended. On 19 October 2015, following a series of reviews, audits and legal challenges to environmental approvals, I publicly undertook to improve the Department's internal practices and capability as a regulator. I announced that an independent assessment of the Department's regulatory maturity would be undertaken by Mr Joe Woodward, a highly regarded Australian environmental regulator.

I welcome Mr Woodward's Regulatory Maturity Report and its recommendations on how we can establish and maintain ourselves as a contemporary, mature and trusted regulator. The report describes the attributes of a best-practice regulator and identifies areas where the Department should focus its efforts. I particularly welcome the report's findings that our approach to regulation is sound and consistent with other regulators, and that both officers and the leadership team are skilled and committed with a strong desire to become a modern best practice regulator.

The report highlights the need to develop a collective identity and vision in the Department to help guide what, why and how we regulate. There are further actions we will take to give stakeholders greater confidence in the Department's approach to regulation. We will develop an overarching regulatory framework, and undertake more frequent and targeted communication with our stakeholders, particularly in the regulated community. We will clearly communicate our regulatory posture, which is a consistent statement of our values, expectations and the behaviours and responses that we will demonstrate in the various areas we regulate.

The Department is committed to improving its work practices and performance in order to deliver strong environmental outcomes through better practice regulation. We have established a dedicated team to coordinate the implementation of the report's recommendations and a plan is in place for the continual improvement of our regulatory practice. I thank staff for participating in this project and for sharing their experience and suggestions with the review team. I also thank business, and environmental organisations and other regulatory agencies for their valuable input.

Dr Gordon de Brouwer, Secretary
Department of the Environment and Energy

Report findings and actions to date

This response outlines our commitment to improvement and the approach we will take to address the key findings and recommendations of the Regulatory Maturity Report. A summary of our response against each of the specific recommendations is provided in Annex A.

The report's findings and recommendations fell across six areas. We have already adopted several priority recommendations and are considering how best to address the remainder. Our approach to implementation will be guided by the priorities of the Australian Government and the Department, and represent the most effective use of available resources.

As a first step, the Department has established the recommended Regulatory Steering Committee to oversee the internal reform program and advise on the Department's regulatory improvement agenda. The membership of this committee consists of Senior Executive from across the Department and from external Australian Government agencies with strong regulatory experience.

Our objectives and performance

Chapter 1 of the report (Our Objectives and Performance) describes the way in which a modern regulator understands, communicates and evaluates its objectives and performance.

The report recommends that the Department should:

- develop a new Regulatory Framework
- design robust and measurable objectives and performance indicators for regulatory activities
- establish an oversight body to consider the Department's regulatory policies and posture
- commit resources for systematic monitoring, analysis and improvement.

The Department supports these recommendations and recognises the importance of developing a robust Regulatory Framework. Traditionally, objective setting has occurred on a subject-specific basis in individual areas of regulation. While this individualised approach has had positive outcomes, the Department is now aiming for aligned and prioritised objectives that are consistent and well understood by stakeholders.

We will design a Regulatory Framework and work with the regulated community in the coming months to test this product and ensure that it is fit for purpose. We recognise that tracking progress is important and are developing a framework to evaluate our regulatory performance. We will measure and report on improvements in performance in an annual self-assessment published under the Australian Government's Regulator Performance Framework.

Our approach to regulation

Chapter 2 of the report (Our Approach to Regulation) describes how a modern regulator delivers on its responsibilities and recommends that aspects of assessment, conditioning, compliance and enforcement activities are strengthened.

The report recommends that the Department should:

- enhance problem solving and broaden regulatory and compliance tools
- reduce reliance on management plans for *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) approvals
- help regulated entities to comply with obligations
- provide all stakeholders with more information about policies and decisions
- further develop its intelligence capability.

The Department supports these recommendations, and is committed to increasing the efficiency and effectiveness of our regulatory practice by focusing on outcomes and increasing risk-based approaches. For example, we have recently released an Outcomes-based Conditions Policy to reduce reliance on prescriptive conditions and management plans, and give approval holders additional flexibility in determining how to achieve the required environmental outcomes.

We are enhancing our intelligence capability, including by developing a strategic intelligence capacity and improving IT infrastructure to enable more effective information sharing and collaboration with other regulators.

Australian regulatory agencies, such as the Australian Taxation Office, are reconsidering their regulatory approach in response to changing public expectations and new technologies. We are working with other regulators to ensure that any lessons learnt are factored into our regulatory design process.

We will engage with stakeholders over the next 12 months to better target communication and develop products to make it easier for the community to understand and comply with legislative requirements. We are undertaking a stock-take of communications materials to establish a baseline against which we can measure progress. We will talk with other agencies and the regulated community about their preferred communication channels.



Photo: View from the riverbank up the Huon River near Egg Island © Copyright Nick Rains

Our people

Chapter 3 of the report (Our People) identifies the importance of supporting well trained and proficient staff with integrated business systems, and tools.

The report recommends enhancing the regulatory skills and capabilities of staff and reviewing the internal organisation of the Department's regulatory functions, including through:

- developing a Capability Framework for regulatory officers
- formal and informal training and induction programs
- enhancing the regulatory experience of staff, including within the Senior Executive
- taking a consistent approach with staff in times of change
- maintaining and enhancing support for innovation
- centralising support functions and minor changes to internal organisation.

The Department supports these recommendations. We are committed to investing in staff and providing the support and training required to improve regulatory capability.

We are reviewing our internal training and guidance programs and have partnered with the Australian Public Service Commission to develop and pilot a course for regulatory practitioners and managers. We are developing a Capability Framework, based on work undertaken by the Australian Public Service Commission and the Institute of Public Administration Australia, to establish a set of key competencies for our regulatory officers. Once established, we will assess the skills and knowledge of staff against the framework to identify learning needs and target training accordingly.

We are seeking new ways to interact and collaborate with the Australian community, through involvement in activities like Innovation Month held in July 2016. The Department hosted two workshops allowing staff to pitch innovative, practical solutions to everyday problems. Staff were given opportunities to attend other events throughout the month which brought together government, business and academia, to address critical policy and service delivery challenges using their knowledge, creativity and expertise.

Over the coming months, we will consider options for the structure of compliance, enforcement and monitoring functions and consult with staff to determine the most effective structure.

Our systems and tools

Chapter 4 of the report (Our Systems and Tools) highlights the importance of well-developed and maintained business systems and tools to support efficient, robust and consistent decision making. Feedback from staff and external stakeholders noted the volume and disparate nature of policies and guidelines, and inadequacies in the current IT and business systems. The report recommends that the Department:

- develops an end-to-end IT system that manages EPBC Act projects from pre-referral through to compliance
- creates a central support team to assist with the development and maintenance of business tools
- increases investment in IT systems as a high priority, and enhances governance arrangements for the development and implementation of these systems.

The Department is making a substantial investment to reform and upgrade its information and communication technology platforms. The Chief Information Officer is developing a forward work program which prioritises activities and balances the immediate and long-term needs of the agency.

We have appointed a Digital Innovation Officer to support innovative user-centric design, and increased our investment in information and communication technology platforms. This will improve the efficiency of decision making under the EPBC Act. It will also enable us to use our considerable environmental data holdings more effectively and make more of this information available to the community.

We are strengthening our work systems with input from stakeholders, including IT and business system specialists, subject matter experts and lawyers. We recognise that these systems must be both enduring and flexible to ensure stakeholder confidence and be able to adapt to any changes in the operating environment now and in the future.

We recently undertook a project to improve the way we identify, coordinate and consider material relevant to statutory decisions made under Parts 5, 9 and 10 of the EPBC Act. The focus of the project has been on testing and refining the business systems we are using while our new IT system is built.



Photo: Aerial view of sugar and vegetable crops along the Pioneer River near Mackay © Copyright Allan Fox and Department of the Environment and Energy

Our approach to risk

Chapter 5 of the report (Our Approach to Risk) describes the way a mature regulator identifies and engages with risk and makes recommendations about the Department's approach to risk, including:

- reviewing the Risk Management Framework
- analysing risk across regulatory activities and systematically allocating resources proportionate to risk
- utilising intelligence for gathering data and analysing risks
- improving external communication of risk.

We recognise the importance of a robust risk management framework. In 2015, we appointed a Chief Risk Officer to deepen our understanding and management of risk in our regulatory activities. Our approach to risk will be influenced by setting out a formal regulatory posture, which is a clear and consistent statement of the Department's regulatory purpose and approach.

To support a consistent risk-based approach to compliance and enforcement we have already developed a risk-based prioritisation model, the National Environmental Significance Threat and Risk Assessment tool, to focus the Department's EPBC Act compliance monitoring activities on projects that pose the greatest risk to nationally protected matters. Similarly, a Wildlife Strategic Threat and Risk Assessment tool is being developed to identify and analyse risks and allocate resourcing for international wildlife trade compliance activities. We are exploring ways to simplify assessment and reporting processes for routine or low-risk applications.



Photo: Kurrajong tree in flower near the base of the Ord Dam at Lake Argyle (Dragi Markovic)

How we engage

Chapter 6 of the report (How We Engage) advocates a strategic approach to two-way engagement with stakeholders and active consultation in the design and implementation of regulation. The report recommends that the Department improves its communication and engagement activities by:

- increasing its knowledge of regulated industries
- reducing the burden of information requests
- establishing and maintaining a single point of contact
- speaking with a single voice
- improving engagement with community groups, co-regulators and communities of practice.

The Department's commitment to best practice in our engagement with external stakeholders and co-regulators will be reflected in a new external engagement strategy. This will provide new and improved communication channels informed by a better understanding of our audience, their needs and preferred methods of engagement.

In line with the principles of open government, we are using the online survey platform Citizen Space to design and review policies and processes in collaboration with stakeholders. We are also working to apply behavioural insights theory to improve engagement with and understanding of regulatory requirements through simplification of public communication materials and identification and removal of barriers to compliance. We are a foundational member of the Behavioural Economics Team of the Australian Government, and have recently partnered with the University of Technology Sydney to explore ways to apply behavioural insights to increase voluntary compliance.

We maintain agreements with other regulatory agencies such as Australian Border Force and state and territory environmental agencies. There is scope to improve information sharing with these agencies, to reduce duplication and create efficiencies for the regulated community. Additionally, placing embedded officers within NSW and ACT core regulatory agencies has enhanced information and data exchange, and supports an efficient, streamlined joint assessment process.

We are taking a more structured approach to engagement with industry sectors, for example through a working group with representatives from the National Farmers' Federation to increase mutual understanding and communication. Senior Executive leads will continue to oversee engagement with each state and territory, and lead contacts for industry sectors have been clarified. Encouraging a two way flow of information will facilitate an increased understanding of the business drivers and activities of regulated industries.

In addition to industry engagement, we are working to identify and engage with parties who influence industry behaviour. For example, authorised Customs brokers are a critical source of information for businesses importing products into Australia. Imported products such as air conditioning units and fridges charged with synthetic greenhouse gases, and importers who import televisions and computers above a specified threshold, are regulated under environmental legislation. Providing up-to-date information to brokers allows them to advise their clients of any relevant departmental programs or requirements.






Conclusion

The Department is focused on establishing itself as a trusted and mature regulatory agency. We will implement the recommendations of the Regulatory Maturity Project over the next 12 to 18 months, with outcomes to take full effect as soon as possible. We are committed to improving our business systems and tools, developing a clear regulatory framework, investing in staff and making it easier for the community to understand and comply with environmental laws.

We will review progress regularly, undertaking targeted consultation and course correction as needed to ensure reforms are effective, enduring and have the support of our regulated sectors, our staff and the wider community.

Annex A – Recommendation summary

The Department of the Environment and Energy's response to each of the recommendations of the Regulatory Maturity Project Report is outlined below:

Report Theme	Recommendation	Description	Department's response
Objectives and Performance	1.1 Regulatory Framework	The Department should develop a new Regulatory Framework.	 The development of a Regulatory Framework commenced in October 2016. Draft framework to be developed by end December 2016 and final to be published by July 2017.
	1.2 Performance monitoring and communication	The Department and the Environment Protection Group should develop robust and measurable objectives and key performance indicators relating to its regulatory activities.	 The development of an evaluative framework commenced in October 2016.
		The Department should publicly report on its performance to address stakeholder concerns.	 Reporting will be undertaken through the Regulatory Performance Framework annual self assessment to be published in December 2016.
	1.3 Governance	The Department should establish an oversight body to consider the Department's regulatory policies and posture; and to have oversight of regulatory issues, policies, and major pieces of public guidance.	 An oversight body was established in May 2016. The Regulatory Steering Committee is chaired by the Deputy Secretary, Environment Protection Group. It has broad representation from across the Department and from other government agencies with strong regulatory experience.
		The Regulatory Advisory Panel should continue to operate as a subcommittee of the Regulatory Steering Committee with particular focus on specific compliance and enforcement matters.	 The Regulatory Advisory Panel continues to operate with a focus on specific compliance and enforcement matters.

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Report Theme	Recommendation	Description	Department's response
Approach to Regulation	1.4 Continuous improvement	The Environment Protection Group should continue to develop and promote a culture of continuous improvement.	 A team was established in March 2016 to improve regulatory capability in Environment Protection Group and promote a culture of continuous improvement.
		The Department and the Environment Protection Group should support ongoing business improvement activities and performance assessments, including testing of changes to business systems.	 In progress. An evaluative framework is being developed to allow monitoring impacts of changes to business practices over time.
	2.1 The value of good regulation	The Department and the Environment Protection Group should regularly communicate and emphasise the importance of good environmental regulation, both internally and externally.	 The Department is developing a regulatory communication strategy to guide its engagement both internally and externally.
	2.2 Understanding regulation and using the right tools	The Environment Protection Group should use objectives, strategies and training to articulate that regulation is a broad suite of measures that should be used flexibly to achieve the objectives of the legislation.	 The Department recognises that a one size fits all approach is not appropriate. We are working to articulate our approach to regulation including what the regulated community can expect from us under each piece of legislation we administer.
		The Department should expand the problem-solving working groups established in the Environment Standards Division to cross-divisional working groups, coordinated by an Senior Executive officer, to explore innovative approaches to achieve desired legislative outcomes.	 An officer level Working Group was established in June 2016 to develop and test project outputs. Further, short term focus hubs, chaired by Working Group members with participants drawn from across the Department, will provide 'solution focussed' options to address shared problems.

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Report Theme	Recommendation	Description	Department's response
	2.3 Compliance and enforcement	<p>The Department should develop, maintain, and communicate a renewed Compliance and Enforcement Strategy as part of the Regulatory Framework.</p> <p>The Department should continue work in relation to the <i>Regulatory Powers (Standard Provisions) Act 2014</i>, and consider on a case-by-case basis whether it should be triggered under EPG legislation.</p>	<p> The Department's Compliance and Enforcement Strategy will continue to be reviewed and updated as required.</p> <p> In progress. A project is underway to analyse the impact of adopting the <i>Regulatory Powers (Standard Provisions) Act</i> across the Department's legislation.</p>
	2.4 Communicating compliance	The Department and the Environment Protection Group should communicate the compliance strategy developed under <i>Recommendation 2.3 (Compliance and Enforcement)</i> with its full range of stakeholders.	 In progress. A project to assess communications materials and identify the preferred communication channels of the regulated community is underway.
	2.5 Outcomes focused conditions	The Environment Protection Group should reduce the reliance on management plans in EPBC Approvals.	 Outcomes-based Conditions policy published in 2016. This policy sets out the Department's preference and expectations for conditions focused on environmental outcomes rather than prescriptive requirements and management plans.
	2.6 Consistent Conditions	The Environment Protection Group should develop model conditions (to be tailored to particular projects) for key areas of environmental regulation, and continue to develop and implement training and support for staff on the conditions policies.	 In progress. The Department is working to develop model conditions for Part 9 approvals under the EPBC Act. A conditions writing Community of Practice has been established and a conditions writing training module for staff is in development.

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Report Theme	Recommendation	Description	Department's response
	2.7 Responsibility for post-approvals functions	<p>The Environment Standards Division should move the responsibility for EPBC post-approval work from the Compliance and Enforcement Branch to the relevant EPBC assessment branches.</p> <p>The Environment Standards Division should monitor the timeframes for approving management plans, and if there is a significant increase consider setting and publishing target timeframes for this process.</p>	<p> Further consideration and consultation required.</p> <p> A business improvement project is underway to monitor timeframes for approving management plans and variations to conditions, and to provide clear guidance for approval holders in relation to requirements for approved management plans.</p>
	2.8 Making it easier to comply	The Environment Protection Group should assist the regulated community to comply with requirements by understanding the entity's operating environment.	<p> In progress. We are taking a more structured approach to engagement with industry sectors to increase mutual understanding and communication. Senior Executive leads will continue to oversee engagement with each state and territory, and lead contacts for industry sectors have been clarified. Encouraging a two way flow of information will facilitate an increased understanding of the business drivers and activities of regulated industries.</p>
	2.9 Transparency & disclosure of information	The Environment Protection Group should proactively provide more information about its decisions and processes.	<p> We will be engaging with stakeholders over the next 12 months to better target communication and develop products to make it easier for the community to understand and comply with legislative requirements. We will be clear about when statements of reasons for decisions will be published.</p>
	2.10 Intelligence	The Department should invest in IT tools for gathering and analysing intelligence, including data sharing with other agencies.	<p> We are enhancing our intelligence capability, including by improving IT infrastructure to enable more effective information sharing and intelligence analysis.</p>

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Report Theme	Recommendation	Description	Department's response
Our People	3.1 Skills and training	The Department and the Environment Protection Group should identify the specific skills and capabilities necessary for regulatory activities and incorporate these into a Capability Framework for regulatory officers.	 Work commenced in October 2016 on a Regulatory Professional (APS4–SES) Capability Framework to ensure professional performance is effective, reliable, consistent and of a high standard.
		The Environment Protection Group should develop a formal induction and training program for all regulatory staff, with specific content for Senior Executives and officers exercising regulatory powers.	 In progress.
		All Senior Executives with regulatory responsibilities should also complete the Australian and New Zealand School of Government intensive course 'Managing Regulation Compliance and Enforcement' intensive program.	 All Senior Executive with regulatory responsibilities will complete relevant training to ensure a high level of competency, which may include the recommended Australian and New Zealand School of Government intensive course.
	3.2 Consideration of economic and social impacts	The Senior Executive should promote a culture within the Department of viewing all problems and proposed solutions through the prism of environmental, economic and social impacts (where this is legally allowable).	 We are better integrating the consideration of social and economic factors across our work in the Department. A stock-take of the Department's needs for socioeconomic analysis commenced in July 2016.
	3.3 Centralised support	The Environment Protection Group should centralise responsibility for coordination of training, regulatory policy, guidance, processes, and IT in a Regulation Reform and Support Branch.	 Further consideration and consultation is required to determine the most suitable structure for the Department going forward, noting resource limitations.

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Report Theme	Recommendation	Description	Department's response
	3.4 Compliance functions	The Environment Protection Group should proceed with the establishment of the Office of Compliance and Enforcement, which should include all of EPG's compliance functions.	 Further consideration and consultation required.
	3.5 Linkages	The Environment Protection Group should develop formal and informal mechanisms to increase collaboration and understanding across the Environment Standards Division and the Wildlife, Heritage and Marine Division.	 Joint Divisional Executive Committee meetings commenced in October 2015. A cross-Divisional task force established in March 2016.
	3.6 Change management	Senior Executive should adopt a more consistent approach to twoway engagement with staff in times of change.	 The Department's Senior Executive are committed to engaging with staff in times of change and endorsed the Department's Change Management Framework in June 2016. The Framework provides guidance on developing a model for organisational change, with a major focus on managing people through change processes.
	3.7 Innovation	The Environment Protection Group should continue to maintain a focus on innovation.	 We are seeking new ways to interact and collaborate with the Australian community, across the Department and in other government agencies.
	3.8 Delegations and accountability	The Department should establish a central registry of delegations, and allocate responsibility for its maintenance to one area.	 Further consideration and consultation required.
	3.9 Regulatory capture	The Department should openly discuss the risk of corruption and regulatory capture.	 Underway. E-learning modules on fraud awareness, ethics and conduct are already available to staff. A new training module on fraud, corruption, ethical behaviour and conduct is in development.

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Report Theme	Recommendation	Description	Department's response
Systems and Tools	4.1 Policies and guidance material	The responsibility for the coordination and management of all regulatory policies and guidance material across the Environment Protection Group should be given to a single support team within the proposed new Regulation Reform and Support Branch.	 We will work to ensure broader consistency across the Department's regulatory products.
	4.2 IT systems	As a high priority, the Department should bring forward investment in an integrated end-to-end IT system to improve its reliability, effectiveness and efficiency.	 The Department is increasing its investment in IT systems and products.
	4.3 Governance for IT systems	The recommended Regulatory Reform and Support Branch should have responsibility for coordinating the management of regulatory business systems and coordinating and providing input to the IT Branch.	 See recommendation 3.3 above.

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Report Theme	Recommendation	Description	Department's response
Approach to Risk	5.1 Risk management framework	The Chief Risk Officer should: review the Risk Management Framework, including supporting policies and tools; consider adopting more adaptive and flexible tools and approaches to support risk assessments; work with Divisions and Groups to help them develop meaningful and targeted risk appetites; and communicate and provide training to ensure that staff understand their roles and obligations in relation to risk management.	 In progress.
	5.2 Risk assessment and resource allocation	The revised framework from Recommendation 5.1 (Risk management framework) should support consideration of risk across the Department and the Environment Protection Group, as well as managing the risks of individual projects.	 In progress.
		The Environment Protection Group should work with the Chief Risk Officer to continue to develop tools for systematically analysing risk between and across all of its regulatory activities.	 In progress. Note that the Chief Risk Officer is a member of the Regulatory Steering Committee.
	5.3 Resource levels	The Department should strive to maintain or increase staffing levels within the Environment Protection Group.	 We agree that maintaining adequate staffing for delivery of key priorities is an ongoing consideration for the Department.
	5.4 External communication of risk	The Chief Risk Officer should consider how best to communicate the Department's risk approach externally.	 In progress.
	5.5 Intelligence	The Department should adopt intelligence gathering and analysis to inform its risk management approach.	 In progress. We are enhancing our intelligence capability, including by developing a strategic intelligence capacity. For example, the Compliance and Enforcement Branch has engaged a Strategic Intelligence Manager.

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Report Theme	Recommendation	Description	Department's response
How We Engage	6.1 Understanding regulated industries	The Environment Protection Group should establish a group of industry or stakeholder experts.	 In progress.
	6.2 Reducing the burden of information requests	The Environment Protection Group should work to reduce the burden associated with information requests.	 The Department, including the Environment Protection Group, is working to minimise the burden on the regulatory community.
	6.3 Proactive engagement with community stakeholders	The Environment Protection Group should ensure that it routinely engages with relevant stakeholders during all phases of the design and implementation of regulatory processes.	 The Department is committed to providing more information about its policies and decisions and working with stakeholders when developing and implementing new policies.
	6.4 Working with other regulators	The Department should increase engagement with other Commonwealth and state regulators to build its regulatory capability.	 We are keen to strengthen and formalise partnerships between the Department and other regulatory agencies and have instituted a program of rolling conversations in order to share lessons learned.
	6.5 Engaging with communities of practice	The Department should increase engagement with relevant communities of practice to build its regulatory capability.	 The Department is engaged in the Community of Practice for Commonwealth Regulators convened by the Department of the Prime Minister and Cabinet.
	6.6 Speaking with a single voice	<p>The Environment Protection Group should work with the Policy and Communication Branch to develop a broad communication strategy for the Group.</p> <p>The Environment Protection Group should establish designated points of contact for key stakeholders.</p>	<p> In progress.</p> <p> Designated contact points are in place for a number of stakeholder groups based on the jurisdiction and/or industry they operate in.</p>

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