

Environmental Compliance Regulatory Risk Review

Final Report

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Contents

Executive Summary.....	4
Recommendations	7
Governance and structure	7
Resources	8
Information management and systems	8
Risk and prioritisation	9
Partnerships and engagement	11
Internal engagement	11
External engagement.....	11
Compliance policy and regulatory tools.....	12
Introduction	13
Background.....	13
Terms of Reference	14
The Review Process	14
Stakeholder views	17
Departmental officers	17
Senior executives.....	17
Staff in environmental program areas	18
Environment Compliance Branch staff.....	19
Other Commonwealth agencies	20
State regulators	21
New South Wales.....	21
Victoria.....	22
Queensland.....	23
South Australia	24
International counterparts.....	25
Canada	25
New Zealand	25
Non-government stakeholders	26
Community	26
Industry.....	28
Addressing compliance risks and gaps	30

Risks under different legislative regimes	31
<i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)</i>	31
<i>Underwater Cultural Heritage Act 2018</i>	34
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	34
<i>Product Emissions Standards Act 2017</i>	34
<i>Hazardous Waste (Regulation of Exports and Imports) Act 1999</i>	34
<i>Recycling and Waste Reduction Act 2020</i>	35
<i>Environment Protection (Sea Dumping) Act 1981</i>	35
Governance and structure	36
Resources	40
Information management and systems	43
Risks and Prioritisation	47
Partnerships and engagement	51
Compliance policy and regulatory tools.....	54
Conclusion	57
Attachment A – A staged approach to reform	58
Attachment B – Compliance responsibilities for Commonwealth environmental legislation	61
Current compliance responsibilities of the Environment Compliance Branch.....	61
Other environmental legislation	61
Attachment C – List of meetings held for the Review	63
The Department of Agriculture Water and the Environment	63
Executive.....	63
Program areas.....	63
External Stakeholders.....	64
Attachment D - Sectors and risk factors identified in Environment Compliance Branch risk prioritisation workshop (May 2021)	65
Sectors	65
Risk factors	66

Environmental Compliance Regulatory Risk Review

Executive Summary

The Environmental Compliance Regulatory Risk Review (the Review) was undertaken to assist the Department of Agriculture, Water and the Environment (the Department) to respond to a recommendation arising from an independent performance audit by the Australian National Audit Office (ANAO) (Auditor-General Report No.47 2019–20: *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999*, May 2020) that “the Department conduct an up to date risk assessment of noncompliance across its environmental regimes and develop and implement arrangements to prioritise its strategic risk assessments”.

The Department’s Environment Compliance Branch (ECB) is responsible for managing matters of serious non-compliance with environmental legislation, ranging from audits and triage of allegations through to investigations and criminal prosecutions, for a range of environmental programs established under seven different Acts of Parliament.

The Review has identified that ECB is unable to strike an effective balance of effort across all of the environmental programs for which it is responsible for managing compliance because, at present, it does not have access to the information and intelligence with which to make decisions about regulatory priority based on relative risk. As a result, most compliance activity is reactive, and some programs are not subject to any compliance activity.

This report includes a detailed summary of the meetings held to inform different aspects of the Review, which provides insights into the approaches taken by other regulators and highlights community and industry views of the Department’s regulatory activities.

Within the Department, senior executives and staff of both environmental program and compliance areas all strongly supported the Executive’s decision to conduct this Review to ensure that the environmental outcomes intended by legislation can be achieved as effectively as possible.

Similarly, all external stakeholders consulted during the Review (including states and territories, other Commonwealth agencies, industry and community groups) supported a more robust approach to managing compliance with Commonwealth environmental legislation.

It was universally recognised that the profile, breadth and effectiveness of environmental compliance within the Department has reduced over time and there has been little recent investment in this function. As a result, it now falls well short of being a model contemporary compliance function on which the government, industry, community and program managers within the Department can confidently rely.

Risk is usually defined in terms of the likelihood and consequence of harm occurring (the effect of uncertainty on achieving objectives). Whilst this theoretical model is well

understood across the Department, the tools (for holding, sharing and analysing information) that are necessary to determine the priority compliance requirements for each legislative program, let alone compare those risks across all of the programs, are not in place.

One of the major findings from the Review is that the ability to assess risk not only requires ready access to high quality data but also relies on gathering intelligence. Effective compliance requires operational intelligence to inform the day-to-day compliance activities of the Department and a strong strategic intelligence capability to identify emerging risks and trends. The Department currently has neither the information systems nor the intelligence capability to undertake risk assessment and prioritisation.

In this context, the Review has identified a number of steps that the Department needs to take before it can meaningfully undertake the activity recommended by the ANAO. The Review makes a number of [recommendations](#) and proposes a [staged approach to reform](#) to address current weaknesses in governance, resourcing, information management and intelligence to move beyond the current prioritisation approach based on the knowledge and views of individuals to a more robust and transparent approach.

The Review makes 28 recommendations, including for a number of specific packages of work aimed at overcoming some immediate obstacles, to provide a basis for establishing a strong framework for managing compliance more effectively into the future. Some immediate investment in specific projects is recommended, as well as a marginal increase in ECB resources that is necessary to commence the process of reform that the Review is suggesting.

Work has already commenced in the Department on implementing some more modern information management systems. This work should continue but with greater executive-level oversight to ensure that, over time, the Department can maximise the gains in respect of targeting daily work activities, undertaking more reliable risk assessments, setting priorities and developing both operational and strategic intelligence capabilities. These systems should also provide higher quality and more meaningful executive-level reporting to inform decisions on future priorities and resource requirements.

Given the national focus of the Department in managing environmental compliance for a number of complex and far-reaching pieces of legislation covering matters of national environmental significance, enforcing Australia's international border responsibilities as well as its obligations in respect of international agreements, the relationships that ECB has with program areas, states and territories, other intelligence and law enforcement organisations, industry and the community are particularly important. The Department has limited resources and needs to play a stewardship role for environmental compliance, leveraging these relationships to draw on their knowledge, keep abreast of new issues and opportunities as well as harnessing all possible resources to maximise its impact.

The Australian Government is implementing significant environmental reforms to the EPBC Act and reforms to modernise a number of legislative frameworks. An important part of this

modernisation process is to ensure that the compliance responsibilities, which are needed to effectively implement the Acts, can follow through.

Overall, if the activities recommended in the Review are supported by increased executive participation and stronger governance, particularly over the next 18- 24 months, ECB should be able to achieve a stage where it is much better equipped to be a modern, responsive and trusted environmental compliance leader.

Recommendations

The Environmental Compliance Regulatory Risk Review (the Review) recommends that:

1. The Department initiate a comprehensive reform program of its environmental compliance functions ([Attachment A](#)) that addresses its governance, structure and resources, information management and intelligence, regulatory tools, approach to risk, prioritisation, and stakeholder partnerships and engagement with the aim of developing environmental compliance as a model national approach (centre of excellence).

Governance and structure

2. The Department maintain a robust and dedicated focus on environmental compliance through the retention of a specifically identified environmental compliance branch, with strong executive-level governance.
3. To maintain a coherent focus on national environmental protection, the Deputy Secretary responsible for environmental compliance chair an Executive Committee comprised of First Assistant Secretaries responsible for the Department's environmental policy, program and compliance areas so that:
 - compliance is managed as an integral part of the program management cycle, using information generated through and feeding back into applications and approvals to effectively inform department's approval/permit management processes
 - more effective relationships and operational linkages can be established and maintained with environmental policy and environmental program areas (including through sharing data and intelligence)
 - the development of the regulatory risk dashboard (see Recommendation 5) is coordinated and supported
 - compliance priorities and an Annual Compliance Plan (see Recommendation 20) can be developed and agreed with input from both program and compliance teams
 - implementation of these reforms is coordinated and monitored.
4. The Department immediately step up its executive-level reporting on environmental compliance matters to provide greater corporate visibility of this function, commencing with monthly reporting to the Deputy Secretary responsible for environmental compliance on monitoring, audit and enforcement activities across the legislative regimes, as well as progress on the recommended compliance-based business improvement reforms and insights into intelligence issues.

5. The Department allocate sufficient funds (\$200,000 - \$300, 000) for the Chief Risk Officer to undertake a project to develop a dedicated business-focused regulatory risk dashboard to monitor how risk is being managed across all environmental legislative regimes, for provision to the Executive Board to ultimately replace the monthly reporting described in recommendation 4.

Resources

6. To enable reforms to commence, the Environment Compliance Branch immediately fill all vacant positions, including using contractors until positions can be permanently filled.
7. Additional resources of 3-4 staff reporting directly to the First Assistant Secretary be provided to establish a project management approach to implementing the proposed reforms, coordinate procurement for the specific packages of work identified in this report and provide initial secretariat support for preparing papers for the Executive Committee described in Recommendation 3.
8. A small team be contracted to work with senior compliance staff to develop some interactive compliance training modules and where possible this team work with state and territory counterparts to draw on their expertise and training materials.
9. A panel of subject matter experts and a panel of compliance experts be established upon whom the Department can draw to assist with inspections, audits and investigations, particularly where on-the-ground site visits are needed and there is interaction with specific industry officials.

Information management and systems

10. Investment into information systems to support activities relating to environmental compliance occur in three stages, with strong executive-level oversight to ensure and promote interoperability with other systems in the Department:

Stage one

- a. continue implementation of the Compliance Intelligence and Information Management System (CIIMS) currently being procured by the Environment Compliance Branch to support compliance functions across all legislation that the environmental compliance team needs to administer
- b. review and update the National Environmental Significance and Threat Risk Assessment (NESTRA) tool

Stage two

- c. build preliminary compliance requirements into the development of the Digital Environmental Assessment Program (DEAP), with a particular focus on inclusion of fields for proponent compliance history, and for managing compliance reports required from proponents as part of their conditions of approval
- d. identify the information management requirements for effective compliance monitoring and enforcement under the *Environment Protection (Sea Dumping) Act 1981* and how existing or planned systems can capture and use this information

Stage three

- e. more fully integrate the Portal and Assessments System and the compliance systems to leverage the data to generate better management reporting (including to Parliament), link with other intelligence agencies and undertake strategic planning
- f. develop data warehousing and data mining capabilities to better inform policy development, program administration (including compliance) and intelligence.

Risk and prioritisation

11. The Department establish a project costing around \$300,000 to engage personnel to clear the backlog of reviewing, assessing, and undertaking follow-up action for the outstanding EPBC management reports and to establish a framework for more timely future review, follow-up and action.
12. The Department design a program-based audit process to assess the effectiveness of regularly applied conditions (such as offsets), in terms of adherence and achievement of positive environmental outcomes. The Department establish a project to significantly strengthen ECB's approach to monitoring approval conditions including:
 - Grouping like conditions and reviewing these as programs of work to form a view on how these conditions are being met overall.
 - Identifying the extent to which these kinds of conditions are or can be met.
13. The Department urgently finalise inspection and monitoring arrangements with states and territories for shipwrecks managed under the *Underwater Cultural Heritage Act 2018*, and clarify responsibilities for investigations to enable timely engagement of an investigator when necessary.

14. The Department undertake a strategic intelligence review of the illegal export of hazardous waste, to identify the level of compliance resources needed to mitigate risk and to build stronger relationships with Australian Border Force to plan for ongoing monitoring and enforcement on which compliance arrangements rely to be fully effective.
15. Program-specific compliance plans that identify roles and responsibilities and prioritisation arrangements for the *Ozone and Synthetic Greenhouse Gas Management Act 1989*, the *Product Emissions Standards Act 2017* and the *Recycling and Waste Reduction Act 2020* be developed for endorsement by the Executive Committee identified in Recommendation 3.
16. The Department establish a short-term project to undertake a risk assessment of categories of permit holders under the *Environment Protection (Sea Dumping) Act 1981*, address recommendations from the recent internal audit, clearly establish compliance roles and responsibilities and design an ongoing compliance activities.
17. The Department establish a project with dedicated funding (\$300,000) to design and plan its intelligence capability at both the operational (supporting effective monitoring, enforcement, risk assessment and prioritisation) and strategic (identifying emerging domestic and international trends relevant to compliance and enforcement) levels.
18. The Department establish a short-term dedicated project team of 2-3 staff to develop a prioritisation framework that can be used to establish priorities across all relevant environmental legislation to inform the development of the Annual Compliance Plan (Recommendation 20), which:
 - Consults in detail with program areas to define sectors at a level of granularity (eg land clearing not just agriculture, quarries not just mining) to enable associated risks to be clearly identified and a program of compliance action to be identified
 - Draws on aggregated program data such as the number of like conditions, numbers of management reports required relating to a certain topic, compliance history of an entity, the level of geographic coverage, proximity to population or known threatened species
 - Develops a rating system that enables sectors to be scored so work can be prioritised and resources transparently allocated
 - Identifies ongoing data and information requirements that can then be used as a basis for ongoing risk assessment and building the new

compliance information systems shifting the initial qualitative approach to a more quantitative capability.

19. The Department establish a dedicated project (\$300,000 - \$500,000) to engage contractors to clear the current backlog of monitoring and management reports for activities approved under the EPBC Act and establish a framework for more timely future review, follow up and action.
20. The Department prepare an Annual Compliance Plan, ideally for each financial year, that sets out the major areas of focus for the year, how compliance will be undertaken for each of its regulatory regimes and how its dedicated compliance resources will be allocated
 - the Annual Compliance Plan be confirmed by the Department's Executive Board, approved by the Department's Secretary and reported to its Audit Committee
 - the Department's Executive Board (or delegate) approve any request to deviate from the approved Annual Compliance Plan priorities
 - any deviation from the Annual Compliance Plan should include approval of reallocation of resources (i.e. either allocate additional resources for any new priority or specify areas that are no longer a funded priority)
 - the Department annually publish a summary of activities undertaken against the plan for each of its environmental legislative regimes.

Partnerships and engagement

Internal engagement

21. Assistant Secretaries of environmental programs and compliance meet at least twice annually to examine priorities, emerging issues, resources and progress across the range of environmental legislation being administered by the Department.
22. The Environment Compliance Branch be actively included in the current process to develop model conditions for activities approved under the EPBC Act, to ensure that these conditions can be effectively monitored and enforced.

External engagement

23. External partnerships be strengthened and maintained including with:
 - state, territory and international environmental regulators
 - national intelligence agencies - to share intelligence, strengthen data exchange, expand horizon scanning and coordinate actions against sophisticated offenders.
24. A specific area of the Department coordinate engagement in cross-portfolio forums relating to serious and organised crime and national security and intelligence, to ensure that environmental issues are considered as part of these discussions.

Compliance policy and regulatory tools

25. The Department put in place a project team with dedicated funding of around \$200,000 to immediately update and publish its compliance policy to clearly set out:
- its role in administering environmental legislation
 - the purpose of achieving compliance with this legislation
 - its framework and principles for managing compliance, including key relationships
 - its approach to achieving compliance including:
 - the monitoring and investigative powers and tools in place
 - its approach to assessing breaches
 - how it determines the significance of a breach and the risk-proportionate regulatory responses it uses
 - the enforcement options that may be applied depending upon the nature and seriousness of non-compliance.
26. To increase community confidence in the Department's protection of Australia's environment, the Department annually publish:
- information, updated monthly, on regulatory activity including the number of monitoring activities, investigations, reviews of documentation, enforcement actions (including official cautions, orders imposed, enforceable undertakings, penalty notices and prosecutions)
 - a list of organisations that have an enforceable undertaking or been subject to a formal enforcement action, including how the organisation responded and the environment protected (as a mechanism to disseminate positive actions by industry).
27. The Department increase its educational activities in respect of compliance including conducting forums with industry about compliance expectations and key compliance topics and adopt a user-centred approach to developing and disseminating its compliance guidance, including accessible information on how compliance is undertaken, plain English guides, FAQs, fact sheets, etc.
28. Commencing with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the Department review its full suite of environmental legislation to determine the appropriate inclusion of powers to support an effective monitoring, investigation and enforcement approach, as set out in the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act).

Introduction

The Commonwealth Department of Agriculture, Water and Environment (the Department), through its Environment Compliance Branch (ECB), commissioned Ms Carolyn McNally (former Secretary of the NSW Department of Planning and Environment) and Dr Brian Richards (former Executive Director of the Australian Industrial Chemicals Introduction Scheme) to undertake a review to provide advice on its environmental compliance functions.

This Review examined the approach of the Department to assessing risks across a range of environmental legislation, identified gaps in compliance activity across these legislative regimes, and considered comparable activities in other jurisdictions (including drawing on lessons from Canada and New Zealand). This final report of the Review makes 28 recommendations aimed at helping the Department to enhance and modernise its environmental compliance function. This report describes a pathway to reform (summarised at [Attachment A](#)) to enable the Department to undertake risk assessment on an ongoing basis, prioritise its activities, close a number of gaps and further build its capability in environmental compliance. This will increase the government's and the community's confidence in the effectiveness of the administration of environmental legislation in mitigating risks to the environment.

Background

The Department is responsible for administering 15 Acts of Parliament ([Attachment B](#)) aimed at protecting Australia's unique and diverse environment. Seven of these Acts require dedicated compliance activity in order to enforce their requirements and meet their objectives. The centrepiece of these acts is the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)¹. In addition to this Act, there are six other environmentally-focused Acts that require dedicated ongoing compliance action by ECB to ensure that the legislation is being enforced effectively. The remaining eight environmental Acts either do not have compliance and enforcement obligations or these are managed by other divisions of the Department, other Commonwealth agencies, by entities specifically established to undertake this role, or by states and territories.

The Australian National Audit Office (ANAO) undertook an independent performance audit and published a report (Auditor-General Report No.47 2019–20: *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999*, May 2020)² that made eight recommendations aimed at improving the administration of the EPBC Act by the Department. The Department accepted all the recommendations of the audit and has commenced a detailed program of work to address these recommendations.

¹ <https://www.legislation.gov.au/Details/C2021C00081>

² <https://www.anao.gov.au/work/performance-audit/referrals-assessments-and-approvals-controlled-actions-under-the-epbc-act>

The Department commissioned the Review to assist in addressing recommendation 2 of the ANAO audit, which proposes that 'The Department conduct an up-to-date risk assessment of non-compliance across its environmental regulatory regimes and develop and implement arrangements to prioritise its strategic compliance assessments'. The Review considers there are a number of risks in respect of the Department's compliance activities, not only in respect of the EPBC Act, but also across the range of environmental regulatory regimes for which legislation requires the Department to undertake compliance activities.

Terms of Reference

The Terms of Reference seek the Review to address the following questions:

1. What are the non-compliance risks with each environmental regulatory regime?
2. What are the risk consequences, probability and significance? How do they compare to each other?
3. What compliance activities are already undertaken by the Department to manage those risks?
4. Are there gaps in compliance activities which could result in serious environmental, social, reputational, political, economic, legal or other harm?
5. What are the benchmarks in other environmental regulatory jurisdictions (e.g. Canada, New Zealand) for indicating compliance effort required?
6. What regulatory tools should the Department consider (i.e. levers in legislation, monitoring tools, building and reliance on social license to maintain risk in an activity doer, etc.)?

The Review Process

To address the Terms of Reference, the Review examined the Department's approach to managing the risk of non-compliance, how prioritisation of resource allocation is undertaken, what governance is in place, and the key relationships and systems that are used to support the non-compliance management functions. This was undertaken through:

- Discussions with internal staff including senior executives, program and compliance branch staff
- Discussions with external stakeholders including compliance experts, States and Territory compliance staff, compliance executives and staff from Canada and New Zealand and other Commonwealth government regulatory agencies
- Consideration of Departmental and ECB compliance documentation
- Examination of other reviews that considered and made recommendations regarding environmental compliance
- A one-day workshop with ECB staff to examine risk and prioritisation approaches
- Identification of the information technology systems used to support regulatory activity.

The reviewers met with senior executives, program and compliance staff from the Department to understand how they are organised; how they undertake their roles; what

their core functions are; who their key stakeholders are; and how they coordinate their work across the Department.

Information was sought on what staff perceive as the core risks and how these are identified and prioritised for each regulatory regime; how work is prioritised across the various Acts to manage risk; what they believe is needed to enable them to reduce risk and improve environmental outcomes; to what extent they utilise their powers as set out in the Acts; what information systems are in place or planned; and what they perceive as the barriers or limitations in undertaking compliance activities.

Reviewers met with other regulatory agencies within the Commonwealth with specific expertise or experience (often under resource-constrained operating environments) to ascertain their approach to risk identification, management and prioritisation of risks and where appropriate environmental risk.

Discussions were held with state and territory counterparts in New South Wales, Victoria, Queensland and South Australia to draw on their experience including what is working for them and what is not and to identify how they approach risk and prioritisation.

Discussions with New Zealand and Canadian environmental regulators were held to understand their approach to managing environmental risk through the compliance activities that they undertake, considering issues such as: resourcing; available regulatory powers; use of information systems; recent and proposed reforms; and their approaches to managing risk and prioritising their compliance activities.

Relevant documents that were considered in the Review include:

- The Final Report of an independent statutory review of the EPBC Act (the Samuel Review)³, which made several findings and recommendations regarding compliance that are currently under consideration by the Australian Government.
- Relevant previous ANAO audit reports⁴
- Report of the review by Dr Wendy Craik of interactions between the EPBC Act and the agriculture sector⁵
- Report of the Independent Review by KPMG of the regulation of the export of native and exotic birds⁶

³ [Independent Review of the EPBC Act \(Samuel Review\)](#)

⁴ Auditor-General Report No.38 2002–03 *Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999*; Auditor-General Report No.31 2006–07 *The Conservation and Protection of National Threatened Species and Ecological Communities*; Auditor-General Report No.43 2013–14 *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*; Auditor-General Report No.7 2015–16 *Managing Compliance with the Wildlife Trade Provisions of the Environment Protection and Biodiversity Conservation Act 1999*; Auditor-General Report No.31 2016–17 *Monitoring compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval: Follow-on audit*.

⁵ [Review of interactions between the EPBC Act and the agriculture sector \(September 2018\) \(Craik Review\)](#)

⁶ [Independent Review - Regulation of the export of native and exotic birds \(December 2020\) \(KPMG Review\)](#)

- The Australian State of the Environment report 2016 (SoE 2016)⁷
- Branch and section guidelines; the Department's Compliance Policy; the Department's Regulatory Practice Statement
- The relevant Acts, with a specific focus on offence provisions, objectives and approval responsibilities.

⁷ <https://soe.environment.gov.au/>

Stakeholder views

This section of the report outlines the themes and views that were obtained from discussions with stakeholders both within and external to the Department.

People and organisations interviewed during the Review are listed at [Attachment C](#).

Departmental officers

Senior executives

Senior executives in the Department agree on the importance of having a strong compliance approach as part of ensuring that legislation is effectively administered. Overall, they agree that there is a need for highly motivated professional staff, accurate information to focus on improving environmental outcomes, and a need for greater clarity about roles and responsibilities. They want the Australian community to be confident that the Department is actively working to protect the environment, not just reacting after environmental damage has occurred.

Whilst senior executives are unanimous in their view about the need for a strong focus on environmental compliance, there are different views about how this should be achieved. Some think that compliance should be mainly managed by program managers, with ECB focusing only on non-compliance (undertaking any necessary investigations and enforcement actions); others consider that ECB should play a broader corporate function in gathering intelligence, identifying risks and undertaking strategic assessments; some think there is a role for ECB in supporting programs with monitoring and audit functions; and one area also regards ECB as playing a useful role in compliance education.

All senior executives with responsibility for environmental programs are keen to see better integration between the application/approvals processes and compliance functions. They would like to see a more explicit and transparent decision-making framework, with clear triggers for referring matters to the compliance area, noting the challenges in adhering to tight statutory timelines. They suggest that the Executive Board should have a key role in determining the Department's regulatory posture and recognise the potential benefit of policy areas having access to strategic and operational intelligence generated by the compliance area.

In discussions regarding how compliance activities are being achieved for their respective areas of program responsibility, the general view is that the compliance function has become degraded over time due to differing prioritisation expectations, resourcing constraints, retention of capabilities as well as poor information management. There is an acknowledgement that this combination of impacts may lead to gaps and potentially regulatory failure. They feel that a greater emphasis could be given to identifying untreated or under-treated risks within the Department's areas of responsibility but recognise that, while the Department holds a large amount of information, it is not yet managed in a way that properly informs regulatory decision-making (including for managing non-compliance).

Senior executives responsible for the compliance function generally acknowledge the issues raised by program areas but consider that, in moving forward, compliance should not just be seen as an extension of the post-approval process but be considered as an integrated business support service that is both strategic and predictive. They feel that compliance needs a strong connection to the Department's Executive Board or an Executive Committee with dedicated oversight of program or business-related risks as opposed to broader enterprise risks because of the potential to add significant organisational value in managing business risk. Compliance activity should primarily prevent (rather than just punish) non-compliance. However, to achieve this vision, information systems need to be in place to support both operational and strategic intelligence functions to better manage risk, enhanced triage and prioritisation processes are needed to better manage resources and additional resources are needed to undertake the range of activity required to manage compliance for a large number of legislative regimes.

Further to this, there is some concern about the ability of a single branch manager to satisfactorily lead environmental compliance across all of the legislative regimes, run the day-to-day affairs of a branch, provide satisfactory executive and ministerial support, be responsible for appropriately servicing program areas, build new systems and implement a range of new reforms.

Staff in environmental program areas

Discussions with staff responsible for administering various environmental programs (eg wildlife trade, assessing referrals made under the EPBC Act, sea dumping, underwater cultural heritage and marine parks) and those preparing the next State of the Environment reports reveal differences in the ways that they engage with ECB. For example, once a matter referred under the EPBC Act has been approved (with conditions), ECB is then responsible for all subsequent compliance activity, including receiving regular compliance reports from proponents, conducting audits, and addressing any identified non-compliance. Similarly, ECB staff are responsible for considering all applications for release of goods seized by Australian Border Force staff on suspicion of a breach of wildlife trade legislation having occurred. However, other programs (such as sea dumping and Antarctic management) manage all post-approval functions, monitoring and inspection activities until a *prima facie* case of serious non-compliance is escalated to ECB for consideration for prosecution, while for other programs (such as hazardous waste regulation, ozone and product emissions standards) there are no identified resources or formalised roles and responsibilities for ECB to conduct compliance activities.

Some areas report difficulty engaging with staff in ECB, which they recognise as being in part due to resourcing constraints but in part due to differences in approach and unresolved disagreements about respective roles and responsibilities. This situation is adversely impacting on program management, including key stakeholder relationships and environmental outcomes. An internal consultative committee that agreed on compliance resource allocation has been disbanded.

The Department has obtained funding to develop a new information technology system (DEAP) to manage workflows relating to the assessment and approval of referrals made under the EPBC Act. However, interviews with staff working on this system confirm that functions relating to recording compliance with any conditions of approval are not included in the scope of this system – the system extends to the post-approval stage (including variation of conditions, approval of management plans and registration of approved offsets), but not to any subsequent compliance workflows such as management reporting and case management for high risk projects. Therefore, allegations of findings of non-compliance with any conditions of approval (including offsets) will not be recorded in this system, and a proponent’s compliance history will not be available to officers considering new or varied approvals. These issues, with recommendations to address them, are explored later in this report in a section on [information management and systems](#).

Environment Compliance Branch staff

ECB staff advise that they are in a crisis situation, hampered by a lack of resources, including contemporary compliance tools such as information systems. Information held by the branch is siloed in a variety of spreadsheets that do not allow a comprehensive view of key compliance risks and the size of these spreadsheets is leading to them becoming unstable and therefore unreliable. There is a high reliance on experienced officer knowledge; however, these officers are stretched, some are relocating to work areas of higher prominence in the organisation and compliance capability is declining overall.

Given the limited compliance resources, there is concern about the extent to which compliance officers are being diverted to administrative tasks such as managing Freedom of Information requests, responding to routine correspondence and providing routine and regular estimates briefings rather than progressing compliance matters. The current level of ECB resources does not permit management of a sufficient proportion of routine audits, reviews of management reports and allegations of non-compliance.

Work is underway to design an information system to support the compliance functions across all relevant environmental legislation. This system is intended to be able to interface with the new system being built for EPBC Act approvals, while also accommodating information and workflow for compliance activities related to other environmental legislation, but the work to build these interfaces is currently not funded.

ECB staff have evidence of increasing involvement by organised criminal groups in environmental crimes, particularly in relation to hazardous waste and illegal wildlife trade. Although they are building links with other relevant intelligence and law enforcement agencies, resource constraints and lack of mature information systems (including limited access to data held by other agencies) are hampering their ability to effectively respond to this growing threat.

Only a small number of compliance cases proceed to prosecution, with the likelihood of prosecution depending primarily on the criminality of the offence, rather than the

environmental impact of the alleged conduct. Criminal penalties are low relative to the potential level of environmental harm.

Other Commonwealth agencies

The Australian Competition and Consumer Commission (ACCC) adopts a highly structured approach to compliance and enforcement, with clear strategic focus on improving the operation of Australia's market economy. Each year, the ACCC Chairman announces the organisation's annual compliance priorities in a major speech. These priorities are informed by a detailed strategic review (compiled into an 80-page document that identifies about 15 options for compliance and enforcement focus in the coming year), which is then considered at a strategic review day involving all Commissioners and most senior executives. The strategic review is informed by data from a wide range of sources, including from its call centre (that receives about 300,000 consumer complaints every year), dialogue with international counterparts on emerging issues, interviews with key stakeholders, media reports and surveys. The Commission itself determines the final 12 areas of priority focus that are publicly announced.

ACCC then develops a detailed compliance and enforcement plan for each priority area and, using an integrated approach, chooses the most appropriate compliance tools (such as education for that industry sector, consumer information resources, enforceable undertakings, infringement notices and, if appropriate, selective litigation to drive change in the relevant sector). Base resources are allocated and monitored using KPIs, with additional funding allocated where necessary.

Decisions on litigation (civil or criminal) are made by a senior executive committee in ACCC, taking into account what the litigation will achieve. Their intention is to drive change in market behaviour, so litigation is not regarded as an end in itself (or just an announceable), but as a mechanism to crystallise thinking in the market and stimulate behavioural change.

Staff from Austrac, the Commonwealth Director of Public Prosecutions (CDPP), the Department of Home Affairs and Australian Border Force (ABF) who work with ECB staff were also interviewed to understand the working relationship between agencies. Austrac leads the Fintel Alliance, a group of 29 government and private sector entities collaborating to address the criminal exploitation of the financial sector. Environmental crime is usually financially motivated, and evidence of financial transactions is important as a basis for successful prosecution. By participating in the Fintel Alliance, the Department is building relationships with law enforcement and intelligence agencies that facilitates access to previously unavailable information.

ECB staff have developed a very effective working relationship with staff of the Commonwealth Director of Public Prosecutions (CDPP). CDPP (which is also a member of the Fintel Alliance) has a practice group that has developed expertise in specialised field of prosecuting environmental crime. Before a brief of evidence is prepared, CDPP now offers ECB staff a 'pre-brief' service that assists ECB staff to discuss evidentiary issues and this accelerates the consideration of the evidence when it is submitted to CDPP. This

is a direct result of the work of the ECB team and allows the same investigator and lawyer to be involved in a case for the duration of the action. Decisions on whether to prosecute are made by CDPP, not ECB, based on the Commonwealth prosecution policy (including whether there is a reasonable prospect of success, and that prosecution is in the public interest). The availability of defences such as mistake of fact can be teased out early and fully considered in the decision as to whether to prosecute. The size and nature of the penalty is not a consideration in whether to prosecute, other than in relation to the public interest, and lesser penalties (such as fines) can still deter other offences being committed. Where a number of offences appear to have been committed, prosecution may focus only on those offences that can be readily proven, including strict liability offences, rather than all possible offences.

Staff from the Department of Home Affairs and Australian Border Force focus on serious organised crime at the border, but don't have a major focus on environmental crime as it is not clear to them to what extent this is a priority in comparison to other responsibilities managed by the Department such as biosecurity. There is no established practice or pathway for front line border force officers to receive training from ECB specialists other than for wildlife trade (although this training is not currently occurring due to the significant reduction in overseas travel during the COVID-19 pandemic). Within the Department of Home Affairs, compliance and enforcement priorities are signed off by the Executive Board (which includes its Secretary and the ABF Commissioner) based on the probability of harm occurring. Discussions on national security priorities now routinely include trade and biosecurity issues, but not environmental issues. Offences relating to environmental crimes such as illegal wildlife trade are usually detected by chance, rather than as a result of concerted action. In setting priorities, Home Affairs staff are not clear whether the priorities of the Department of Agriculture, Water and the Environment now relate only to biosecurity, or extend to other issues such as environmental crime.

State regulators

Interviews were held with a range of environmental policy, program and regulation senior executives and staff from NSW, Victoria, Queensland and South Australia to ascertain their particular areas of focus, identify any recent improvements they were making and to draw upon their learnings in respect of what is working for them and what is not.

New South Wales

Current and former staff of the NSW Department of Planning, Industry and Environment provided information on their approach to managing environmental compliance. Their view is that a successful compliance model requires a partnership approach, particularly with co-regulators where regulatory functions can overlap. For NSW, this includes the Commonwealth, the NSW EPA, the NSW Office of Environment and Heritage, and NSW Health. Close relationships are critical in building trust, achieving influence and efficient resource use, but it is important to remain focused on the outcome that is sought (that is environmental protection, not just a number of fines or prosecutions). If the focus is

on the outcome, then risks to achieving that outcome can be more readily identified and the most effective mitigation of that risk can be put in place. Risk profiling (identifying relevant factors that create risk) is critical. NSW has developed a methodology for undertaking risk assessment at a project level which guides the allocation of resources and priorities.

NSW environmental regulators focus on promoting compliance (not just addressing non-compliance), which involves a proactive (not just a reactive) approach through continual engagement with the regulated community. While surveillance and reporting remain important, a reduction in the number of enforcement actions should be seen as evidence of successful regulation based on effective strategic relationships. While engagement with industry peak bodies and senior managers is useful, engagement with staff on the ground is necessary to understand actual compliance and raise industry awareness of the existence of real regulatory oversight.

In NSW, effective use of information management technology has been a game-changer. Their single, public-facing system provides departmental staff with a comprehensive view of proponents of actions with environmental impact, and an ability to identify trends and emerging compliance issues. Transparency through public reporting of information about compliance activities encourages wider compliance (including through deterrence) and builds credibility of the regulator and community confidence. Factual public reports of formal compliance actions taken include an explanation of why the action was taken and what outcome was achieved to protect the environment.

In NSW, compliance is very closely linked to the assessment process, and there is a continual feedback cycle between assessment, approval and compliance functions.

Victoria

New environmental legislation commences in Victoria on 1 July 2021, which has been accompanied by substantial additional investment (around \$250 million over 5 years), with an increase in staffing in the Victorian EPA from 300 to 900 staff over the past three years. The new legislation creates a general environmental duty that applies to all Victorians, which is a paradigm shift in regulatory approach by making environmental protection a shared responsibility. There is now a focus on preventing environmental harm using an outcome-focussed and performance-based approach. Anyone creating a risk to the environment can be asked to provide evidence that the risk is being mitigated. Industry (and any other person with an environmental duty) will be accountable for how their risks are being controlled. A new tool has been developed to track priority waste, to assist in detecting stockpiling or diversion of waste.

Victorian officials advised that \$100 million has been invested in new IT systems including a new data repository and customer relationship management (CRM) system. The Victorian EPA is part of a whole-of-government intelligence network. A multi-agency 'fusion centre' to manage intelligence on waste has been established that allows the collation of data from multiple sources, and the generation of intelligence reports and

issues registers. This intelligence-led prioritisation of emerging risks can be addressed by multi-functional teams using agile methods.

Significant investment is being made in informing, educating and engaging stakeholders to bring about behavioural and cultural change. Stakeholder reference groups by industry sector have been established to raise awareness of regulatory obligations and share good practice. There is a strong emphasis on information products, and enforcement actions are publicly reported to promote transparency and trust.

Queensland

In Queensland, assessment of applications and issuing of permits occurs in centralised business hubs (such as for coal or metalliferous mining), whereas compliance is managed through a distributed model (based in the regions). Centralisation of assessments occurred in response to industry concerns about inconsistent application of conditions. Similarly to other jurisdictions, model conditions have been developed to reduce the need for frequent consultation between assessment and compliance teams.

Regionally-based inspectors (generally with scientific qualifications or competencies) enforce compliance up to the point of consideration for prosecution, through issuing infringement notices, statutory remediation notices, or environmental protection orders. All enforcement decisions above a warning letter are considered by a senior officer (Compliance Manager) to maintain consistency. However, this requirement for senior officer involvement has created an enforcement bottleneck, and consideration is currently being given to moving to a more risk-based approach based on the type of non-compliance.

Cases being considered for prosecution are referred firstly to an investigations team (15 staff, who also investigate matters for Queensland Parks and Indigenous Cultural Heritage) before being considered by a division-head-level compliance coordination committee. About 30 cases are prosecuted each year (including contested penalty infringement notices).

A Microsoft Dynamics CRM system has been deployed in the last 12 months to store information from assessments (that can be accessed by compliance staff) and records information about both proactive and reactive compliance activity (including all complaints and allegations).

Complaints and allegations are triaged through a call centre, from which medium to high-risk issues are referred for compliance action. All (around 7000) approved projects are reviewed every 6 months and given a risk profile, which is used to prioritise proactive compliance audits. Current priorities are waste, coal seam gas and the calculation of estimated rehabilitation costs (for financial assurance purposes).

Queensland EPA undertakes an annual strategic risk assessment (looking at mega-trends) using all available information, the outcomes of which are published after clearance by a Deputy Director-General. This year, they have identified offsets as a

challenging issue, not only for vegetation and biodiversity, but increasingly for water quality. Urbanisation has also been identified as a 'macro risk'.

Although Commonwealth and State regulators engage in relation to environmental impact assessments, there is currently very little joint Commonwealth/State monitoring, compliance and enforcement activity.

State inspectors do not routinely check for compliance with Commonwealth-imposed conditions, and there is no robust system for sharing intelligence gained through inspections. They are aware that Commonwealth agencies (and CSIRO) have a lot of other useful data and have started exploring how to access this.

Queensland uses drones (about 14 drones and 11 drone pilots) to monitor fugitive emissions and has a geospatial information team that uses ESRI and Google Globe (and taps into the Queensland Government library services) to detect and monitor land clearance.

South Australia

South Australian environmental legislation, like that in Victoria, includes a general duty to protect the environment, and emphasises a precautionary approach to the risk of environmental harm. All people in South Australia must take reasonable and practicable steps to avoid environmental harm.

Responsibility for regulating unlicensed activity rests with local government, while the South Australian EPA regulates licensed activities (including the medical use of radiation).

The SA EPA has around 210 staff, of whom around 50 work in compliance. Staff are required to register all regulatory interactions (not only site visits, but phone calls, licence applications, audit notes) in a database system that also records workflows (such as management of breaches).

To assist in meeting statutory assessment timeframes, all development applications are sent immediately to the compliance area on receipt, and compliance input is routinely considered in the assessment process.

The SA EPA uses risk assessment to allocate resources to the areas of highest priority based on a range of factors such as the sensitivity of the receiving environment, compliance history, community interest, and local site management of emissions (including noise). This results in 'the Tiered List', in which all licensed activities are allocated to one of three tiers (Tier 1 being the highest risk).

Activities allocated to Tiers 1 and 2 are further divided into Tier 1(a) and 1(b), and 2(a) and 2(b). Activities given an '(a)' ranking are those that have high potential for harm, a history of non-compliance and strong community interest (or opposition). Management of these is undertaken by a multidisciplinary team from across the EPA, with regular inspections. Activities ranked '(b)' are not inherently low risk, but need to provide regular monitoring data that are assessed by a small team in one area of the EPA.

Tier 3 activities are further sub-categorised into 3(c) and 3(d). Activities assessed as Tier 3(c) (such as waste haulage businesses) have little active regulatory oversight (other than a requirement for periodic licence renewal), whereas Tier 3(d) activities (such as concrete batching plants) are subject to occasional campaign-based inspections.

The SA EPA publishes an annual compliance plan, and is currently drafting a compliance policy, which will be published in due course.

They regard staff culture and behaviour as being as important as technical knowledge in achieving consistent regulatory outcomes. Their focus is on bringing people into compliance, rather than prosecution. A sub-committee of the SA EPA Executive (with some lawyers) sets thresholds for investigation and prosecution, and determines the cases to be prosecuted.

International counterparts

Canada

The Canadian Department of Environment and Climate Change has 3000 staff with responsibility for approvals and regulation across numerous provinces with separate functions for diverse aspects such as policy development, species conservation and waste. There are 42 regulations in place to manage these with limited resources identified as a constraint on their ability to monitor how effective these regulations are. The agency has 500 people located across Canada in specific enforcement functions reporting directly to the deputy Director-General. An annual prioritisation exercise helps direct the attention of regulated activities. Border enforcement is one of the focus areas that includes joint bilateral work with the United States of America.

Program effectiveness and environmental outcomes are specifically measured by a discrete unit that tracks against environmental indicators that include global indicators. These metrics are made public.

Information systems are often old or fragmented in their inter-operability both at a national level and when interacting at a provincial level. There is a dedicated and sophisticated enforcement system containing confidential data.

New Zealand

Like in Australia, various levels of government have different parts of environmental regulation responsibility, leading to some fragmentation and confusion about roles in compliance and enforcement. For example, conservation legislation, ocean/maritime-related controls and animal welfare are primarily centralised in the Ministry for the Environment, while local councils are responsible (and report annually) for enforcing the Resource Management Act (RMA), which includes land clearing regulation, and the NZ EPA has the power to support, assist or intervene in council actions. The RMA is poised for significant review in respect to both its tools and (potentially) institutional arrangements.

The New Zealand Government has made 'environment, climate change and natural resources' one of its 16 National Security and Intelligence Priorities, which has increased the focus on compliance with environment protection legislation.

The NZ EPA has recently restructured in order to move to a more risk-based compliance approach. It has established an intelligence and reporting team to identify emerging trends and recommend changes in internal resource allocation. NZ EPA has 90 staff working in regulatory roles (engagement and regulatory operation), with 28 compliance officers undertaking monitoring and audit activities. This year, they are looking to expand their 'inform and educate' functions.

A risk-based national regulatory approach requires a comprehensive understanding of the regulated community to understand where the risks lie, and this remains a challenge for New Zealand. The compliance and enforcement tools available vary from some Acts that have a single enforcement option (prosecution with a low maximum fine) through to legislation with a range of enforcement tools that can be applied proportionately to circumstances. For example, the RMA has infringement fines, abatement notices (directive orders that can be issued by the agency but that are subject to appeal), enforcement orders (that must be applied for in Court) and prosecutions.

Outreach programs across all agencies generally provide information on expectations (brochures/websites), proactive engagement with the regulated community to model best practice (e.g. open days on farms by regional councils regarding freshwater management), responding to phone or email enquiries and adopting a graduated enforcement model that seeks to educate as a first option where appropriate.

However, significant challenges remain to be addressed. The sophistication of information systems varies between agencies and there is little system-wide integration. Information relevant to compliance is held in a large number of discrete non-interoperable software systems, and nationally aggregated reporting (which requires manual collation with associated data quality risks) focuses on environmental monitoring but not compliance. Each regional council uses some form of geospatial mapping, but the lack of national integration of this information limits its utility for compliance purposes.

Non-government stakeholders

Following an analysis of submissions provided to the recent review of the EPBC Act undertaken by Graeme Samuel, the Review team held further discussions with a small number of key agencies from both the community and industry sectors to better understand their views about the Department's approach to environmental compliance, but to also seek their ideas and suggestions.

Community

The community sector generally supports the findings of the Samuel review regarding legislative reform, particularly the establishment of environmental standards and the

Department's access to a full suite of contemporary regulatory tools across all of its legislative schemes.

While recognising the importance of working with different industry sectors, project proponents and the community to prevent non-compliance, civil society groups are concerned that the Department has been placing too much emphasis on achieving voluntary compliance, and that community-based groups themselves are left to take civil action in respect of egregious breaches of environmental laws. Although community groups recognise that education and awareness-raising are important in achieving compliance, the role of prosecutions to create deterrence is also critical. They prefer to see the Department adopt a stronger enforcement approach for serious offences.

Community advocates are concerned that some people feel that they can ignore their environmental obligations with impunity, with a resultant loss of trust in the Government's commitment to protecting our environment. This loss of trust could be addressed by a stronger regulatory posture, as well as through greater transparency such as through publication of the prioritisation and resource allocation framework and a regularly updated public register of compliance actions and outcomes. This would need to be done carefully so that the Department does not imply that non-prioritised areas will be totally ignored.

They support a more active program audit approach on particular environmental issues (such as illegal land clearing or sea dumping) and identify the diminution of compliance resources and lack of transparency as major impediments to achieving better compliance.

In terms of prioritisation, community groups recommend greater thought be given to targeting relevant regulatory tools to the environmental harm being managed. They note that inconsistent or patchy use of regulatory tools creates reputational risk for the Department. They recommend stronger partnerships be developed with other agencies, such as those with greater capability in geospatial imaging or other sources of intelligence.

Even if certain Commonwealth compliance functions (such as site inspections) are devolved to states and territories, community-based groups note that there will still be a need for a strong Commonwealth compliance presence. Such devolution should not result in a reduction in resources for Commonwealth compliance activities - they feel that Matters of National Environmental Significance are already underdone from a compliance perspective as enforcement action in these areas is significantly under-resourced and ineffectual.

Community organisations note the need for better data and the need for further investment in systems to provide more targeted responses and increase the analytical capability at a national level. They suggest that better data would help to understand the size of the problems, including through greater proactive use of satellite surveillance.

Industry

Industry associations recognise that a compliance framework that includes education, monitoring and enforcement is critical to maintain community confidence that the environment is being appropriately protected. To manage this process effectively, industry recognises that the Department needs sufficient resources to undertake meaningful compliance activities.

Industry is concerned that some activities detrimental to the environment are escaping the net, while other sectors seem disproportionately targeted. The agricultural sector in particular notes a disconnect between legislative requirements and people's understanding of their obligations, and confusion caused by different frameworks that apply in both Commonwealth and State legislation. Agricultural stakeholders would prefer to see a 'whole of landscape' approach with closer links between the Department and state and regional authorities so that all relevant information is taken into account in identifying risks and taking compliance action. The agriculture sector has struggled in interpreting published guidance and would likely respond with increased engagement where there are clear steps in identifying where intersections with Commonwealth Acts occur and what precise steps need to be taken.

Industry would prefer a flexible outcomes-based approach to compliance, with a focus on the objectives being sought (priority risks to the environment), rather than a prescriptive rules-based approach. They feel that such an approach would drive continuous quality improvement and innovation, which would lead to better industry practices and therefore a reduced need for punitive compliance action. They feel that the recent ANAO audit report focuses too much on process, rather than outcome.

A clear exposition of the outcomes expected and what good compliance looks like can be achieved through better communication. They suggest education programs for the regulated community, which could include face-to-face workshops for industry employees. Such workshops would also provide the Department with a better understanding of the regulated industry. This education should continue after a project has been approved, and would be assisted by continuity of Departmental staff involved. In this regard, industry is dissatisfied with the high level of staff turnover in the Department (and in particular the loss of staff with industry knowledge), which creates high costs for industry in educating departmental officials on industry practices.

Different industry sectors are at different stages of maturity with respect to regulatory compliance, which reinforces the need for the Department to collect better baseline data about a project and a proponent to be able to measure progress in quality improvement. They support a centralised repository of environmental data that is available to everyone. They see no competitive advantage to industry in refusing to share available data, and believe that greater community access to these data would lead to a better understanding of environmental issues, including the outcomes of the project approval process. In order to build trust, members of the community need to understand their rights, and to know where to take any concerns they may have about a

project. Industry would be happy to partner with the Department in such community education activities.

Industry regards project approval as a process that continues for the life of the project, not just at the beginning. Industry feels that the Department generally adopts a very passive approach to compliance, mixed with periods of intense activity.

Industry representatives feel that there are clear synergies between compliance activities conducted by the Department and those conducted by state or territory agencies, and support a closer partnership approach between different levels of Government.

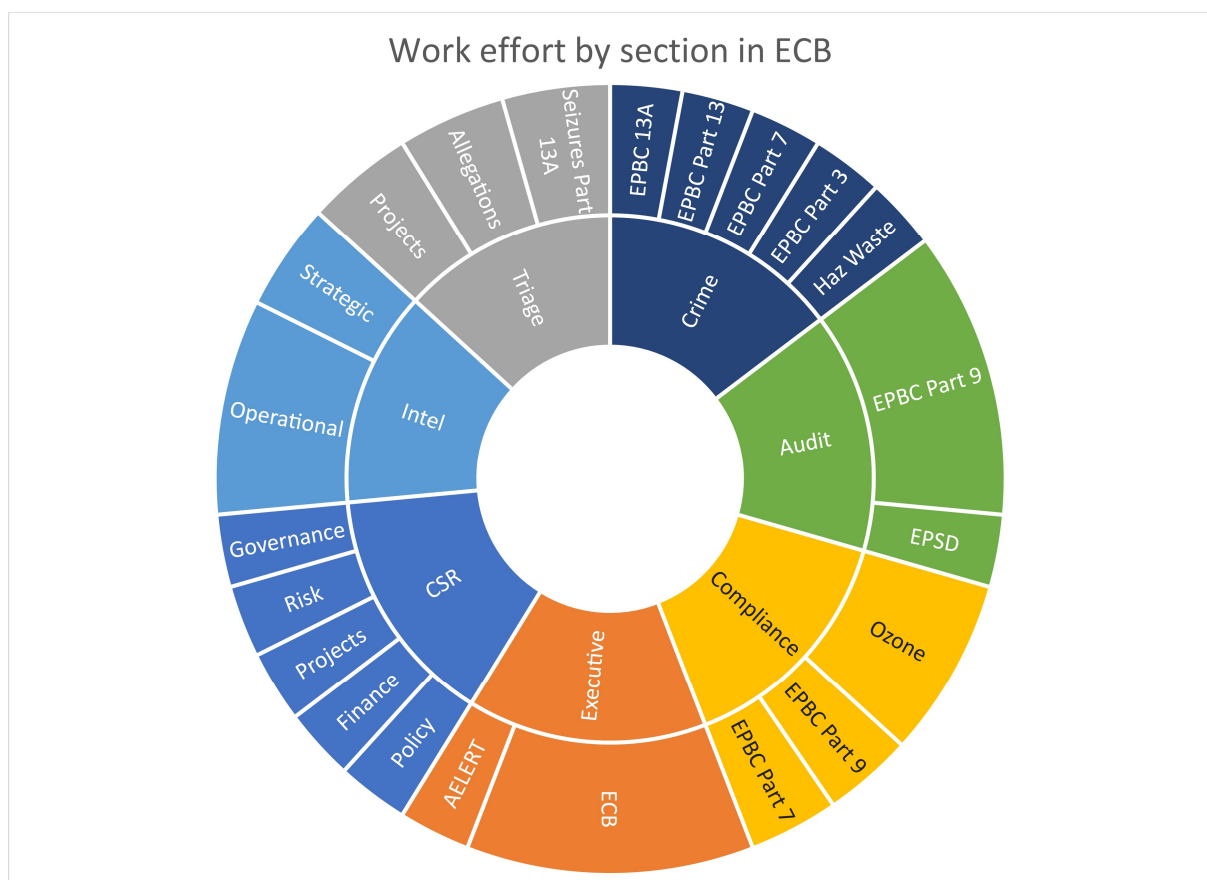
Addressing compliance risks and gaps

Assuring compliance with Commonwealth environmental legislation is an important aspect not only of protecting the Australian environment, but also increasing community confidence in the Department as a regulator.

Following extensive internal and external consultation and an analysis of relevant documents, the Review has found that the Department's environmental compliance function needs investment and reform to be able to assess and prioritise risks to the environment arising from any non-compliance with statutory requirements.

Although ECB's dedicated and expert staff have been doing their best to address non-compliance regarding some statutory requirements, including implementing recommendations from a 2014-15 ANAO audit report, the level of available resources has been diminishing, and data and intelligence that are necessary to allow a fully effective regulatory regime to operate effectively are not readily available. Further to this, the current departmental structure has resulted in environmental compliance teams becoming siloed and their links back into the program areas are faltering resulting in an inconsistent, reactive and diminishing set of compliance activities.

Currently, different sections in ECB focus on different parts of the EPBC Act and other legislation, as illustrated in the following diagram:

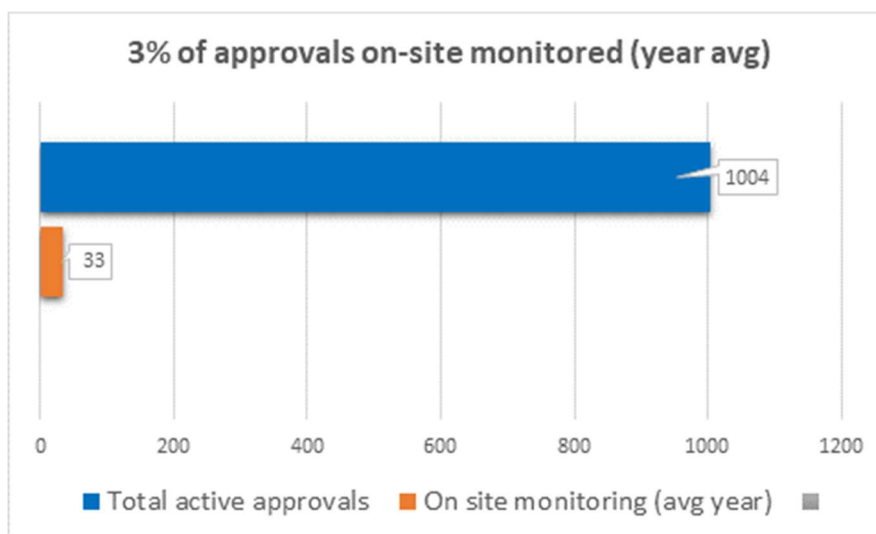


Risks under different legislative regimes

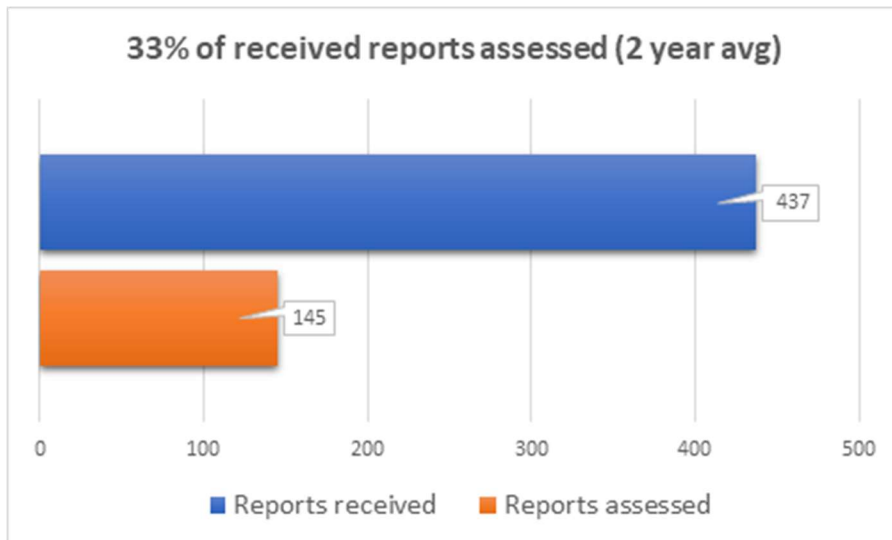
The Review identified risks in respect of each of the environmental Acts as follows:

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

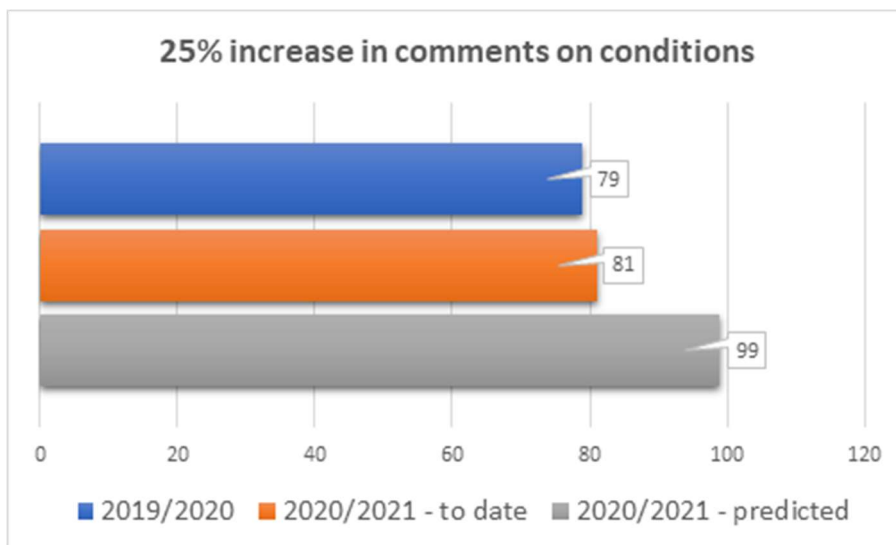
- There has been a rapid decline in on-the-ground compliance activity for the EPBC Act over the last 3 financial years:
 - 2018 - 2019: 79 compliance site visits
 - 2019 - 2020: 8 compliance site visits
 - 2020 - 2021: 5 compliance site inspections
- This has resulted in only a very small proportion of active projects being directly monitored each year:



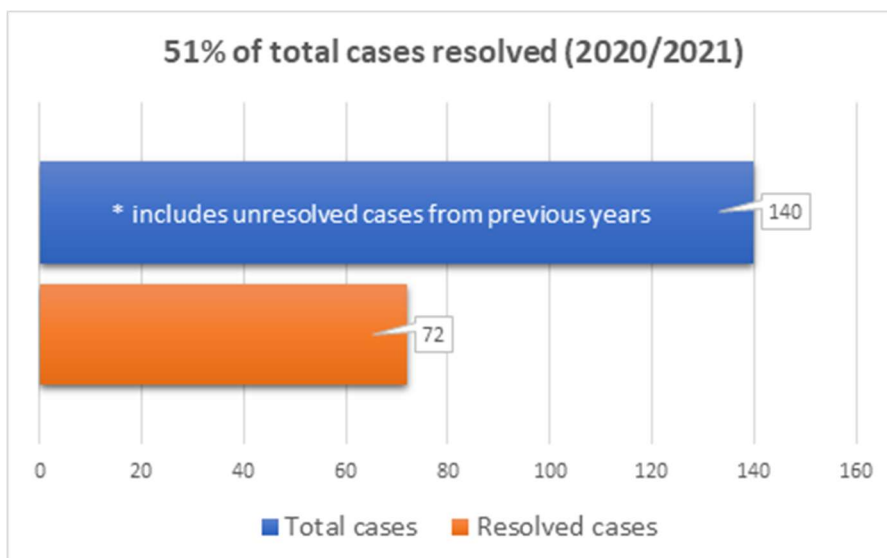
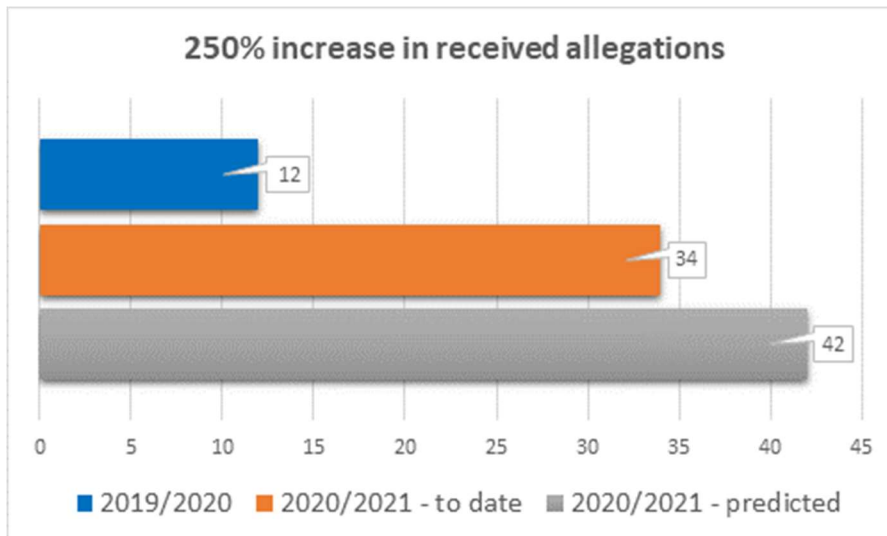
- Less than half of the annual compliance reports submitted by proponents under the EPBC Act are now appropriately assessed. Of the 289 annual compliance reports received by the Environment Compliance Branch last year, only 129 were able to be reviewed. Further to this, staff feel that many more reports should have been received, but a lack of accessible data (such as the start date of approved activities) is hampering their ability to undertake the necessary follow-up and any relevant compliance action.
- This reduction in resource has resulted in inadequate scrutiny of annual compliance reports submitted by EPBC Act approval-holders and almost no on-site verification of compliance with conditions of approval:



- To improve statutory timeframe performance in the EPBC Act assessment process, conditions are increasingly being imposed that require post-approval confirmation, which has led to a 25% increase in requests to ECB for comment:



- There has been an increase (of around 250%) in the number of allegations of non-compliance with conditions of EPBC Act approval, but only around half of compliance cases are being resolved:



- On average, each project approved under the EPBC Act has 26 conditions applied. The recent increase in approvals means that there is a parallel requirement emerging for more and ongoing compliance involvement and activity; however, unlike the assessment and referrals team, the compliance resources are actually reducing at this time.
- Some compliance activity is continuing for the wildlife trade program, although this has been the subject of a recent KPMG review that identified a number of areas requiring improvement.
- Functions such as external stakeholder education, compliance officer training and triage have become lost, disjointed or diluted over time as a result of historical structural changes.
- Recent increases in resources in program areas to accelerate assessment of applications have not been matched by a proportionate increase in compliance resources to monitor approved activities. Comments on proposed conditions of approval are often not taken up because, by the time they have been prepared, the program area has negotiated different conditions with the proponent (on which

input from the compliance team is then not sought due to statutory timeframe constraints).

- In addition, to facilitate meeting statutory timeframes, submission by the proponent of information on environmental impacts is increasingly being deferred to the post approval phase, which increases compliance risks and workload.
- increasing resources for issuing approvals (with conditions) should be balanced with increased resourcing to ensure compliance with those conditions.

Underwater Cultural Heritage Act 2018

- The inspection and investigation functions of the Underwater Cultural Heritage program, including surveillance and monitoring of around 7,500 shipwreck sites, have come to a standstill as state and territory inspectors await approval and training on the new legislation from the Department to carry out their functions.
- Roles and responsibilities regarding the identification and provision of investigators for serious non-compliance such as identified looting of shipwrecks is unclear.
- The Underwater Cultural Heritage program area advised that it took 6 months for the Environment Compliance Branch to appoint an investigator to examine a major compliance incident (looting of a shipwreck site). At one level, this could be viewed as being due to a lack of available compliance resources but it also points to a lack of clarity about the role of (and delegations held by) compliance and program management in the context of the introduction of relatively new legislation. Interestingly, there was limited escalation of this matter within the Department, which again seems to illustrate the silos emerging in the organisation that are leading to poor communication and a lack of clarity about the respective roles and responsibilities of environmental program and compliance groups.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

- Compliance activities for Acts related to ozone and greenhouse gas management are diminishing and program managers could not describe how compliance activity is in fact being undertaken.
- There is no written agreement between program and compliance areas.
- There are no agreed or clear triggers for matters that should be referred to ECB.
- Roles and responsibilities regarding compliance are not clear and there is limited visibility of what compliance is in fact being undertaken.

Product Emissions Standards Act 2017

- The program area has funding available for undertaking compliance, but the lack of agreement on the activities to be undertaken by ECB has meant that these funds remain with the program area.
- There are no agreed or clear triggers for matters that should be referred to ECB.

Hazardous Waste (Regulation of Exports and Imports) Act 1999

- The circular economy aimed at eliminating waste and promoting reuse of resources is presenting a range of new challenges in respect of waste management for which there is a very limited strategic or intelligence capability.

- Staff advise that they have experienced recent difficulty in obtaining cooperation from Australian Border Force (ABF) when they become aware of intelligence suggesting that a shipment of hazardous waste is being prepared for illegal export, due to hazardous waste not being a current ABF operational priority.
- ABF staff advise that input on border priorities from the Department has focused primarily on biosecurity.
- The prioritisation of illegal exports of hazardous waste requires much more detailed discussion with ABF and an agreement about how resources can be rapidly deployed when significant non-compliance is identified to enable this Act to be fully effective.

Recycling and Waste Reduction Act 2020

- The compliance arrangements for this Act were recently designed with ECB to ensure there are dedicated resources available for compliance. A small amount of funding is available in 2021 -22 to commence the process of planning future compliance activity.
- In future years, dedicated funding for ECB is available to ensure that there are resources in place to carry out agreed measures to address non-compliance. However, detailed planning and relationships with ABF (on which this program relies for compliance) need to be settled.

Environment Protection (Sea Dumping) Act 1981

- Staff advise no audits of permit-holders have taken place since 2016, no criminal or civil action has ever been taken in respect of a breach of permit conditions, and no remediation orders have ever been issued.
- A recent internal audit has found that controls to monitor adherence to permit conditions are inadequate.
- There are no clear protocols for referring matters for compliance action, with program staff informally determining the 'capacity or willingness' of ECB staff to investigate apparent breaches of permit conditions.
- Currently information is held on individual files as there is no information management system or even a spreadsheet that would allow ready access to information by ECB staff.
- Risks associated with new types of industries recently seeking sea-dumping permits (eg artificial reefs in deep water (old oil rigs) for scuba diving, sea-bed carbon capture and storage installations, debris from spacecraft and burials at sea) have not been systematically assessed.

There are a range of tasks that could be immediately undertaken to address the matters raised above and, if given priority, there are some quick gains to be made. Given the wide range of risks now requiring attention across a number of pieces of legislation, the Review is of the opinion that a coordinated program of reform be undertaken that comprises a range of specific projects to address these matters. The Review also recommends an increase in on-the-ground resourcing in particular areas and that a small dedicated team reporting to

the First Assistant Secretary of the Compliance and Enforcement Division be established to coordinate and project manage the reforms over the next two years.

The Review considers that, without additional resources and a dedicated effort, it would be difficult for the Department to undertake the level of change required to improve environmental compliance. The current reform being undertaken by the EPBC program area shows what can be achieved through a concerted effort that also provides an opportunity for existing staff to apply their expertise in the reform project, with their roles being temporarily backfilled with short-term contract staff. This approach, albeit on a smaller scale, would be appropriate for reforming the environmental compliance function.

Discrete packages of work and the resources required to implement the recommended program of reforms are discussed in more detail below in the section on [Resources](#).

Recommendation 1

The Department initiate a comprehensive reform program of its environmental compliance functions ([Attachment A](#)) that addresses its governance, structure and resources, information management and intelligence, regulatory tools, approach to risk, prioritisation, and stakeholder partnerships and engagement with the aim of developing environmental compliance as a model national approach (centre of excellence).

Governance and structure

The current environmental compliance arrangements fall well short of the approach the Department has committed to in its new Regulatory Practice Statement⁸⁸, which describes a model approach to managing regulatory compliance. To create a more effective compliance approach, strong governance is required to ensure that each of the above risks is addressed, with ongoing assessment and prioritisation of residual and emerging risks.

Effective achievement of compliance objectives requires a detailed knowledge of the regulated community, as well as a clear understanding of the legislation being administered. Retaining a specialised focus on environmental compliance is essential to maintain this sectoral knowledge.

Given the Commonwealth's responsibilities for matters of national environmental significance (MNES), Australia's borders (including Australian waters) and international treaty obligations, the Review considers that, in addition to addressing the specific regulatory risks outlined above, the Department needs to make a number of changes to strengthen the governance framework that supports ECB so that its compliance functions are achieving the objects of the full suite of legislation, including by:

- retaining a dedicated environmental compliance team
- increasing the resources, capability and skill set for environmental compliance
- building up its information management and intelligence capacity

⁸⁸ <https://ausgovenvironment.sharepoint.com/sites/AWE-intranet/Shared Documents/Forms/AllItems.aspx?sortField=Modified&isAscending=false&id=/sites/AWE-intranet/Shared Documents/Regulatory statement Internal Final.pdf&parent=/sites/AWE-intranet/Shared Documents>

- putting more effort into strategic planning and priority-setting
- strengthening partnerships with other Commonwealth and state agencies who have on-the-ground monitoring and surveillance capabilities to optimise the benefit of available environmental protection resources.

Compliance should operate as an integral part of overall environmental program management. Many stakeholders regard compliance as a cycle of activity with three iterative parts: 1) approvals; 2) post-approval follow-up; and 3) ongoing compliance. The knowledge and insights gained from steps 1 and 2 are integral to identifying potential and actual non-compliance in step 3. For example, difficulty complying with early post-approval conditions often indicates the need for increased monitoring and, if need be, early intervention. Similarly, analysis of common conditions or sets of conditions that proponents are consistently having trouble implementing will suggest that program-based audits and more widespread follow-up take place. External stakeholders identified land-clearing and the difficulties a number of projects are having in meeting offset obligations as one such area in need of focused compliance action.

Following a recent machinery of government change, ECB was relocated into to a broader compliance division (with no other functions relating to environmental protection), which primarily has responsibility for biosecurity compliance and related activities. While the aim at that time was to build a centre of excellence for the application and development of compliance skills in a newly amalgamated Department, an unintended consequence has been that the environmental compliance function has become increasingly ineffectual, focusing more on process, managing increasingly scarce resources and reacting to some of the higher profile issues than collaborating with their environmental program counterparts to set priorities for improving environmental outcomes.

The structural separation of ECB from the day-to-day management of environmental programs, including the assessment and post-approval functions of the EPBC Act and all other environmental legislation creates challenges for program administration. The location of environmental compliance within a division primarily responsible for biosecurity (and organisationally separated from relevant environmental policy and program areas) has challenged knowledge-sharing and workflow integration.

In order to better understand the impact of this organisational separation, one of the benchmarking questions the Review asked other government agencies was about the extent to which their program and policy areas work together with compliance. Based on all of the discussions undertaken with regulatory agencies within the Commonwealth, internationally and from a state jurisdictional perspective it is apparent that environmental compliance activities are most effective when they are managed as part of an integrated project lifecycle approach. This requires strong and ongoing feedback loops between project assessment, post-approval and compliance functions. In practice, this involves joint priority-setting, frequent (daily) officer-to-officer interactions and, most importantly, joint leadership and oversight accountability.

Within the Department, it became apparent during the Review that there is a high level of dissatisfaction and concern about the compliance function among the environmental program managers and staff, with several senior managers expressing the view the environmental compliance activities are invisible to them, they are concerned that compliance now seems like a major gap in the administration of their legislation, they feel that their issues are not appropriately prioritised and they are not able to draw on the support of compliance when investigations, monitoring or advice is needed.

There are also inconsistencies regarding the degree to which policy or program areas manage various elements of compliance themselves, and where ECB is expected to play a role.

Currently, environmental policy and program management (including assessment and approvals) and program integrity (compliance) activities report to different Deputy Secretaries, which means that the first point of joint oversight of these activities in the organisational structure is at the level of the Department's Secretary. This degree of structural separation requires stronger governance mechanisms to achieve an iterative, collaborative and robust approach to managing environmental risks.

Senior (CEO or Executive Board) involvement in determining, resourcing and actively promoting compliance priorities (including through advocating for these priorities with key external stakeholders) was also seen as critically important by most benchmarked agencies, particularly for new or emerging issues (such as managing environmental offsets).

Most benchmarked agencies agree that separation of assessment and compliance duties at an officer level is considered best practice (in part due to the different skills involved in assessing whether a proposed activity can be undertaken without undue risk to the environment, and conducting surveillance, monitoring, investigation and correction of an authorised or unauthorised activity). However, there is consensus that the assessment, approval, post-approval and compliance functions need to be tightly integrated in order to achieve the policy objectives of the environmental legislation.

This structural separation is now adversely impacting the effective administration of environmental legislation and, if that structural separation is retained, a concerted effort through very strong governance is required to overcome the functional difficulties that have emerged. This level of governance needs oversight by very senior executives from both compliance and program areas so that compliance is considered a shared responsibility.

To support more effective governance, reporting on compliance activities should explicitly focus on the achievement of the objectives of each environmental program.

A consistent and robust risk management approach requires a shared understanding of and focus on the legislative objectives, a common view about what, how and why conditions are applied to an approval, agreement on compliance program priorities, iterative feedback loops, and an early and joint understanding of trends and risks.

The Department currently has a well-established process for managing and reporting on enterprise or corporate risks. A similar approach to managing regulatory risks across

environmental legislative regimes would achieve a more holistic approach to priority-setting and provide greater oversight and visibility about the range of compliance activities.

Recommendation 2

The Department maintain a strong and dedicated focus on environmental compliance through the retention of a specifically identified environmental compliance branch, with strong executive-level governance.

Recommendation 3

To maintain a coherent focus on national environmental protection, the Deputy Secretary responsible for environmental compliance chair an Executive Committee comprised of First Assistant Secretaries responsible for the Department's environmental policy, program and compliance areas so that:

- **compliance is managed as an integral part of the program management cycle, using information generated through and feeding back into applications and approvals to effectively inform department's approval/permit management processes**
- **more effective relationships and operational linkages can be established and maintained with environmental policy and environmental program areas (including through sharing data and intelligence)**
- **the development of the regulatory risk dashboard (see Recommendation 5) is coordinated and supported**
- **compliance priorities and an Annual Compliance Plan (see Recommendation 20) can be developed and agreed with input from both program and compliance teams**
- **implementation of these reforms is coordinated and monitored.**

Recommendation 4

The Department immediately step up its executive-level reporting on environmental compliance matters to provide greater corporate visibility of this function, commencing with monthly reporting to the Deputy Secretary responsible for environmental compliance on monitoring, audit and enforcement activities across the legislative regimes, as well as progress on the recommended compliance-based business improvement reforms and insights into intelligence issues.

Recommendation 5

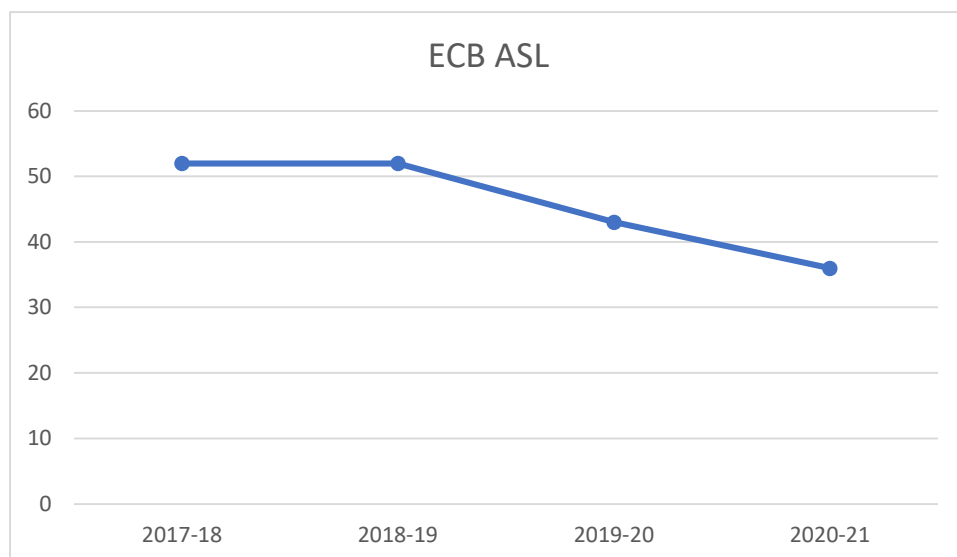
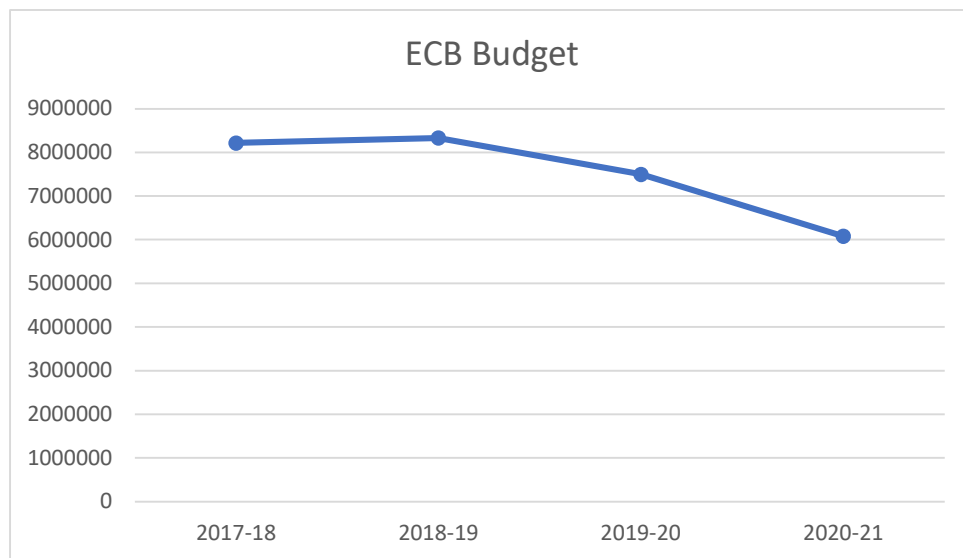
The Department allocate sufficient funds (\$200,000 - \$300, 000) for the Chief Risk Officer to undertake a project to develop a dedicated business-focused regulatory risk dashboard to monitor how risk is being managed across all environment legislative regimes, for

provision to the Executive Board to ultimately replace the monthly reporting described in recommendation 4.

Resources

The continuing reduction of resources dedicated to environmental compliance is reducing the level of mitigation of environmental risks.

Since 2018-19, the level of compliance staffing has dropped from 58 to 41, of which several positions remain vacant due to lengthy approval processes and the Division's overall ASL cap having been reached. This means that currently around 36 filled positions are attempting to cover 8 pieces of environmental legislation and an increasing workload in terms of the number of approvals, permits and licences being issued across relevant program areas.



As highlighted earlier in this report, ECB resources are largely applied to managing compliance with the EPBC Act, with some resources being applied to managing compliance

with 3 other Acts. Due to the reduction of resources, few (if any) resources are now applied to other environmental legislation with compliance obligations.

Industry associations and community groups identify a number of issues that reduce the efficiency and effectiveness of compliance activities, including inconsistent compliance approaches, a stop-start approach due to changing priorities, and loss of continuity and reduction in subject matter expertise due to staff turnover. Stakeholders also note inconsistencies in the split of responsibility between program and compliance areas for the different environmental programs with respect to monitoring, surveillance, inspection and compliance-focused education.

In discussion with key external stakeholders (both in industry and community sectors) there was concern about loss of expertise in the specific environmental aspects of compliance and poor visibility of the Commonwealth environmental compliance function. Many external stakeholders raised this as their key concern. Industry stakeholders said that, due to loss of subject matter expertise in the Department, they need to educate officials on issues such as groundwater, emissions and other specialist areas. This results in inspections, audits and monitoring requiring more time and effort than necessary, raising costs for them as well as the Department.

Discussions with ECB staff confirmed that the lack of specialist expertise was an issue in some aspects of their work. ECB currently depends on a few long-term staff to pass down knowledge; however, if these staff take extended leave or retire, there is a risk that this knowledge will be lost. Staff also expressed a need for training on more generic compliance matters such as interpreting legislation, applying a risk-proportionate approach to enforcement, planning an investigation and writing up compliance reports. Agencies such as state Environment Protection Authorities provide regular training including formal coaching and mentoring of newer staff.

The Samuel report proposes that some of the on-the-ground compliance activities for the EPBC Act be undertaken by state and territory compliance officers. However, this would not be grounds to reduce Commonwealth compliance resources. Even if some states and territories agree to undertake on-the-ground compliance audits for new projects approved following referral under the EPBC Act, there are still insufficient Commonwealth compliance staff to monitor existing approvals, let alone develop more desktop, analytical and intelligence-led activities that are necessary to support a more strategic compliance approach through which the Commonwealth can focus its efforts on preventing non-compliance and on enforcement and prosecution at the top end of the compliance pyramid.

The risk analysis of individual pieces of legislation (above) highlighted some areas where a significant increase in workload has emerged, particularly where the number of approvals is rapidly increasing as the Department works through assessments more quickly to meet statutory timeframes and where new pieces of legislation have been implemented. Areas of particular concern are the backlog management reports under the EPBC Act that require review and follow-up, the increasing number of conditions that now need to be monitored under the EPBC Act, and the legislative regimes where compliance arrangements are not

well defined. These issues can be addressed by applying dedicated resources using a project management approach.

ECB currently has insufficient resources to manage its day-to-day work, let alone implement the recommended reforms. As with any reform program, some up-front investment is needed to manage the change process. The Review recommends that the Department move quickly to fill vacant positions in ECB (with contractors until positions can be permanently filled), that a small number of additional resources be provided to address identified gaps, and a small project team be established to manage the reform process (including the development of training modules).

Another resource gap is having sufficient investigators to follow through on more serious issues of non-compliance, particularly in the areas of wildlife trade, sea dumping, hazardous waste and underwater cultural heritage. The establishment of a panel of investigators would help to address this situation, supplemented by online training modules.

Recommendation 6

To enable reforms to commence, the Environment Compliance Branch immediately fill all vacant positions, including using contractors until positions can be permanently filled.

Recommendation 7

Additional resources of 3-4 staff reporting directly to the First Assistant Secretary be provided to establish a project management approach to implementing the proposed reforms, coordinate procurement for the specific packages of work identified in this report and provide initial secretariat support for preparing papers for the Executive Committee described in Recommendation 3.

Recommendation 8

A small team be contracted to work with senior compliance staff to develop some interactive training modules for ECB staff and where possible this team work with state and territory counterparts to draw on their expertise and training materials.

Recommendation 9

A panel of subject matter experts and a panel of compliance experts be established upon whom the Department can draw to assist with inspections, audits and investigations, particularly where on-the-ground site visits are needed and there is interaction with specific industry officials.

Information management and systems

Effective management of environmental risk requires access to information and data from a wide range of sources, including applicant information and history, relevant approvals and their conditions, environmental impact studies conducted as part of the assessment process, geospatial mapping information (including satellite images of areas under threat), information supplied by a wide range of stakeholders (including individual citizens and civil society groups as well as industry proponents and peak bodies), and information obtained from other Australian and international regulatory, intelligence and law enforcement agencies.

A number of reviews have identified an urgent need for the Department to better manage the information necessary not only for assessment of applications, but also for compliance.

The Review has identified a number of options for improving the management of information relevant to environmental compliance. These include introducing an electronic system for improving the local management (within the Environment Compliance Branch (ECB)) of information directly related to approved activities (such as annual compliance reports, allegations and audit findings). Such a system needs to include the history of applicants seeking an approval, ability to audit outstanding management reports that are required as a condition of approval, and ability to assess conditions of approval in aggregated format to inform program-based compliance activities rather than the current file-by-file approach. This system needs to integrate and aggregate information relevant to the work of the Branch that is held by the program areas of the department and by other agencies.

The current system for managing compliance information, which is largely based on spreadsheets maintained by different sections in the branch, requires multiple data entry points (with the potential to introduce and perpetuate errors) and does not afford a comprehensive view of project proponents, industry sectors, trends or emerging risks. A number of the spreadsheets contain so much information that they are at risk of no longer functioning reliably. The spreadsheet system precludes data sharing and manipulation (data mining), consistency in compliance approaches (an issue of concern raised by industry bodies), the ability to record how or if a potential compliance matter has been resolved and does not allow officers in the Department to provide reliable executive level reporting.

Investment in information systems is overdue. ECB needs to urgently develop systems to hold and interrogate its own data as current systems are spreadsheet-based and are at risk of failure. The branch has recently been working to procure more effective and modern systems, but this process has been delayed due to discussions about whether such systems should be expanded so that other (non-environmental) programs such as biosecurity can leverage the benefits of any systems investment.

ECB has recently commenced procurement of a more integrated and contemporary information system (the Compliance Intelligence and Investigation Management System - CIIMS) to manage information relating to the compliance aspects of a range of environmental programs. This work should proceed as a matter of urgency. It is important

that implementation of this system is not delayed given the existing systems are no longer adequately supporting compliance functions. Without this investment, the compliance area will be unable to function reliably or effectively.

The National Environmental Significance and Threat Risk Assessment (NESTRA) tool is a spreadsheet that uses an algorithm to derive a relative risk rating of actions approved under the EPBC Act for case management, case prioritisation, quality assurance and workflow management. Work has commenced with the CSIRO to develop business rules for moving this system to a cloud-based database. Modernising other internal compliance systems should be prioritised and supported, but with greater executive level oversight of how these systems interface and integrate with broader departmental assessment workflow, data management and corporate records systems.

NESTRA will undergo an efficiency review in 2021-22 to determine if it is adequately identifying risk. The review will be undertaken by a team of risk specialists and data scientists from the CSIRO. The review will be finalised in early 2022. This work should continue as a matter of priority.

Software that allows mirroring of devices such as computers and mobile phones during site visits, and access to satellite imaging analytics systems such as Planet are also necessary tools to undertake effective compliance.

Whilst the recommended approach means that compliance information about a project or proponent is not immediately available to program areas for consideration for new or varied approvals, and information considered in the approval or conditioning process is not available for compliance purposes this can be addressed at a later stage by creating interfaces to other systems such as the new assessment portal and workflow system.

There may be some concern that these systems (as currently planned) do not fully integrate with other information systems in place, or under development, in related policy and program areas, or be available to support other compliance functions within the broader Department. However, this concern can be addressed by designing and implementing CIIMS and upgrading NESTRA so that in future they can become modules in a suite of environmental program IT solutions. To achieve this, the implementation of CIIMS and the redesign of NESTRA should be undertaken in accordance with Departmental IT architecture standards and governed accordingly.

Work currently under way to establish new information systems needs to be coordinated to ensure that consistent information is available to all departmental staff responsible for managing risks to the environment. Progress on this IT system build should be monitored and supported via the board established to oversee the design and implementation of the Digital Environmental Assessment Program (DEAP).

Work currently underway on developing DEAP should be expanded to include the design of functional interfaces with the systems being developed for compliance purposes (CIIMS) and risk rating (NESTRA) so that these systems can operate in the future as modules of a more comprehensive approach to managing information relevant to protection of the

environment from across the Department. This should allow compliance staff access to the full suite of information considered in assessments, and assessment staff to have access to the compliance history of proponents and the suitability (or otherwise) of specific conditions of approval.

Over time, the adoption of more sophisticated data warehousing and data mining technologies should be implemented to identify trends and emerging compliance risks based on data from a wide range of sources, to inform risk assessment and prioritisation of resource allocation, and to measure the success of compliance interventions in environmental terms. Implementation of such information management capability would require significant investment but would be of immense value to the Department's policy and program management functions, as well as its compliance operations. However, it would be premature to make this investment without having high quality data stored in a readily accessible form. A staged approach is recommended.

Recommendation 10

Investment into information systems to support activities relating to environmental compliance occur in three stages, with strong executive-level oversight to ensure and promote interoperability with other systems in the Department:

Stage one

- a. continue implementation of the Compliance Intelligence and Information Management System (CIIMS) currently being procured by the Environment Compliance Branch to support compliance functions across all legislation that the environmental compliance team needs to administer**
- b. review and update the National Environmental Significance and Threat Risk Assessment (NESTRA) tool**

Stage two

- c. build preliminary compliance requirements into the development of the Digital Environmental Assessment Program (DEAP), with a particular focus on inclusion of fields for proponent compliance history, and for managing compliance reports required from proponents as part of their conditions of approval**
- d. identify the information management requirements for effective compliance monitoring and enforcement under the *Environment Protection (Sea Dumping) Act 1981* and how existing or planned systems can capture and use this information**

Stage three

- e. more fully integrate the Portal and Assessments System and the compliance systems to leverage the data to generate better management reporting (including to Parliament), link with other intelligence agencies and undertake strategic planning**
- f. develop data warehousing and data mining capabilities to better inform policy development, program administration (including compliance) and intelligence.**

Risks and Prioritisation

Regulators will never have sufficient resources to prevent all environmental harms. To optimally deploy limited compliance resources, a strategic approach is required that:

- anticipates and proactively addresses emerging threats before environmental harm occurs
- uses intelligence-based risk assessments to identify areas of greatest risk
- designs risk-proportionate intervention strategies
- deploys robust and sophisticated compliance capabilities to effectively mitigate environmental risks.

Managing environmental compliance involves both reactive and proactive approaches to assessing and managing risks to the environment: the Department needs to be able to prioritise and respond to allegations and evidence of non-compliance and to have a program of work to monitor adherence to conditions of approval but it also needs to hold, integrate and analyse information from a range of sources to effectively and efficiently undertake compliance activities across complex and varied legislation.

Currently, environmental compliance priorities are set by the Assistant Secretary of the Environment Compliance Branch and, within individual sections in the branch, priorities are determined based on individual prioritisation frameworks developed at a section level. Whilst this goes some way to assisting with the management of resources, the focus is largely on the EPBC Act and the justification for the relevant priorities is not visible to either other members of the branch, other program areas or executive level decision-makers across the Department.

The Review has identified the need for more active oversight and involvement in the process of determining and setting priorities by program areas and the Department's Executive Board and Audit Committee. The basis for the appropriate prioritisation of resource allocation needs to be based on proper consideration of the information it draws from a wide range of sources. Because the Environment Compliance Branch is responsible for managing compliance with seven individual pieces of environmental legislation, the prioritisation process also needs to be cognisant of current and emerging risks across a wide range of environmental threats.

The creation of a strong intelligence capability within the ECB that is knowledgeable about environment programs, stakeholder concerns and what has experience of works and what does not is a critical input for assessing risk and prioritising day to day work activity as well as for pulling together large and more targeted programs of work. Through a well established operational intelligence function, the likelihood of non-compliance by considering an entity's compliance posture (including its compliance capability and history) and identifying emerging issues will assist the Department take a much stronger lead in environmental compliance and provide reassurance to the government and the community about what it is doing and why.

In addition to an operational intelligence capability a dedicated environmental strategic intelligence capability can further enhance the Department's compliance efforts. As

intelligence uses information from a wide range of sources to identify and assess existing and emerging threats in the operating environment strategic intelligence can assist with identifying emerging trends and can be integrated with intelligence from other agencies to identify and prioritise broader threats. A successful compliance approach uses intelligence at both strategic and operational levels to inform and guide prioritisation of activities, resource allocation, decisions, and policies.

The Environment Compliance Branch held a workshop in May 2021 to commence the process of developing a more systematic approach to prioritisation that spans all relevant pieces of legislation, using a sectoral framework to assess environmental risks. The workshop identified a wide range of sectors (as set out at [Attachment D](#)) that ECB could use in future risk assessment and prioritisation exercises and identified a four-step rating scale of low, medium, high and extreme to compare risks and priorities. Within the rating scale, staff commenced development of a scoring system similar to those used by environment agencies in some states and territories to ensure that issues were able to be objectively considered. However, in identifying risk criteria to which ratings could then be applied, staff recognised that the criteria may need to differ between Acts and there was a need for a greater degree of granularity of data within sectors, which requires expertise from program areas.

The workshop recognised that ECB does not have access to the data necessary to properly assess and prioritise risks as they relate to each piece of legislation, let alone to prioritise across the full suite of environmental legislation.

By way of example based on the knowledge and information held at a branch level, 5 key areas of focus were identified: mining; agriculture; waste; construction and development; and wildlife trade. The workshop noted that these areas related primarily to the EPBC Act. In terms of identifying where the branch should put its efforts across the different legislative regimes, there was limited knowledge or access to relevant information as this was primarily retained in the program area. Further work is needed to be more granular. For example, 'agriculture' could cover land-clearing, hazardous substance management, water pollution or land overuse. Within 'mining', air quality, noise, odours or surface water impacts were specific subsets of concerns, and land-clearing could be approved with offsets, so compliance with offsets was likely to be another important focus for compliance activity. Alternatively, compliance activities could focus on projects with the most conditions or proponents with a poor compliance history. It was noted that this level of information would be much more accessible following the completion of the first stage of the proposed CIIMS case management system.

ECB staff at the workshop agreed that a transparent process of prioritisation was essential to properly targeted compliance activity but without the necessary intelligence, partnerships and governance this would be difficult to achieve. Following the workshop, the coordinated branch approach to risk management and priority-setting should be continued to enable a suitable framework to be developed and refined. The completion of the framework can then form the basis of a more transparent approach to updating the Annual

Compliance Plan for Executive endorsement, thereby addressing the risk management recommendation in the recent ANAO audit.

To progress this, a specific short-term project team within ECB with some dedicated resources (around \$300,000) should be tasked with coordinating a first stage risk review and prioritisation process across all legislative programs that results in the development of an Annual Compliance Plan. The development of this plan should commence with detailed consultation with program areas and oversight by the Executive Board.

Over time, though the Department needs to develop a more strategic approach to compliance priority-setting, based on assessment of trends and emerging issues using data drawn from a variety of sources, including from:

- its case management system
- complaints and allegations received by the Department
- the systems in place for effective program management
- other intelligence agencies
- states and territories
- geospatial information systems used by the department (which may require additional resources in those areas)
- access to satellite-based environmental surveillance systems managed by third parties.

All of these data would come together to not only inform risk assessment and resource prioritisation but the effectiveness of remediation and enforcement and outcomes measurement.

In addition, the capture of relevant environmental data could feed into internal reporting and external benchmarking (such as State of the Environment reports) that enables the Department to be transparent and objectively determine whether the objects of the Acts or the environmental outcomes are actually being achieved and further aid prioritisation and resource allocation.

Recommendation 11

The Department establish a project costing around \$300,000 to engage personnel to clear the backlog of reviewing, assessing, and undertaking follow-up action for the outstanding EPBC management reports and to establish a framework for more timely future review, follow-up and action.

Recommendation 12

The Department design a program-based audit process to assess the effectiveness of regularly applied conditions (such as offsets), in terms of adherence and achievement of positive environmental outcomes. The Department establish a project to significantly strengthen ECB's approach to monitoring approval conditions including:

- **Grouping like conditions and reviewing these as programs of work to form a view on how these conditions are being met overall.**

- Identifying the extent to which these kinds of conditions are or can be met.

Recommendation 13

The Department urgently finalise inspection and monitoring arrangements with states and territories for shipwrecks managed under the *Underwater Cultural Heritage Act 2018*, and clarify responsibilities for investigations to enable timely engagement of an investigator when necessary.

Recommendation 14

The Department undertake a strategic intelligence review of the illegal export of hazardous waste, to identify the level of compliance resources needed to mitigate risk and to build stronger relationships with Australian Border Force to plan for ongoing monitoring and enforcement on which compliance arrangements rely to be fully effective.

Recommendation 15

Program-specific compliance plans that identify roles and responsibilities and prioritisation arrangements for the *Ozone and Synthetic Greenhouse Gas Management Act 1989*, the *Product Emissions Standards Act 2017* and the *Recycling and Waste Reduction Act 2020* be developed for endorsement by the Executive Committee identified in Recommendation 3.

Recommendation 16

The Department establish a short-term project to undertake a risk assessment of categories of permit holders under the *Environment Protection (Sea Dumping) Act 1981*, address recommendations from the recent internal audit and clearly establish compliance roles and responsibilities.

Recommendation 17

The Department establish a project with dedicated funding (\$300,000 - \$500,000) to design and plan its intelligence capability at both the operational (supporting effective monitoring, enforcement, risk assessment and prioritisation) and strategic (identifying emerging domestic and international trends relevant to compliance and enforcement) levels.

Recommendation 18

The Department establish a short-term dedicated project team of 2-3 staff to develop a prioritisation framework that can be used to establish priorities across all relevant environmental legislation to inform the development of the Annual Compliance Plan (Recommendation 20), which:

- Consults in detail with program areas to define sectors at a level of granularity (eg land clearing not just agriculture, quarries not just mining) to enable associated risks to be clearly identified and a program of compliance action to be identified

- Draws on aggregated program data such as the number of like conditions, numbers of management reports required relating to a certain topic, history of an entity, the level of geographic coverage, proximity to population or known threatened species
- Develops a rating system that enables sectors to be scored so work can be prioritised and resources transparently allocated
- Identifies ongoing data and information requirements that can then be used as a basis for ongoing risk assessment and building the new compliance information systems shifting the initial qualitative approach to a more quantitative capability.

Recommendation 19

The Department establish a dedicated project (\$300,000) to engage contractors to clear the current backlog of monitoring and management reports for activities approved under the EPBC Act and establish a framework for more timely future review, follow up and action.

Recommendation 20

The Department prepare an Annual Compliance Plan, ideally for each financial year, that sets out the major areas of focus for the year, how compliance will be undertaken for each of its regulatory regimes and how its dedicated compliance resources will be allocated

- the Annual Compliance Plan be confirmed by the Department's Executive Board, approved by the Department's Secretary and reported to its Audit Committee
- the Department's Executive Board (or delegate) approve any request to deviate from the approved Annual Compliance Plan priorities
- any deviation from the Annual Compliance Plan should include approval of reallocation of resources (i.e. either allocate additional resources for any new priority or specify areas that are no longer a funded priority)
- the Department annually publish a summary of activities undertaken against the plan for each of its environmental legislative regimes.

Partnerships and engagement

The Department's success in achieving compliance relies on partnerships. The experience of other regulators shows that improved environmental outcomes result from more active engagement with regulated entities (while avoiding regulatory capture), other state/territory, national and international regulators as well as industry and the community. These partnerships provide guidance, information and intelligence but they also assist the Department to implement its compliance activities.

Staff in the Environment Compliance Branch should proactively build closer working relationships with officers in other areas of the Department administering environmental protection programs, including through regular meetings to identify actions to improve processes and procedures relating to information-sharing and joint ways of working.

Periodic meetings between assistant secretaries and directors from program and compliance areas would help to foster these relationships as well as provide a mechanism for information-sharing and joint action on emerging issues, gaps and solutions.

The Review recommends that division heads and branch heads responsible for environmental policies and programs and environmental compliance meet regularly to promote information-sharing, encourage a focus of joint responsibility and support the implementation of the range of joint activities outlined in this report. On a quarterly basis, these meetings should identify any current or emerging issues relating to the role of the compliance function in achieving policy objectives, and on an annual basis these meetings should sign off the compliance priorities being recommended to the Executive Board for approval by the Secretary together with a resource plan and a risk review. This would also allow more comprehensive advice to be provided to the Minister for the Environment regarding prioritisation and a more holistic approach to achieving environmental outcomes.

A number of important partnerships have been developed in recent years by ECB with other law enforcement agencies such as the Department of Home Affairs and the Commonwealth Director of Public Prosecutions. However, some of these relationships have struggled in recent months as supporting agencies have become unclear about the relative priorities between biosecurity and environmental compliance. These partnerships are essential for intelligence and enforcement purposes, particularly when it comes to matters such as wildlife trade, illegal waste management and sea dumping.

ECB staff should continue to foster good officer-level working relationships with staff in other Commonwealth agencies such as Australian Border Force, Austrac, and the Commonwealth Director of Public Prosecutions to increase their understanding of issues relating to environmental crime. This work should be actively supported by the Department's executive, particularly when issues require escalation.

ECB should also consider where the Department could be better engaged and provide advice and recommended actions to the Deputy Secretary such as for higher-level strategic discussions that can raise environmental crime as a priority with other law enforcement, national security or intelligence agencies.

Departmental representation on high level security committees is currently focused on biosecurity, so environmental considerations are usually not prominent at these forums. This contrasts with New Zealand, which has listed environment and climate change of one of 16 national security priority areas (with biosecurity also a priority).

Both industry and the community sectors are keen to strengthen their relationships with the Department on compliance issues. A key message to the Review from both industry and the community was a willingness to help foster a culture of compliance. ECB could gain knowledge and intelligence from better relationships with the regulated community as well as ensuring that guidelines and communication material resonate with their intended audience. Jointly run workshops with local land councils or water catchment authorities at the local level could be effective at increasing awareness of environmental protection

obligations among different industry sectors (eg mining, agriculture, residential development).

States and territories are continually improving their compliance approaches and they indicated a willingness for ongoing dialogue and joint work. To achieve this, ECB should identify key compliance contacts in other jurisdictions, through which to build better working relationships over the longer term, or escalate urgent matters in the shorter term.

Further to this, the Government has committed to implementing certain matters recommended in the recent review of the EPBC Act by Graeme Samuel, including rigorous assurance monitoring for bilateral agreements with states and territories. As these agreements are likely to have implications for environmental compliance monitoring and enforcement, involvement of senior executives from compliance in these discussions is essential.

Discussions with international counterparts in Canada and New Zealand revealed a keen interest in developing meaningful dialogue with the Department on environmental compliance. Further consideration of how ECB would engage most constructively with these stakeholders is needed. An annual high level videoconference in the first instance would help ECB keep abreast of international developments in environmental compliance and could lead to the development of work-sharing projects.

Some moderate additional resources would increase the branch's capacity to engage with key stakeholders. To be an effective regulator (in accordance with the Department's new Regulatory Practice Statement), ECB needs to engage with stakeholders when identifying risks and setting requirements to ensure that achieving compliance is as efficient and practical as possible, and that the requirements manage the risks in building a shared understanding of regulatory objectives and expectations. Stakeholder engagement is a tool in achieving better compliance, not an end in itself, and therefore such relationships need to have clear strategic objectives and be based on mutual trust.

Recommendation 21

Assistant Secretaries of environmental programs and compliance meet at least twice annually to examine priorities, emerging issues, resources and progress across the range of environmental legislation being administered by the Department.

Recommendation 22

The Environment Compliance Branch be actively included in the current process to develop model conditions for activities approved under the EPBC Act, to ensure that these conditions can be effectively monitored and enforced.

Recommendation 23

External partnerships be strengthened and maintained including with:

- **state, territory and international environmental regulators**
- **national intelligence agencies - to share intelligence, strengthen data exchange, expand horizon scanning and coordinate actions against sophisticated offenders.**

Recommendation 24

A specific area of the Department coordinate engagement in cross-portfolio forums relating to serious and organised crime and national security and intelligence, to ensure that environmental issues are considered as part of these discussions.

Compliance policy and regulatory tools

One of the challenges for the Department is how to most effectively apply the regulatory toolset it has at its disposal. Traditionally, regulation relies on a series of enforcements that are clearly set out in each of the regulatory regimes. One of the key aims of modern legislation is to include a range of enforcement measures so that actions to achieve compliance can be proportionate to the issue being addressed. However, there is broad recognition that educative approaches are very powerful in preventing non-compliance (rather than waiting to penalise regulatory breaches).

New regulatory tools (including the more consistent use of powers available under the Regulatory Powers Act) and a more sophisticated approach to determining risk and allocating priorities are required if the Department is to effectively protect the Australian environment through promoting compliance with the full range of legislation enacted by the Parliament.

In addition, regulators are increasingly including information-based approaches as a part of their regulatory toolbox. While some stakeholders consulted as part of the Review process felt that the best deterrence of non-compliance was a stronger application of traditional enforcement tools, others spoke about the range of benefits being achieved through more proactive use of information as a mechanism for increasing awareness and changing behaviour. Publishing a detailed compliance policy and publishing data on enforcements being applied, together with positive stories about how entities were achieving compliance, have been paying dividends for other regulators as they were focusing on the reputation and ‘social licence’ of companies and individuals.

In this regard, although the Department’s environment compliance policy is published on its website, it is very broad and needs revision to more clearly set out its approach and the range of tools that are available when non-compliance occurs. The NSW Department of Planning, Industry and Environment has a public-facing policy that sets out in quite some detail how the Department manages compliance⁹. This policy is a tool to assist the regulated community and inform the general community about how compliance is facilitated and non-compliance is addressed.

The Department’s published environmental compliance policy should be updated to clearly set out:

- its role in administering environmental legislation

⁹ [Compliance Policy \(nsw.gov.au\)](https://www.nsw.gov.au/compliance-policy)

- the purpose of achieving compliance with relevant legislation
- the Department's framework and principles for managing compliance, including key relationships
- its approach to achieving compliance including
 - the monitoring and investigative powers and tools in place
 - its approach to assessing breaches
 - how it determines the significance of a breach and the risk-proportionate regulatory responses it uses
 - the enforcement options that may be applied depending upon the nature and seriousness of non-compliance.

Many regulatory agencies are now publishing monthly or quarterly statistics about their compliance activities, such as compliance reports reviewed, audits undertaken and the use of different forms of enforcement. To balance the narrative, they are including positive information the environmental outcomes achieved through better compliance by proponents following regulatory intervention. Some jurisdictions advised that some of their previously least compliant proponents have overcome issues that had been resulting in regulatory breaches and have become exemplars of good compliance behaviour.

Currently, the availability of contemporary regulatory monitoring, investigative and enforcement tools (infringement notices, enforceable undertakings, injunctions etc) is not consistent across the different regulatory regimes and could be addressed by amending relevant legislation to trigger the provisions of the *Regulatory Powers (Standard Provisions) Act 2014*¹⁰ (the Regulatory Powers Act).

To undertake risk-proportionate regulation, a range of regulatory tools is required. The Regulatory Powers Act provides a suite of powers to support an effective monitoring, investigation and enforcement approach. More recent environmental legislation (such as the Underwater Cultural Heritage Act 2018 and the Recycling and Waste Reduction Act 2020) adopts this standard suite of powers (where appropriate), whereas older legislation contains an incomplete and varied range of regulatory powers that do not facilitate a contemporary compliance approach consistent with the Australian Government's regulatory reform agenda.

The recent review of the EPBC Act by Graeme Samuel recommended that the EPBC Act be amended to adopt relevant powers available under the Regulatory Powers Act. This Review supports that recommendation and also supports work that is currently underway for legislation regulating ozone and synthetic greenhouse gas management to similarly adopt relevant powers under the Regulatory Powers Act.

¹⁰ <https://www.ag.gov.au/legal-system/administrative-law/regulatory-powers>

This Review recommends that the Department review its full suite of environmental legislation to determine the appropriateness of adopting these powers more consistently to streamline and simplify monitoring and enforcement powers across its statute book. For some regulatory regimes, such as for sea dumping, it would move away from the current ‘feather or brick’ approach making enforcement options more risk-proportionate.

Alignment of all relevant legislation with the Regulatory Powers Act would provide compliance officers with flexible and risk-proportionate monitoring and enforcement powers (such as monitoring warrants, injunctions, infringement notices, enforceable undertakings, and civil and criminal offence provisions) to assist in making environmental compliance more effective. The Department should also produce guidance for compliance staff to promote consistent and risk-proportionate use of different regulatory tools.

Recommendation 25

The Department put in place a project team with dedicated funding of around \$200,000 to immediately update and publish its compliance policy to clearly set out:

- **its role in administering environmental legislation**
- **the purpose of achieving compliance with this legislation**
- **its framework and principles for managing compliance, including key relationships**
- **its approach to achieving compliance including**
 - **the monitoring and investigative powers and tools in place**
 - **its approach to assessing breaches**
 - **how it determines the significance of a breach and the risk-proportionate regulatory responses it uses**
 - **the enforcement options that may be applied depending upon the nature and seriousness of non-compliance**

Recommendation 26

To increase community confidence in the Department’s protection of Australia’s environment, the Department annually publish:

- **information, updated monthly, on regulatory activity including the number of monitoring activities, investigations, reviews of documentation, enforcement actions (including official cautions, orders imposed, enforceable undertakings, penalty notices and prosecutions)**
- **a list of organisations that have an enforceable undertaking or been subject to a formal enforcement action, including how the organisation responded and the**

environment protected (as a mechanism to disseminate positive actions by industry).

Recommendation 27

The Department increase its educational activities in respect of compliance including conducting forums with industry about compliance expectations and key compliance topics and adopt a user-centred approach to developing and disseminating its compliance guidance, including accessible information on how compliance is undertaken, plain English guides, FAQs, fact sheets, etc.

Recommendation 28

Commencing with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the Department review its full suite of environmental legislation to determine the appropriate inclusion of powers to support an effective monitoring, investigation and enforcement approach, as set out in the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act).

Conclusion

To make the necessary changes in each of these areas, the Review recommends a reform program be established (summarised at [Attachment A](#)) to implement a range of specific packages of work to overcome some immediate obstacles as well as measures to achieve a more partnership-based, intelligence-led, strategic approach to compliance. A strong prioritisation framework will provide the basis for strategic compliance assessments to allow resources to be targeted at addressing key risks to the environment.

In summary, the Review has found that a more holistic approach is desirable to optimally manage the risks to the environment with a strong emphasis needing to be placed on joint priority setting, close cooperation and information sharing. Stronger governance is also needed to reduce the growing silos that are emerging in the Department, to assist the Environment Compliance Branch retain a base of up-to-date knowledge, and clarify the roles and responsibilities for sectoral outreach and education across the spectrum of environmental protection programs.

Attachment A – A staged approach to reform

	Stage 1	Stage 2	Stage 3
Governance and structure	<ul style="list-style-type: none"> Retain a separate Environment Compliance Branch Establish an Executive Committee, chaired by the Compliance Deputy Secretary and comprising senior compliance and program executives to oversee the implementation of reform recommendations and compliance priorities and then monitor implementation Increase level of reporting (at least monthly) to the Deputy Secretary on recruitment, issues emerging, and the number of compliance actions being undertaken, including under which legislation Commence a project to design and develop business level dashboard reporting that can be applied across all of the environmental legislation and later other parts of the business (e.g. biosecurity, water) 	<ul style="list-style-type: none"> A project be undertaken by the chief risk officer, for around \$200,000 to \$300,000, to develop a dedicated business-focused regulatory dashboard for environmental programs (this work could also be extended to biosecurity and water) to monitor and report on risk and how it is being addressed. The dashboard could then replace reporting in stage 1. 	<ul style="list-style-type: none"> Move from a reactive compliance approach to a proactive compliance approach via interrogation and reporting of program and compliance data including predictive reporting Report on the decline of environmental incidents resulting from compliance activities Develop standard reporting on emerging trends and outcomes achieved e.g. move from process-based reporting to outcomes-based reporting More effective and efficient use of resources through strategic planning and management of emerging issues signed off by Executive Board
Resources	<ul style="list-style-type: none"> Vacant positions are urgently filled including streamlining the approval process to accelerate the recruitment process Additional resources of 3-4 staff (\$300,000) to establish a project management and Secretariat team, reporting to the compliance FAS to coordinate the reform process, establish the governance structure outlined above and undertake procurement for identified packages of work Commence work on develop guidance and training for staff on applying risk-proportionate use of different regulatory tools Commence work on establishment of a panel of environment specialists and a panel of investigators 	<ul style="list-style-type: none"> In addition to filling currently vacant positions, provide a minor increase in staffing of 5-6 people over the allocated 2020-21 level to bring the levels back up to around 46-47 staff plus an additional 3-4 staff to continue to lead the reform project Increase access to specialist personnel through a panel of subject matter experts Increase the pool of investigator personnel through contract staff or a pool of investigators that are part of a panel that can work on an as needed basis Develop a program for internal staff training 	<ul style="list-style-type: none"> Allocate resources based on the priorities identified through the Annual Compliance Plan

Information management and systems	<ul style="list-style-type: none"> • Finalise procurement of CIIMS (Compliance Intelligence and Investigation Management System) to more effectively manage information relating to the compliance aspects of environmental programs and overcome the risks with the existing spreadsheet-based system • Continue the modernisation of the NESTRA system • Increase executive level oversight of how systems will interface and integrate with other Departmental Systems • Procure the software that allows mirroring of devices (around \$100,000) • Procure access to satellite imaging software such as Planet (around \$300,000) 	<ul style="list-style-type: none"> • Implement an updated and modernised NESTRA system • Establish a coordinated governance and oversight role to ensure that new systems are developed in accordance with Department architecture standards and oversight • Expand work on the development of the Department's Digital Interface Program (DEAP) to include the development of functional interfaces for the modern compliance systems so that all information can be integrated and accessible to officers from across the Department 	<ul style="list-style-type: none"> • Build data warehousing and data mining capabilities to identify trends and emerging compliance risks • Establish reporting and data analysis capabilities that enable compliance interventions to be more strategic, evaluated and linked with data and intelligence from other security agencies such as those in the Department of Home Affairs
Risk and prioritisation	<ul style="list-style-type: none"> • Urgently finalise inspection and monitoring arrangements with States and Territories for shipwrecks and clarify investigation responsibilities and resourcing • Undertake a strategic intelligence review of the illegal export of hazardous waste inclusive of identifying resources needed to mitigate risk • Establish a project to undertake a risk assessment of permit holders under the Sea Dumping Act inclusive of addressing recent audit and establishing ongoing compliance roles and responsibilities • Urgently establish a project to increase the focus on reviewing management reports with a view to increased follow up on any non-reporting (contract staff could do this around \$200,000 to \$300,000) • Develop program specific compliance plans for three of the Acts, as set out in the report recommendations, where compliance responsibilities are not well defined • Undertake a project to define intelligence capability requirements at the both the operational and strategic levels for environmental compliance, noting the role intelligence will play in defining future priorities across at least 7 legislative regimes 	<ul style="list-style-type: none"> • Establish a project team inclusive of 2-3 staff and some expert contractors to build a tailored risk prioritisation framework that can be applied to more effectively managing non-compliance across all environmental legislative regimes as follows: <ul style="list-style-type: none"> ○ Consults with relevant program areas ○ Draws on program data ○ Specify sectors at the right level of granularity to identify, compare and prioritise risk across programs ○ Identify environment-specific risk relevant to particular sectors ○ Develop an appropriate scoring system to more effectively rate the risks in respect of likelihood and consequence of the risk • Develop an agreed prioritisation framework including executive-level briefing and sign off processes • Assign the ongoing risk assessment and annual compliance planning to a particular section in the Branch and maintain a process of regular assessment of risks • Oversight of risk assessment is undertaken by the Executive Board 	<ul style="list-style-type: none"> • The prioritisation and risk assessment process is accompanied by a detailed project implementation plan and resourcing plan • Continue to engage Program areas in the process of annual or biannual risk assessment • These plans should be overseen by the Executive Board and the Department's Audit and Risk committee • Consider further investment of staff and IT to increase the robustness of the risk assessment process • Establish priorities for the Commonwealth complemented by the work of the states and territories so that the Department develops a clear and strong narrative about how its responsibilities are being managed not just through its own activity but that of partner organisations

Partnerships and engagement	<ul style="list-style-type: none"> • ECB to be fully included in the work being undertaken by the program areas to develop standard conditions • Increase compliance officer involvement in the development of non-standard conditions across programs • Proactively develop good working relationships with officers from program areas through regular meetings be held between program and compliance Assistant Secretaries to support joint projects and promote information sharing, examine priorities, emerging issues and resourcing • A specific area of the Department coordinate engagement in cross portfolio forums relating to serious and organised crime so that Departmental representatives are well equipped to ensure environmental issues are discussed at whole of government meetings • Continue to foster effective relationships with the CDP and Australian Border Force including briefing senior executives on any issues and barriers that may emerge to progressing environmental compliance actions • Involve ECB in the state and territory officer-level discussions occurring in respect of changes to the administration of the EPBC Act as compliance will be directly impacted and need to adjust its processes. In addition, they can provide useful advice on the range of matters that will need to be considered regarding compliance 	<ul style="list-style-type: none"> • Following a small increase in compliance staffing numbers, identify key contacts for programs and jurisdictions to further develop these key relationships and to progress matters more quickly including through escalation if need be • Increase senior executive involvement in cross agency matters through more regular advice to senior executives on actions and emerging barriers with other Commonwealth agencies • Develop relationships with industry representative bodies to engage them in common and emerging compliance issue discussions and seek their support to educate and advise their members 	<ul style="list-style-type: none"> • Develop strategies for data and information sharing with other agencies and jurisdictions • Develop an annual forum in which all stakeholders can share compliance learnings, promote the benefits of compliance and showcase positive case studies • Develop an awards program to highlight and promote well designed and implemented compliance activity by industries
Compliance policy and regulatory tools	<ul style="list-style-type: none"> • Establish a project of around \$200,000 to update and publish the Department's compliance policy and hence Increase the visibility of environmental compliance to the public through a clearly explained and transparent policy. Refer to other jurisdictions for examples. • Update regulatory powers in the EPBC Act to be consistent with the Regulatory Powers Act as per the Graeme Samuel report 	<ul style="list-style-type: none"> • Provide a program of regular compliance-based education sessions targeted at industries, regions, and particular legislative requirements where compliance is a key to achieving better environmental Review all environmental legislation for availability of contemporary regulatory powers (Regulatory Powers Act) • Increase public information on compliance activities undertaken including promoting the environmental benefits 	<ul style="list-style-type: none"> • Accelerate the application of the Regulatory Powers Act to all relevant environmental legislation • Train staff in applying a risk-proportionate and consistent approach to the use of regulatory powers across programs • Need for enforcement reduced in some sectors as proponents become more aware of their obligations and how to achieve compliance

Attachment B – Compliance responsibilities for Commonwealth environmental legislation

Current compliance responsibilities of the Environment Compliance Branch

1. *Environment Protection and Biodiversity Conservation Act 1999*
2. *Hazardous Waste (Regulation of Exports and Imports) Act 1989*
3. *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*
4. *Environment Protection (Sea Dumping) Act 1981*
5. *Recycling and Waste Reduction Act 2020*
6. *Underwater Cultural Heritage Act 2018*
7. *Product Emissions Standards Act 2017*

Other environmental legislation

8. *Antarctic Treaty (Environment Protection) Act, 1980*
 - *Compliance managed by the Australian Antarctic Division. If a prosecution is contemplated, this would be referred to ECB.*
9. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
 - *Compliance Heritage Branch – Indigenous Heritage Section manages compliance. If a prosecution is contemplated, this would be referred to ECB.*
10. *Fuel Quality Standard Act 2000*
 - *Department of Industry, Science, Energy and Resources has the responsibility for all compliance and enforcement.*
11. *Great Barrier Reef Marine Park Act 1975*
 - *Compliance is managed by the Great Barrier Reef Marine Park Authority*
12. *Australian Heritage Council Act 2003*
 - *No offence provisions*
13. *Environment Protection (Alligator River Region) Act 1978*

- *No offence provisions*

14. National Environment Protection Measures (Implementation) Act 1998

- *Once adopted by the National Environment Protection Council, National Environmental Protection Measures are implemented in each Australian jurisdiction through mirror legislation.*

15. Sea Installations Act 1987

- *Compliance is managed by:*
 - *National Offshore Petroleum Safety and Environmental Management Authority (oil rigs etc.)*
 - *Australian Maritime Safety Authority(for infrastructure such as underwater cables)*

Attachment C – List of meetings held for the Review

The Department of Agriculture Water and the Environment

Executive

Deputy Secretary – Andrew Tongue, Biosecurity and Compliance Group

Deputy Secretary – James Larsen, Environment and Heritage Group

Deputy Secretary – Dean Knudson, Major Environment Reforms Group

A/g Deputy Secretary – James Tregurtha, Major Environment Reforms Group

First Assistant Secretary – Kate Lynch, Environmental Protection Division

First Assistant Secretary – Peta Lane, Biosecurity, Strategy and Reform Division

First Assistant Secretary – Peter Timson, Compliance and Enforcement Division

First Assistant Secretary – Lionel Riley, Corporate and Business Services Division

Assistant Secretary – Richard Chadwick, Environment Compliance Branch

Assistant Secretary – Monica Collins, Environment Compliance Branch

Assistant Secretary – Jagtej Singh, Environment Compliance Branch

Assistant Secretary – Andrew McNee, Environmental Approvals Division

Assistant Secretary – Mary Colreavy, Governance and Reform Branch

Assistant Secretary – Rachel Burgess,

Program areas

Environmental Intelligence

Environmental Crime

Triage and Wildlife Trade

Compliance, Strategy and Risk

State of the Environment Report

Environmental Approvals

Heritage, Reef and Wildlife Trade

Environmental Audit

Sea Dumping

Underwater Cultural Heritage

Governance and Reform

Parks Australia

External Stakeholders

Australian Competition and Consumer Commission

Commonwealth Director of Public Prosecutions

Australian Transaction Reports and Analysis Centre (AUSTRAC)

Department of Home Affairs

Australian Border Force

New South Wales Department of Planning, Industry and Environment

Environment Protection Authority Victoria

Environment Protection Authority South Australia

Queensland Department of Environment and Science

Environment Protection Authority New Zealand

New Zealand Ministry for the Environment

Department of Environment and Climate Change, Canada

Prof Graham Samuel, author of the Independent Review of the EPBC Act

Dr Wendy Craik, author of Review of Interactions between the EPBC Act and the Agricultural Sector

Minerals Council of Australia

National Farmers Federation

Environmental Defenders Office

World Wildlife Fund

Attachment D - Sectors and risk factors identified in Environment Compliance Branch risk prioritisation workshop (May 2021)

Sectors

Aspect	Category	Sector
Air	Ozone	Brokers and Freight forwarders
Air	Ozone	Fire protection
Air	Ozone	Heating (heat pumps)
Air	Ozone	Methyl bromide (agricultural fumigation)
Air	Ozone	Product emissions
Air	Ozone	Refrigeration and air-conditioning
Air	Ozone	Technicians and metal scrapping
Air	Quality	Power equipment makers, importers, retailers
Air	Quality	Small engine emissions
Land	Agriculture & Forestry (land clearing)	Agriculture
Land	Agriculture & Forestry (land clearing)	Forestry
Land	Conservation	Natural Resource Management
Land	Conservation	Non Government Organisations/ Not For Profit
Land	Conservation	Offsets
Land	Conservation	Science and Research
Land	Development	Bulk Earthworks
Land	Development	Commercial development
Land	Development	Industrial development
Land	Development	Local government (incl municipal planning)
Land	Development	Manufacturing
Land	Development	Residential Development
Land	Development	State government (incl. regional planning)
Land	Development	Tourism and recreation
Land	Energy Generation and Supply	Hydro
Land	Energy Generation and Supply	Other renewables
Land	Energy Generation and Supply	Solar Panels
Land	Energy Generation and Supply	Wind farms
Land	Heritage	Antiques association
Land	Heritage	Online marketplaces

Land	Linear Infrastructure	Gas
Land	Linear Infrastructure	Power
Land	Linear Infrastructure	Rail
Land	Linear Infrastructure	Roads and Infrastructure
Land	Linear Infrastructure	Telecommunications
Land	Mining	Coal
Land	Mining	Coal Seam Gas
Land	Mining	Exploration
Land	Mining	Mining
Land	Mining	Ore
Waste	Hazardous waste	Brokers and Freight forwarders
Waste	Hazardous waste	e-waste
Waste	Hazardous waste	Toxic/contaminated
Waste	Hazardous waste	Transport
Waste	Hazardous waste	Used Lead Acid Batteries (ULAB)
Waste	Non-putrescible	Batteries
Waste	Non-putrescible	Cardboard
Waste	Non-putrescible	Comingled (household)
Waste	Non-putrescible	Glass
Waste	Non-putrescible	Medical Waste (including nuclear)

Risk factors

Theme	Risk factor
Environmental	Air pollution
Environmental	Available offsets
Environmental	Biodiversity loss
Environmental	CITES listed
Environmental	Climate change
Environmental	Economic value
Environmental	Environmental risk/harm (irreperability)
Environmental	Food security
Environmental	Geographic size / Disturbance area
Environmental	Groundwater
Environmental	Human health risk/harm (loss of life)
Environmental	Loss of heritage values
Environmental	Migratory species
Environmental	Ozone depletion
Environmental	Proximity to Indigenous Cultural Heritage
Environmental	Proximity to People /populations

Environmental	Proximity to Ramsar wetlands
Environmental	Proximity to Threatened ecosystems
Environmental	Proximity to Water sources
Environmental	Size / Volume
Environmental	Surface water