



Australian Government
Department of the Environment

Outcomes-based conditions guidance

Environment Protection and Biodiversity Conservation Act 1999



March 2016

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1. Introduction

This guidance outlines the issues that must be considered and the processes that may be used to develop outcomes-based conditions of approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Australian Government's approach to the use of outcomes-based conditions is set out in the *Outcomes-based conditions policy* (March 2016) available at the Department's website. The *Outcomes-based conditions policy* sets out the circumstances in which an outcomes-based condition is appropriate.

The information in this guidance and the *Outcomes-based conditions policy* should be considered holistically and does not represent legal or professional advice. The statements included in this guidance and the *Outcomes-based conditions policy* are intended as guidance only and should be applied consistently with the requirements of the EPBC Act and Regulations.

This guidance is one of a suite of policies and guidance in relation to environmental assessments and approvals under the EPBC Act. Current policies, as well as relevant associated guidance documents, are available at: www.environment.gov.au/

1.1. Context

All conditions of approval should be designed to achieve the best possible environmental outcome. The *Outcomes-based conditions policy* and this guidance should be used by Departmental staff, project proponents and others to assist in developing and implementing outcomes-based conditions as much as practical, while taking all relevant aspects into consideration. It is anticipated that outcomes-based conditions will be able to be applied in the majority of circumstances, even where more prescriptive conditions may also be needed to address particular risks.

1.2. Overarching considerations

The objects of the EPBC Act must be considered when developing outcomes-based conditions for a controlled action. Outcomes-based conditions must be tailored to each specific action to ensure consistency with the objects of the EPBC Act and to ensure the achievement of beneficial conservation and protection outcomes for each relevant Matter of National Environmental Significance (protected matter).

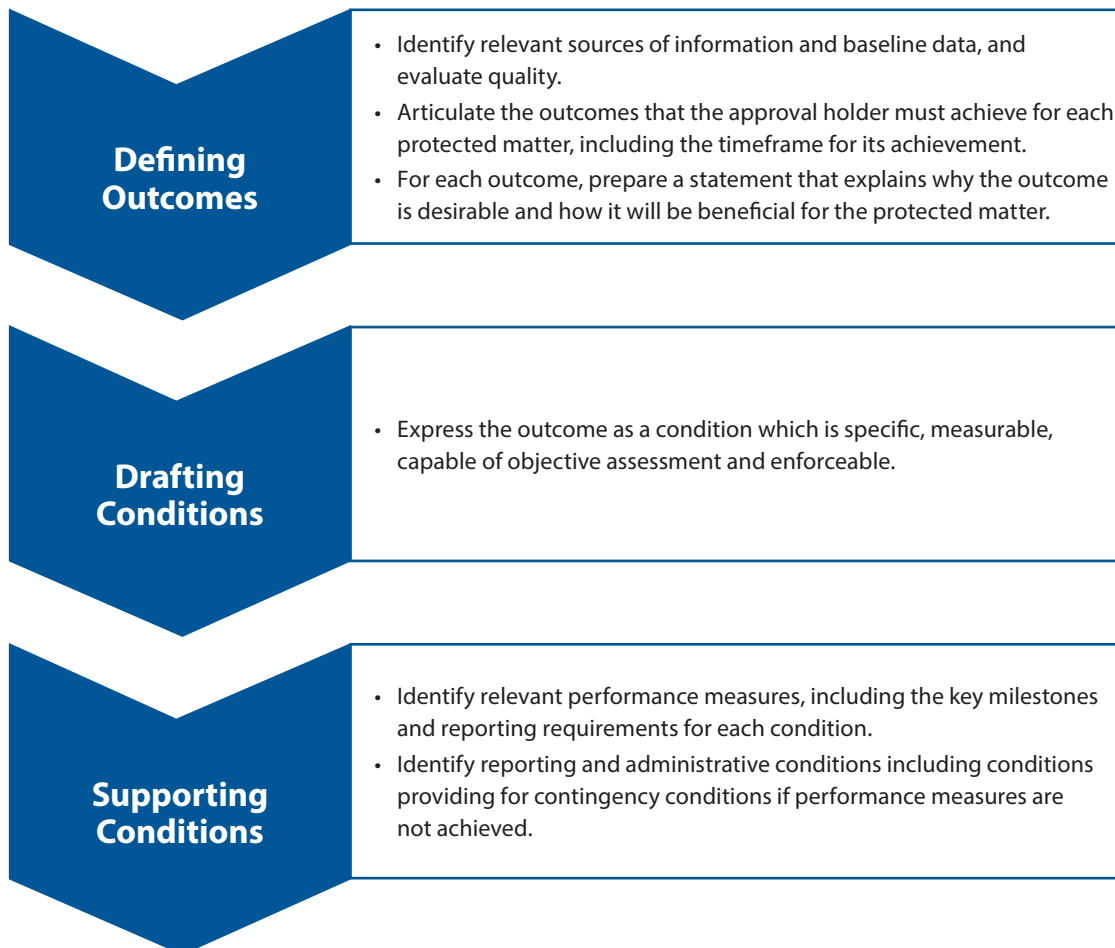
The objects of the EPBC Act are to:

- a) Provide for the protection of the environment, especially those aspects of the environment that are a protected matter.
- b) Promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.
- c) Promote the conservation of biodiversity.
- d) Provide for the protection and conservation of heritage.
- e) Promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and Indigenous peoples.
- f) Assist in the co-operative implementation of Australia's international environmental responsibilities.
- g) Recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity.
- h) Promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

1.3. Overview of the process

The diagram below represents the key steps in the process of developing an outcomes-based condition.

The assurance framework detailed in Part 4 below will provide for corrective actions which will apply to the approval should performance measures not be achieved at key milestones. Corrective actions may be specified in the conditions, if necessary.



1.4. Flexibility in application of conditions

The *Outcomes-based conditions policy* outlines four broad types of conditions:

- Prescription-based conditions (technology or standards based).
- Systems-based conditions (management based).
- Outcomes-based conditions (performance based).
- Surrogate conditions (a type of outcomes-based condition).

The condition set for any given project may include more than one type of conditions (a hybrid condition set) depending on the particular risks that need to be managed.

Where conditions are proposed in accordance with the EPBC Act Offsets Policy, this will generally result in a hybrid condition set. The Offsets Policy specifies the outcome which any offset must achieve, that all offsets must deliver a conservation outcome that improves or maintains the viability of a protected matter. Any outcome-based condition involving an offset needs to be consistent with this overall outcome required by the Offset Policy and should include additional prescriptive or systems-based conditions.



Photo: Woodland (Dragi Markovic)

2. Defining Outcomes

Outcomes-based conditions must be tailored to each project. The Department and the proponent should work together to ensure that referral information and assessment documentation contains the information necessary to identify beneficial environmental outcomes and to enable appropriate proposed outcomes-based conditions to be developed and assessed.

An outcomes-based condition has four critical characteristics. It must:

- be adapted to the specific environmental risks of a project
- be expressed in the form of a specific outcome
- be capable of objective measurement and reporting
- permit the timely identification and appropriate resolution of problems that arise through the course of a project that may compromise the achievement of outcomes.

When developing an outcomes-based condition it is necessary to consider these characteristics holistically.

2.1. Defining outcomes for matters of national environmental significance

Identifying the outcome for the protected matter is the first step to determine how an action will affect the protected matter and the conditions that should apply to the approval in order to avoid and mitigate its impacts, including consistency with the objectives of a relevant Recovery Plan.

Outcomes-based conditions may be suitable when an approval holder and the Department can identify overall outcomes for the relevant protected matter.

The ability to identify and define specific, achievable and enforceable outcomes depends on:

- The quality of information available about a protected matter and the relevant impacts of the action prior to the action being taken.

- Whether it is possible to readily measure, either directly or via a surrogate, the overall viability (for species and ecological communities) or status (for Ramsar sites, heritage sites) of the protected matter.
- Whether the desired outcome for the protected matter, or a surrogate for the protected matter, is capable of accurate and reliable measurement.

The identification of relevant outcomes necessary to support the development of conditions requires sufficient information about the relevant protected matter and the impacts of the relevant impacts.

General knowledge of the protected matter (e.g. a listed threatened species), can assist with relating any likely impacts to known risks and the overall desired outcome for that protected matter. Generalised information will not always be sufficient to develop tailored outcomes-based conditions. Access to good quality baseline data about the relevant protected matters or information which directly supports the protected matter at a particular place, is essential (see below at 2.3).

2.2. Information sources

The information that an approval holder and the Department can use to determine the desired outcome for a protected matter may come from a variety of sources.

Important sources of information are Bioregional Plans, Approved Conservation Advices, Recovery Plans, peer reviewed journal articles, Departmental databases, Threat Abatement Plans and good-quality baseline survey data. For example, Recovery Plans generally contain:

- objectives (desired outcomes) for the protected matter
- performance criteria (monitoring/evaluation) to assess changes to the conservation status of a protected matter
- strategies and actions for how the outcomes and objectives for the protected matter will be achieved.

The objectives in Recovery Plans are useful for identifying the overall outcome for the species, or an overall objective for the protected matter. It is important to consider the information holistically—a range of information sources may be useful and can contribute to articulating appropriate outcomes.

Example 1—Information sources for *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* ecological community

A proponent is developing a proposal for an action that is likely to have significant impacts on the *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* (Ecological Community). The Ecological Community is protected under the EPBC Act as a matter of national environmental significance. The proponent is keen to pursue outcomes-based conditions for the action and has a good environmental compliance record.

The overall objective of the *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* National Recovery Plan (May 2011) (Recovery Plan) is to promote the recovery and prevent the extinction of the critically endangered ecological community. Specific objectives include:

- achieving no net loss in extent and condition of the ecological community throughout its geographic distribution
- increasing protection of sites with high recovery potential
- increasing landscape functionality of the ecological community through management and restoration of degraded sites
- increasing transitional areas around remnants and linkages between remnants.

These objectives can be used as a guide to identifying the overall outcome for this matter of national environmental significance in relation to the specific action.

For example, if the action is likely to impact on the extent of the Ecological Community, the conditions of approval could specify an outcome related to extending the Ecological Community in the surrounding areas through the management and restoration of degraded sites. If the action is likely to impact on the condition of the Ecological Community, approval conditions might define an outcome relating to the improvement of the condition of the Ecological Community on and off site. The conditions could define improvement by reference to the condition criteria in the Recovery Plan, setting a clear standard for the approval holder to meet.

These conditions would progress the achievement of the objectives of the Recovery Plan and therefore achieve a beneficial environmental outcome for the Ecological Community.

It is important to note that all relevant information sources should be considered when identifying outcomes relating to a particular action. Over time, as approval holders monitor and report on outcomes-based conditions and this information is made publicly available, the existing knowledge base about particular protected matter will expand and inform the development and evaluation of future outcomes-based conditions as part of a system of continuous improvement.

2.3. Baseline data

Baseline data provides the benchmark which outcomes, milestones and performance indicators are compared to over the life of an approval.

Baseline data refers to environmental surveys undertaken or directly supervised by qualified environmental experts to record and collate statistics and other relevant information about the existing environmental conditions at the proposed project site, relevant control sites, and/or offset sites, including information about protected matters (such as population, location, available habitat and quality of habitat).

This information must include statistically robust baseline data for the relevant protected matter at the project site, although this will depend on the nature of a proposed action and the protected matter. If the action is likely to impact protected matters outside of the project site or have cumulative impacts, then more widespread baseline data at a broader local, state or national level may be required.

Good quality and statistically robust baseline data is important to the environmental impact assessment process as it provides a basis for determining the likely and actual impacts of the proposal. It can provide a baseline for assessing outcomes for offset sites or assessing changes to control sites. Successfully identifying achievable and measurable outcomes for a particular action will usually depend upon the quality of the available baseline data about the relevant protected matter. Providing the Department with good quality baseline data at the time of referral improves the likelihood of a proposed action being assessed as one suitable for outcomes-based conditions.

Baseline data surveys should be designed to provide information that is relevant to the identification and assessment of likely and actual impacts on a protected matter. For example, a project that is likely to have a significant impact on the breeding habitat for Swift Parrot (*Lathamus dicolor*) should be supported by the collection of baseline survey data that describes and quantifies the current status of the Swift Parrot breeding habitat at the project site so that impacts on and rehabilitation of the habitat can be measured over time.

Baseline surveys can be undertaken using a wide variety of methodologies and designs. The methods that best suit the protected matter being targeted and the environmental conditions at the survey location should be used. Depending on the nature and seasonal variability of the protected matter at a project site, it may be necessary to collect baseline data at various times of the year, or over a number of years. Proponents of actions should therefore undertake baseline surveys (consistent with applicable Departmental survey guidelines or other best practice guidelines) as early as possible in the project planning process so that it may be included in the referral information provided to the Department.

Proponents seeking outcomes based conditions for an action should provide the Department with statistically robust baseline data that satisfies the following requirements:

- The survey design, including sampling methods, timing and duration, is appropriate to the protected matter.
- Surveys are designed and undertaken by or under the direct supervision of independent, qualified experts with knowledge and experience of the relevant protected matter and the region in which the surveys are undertaken.
- Surveys are relevant to the impacts of the proposal and allow for achievable and measurable outcomes for protected matter to be identified.
- The data provides the ability to evaluate the effectiveness of management measures.
- The data provides the ability to demonstrate that progress towards achieving the outcome is being met.

Proponents should refer to the Department's survey guidelines for relevant species and communities, available at www.environment.gov.au/epbc/policy-statements, or other relevant standards.

Proponents and approval holders are encouraged to work with independent and appropriately certified environmental and data experts to develop baseline data to meet these requirements.

Example 2—Baseline data for the *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* ecological community

A proponent is developing a proposal for an action that is likely to have significant impacts on the *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* (Ecological Community). An appropriate outcomes-based condition for the approval of an action might require that the approval holder maintains the condition, for the term of the approval, of the Ecological Community on the project area.

The approval holder could comply with this condition by ensuring that a protective buffer zone is maintained around the Ecological Community.

Baseline data provides a benchmark for assessing whether the outcome has been achieved, and ensures that the outcome is objectively measurable.

2.4. The use of surrogate outcomes

Determining the appropriate conditions to use depends upon the degree of certainty and consensus about the likely impacts of an action on the protected matter and upon the availability and quality of baseline survey data and other relevant environmental information. Where the impacts of an action on a protected matter are difficult to measure directly it may be appropriate for a condition to specify an outcome for something which directly supports conservation outcomes for the protected matter and is capable of specific measurement. For example threatened species are often inherently rare, making changes in populations difficult to monitor accurately.

A *surrogate outcomes-based condition* is one that specifies an outcome (or a level of performance to be achieved) for something which directly supports the protected matter. For example, an outcome might require that the approval holder achieve a specified

level of habitat condition, such as water quality, which is known to directly improve conservation outcomes for a particular listed threatened species of frog. The measurable outcomes for the surrogate will support positive conservation outcomes for the protected matter, e.g. good water quality as habitat for the frog would in turn lead to the desired outcome for the listed threatened species as a protected matter.

Identifying something that supports the presence, abundance or richness of other aspects of biodiversity, and measuring outcomes for that thing, can provide a cost and time-efficient way of monitoring. There are numerous supporting outcomes which may be used including habitat surrogates (e.g. vegetation condition), environmental indicators (e.g. water quality), and indicator species.

The identification and monitoring of surrogate outcomes is not without its challenges, and assumptions need to be made about whether the management of the surrogate will adequately address the factors that enhance or threaten the persistence of a protected matter.

For example, when defining outcomes for restored habitat as a supporting outcome for the viability of a fauna population, the following assumptions apply: that the fauna species occupies restored habitat; that the restored habitat supports an average density of that species; and that other threats to the species have not impacted their population. Depending on how well the surrogates capture the important

attributes of the species, some species' needs may not be fully addressed, making it critical to implement well-designed monitoring. It is therefore important that these assumptions about why the surrogate outcome will benefit the protected matter are explicitly defined at the outset.

Example 3—Surrogate outcomes-based conditions for Large-eared Pied Bat

A proponent is proposing to construct a pipeline in eastern NSW which involves clearing of known Large-eared Pied Bat habitat in order to construct one section of the pipeline. This action is likely to have significant impact on the species which is protected under the EPBC Act.

It is known (from baseline survey data and other sources) that roost sites and patches of Large-eared Pied Bat habitat in the local area are fragmented because of existing developments. It is also known that maintaining foraging habitat in close proximity to roost sites is essential for the protection and ongoing conservation of the species. General species information also identifies which populations are under the greatest pressure.

An outcomes-based condition could require the approval holder to maintain, for the term of the approval, foraging habitat in identified areas where Large-eared Pied Bat populations are under pressure.

Performance of this outcome could be measured by the publication of periodic surveys designed by species experts and undertaken by environmental consultants or local community conservation organisations to indicate changes (including improvements) in baseline survey data of foraging habitat.

This hypothetical example shows how knowledge about the species can be used to identify conditions that rely on a supporting outcome to achieve outcomes for protected matters and how community confidence in those outcomes may be fostered and assured by community participation in the collection and publication of ongoing monitoring data.

2.5. Statement of outcomes

The final stage of defining outcomes is to prepare a statement of outcomes, which should contain two key components:

- For each protected matter, a statement should be prepared that identifies and articulates the outcomes that the approval holder must achieve, and outline the timeframe for the achievement of each outcome.
- For each outcome, a statement should be prepared that explains why the outcome is desirable and how it will be beneficial for the protected matter.

Conditions should be supported by a statement of outcomes. Even where more prescriptive conditions are required to address specific risks, a statement of outcomes provides a clear purpose for those conditions. The statement of outcomes may form part of the set of conditions of approval. In other cases, it will be more appropriate to provide the statement of outcomes in another document.

3. Drafting Conditions

Outcomes based conditions include six key elements:

- 1) Outcomes
- 2) Milestones
- 3) Performance indicators
- 4) Monitoring requirements
- 5) Adaptive management and continual improvement
- 6) Record keeping, publication and reporting

3.1. Outcomes

Outcome conditions should be based on the statement of outcomes as discussed above in section 2.

The *Outcomes-based conditions policy* provides context and examples regarding drafting of different types of conditions. In terms of outcomes-based conditions, outcomes for protected matters will often be expressed in a *relative* manner. For example outcomes could require that:

- A population size is maintained or improved in a project area.
- There is no net loss of an ecological community in a defined area as a result of the action.
- That the viability of a population at an offset site is maintained.

A condition may require an outcome that the project has no impact on a particular protected matter, such as:

- No contamination of a wetland as a result of the action.
- No disturbance of a specified area of ecological community on the project site.

Conditions on outcomes, performance measures and milestones should apply the *SMART* criteria:

Specific: Specify an outcome to be achieved for a matter protected under the EPBC Act controlling provisions of the approval, in a specified location.

Measurable: Include quantifiable performance measures and milestones relating to the protected

matters that can be readily compared over time. This can include outcomes for a supporting indicator for that matter.

Achievable: Realistic when compared with baseline performance and resources available.

Relevant: Directly link with the impacts of the proposal, or to achieve the outcome on an offset for the impacts of a proposal. The condition must name the protected matter or matters being protected by the condition.

Time-bound: Include specific timeframes for the completion of the outcome. This might be a number of years after the main impact of a project or set period of time (e.g. two years) prior to the expiry of the approval. The condition must also state a reference point in time which the outcome must be compared to (this would normally be the date of the approval).

For example, an outcomes-based condition may require the protection and maintenance of an existing population of a listed threatened species at the project site for the duration of the approval. Demonstration of compliance with this condition would require regular monitoring and reporting throughout the term of the approval.

An outcomes-based condition which requires no net loss of a community as a result of the action could be evaluated by the publication of survey data on offset sites six months prior to the expiry date of the approval that indicates there has been no 'net-loss' of the existing population of the species as established by the baseline data.

As indicated above, the condition must also define the boundaries that apply to the outcome so that it is clear whether the outcome must be achieved for a protected matter across an entire project area, or within a particular defined area on the project site, or within a wider geographical region.

Example 4—Outcomes-based condition for Sandplain Duck Orchid

During the Peak Flowering Period immediately prior to the Expiry Date of the Approval, there must be no Net Loss¹ to the Extent and Abundance of the Existing Population of the Sandplain Duck Orchid (Paracaleana dixonii) within the Project Area, as compared to the extent and abundance² of the Sandplain Duck Orchid in the Baseline Data.

Peak flowering period, extent and abundance are terms which can be defined with reference to relevant survey guidelines.

Purpose of condition

The purpose of the condition is to ensure that the existing population of the Sandplain Duck Orchid is maintained and protected in the Project Area in accordance with the Regional and Local Priority Actions as specified in the *Approved Conservation Advice for Paracaleana dixonii (Sandplain Duck Orchid)* dated 16 December 2008.

3.2. Milestones

The conditions will describe the milestones which must be met in order to demonstrate that the approval holder is on track to achieving the required outcomes. Examples of milestones include:

- When outcomes must be achieved.
- When baseline monitoring data (or additional baseline data) must be collected.
- Interim outcomes between the establishment of a baseline and the date the overall outcome must be achieved, to check whether the outcome is on track.

Below is an example of a condition that includes milestones.

Example 5—A condition that includes milestones

Before commencement of any impacts to Koala Habitat, the Approval Holder must collect an additional 12 months baseline data on Koala Habitat extent, abundance and connectivity, and Koala abundance.

At 5 years after the date of the Commencement of the Action, the Approval Holder must have planted new Koala Habitat that, when mature, will provide improved connectivity of Koala Habitat within the Project Area.

At 10 years after the date of the Commencement of the Action, relative to the baseline data, there must be:

- *No Net Loss to the extent and abundance of Koala Habitat as a result of the action,*
- *No Net Loss to the extent and abundance of Koala Habitat Trees and Food Trees as a result of the action, and*
- *No Net Loss of Koala abundance as a result of the action.*

¹ Note: The meaning of the capitalised terms (such as 'Peak Flowering Period', 'Net Loss', 'Project Area' and 'Existing Population') and the performance indicators that will measure compliance would be set out elsewhere in the approval. 'Net Loss' would be defined with reference to known variations to the population of the species, e.g. 'a loss of greater than 5% of the population as compared to the Existing Population'. 'Existing Population' would be defined with reference to the baseline surveys provided in the referral information or other approved surveys.

² Terms such as extent, abundance and connectivity may also need to be defined by the conditions.

3.3. Performance indicators

The conditions must provide certainty about what is required by the conditions. Performance indicators for outcomes-based conditions allow the approval holder to measure and demonstrate performance against the milestones and specified outcomes. Importantly performance indicators should be determined in such a way that ensures the approval holder can demonstrate whether they are on-track for achieving the overarching outcome as the project progresses. This ensures that it is possible to determine whether the approval holder has complied with their obligations under the EPBC Act at any point during the life of the approval.

For example, if a condition specifies that the population of a listed threatened species of fauna must be maintained and improved over the term of the approval, performance indicators for this outcome might include:

- Improvement in the quality and quantity of known foraging habitat for the protected matter relative to baseline data or control sites.
- Population numbers within a particular statistical range.
- Genetic diversity of the population.
- Distribution and extent of the population.

Below is an example of an outcome condition that includes performance measures.

Example 6—A condition that includes performance measures

*The Approval Holder must maintain and improve habitat for the Koala (*Phascolarctos cinereus*) on site. At 20 years after the date of the commencement of the action, relative to the Baseline Data there must be:*

- *a Net Improvement to the extent and abundance of Koala Habitat,*
- *a Net Improvement to the extent and abundance of Koala Food Trees,*
- *improved connectivity of Koala Habitat within the Project Area, and*
- *a Net Improvement in Koala abundance.*

3.4. Monitoring requirements

The conditions described above require performance measures for determining if an outcome is on track. Performance measures must be monitored.

The conditions will include a condition requiring the approval holder to implement and document a monitoring programme to monitor the performance measures.

Useful monitoring requires the establishment of baseline data, control sites and regular monitoring after the commencement of the impact.

The scale and effort of the monitoring must be suitable for the risk of the project, based on the scale of the impacts and the significance of the protected matter being impacted by the action. Depending on the risk of the action, the monitoring programme may require consultation with protected matter experts,

or monitoring may be required to be undertaken by persons with specific qualifications or experience. Where risk is higher, the monitoring program must be statistically robust and may need to be developed in consultation with a biometrician.

The Department encourages approval holders to use best practice experimental design in monitoring programs. Monitoring should include control sites so that if there are any regional trends in the matter being monitored, this can be considered later if the outcomes appear off-track. Experimentation trials of different measures should be undertaken particularly where there are new or poorly understood impacts or mitigation measures. Data from monitoring (from both on-site and controls) and any experimentation trials results should be used to inform adaptive management.

Below is an example of a monitoring condition.

Example 7—A condition that outlines monitoring

The Approval Holder must monitor Koala Habitat extent, abundance and connectivity, and Koala abundance, for the life of the approval both on site and at appropriate Control Sites.

The Approval Holder must ensure adequate data is collected to ensure that progress can be compared to performance indicators, milestones and the required outcomes.

3.5. Adaptive management and continual improvement

The Department considers that adaptive management is usually the best practice approach for achieving environmental outcomes. A process of continual improvement such as the one outlined in AS/NZS ISO 14001:2004 can be used to achieve the desired outcomes.

The adaptive management cycle is continual and involves four steps:

- Plan—Document management measures being implemented or proposed to be implemented.
- Do—Undertake the action and implement management measures.
- Check—Monitoring the outcomes.
- Review—Based on monitoring results, review management measures.

An adaptive management system can enable the approval holder to adopt a flexible approach to achieving the required outcomes without having to seek approval from the Minister for changes to the approach. It can also facilitate the use of experimental design.

3.6. Record keeping, publication and reporting requirements

The conditions will require the approval holder to maintain accurate records and publish and report on their progress towards the required milestones and outcomes. Conditions will also require approval holders to make publicly available under an open licence the results of their monitoring activity (including baseline data collected).

An approval holder must be able to demonstrate that an outcome has been achieved. In order to achieve the full benefit of an outcomes-based approval the approval holder must therefore publish all relevant data. This contributes to transparency about the conduct of the action and the impacts on the environment. Allowing public access to data increases knowledge about matters of national environmental significance, which in itself is a positive outcome for those matters.

The person taking the action must report to the Department if monitoring suggests that there is a risk that an outcome may not be achieved or any non-compliance with the conditions. See section 4.3 below for more details on corrective actions.

Below is an example of a condition requiring publication under an outcome-based approval.

Example 8—A condition that describes publication requirements

The Approval Holder must maintain a dedicated webpage on compliance with these conditions that is publicly available on their website for the life of the approval. The webpage must include a copy of the approval conditions, all monitoring results, and documentation of on-site Koala habitat management (including any revised or previous versions of that documentation).

3.7. Post-approval identification of milestones, monitoring and performance indicators

The critical components discussed above would normally be included in the approval as conditions. In some cases a proponent may be able to commit to an outcome, but the scale or complexity of the action means that key components (for example performance indicators, monitoring program or milestones) are not fully understood at the time of the approval and so are not captured in approval conditions.

Where this is the case, the conditions will require the Approval Holder to determine the required component and provide to the Department for approval by the Minister before commencement of the action or before commencement of impacts to the relevant protected matters.

Example 9 - A condition that includes milestones

Prior to taking any part of the action which causes impacts on Koala habitat, the Approval Holder must provide the Department with details of key proposed milestones. These milestones must set out specific measures the approval holder will achieve which indicate progress towards the overall outcome [refer to specific condition].

The Approval Holder must not take any part of the action which causes impacts on Koala habitat until the Minister has approved the milestones.

The Approval Holder must achieve the milestones approved by the Minister.

4. Assurance Framework

4.1. Assurance framework model

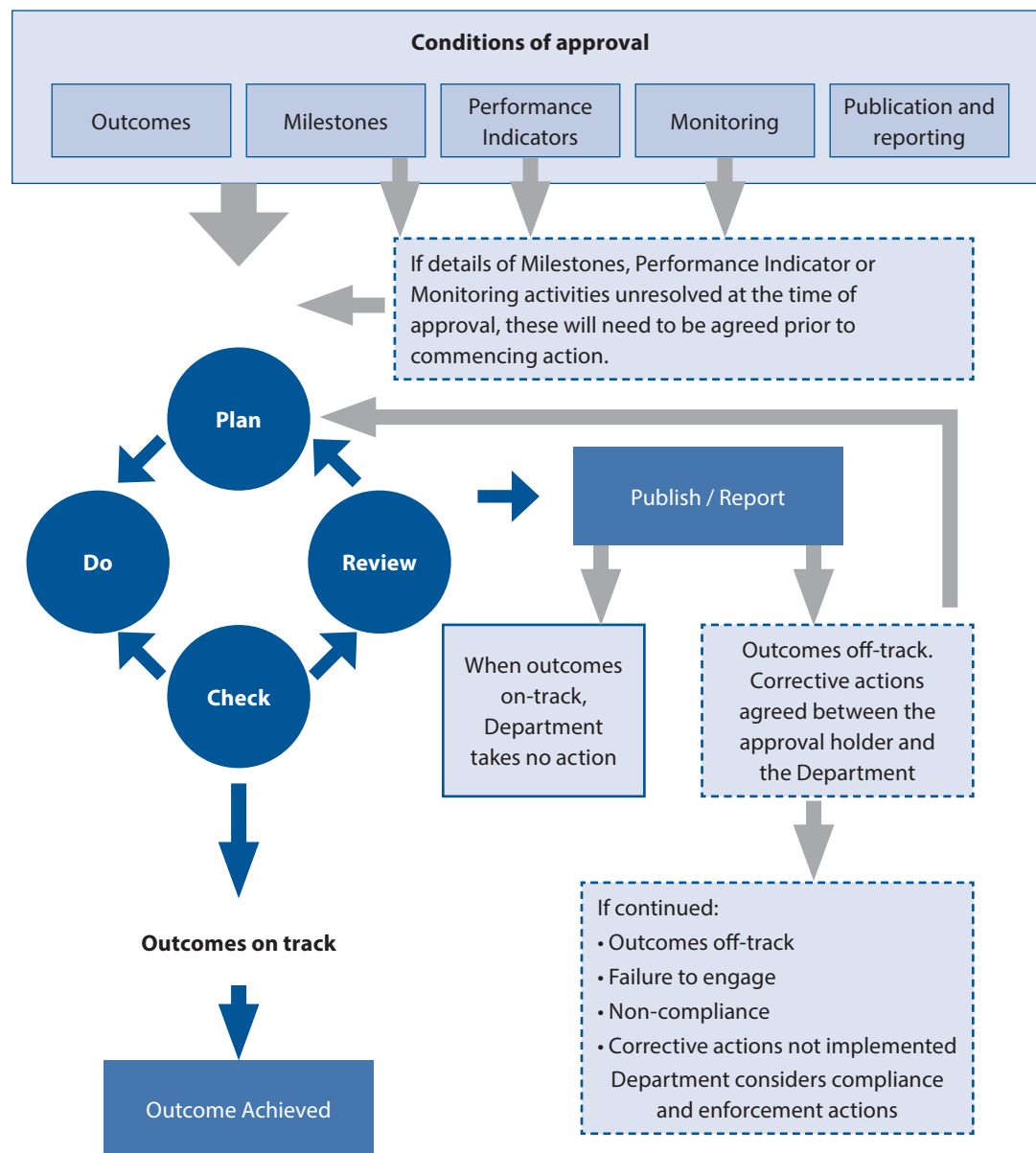
The Department's assurance framework model outcomes-based conditions of approval is shown at Figure 1. Outcomes based conditions provide the opportunity for approval holders to apply adaptive management techniques in order to achieve the outcomes specified in the approval conditions. This means that once the outcomes, milestones, performance indicators and monitoring regime have been determined, the actual management activities to deliver the outcomes can be adjusted and improved over time without consultation with the Department. This adaptive management approach is represented by the Plan, Do, Check and Review cycle shown in Figure 1.

Approval holders with outcomes-based conditions are required to monitor their progress and regularly report whether performance indicators demonstrate they are on track to achieve the specified milestones and outcomes. The approval holder will be required to make these reports publicly available. When performance indicators show that the environmental management is on track to achieve the specified milestones and outcomes, there is no need for the Department to take any additional action.



Photo: Gippsland water dragon (Andrew Tatnell)

Figure 1: Outcomes-based Conditions Assurance Framework Model



4.2. When might the Department become involved

The Department would become involved if the approval holder reported the outcome was not on track, or there was a reasonable risk that the outcomes may not be achieved. The Department encourages approval holders to report any concerns to the Department at the earliest possible time, so the Department can work with the approval holder to ensure the project achieves the required outcomes.

Examples of when the Department may conclude that there is a reasonable risk that milestones or overall outcomes may not be achieved include when:

- the baseline or monitoring data appears to be inadequate
- publication or reporting has not been completed within required timeframes
- reporting shows that the milestones are not being met
- the monitoring data shows a trend away from achieving the milestones or overall outcomes
- the approval holder cannot otherwise prove that milestones are likely to be met
- the approval holder does not engage with the Department
- the approval holder has breached any condition.

4.3. Corrective actions

Where the approval holder demonstrates that it has made best efforts to comply with its obligations under the EPBC Act, the Department will work cooperatively with the proponent to identify corrective actions. This could include the Department asking an approval holder to provide further information such as: monitoring results; detailed documentation on how matters protected under the EPBC Act are being managed; or how an adaptive management process is being implemented.

If the Department considers that a more detailed review of an approval holder's adaptive management process is necessary, the Department may require a performance review. Performance reviews will focus on assisting the approval holder to achieve the outcomes required in the approval. Performance reviews may be conducted by an expert in the matter being protected.

The Commonwealth Minister will retain the power under the EPBC Act to add or vary the conditions of approval in particular circumstances. Those circumstances include:³

- where the approval holder has breached any condition of the approval (e.g. failing to comply with publication requirements or failing to meet a milestone)
- where the significant impacts of an action were not previously identified (either in nature or scale) and the Minister considers that a change to the conditions of the approval is needed to protect matters of national environmental significance.

4.4. Compliance and enforcement

The Department will continue to undertake compliance and monitoring activities for outcomes-based conditions in accordance with *Compliance and Enforcement Policy: Environment Protection and Biodiversity Conservation Act 1999* (2013).

Consistent with that policy, it is the Department's expectation that regulated entities will self-report potential non compliances upon becoming aware of them. Self-reporting enables the Department to address instances of non compliance as early as possible and may help to prevent the issue from escalating or becoming more severe.

Failure to maintain appropriate records, or to adequately monitor or report on outcomes-based conditions will therefore be regarded seriously.

3 EPBC Act, Section 143

If a project continues to remain off-track, an approval holder fails to engage with the Department, the approval holder does not comply with further conditions, or where corrective actions are not implemented, the Department may implement further compliance and enforcement measures in accordance with the Department's compliance and enforcement policy. Possible compliance and enforcement measures may include:

- Caution notices or formal advisory letters requiring future compliance.
- Infringement notices.
- Varying, or imposing further conditions on permits or approvals.
- Suspending or revoking approvals.
- Retaining bonds or securities lodged as a condition of approvals, to remediate any harm caused by a breach.
- Directed audits, provided for under Division 12 of the EPBC Act, which allow the Minister to direct an approval holder to conduct an audit where the Minister suspects that an authorised action is having impacts greater than anticipated when the action was assessed, or that the approval holder is likely to breach a condition of approval.
- Conservation or other agreements to compensate for the contravention or to prevent future contraventions.
- Enforceable undertakings.

Enforcement measures may also include civil remedies and criminal penalties. Copies of the *EPBC Act Compliance and Enforcement Policy* (2013) and guidelines including *the Annual Compliance Report Guidelines* are available on the Department's website: www.environment.gov.au/epbc/publications

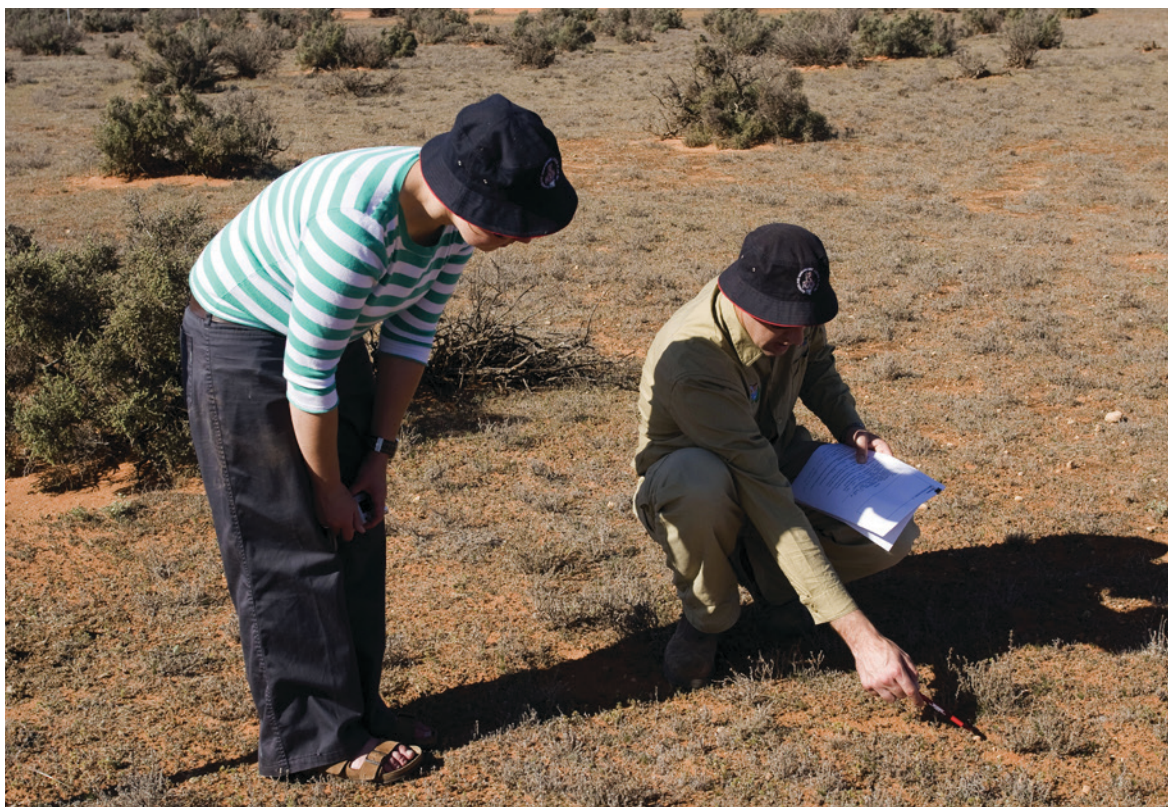


Photo: Monitoring (John Baker)

