

Senate Standing Committee on Environment and Communications
Legislation Committee
Answers to questions on notice
Environment portfolio

Question No: 41
Hearing: Additional Estimates
Outcome: Outcome 1
Programme: Environment Assessment and Compliance Division (EACD)
Topic: EPBC Act – enforcement, risk management, application of precautionary principle
Hansard Page: N/A
Question Date: 23 February 2015
Question Type: Written

Senator Canavan asked:

I refer to the process and approach adopted by the Department in enforcing the EPBC Act, in particular the risk-based approach used to assess whether a project needs referral or is deemed to cause impact to Matters of National Significance under the Act, and how that applies in regard to threatened species. The compliance enforcement policy of the department states:

“A risk-based approach is used to prioritise cases and identify those that warrant further investigation. Compliance and enforcement activities are undertaken in accordance with the principles of natural justice and procedural fairness. We may also seek the opinion of experts on specific subject matter.”

1. What evidence and what scientific level of confidence in that evidence does the Department require before it determines that a potential development project is likely to have an impact on a significant matter before the Department takes compliance actions?
2. Can you provide an example of that evidence in any recent cases where the Department has taken compliance action?

Answer:

- 1 The Department takes a proactive role in promoting the protection of matters of national environmental significance and prefers to work collaboratively with landholders to minimise the risk of landholders inadvertently impacting on threatened species or ecological communities in breach of the legislation.

In circumstances where this isn't possible, in order to progress a compliance matter the Department would first require the appropriate admissible evidence.

For a criminal prosecution this would require evidence that could establish that an offence had occurred beyond reasonable doubt. For civil proceedings or administrative responses to identified contraventions, the minimum standard is that an offence had occurred on balance of probabilities.

Physical and expert (including scientific) evidence is collected in accordance with a range of policies and guidance documents including; *Australian Government Investigations Standards*, *Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia*, *Commonwealth Fraud Control Guidelines* and *Prosecution Policy of the Commonwealth*, amongst others.

- 2) Summaries of a range of compliance outcomes are available on the Department's website at: <http://www.environment.gov.au/epbc/compliance-and-enforcement/case-judgments>

The Department does not release detailed information related to individual compliance investigations. Disclosure such as this may prejudice a person's right to a fair hearing or legal process, impinge upon the privacy or safety of others involved in the investigation (such as complainants, witnesses and suspects), or prejudice past or future actions of the Department.