

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

Question No: 79
Hearing: Supplementary Budget Estimates
Outcome: Outcome 1
Programme: Environment Assessment and Compliance Division
Topic: ANAO REPORT MANAGING COMPLIANCE WITH EPBC ACT 1999
Hansard Page: N/A
Question Date: 29 October 2014
Question Type: Written

Senator Waters asked:

The Department has the ability to redraft these to make them more enforceable where the proponent agrees, or there's been non-compliance. What process does the Department follow if you find a condition has been poorly drafted so that it's impossible to actually find anyone non-compliant? Does that mean the only way to tighten conditions is with the proponent's agreement?

Answer:

Section 143 (1) (a) of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act) enables the Minister to vary, revoke or add to any of the conditions attached to the approval if any of the conditions attached to the approval have been contravened. There is no requirement in the Act to secure the proponent's consent to such a variation.

In the event that any condition attached to an approval has been contravened, the Department reviews the conditions attached to that approval and may initiate a variation under section 143 (1) (a) to update any of the conditions attached to that approval.

Sections 143 (1) (b) and 143 (1) (ba) of the Act provide a mechanism by which conditions attached to an approval can be revoked, varied or added to without the consent of the proponent. This provision requires that a significant impact has occurred, or has the potential to occur, that was substantially greater than the impact that was identified in assessing the action.

Section 143 (1) (c) of the Act provides a mechanism by which the conditions of the approval can be revoked, varied or added to with the agreement of the Minister and the proponent. This provision requires that the variation is necessary or convenient for the protection of a matter protected under the Act or to repair or mitigate damage to a matter protected by the Act.

Where the Department has identified a need to revise a condition attached to an approval, or where a proponent has requested a variation to a condition attached to the approval, the Department actively works with the proponent to incorporate any necessary revisions to other conditions attached to that approval to improve their applicability and enforceability.