



Inquiry into Auditor-General's Report No. 15: 2013-14 Environmental regulation of the resources and waste industries

Report No. 53

**Agriculture, Resources and Environment
Committee**

December 2014

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Abbreviations and definitions

DEHP or EHP	Department of Environment and Heritage Protection
DNRM or NRM	Department of Natural Resources and Mines
QAO	Queensland Audit Office
QAO Report	Auditor-General's Report to Parliament No.15: 2013-14 ' <i>Environmental regulation of the resources and waste industries</i> '
EP Act	<i>Environmental Protection Act 1994</i>

Chair's foreword

This report presents the committee's consideration of the Auditor-General's Report to Parliament No. 15: 2013-14 – *Environmental regulation of the resources and waste industries*.

The committee is satisfied that the approach being undertaken by the Department of Environment and Heritage Protection is improving its compliance framework and data management, and the coordination between the two, to implement the government's regulatory strategy.

I commend this report to the House.



Ian Rickuss MP
Chair

December 2014

Recommendations

Recommendation 1 **3**

The committee recommends that the Legislative Assembly note this report.

Recommendation 2 **3**

The committee recommends that a follow-up performance audit of the monitoring, compliance and enforcement of environmental conditions in 2016-17 be considered by the Queensland Audit Office in its Strategic Audit Plan.

Recommendation 3 **9**

The committee recommends that the Department of Environment and Heritage Protection consider prioritising the development of a third party auditor policy within its Compliance Renewal Program.

1. Introduction

Role of the committee

The Agriculture, Resources and Environment Committee is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.¹

The committee, under section 94(1) of the *Parliament of Queensland Act 2001*, has a responsibility to assess the integrity, economy, efficiency and effectiveness of government financial management within its portfolio area. The committee can do this by examining government financial documents or considering the annual and other reports of the Auditor-General.

The referral and role of the Auditor-General

On 1 April 2014, the Auditor-General's report titled Report to Parliament No.15: 2013-14 *Environmental regulation of the resources and waste industries* (the QAO Report) was tabled in the Legislative Assembly and referred to the committee for consideration, in accordance with Standing Order 194B.

The role of the Auditor-General is to provide the Queensland Parliament with independent assurance of public sector accountability and performance. This is achieved through reporting to Parliament on the results of its financial and performance audits.

The QAO Report presents the findings of a performance audit of a government activity, namely environmental regulation, pursuant to section 37A of the *Auditor-General Act 2009*. A performance audit assesses whether an entity or activity is achieving its objectives effectively, economically and efficiently, and is compliant with relevant legislation. It does not consider the merits of government policy; rather it considers how well the policy is administered by the relevant government agency.²

The committee's process

On 21 May 2014, the committee received a private briefing by the Queensland Audit Office (QAO) on the audit methodology and key audit findings. The recommendations are listed in Appendix A.

During the period between April and October 2014, the committee conducted inquiries into the following Bills, which implemented changes to the environmental regulation of the resources and waste industries:

- Environmental Offsets Bill 2014
- Mineral and Energy Resources (Common Provisions) Bill 2014
- Environmental Protection and Other Legislation Amendment Bill 2014
- Water Reform and Other Legislation Amendment Bill 2014

The committee has revisited relevant evidence provided in submissions and at public hearings for the above-mentioned inquiries, as part of its consideration of the QAO Report.

On 26 November 2014, the committee held a public briefing on the QAO Report by the Departments of Environment and Heritage Protection (DEHP) and Natural Resources and Mines (DNRM), and QAO. A list of witnesses who gave evidence at the hearing is included at Appendix B.

¹ Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.

² QAO, 2012, *Performance Audit practice statement*, p. 1. Available at <https://www.qao.qld.gov.au/files/file/Additional%20Docs/PApracticestatement-November2012.pdf>. Accessed 1 December 2014.

Committee comment

The committee welcomes the Queensland Auditor-General's *Report No. 15: 2013-14 - Environmental regulation of the resources and waste industries* and notes the key findings and recommendations.

The committee notes that the performance audit was conducted between May 2013 and February 2014, using a five-year sampling period from 2007-08 through to 2012-13. This period precedes the new regulatory strategy adopted by DEHP in March 2013 and the extensive legislative and regulatory reform of mining authorities and environmental approvals progressed during 2014.

Notwithstanding the timing of the audit, the committee notes that DEHP and DNRM agreed with the Report recommendations. Moreover, DEHP indicated that the recommendations of the audit have been used to inform and prioritise its business model and compliance framework, along with other sources of information.

Given the focus of the audit and, indeed government itself, on improving business operations and efficiency, it is not practicable to defer audits but to consider the audit findings and recommendations in this context.

Accordingly, the committee has considered the QAO Report having regard to the changed operating environment. This includes advice by the DEHP with respect to its Compliance Renewal Program and Project Unify, as well as the One Window project with DNRM to support appropriate, shared access to information.

The committee's consideration of the context has been further aided by observations by the committee in light of the recent Bill inquiries, which highlighted the issue of public confidence in environmental and land/water risk management and compliance with environmental conditions. In the context of the new risk-based regulatory strategy employed by DEHP, and with respect to the evidence that the committee has heard pursuant to its previous inquiries, the committee considers there is an increased importance for effective compliance monitoring and enforcement, for both public confidence in the regulatory strategy and the mitigation of landholder and environmental impacts associated with standard and site-specific applications.

The committee commends DEHP on its approach to improving its data management systems and compliance framework to implement its regulatory strategy. The committee is also satisfied that, given the progressive implementation of the Compliance Renewal Program, the department has provided evidence of short-term activities in its management actions to heightened industry monitoring and oversight in the interim. These include the realignment of its workforce to employ officers dedicated to compliance activities, proportion of proactive versus reactive inspections, updated information sharing procedures between departments and completion of actions in respect of financial recommendations. This is vital in light of the commencement of legislative changes in respect of both mining and waste regulation this year.

The committee notes that DEHP's original response to the Report highlighted the potential benefit of auditing the effectiveness of the new regulatory strategy and its implementation. Given the potential for environmental harm, landholder and industry impacts and state financial liability arising from ineffective monitoring, compliance and enforcement of environmental conditions, the committee agrees that there may be benefit in QAO conducting a follow-up performance audit in 2016-17, subsequent to the expected completion date for the staggered implementation of the Compliance Renewal Program. The committee may recommend such when invited to provide potential audit topics as part of QAO's annual review of its Strategic Audit Plan.

Recommendation 1

The committee recommends that the Legislative Assembly note this report.

Recommendation 2

The committee recommends that a follow-up performance audit of the monitoring, compliance and enforcement of environmental conditions in 2016-17 be considered by the Queensland Audit Office in its Strategic Audit Plan.

2. Consideration of the QAO Report

2.1 Background

DEHP is the primary regulator of the resources and waste industries under the *Environmental Protection Act 1994* (the EP Act). Regulation occurs via environmental authorities, which authorise activities that may be carried out on a site and determine the operating conditions that must be met by the operator. For example, authority holders may be required to develop management plans, submit periodic impact monitoring reports, construct certain containment infrastructure, rehabilitate sites and/or provide environment offsets as a condition of their environmental authority.

A series of green-tape reduction reforms, including as part of the above-mentioned Bills, have (amongst other things) simplified assessment and approval processes and adopted a 'risk-based' approach to environmental regulation. Environmental authorities are assessed as standard applications, variation applications or site-specific applications.

As context, the QAO Report acknowledged the government's commitment to reduce regulatory burden on industry and DEHP's new regulatory strategy, released in February 2013:

EHP describes its regulatory strategy as representing a 'fundamental shift' in the way it is to undertake its environmental regulatory role. This shift includes a commitment that environmental regulation would be an 'enabler of, not a roadblock to, sustainable development'.

... under [its] regulatory strategy, EHP focuses less on applying the standards through the assessment and approval of applications for environmental authorities and their conditions, and more on monitoring and responding to performance. ...In reducing its focus on assessing applications, EHP has committed to an increased focus on effective and targeted compliance activities and a more consistent application of strong but proportional enforcement activities.³

In 2013, the Queensland Supreme Court brought down a decision that established that the state has a duty of care to properly supervise, monitor and enforce the conditions it imposes on holders of environmental authorities.⁴ Failure to do so exposes the state to legal liability and significant costs associated with rehabilitation in the event of environmental damage. There is also risk to public confidence in the effectiveness of environmental conditions associated with environmental authorities and development approvals.

The QAO commented in its report that the commitment by DEHP requires a significant focus on effective supervision, monitoring and enforcement activities in identifying and addressing non-compliance and deterring future non-compliance in the regulated industries.⁵ Having regard for the significant growth of the resource sector activity in Queensland over recent years, this priority was the basis upon which the audit was initiated.

The primary focus of the audit was the activities of the DEHP as primary regulator but, due to the overlapping responsibilities for the regulation of the mining sector, DNRM was included in the audit scope. DNRM administers the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004*, and regulates the land tenure framework for the resources sector under these Acts.⁶

³ QAO, 2013, QAO Report, p. 11.

⁴ QAO, 2013, QAO Report, p. 7.

⁵ QAO, 2013, QAO Report, p. 11.

⁶ On 9 September, the *Mineral and Energy Resources (Common Provisions) Act 2014* was passed. This Act will progressively replace the existing resources Acts with a single, common resource Act. However, until this body of work is complete, the Common Provisions Act co-exists alongside the existing resources Acts.

2.2 Audit findings and recommendations

The objective of the QAO audit was to determine whether the supervision, monitoring and enforcement of environmental conditions for environmental authorities for the mining and waste sectors was effective and protected the state from financial risk.⁷

The QAO Report concluded that DEHP was not fully effective in performing its regulatory role. The QAO attributed this failure generally to poor quality of data, inadequate data management systems and to a lesser extent inadequate compliance management and planning methodologies:

*..., the common thread throughout this report is the poor quality of data held by EHP and its predecessors relating to its supervision, monitoring and enforcement activities and to its administration of fee debt and financial assurances. Data are unreliable; hard to access; difficult to analyse; and often incapable of providing timely and quality information to inform decisions. This legacy issues has been known for years without being addressed.*⁸

The QAO also noted that, as a consequence, environmental rehabilitation by operators remains an unrealised aspiration. This in turn is leaving the state with an increasing legacy of sites not rehabilitated.⁹

At the public briefing, DEHP reiterated the context in which the QAO conducted the audit:

*... upfront I want to recognise that the Auditor-General's report was tabled in April of this year and is based on statistical and other information that, in some cases, is years old, as well as many of the regulatory approaches that the department was renewing at the time of the audit. Whilst EHP accepted all of the Auditor-General's recommendations, the department was already aware of the issues raised by the Auditor-General and had started to work to address many of them before or during the audit. These issues included a need to improve its data management capabilities to address the level of outstanding annual fees and to investigate alternative approaches to managing financial assurance.*¹⁰

A summary of the QAO recommendations and updated status report on actions and timeframes by DEHP forms Appendix A. The following sections outline key issues and advice considered by the committee, further to this summary.

2.2.1 Supervision and Monitoring

Regulatory supervision can be viewed as the internal operational management and oversight of regulatory functions by the department. The QAO noted in its report that:

*Strong ongoing supervision supports the effective targeting of strategies, operations and resources to maximise compliance and detect non-compliance.*¹¹

And,

*Government services that rely on the activities of multiple departments require a level of integration, coordination, cooperation and sharing of data and information if they are to deliver outcomes that are effective, efficient and economical. Without this, the risk of duplication of effort, or of the activities of departments hindering rather than complementing each other, is heightened.*¹²

⁷ QAO, 2013, QAO Report, p. 1.

⁸ QAO, 2013, QAO Report p. 1.

⁹ QAO, 2013, QAO Report, pp. 1-2.

¹⁰ Elwood, D. 2014, *Draft briefing transcript*, 26 November, p. 1.

¹¹ QAO, 2013, QAO Report, p. 15.

¹² QAO, 2013, QAO Report, p. 16.

In regards to supervision, QAO made the following observations:

- Risk planning by DEHP has improved, but its planned supervision and monitoring activities are still unlikely either to maximise compliance or to detect all serious non-compliance within the resources industry. Plans do not have sufficient, relevant performance measures to determine whether plan objectives have been met.¹³
- Poor data management and reporting practices within DEHP and between DEHP and DNRM limit its ability to supervise the resources industry effectively. Data is not being well managed, used or shared. These data issues limit the usefulness of environmental risk assessment, weaken compliance planning, and hamper coordination of effort.¹⁴

The QAO Report also identified that, whilst some progress has been made in reducing the number of overdue annual returns, DEHP supervision of industry through the process of annual returns and collection of fees has previously not been effective.

The failure of an operator to comply with requirements to submit an annual return should raise concerns and trigger a reassessment of the risk profile of the holder and site; at present, it does not. This raises the risk that non-compliance with environmental conditions is going undetected.

EHP also does not check or audit annual returns for accuracy and it could much better use the information from the annual returns it receives. In the absence of such checks by EHP, there is a risk that operators are simply 'ticking the compliance box' on annual returns.¹⁵

Regulatory monitoring can be viewed as the external activities to oversight industry performance and compliance. Inspections and audits are the predominant means for regulators to monitor compliance with environmental conditions. In regards to compliance monitoring activities, QAO made the following observations:

- DEHP needs to further strengthen its audit and inspection program if it is to meet commitments in its new regulatory strategy and improve industry compliance. Until this occurs, its monitoring activities are less likely to be an effective deterrent.¹⁶
- Despite the net increase in inspections, there is little evidence to demonstrate that DEHP's monitoring is timely, appropriately risk-based or effective in detecting non-compliance. As was the case for its planning and supervision, this is largely because of weaknesses in DEHP's data management systems.¹⁷
- DEHP does not do periodic or systematic risk assessments or inspections of those sites that have standard conditions applied or standard conditions with variations. It inspects such sites only if it receives a complaint or incident notification. It does not know whether the actual risk posed by the majority of these sites has changed from the original determination. This is of particular concern.¹⁸
- Because DEHP and DNRM do not coordinate their resources or site visits, both departments' coverage of the resources industry is unnecessarily constrained. Individually, the resources each department has are limited; by cooperating and coordinating their efforts, they would have much greater regulatory influence on the industry.¹⁹

QAO Report recommendations 1-4 refer.

¹³ QAO, 2013, QAO Report, p. 15.

¹⁴ QAO, 2013, QAO Report, p. 16.

¹⁵ QAO, 2013, QAO Report, p. 21.

¹⁶ QAO, 2013, QAO Report, p. 25.

¹⁷ QAO, 2013, QAO Report, p. 25.

¹⁸ QAO, 2013, QAO Report, p. 25.

¹⁹ QAO, 2013, QAO Report, p. 26.

At the public briefing, DEHP advised the committee of a number of significant operational changes that have occurred within the department since the time of the QAO audit, to address the issues highlighted in the QAO Report findings and recommendations.

Firstly, the department noted that it has implemented a new business model that separates regulatory functions, such that applications are assessed by specialised business centres and compliance monitoring is undertaken by the dedicated compliance centre staff. Staff no longer have to prioritise assessment of applications with statutory timeframes over proactive compliance inspections:

As part of putting the Regulatory Strategy into practice, EHP has also recently changed the way it operates to give customers and the community a better service. Applications for environmental licences are now assessed in one of our specialised business centres, ensuring faster processing times and a far more consistent licensing approach. Our dedicated compliance officers are dispersed across the state to be available to respond quickly to incidents and complaints, visit high-risk sites to check on businesses' environmental performance and, importantly, liaise and educate licence holders about the obligations and where to find information to help meet them.²⁰

DEHP also advised of the work underway under its Project Unify and Compliance Renewal Program, to improve its data management systems, risk assessment and compliance strategies.

The thing we need to do first is fix the data collection up. That will see automatic improvements then in our risk assessment process and our prioritisation of resources, and it is exceptionally important for us to get that right first.²¹

And,

One of the criticisms of the Queensland Audit Office in the way that we used to do things in the past was that the inherent risk of the activity drove everything... What we have looked at is a whole range of other things and the care package process is the start of that about information collection. It is a lot about operator risk as well which is something that we have never collected before. It is a better appreciation and weighting of environmental risk by either proximity to things that are important—people in particular industries or Ramsar wetlands—or whatever the situation may be. It is also trying to get ourselves away from that situation where that inherent risk of the activity was weighting too heavily and driving the risk assessment process. We call it now our compliance prioritisation model. So we go through this process and we spit out effectively a list of sites per compliance centre. We literally have our sites now—I think we have about 2,000 sites that we have been gradually improving information and feeding into that process. We are seeing a very marked difference in terms of the sites that are on that list compared to the sites that would have been on the list with our previous risk assessment process. Do we go to every site every year? No, we do not.²²

And,

... some of the things that we have done in terms of changing our compliance and enforcement model in relation to risks as they are eventuating and a better understanding of those risks, which is one of the criticisms of the audit report of our process. So using debt as an example... we have gone through a process where people, for example, have not been paying their fees and it is a sustained conduct over time, we are alternatively suspending or cancelling their authority, depending on the severity of the debt involved. So what we are now doing is translating that into a tactical compliance project, where we are ensuring that,

²⁰ Ellwood, D. 2014, *Draft briefing transcript*, 26 November, p. 2.

²¹ Lenz, A. 2014, *Draft briefing transcript*, 26 November, p. 7.

²² Lenz, A. 2014, *Draft briefing transcript*, 26 November, pp. 8-9.

*if we have suspended any licences, we are following that up with an inspection, that it is linked to that customer and that file, that we are ensuring that the suspension is effectively being followed and that they are not continuing to operate. That is an example, I suppose, from a data point of view about how we are trying to link our systems and ensure that the information is flowing between areas and that we are addressing that as a risk in terms of our compliance framework as well.*²³

DEHP confirmed that the compliance prioritisation model applies to every site it regulates regardless of approval category and, accordingly, environmental authorities with standard conditions and variations to standard conditions are subject to targets and proactive compliance monitoring.²⁴ In respect of streamlined application processes for standard approvals, DEHP advised:

*...we will keep those people who sign those forms honest. We have false and misleading provisions, executive officer liability, so it is not that we are letting the people get an approval and we do not talk to them again. It is about setting the standards and the expectations that they need to comply with, and that our efforts and energy will be put into following up and making sure that they operate accordingly. The act has a range of provisions in there to be able to deal with people as I said, if they were to perhaps provide false or misleading information, and directors of companies et cetera are liable.*²⁵

DEHP further indicated that the use of third party auditors to assist with the compliance monitoring and inspection of lower risk sites was under consideration but that there was still further work to be completed in this regard and therefore this option was not expected to be available before the end of 2016.²⁶

Further, in relation to the supervision of industry through annual returns, DEHP advised that it has taken action and implemented a number of measures to deal with this issue:

In relation to our debt management, we identified about 18 months or two years ago that we were not tracking in a place that we needed to in terms of collecting moneys due.

*...we have changed our strategy in terms of how we collect that debt. We have been able to arrest the growth in that debt and we are now starting to see the benefits of it reducing. What we have done to change is that we have centralised the debt management process so that it is being coordinated and managed centrally and we are taking a much harder line in terms of how we deal with business in terms of whether they have paid and their ability to operate because it is clearly an unfair playing field or a competitive advantage that they are obtaining, so we are keen to do that.*²⁷

DEHP also advised that it is developing an online capability for, and completion and lodgement of, annual return information both of which will improve DEHP's ability to manage annual returns and analyse annual return data. DEHP is also 'incorporating information from annual returns into [its] compliance planning processes'.²⁸

²³ Lenz, A. 2014, *Draft briefing transcript*, 26 November, p. 3.

²⁴ Lenz, A. 2014, *Draft briefing transcript*, 26 November, pp. 8-9.

²⁵ Ellwood, D. 2014, *Draft briefing transcript*, 26 November, p. 8.

²⁶ Lenz, A. 2014, *Draft briefing transcript*, 26 November, p. 9.

²⁷ Brown, G. 2014, *Draft briefing transcript*, 26 November, pp. 2-3.

²⁸ DEHP, 2014, *Correspondence*, 2 December, p. 2.

Committee comment

The committee notes the progress in implementing the new data management system, and agrees that improved data capture and analysis will aid the department's regulatory and compliance strategy and benefit the department's method of risk assessment. The committee further notes that this system will also support enhanced data sharing across agencies where there are shared regulatory and compliance responsibilities.

The committee is satisfied with the advice provided by DEHP in relation to its new compliance framework. The committee strongly supports the use of third party auditors for annual audits to support the department's compliance framework, in addition to departmental inspections. The committee considers that the potential benefits, including more self-regulation in organisational culture and cost effective compliance outcomes through the use of third party audits, similar to the approach adopted in the area of contaminated soil, warrants higher priority within the department's implementation schedule.

Recommendation 3

The committee recommends that the Department of Environment and Heritage Protection consider prioritising the development of a third party auditor policy within its Compliance Renewal Program.

2.2.2 Enforcement

Enforcement action is an important part of the overall regulatory compliance model. Effective enforcement acts to deter non-compliance by creating negative consequences for operators who breach environmental conditions and cause harm. As noted in the QAO Report, for deterrence to be effective, there must be a high likelihood of detection, action must be timely and consistent, and penalties must be proportionate to the nature of the breach.²⁹

EHP has a variety of enforcement tools at its disposal to address non-compliance with environmental conditions when it is detected. These range from warnings (verbal or written), penalty infringement notices, management programs, statutory orders and prosecutions. These actions are designed to educate, penalise and deter industry non-compliance.³⁰

And,

EHP has guidelines which provide general principles to assist environmental officers with choosing the appropriate enforcement tool for a given situation.³¹

Whilst QAO was satisfied that DEHP's enforcement actions were generally proportionate and commensurate to circumstances, the QAO Report raised concern that it was not clear if enforcement actions were timely or effective in achieving compliance by operators due to a lack of performance assessment and follow-up activities. As further noted by QAO, this is due both to issues of poor data and a lack of systematic analysis and monitoring of compliance actions:

EHP does not know the effectiveness of issuing penalty infringement notices as an enforcement tool in the resources industry, because of its poor data and its inability to isolate notices issued to the resources industry from the other industries it regulates. It does not collate and analyse information on the effectiveness of its use of warnings, management plans or statutory orders. For these reasons, it does not know if its

²⁹ QAO, 2013, QAO Report, p. 34.

³⁰ QAO, 2013, QAO Report, p. 34

³¹ QAO, 2013, QAO Report, p. 34.

*enforcement activities are having any effect in improving compliance and environmental outcomes.*³²

An additional concern noted by QAO in its report was that DEHP was not capturing the full costs of its prosecutions, such as costs of investigations undertaken by its compliance and audit teams, and therefore misses the opportunity to recover these costs through the courts.³³

QAO Report recommendations 5-6 refer.

DEHP explained to the committee its new approach to performance management:

We are running a really rigorous process where, when we start [a] particular project, we are defining our outcomes and our objectives that are measurable ... we are designing quite specific performance measures for our interventions on a case-by-case basis so that we can demonstrate the environmental improvement.

For some things, though—like [compliance inspections]— the information will be focusing on trying to capture if there is performance improvements by the people that we regulate.

*So... depending on the style of project or the style of intervention we are doing, we are trying to capture the environmental improvement as a consequence. The same principle holds for prosecutions, for example, where we do intervene in that higher end tier that we are showing as well the difference in environmental behaviour or performance improvement that we can see at the same time—which is, to be frank, not information that we have captured consistently in the past, which is probably the biggest problem.*³⁴

DEHP also advised that it recently changed its approach to seeking costs to include costs of professional officers involved in investigations and, as such, DEHP now seeks to recover the full cost of investigating and prosecuting non-compliance cases as recommended in the QAO Report.³⁵

Committee comment

The committee notes and is satisfied with the advice provided by DEHP in relation to business improvements in its enforcement program.

2.2.3 Financial Assurance

Financial assurance is an additional tool used by the state to encourage compliance, but it also serves to minimise financial exposure where an authority holder abdicates its responsibilities to rehabilitate or restore the environment.³⁶ The challenge is to balance the cost impacts on project proponents whilst ensuring the financial assurance amount is an incentive to promote compliance.³⁷

To be effective, therefore, a financial assurance should be material enough to promote compliance with environmental authority conditions and sufficient to cover the cost of rehabilitation, thus limiting the risk exposure to the state.

*... Government departments should have a clear and transparent process to calculate the amount of financial assurance required and established criteria to decide when to 'call in' the financial assurance.*³⁸

The QAO Report noted significant concern both for the amounts held by the state and the administration and management of financial assurance by DEHP and DNRM:

³² QAO, 2013, QAO Report, p. 3.

³³ QAO, 2013, QAO Report, p. 33.

³⁴ Lenz, A. 2014, *Draft briefing transcript*, 26 November, pp. 5-6.

³⁵ DEHP, 2014, *Correspondence*, 2 December, p. 3.

³⁶ QAO, 2013, QAO Report, p. 41.

³⁷ QAO, 2013, QAO Report, p. 42.

³⁸ QAO, 2013, QAO Report, p. 42.

There is no clear record of financial assurance held by the state because some assurance is held by NRM and some is held by EHP. Inadequate communication and processes between the two departments mean there is no reconciliation of records between the departments against funds held. At times, EHP staff did not know whether the financial assurance they required from an environmental authority holder had been requested, received or retained by NRM.

The financial assurance held by the state has historically been insufficient to cover the estimated rehabilitation costs; however, over recent years, EHP made a concerted effort to increase the amount held and to reduce the gap. This has resulted in a significant increase in assurances held of \$3.5 billion (240 per cent) for the sample we examined.

The amount of financial assurance requested is not always the amount calculated as necessary for rehabilitation, meaning sites remain with insufficient financial assurance. This leaves the state exposed, should the environmental authority holder go into administration.

Where financial assurance held by EHP and NRM is insufficient to cover the costs of rehabilitation, the departments are reluctant to take appropriate action to revoke permits and claim financial assurance. This risks future environmental damage, which could result in rehabilitation and management costs to the state.³⁹

The QAO Report further noted concern that a lack of agreed understanding regarding 'care and maintenance' status of sites undermined the ability for the state to commence rehabilitation works and noted that this had been identified in previous reviews of the financial assurance system and abandoned mines program:

A 2007 review by the Service Delivery and Performance Commission found a lack of clarity of responsibilities and processes between public sector agencies for the transfer of sites to the NRM-administered Abandoned Mines Land Program (AMLPL). Despite recommendations made by the Commission in its report, there is still no clear definition about care and maintenance sites and no transparency on transfer of administrative responsibility for sites from EHP to the NRM-administered AMLPL. There is a lack of clear protocols between the two departments about the management of these sites. This results in sites remaining in care and maintenance while EHP and NRM dispute over the administrative and regulatory responsibility for the site.⁴⁰

QAO Report recommendations 7-9 refer.

In its updated status report, DEHP advised that the project to revise its financial assurance guidelines and implement new financial assurance calculators was completed in March 2014.⁴¹ DEHP also advised the committee that the transfer of responsibility for administering all financial assurances was still in progress, with the transfer process on hold whilst DEHP and DNRM consider alternative financial assurance models and approaches. This project is due for completion by 30 June 2016, with progressive transfer to DEHP occurring before this date.⁴²

Finally, in relation to the management of 'care and maintenance' sites, the department advised that an interdepartmental working group was continuing work to develop agreed and consistent definitions, principles, protocols and processes for how the two departments will collaborate for mines at risk, which includes managing care and maintenance sites.⁴³

³⁹ QAO, 2013, QAO Report, pp. 3-4.

⁴⁰ QAO, 2013, QAO Report, p. 47.

⁴¹ DEHP, 2014, *Correspondence*, 2 December, p. 5.

⁴² DEHP, 2014, *Correspondence*, 2 December, p. 4.

⁴³ DEHP, 2014, *Correspondence*, 2 December, pp. 5-6.

Committee comment

The committee has considered the matters relating to financial assurance and rehabilitation in the context of observations and evidence arising from its previous inquiries, which support the findings of QAO in so far as it found that environmental rehabilitation is not being fully realised and that the state remains exposed to unnecessary and increasing financial risks in order to meet community expectations. The committee notes and is satisfied with the advice provided in respect of the revision and administration of DEHP's financial assurance guideline and calculators.

The committee notes that DEHP is exploring alternative models for financial assurance and is seeking to improve processes for dealing with mines at risk but suggests, notwithstanding the inherent complexity and need for consultation across stakeholder groups, that this should be progressed as a priority. In this regard, the committee considers it critical that effective governance frameworks are in place to minimise the risk of operators defaulting on their environmental, land and water rehabilitation obligations and to ensure the state does not accumulate any further financial liability or lasting environmental damage as a legacy of retired mines and boreholes. The committee is also interested in the effectiveness and efficiency of activities by which the estimated 15,000 abandoned mines across Queensland are being cared for and managed under existing programs and frameworks.

Appendix A - Summary of QAO recommendations and Departmental response/update

Issue	Recommendation	Agreed Management Actions	Expected Implementation Date	Latest Update	Status*
Supervision					
Coordination and accessibility of information	1. The Department of Environment and Heritage Protection and the Department of Natural Resources and Mines improve the exchange, coordination and accessibility of information to achieve better planning and risk assessments to inform their compliance activities.	<p>a) EHP will work with NRM to develop a protocol for the provision of information to EHP to be used by its intelligence analysis team to inform intelligence assessments and compliance planning.</p> <p>b) EHP will also commence a project to update the interagency manual that governs interactions between NRM and EHP on matters related to assessment and licensing of resource activities.</p>	<p>31/12/2014</p> <p>31/12/2014</p>	<p>Through the Compliance Framework Project (Compliance Renewal Program), EHP has reviewed its intelligence collection plans and established:</p> <ul style="list-style-type: none"> a network of contacts and key data sources within NRM a mutually acceptable method of timely exchange of information. <p>A new departmental Information and Communication Technology (ICT) system currently being developed will include an interface with MyMinesOnline for the management of approvals for mining customers between NRM and EHP. This system to system automated data transfer will enable streamlined business process and provide accessibility to real time information for the agencies.</p> <p>EHP has identified its current interactions with NRM and areas requiring improvement. Preliminary consultation with NRM has occurred on these matters.</p> <p>EHP and NRM officers have been working together to produce an updated manual which reflects numerous changes to legislation, as well as changes to the internal processes of both departments. Completion of the updated manual is anticipated for 31 December 2014.</p>	On Track
Recovery of long-term annual fee debt	2. The Department of Environment and Heritage Protection pursue enforcement action to recover the long-term debt it is owed from annual fees.	<p>EHP already undertakes enforcement action in respect of outstanding annual fees, in the form of suspension and cancellation of environmental authorities. It also undertakes legal action to recover outstanding debts where it is appropriate to do so.</p> <p>EHP has begun investigating the use of options to recover long-term debt in a cost-effective way, including through the use of mercantile agents to assist with the recovery process.</p> <p>EHP will continue with this approach noting that:</p> <ul style="list-style-type: none"> Some long-term debt will be unable to be recovered in a cost-effective manner and for this portion of the debt a write-off of the outstanding amount is a legitimate 	n/a	<p>The taking of enforcement action had commenced before the QAO report, and will continue with refinements to the process as necessary.</p> <p>Since May 2013, EHP has substantially reformed and improved its process for managing outstanding annual fees and these reforms are now paying dividends.</p> <p>EHP's approach to collecting unpaid annual fees is consistent with its regulatory strategy, and in particular emphasises that operators who fail to pay their annual fee should not receive a commercial advantage over those who do by being allowed to continue to operate.</p> <p>494 Environmental Authorities have been suspended and 9 cancelled by the debt management team from 1 May 2013-31 October 2014.</p> <p>\$9.8 million in overdue fees has been paid following action by the debt management team.</p> <p>EHP has also recently used data from the Australian Securities and Investments Commission to identify over \$926,000 in outstanding annual fees that are</p>	Complete

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Issue	Recommendation	Agreed Management Actions	Expected Implementation Date	Latest Update	Status*
		action that is consistent with prudent financial management practices.		unrecoverable due to the insolvency of the operator and that will be written off as bad debt in accordance with prudent accounting practices.	
Use of information provided in annual returns	3. The Department of Environment and Heritage Protection utilises information provided in annual returns to inform its compliance planning and improve its supervision of the industries it regulates.	<p>a) EHP will incorporate information from annual returns into its state and regional compliance planning processes.</p> <p>b) As part of Project Unify, EHP will develop a system for annual returns to be able to be completed and lodged online, which will improve the ability of EHP to analyse data from returns.</p>	<p>30/06/2015</p> <p>30/06/2016</p>	<p>The Department of Environment and Heritage Protection is incorporating information from annual returns into its compliance planning processes.</p> <p>As part of Project Unify, EHP will develop a system for annual returns to be able to be completed and lodged online, which will improve the ability of EHP to analyse data from returns.</p> <p>EHP has redesigned its compliance framework, incorporating proactive and reactive work streams to enable effective and efficient utilisation of compliance resources.</p> <p>The Compliance Prioritisation Model is the first proactive compliance tool under the new framework that incorporates information from annual returns as a risk indicator.</p>	On Track
Monitoring					
Compliance with environmental authorities	4. The Department of Environment and Heritage Protection implements a program to proactively monitor compliance with environmental authorities with standard conditions and variations to standard conditions.	EHP is currently undertaking a Compliance Renewal Program which will consider the use of third party auditors for lower risk sites.	31/07/2015	<p>The Compliance Framework Project (CFP) is redesigning the Department of Environment and Heritage Protection's compliance framework to deliver intelligence-driven compliance activities.</p> <p>The Compliance Prioritisation Model (CPM) is a continuous, targeted and refined approach to the EHP's programmed proactive compliance priorities.</p> <p>Proactive compliance in relation to environmental issues or specific industry sectors will be addressed through Targeted Compliance Projects (TCP).</p> <p>Reactive compliance is addressed through the Unplanned Compliance Events (UCE) framework which contains standard business rules for application for a state wide response.</p> <p>The Compliance and Risk Evaluation package will assist an officer to collect information about risk and compliance and inform a site risk profile.</p>	On Track
Enforcement					

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Issue	Recommendation	Agreed Management Actions	Expected Implementation Date	Latest Update	Status*
Investigation cost recovery	5. The Department of Environment and Heritage Protection captures and recovers the full cost of investigating and prosecuting all non-compliance cases.	EHP has recently changed its approach to seeking costs to include the costs of professional officers involved in investigations.	n/a	<p>The Department of Environment and Heritage Protection seeks to recover full investigation costs and the maximum allowable legal costs when prosecuting all non-compliance cases.</p> <p>So that the court can be appraised of costs, investigators provide an itemised list of investigation costs and timings.</p> <p>The amount of legal costs that may be awarded in the Magistrates Court is governed by a modest scale under the Justices Regulation 1999.</p> <p>The court also has the full discretion whether to award costs in a prosecution.</p> <p>Where the court awards costs, the Department of Environment and Heritage Protection asks the court to refer recovery of the costs to the State Penalties and Enforcement Registry.</p>	Complete
Performance measurement and reporting	6. The Department of Environment and Heritage Protection improves its performance measurement and reporting to demonstrate the effectiveness of its activities in achieving environmental outcomes.	The compliance framework will be rewritten as part of the Compliance Renewal Program and will consider this aspect of performance measurement.	30/06/2016 although progress will be gradual and measured from now onwards	<p>The Department of Environment and Heritage Protection is reshaping its proactive compliance methodology and framework.</p> <p>EHP has reviewed key performance indicators which now align to Departmental plans and the Queensland Plan.</p> <p>Positive steps have been taken to improve how data is recorded within Ecotrack and the implementation of a new ICT system offers greater functionality thus improved timeliness of resources.</p> <p>EHP Connect, the department's new ICT system will link a number of databases to create one single database which will enable real time information.</p>	On Track
Financial assurance					
Responsibility for administering all financial assurances	7. The Department of Environment and Heritage Protection assumes responsibility for administering all financial assurances, including those currently collected and held by the Department of Natural Resources and Mines.	<p>EHP had already begun discussions with NRM about handing administration of financial assurance to EHP. These discussions will continue.</p> <p>Given the complexity and amount of financial assurance involved, the transfer will take place progressively.</p> <p>Development of an alternative financial assurance model – such as a pooled fund – may mean that an agency other than EHP becomes responsible for administering the</p>	30/06/2016 with progressive transfer to EHP occurring before that date	<p>The Department of Environment and Heritage Protection has been investigating alternative models for financial assurance.</p> <p>A pooled fund model for financial assurance was considered but this was not supported by stakeholders. An alternative risk evaluated financial assurance framework is currently being developed.</p> <p>The risk evaluated financial assurance framework would ensure the government would have the required funds to undertake any necessary works should an operator default on their rehabilitation obligations.</p> <p>The transfer of responsibilities to EHP has not taken place while consideration of alternative approaches is still under way.</p>	On Track

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Issue	Recommendation	Agreed Management Actions	Expected Implementation Date	Latest Update	Status*
		model.			
Financial assurance framework	8. The Department of Environment and Heritage Protection ensures the financial assurance it calculates and collects reflects the estimated cost of environmental rehabilitation.	EHP has revised its financial assurance guideline (published 7 March 2014) to include a calculator for resource activities, and to include an enhanced discount system to encourage better environmental performance. Note that EHP is also undertaking a wider review of the financial assurance system to look at the alternative model of a fund rather than assurances from each individual operator.	March 2014	New financial assurance (FA) calculators were developed by a third party consultant and through a transparent and highly consultative process with industry. The petroleum rehabilitation calculator was a world's first and is now being used to inform the development of other state jurisdiction FA calculators. EHP implemented the new FA calculators and revised Guideline in March 2014. Access to the EHP calculators is free providing a cost saving to industry and confidence for EHP in the values submitted in the FA application. The new system also provides a process whereby industry can have their own calculator assessed by EHP prior to submitting an FA application. Companies using the EHP calculator or their own recognised calculator benefit from a more streamlined FA application process. The new system has also enabled EHP to provide a more accessible discount system for FA.	Complete
Management of care and maintenance sites	9. The Department of Environment and Heritage Protection and the Department of Natural Resources and Mines establish clear definitions, guidelines and formal protocols for dealing with the ongoing management of, and where necessary the transfer of responsibility for, 'care and maintenance' sites.	EHP will develop robust processes for dealing with mines in care and maintenance. EHP will work with DNRM to develop clear definitions and protocols for the transfer and ongoing management of care and maintenance sites, and for calling on financial assurance.	31/12/2014	The Government has established a 'One Government' approach to achieve best practice management outcomes for care and maintenance mine sites in Queensland. Collaborative management between departments will minimise the potential for harm to the environment, reduce the State's exposure to liability and maintain the value of the mining resource where it can be transferred. The process was established so that EHP and NRM could establish clear processes for identification of and ongoing management of 'care and maintenance' mine sites. An interdepartmental working group was established in 2014 and agreed on the definition, principles, protocols and processes for how the departments will collaborate for mines at risk, which includes managing care and maintenance sites. A senior point of contact position in each department will be responsible for fostering early collaboration, open dialog and ongoing exchange of information to deliver 'One Government' management outcomes.	On Track

* Key to Implementation Status of Agreed Management Actions		
	Complete	The agreed management action has been implemented and management actions have been completed.
	On Track	Implementation of the agreed management action is on track to be completed by, or within three months of, the completion date.
	Minor Issues	Minor issues have arisen which have impeded implementation of the agreed management action by the completion date.
	Major Issues	Major issues have arisen which have impeded implementation of the agreed management action by the completion date.
	Not yet commenced	Implementation of the agreed management action is yet to commence.
	Superseded	The implementation of a recommendation will never be achieved as a new approach has been adopted, or the entire recommendation has been superseded by an alternative recommendation.

Appendix B – Briefing officers

Briefing officers at a public briefing held on 26 November 2014

Department of Environment and Heritage

Dr Glen Brown, Executive Director, Regulatory Capability and Customer Service

Mr Dean Ellwood, Deputy Director-General, Environmental Services and Regulation Division

Ms Anne Lenz, Executive Director, Petroleum, Gas and Compliance

Ms Elisa Nichols, Executive Director, Reform and Innovation

Department of Natural Resources and Mines

Ms Rachael Cronin, Deputy Director-General—Service Delivery

Queensland Audit Office

Mr Darren Brown, Director

Mr Anthony Close, Deputy Auditor-General

