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Submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999

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Submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999

Abstract
Please find following a submission to the Independent Review of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999. This submission focuses on reviewing the level of compliance with Section 516A (Annual reports to deal with environmental matters) of the EPBC Act 1999 by addressing the following questions raised in the Independent Review of the EPBC Act's Discussion Paper: Question 37 – Does the Act contain sufficient comprehensive and appropriate range of enforcement mechanisms? Are those mechanisms capable of deterring and responding to contraventions of the Act? Question 40 – Does the Act provide sufficient guidance for decision makers in their consideration of uncertainty when making decisions under the Act? If not, how should the Act deal with uncertainty? Question 41 – Does the Act provide the appropriate opportunity for external input and scrutiny of decisions made under the Act? Is there sufficient transparency? Are the periods for public consultation adequate? This submission includes a number of recommendations which we believe will improve the level of reporting transparency as per section 516A of the EPBC Act 1999.

Keywords
Environment Protection and Biodiversity Conservation Act 1999; Environmental reporting

Disciplines
Accounting | Business | Public Affairs, Public Policy and Public Administration | Social and Behavioral Sciences

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Submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999

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17th December 2008

Dear Secretariat

Please find following a submission to the Independent Review of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999.

This submission focuses on reviewing the level of compliance with Section 516A (Annual reports to deal with environmental matters) of the *EPBC Act 1999* by addressing the following questions raised in the Independent Review of the EPBC Act's Discussion Paper:

> *Question 37* – Does the Act contain sufficient comprehensive and appropriate range of enforcement mechanisms? Are those mechanisms capable of deterring and responding to contraventions of the Act?
>
> *Question 40* – Does the Act provide sufficient guidance for decision makers in their consideration of uncertainty when making decisions under the Act? If not, how should the Act deal with uncertainty?

Question 41 – Does the Act provide the appropriate opportunity for external input and scrutiny of decisions made under the Act? Is there sufficient transparency? Are the periods for public consultation adequate?

This submission includes a number of recommendations which we believe will improve the level of reporting transparency as per section 516A of the *EPBC Act 1999*.

Please do not hesitate to contact us

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Executive Summary

Current EPBC Act 1999 section 516A reporting requirements

Section 516A (6) of the *EPBC Act 1999* requires Commonwealth government organisations to document in their Annual Report the impact of the organisation's activities, which includes the development and implementation of policies and programs as well as the operations of the organisation, on the environment.

Current EPBC reporting performance

The current level of compliance with section 516A (6) of the *EPBC Act 1999* across the Commonwealth government organisations is mixed. The *FMA Act 1997* bodies have a high level compliance while the level of compliance of Commonwealth Authorities, who operate under the *CAC Act 1997,* varies greatly between organisations. The level of compliance which is of most concern is that of the Commonwealth Companies. These organisations, which operate under both *Corporations Act 2001* and *CAC Act 1997* have very low levels of compliance with section 516A of the *EPBC Act 1999.*

Recommendations:

The following is a summary of the recommendations contained in this submission.

In relation to *Question 37* – Does the Act contain sufficient comprehensive and appropriate range of enforcement mechanisms? Are those mechanisms capable of deterring and responding to contraventions of the Act?

We recommend the development of an appropriate training program to ensure the level of environmental performance and management disclosure improves the transparency Commonwealth government organisations whilst also appropriately discharging their environmental reporting accountabilities under the *EPBC Act 1997*. (Sanctions imposed on organisations for not complying with section 516A of the *EPBC Act 1997* would be counterproductive).

In relation to *Question 40* – Does the Act provide sufficient guidance for decision makers in their consideration of uncertainty when making decisions under the Act? If not, how should the Act deal with uncertainty?

We recommend an explanatory booklet be developed and published to allow preparers of accounts to see examples of disclosures and to allow preparers of accounts to better appreciate reporting alternatives.

In relation to *Question 41* – Does the Act provide the appropriate opportunity for external input and scrutiny of decisions made under the Act? Is there sufficient transparency? Are the periods for public consultation adequate?

The above recommendations will contribute to improving the transparency of the Commonwealth government organisations environmental performance and management.

Introduction

Over the past two decades there has been a significant increase in public awareness of and focus on the environmental impact of organisations operations. Gaffikin suggests that one of the "biggest issues facing the world community" is the concern over the environment (2008, p. 204) while Cooper explains that environmental issues have come to the fore in academia on the assumption that "the very planet is under threat of imminent destruction" (1992, p. 17). This concern is supported by Gray and Bebbington who explain there is an environmental crisis which requires "a substantial response … from organisations in general and businesses in particular" (2001, p. 9).

In the Australian public sector the focus on and reporting of environmental performance and management has increased in recent times, as Burritt and Welch suggest, due to a number of reasons including the Commonwealth's acceptance for the implementation of various international environmental treaties and the level of public concern about the impact of man on the environment (1997a , pp. 3-4). This increased focus has contributed to the development and implementation of more formal environmental performance and management disclosure requirements of Commonwealth public sector organisations.

In the early 1990's the three tiers of government[1] in Australia agreed to adopt a National Strategy for Ecologically Sustainable Development (NSESD) which was developed in consultation with various interest groups from industry, the community and

[1] The three tiers of government –include Local Government, State Government and Commonwealth Federal Government.

government. The strategy was developed with the intention of "integrating environment and development considerations in decision making" (DEWHA 2007a) and reflected the increased recognition in society of the importance of containing, measuring and reporting on the environmental impact of organisations. The NSESD inturn contributed to the development and enactment of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act 1999) which has the objectives: to provide for the protection of the environment; promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and to promote the conservation of biodiversity (section 3(1) *EPBC Act 1999*).

The focus of this submission is on section 516A [refer appendix 1] of the *EPBC Act 1999* which requires Commonwealth government organisations to include in their annual reports a "section detailing their environmental performance and the organisation's contribution to ecologically sustainable development" (DEWHA 2007b, p. 56).

The following section discusses the two pieces of legislation which describes and prescribes the financial reporting requirements and financial accountabilities of Commonwealth government organisations. This legislation was part of the public sector financial reforms developed and implemented in the 1990s.

Financial Reporting Framework

The financial reporting requirements and financial accountabilities of a Commonwealth government organisation [depending on the type of organisation] are outlined in one of two specific pieces of legislation. The first is the *Financial Management and Accountability Act 1997* which provides the "framework for the proper management of public money and public property by the Executive arm of the Commonwealth" (DOFD 2007). The second is the *Commonwealth Authorities and Corporations Act 1997* which "regulates certain aspects of the corporate governance, financial management and reporting of Commonwealth authorities, which are in addition to the requirements of their enabling legislation; and the corporate governance and reporting of Commonwealth companies which are in addition to the requirements of the *Corporations Act 2001*" (DOFD 2008).

The following two sections cover in more detail the *FMA Act 1997* and the *CAC Act 1997.*

Financial Management and Accountability Act 1997 (FMA Act)

The *Financial Management and Accountability Act 1997 (FMA Act)* was developed to provide a framework for the proper management of public money and public property. The Commonwealth government organisations covered by this Act include Departments of State, such as the Department of Treasury; the Departments of the Parliament, such as Department of the House of Representatives; and prescribed Agencies, such as the Bureau of Meteorology, (Part 2, section 5 *FMA Act 1997*). "The *FMA Act 1997* sets out the financial management, accountability [reporting] and audit

obligations of agencies that are financially part of the Commonwealth, in particular: for managing public resources efficiently, effectively and ethically" (DOFD 2007).

Commonwealth Authorities and Companies Act 1997 (CAC Act)

The *Commonwealth Authorities and Companies Act 1997 (CAC Act)* was developed to regulate the financial reporting and accountability of Commonwealth Statutory Authorities (CSAs) and Commonwealth Companies (CCs). CSAs are body corporates incorporated for a public purpose by an Act or by regulations under an Act (*CAC Act ss.7*) and hold money on their own account and are separate legal entities to the Commonwealth. CCs are *Corporations Act 2001* companies in which the Commonwealth has a controlling interest (ss.34). The creation of CSAs and CCs is based on various decisions made by government to operate government-controlled entities "outside a traditional departmental structure" (Uhrig 2003 p.16).

In addition to the legislative frameworks of the *FMA Act 1997* and *CAC Act 1997* Commonwealth government organisations may also be directed by various guidelines [expectations] issued by the central agencies Departments of Finance and Deregulation, Treasury, Prime Minister and Cabinet and the Australian National Audit Office. For example the *Australian Government Procurement Policy Framework* outlines the "Government's expectations for all departments and agencies (agencies) subject to the *Financial Management and Accountability Act 1997* (FMA Act 1997) and their officials, when performing duties in relation to procurement" (DOFA 2005, p. 2).

The following section discusses the purposes of Commonwealth government organisations' annual reports and the guidance provided by key Commonwealth agencies.

Annual Reports

In the Commonwealth public sector the purpose of an organisation's annual report, which is not too different from the purpose of a private sector organisation's annual report, is based around the notion of accountability. Barrett (2003), a past Commonwealth Auditor-General, explained that accountability in the public sector implies conformity with a system of administrative processes designed to provide authority for administrative actions and, at the same time, a framework for reporting and checking on actions taken. This is consistent with Mulgan's (1997, p. 27) explanation that accountability is a complex notion, which implies a relationship of authority based upon the idea that those who are accountable are in some sense subordinate to those to whom they must give account.

The disclosure of financial performance and other relevant data, including environmental performance, in an organisation's annual report contributes to the discharge of the Commonwealth public sector organisation's accountability to government, parliament and society (Gibson and Guthrie 1996, p. 69). The other function of Commonwealth public sector annual reports is to inform stakeholders, especially Parliament, about the performance of the organisation in relation to services provided by Government organisations. *FMA Act 1997* bodies are required to follow the guidance of the Department of Prime Minister and Cabinet's (PM&C) document

Requirements for Annual Reports: For Departments, Executive Agencies and FMA Act Bodies. This document outlines the mandatory information, such as specific legislation requirements, these organisations need to include in their annual reports. For example this document states "the annual report *must* [emphasis added] include in an appendix(s) … ecologically sustainable development and environmental performance reporting (section 516A of *Environment Protection and Biodiversity Conservation Act 1999*)" (PM&C 2007, p. 15). Commonwealth Authorities and Commonwealth Companies, covered by the *CAC Act 1997*, are required, under section 9 of the *CAC Act 1997,* to prepare an annual report that is [as are *FMA Act* bodies' annual reports] tabled in Parliament, and forwarded to the responsible Minister. However there is no specific guidance document, other than the *EPBC Act 1999*, issued by the government that explicitly indicates the public sector organisation must include in its annual report its environmental performance in line with section 516A of the *EPBC Act 1999*.

In 2006 two Finance Circulars were issued, by the then Department of Finance and Administration, outlining the requirement of Chief Executives of *FMA Act 1997* Bodies (FC 2006/08) and directors of *CAC Act 1997* organisations (FC 2006/11) to complete a Certificate of Compliance. The Certificate of Compliance, which is to be prepared separate from an organisation's annual report, is to be sent to the organisation's relevant Minister and a copy forwarded to the Minister for Finance and Administration (FC 2006a, p. 1; FC 2006b, p. 2). The purpose of the Certificate of Compliance is to assist the Chief Executives or the directors, depending on the organisation, in complying with the reporting requirements on compliance and financial sustainability (FC 2006a;

FC 2006b). Unfortunately the Certificate of Compliance does not require the Chief Executives or the directors to indicate explicitly whether or not their organisation has complied with the *EPBC Act 1999*. Rather its focus is on "the agency's compliance with the Australian Government's financial management framework" (FC 2008 p. 2). However section 8 of Finance Circular 2008/04 states:

> "The Certificate also requires Chief Executives to state whether the agency is operating within the agreed resources for the current financial year and has adopted appropriate management strategies for all currently known risks [including environmental risks?] that may affect the financial sustainability of the agency" (FC 2008 , p. 2).

This section could be interpreted that environmental risks should also be taken in consideration when developing and implementing "appropriate management strategies" to reduce the likelihood of an event 'risk' which "may affect the financial stability" however without an explicit requirement it is unlikely public sector organisations will disclose such risks.

While Commonwealth public sector annual reports contribute to the discharge of their accountability to government, parliament and society Burritt and Welch explain that:

> the giving of an account is not enough for an accountability relationship to exist; there is also to be a process for holding the accountor to account for actions taken and consequences incurred. Hence, enforcement mechanisms are crucial to accountability. Enforcement mechanisms are related to the power of the accountee" (1997b, p.533)

The following section will discuss the *Environment Protection and Biodiversity Conservation Act 1999.* This discussion will place particular focus on the required environmental performance and management information to be included in a Commonwealth government organisation's annual report as outlined in Section 516A of the Act.

Environment Protection and Biodiversity Conservation Act 1999

In 1992 the Heads of Government endorsed the National Strategy for Ecologically Sustainable Development (NSESD) which had been developed over a period of 5 years (DEST 1996, p. 1). The NSESD included 5 key principles: integrating economic and environmental goals in policies and activities; ensuring that environment assets are properly valued; equity within and between generations; risk and irreversibility is dealt with cautiously; and recognising the global dimension. (DEWHA 2007a). The *Environment Protection and Biodiversity Conservation Act 1999* objectives which include: to provide for the protection of the environment; promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and to promote the conservation of biodiversity (section 3(1) EPBC Act 1999) reflects the NSESD's principles. The *Environment Protection and Biodiversity Conservation Act 1999* provides a "framework for a more effective national approach to environmental management, ensuring resources are focussed on delivering better environmental outcomes at all levels of government" (ParlInfo Web 1998).

The *EPBC Act 1999* is a broad reaching Act which requires Departments of State and any other Agency [*FMA Act 1997* bodies]; Commonwealth authorities; Commonwealth companies [*CAC Act 1997* organisations]; and any other Commonwealth agency required by law to provide an annual report to a responsible Minister (DEWHA, 2003, p. 1) to report under section 516A of the *EPBC Act 1999.* Section 516A (6) defines the type and nature of environmental performance and management information to be included in the annual reports of Commonwealth government organisations covered by the *EPBC Act 1999*. For example, the information presented in the annual report needs to include information on how the organisation's activities accorded with the principles of ESD; how the outcomes of the organisation contributes to the ESD; the effect of the activities on the environment; and measures the organisation is taking to minimise the impact of its activities on the environment. The requirements outlined in Section 516 A (6) "ensure the Commonwealth government is publicly reporting information relevant to its environmental performance" (DEWHA, 2003, p. 1).

While these reporting requirements of section 516A of the *EPBC Act 1999* are seen as a positive step forward there are concerns these requirements which are guiding Commonwealth public sector organisations to measure their performance in a way which does not actually address the environmental impact issues of Commonwealth government organisations. Indeed, the reporting requirements of section 516A of the *EPBC Act 1999* could be viewed as being based on the management concept of efficiency rather than on the more complex concept of justice which would address concerns such as social justice, and the impact of economic activity (Gaffikin 2008, p. 210; Ball and Grubnic 2007, p.

257; Funnell and Cooper 1998, p. 85). As Burritt and Welch outline "as commercial motives gain importance and attention" (2007a, p. 6) public sector managers may focus on those environmental performance measures which are easy to manage and disclose such as "such as recycling, energy efficiency and waste management [efficiency based measures] (Burritt and Welch 2007a, p. 6). Ball and Grubnic suggest that "departments are reporting on operational or housekeeping issues" (2007, p. 257) rather than on the environmental impact of government organisations' outcomes [government policy]. The reporting requirements could be improved by reflecting that "the nature of the tasks performed, a social value base and a role in public policy, that sets the public sector apart from the private sector" (Ball and Grubnic, 2007, p. 249).

The following section discusses the sample selection of the study and the qualitative data collected.

QUALITATIVE DATA

Sample selection

There are 89 entities under the *CAC Act 1997* which include 26 Commonwealth Companies and 63 Commonwealth Authorities. Of the 26 Commonwealth Companies four are classified as material entities as they comprise 99% of revenues, expenses, assets and liabilities of the Commonwealth companies. These four Commonwealth companies have been included in this study.

There are 24 of the Commonwealth Authorities classified as material entities. From these 24 material Commonwealth Authorities 14 (58%) have been included in this

study. Ten were excluded either because it was not possible to obtain sufficient complete data for this study or the nature of the organisation was significantly unique that inclusion would not add to the study, for example the Australian Reinsurance Pool Corporation and the Coal Mining Industry (Long Service Leave Funding) Corporation.

Under the *FMA Act 1997* there are 99 agencies (DOFD 2008b), including 58 Statutory Agencies and 4 Executive Agencies. 18 of these Statutory and Executive Agencies are defined as material entities and from this group 8 (44%) were included in this study. It was not possible to obtain sufficient complete data for the period 2002 to 2007 for ten material Statutory and Executive Agencies so they were also excluded from this study.

The Annual Reports for the period 2002-03 to 2006-07 for each of the 26 selected Commonwealth government organisations were reviewed and information on the level and detail of their compliance with *EPBC Act 1999* was collected. The results from this initial study are presented in the next section.

Results

The level of environmental performance and management reporting of the 26 government organisations was assessed based on four distinct qualitative measures. The organisations that complied with *EPBC Act 1999* Section 516 and provided specific details of their environmental performance and management, in line with section 516A, in their annual report were assessed as ***Detailed***. The organisations which discussed their environmental performance and management in some detail and complied with the *EPBC*

Act 1999 Section 516 but without specific details were assessed as ***Broad***. The final two levels were ***Min*** for very basic reference to the environment and ***Nil*** for no reference. Details of the environmental performance and management of selected Commonwealth public sector organisations, in line with Section 516A, is outlined below.

Organisation	2002-03	2003-04	2004-05	2005-06	2006-07
FMA Act Bodies					
Australian Electoral Commission	Broad	Broad	Broad	Broad	Broad
Australian Customs	Detailed	Detailed	Detailed	Detailed	Detailed
Centrelink	Detailed	Detailed	Detailed	Detailed	Detailed
BoM	Detailed	Detailed	Detailed	Detailed	Detailed
Family Court of Aust	Broad	Broad	Broad	Broad	Broad
National Capital Authority	Detailed	Detailed	Detailed	Detailed	Detailed
Medicare Aust	Min	Broad	Broad	Broad	Detailed
Australian Research Council	Detailed	Detailed	Detailed	Detailed	Detailed
CAC Act Commonwealth Authorities					
National Museum	Detailed	Detailed	Detailed	Detailed	Detailed
Defence Housing Authority	Min	Min	Min	Broad	Broad
Tourism Aust	Min	Min	Min	Min	Min
CSIRO	Detailed	Detailed	Detailed	Detailed	Detailed
Aust Post	Detailed	Detailed	Detailed	Detailed	Detailed
ABC	Broad	Broad	Broad	Broad	Broad
SBS	Broad	Broad	Broad	Broad	Broad
Comcare	Min	Min	Min	Nil	Nil
National Gallery	Min	Min	Min	Broad	Broad
National Library	Min	Min	Broad	Broad	Broad
Indigenous Business Aust	Nil	Nil	Nil	Min	Min
Australian Hearing Services	Min	Min	Min	Min	Detailed
ANSTO		Detailed	Detailed	Detailed	Detailed
Reserve Bank	Min	Min	Min	Min	Min
CAC Act Companies					
Film Finance Corp	Nil	Nil	Nil	Nil	Nil
Aust Rail Track Corp	Nil	Min	Min	Min	Broad
ASC Pty	Min	Min	Min	Min	Broad
Medibank Private	Min	Min	Nil	Nil	Nil

FMA Agencies

The *FMA Act 1997* organisations in the study showed a very high level of compliance with section 516A of the *EPBC Act 1999*. This result is consistent with Burritt and Welch's findings the volume of budget entity [organisations[2]] environmental disclosures is greater than for non-budget entities (1997b). The annual reports of the majority of these eight *FMA Act 1997* statutory and executive agencies in the study provided specific details of their environmental performance and management in line with the requirements of section 516A. For example in the Bureau of Meteorology's 2006/07 Annual Report each of the sub sections of Section 516A (6) are specifically addressed. The following is an extract from the Bureau of Meteorology's 2006/07 Annual Report

> **2. How the outcomes (if any) specified for the agency in an Appropriations Act relating to the period contribute to Ecologically Sustainable Development (ESD).**
>
> The role of the Australian Bureau of Meteorology is to achieve the major outcome of Australia benefiting from meteorological and related science and services. While not explicitly contributing to ecologically sustainable development, the quality information and knowledge provided in the Bureau's outputs contribute to ecologically sustainable development decision making processes across the Australian community, covering diverse areas such as marine, agriculture, water, climate and aviation. (BoM, 2007, p. 228)

Another of the organisations in this group, Medicare Australia, had a compliance rating of ***Min*** in 2002-03, however over the rest of the study period the organisation's

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[2] The classification is based on whether funding is predominantly obtained through the budget appropriation mechanism [budget entities] or through market sources [non-budget entities] (Burritt and Welch 1997a; p. 2)

compliance with section 516A of the *EPBC Act 1999* increased to a rating of ***Detailed*** in 2006-07. Another of the organisations in this group, the Australian Electoral Commission's (AEC), level of compliance, for the full period of the study, has been rated as ***Broad***, however it is important to realise the AEC complied with section 516A of the *EPBC Act 1999*. Rather than addressing specifically the reporting requirements of section 516A of the *EPBC Act 1999* the AEC included in its annual reports a section titled "Compliance Index" (AEC 2007, p. 228) where information on the organisation's compliance with various legislative requirements can be located.

Commonwealth Authorities

The level of compliance of the 14 Commonwealth Authorities with section 516A of the *EPBC Act 1999* was not as consistent as the eight *FMA Act 1997* organisations.

The CSIRO's, Australian Post's, ANSTO and National Museum's annual reports from 2002-03 were very explicit and detailed the organisation's environmental performance and management. For example National Museum's 2006-07 Annual Report presented in table form (refer Appendix 3) the organisation's performance against each of the sub sections of Section 516A (6). The CSIRO's 2006-07 Annual Report, pages 123 to 125, includes graphs which explicitly showed the organisation's performance on a number of key environmental indicators including electricity consumption, water consumption, waste management and greenhouse gas emissions. This is type of reporting is consistent with Burritt and Welch's prediction that public sector managers will focus on disclosing physical efficiency based measures as they are easy to manage and disclose

(Burritt and Welch 2007a, p. 6). Similar to the Australian Electoral Commission the CSIRO also includes a "Compliance index – statutory reporting requirements" (CSIRO 2007, p. 227) which explicitly outlines where in the annual report information can be located on the organisation's compliance its statutory reporting requirements including section 516A of the *EPBC Act 1999*.

The level of compliance with *EPBC Act 1999* of a number of other Commonwealth Authorities was significantly different to that of the CSIRO and National Museum. For example during the period 2002 – 2007 Tourism Australia did not refer to *EPBC Act 1999* in any of their annual reports. Tourism Australia's main comments under the section *Ecologically sustainable development & environmental performance* in the organisation's annual reports were based around the development of "sustainable tourism industry in Australia" (Tourism Australia Annual Report 2006-07, p. 24) rather than addressing the reporting requirements of Section 516A of the *EPBC Act 1999.* This low level of compliance is confusing as Tourism Australia states that:

> Tourism Australia was also one of 11 agencies represented on a whole of government Sustainability Working Group, which has been piloted by the Department of the Environment and Water Resources, to continuously improve corporate environmental performance (Tourism Australia Annual Report 2006-07, p. 24),

yet they don't actually disclose any of their corporate environmental performance in their annual reports. Similarly the Defence Housing Authority provided only the following reference to environmentally sustainable development in their 2002-03 and 2003-04 annual reports:

> *Environmentally sustainable development*
> DHA [Defence Housing Authority] is conscious of its responsibilities to the environment when undertaking developments and housing construction. All new DHA houses have a four star energy rating. (DHA 2003, p. 73; DHA 2004, p. 44)

This response is very limited and does little to inform users of the organisation's annual reports about the environmental performance and management of the organisation.

A different approach by a Commonwealth Authority, to say something without really saying anything, was that of Comcare, who's mission is defined as "To work in partnership with our customers to reduce the human and financial costs of workplace injuries and disease in the jurisdiction" (Comcare, 2005, p. 2). Comcare seems to have missed the point of the *EPBC Act 1999* as their response to the Section 516 A of the *EPBC Act 1999* in their annual reports for the period 2002 -2007 was

> *No*[emphasis added] Comcare activities have been identified as having an environmental impact as described under s.516A of the EPBC Act 1999 (Comcare 2003, p. 187)

This response indicates that there is a perception that the Act allows broad levels of interpretation, however, section 516 (6) of the Act explicitly states

> *Content of report*
> (6) A report … relating to a body or person (the ***reporter***) for a period must: …
> (c) *document the effect of the reporter's activities on the environment* [emphasis added] (EPBC Act 1999, section 516A)

The use of electricity, water and other basic consumables in Comcare's operations would fall under this section of the Act. It appears Comcare, along with others, has misinterpreted these requirements.

Commonwealth Companies

Of the three Commonwealth government organisational groups the Commonwealth companies group had by far the lowest level of compliance with *EPBC Act 1999.* These Commonwealth government organisations, as discussed earlier in this submission, are *Corporations Act 2001* companies in which the Commonwealth has a controlling interest (ss.34) and are also the closest in nature and function to private sector organisations. One of the more notable points from this study is that while two of the companies, ASC[3] Pty Ltd and Australian Rail Track Corporation, have marginally improved the reporting in their annual reports of their environmental performance and management over the period of 2002 – 2007 Medibank Private Ltd has actually decreased its level of reporting. Another interesting point to note is in relation to Film Finance Corporation Australia Ltd's level of compliance with section 516A of the *EPBS Act 1999*. The Film Finance Corporation Australia's comment on their environmental performance and management reporting in all five annual reports was "the company's operations are not subject to any *significant* [emphasis added] environmental regulations under either commonwealth or state legislation" (FFC 2007, p, 47). This response is very similar to Comcare's reporting and further supports the myth that compliance to the *EPBC Act 1999* is open to interpretation.

DISCUSSION

In 2003 the Australian National Audit Office (ANAO) published a performance audit report on *Annual Reporting on Ecologically Sustainable Development*. This

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[3] Formerly known as Australian Submarine Corporation.

performance audit was conducted on "45 Commonwealth departments, agencies and other bodies" (ANAO 2003, p. 15). Also reviewed in this performance audit were the annual reports of 20 agencies for the 2000-01 and 2001–02 financial years. One of the key findings of this performance audit was

> "… there is considerable scope for improvement in relation to the quality of agencies' annual reports; especially in relation to compliance with the EPBC Act and articulating agencies' contribution to broader ESD outcomes [section 516A]" (ANAO 2003, p. 15).

In relation to the specific reporting requirements of section 516A (6) of the *EPBC Act 1999* the ANAO found there were breaches of all five requirements of the Act. Indeed "fifty per cent of agencies reviewed did not comply with section 516A (6) (c), which requires agencies to document the effect of their activities on the environment" (ANAO 2003, p. 24). This study has shown a number of Commonwealth organisations, for example Comcare, Tourism Australia and Film Finance Corporation Australia Ltd, are still not complying with sections of the *EPBC Act 1999*. Given the increased public awareness of the environmental impact of organisations operations on the environment and the *EPBC Act 1999* it is difficult to identify specifically the reason for this lack of compliance. One possible reason is the misconception that key sections of the Act, for example section 516A (6) (C) is open to broad interpretation.

Another of the findings of the 2003 ANAO performance audit is that there was a widely held view in non-environmental agencies that ecological sustainable development is not considered relevant (ANAO 2003, p. 16). The study on which this submission is based indicates this view appears to still be the case in some of the *CAC Act 1997*

organisations, particularly Medibank Private and Film Finance Australia. The results of the Commonwealth Companies in this study indicates these organisations, due to their ability to make and keep and profit, may regard the social costs of their environmental performance and management as "competitively sensitive and will be less willing to disclose (Burritt and Welch, 1997a, p. 5).

The main conclusion be drawn from the review of these organisations' environmental performance and management reporting is that compliance with the reporting requirements of the *EPBC Act 1999* for Commonwealth government organisations is improving, particularly for *FMA Act 1997* bodies and Commonwealth Authorities. Another conclusion drawn from this review is that the poor level of EPBC Act reporting compliance, in relation to Section 516A requirements, of the Commonwealth Companies may be a reflection of their belief that society does not as yet consider environmental reporting in annual reports to an as important avenue to gain organisational legitimacy as the avenue provided by the pursuit of financial objectives.

CONCLUSION

The development in the early 1990's of a National Strategy for Ecologically Sustainable Development and the subsequent enactment of the *EPBC Act 1999* has led to a general increase, and improvement, of the environmental performance and management reporting in the annual reports of Commonwealth government organisations. This study reviewed the level of compliance with Section 516A of the *EPBC Act 1999* of 26 material Commonwealth government organisations over the period 2002 – 2007. While

the results are somewhat mixed it appears the Commonwealth public service and individual Commonwealth government organisations have started to place increased importance in considering and acknowledging their impact on the environment.

Future studies in this area could review in more detail the level of compliance of all Commonwealth public sector organisations, rather than just a small sample, with section 516A of the *EPBC Act 1999*. This would allow more meaningful conclusions to be drawn and more accurate analysis to be completed on the level of compliance with section 516A of the *EPBC Act 1999* of Commonwealth government organisations. Future research could also be conducted on Commonwealth public sector organisations to determine whether any of these organisations try to protect themselves from the disclosure of poor environmental performance through: educating stakeholders on the organisation's intentions to improve performance; changing stakeholders' perceptions; directing attention away from issues of concern; and changing expectations about the organisation's performance (Burritt and Welch 1997b, p. 535).

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Appendix 1- Section 516A Annual reports to deal with environmental matters

Agency annual reports

(1) The Head of an Agency (as defined in the *Public Service Act 1999*) must ensure that an annual report under that Act on the Agency's activities complies with subsection (6).

Annual reports of Commonwealth authorities

(3) The directors of a Commonwealth authority (as defined in the *Commonwealth Authorities and Companies Act 1997*) must ensure that an annual report relating to the authority prepared under that Act complies with subsection (6).

Annual reports of Commonwealth companies

(4) A Commonwealth company (as defined in the *Commonwealth Authorities and Companies Act 1997*) that is a Commonwealth agency must ensure that the documents given to the responsible Minister (as defined in that Act) under section 36 of that Act include a report complying with subsection (6).

Annual reports of other Commonwealth agencies

(5) A Commonwealth agency that is:
   (a) established by or under a law of the Commonwealth; and
   (b) required by law to give the Minister responsible for it an annual report; and
   (c) not described in subsection (3) or (4);

must ensure that the annual report complies with subsection (6).

Content of report

(6) A report described in subsection (1), (3), (4) or (5) relating to a body or person (the ***reporter***) for a period must:
   (a) include a report on how the activities of, and the administration (if any) of legislation by, the reporter during the period accorded with the principles of ecologically sustainable development; and
   (b) identify how the outcomes (if any) specified for the reporter in an Appropriations Act relating to the period contribute to ecologically sustainable development; and
   (c) document the effect of the reporter's activities on the environment; and
   (d) identify any measures the reporter is taking to minimise the impact of activities by the reporter on the environment; and
   (e) identify the mechanisms (if any) for reviewing and increasing the effectiveness of those measures.

(7) In subsection (6):

activities includes:
   (a) developing and implementing policies, plans, programs and legislation; and
   (b) the operations of a department, authority, company or agency referred to in this section.

Appendix 2

Extract from National Museum of Australia Annual Report 2006 – 07

Environmental performance and ecologically sustainable development

During 2006–07, the Museum continued its commitment to the conservation of natural resources through improved energy management and the implementation of a number of other initiatives aimed at minimising the impact on the environment from its operations. Under the Environment Protection and Biodiversity Conservation Act 1999, all Commonwealth agencies are required to report on their environmental performance and contribution to ecologically sustainable development. The table below details the Museum's key activities during 2006–07.

Paragraph 516A(6)(a)	How the activities of the organisation accord with the principles of Ecologically Sustainable Development (ESD)	The Museum has in place an Environmental Management System (EMS) that meets or exceeds the requirements of ISO14001 to assist all staff to undertake their work in a manner that minimises the risk to the environment. A key element of the EMS is the Environmental Management Policy, which highlights the Museum's commitment to operate within the principles of ESD wherever possible. The promotion of ecologically sustainable development is woven through the content of the Museum's permanent and temporary exhibitions, as well as its programs designed for students, its public programs, and its administrative and decision-making processes. Examples include the Old New Land gallery, which emphasises the interrelationship between humans and the environment, particularly in 'Australians Living Inland', which explores the relationship of three communities, Kalgoorlie, Wagga Wagga and Alice Springs, to their environment and water sustainability. The Museum continues to contribute both funding and expertise, wherever possible, to the protection and improvement of the Canberra environment via its partnerships with The Australian National University, Australian National Botanic Gardens, CSIRO Black Mountain, Environment ACT, Lower Sullivans Creek Catchment Group and the National Capital Authority. An example of this is the Museum's ongoing contribution of resources to the Lower Sullivans Creek Catchment ecological survey, a nationally significant project that aims to develop a biodiversity management plan for the Lower Sullivans Creek Catchment area.

(NMA 2007, p. 194)