



## **Joint Committee of Public Accounts and Audit**

Review of the Auditor-General Act 1997

Opening Statement by the National Environmental Law Association Ltd

19 February 2021

### **Introduction**

Good afternoon Chair and Committee Members.

The National Environmental Law Association Ltd (NELA) is pleased to have this opportunity to speak to its submission to the Committee's review of the *Auditor-General Act 1997*.

The key issues that NELA raised in its submission of 20 November 2020 included that:

- the ANAO's governance framework and independence should be strengthened, with increased funding, with the *Auditor General Act 1997* and Administrative Arrangements Order being amended so that the ANAO becomes a parliamentary department, alongside the four other parliamentary departments;
- rule 17AG(3) of the Public Governance, Performance and Accountability Rule 2014 made under the *Public Governance, Performance and Accountability Act* (PGPA) Act should be amended to include reference to the external scrutiny (reviews and decisions) applied by international governmental organisations including United Nations agencies, regional organisations and convention bodies, so as to enhance Australian Government transparency and accountability; and
- the operation of Regional Forest Agreements be audited as a matter of urgent priority and that amendments to the EPBC Act be considered if appropriate as a result of the audit, so as to better protect Australia's declining biodiversity.

As the final report of Professor Graeme Samuel AC's review of the EPBC Act is now publicly available (**the Review Report**), NELA makes additional recommendations concerning the ANAO's governance framework in light of several recommendations in the Review Report.

These additional introductory comments focus on the Review Report's recommendation that a new statutory position of Environment Assurance Commissioner (**EAC**) be created, and its comment that the functions and performance of the EAC should lead to better outcomes than the ANAO has been able to achieve in relation to audits of Commonwealth environmental agencies, warrant further consideration.

Recommendation 23 of the Review Report is that a statutory position of EAC be created to:

- oversee audit of decision-making by the Commonwealth under the EPBC Act, including the Office of Compliance and Enforcement;
- oversee the audit of an accredited party under an accredited arrangement;

- conduct performance audits, like those of the Auditor General and set out in the *Auditor-General Act 1997 (Cth)*; and
- provide annual reporting on performance of Commonwealth and accredited parties against National Environmental Standards.
- This report should be provided to the Environment Minister, to be tabled in the Australian Parliament in a prescribed timeframe.

Recommendation 24 provides that in the second tranche of reform, the EPBC Act should be amended to replace outdated bilateral agreement processes with accreditation processes based on National Environmental Standards, that take into account the independent advice of the Environment Assurance Commissioner, amongst other matters.

The Review Report recommends that the EAC should be supported by a standing, well-resourced audit function within the Department of Agriculture, Water and the Environment (DAWE).

EAC recommendations on issues of concern would be reported to the Commonwealth Environment Minister and be tabled in Parliament within a reasonable timeframe specified in the Act.

The Review Report is critical of the outcome effectiveness of the ANAO's audits, suggesting that they are *ad hoc*, with a lack of accountability in the implementation of actions to address the ANAO's recommendations.

NELA is concerned that the Review Report does not clearly articulate the difference between internal and external audit, and likely stakeholder perceptions of these Review Report recommendations if implemented.

NELA considers that there is an apparent lack of independence created by the recommendation that the statutory EAC be located within the executive government agency DAWE, and that DAWE will provide the staff to support the proposed EAC. The proposed EAC seems to be more like an internal audit function rather than an independent audit function.

The Review Report recommends that the EAC provide independent advice on national environmental standards, and by implication, on bilateral agreements with the States and Territories.

It would be inappropriate for the EAC to have policy input to the development of agreements and standards if the EAC is also to have responsibility for the independent audit of statutory compliance, and the conduct of assurance and performance audits.

For the EAC to be involved in policy development in relation to the proposed national environmental standards compromises perceptions of independence.

NELA considers that were the ANAO to become a Parliamentary Department, as NELA has recommended, with an equivalent role to the proposed EAC created within that department, that should provide a stronger independent audit and oversight function with less appearance of a compromised location and compromised staff.

NELA recommends that the JCPAA consider the role and functions of New Zealand's Parliamentary Commissioner for the Environment. The work of the Commissioner should have the effect of improving the implementation of the EPBC Act and the monitoring, evaluation and reporting of statutory compliance.

A position equivalent to the EAC, with the appointee highly qualified in fields of science and independent audit, should be appointed under amendments to the Auditor-General Act, and their reports should be submitted to the Parliament rather than to the Minister, for consideration initially by the most appropriate Parliamentary Committee.

NELA suggests that the appointment process for the EAC should be equivalent to that of the Auditor-General, but for a term of five years with the possibility of reappointment – i.e., the JCPAA should be required to approve their appointment that would be formalised by the Governor-General

approving the recommendation of the Prime Minister after JCPAA has approved the proposed appointee.

NELA welcomes the Review Report recommendation 37, that as part of tranche 3 of its proposed reforms, the Commonwealth should pursue harmonisation with states and territories in relation to national and international reporting and develop a nationally agreed system of environmental-economic accounts.

The Review Report recommends that consolidated monitoring and reporting on environmental outcomes across Australia should be achieved through the State of the Environment report and other reporting.

NELA suggests that further thought has to be given to the interaction of the proposed EAC with other tiers of government. The Review Report suggests that the EAC should oversee the audit of an accredited party under an accredited arrangement. Does this raise Constitutional issues? Can Commonwealth audit powers be exercised in relation to state government agencies?

This is a serious issue that justifies the Commonwealth retaining approval powers in relation to development proposals in states and territories that can affect matters of national environmental significance, as the Commonwealth is likely to have access to documents and relationships with stakeholders that an independent auditor can investigate and assess. If approval powers are delegated to the states and territories, there may be constitutional and intergovernmental impediments that will unnecessarily constrain the EAC's proposed audit function.

NELA supports the Review Report recommendation that the EPBC Act be amended to replace the Indigenous Advisory Committee with the Indigenous Engagement and Participation Committee. Its mandate would include monitoring compliance with a new national environmental standard for Indigenous engagement and participation in decision-making, and the Minister would be required to demonstrate how Indigenous knowledge and science is considered in decision-making.

NELA considers that the implementation of and compliance with the new National Environmental Standard for Indigenous engagement and participation in decision-making should be the subject of both internal audit, and external independent audit by the ANAO.

NELA's view is that the EAC as proposed by the Review Report should be located within the ANAO as a Parliamentary employee, whether the position is titled the EAC, the Parliamentary Commissioner for the Environment, or some other title.

Thank you, and NELA will endeavour to respond to your questions.