RESEARCH ONLINE

University of Wollongong
Research Online

Faculty of Law - Papers (Archive)

Faculty of Law, Humanities and the Arts

2001

Environmental Performance Auditing of Government - the Role for an Australian Commissioner for the Environment

G. L. Rose
University of Wollongong, grose@uow.edu.au

Publication Details

This article was originally published as Rose, G, Environmental Performance Auditing of Government - the Role for an Australian Commissioner for the Environment, Environmental & Planning Law Journal, 18(3), June 2001, 293-318.

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: research-pubs@uow.edu.au

RESEARCH ONLINE

Environmental Performance Auditing of Government - the Role for an Australian Commissioner for the Environment

Abstract
Commonwealth performance in environmental management can be systematically assessed and reviewed through public sector environmental audits. Australia's experiences in public sector environmental audit indicate that its difficulties lie in inadequate available baseline data and vague policy benchmarks. Significant governmental efforts are being made to address the national data problem but not the benchmarks. Recent trends towards more systematic government performance reporting may eventually feed back to improve benchmarks. Some urge the establishment of an Australian Commissioner for the Environment to implement performance reporting, amongst other tasks. The potential role of the Commissioner as national auditor in particular is examined, drawing largely on Canadian experience.

Disciplines
Law

Publication Details
This article was originally published as Rose, G, Environmental Performance Auditing of Government - the Role for an Australian Commissioner for the Environment, Environmental & Planning Law Journal, 18(3), June 2001, 293-318.

This journal article is available at Research Online: http://ro.uow.edu.au/lawpapers/39

Environmental Performance Auditing of Government – the Role for an Australian Commissioner for the Environment

GREGORY ROSE

Associate Professor, Faculty of Law, University of Wollongong

Commonwealth performance in environmental management can be systematically assessed and reviewed through public sector environmental audits. Australia's experiences in public sector environmental audit indicate that its difficulties lie in inadequate available baseline data and vague policy benchmarks. Significant governmental efforts are being made to address the national data problem but not the benchmarks. Recent trends towards more systematic government performance reporting may eventually feed back to improve benchmarks. Some urge the establishment of an Australian Commissioner for the Environment to implement performance reporting, amongst other tasks. The potential role of the Commissioner as national auditor in particular is examined, drawing largely on Canadian experience.

There is so much governmental effort wasted in penning placebo policies on the environment! Why would anyone want to waste more effort in a further paper chase, auditing follow up? Yet, given careful attention, these wasting, dusty policy commitments might have useful lives. Performance audits are essential to ensure their vitality.

Current practice and possibilities for auditing performance of environmental commitments by the Commonwealth government in Australia are explored in this article. Whether the task of public environmental performance auditing should be mandated to a new public office, such as a Commissioner for the Environment, or to an existing office, such as the Australian National Audit Office, is considered. The object is to inform aspects of the current debate concerning establishment of a Commonwealth Commissioner for the Environment.

Defining environmental performance audit

Environmental auditing emerged as a named activity in the 1970s. It was widely taken up by companies in the 1980s due to a number of factors: the increasing requirements of, and penalties associated with, governmental environmental regulation; the need to manage civil liability risk; the opportunities to increase efficiency gains through improved internal management systems; and the need for better public relations management as corporate environmental performance came under increasing public scrutiny. These trends continue to promote the use of environmental audit today and environmental audit is still primarily a private sector activity.[1]

The International Standards Organisation defines an environmental audit as

> "a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether specific environmental activities, events, conditions, management systems, or information about these matters conform with audit criteria, and communicating the results of this process to the client".[2]

* The author thanks those who gave freely of their time and knowledge in interviews for this article.

[1] Gregory P Johnson, *The ISO 14000 EMS Audit Handbook* (St Lucie Press, Boca Raton, USA 1997), p 2.

[2] ISO 14010, s 3.9. The International Chamber of Commerce definition of environmental auditing, which is widely accepted by industry, addresses essentially private sector activity and is less suited to public sector auditing is: a management tool comprising a systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are performing with the aim of helping to safeguard the environment by: facilitating management control of

This definition connotes different activities in distinct circumstances. It covers, for example, a one-off project assessment, such as management of sediment dredging in a port development, or ongoing systematic review of organisational performance, for example of internal management of energy efficiency.[3] Thus, because the spectrum of activities described as "environmental auditing" is broad, the term is often used loosely. To avoid confusion it is necessary to distinguish the fragmented meanings of the term and to identify exactly which environmental audit approaches and methodologies are the appropriate subject of consideration in public sector auditing of its own environmental performance.

Legal compliance, due diligence and performance audits distinguished

Common criteria for environmental audits in the private sector are legal compliance and exercise of due diligence. Compliance auditing determines whether an organisation is operating in compliance with all relevant legal obligations, usually set out in legislation and regulations. Typically, compliance audits identify specific problems of non-compliance with environmental regulations. Additionally, an audit may also be designed to ensure the exercise of due diligence in fulfilling relevant legal obligations. It then becomes a tool to assess the risk of non-compliance and to institute appropriate risk control measures.[4]

A legal obligation is central to compliance and due diligence audits. By contrast, a performance audit is as broad as the objectives chosen by the organisation . Thus, a performance audit may examine, inter alia, whether the organisation is acting in compliance with all relevant legislation and how to manage the risk of non-compliance, as subsidiary matters to assessment of organisational environmental objectives. [5]

Performance auditing is probably a more appropriate and useful form of environmental audit for public sector needs. Although it is now usual for most arms of government to be bound to comply with environmental laws in the same way as private sector entities,[6] it is not always the case that the crown is bound and that a compliance audit is appropriate.[7] Further, the traditional responsibility of government for natural resources management, managed through policy setting, lends itself to assessment of the performance.

The 4 "E"s of performance auditing

Public sector performance auditing aims to determine whether an organisation is achieving its objectives effectively, efficiently and economically. These criteria are referred to as "The 3 'E's" and have been defined as follows:

- "Economy" is 'the acquisition of the appropriate quality and quantity of financial, human and physical resources at the appropriate times and at the lowest cost (that is, spending less);
- "Efficiency" is making sure that the maximum useful output is gained for any given set of financial, human or physical resource inputs, or is minimised for any given quantity and quality of output provided (that is, spending well);
- "Effectiveness" is the achievement of the objectives or other intended results of programs, operations or activities (that is, spending wisely).[8]

environmental practices, and assessing compliance with company policies, which includes meeting regulatory requirements. Ruth Geldard, *Environmental Auditing in Victoria: Private enterprise and public sector examples* (Monash University LLM thesis, 1995), p 1.

[3]. The term has been used to cover a wide range of audit procedures, including: Performance Audits (see below), Environmental Management Systems Audits (see below), Registration Audits (that is, for certification under a management standard), Compliance Audits (see below), Site Audits (for example, Examination for contamination, etcetera), Prediction Audits (risks and trends), and Industry Audits (for example, mining, timber sector performance).

[4] Undertaking environmental audits to ensure exercise of due diligence can also provide a defence to some environmental offences, or be a mitigating factor in environmental prosecutions. Allen Allen and Hemsley *Due Diligence a Guide for Directors* (Australian Institute of Company Directors, Sydney, (no date)), p 20.

[5] Neil Gunningham and James Prest, *Environmental Audit as a Regulatory Strategy: Prospects and Reform* 15 *Sydney Law Review* 492 [1993], 495.

[6] For example, Commonwealth of Australia *Environment Protection and Biodiversity Conservation Act* 1999, s 4.

[7] For example, the Royal Australian Navy is not bound to implement pollution control measures that are binding upon Australian merchant ships.

[8] Parliament of Victoria, Public Accounts and estimates Committee Issues Paper No 3 *Environmental Auditing and Reporting* (1998), p 31. The Australian National Audit Office (ANAO) takes a slightly different approach, usually rolling

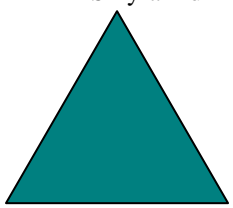
A performance audit, per se, may concern any organisational objective, such as growth in market share. An environmental performance audit is a simply a performance audit concerned with the organisation's environmental objectives. It is premised upon the organisation identifying one or more environmental objectives, which give rise to "model" or "best practice" performance criteria. If there are no policies, objectives and strategies it is very difficult to do a performance audit because there is nothing objective against which to assess performance. It is important to note that performance audits do not audit the appropriateness or adequacy of government policy. They cover merely the administration of existing policy.

A fourth "E", advocated by some environmental auditors, would be the regular, automatic inclusion of "environmental sustainability" in all organisational performance audits.[9] It is premised on the principle that all organisations should have internalised some environmental objectives. Under current performance audit practice, however, environmental sustainability aspects are addressed only when an audit is specifically commissioned to examine them.

Auditing performance against environmental management system targets

Environmental management system (EMS) audits assess performance against targets set out in the EMS. Thus, EMS auditing is a sub-category of performance auditing. The International Standards Organisation (ISO) is negotiating a series of international standards for environmental management – the ISO 14000 standards series. These include an internationally accepted model for an EMS, identified as ISO 14001, adopted in 1996.[10] It requires that the organisation set itself environmental goals, which are to be identified by the organisation. Although it does not prescribe goals, ISO 14001 does prescribe management processes essential to the achievement of those goals. They include undertaking an inventory and assessment of environmental aspects of an organisation's operations, products and services; that employees be trained and competent to handle the environmental consequences of their work; and that an organisation commit to processes of continual environmental improvement.[11]

EMS Pyramid[12]



The EMS standard rests at the foundation of the structure of ISO 14000 standards that address, amongst other things, environmental labelling, life cycle assessment, certification and accreditation.[13] ISO 14010 is the adopted standard for General Principles on Environmental Auditing and its broad scope[14] can encompass audit of governmental performance. The standard applies to all types of environmental auditing, not just EMS auditing. The audit criteria could be, for example, the governmental policies, practices, procedures or requirements against which the auditor compares collected audit evidence. The criteria are set by the "client", which can be the governmental organisation that calls for the audit. It appears well adapted to public sector environmental performance reporting.

together the efficiency and economy criteria and often also including an assurance element in many performance audit reports. (See text at note 52 below.)

[9] For example, Government of Canada *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons* 1997 (Ottawa 1997), p 16, para 55. The 4th "E" has been formally introduced into the work of some Auditors-General through legislative mandate. See Canada's 1997 amendment to the *Auditor-General Act* 1997, introducing s 7(2)(f), and the Australian Capital Territory's 1997 amendment to the Auditor-General's Act, introducing s 12(2).

[10] ISO, "ISO 14000 – Meet the Whole Family!" (ISO 1998) available at ISO website http://www.iso.ch (accessed 21 September 2000).

[11] Joseph Cascio, Woodside, Gayle and Mitchell, Philip *ISO 14000 Guide – The New International Environmental Management Standards* (McGraw Hill, New York 1996), Ch 2. For an organisation to register itself as having in place an EMS of international standing, it needs to be certified and registered as being in conformity with the requirements of ISO 14001.

[12] Ibid, p 37.

[13] ISO, op cit n 10.

[14] See the definition used, op cit n 2.

Public sector environmental audit

Governmental auditing needs to be seen in the broader framework of tools for good public sector governance. It promotes public sector accountability to stakeholders for the proper performance of its responsibilities, including the integrity, efficiency and effectiveness of its performance. Stakeholders whom the public sector serves include ministers, parliament, the public and industry.

Within this broader accountability framework, public sector environmental auditing assesses proper performance of responsibilities for environmental management. These management responsibilities, across the whole of government, can be conceived in three dimensions (see diagram):

- along a horizontal environmental policy axis, including fundamental environmental policy formulation (for example greenhouse gas emissions abatement policy) and mainstreaming environmental responsibilities into other social policy sectors (for example mining, agriculture, tourism);
- along another horizontal axis concerning internal resources management within departments, (for example, internal energy use efficiency, green codes for goods procurement and the use of waste processing systems);
- along a vertical axis which concerns the public institution's environmental management systems (for example. consultation processes, relevant quantified targets, trained personnel, executive responsibility, feedback processes).

Public sector performance audits might address proper performance of one or more of these environmental management responsibilities. The simple way to identify those responsibilities that can be performance audited is to identify the performance commitments made by government itself. These include obligations under legislation, commitments for whole-of-government approaches articulated in published policy, and departmental or agency commitments set out in publicly accessible documents.[15]

Contrasting environmental review methodologies: state of environment reporting and environmental impact assessment

Other methodologies for assessing public sector environmental performance are sometimes confused with that for public sector environmental performance audit. They are forms of environmental review but not performance audits. State of Environment (SOE) reporting, for example, is a form of public sector environmental review but it is not a performance audit. The Commonwealth Land and Water Resources Research and Development Commission (LWRRDC) is engaged in a process of reporting on the state of national soil, vegetation and water resources which it describes as a National Land and Water Resources Audit but it is not a performance audit.[16]

Given that environmental management has traditionally been a public sector environmental function, SOE reporting does in fact reflect indirectly on the effectiveness of consecutive governments' performance over time. However, SOE reporting focuses on scientific assessment, not performance assessment. Actual changes in environmental conditions may be caused by actions beyond the control of an incumbent government. Indeed, performance against public sector commitments, per se, is not directly or specifically assessed through SOE reporting. While the information in an SOER is essential to describe baselines and movement in environmental quality indicators, as well as to describe sources and dynamics of environmental change, it does not in itself assess the economy, efficiency and effectiveness, of performance of identified public

[15] See inventory of selected Commonwealth policies in Appendix III and the discussion of the National Strategy for Ecologically Sustainable Development, op cit n 67 below.

[16] The Land and Water Resources Audit is managed by the Land and Water Resources Research and Development Corporation over a four year program due to conclude in June 2001 and is funded by the Natural Heritage Trust with a budget of A$30 million. It is intended to provide an objective national assessment of the extent of natural resource degradation to establish baselines for trends analysis, creating integrated nationally compatible data sets and links with the State of the Environment reporting process, indicators for sustainable development, etc. It is seeking to stitch together the various databases held by Commonwealth and State agencies to create a coherent whole. See http://www.nlwra.gov.au (accessed 6 October 2000).

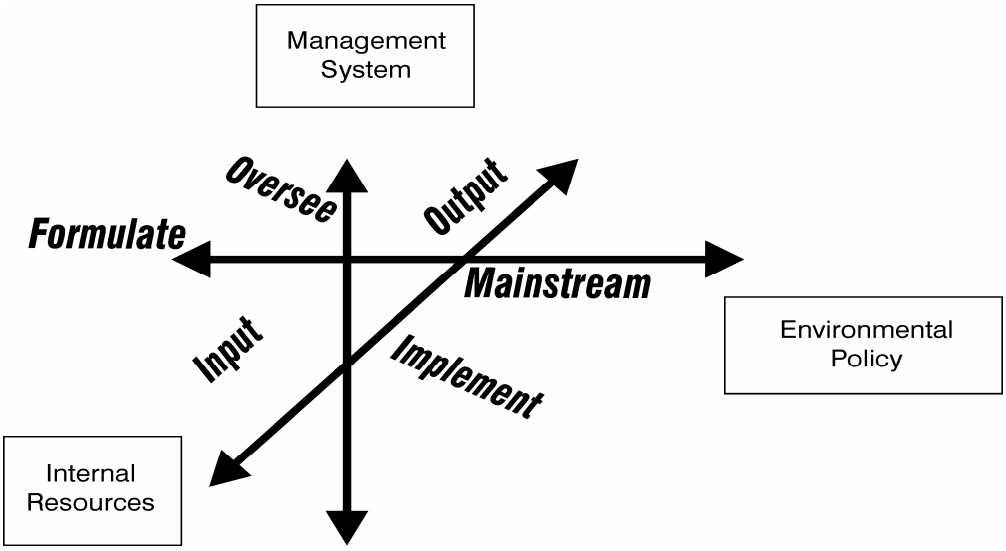


Diagram – Public sector environmental audit: whole of government management responsibilities

sector environmental commitments.[17]

The usual methodology for analysis used for SOE reporting is the Pressure-State-Response model.[18] This simply describes the state of the environment based on environmental quality indicators, in the context of pressures from human activities and responses by governments, enterprises and households. SOE reporting gives broad pictures of the environmental status quo in a continual process, necessary to formulate environmental commitments and to review them but, unlike environmental auditing, it is not premised on a commitments implementation process.

An Environmental Impact Statement is another product of a public environmental assessment process that can be associated with, but does not equate to, an audit. The Statement, produced through the environmental impact assessment (EIA) process, is required under law to be produced by an organisation as a prerequisite to its gaining project development approval or other permits.[19] However, in relation to timing, EIA stands at the other end of the time continuum from environmental auditing. EIA is carried out before a new project is developed, to predict the future impact of the proposed action,[20] whereas environmental auditing examines the actual environmental impact of those operations.[21] Nevertheless, where an EIA results in conditions being set in a development approval, regular auditing can be used as a form of monitoring

[17] The 1998 SOE report produced by the Western Australian government is unusual for its emphasis on identifying future environmental action. Although it is not a performance audit, it is explicitly linked to review of environmental policy and governmental response actions. See "State of the Environment" www.environ.wa.gov.au/DEP/soe (accessed 26 October 2000).

[18] *Australia: State of the Environment 1996* (CSIRO, Melbourne 1996), pp 1-6.

[19] For example, *Environment and Protection Biodiversity Conservation Act* 1999, s 66.

[20] UNEP *EIA Training Resource Manual; Monitoring, Implementing and Auditing* (UNEP, 1997), pp 1-2, 5-6. Available at http://www.environment.gov.au/portfolio/epg/eianet/manual/manuaI /topi c11.htm.

[21] Further, only two thirds of national auditing authorities around the world do not have a mandate to perform EIA. See INTOSAI Working Group on Environmental Auditing "Results of 1993 Survey" at http://www.rekenkamer.nl/ea (accessed 21 September 2000).

to see what impacts do occur; to ensure that the anticipated impacts are maintained within the levels predicted; and to ensure that conditions of approval are adhered to.[22]

Standards for public sector environmental audit

In contrast with the standard methodologies for SOE reporting and EIA, or for annual public sector financial statements and audits,[23] the methodology for public sector environmental statements and audits is not well established. Performance audits, in general, examine and assess resource use, information systems, delivery of outputs and outcomes including performance indicators, monitoring systems and legal and ethical compliance, in order to determine if an organisation is performing efficiently, economically and effectively.[24] However, these procedures are not refined for the specific purposes of public sector environmental performance audits.

For example, there is as yet no accepted international requirement that environmental performance audits, in either the public or private sector, include recommendations or follow up. A no frills audit might not include that task within the terms of reference and a performance auditor will not identify risks flowing from a failure to meet objectives, investigate their causes or describe remedies for failure, unless instructed to do so. Yet one might think that a public sector environmental performance audit ought always to do so.

A further example is the lack of internationally accepted guidelines as to disclosure of public or private sector environmental audits. In the private sector, environmental audits are usually conducted only on a voluntary basis, are not reviewed by any government authority, may be subject to legal professional privilege, and are not usually disclosed for public scrutiny except in rare cases involving statutory or mandatory audits.[25] Accordingly, ISO 14010 standards do not require any communication of results to the public or to anyone other than the client.[26] On good governance and public accountability grounds, however, audits carried out by public sector institutions should not confidential. Thus, under the Commonwealth *Auditor-General Act* 1997, public sector performance audits are made public. Similarly, EIA and SOE reporting processes are carried out for public benefit and are always open to public scrutiny.

Australian experience in public sector environmental performance audit

The diverse and complex roles of government and relatively long periods between elections prevent timely, specific and effective market feedback to government on its environmental performance. Therefore, it must generate its own feedback.[27] Thus, governments can use environmental audits to test and improve their own environmental management, to design environmental policy and to respond to public concerns over specific environmental management issues.[28]

Along the first horizontal axis of Commonwealth environmental management commitments there is a need for auditing against the performance criteria set in an increasing number of environmental policy, legislation and treaty commitments. National policies proliferated during the 1990s[29] and their implementation is not widely or routinely subject to review.[30] Many national commitments have been made at the international level through treaties and international action plans.[31] Along the same axis,

[22] Indeed, the performance of EIA as an environmental management tool can be also audited to assess its effectiveness. See: Ralph C Buckley, *Precision in Environmental Impact Prediction: First National Environmental Audit, Australia* (CRES/ANU Press, Canberra 1989).

[23] The content of financial statements setting out internal corporate financial management by Commonwealth entities is far more clearly specified. (See: *Financial Management and Accountability Act* 1997, s 55.)

[24] See generally, Johnson, op cit n 1, p 2.

[25] The audit has no force in law and is admissible in court only as evidence of "all due diligence" on the basis of voluntary disclosure by the defendant. See EPA *Environmental Audit; Best Practice Environmental Management in Mining*, (Cth of Aust., Canberra, 1996), p 8.

[26] Johnson, op cit n, p 254.

[27] Productivity Commission Report No 5 *Implementation of Ecologically Sustainable Development Principles by Commonwealth Departments and Agencies* (Cth of Aust 1999), p 53.

[28] AIDAB *Handbook for Environmental Audit* Sector Report No 1 (1991), p 7.

[29] See Appendix III.

[30] Productivity Commission Report No 5, op cit n 27, p 57 and Table 4.2.

[31] Donald R Rothwell, "From the Franklin to Berlin: The Internationalisation of Australian Environmental Law and Policy" 17 *Sydney Law Review* 242. Although some treaty and action plan commitments incorporate international mechanisms

further obligations are contained in some Commonwealth legislation that binds the Crown.[32] Systematic review of implementation of these commitments at the national level is necessary to assess the effectiveness of any actions taken as well as for good domestic governance.

Along the second horizontal axis lie environmental impacts of governments' own internal resource use, such as paper, water and energy consumption, and waste output. These are of substantial consequence as government purchasing power and operations are a major influence upon the economy.[33] There is a need for appropriate policies to be formulated and implemented to address governmental operations. One example of this is the Commonwealth's 1997 Energy Policy.[34]

But are there management systems in place to ensure proper formulation and implementation of such policies? Such audits take place only sporadically. Along the vertical axis of environmental management systems, Australia was externally assessed in 1997 by the international Organisation for Economic Cooperation and Development (OECD). As part of the cycle of national environmental performance reviews conducted of its members, the OECD report evaluated the general implementation of environmental policies.[35] Findings included "significant potential" for improving effectiveness and efficiency. Most relevant for this article were the particular identification of inadequate coverage and consistency in environmental monitoring and data, which weakens Australia's ability to track environmental progress, to formulate cost-effective policies and to measure performance.[36] The OECD recommended upgrading national efforts for collection and assessment of environmental data. Further, it found that the setting of quantifiable targets and timetables would be useful in this context, as well as the creation of appropriate institutional mechanisms, Federal cooperative mechanisms, peer reviews of the environmental performance of States and Territories and accelerated greening of government operations.[37]

Commonwealth environmental reporting obligations

The following discussion examines in more detail the extent to which internal institutional management systems along the vertical axis are now in place to ensure that Commonwealth environmental commitments are performed economically, efficiently and effectively.

The Commonwealth *Environment Protection and Biodiversity Conservation Act* 1999[38] (EPBC Act) came into force, for most parts, on 16 July 2000. Section 516A of the Act was inserted at a late stage into the Bill while it was under consideration in the Parliament, as indicated by both the numbering and the awkward text.[39] It addresses the obligations of Commonwealth governmental bodies to deal with environmental matters in their annual reports. The new obligations apply to annual reports for the year ending 30 June 2001.[40] The obligations apply to public service departments, Parliamentary departments, Commonwealth authorities and companies and to agencies established under

for implementation review, they are for the most part insubstantial, imposing little assessment at the national level. (See G Rose, "Non-Compliance in International Environmental Law" conference paper delivered at "Visits under International Law: Verification, Monitoring and Prevention" (23 and 24 September 1999, Geneva, Switzerland) on file with author.

[32] For example, *Environment Protection Biodiversity Conservation Act* 1999, s 4.

[33] In the 1997-1998 financial year, Australian Commonwealth revenue was almost $136 billion and outlays $141 billion, or 25 per cent of GDP. See Australia Now - A Statistical Profile - Government Finance at http://www.abs.gov.au/Ausstats (accessed 25 September 2000).

[34] Performance under this policy, which requires government agencies to meet energy efficiency targets, was audited in 1999. See ANAO *Energy Efficiency in Commonwealth Operations*, Report No 47 1998-99 (Department of Industry, Science and Resources, and Australian Greenhouse Office) Table 4.

[35] OECD *Environmental Performance Reviews: Australia* (OECD Paris 1998). The report also examined integration of economic and environmental concerns and international cooperation in environment protection.

[36] Ibid, p 19.

[37] Ibid, p 28.

[38] Act No 91, 1999.

[39] Commonwealth parliamentary opposition views advocating that environmental auditing and State of Environment reporting should be included within the Act are set out in Appendix II. The government opposed both. It seems likely that s 516A on environmental auditing was inserted as part of a late deal with opposition parties to ensure passage of the Bill through the Senate. Requirements for State of Environment reporting are now also set out in the Act, at s 516B.

[40] Department of Prime Minister and Cabinet "Requirements for Annual Reports", s 14(1), at http://www.pmc.govt_index.html (accessed 27 September 2000)

Commonwealth law.[41] The environmental content requirements for the annual reports are not clear. Section 516A(6) provides that annual reports must:

(a) include a report on how the actions of, and the administration (if any) of [any Commonwealth] 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 actions on the environment; and
(d) identify any measures the reporter is taking to minimise the impact of actions by the reporter on the environment; and
(e) identify the mechanisms (if any) for reviewing and increasing the effectiveness of those measures.

These environmental content requirements can be considered as addressing the effects, both positive (paras (a) and (b)) and negative (paras (c), (d) and (e)) that the Commonwealth institution has on the environment. They can be interpreted as including commitments made under national and international environmental instruments.

An action referred to under para 516A(6)(a) is defined in the legislation as including a project, development, undertaking or activity[42] but excludes the making of governmental decisions.[43] The "principles of ecologically sustainable development" (ESD), referred to under paragraph 516A(6)(a), are defined in the EPBC Act's general list of definitions as having "a meaning affected by section 3A".[44] Section 3A provides:

The following principles are principles of ecologically sustainable development:

(a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
(b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
(c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
(d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
(e) improved valuation, pricing and incentive mechanisms should be promoted.

It is difficult to imagine how any Commonwealth body's accordance with the ESD principles set out above might be demonstrated in the environmental sections of its annual reports. No quantified criteria or governance processes are prescribed. The principles are broad and general and render practical implementation of the reporting task either vastly unmanageable, or trivial and superficial. The ESD principles referred to in s 516A(6)(a) are not exhaustively defined in Art 3A.[45] Article 528 provides simply that the principles have a meaning "affected by Article 3A", leaving open the possibility that the principles referred to in s

[41] (1) The Secretary of a Department under the *Public Service Act* 1999 must ensure that a report under s 25 of that Act complies with subs (6). (2) The relevant Presiding Officer in relation to a Parliamentary Department (as defined in s 9B of the *Public Service Act* 1922) must ensure that a report under that section complies with subs (6). (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 subs (6). (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 s 36 of that Act include a report complying with subs (6). (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 subs (6).

[42] EPBC Act, s 523.

[43] EPBC Act, s 524. Amendments to s 516A included in the Environmental Legislation Amendment Bill will broaden its scope beyond the limits of ss 523 and 524.

[44] EPBC Act, s 528.

[45] While the language used in Art 3A is arguably exclusive (expressio unius), it is not surely so as the Article refers generally to "principles" rather than using the definitive article for "the principles".

516(6)(a) can be elaborated and specified through the use of guidelines, subsidiary legislation, or interpretation.

Under Art 516A(6)(b), the outcomes specified for a budget allocated to a Commonwealth body under an Appropriations Act during the financial year reported on must be described in terms of the outcomes' positive contribution to ESD. This provision on outcomes suffers also from the lack of specificity in criteria or processes inherent in the definition of sustainable development. Commonwealth bodies will be in need of guidelines for their reporting under this provision. The Department of Finance and Administration seems the appropriate body to develop benchmarks for reporting guidelines,[46] in cooperation with the Department of Environment and Heritage.

Paragraph (c) seems to require an inventory of retrospective environmental impacts, while para (d) seeks information as to measures currently in place to address those impacts. The relationship between paras (c) and (d) is ambiguous. All impacts should be described, irrespective of measures to minimise them, so that a comprehensive account can be obtained of the impacts and costs of addressing the impacts. On the other hand, it could be asserted that the inventory of effects described under (c) (for example, contamination of land) might need to cover only those effects not ameliorated under para (d) (for example, because a clean up has been conducted). The former interpretation is preferable to ensure transparency. Guidelines need to be prepared to clarify this point and to set out a checklist of impacts (for example, waste output streams, identified resources inputs or uses) and of ameliorative measures (for example, procurement codes, efficiency measures) to be described. In addition, comparable methodologies and units for their measurement (that is, core indicators) need to be defined.

While most content requirements of s 516A(6) concern description of past actions taken, para (e) uniquely addresses future actions. It requires that annual reports identify mechanisms to review and increase the effectiveness of measures to minimise environmental impacts. This is in effect a requirement for Commonwealth bodies to develop processes of continuous environmental performance improvement, which is an important element of any standard environmental management system. Thus, s 516A(6)(e) obliquely introduces the requirement to develop an EMS.

At the foot of EPBC Act s 516A(6) is the following cryptic note:

> "Note: The *Auditor-General Act* 1997 lets the Auditor-General audit a reporter's compliance with these requirements."

In contrast to the discretion to audit environmental statements under s 516A, Commonwealth institution financial statements are subject to compulsory audit under the *Financial Management and Accountability Act* 1997.[47] The audited financial statements together with the Auditor-General's assurance report thereon, are required to be included in the Annual Report of each governmental body.[48] There is novel opportunity here for the Auditor-General to introduce a comparable system for annual audits of environmental performance statements, assisted for the first time by the data required to be provided by Commonwealth bodies.

Despite the vagaries of s 516A, it is an enormous step forward for environmental performance auditing in the Australian public sector. Currently, detailed criteria and processes for environmental reporting in the form of guidelines are being developed by Environment Australia.[49] No doubt, these will need to be refined through experience in their application.

Functions of the Australian National Audit Office

The role of the Australian National Audit Office (ANAO), as established under the *Auditor-General Act* 1997 (Commonwealth), is to assist the Auditor-General in providing independent audit of public sector entities, including Commonwealth agencies, authorities and companies.[50] ANAO fulfils this role by undertaking programs of audits of performance

[46] As is the case in Canada, see text below accompanying footnote 125.

[47] *Financial Management and Accountability Act*, s 56.

[48] Ibid, p 57. The audited financial statements must be prepared in accordance with the prescribed Finance Minister's Orders.

[49] Personal interview, Andrew Major, Assistant Director, Intergovernmental Unit, International and Intergovernmental Branch, Environment Australia, 21 September 2000.

[50] *Auditor-General Act* 1997, ss 11, 12, 13.

and of financial statements.[51] Chief executives are obliged to manage the affairs of their agencies in a way that promotes proper use of Commonwealth resources, where proper use means efficient, effective and ethical use.[52] The Auditor-General has the mandate to undertake performance audits at his or her unfettered discretion[53] in relation to Commonwealth bodies.[54] Audits of environmental management are obviously within the mandate.[55]

Across the decade 1990-1999, 24 audits of environmental relevance were conducted,[56] averaging approximately two or three each year. For example, of the 26 performance audit reports tabled by ANAO in the first half of 1999, one related to internal corporate environmental management by Commonwealth entities.[57] These audits comprise approximately four per cent of ANAO audits produced, about equal to the average rate for environmental audits among performance audits conducted by national audit institutions globally.[58]

Strategic planning for performance audits in 2000-2001 is guided by six broad themes, considered by it to be important to the Parliament and the wider Australian community. These do not explicitly address environmental performance.[59] The ANAO does not as yet have a dedicated program of environmental performance auditing but addresses itself to environmental agencies or programs as the perceived need arises.[60] Thus, subjects for audits are selected on the basis of a systematic assessment of the risks to the government program and the benefits an audit can provide.[61]

As at the time of writing, ANAO is organised into two divisions, one for financial auditing and the other for performance auditing. There are approximately 100 staff members in the performance auditing division, within which eight branches are responsible for sectoral portfolios. A branch of 12 officers addresses a group of portfolios that includes an environment and heritage section of two to three officers.[62] Although most environmental performance audits would focus on the environment and heritage portfolios, some environmental audits are addressed by personnel assigned to other portfolios, either as a specific issue or as one of a number of other issues. This level of resources would fall just below the middle of the one per cent to 10 per cent range of resources committed to environment related auditing by national audit institutions around the world.[63] Appendix I indicates the various portfolios addressed in environment related audits.

Of course, the performance objectives in environmental policies and programs assessed are not confined to environmental ones. However, examination of the reports produced shows that the main focus of the environment audits tends to be on economy and efficiency, rather than effectiveness in

[51] ANAO has two Services Groups: the Performance Audit Services Group and the Assurance Audit Services Group. General performance audits are mandated under Art 18 of the *Auditor General Act* 1997. See "Delivering an Integrated Audit Service" http://www.anao.gov.au/Auditstr.html (accessed 10 August 1999).

[52] *Financial Management and Accountability Act*, s 44. The ANAO includes an ethical performance assessment component in all audits, although the identification of particular ethical criteria is difficult and can only be meaningfully related to conformity with the purpose of spending mandates.

[53] *Auditor General Act* 1997, s 8.

[54] Other than Government Business Enterprises (GBEs) or persons employed under the Members of Parliament (Staff) Act 1984. For wholly owned GBEs, performance audits may be undertaken by the Auditor-General where requested by the Minister, the Finance Minister or the Joint Committee of Public Accounts and Audit. This article does not examine whether these provisions of the *Auditor General Act* restrict the ANAO from undertaking environmental performance audits of Parliamentary Departments or Commonwealth Companies required to produce environmental reports under EPBC s 516A(2) and (4).

[55] The meaning of the "environment" is not limited in its normal meaning or in Commonwealth legislation to areas of national jurisdiction and, interestingly, the Auditor General's mandate covers examination of acts outside Australia (*Auditor-General Act* 1997, s 4).

[56] See Appendix 1.

[57] See Appendix I.

[58] INTOSAI Working Group on Environmental Auditing "Results of 1993 Survey" at http://www.rekenkamer.nl/ea (accessed 21 September 2000).

[59] The six themes are: Governance – Human Resource Management; Governance – Financial Management; Governance – Performance Information; Procurement and Contract Management; Information Technology; and Service Delivery. (Delivering an Integrated Audit Service http://www.anao.gov.au/Auditstr.html)

[60] Personal interview, Mr Michael Lewis, Executive Director, Performance Audit Services, 22 June 2000.

[61] In considering the risks and benefits, the ANAO examines the financial materiality, the significance of the program, the visibility of the program, as reflected in its political sensitivity or national importance, and the lack of recent audit coverage and internal or external review.

[62] Ibid.

[63] INTOSAI Working Group on Environmental Auditing "Results of 1993 Survey" at http://www.rekenkamer.nl/ea (accessed 21 September 2000).

meeting environmental objectives.[64] The reasons are essentially technical. Data for assessing economy and efficiency are more readily available and standard methodologies are clearly defined. In contrast, assessment of the effectiveness of environmental performance is hindered by methodological obstacles and data paucity. Often, environmental objectives are articulated in vague terms, obscuring criteria for assessment, and baseline data and ecological cause-effect relationships are unknown, making effectiveness difficult to measure.[65] For example, in its report on Commonwealth Natural Resource Management and Environment Programs, the ANAO concluded that, although the government agencies concerned were constrained by poor baseline information and long lead times in achieving outcomes, their program objectives were too broad and unspecific to identify outcomes, their administration lacked committed focus on outcomes, and performance information collection was inadequate.[66]

All indications are that some new, external impetus would be necessary for a more systematic and pervasive ANAO approach to environmental performance auditing. It remains to be seen whether EPBC Art 516A together with governmental commitment and public pressure might generate a focus on systematic auditing of Commonwealth environmental performance.

Productivity Commission review

The Productivity Commission is the Commonwealth Government's principal review and advisory body on micro-economic policy.[67] Under the *Productivity Commission Act* 1998, the Commission's functions include holding independent public inquiries and reporting on matters relating to industry and productivity.[68] The Productivity Commission's general policy guidelines require the Commission to ensure that industry develops in a way that is ecologically sustainable.[69] Productivity can be interpreted to include optimal productivity of natural resources and the Productivity Commission has explicitly stated that "sound economic management requires sound environmental management".[70] The Commission therefore considers environmental and social aspects in all its activities and has produced several reports on environmental issues.

Most relevant to the environmental performance auditing of government is the Commission's report on Implementation of Ecologically Sustainable Development by Commonwealth Departments and Agencies.[71] This was the first national environmental performance assessment conducted after the 1997 OECD[72] report and it is the most comprehensive of Commonwealth performance evaluations. It focuses on how department and agencies implement ESD principles and "how they monitor, evaluate and report on implementation of ESD". Less diplomatic and more specific than the OECD report, it produced a survey of selected departments' and agencies' approaches to incorporating ESD principles into decision-making.[73] The report found that it is uncommon for ESD principles to be fully taken into account from the initial policy development stages right through to the monitoring and review of the policies and programs.[74] It found that there were no legislated requirements for ESD monitoring, other than in relation to airports, although limited governmental ESD monitoring requirements are set out in some ESD policy instruments. A survey of actual

[64] See for example the reports on energy management and airport noise, Appendix I.

[65] INTOSAI Working Group on Environmental Auditing "Results of 1993 Survey" at http://www.rekenkamer.nl/ea (accessed 21 September 2000).

[66] Audit Report No 36 1996-97. A mid-term review on the management of the $A1.5 billion Natural Heritage Trust drew similar conclusions. It was commissioned by the government from a variety of public and private sources and is comprised of 28 separate reports and released in February 2000, see: www.nht.gov.au.

[67] Three bodies merged to form the Productivity Commission in 1998. These were the Industry Commission, the Bureau of Industry Economics and the Economic Planning Advisory Commission. (See Productivity Commission Home page www.pc.gov.au (accessed 21 September 2000).)

[68] Under s 6, these cover, inter alia, legislation or administrative action taken, or to be taken, by the Commonwealth, a State or Territory that affects or might affect the productivity performance of industry, industry development or the productivity performance of the economy as a whole.

[69] *Productivity Commission Act*, Pt 2, s 8.

[70] Productivity Commissioner Neil Byron and Barbara Arentino, "Sound economic management requires sound environmental management", conference paper at National Environmental Law Association 18th Annual Conference (NELA, Canberra, 1999).

[71] Productivity Commission Inquiry Report No 5 25 May 1999.

[72] Op cit n 35.

[73] Ibid, Table 4.1.

[74] Ibid, p 63.

monitoring and review of implementation[75] found that these activities are not widely undertaken routinely and there are few examples where the results of monitoring are fed back into the policy or program.[76]

The report made recommendations to improve frameworks and processes for monitoring and review, particularly over the longer term.[77] These included departments and agencies regularly monitoring the efficiency and effectiveness of their ESD related policies, programs and regulations;[78] and the Australian Bureau of Statistics developing standard classifications and measurement protocols for collection of state of the environment data and sustainability indicators.[79] It is significant that a jettisoned Draft Recommendation 7.5, suggesting that Commonwealth, State and Territory governments cooperate to facilitate performance measurement and comparisons of the effectiveness and efficiency of ESD programs, was deleted from the Final Report, no doubt because of the difficult political sensitivities associated with coordinating such action. Similarly, the Report canvassed adoption of new performance assessment mechanisms, and noted the relevance of a Commissioner for ESD in this respect, but failed to make any specific recommendations.[80] The Report merely concluded that leadership is needed at the highest level and that the Prime Minister's Science, Engineering and Innovation Council, which is chaired by the Prime Minister and includes key Cabinet Ministers, could consider reporting on a triennial basis "on matters relating to further implementation of ESD with a longer term strategic focus".[81]

This rather lame conclusion to an excellent study suggests apprehension of the political and institutional constraints that would confront proposals for improved accountability. The Commonwealth government usually makes a response to its Productivity Commission reports but, at the time of writing this article 18 months later, is yet to do so for that report. Nevertheless, the report provides a useful block for building institutions for better environmental performance accountability and EPBC Act s 516A might be seen as a partial response.

Internal agency audits

For this article, a survey of annual reports of Commonwealth departments and agencies engaged in activities with major sustainable development impacts was undertaken. It found that currently only two Commonwealth agencies systematically audit their performance in the context of environmental policy implementation and that no agencies report an overall environmental performance assessment.

Australian Agency for International Development

Australia's Agency for International Development (AusAID) audits the field impacts of its development activities. It does not audit impacts of its corporate operations. AusAID incorporates into its operations explicit sustainable development objectives, which require:

> "the integration of economic, environmental and social considerations into the delivery of the development cooperation program ...
> (i) to enhance potential environmental benefits;
> (ii) to mitigate adverse effects; and
> (iii) to highlight projects where objectives may be seriously undermined by unsatisfactory environmental factors".[82]

The two mechanisms for achieving these objectives are environmental assessment[83] and

[75] Ibid, Table 4.2.
[76] Ibid, p 65.
[77] Ibid, Overview xvii.
[78] Ibid, Recommendation 7.4. It went on to require the development of performance indicators against clearly stated objectives established early in the policy development phase, using the framework of the National Land and Water Resources Audit in areas such as air quality, fisheries, chemicals and marine systems.
[79] Ibid, Recommendation 7.5.
[80] Ibid, Ch 8.
[81] Ibid, Recommendation 9.1. The draft report had dared no recommendation at all on this matter.

[82] Australian Agency for International Development *Environmental Assessment Guidelines for Australia's Aid Program*, (AusAID, Canberra, 1996), p 5.
[83] Under EPBC Act s 160, the AusAID is required to refer actions that might entail significant environmental impacts to the Environment Minister for advice. Under s 164, actions are then assessed through the EIA process . Under the superseded *Environment (Impact of Proposals) Act* 1974 (Commonwealth) a Record of Understanding with Environment Australia allowed, procedures operative under the Act to be applied flexibly, in deference to the laws of countries where the impacts are to take place. (AusAID *Environmental Assessment Guidelines for Australia's Aid Program* (Canberra 1996), p7).

environmental audit procedures.

In 1990 the federal government committed to an annual environmental audit and developed guidelines for environmental audit of its international development cooperation activities.[84] It also adopted its "Ecologically Sustainable Development in International Development Cooperation: An Interim Policy Statement" in response to the Senate Committee on Environment, Recreation and the Arts report on "Environmental Impact of Development Assistance".[85]

Between 1991 and 1994, AusAID (then AIDAB)[86] commissioned annual environment audits.[87] All four audits involved consultants examining project documentation (that is, desk audits) to assess project environmental impacts and commenting on AusAID's environmental assessment procedures. The 1994 audit included a field assessment of project impacts.

Following the 1994 audit, the frequency of environmental audits was reduced to one every three years, with environmental cluster evaluations of projects in each of the intervening years.[88] Cluster evaluations involve a field assessment of impacts for a group of projects in a related sector, whereas the focus of an environmental audit is now a desk examination of environmental assessment and management systems. An environmental audit was conducted in 1999 (yet to be published) that reviewed the effectiveness of AusAID's 1996 "Environmental Assessment Guidelines for Australia's Aid Program".[89]

It is evident that the content and form of AusAID's internal environmental audit program is constantly changing. It evolved through the 1990s to better suit the organisation's needs. Field audits of international operations are expensive and the main reason for scaling back seems to be resource limitation. While efforts to audit operations were strong in the early 1990s, they may be faltering 10 years later.

Australian Fisheries Management Authority

The Australian Fisheries Management Authority (AFMA) has statutory obligations[90] to ensure that the exploitation of fisheries resources and any related activities are conducted in a manner consistent with the principles of ESD, with particular regard to the impact of fishing activities on non-target species and the marine environment.

In its 1996 report on Commonwealth Fisheries Management, the ANAO severely criticised AFMA for failing to take appropriate steps to meet its statutory objectives.[91] In relation to fisheries sustainability, the audit found that a lack of output based performance indicators (such as stock assessments) shielded the organisation from public accountability and that, in relation to environmental performance, its annual reports did 'not provide an indication of its success in limiting fishing to ecologically sustainable levels'.[92] Following the ANAO report, the Commonwealth Parliament commenced an inquiry into AFMA in 1996 and then tabled a report in 1997.[93] The report was more sympathetic to AFMA than the ANAO and noted that AFMA was putting in place improved performance management measures.

In fact, AFMA agreed with most of the ESD and performance accountability related recommendations in the ANAO report.[94] It now includes an Environment Report and also reports against performance indicators in each of its Annual Reports, addressing its ESD obligations.[95] These developments suggest that official audit and Parliamentary review procedures do promote tangible improvements in governmental agencies systems for management of their environmental performance.

[84] Australian International Development Assistance Bureau (AIDAB) Sector Report No1 *A Handbook for Environmental Audit* (Canberra, 1991).

[85] Ibid.

[86] Australian International Development Assistance Bureau.

[87] AusAID *1994 Environment Audit of the Australian Overseas Aid Program* (Canberra 1994), p 5.

[88] In accordance with AusAID's acceptance of the 1994 report at recommendation 14.

[89] Personal interview, Tim Eldridge, Environmental Analyst, Rural Infrastructure and Environment, AusAID, 21 September 2000.

[90] *Fisheries Management Act* 1991, s 3.

[91] Report No 32 1995-1996, Vol 1.

[92] Ibid, p 26-27.

[93] Commonwealth of Australia *Managing Commonwealth Fisheries: The Last Frontier* Standing Committee on Primary Industries Resources and Rural and Regional Affairs Report (Canberra 1997).

[94] Ibid, p 32, 36.

[95] For further follow up see David Nicholls and Tom Young 'Australian Fisheries Management and ESD - The One that Got Away?' 17/4 *Environmental Planning and Law Journal* 272 (2000).

Agriculture Fisheries and Forests Australia and Environment Australia

Two other agencies which annually report on their environmental performance and have major sustainable development impacts are Agriculture Fisheries and Forests Australia (AFFA) and Environment Australia (EA). AFFA reports regularly against sustainability objectives for natural resources management, that it publishes in its annual report. However, the objectives lack specific performance criteria and the corresponding items are superficially reported.[96] Environment Australia similarly reports annually against highly generalised objectives by providing descriptions of its activities but without evaluation against specific criteria.[97] In neither case do the agency reports qualify as performance audits. It seems likely that assessments of their actual environmental performance could not be meaningfully performed against the objectives adopted. It is certain that, for these reasons at least, neither agency would bear up well under an external audit of their respective environmental performance management systems. Due to the central role of these agencies in formulation and implementation of Commonwealth environmental management policies, improvement in their management systems should be considered a priority.

National Environment Protection Council

Important to mention in the context of internal reviews for the effectiveness of environmental performance is the National Environment Protection Council (NEPC). NEPC produces an annual report, the first and only so far being for the year 1998-1999. The report reviews the effectiveness of National Environment Protection Measures (NEPMs). Reviews of effectiveness are self-executed by the governments of the participating jurisdictions (ie. all nine Australian governments) and are drawn together by the NEPC service corporation. Although they are not environmental performance audits based upon a standard performance cycle or environmental management system, the reviews do report against specific annual performance targets.[98] The reviews are significant for indicating a trend towards reporting effectiveness of national environmental policies.[99]

Australian States and Territories

Australian Capital Territory

New steps are being taken to audit government environmental performance at the Australian State and Territory levels. The Commissioner for the Environment created in the Australian Capital Territory (ACT) in 1993 is currently the only office of its type in Australia. Under the *Commissioner for the Environment Act* 1993, the Commissioner is appointed by the Minister for a maximum of five years.[100] The functions of the Commissioner are, in large part, to act as an environmental ombudsman and as a commissioner of inquiry.[101] The Commissioner is also responsible for triennial ACT State of the Environment (SOE) reports.[102] Akin to a performance audit, the SOE reports are to contain an evaluation of the adequacy and effectiveness of environmental management, including an assessment about the degree of ACT compliance with national Environmental Protection measures made by the National Environment Protection Council.[103]

Agencies are to include in their annual reports details of: any requests by the Commissioner for assistance; any assistance provided in response; any investigation carried out by the Commissioner in respect of the agency; the Commissioner's recommendations made following an investigation; and the agency's follow-up to those recommendations.[104] In addition, the Commissioner

[96] See 1998-1999 report, annual reports for AFFA are available at http://www.affa.gov.au

[97] See 1998-1999 report, annual reports for Environment Australia are available at http://www.ea.gov.au

[98] See NEPC Annual Report 1998-1999 at http://nepc.gov.au

[99] The Oceans Policy 1998 is also notable for its call for establishment of milestones for assessment and reporting on the effectiveness of the policy (Pt 2, Ch 6.1), although their quality and the robustness of the implementation assessment process remains to be seen.

[100] Article 5.

[101] Under s12 Commissioner is to investigate complaints and conduct investigations as directed by Minister.

[102] Section 19.

[103] Section 19(2)(b).

[104] Section 23. The principal officer of an agency shall include in the annual report of that agency:
(a) details of any request under s 18 received by the agency;
(b) details of any assistance provided in response to that request;
(c) details of any investigation carried out by the Commissioner in respect of any activity of the agency; and

may undertake a special report initiated by the Commissioner or directed by the Minister. The Commissioner's annual report is to include particulars of measures taken by the Territory to implement any recommendation in an SOE report or special report and particulars of any recommendation which the Commissioner believes is still to be fully implemented.[105]

Thus, the broad mandate of the ACT Commissioner for the Environment focuses on the functions of Ombudsman, Commissioner of Inquiry and that of manager of SOE reporting. These include ACT public sector environmental performance auditing, especially with respect to NEPMs implementation and recommendations flowing from the Commissioner's past reports. However, the substantial responsibilities of the Office of the Commissioner on paper are belied by its limited resources on the ground. It has the equivalent of two full time staff. Therefore, its activities are largely constrained to its function in State of the Environment reporting.

Environmental auditing in the ACT also receives attention in the ACT *Auditor-General Act* 1996. It is unique in Australia in explicitly setting out the mandate of the Audit-General to incorporate the fourth "E", for ecological sustainability, into the conduct of ACT public sector performance audits. Sustainability considerations are defined to include the implementation of the precautionary principle; inter-generational equity; conservation of biological diversity and ecological integrity; and improved valuation and pricing of environmental resources.[106] Despite the broad sweep of this requirement, the Auditor-General's performance audits are to include sustainability considerations only "as appropriate". This has been interpreted such that it is not appropriate to address the 4th "E" in all circumstances, (rather than that all audits should address the 4th "E" appropriately in each set of circumstances). An issues scoping study at the commencement of the audit process forms the basis for the auditor's exercise of judgement as to appropriateness in each case.[107]

The ACT Office of the Auditor-General comprises about 20 staff. Due to its limited resources it has not initiated any specifically environmental audits or undertaken assessment of implementation of the 4th "E" since the entry into force of the 1997 amending legislation.[108] Thus, the steps taken in the ACT are novel and exciting but are less than they seem.

Other jurisdictions

An Office of the Commissioner for the Environment was established in 1987 in Victoria, within the Ministry for Planning and Environment, to produce SOE reports. It issued two, assessing Victoria's inland waters (1988) and Victoria's agriculture and the environment (1991). However, the Office and Commissioner positions were abolished in 1991, during a restructuring of the State's institutions and a radical downsizing of its government.[109]

A newly incumbent government is now acting to establish a Commissioner for Ecologically Sustainable Development.[110] It has given its support

(d) details of any recommendation made by the Commissioner following an investigation of the activities of the agency; and
(e) details of any action the agency has taken in respect of each recommendation.

[105] Article 20(b) and (c).

[106] Under s 12(1) of the Act, the Auditor General may at any time conduct a performance audit in respect of a department, Territory entity, joint venture or trust in which a Territory entity has a controlling interest. Under s 12(1), in the conduct of the performance audit, the Auditor General shall, where appropriate, take into account environmental issues relative to the operations being reviewed or examined, having regard to the principles of ecologically sustainable development. Article 12(3) goes on to define ecologically sustainable development as follows:
"(3) In this section 'ecologically sustainable development' means the effective integration of economic and environmental considerations in decision-making processes achievable through implementation of the following principles:
(a) the precautionary principle, namely, that if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
(b) the inter-generational equity principle, namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
(c) conservation of biological diversity and ecological integrity;
(d) improved valuation and pricing of environmental resources."

[107] Personal interview, David Hughes, Office of Auditor-General, Australian Capital Territory, 20 September 2000.

[108] Ibid.

[109] 31st Report to Parliament *Interim Report of the Inquiry in Environmental Accounting and Reporting*; p 48. See http://www.parliament.vic.gov.au/paec (accessed 6 August 2000).

[110] The role for a commissioner is being examined through the Victorian Parliament Public Accounts and Estimates Committee, to which the author gave evidence on 17 October 2000.

to implementation of public sector environmental reporting of public sector compliance with legislation but has given no assurances concerning compliance with its policy commitments.[111] The establishment of the Commissioner is currently being considered through the Parliamentary Public Accounts and Estimates Committee[112] which has produced an Interim Report (June 1999) and a follow-up Issues Paper (June 2000) for public consultation.[113]

Although State of Environment reporting occurs on a triennial basis in New South Wales, an ad hoc approach has been taken to environmental performance auditing. For example, the NSW Environment Protection Agency oversees implementation of the Government Waste Reduction and Procurement Strategy (WRAP) and Action for Air Policy, while the Sustainable Energy Development Authority oversees Energy Management Policy targets. It is said that the Office of Auditor-General is developing a more systematic approach to government environmental performance auditing.[114]

The foregoing survey of State and Territory jurisdictions is not comprehensive. However, it does indicate, that gradual movement towards improved systemic management of environmental performance is taking place in some Australian States and Territories.

International experiences compared

Canadian national model

Canada has adopted a model for environmental auditing of governmental performance that looks good on paper and also has resources on the ground. The *Auditor-General Act* of Canada, as amended in 1995 requires that the Auditor-General report where

> "money has been expended without due regard to the environmental effects of those expenditures."[115]

Thus, the hurdle before officers of the Auditor-General is to acquire the necessary skills to ensure that the 4th "E" is systematically incorporated into all performance audits conducted by them. The "materiality" of environmental concerns, that is, scoping of the likely gravity of environmental implications in a given audit, are to be assessed in all cases. While this requires institutional adjustment, the development of an auditing culture which incorporates the 4th "E" has the full support of the Auditor-General himself.[116]

The amended *Auditor-General Act* also requires that the Auditor-General appoint a senior officer to be called the Commissioner for the Environment and Sustainable Development.[117] The Commissioner's main task is sustainable development monitoring and reporting on the progress of major departments.[118] The four main areas of responsibility are to:

- monitor implementation of the institutional sustainable development strategies which the Act requires major departments and agencies to prepare;
- produce audits and special studies on environmental and sustainable development issues;
- handle and record progress on citizen petitions to the Commissioner regarding environmental concerns;[119] and
- report to the Canadian Parliament annually.[120]

The Auditor-General of Canada had previously produced 42 performance audits relevant to

[111] Issues Paper No 4, June 2000 *Follow Up Inquiry in Environmental Accounting and Reporting*, p 81.

[112] For the terms of reference of the Follow Up Inquiry in Environmental Accounting and Reporting http://www.parliament.vic.gov.au/paec/ear_terms.htm (accessed 6 August 2000).

[113] 31st Report to Parliament *Interim Report of the Inquiry in Environmental Accounting and Reporting*; Issues Paper No 4 June 2000 *Follow Up Inquiry in Environmental Accounting and Reporting*. See http://www.parliament.vic.gov.au/paec (accessed 6 August 2000).

[114] Personal interview, Peter Maganov, Manager, Environmental Reporting, NSW Environment Protection Authority, 18 October 2000.

[115] RSC 1985, Ch A-17, as amended by Bill C-83, 1995, s 7(2)f.

[116] Personal interview, Denis Desautel, Auditor General, Canada 21 January 1999.

[117] *Auditor General Act*, s 15(1).

[118] Ibid, s 21.

[119] Handling and recording of petitions requires merely that petitions received by the commissioner be recorded and passed to the appropriate minister within 15 days and acknowledged by the minister within 15 days. The minister then has 120 days to make a response. The Commissioner reports to Parliament on the rate of petition responses.

[120] Report of the Commissioner of the Environment and Sustainable Development to the House of Representatives 1997, para 45. All reports are available at the Commissioner's website http://www.oagbvg.gc.ca/domino/cesd_cedd.nsf/html/menu_e.html

environmental management.[121] Three themes identified in the Commissioner's review of these 42 reports were (1) an implementation gap between the government's stated objectives and its actual performance; (2) lack of coordination and integration across departmental mandates and political jurisdictions; and (3) inadequate performance review and provision of information on performance to Parliament. A work plan for the Commissioner focused on improving information and communications was designed to address these themes.[122]

The Commissioner is located within the Office of the Auditor-General and has a staff of approximately 40 auditors and an annual budget of C$3 million. Audit teams previously dealing with Environment Canada and Natural Resources Canada portfolios were folded into the Commissioner's staff, in addition to specialised recruits.[123] A three year forward cycle of audits and special studies enables a systematic and strategic approach to the task of national environmental performance auditing. The broad formal mandate and the funding of a Commissioner and staff to fulfil the environmental performance auditing task has lifted the profile of national sustainable development auditing within Canada and seems to provide a model for examination by comparable countries.

Particularly innovative are the institutional sustainable development strategies required of major departments and agencies. The strategies are to set out the triennial environmental performance goals each department selects for itself. Twenty eight were tabled in Parliament in December 1997 and first reported on to Parliament by the Commissioner in May 1998. The strategies were assessed by the Commissioner in accordance with a checklist of essentially procedural requirements. For example, a strategy was required to be designed following consultations with stakeholders, to set out relevant issues, to relate those issues to goals, to identify measurable goals, to indicate how the strategy would change what the department does, and how performance would be measured and reported. Substantively, they were to deal with both the agency's policies and programs and with the management of its internal operations. In this context, Canada's *Guide to Green Government* 1995, *Directions for Greening Government Operations* 1995 and the *Environmental Management System (EMS) Self Assessment Guide* 1994 were used to build a framework for reviewing strategies.[124] However, selection of the substantive goals themselves remains a policy choice in which the Commissioner has no role.[125]

The Commissioner's May 1998 annual report found two fundamental weaknesses (among other problems) in the 1997 departmental strategies. These were a lack of measurable targets and a tendency to restate the status quo, rather than aim towards future progress.[126] In response to the recommendations in the 1998 report, agencies presented revised strategies to the Canadian Parliament in March 1999. At the time of the Commissioner's May 1999 annual report, the revised strategies had been in place for only three months and the part of the report concerned with them was partly about the consultative process leading to their formulation. It found that there was a high level of satisfaction among those consulted as to their involvement but shortcomings were also identified. These were due to limited feedback on how participants' views were reflected in strategies, limited consultation and coordination among departments in the formulation of strategies affecting cross-sectoral matters, and limited involvement of senior management in the formulation process.[127] The 2000 annual report

[121] Report of the Commissioner of the Environment and Sustainable Development to the House of Representatives 1997, p B-1.

[122] Personal interview, Brian Emmett, Commissioner of the Environment and Sustainable Development, Office of the Auditor General, Canada, 18 January 1999.

[123] Ibid.

[124] Report of the Commissioner of the Environment and Sustainable Development to the House of Representatives 1997, para. 50. Note also that Canada's Green Plan 1990 announced a Federal Environmental Stewardship Initiative that included a Code of Environmental Stewardship.

[125] Report of the Commissioner of the Environment and Sustainable Development to the House of Representatives 1998, Ch 1.

[126] Report of the Commissioner of the Environment and Sustainable Development to the House of Representatives 1998 Ch 1.30.

[127] Report of the Commissioner of the Environment and Sustainable Development to the House of Representatives 1999, "Moving Up the Learning Curve – The Second Generation of Sustainable Development Strategies" Exhibit 7. To ensure engagement at senior levels it may be helpful to require that CEOs of Departments personally present their organisation's

found that about 50 per cent of revised targets included a clearly stated criterion for measuring success and an expected completion date.[128]

Departments and agencies report to Parliament on their own implementation of the their strategies annually in October, based on progress to 31 March. Implementation reports are based upon the Canadian Treasury Board Guideline for the Preparation of Departmental Performance Reports to Parliament.[129] The first departmental and agency reports on their sustainable development strategies as revised in 1999 were delivered in October 1999 and were addressed in the Commissioner's May 2000 report. The report focused on whether departments were doing what they said they would in their strategies and whether they had the capacities to implement their strategies.

It found that the quality of information supplied fell well below requirements set out in the Treasury Board Guideline, but that it is improving overall. The Report assessed that about 20 per cent of the strategies' commitments were being met, as compared to 11 per cent in 1999. In relation to departments' and agencies' capacities to implement their strategies, the report looked for the use of an EMS and took ISO 14001 as the benchmark. It found that half of the management practices identified in the ISO 14001 standard were being applied, as compared to a third in 1999. Capacity tended to be stronger in the earlier stage of the management cycle, concerning planning, and became progressively weaker in the later stages, in connection with checking corrective action and policy review.[130]

In addition to implementation of sustainable development strategies, the Commissioner's annual reports regularly address broader issues of whole-of-government capacity for sustainable development, such as inter- and intra-governmental cooperation, integration of environmental considerations into policy decisions and environmentally sound internal operations. In 1998 the focus was on building of capacity in management techniques for sustainable development, including expanding the horizons for information input (for example, by inclusive consultation), improving environmental impact assessment information, adopting environmental management systems, and developing indicators for performance measurement[131]. In 1999, the focus was on federal-provincial environment cooperation agreements, organisational management systems and decisions-making.[132] In 2000, cooperative partnerships within government, across government and with the private sector were addressed.[133]

The reports also regularly address a selected sectoral special study. Special studies have covered climate change and biodiversity,[134] toxic substances[135] and smog.[136]

Follow-up audits are conducted two years after an initial audit is reported, to examine for resolution of identified performance shortcomings. Following up on four previous audits (hazardous waste, ozone layer protection, biodiversity conservation, and environmental assessment, 1998-1999), the Commissioner's 2000 report concluded that only five per cent of audit recommendations had been acted upon by government departments.[137]

Interviews conducted by the author with Canadian officials indicated that officers of Environment Canada felt that their department is particularly challenged by the Commissioner. This is to be expected as Environment Canada is seen as the agency primarily responsible for the quality of the federal environmental performance. It is the department generating the most commitments and with the most to lose through exposure of poor implementation. Officials considered that the Commissioner did not appreciate departmental resource constraints, including its limited influence over whole-of-government performance. This concern has been picked up in the Commissioner's annual reports, in the chapters on capacity building.

report on implementation of its sustainable development strategy to the Parliamentary Committee which examines them.

[128] Report of the Commissioner of the Environment and Sustainable Development to the House of Representatives 2000, Chapter 1 "Implementing Sustainable Development Strategies: Year Two – Work in Progress", para 1.5.

[129] Ibid, Exhibit 1.2.

[130] Ibid, para 1.40-1.55.

[131] Report of the Commissioner of the Environment and Sustainable Development to the House of Representatives 1998, Chs 5-8.

[132] 1999 Report Ch s 5-9.

[133] 2000 Report Ch s 5-8.

[134] 1998 Report Ch s 2-4.

[135] 1999 Report Ch s 3-4).

[136] 2000 Report Ch 4.

[137] 2000 Report Ch 9.

Despite the slow turn around time in response to audit recommendations, it appears that the Commissioner is making a difference in governmental environmental performance. There are apparent positive departmental responses to the urging for adoption of EMS tools, such as meaningful performance targets and indicators. There is also, its seems for the first time anywhere, frank assessment of governmental performance and objective, authoritative critique of under-performance. The legal requirement that each government department develop and adopt a sustainable development strategy necessitates the engagement of all government in environmental management. Integrated management between the different arms of government is promoted by consultation with stakeholders. The legal requirement that performance of each sustainable development strategy be audited and a report tabled in Parliament then ensures each department's accountability for fulfilling its responsibilities under its strategy. These and other achievements foster better environmental management, improved implementation, and a culture of accountability. Canada seems to be developing world's best practice in auditing of government environmental performance.

New Zealand

The powers of the Office of Auditor-General in New Zealand include environmental auditing. A few environmental performance audits have been produced,[138] one of them jointly with the Parliamentary Commissioner for the Environment in New Zealand (PCE).[139] The PCE, which commenced functioning in 1987, fulfils several roles, being an environmental ombudsman, auditor of aspects of government environmental management, and an environmental policy adviser to Parliament. Due to its novel nature, it is the Office of the PCE which warrants particular examination.

Helen Hughes, a past Commissioner (1987-1996) has defined the purpose of the Office as being to provide "an independent check on the capability of the New Zealand system of environmental management and the performance of public authorities in maintaining and improving the quality of the environment".[140] The PCE audit function is set out in s 16(f) of the *Environment Act* 1986 and the major audit function originally expected of it concerned environmental impact assessments, as this was the role of the previous Commission for the Environment. However, the onerous responsibility for oversight of assessments shifted, first to the newly created Ministry of Environment under the *Environment Act* 1986 and then to local and regional authorities under the *Resources Management Act* 1991. Therefore, the role of the PCE as auditor of assessments withered after a transitional period. The PCE's strategy in reviewing environmental assessments has been, instead, to establish independent review panels for particular assessments.

Audits have addressed the overall environmental performance of two regional public authorities and a review has been conducted of the management of local and regional councils of their assessment responsibilities. However, fulfilment of the audit role of the PCE has been very limited. This seems due to the varied functions and limited capacity of the Office of PCE (which numbers 12 persons) and, to an extent, its overlap with the audit role of the New Zealand Auditor-General.

The fluidity of the roles played by the PCE has allowed it also to conduct "reviews" acting as environmental policy adviser to Parliament, or "guardian of New Zealand's system of environmental management". These reviews of the existing system of policies are intended to identify gaps or shortcomings and are comparable to environmental audits in the sense of its management system audits described above.[141] However, they do not amount to a process for systematic approach to review of governmental environmental performance. It would seem that the Canadian model better serves that role.

[138] For example, Regional Councils – Maintaining River Protection Works (1998); Administration of the Resource Management Act 1991 by Regional Councils (1996) (http://www.netlink.co.nz/~oag/Reports 6 September 1999).

[139] That is, Marine Fisheries Management (1990).

[140] PCE Annual Report 1993-4 (Wellington 1994) p 4.10, cited in Tom Buhrs, "Barking Up Which Trees? New Zealand's Environmental Watchdog" in G Hawke, (ed) *Guardians for the Environment* (Institute of Policy Studies, Wellington 1997), p 193.

[141] For example, it performed reviews concerning marine fisheries management, dry tussock grasslands, sustainable energy management and rabbit and possum pest management.

Future of Australian Commonwealth environmental auditing

What lies in the future for implementation reviews of Commonwealth sustainable development policy? Auditing of its performance is obstructed by the lack of specific or quantified performance commitments against which policy implementation can be measured, and a lack of baseline data to relate meaningful performance commitments to.

Concerning the need for improvement of information on baselines that specific performance commitments can be related to, the Productivity Commission and ANAO reports lay a great deal of hope at the door of the National Land and Water Resources Audit. National SOE reporting could also be useful here in providing better baseline information. Important steps to improve baseline information coherency are also being taken through the National Pollutant Inventory[142] and at State and Territory levels, through the uptake of regular state of the environment reporting.

While these will not gather the broader context of socio-economic data relevant to sustainable development, those data sets are addressed in part by the "sustainability indicators" being developed by the Australian Bureau of Statistics in association with the Australian and New Zealand Environment and Conservation Council (ANZECC).[143] There is reason for modest confidence that those combined efforts could support development of a coherent national information set concerning the development of scientifically sound national baselines and indicators.

In contrast, concerning specific or quantified Commonwealth government performance commitments in the field of sustainable development, there is still no significant movement forward (for either policy formulation and implementation, or internal resources inputs and outputs). Nevertheless, the strengthening of baselines and indicators, advocacy of private sector models of management and accountability and trends displayed in the AFMA and NEPM effectiveness reporting process, may provide some ground for optimism as to future improvement in the quality of Commonwealth environmental performance commitments. It is likely that regular performance reporting will generate feedback for improved benchmarking of commitments.

In relation to the development of Commonwealth agency internal environmental management systems, s 516A of the *Environment Protection and Biodiversity Conservation Act* 1999 is timely. In requiring agency environmental reporting, it provides an opportunity to introduce systematic audit of agency environmental performance. But the Australian community would have been better served if the legislation had articulated clearer performance objectives to report against, explicitly requiring the formulation of agency targets. Currently, these need to be implied by working backward from the consequences of the reporting obligation. Only by implication of the requirement that agencies continuously improve their environmental management[144] is there a requirement upon them to develop an environmental management system. No doubt this will become apparent after initial audits under s 516A are conducted.

Australian Commissioner for the Environment

Assuming that arguments gathered in this article persuade that there is a need for robust review of Commonwealth environmental performance, what institutional mechanism should be used to perform that review?

The most tested and reliable mechanism is environmental audit, as performed by an independent authority. This could see the establishment of a specific ANAO mandate, such as an Office of the Environmental Auditor or a special Commissioner for ESD, along the lines of the Canadian model. The advantages of a special Auditor or Commissioner are that he or she would lift the profile and importance of Commonwealth environmental performance audit. In its dissenting recommendations in the Senate Report on the Environment Protection and Biodiversity Conservation Bill 1999, the Australian Labour Party called for the ANAO to perform environment audit

[142] See the NEPC website at http://www.nepc.gov.au (accessed 19 October 2000).

[143] See "National Headline Sustainability Indicators" on the themes/environment database of the Australian Bureau of Statistics at http//:www.abs.gov.au (accessed 24 September 2000).

[144] See s 516A(6)(e).

functions.[145]

If located outside the ANAO, the Auditor/Commissioner would be more vulnerable to budget cuts and political hostility than if located within the Auditor-General's office, which is an institution with 100 years of respectable assurance of governmental responsibility and accountability. Within the Auditor-General's office the Auditor/Commissioner also would have access to resources and expertise. In addition, location within the Auditor-General's would promote the incorporation of the 4th "E" into the mainstream work of the ANAO.

Had the EPBC Act also required the systematic conduct of agency performance audits this would have been helpful to ensure that agency reports are accurate and meaningful. In place of the current footnote to s 516A stating that agency environmental reports could be audited, among other consequential amendments following the Act, the *Auditor-General Act* 1997 could have enhanced the Auditor-General's environmental performance audit function. Although the Australian Auditor-General currently has implicit powers to conduct environmental audits, there is no specific mandate. The International Organisation of Supreme Audit Institutions (INTOSAI) Working Group on Environmental Auditing surveys has found that national audit institutions with an explicit environmental audit mandate complete proportionally more environmental audits and tend to be better resourced for the task.[146] The ANAO currently has few resources with which to introduce a coherent program of environmental audits and may need to refine its expertise and methodologies.[147]

On the other hand, location within the ANAO would limit the range of other environmental review tasks a Commissioner for ESD could appropriately undertake. The title of Commissioner is ambiguous and the job description can be broadly conceived. In addition to audit of environmental performance, the environmental review tasks which some might wish a Commissioner to undertake for government could include:

- environmental ombudsman;
- commissioner of public inquiry;
- independent adviser on ESD policy; and
- coordinator of state of environment reporting.

These are not audit functions and would not be successfully located within the ANAO's current mandate and structure.

Calls by the Australian Democrats, Australian Greens and The Greens (WA) for the establishment of a Commissioner for the Environment are set out in their dissenting recommendations in the Senate report into the Environment Protection and Biodiversity Conservation Bill 1999.[148] The Commissioner's central function in each proposal appears to be environmental performance auditing. In its dissenting recommendation the Australian Labour Party called for the Auditor-General to undertake this task. Since then the proposal of the Australian Labour Party for a Commissioner for the Environment has been set out in its 2000 environmental policy platform.[149] The proposal is broad and hints at possibilities of multiple roles, including auditor, ombudsman, SOE reporter and government adviser. This policy would be likely to see the creation of a Commissioner responsible for a range of functions and located outside the ANAO.

Related environmental review roles should be carried by bodies most suited to the appropriate function. The combining of diverse functions into one new institution outside the authority of the Auditor-General is likely to see the new institution's environmental audit function minimised, as was

[145] See Appendix II below. The Australian Labour Party has since made the creation of the office of Commissioner for the Environment part of its policy platform. See Sydney Morning Herald, 17 April 2000.

[146] INTOSAI Working Group on Environmental Auditing "Results of 1993 Survey" at http://www.rekenkamer.nl/ea (accessed 21 September 2000).

[147] For example, auditors would need to be familiar with the environmental context, including baseline conditions, database use, and sustainable development concerns. A systematic cycle of audits would be needed, preferably based upon the gravity of the risk being managed. INTOSAI also found that SAIs that conducted follow-up audits estimated the influence of their reports more favourably than those that did not follow-up.

[148] See Appendix II.

[149] Chapter 31.8 of the ALP 2000 Policy Platform states that "Labor supports the establishment of a Commissioner for the Environment to provide objective, independent analysis and recommendations on environment and sustainable development; monitor and report on progress towards sustainable development; consider public complaints; and assist the Auditor General on matters related to environment and sustainable development issues". See: http://www.alp.org.au/policy/platform2000/chapter_13.html#greening (accessed 26 October 2000).

apparent in the ACT and New Zealand cases. Also likely would be conflicts between various environmental review roles within the one institution. For example, could a commissioner independently act as ombudsman in relation to outcomes from recommendations made by the Commissioner, or audit his/her own performance as ombudsman? Given too many roles is it probable that the proposed Commissioner would perform poorly overall and that some roles will atrophy.

Therefore, an environmental ombudsman is most appropriately located within a properly resourced Federal ombudsman's office.[150] Public environmental performance auditing should be conducted through the Office of the Auditor-General. Independent advice on ESD policy should come from an appropriately constituted Council on ESD, which is a non-governmental stakeholder representatives group.[151] SOE reporting should be coordinated by independent experts, sitting on a steering committee with a statutory mandate. Synergies between these bodies could be promoted through structural linkages. For example, due to the major implications of SOE reporting for longer term ESD policy, the SOE steering committee could be chaired by the head of the ESD Council. It should also include a representative of the Environmental Auditor/Commissioner.[152] Each of these bodies would be established more securely if they were given statutory authority.[153]

Conclusions

There is much legislation and policy in Australia articulating the objectives of sustainable development. However, two comprehensive reports, by the OECD and the Productivity Commission, have identified the need to establish policy implementation review mechanisms at the national level to systematically assess progress towards achievement of ESD objectives. Other than within the fisheries and overseas aid sectors, no Commonwealth management mechanisms were in place until the enactment of s 516A of the EPBC Act. The Act's provisions are tentative and weak, leaving much for administrative clarification.

The ANAO has a mandate to conduct audits of environmental performance. However, institutional obstacles at the national level to the use of performance auditing as the process for this review mechanism are described in ANAO reports, and are indicated in the Productivity Commission and OECD reports. They are lack of baseline data and lack of specific or quantified performance commitments against which policy implementation can be measured. In addition, there is no systematic approach to environmental performance auditing.

Steps are being taken to gradually improve the data sets on which all performance measurement relies. However, Commonwealth performance commitments remain elusively vague and its agencies are not yet required to develop institutional targets. The AFMA experience suggests that, in a conducive statutory and operational context,[154] external environmental audit can assist reorientation of management systems to improve agency performance. Thus a program of environmental audit might assist the development of specific performance targets within institutional management systems.

The ANAO is the appropriate home for a comprehensive program of environmental audits. It currently lacks adequate resources or a recognised mandate for that task. Establishing an Office of the Environmental Auditor, or a Commissioner for the Environment within the ANAO would be the most effective way to allocate the resources and establish the mandate for a Commonwealth environmental audit program. This would be a statutory position

[150] The Commonwealth Ombudsman can presently address environmental complaints but has no specific environmental mandate and has few resources to share around. For general information see: www.comb.gov.au

[151] National councils on ESD have been established in over 150 countries (Productivity Commission Inquiry Report No 5, 25 May 1999, p 58.

[152] For the 1996 SOE national report, a 16 member SOE Advisory Council was formed, chaired by an independent expert. The Council included two government *ex-officio* members. See Commonwealth of Australia *State of the Environment Australia 1996* "The Reporting Process"(CSIRO, Melbourne 1996), pp x and 1.9.

[153] Public inquiries would be the exception, as these could be managed on an ad hoc basis in consultation with the Commissioner for the Environment and the ESD Council. The *Environment Protection and Biodiversity Act* 1999, s 516B establishes, for the first time, a legislative basis for SOE reporting.

[154] That is, under AFMA's constitutive legislation, ESD is one of the organisation's core objectives and the health status of the fish stocks it manages is readily measurable.

created under the *Auditor-General Act* 1997.

Various other forms of environmental policy review would be better assigned to more appropriate bodies, such as a Federal Environmental Ombudsman, a national Council for ESD and a steering committee for ESD reporting. These forms of environmental review are extremely important and are inter-related. For example, it should be obvious that much, including performance auditing, relies upon adequate baseline data gathered through SOE reporting. The focus of this article on performance auditing is not intended to detract from them. It reflects only that environmental performance auditing has received attention in current public debate, that independent reviews of Australian implementation of ESD imply that it is much needed here, and that it is successfully being taken up in a similar federal setting in Canada.

The urgent need for Australian Federal governmental accountability for environmental performance is a clear priority. Environmental auditing by an independent body would provide the system and machinery necessary. All that is needed is political desire for good governance.

Appendix I

Environmentally Relevant Performance Audits: Australian National Audit Office, 1990–1991 to 1999-2000 (provided to the author by ANAO, 27 June 2000)

1999-2000

- Commonwealth Electricity Procurement, Report No 25 1999-2000 (Australian Greenhouse Office, Commonwealth Scientific and Industrial Research Organisation, Department of Defence, and Department of Finance and Administration);
- Weather Services in the Bureau of Meteorology, Report No 22 1999-2000 (Department of the Environment and Heritage); and
- Managing Pest and Disease Emergencies, Report No 9 1999-2000 (Agriculture, Fisheries and Forestry – Australia).
- **1998-99**
- Operations of Green Corps, Report No 42 1998-99 (Department of Education, Training and Youth Affairs).
- **1997-98**
- Preliminary Inquiries into the Natural Heritage Trust, Report No 42 1997-98 (Department of Environment);
- Strategic and Operational Management of the National Registration Authority for Agricultural and Veterinary Chemicals, Report No 26 1997-98;
- Commonwealth Management of the Great Barrier Reef, Report No. 33 1997-98 (Great Barrier Marine Park Authority); and
- Sydney Airport – Noise Amelioration Program, Report No 17 1997-98 (Department of Transport and Regional Development).
- **1996-97**
- Commonwealth Natural Resource Management and Environment Programs: Australia's Land, Water and Vegetation Resources, Report No. 36 1996-97;
- Maralinga Rehabilitation Project Tendering and Commercial Arrangements, Report No 18 1996-97 (Department of Primary Industries and Energy);
- Energy Management of Commonwealth Buildings, Report No. 10 1996-97 (Department of Primary Industries and Energy, Department of Administrative Services); and
- Building Better Cities, Report No 9 1996-97 (Department of Transport and Regional Development).
- **1995-96**
- Environmental Management of Commonwealth Land: Site Contamination and Pollution Prevention, Report No 31 1995-96.
- **1994-95**
- Energy Management in Defence, ANZAC Ship Project Contract Amendments, Overseas Visits by Defence Officers, National Landcare Program, Report No 29 1994-95; and
- Is Australia ready to respond to a major oil spill?, Report No 9 1994-95 (Australian Maritime Safety Authority).
- **1993-94**
- Rural Research and Development Program, Report No 38 1993-94 (Department of Primary Industries and Energy); and
- Implementation of a New Program: Landcare and Environment Action Program (LEAP), Report No 34 1993-94 (Department of Employment, Education and Training).
- **1992-93**
- Implementation of an Interim Greenhouse Response: Energy Management Programs, Report No 32 1992-93 (Department of Primary Industries and Energy); and
- Living with our Decisions: Commonwealth Environmental Impact Assessment Processes, Report No 10 1992-93.
- **1991-92**
- Energy Management of Commonwealth Buildings, Report No 47 1991-92;
- Australian Quarantine Inspection Service – Quarantine Division, Report No 35 1991-92 (Department of Primary Industries and Energy); and
- Program Evaluation in the Departments of Social Security and Primary Industries and Energy, Report No 26 1991-92 (Department of Social Security, Department of Primary Industries and Energy).
- **1990-91**
- Antarctic Supply Vessel – Chartering Arrangements, Report No 9 1990-91 (Department of the Arts, Sport, the Environment, Tourism and Territories).

Appendix II

Senate Environment, Communications, Information Technology and the Arts Committee: Legislation Committee - *Report on Environment Protection and Biodiversity Conservation Bill 1998 & Environmental Reform Consequential Provisions) Bill 1998* (27 April 1999), Chapter 5: General and Preliminary Matters

Commissioner for the Environment

5.14 A constituency for the creation of a commissioner for the environment was evident throughout the hearings of the Committee. [8] The concept derives from both overseas precedents in Canada and New Zealand and Australian precedents in the Australian Capital Territory and Victoria. [9] The suggestion was made that an office of Commissioner for the environment should be established.

5.15 The various submissions suggest a range of possible roles for the proposed environmental commissioner. Principally, it appeared that the role of an environmental commissioner would consist of independent review of government environmental agencies and performance, including review of bilateral agreements, auditing of compliance with approvals and agreements made under the Bill and establishing whether the Commonwealth has met sustainable development strategies. [10] It could include the development of sustainable development strategies and assessment of whether the Commonwealth had met its obligations under such strategies. [11] In addition, the commissioner could be involved in the creation or coordination of periodic State of the Environment reports. [12]

5.16 Mr Beale* did not consider that a Commissioner of the Environment would be an appropriate mechanism under the Bill:

> "It is a very bureaucratic approach. We have not seen the necessity to build such a role into the Bill. The Minister – and, serving the Minister, the Department – will, of course, have an obligation to monitor and evaluate, for example, State compliance with bilateral agreements. … I am going to have to report to the Parliament on that every year and no doubt be examined in relation to it. But it is not a case of setting up a separate bureaucratic arm for that. [13]"

5.17 The Committee does not consider that it would be appropriate to establish a commissioner for the environment under this Bill. The Bill contains adequate safeguards to ensure accountability for the operation of bilateral agreements and of the Act, including review and reporting mechanisms. The Secretary is under an obligation to report to Parliament annually on the operation of the Bill and the report must be laid before both Houses of the Parliament. [14] The Auditor General will be able to conduct audits on matters related the implementation of the Bill under the Auditor General Act 1997.

5.18 The Committee considers further that the suggested functions of the proposed environmental commissioner extend well beyond the scope of the Bill. For example, the development of sustainable development strategies by Commonwealth agencies and the coordination of State of the Environment reporting are much broader concepts than the Bill's focus on environmental assessment and approvals and biodiversity conservation. The Committee considers that the underlying assumption that there needs to be a legislative basis for such processes as State of the Environment reporting is also questionable, as the current administrative basis for this is very successful. [15]

5.19 The Committee does not consider this Bill to be the appropriate vehicle for the creation of what is essentially an independent statutory review body. To be effective, such a position would need its own legislative basis.

Labour Senators' Findings

Labour Senators are of the view that there is a need to ...

12. Provide for the Auditor General to fulfil environmental audit functions.

Minority Report by the Australian Democrats

Recommendation : That a Commissioner for the Environment be established as an independent authority to carry out functions such as reviewing bilateral agreements, monitoring State compliance with bilateral agreements and reviewing the performance of Commonwealth Departments and agencies in implementing their ESD strategies.

Report by the Australian Greens and The Greens (WA)

Recommendation : A Commissioner for the

* Roger Beale, Permanent Secretary, Environment Australia (ed note)

Environment should be established as an independent authority to review the performance of the Commonwealth in fulfilling its environmental objectives and priorities. For example it would review the performance of Commonwealth departments and agencies in implementing their ESD strategies.

Notes:

[8] For example, Mr Gregory Rose, National Environmental Law Association, Proof Committee Hansard, Canberra, 4 March 1999, p 115; Mr Simon Molesworth, Environment Institute of Australia, Proof Committee Hansard, Melbourne, 18 March 1999, p 302; Mr Michael Krockenberger, Australian Conservation Foundation, Proof Committee Hansard, Melbourne, 18 March 1999, p 281; Environmental Defender's Office, Submission 15, pp 47-48.

[9] Mr Simon Molesworth, Environment Institute of Australia, Proof Committee Hansard, Melbourne, 18 March 1999, p 302; Environment Institute of Australia, Submission 623, p 5ff; Mr Gregory Rose, National Environmental Law Association, Proof Committee Hansard, Canberra, 4 March 1999, p 115.

[10] Mr Simon Molesworth, Environment Institute of Australia, Proof Committee Hansard, Melbourne, 18 March 1999, p 302; Environmental Defender's Office, Submission 15, p 47; Mr Michael Krockenberger, Australian Conservation Foundation, Proof Committee Hansard, Melbourne, 18 March 1999, p 281.

[11] Mr Gregory Rose, National Environmental Law Association, Proof Committee Hansard, Canberra, 4 March 1999, p 115; Environmental Defender's Office, Submission 15, p 47.

[12] Mr Michael Krockenberger, Australian Conservation Foundation, Proof Committee Hansard, Melbourne 18 March 1999, p 281; Environmental Defender's Office, Submission 15, p 48; Mr Gregory Rose, National Environmental Law Association, Proof Committee Hansard, Canberra, 4 March 1999, p 115; Environment Institute of Australia, Submission 623, p 3.

[13] Proof Committee Hansard, Canberra, 4 March 1999, p 175.

[14] Clause 516.

[15] The 1996 State of the Environment Report was produced by seven expert reference groups working under the broad discretion of the State of the Environment Advisory Council.

Appendix III

Inventory of Selected Commonwealth Policies on the Environment, categorised by sector.

- Ecologically Sustainable Development
- National Strategy for Ecologically Sustainable Development
- Local Agenda 21
- Marine and Coastal
- Australia's Oceans Policy
- Coastal and Marine Planning Program
- Coasts and Clean Seas Program
- Urban Stormwater Initiative
- National Action Program to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances
- Marine Species Protection Program,
- Fisheries Action Program
- Forests
- Ecologically Sustainable Forest Management Program
- Regional Forests Agreements
- 2020 Vision
- National Forest Policy Statement
- Land, Soil and Freshwater
- Bushcare
- Landcare
- National Rivercare Initiative
- National Wetlands Program
- Wetlands Policy of the Commonwealth Government of Australia
- Murray-Darling 2000
- National Principles and Guidelines for Rangelands Management (under development)
- National Water Conservation Strategy (under development)
- Natural Heritag e Trust
- Biodiversity
- National Strategy for the Conservation of Australia's Biological Diversity
- National Strategy for the Conservation of Australian Species and Communities Threatened with Extinction
- Atmosphere
- Ozone Protection strategy
- National Greenhouse Strategy
- Greenhouse 21C
- Greenhouse Challenge