

Does Australia need a Commonwealth Environmental Protection Agency?

EIANZ seminar, Brisbane, 2 April 2019

Objectives of the seminar:

- To obtain a better appreciation of the relevant roles of the Commonwealth, State/Territory and local governments in managing the environment in Australia.
- To obtain an understanding of how a new Commonwealth environmental protection agency (EPA) (or other potential alternatives) may better confront identified challenges for environmental management in Australia.
- To provide an opportunity for EIANZ members to contribute to the development of an EIANZ policy position on the justification of having a Commonwealth EPA.

(Note: EIANZ is an apolitical organisation that does not endorse any political party. This seminar is for policy discussion only. While several reviews and the ALP have proposed a new “Australian Environment Act” to replace the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the focus of this seminar is not on a new Act but on a new Commonwealth EPA).

Speakers:

- Barry Carbon AM – lessons from the previous national EPA (1992-1998)
- Rob Fowler – APEEL’s recommendations for new national EPA & related bodies
- Tara Kennedy – managing the relationships between Commonwealth, State and local government regulators in practice
- Scott Hanna – lessons from Canada

Questions for speakers:

- **What** is the role you consider the Commonwealth Government should have in protecting the environment within Australia’s three tiers of government (Federal; State/Territory; & local government)?
- **Why** is a Commonwealth EPA necessary or desirable within the Commonwealth’s overall role and, conversely, why is the current system (of a federal department answering directly to the Federal Environment Minister and the Minister being responsible for decisions under the EPBC Act, with referrals of any criminal prosecutions to the Commonwealth Director of Public Prosecutions) insufficient?

Alternatively, do you consider a Commonwealth EPA is neither necessary or desirable and the current department-minister structure is sufficient?



- **How** do you propose to create a Commonwealth EPA? Specifically:
 - Will the current Commonwealth Department of Environment and Energy (**DEE**) still exist in whole or in part and, if so, how will the two share responsibilities (e.g. for Antarctic research)?
 - What budget will the new Commonwealth EPA need, including for substantially increased enforcement of national environmental laws (is it more than the current Department?)
 - What will happen to the existing staff of DEE?
 - Are there models of other Commonwealth regulators that the Commonwealth EPA can emulate (e.g. ACCC, ASIC, GBRMPA, etc)?
 - How will the Commonwealth EPA ensure its independence from government in terms of:
 - appointments of its Chair, board, etc; and
 - maintenance of its budget?
 - How would the new Commonwealth EPA interact with State and local regulatory bodies, particularly in areas that overlap (e.g. MNES that are also MSES)?

Appendix: summary of key historical events:

- 1983 [Tasmanian Dams decision](#) narrowly confirmed Commonwealth's wide powers to make laws to protect the environment.
- 1992 [Intergovernmental Agreement on the Environment \(IGAE\)](#) attempted to delineate for the first time the responsibilities and interests of the three levels of government in Australia.
- 1992-1998 Commonwealth EPA formed (originally under Hawke-ALP Government).
- 1997 the then newly-elected Howard Government concluded the [Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment with the State and Territory Governments](#). This agreement adopted a similar approach to the IGAE.
- 1999 – [EPBC Act](#) enacted based on the 1997 Heads of Agreement.
- 2009 – [Hawke Review of EPBC Act](#) recommended new Australian Environment Act and new independent National Environmental Commissioner and National Environment Commission be established.
- 2012 – [“One-Stop Shop”](#) for federal approvals proposed by Business Council of Australia and adopted as policy by Abbott-Coalition Government but it stalled in the Senate and negotiations with the States and did not materialise.
- 2017 – [Australian Panel of Environmental Law Experts \(APEEL\)](#) recommends next generation of environmental laws for Australia, including a National EPA.
- December 2018 – [ALP proposes new “Australian Environment Act” \(building on existing MNES triggers \(e.g. for land clearing & climate change\), 2009 Hawke Review & APEEL recommendations\) and new, independent Commonwealth EPA.](#)
- May 2019 – Australian federal election due.