

The Senate

Environment and Communications
Legislation Committee

National Water Commission Amendment
Bill 2012

May 2012

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Chapter 1

Introduction

Conduct of the inquiry

1.1 The National Water Commission Amendment Bill 2012 (the bill) was referred to the Senate Environment and Communications Legislation Committee (the committee) on the recommendation of the Selection of Bills Committee in its report of 22 March 2012.¹

1.2 The committee received seven submissions. No public hearings were held however the committee did seek responses from the Department of Sustainability, Environment, Water, Population and Communities to questions that arose during the inquiry.²

Background to the bill

The National Water Commission

1.3 The National Water Commission (NWC) was created under the *National Water Commission Act 2004*. Agreement to establish the NWC was reached through the intergovernmental agreement on the National Water Initiative in 2004 through the Council of Australian Governments (COAG). This intergovernmental agreement was signed by all governments at the June 2004 COAG meeting with the exception of Tasmania, which signed the Agreement on 3 June 2005, and Western Australia, which signed the Agreement on 6 April 2006.³

1.4 The NWC is independent of individual governments but has reporting obligations to COAG and to the public.⁴ The NWC oversees implementation of the National Water Initiative—Australia's blueprint for reform, management and use of water resources.⁵ The NWC advises COAG and the Commonwealth government on national water issues and the progress of the National Water Initiative (NWI).

1.5 Under the *Water Act 2007*, the NWC acquired the function to audit the effectiveness of implementation of the Murray-Darling Basin Plan and associated water resource plans. In addition, the NWC currently manages 177 projects under the \$250 million Raising National Water Standards Program.⁶ These projects fund

1 Senate Selection of Bills Committee, *Report No. 4 of 2012*, p. 4.

2 Department of Sustainability, Environment, Water, Population and Communities, answers to questions on notice, 20 April 2012 (received 24 April 2012).

3 National Water Commission website, <http://nwc.gov.au/commission> (accessed 17 April 2012).

4 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. i.

5 National Water Commission website, <http://nwc.gov.au/commission> (accessed 17 April 2012).

6 National Water Commission website, <http://nwc.gov.au/commission> (accessed 17 April 2012).

research where knowledge gaps on topics relevant to policy or its implementation exist, or development of tools to assist delivery of technical tasks.⁷

1.6 When it was established the NWC was tasked with creating benchmarks from which water management reform could be measured, and was also required to report on this progress, '...auditing the actions of jurisdictions against agreed milestones, and to assess the quality and direction of reform and impediments to achieving the objectives of the NWI.'⁸

1.7 The NWC Act specifies that a review of the ongoing role and functions of the NWC must be completed by the end of 2011, and that the NWC will expire on 30 June 2012. The review of the NWC Act was undertaken by Dr David Rosalky, with the findings of this review published in a report titled *COAG Review of the National Water Commission*, 6 December 2011.

Review of NWC

1.8 In summary, Dr Rosalky's review of the NWC found that the NWI was effective in implementing COAG's water reform agenda, and that it enjoys the support of most stakeholders. The review found that while the NWI was making inroads in reform, '...the full benefits from those initiatives require further elements of the NWI to be put in place'.⁹ It also found that the original timeframes established for the NWI were ambitious and that key reforms had not been fully implemented due to their technically and politically complex nature.¹⁰

1.9 In particular the review noted:

The elements of the NWI still to be implemented are, by their nature, the more difficult ones and the role that can be played by a specialist and independent body like the NWC is likely to be even more important in the future.¹¹

1.10 The review noted that the impact of the NWI had been widely felt and that many communities were relying on stressed water supplies, increasing the need for credible audit and assessment processes on progress made on the NWI. It also noted that a platform for highly technical research related to water resources, riverine systems and communities and industries reliant on them, is needed to inform and implement relevant policy. The Rosalky review advised that an independent forum to allow engagement between governments, researchers, policy makers and other stakeholders was needed, and that the NWC was ideally placed to provide this.¹²

7 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. iv.

8 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. i.

9 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. i.

10 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. ii.

11 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. ii.

12 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, pp ii-iii.

1.11 The review considered that three key services provided by the NWC were also key achievements of the Commission. These are:

- Monitoring and audit of reform activity;
- Assessments of reform activity; and
- Knowledge leadership.¹³

1.12 As a single entity the NWC offers free flow of information on its key functions and the status of water reform.

The state of the NWI agenda and the standing and capacity that the NWC has built to support that agenda make the timing of the sunset provision in the NWC Act inopportune. The focus of consideration at this stage should be how the NWC can most effectively perform the core services it has been providing in the changed circumstances that have merged over the past seven years.¹⁴

Review recommendations

1.13 The review made 31 specific recommendations. In summary, the review concluded that the sunsetting of the NWC on 30 June 2012 was inappropriate and that it should continue for the duration of the NWI with similar governance arrangements. A comprehensive external review of the NWC every five years was recommended.¹⁵

1.14 The review recommended that the oversight, audit and assessment of water reforms in each jurisdiction should continue and that knowledge leadership and dissemination of methods and innovation for reform was an important function.¹⁶ It also recommended that the NWC should encompass all reforms associated with implementation of the NWI, including those associated with the Murray-Darling Basin.¹⁷

1.15 The review recommended that the legislation be amended to implement the recommendations of the review, and provide for provision of reports and studies by the NWC to COAG and COAG's subordinate processes.¹⁸

1.16 The recommendations are reproduced at Appendix 1.

13 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. iii.

14 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. v.

15 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. 54

16 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. 55.

17 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. 54

18 Rosalky, D., *COAG Review of the National Water Commission*, 6 December 2011, p. 57.

Chapter 2

Issues for Consideration

National Water Commission Amendment Bill 2012

1.1 On 14 March 2012, the Commonwealth government tabled the Rosalky review report in Parliament and announced that the NWC would be continued, in accordance with a number of the recommendations made in the review.¹

After considering Dr Rosalky's Review, the Government has determined that the NWC should continue for the life of the National Water Initiative with core ongoing functions of audit, monitoring and assessment. This will ensure the NWC can give priority to its valuable role as a credible, specialist and independent agency supporting national water reforms.²

1.2 Under proposed amendments, the NWC would continue to audit and evaluate implementation of the Murray-Darling Basin Plan, and monitor and assess water reform and progress with the NWI.³ However it will refocus the role of the NWC to provide independent assurance of all governments' progress on water reform while continuing its role of monitoring, audit and assessment.⁴

1.3 Specifically, clause 6 of the bill sets out the proposed functions of the NWC:

- (a) if requested by COAG, to carry out audits to determine:
 - (i) whether parties to the NWI are implementing their commitments under the NWI, or any other agreement between the Commonwealth and a State or Territory, in relation to the parties' management and regulation of their water resources; and
 - (ii) the effectiveness of that implementation;
- (b) every 3 years:
 - (i) to assess the progress of parties to the NWI towards achieving the objectives and outcomes of, and within the timelines required by, the NWI; and
 - (ii) to advise COAG of those assessments; and

1 National Water Commission, *Submission No. 1*, p. 2.

2 Senator Hon Don Farrell, Parliamentary Secretary for Sustainability and Urban Water, 'Gillard Government extends National Water Commission', *Media Release*, 14 March 2012.

3 Senator Hon Don Farrell, Parliamentary Secretary for Sustainability and Urban Water, 'Gillard Government extends National Water Commission', *Media Release*, 14 March 2012.

4 Second reading speech, *Senate Hansard*, 22 March 2012, p. 2573.

- (iii) to advise and make recommendations to COAG on actions that the parties might take to better achieve those objectives and outcomes;
- (c) to conduct any other assessments in relation to matters relating to:
 - (i) the NWI; or
 - (ii) any other agreement between the Commonwealth and a State or Territory, but only if that other agreement provides for the NWC to have this function;
 - (iii) particularly in relation to matters that are significant for achieving the objectives and outcomes of the NWI;
- (d) to monitor areas that are significant for achieving the objectives and outcomes of the NWI;
- (e) to assist with the implementation of the NWI by providing information and guidance in relation to the functions mentioned in paragraphs (a) to (d), and to undertake activities that promote the objectives and outcomes of the NWI;
- (f) if requested to do so by the Minister, to advise and make recommendations to the Commonwealth in relation to the functions mentioned in paragraphs (a) to (d);
- (g) if requested to do so by the Minister, to advise and make recommendations to the Minister in relation to any Commonwealth program that relates to the management and regulation of Australia's water resources;
- (h) to advise COAG on whether a State or Territory is implementing its commitments under any agreement (other than the NWI) between the Commonwealth and the State or Territory relating to the management and regulation of Australia's water resources, but only if the agreement provides for the NWC to have this function;
- (i) if requested by COAG, to conduct any study or analysis, or to provide any report, in relation to:
 - (i) matters of national significance relating to water (including the sustainable management of water resources and access to, and use of, water); or
 - (ii) the COAG Water Reform Framework;
- (j) any other function conferred by another law of the Commonwealth or prescribed by the regulations.

1.4 Other amendments proposed under the bill will:

- reduce the number of Commissioners from seven to five (which was not recommended by the Rosalky review);

-
- close the Australian Water Fund (AWF) Account and remove the NWC's ability to administer any AWF funds;⁵
 - provide for a review of the NWC's performance by the end of 2017, with further reviews every five years.

1.5 The *Raising National Water Standards Program*, which has been administered by the NWC, will end in 2012. However, the NWC Amendment bill provides for the NWC to administer any future program funds that may be allocated to it.

Issues raised in submissions

1.6 The committee received seven submissions. Submitters expressed broad support for the continuation of the NWC and its monitoring and oversight role.⁶ The Australian Water Association stated that the implementation of the NWI has been greatly enhanced by the NWC's existence, identifying its independence as a key strength.⁷ It noted other successes of the NWC: promotion of water standards, development of a National Water Sector Training Strategy, advocacy which stimulates the development of water markets, commissioning a Community of Practice for Environmental Water Managers to help these managers better carry out their functions, and supporting water reform generally through identifying targeted reforms.⁸

1.7 GE Energy regarded the proposed role for the NWC to be able to, at the request of COAG, conduct relevant studies and analysis on water issues as significant.⁹ GE Energy recommended that one issue worthy of referral under this proposed function is access to water supply and wastewater services to Indigenous communities.¹⁰

5 The Australian Water Fund provided funds for three programs: Water Smart Australia, Raising National Water Standards and the Community Water Grants Program. The first two of these programs were administered by the NWC, with Water Smart Australia transferred in 2008 to the then Department of Environment, Water, Heritage and the Arts (now the Department of Sustainability, Environment, Water, Population and Communities). Programs under the Australian Water Fund have ceased or will cease in 2012.

6 South Australian government, *Submission No. 6*; CSIRO, *Submission No. 2*; Australian Water Association, *Submission No. 4*.

7 Australian Water Association, *Submission No. 4*, p. 2.

8 Australian Water Association, *Submission No. 4*, p. 2.

9 Proposed s 7(1)(i).

10 GE Energy, *Submission No. 7*, p. 2.

1.8 The National Farmers' Federation, the Water Services Association of Australia and the Australian Water Association all expressed concern about the level of funding available to the NWC to conduct its functions in a timely way.¹¹

1.9 The CSIRO advocated a strong role for the NWC in knowledge brokerage, and in particular, the development and oversight of a national water science strategy to support the water reform process. The CSIRO would like to see knowledge brokerage as one of the express functions of the NWC:

A knowledge brokerage role for the NWC is not inconsistent with the breadth of the proposed subsections [7(1)(b)(iii), 7(1)(e), (g) and (i)] in the NWC Amendment Bill 2012. However, greater clarity and importance would be given to this role for the NWC if "knowledge brokerage" were to be included as a core function of the NWC in the Bill, in particular as it relates to the other core functions of the NWC.¹²

1.10 In its answer to a question on notice, the Department of Sustainability, Environment, Water, Population and Communities (the department) noted that knowledge brokerage is an important issue for governments:

The Standing Council on Environment and Water is expected to consider this year a National Water Knowledge and Research Platform which will include mechanisms for the improved coordination of water-related research.¹³

1.11 GE Energy applauded the proposed additional requirement in the bill for audits or assessments completed by the NWC under proposed sections 7(1)(a), 7(1)(b) and 7(1)(c) to be made publicly available and recommended that this requirement should be extended to proposed section (7)(1)(i).¹⁴

1.12 The committee understands that the current NWC Act 2004 provides for the Commission to make documents publicly available with the Minister's agreement and that this existing provision could be used in relation to documents prepared under proposed section (7)(1)(i).

1.13 The South Australian government expressed concern that the role of the NWC in evaluating the Murray-Darling Basin Plan is not clear. It also expressed concern that the role of the NWC in evaluating the Commonwealth's management of environmental water is not clear, and suggested that there should be specific provisions in the Bill to allow COAG to request this.¹⁵

11 National Farmers' Federation, *Submission No. 5*, p. 1; Australian Water Services Association, *Submission No. 3*, p. 2; Water Services Association, *Submission No. 4*, p. 3.

12 CSIRO, *Submission No. 2*, p. 4.

13 Department of Sustainability, Environment, Water, Population and Communities, answers to questions on notice, 20 April 2012 (received 24 April 2012), p. 2.

14 GE Energy, *Submission No. 7*, p. 2.

15 South Australian government, *Submission No. 6*, p. 1.

1.14 The South Australian government suggested that the NWC should be required to submit its plan of work and activities to COAG water committees on an annual basis.¹⁶

1.15 In response to the issues raised by the South Australian government, the department noted that Part 3 of the *Water Act 2007* requires the NWC to complete audits of the effectiveness of the implementation of the Basin Plan at least every five years, and to provide a report of its audit to the minister, relevant state ministers and the Murray-Darling Basin Authority.¹⁷

1.16 The department further noted that the responsibility to confer the audit function on the NWC are reproduced in section 7(1)(f) of the bill.¹⁸

1.17 In response to the South Australian government's suggestion that the NWC submit annual plans of work and activities to COAG, the department remarked:

As stated in the second reading speech, it is envisaged that the NWC will formally engage with Council of Australian Governments (COAG) subcommittees on at least an annual basis, including regular advice on its activities. Reporting and consultation will be handled through normal COAG processes. The Department does not consider it necessary to make this a legislative requirement.¹⁹

Committee comment

1.18 The committee is pleased that submitters have given support to the continuation of the National Water Commission and its monitoring and oversight role. The committee believes that the NWC provides an important function in relation to water management in Australia. Accordingly, the committee recommends that the bill be passed before 30 June 2012.

16 South Australian government, *Submission No. 6*, p. 1.

17 Department of Sustainability, Environment, Water, Population and Communities, answers to questions on notice, 20 April 2012 (received 24 April 2012), p. 1.

18 Department of Sustainability, Environment, Water, Population and Communities, answers to questions on notice, 20 April 2012 (received 24 April 2012), p. 1.

19 Department of Sustainability, Environment, Water, Population and Communities, answers to questions on notice, 20 April 2012 (received 24 April 2012), p. 1.

Recommendation 1

1.19 The committee recommends that the bill be passed before 30 June 2012.

**Senator Doug Cameron
Chair**

Appendix 1

Chapter 8 – Recommendations of the COAG Review of the National Water Commission

8.1 Continuing role of the NWC

1. The NWC should carry out key tasks for the lifetime of the NWI aimed at assisting and pursuing the objectives of the NWI and addressing issues that impinge on the successful implementation of the NWI.
2. The NWC should continue without a sunset provision until the NWI is substantially replaced. There should be a comprehensive external review of its roles and functions every five years while its legislation continues to be in force.
3. The purview of the NWC should encompass all reforms associated with implementation of the NWI, including the MDB (Murray-Darling Basin) reforms, and all jurisdictions.

8.2 Continuing and commencing functions

4. Monitoring of reform activity by government and non-government entities is a necessary ongoing function to maintain a central repository of information on reform activity and to inform all participants of developments.
5. Water market reports should continue to be produced at a timing and frequency that fit developments in market arrangements and which ensure integrity of relevant data series.
6. Monitoring of the performance of rural and urban water providers should continue for the duration of the NWI.
7. Audit of the actions and achievements of all jurisdictions in implementing the NWI against agreed commitments is essential to accountability and should continue.
8. Audit of the Basin Plan and associated plans should be carried out in such a way as to minimise reporting requirements.
9. In general, audit indicators should be developed in consultation with jurisdictions to minimise reporting requirements and be based on outputs from reform actions rather than process.
10. Audits of Basin State reform actions agreed under the WMPAs (Water Management Partnership Agreements), and associated Commonwealth commitments to reform action are an appropriate activity for the NWC.

11. Ongoing assessments of progress in implementing the NWI are important. They should be produced no less frequently than every three years. The assessments should be comprehensive but effort concentrated on issues that carry the most significance in achieving the NWI's key goals. The NWC may, at its discretion, and in consultation with affected parties, choose to assess particular aspects at critical times outside the triennial schedule.

12. Assessment of the impacts of inter-jurisdictional water trading in the southern MDB should not be specifically required, but may be carried out by the NWC if, at the time such an assessment is required, the PC is unable to do so in a timely manner.

13. COAG should have access to a body which provides advice and makes recommendations through publicly available reports, specifically in relation to the ongoing implementation of the NWI. The NWC is best placed to perform this function.

14. The function of 'knowledge leadership' should continue to focus on issues impacting on water reform. This should involve the selective commissioning of research and studies, coordination of pertinent information and research, public education through stakeholder forums, and public reporting.

- This function should encompass reform implementation nationally, including in the MDB.
- Priorities in project selection should be made after consultation with jurisdictions and non-government stakeholders.

15. Development of tools and methods to assist jurisdictions or non-government operators to overcome impediments is best funded and conducted by the jurisdictions themselves.

16. An important function for the NWC is to coordinate and to report on the dissemination of knowledge and innovative practices for jurisdictions to emulate where appropriate. The NWC should also take opportunities to broker coordinated development of innovative practices between jurisdictions and industry stakeholders.

17. The NWC should perform the function provided under the Carbon Credits (Carbon Farming Initiative) Regulations 2011.

18 The NWC should perform the functions recommended in the Australia's urban water sector report if the functions are considered of sufficient priority and importance in the NWC's work program.

19. Depending on the Commonwealth's response to the Windsor report, the NWC should perform only those functions that fit within the general functions recommended in this Review and not expand its roles into new skill areas.

8.3 Governance and engagement

20. The NWC should maintain close engagement with jurisdictions and other operators in preparing their assessments with the aim, inter alia, of avoiding excessive reporting burden.

21. NWC should have regular discussions with jurisdictions through Water TOG (National Water Reform Thematic Oversight Group) meetings. It should table a forward work plan for discussion on an annual basis. The work plan needs to canvass the likely forward schedule of reporting activities that will impact on jurisdictions and how the NWC's assessments and reports will avoid duplication and, where possible, rationalise data and reporting requests. While the NWC is to take cognisance of the views expressed, its work plan is for itself to determine.

22. Engagement between NWC and Water TOG should be two-way in nature, enabling NWC's reports and inputs to be discussed with NWC at Water TOG meetings and for Water TOG to express its views about the NWC's activities and work program.

23. NWC should use its meetings with Water TOG to bring the views of users, industry, researchers and other external stakeholders to the attention of jurisdictions.

24. NWC should utilise its engagement with Water TOG and its stakeholder reference group, at least annually, to receive the views of jurisdictions and stakeholders on the NWC's performance against criteria of quality, relevance and timeliness of its activities.

25. NWC audits and assessments of the state of reform activity need to be open as to the situation in each jurisdiction, and the reports published for open access to all stakeholders and the public.

26. The NWC should actively recruit skilled staff and undertake its work with the intention of becoming a highly regarded centre of knowledge and expertise in water reform.

27. The NWC should create a public register of information to make the reference and source documents used in its studies readily available.

28. NWC reports and studies should be subjected to a cost-effective peer review to ensure quality and credibility of its products.

8.4 Institutional arrangements

29. The NWC Act should be amended to implement the recommendations of this Review.

30. Amendments to the NWC Act should:

- provide for the NWC to remain as a Commonwealth statutory authority under the FMA Act to ensure appropriate governance of Commonwealth funding of the NWC
- provide for the NWC to retain its cross-jurisdictional authority with strengthened provisions to ensure that is seen as not belonging to, or preferentially representing, one jurisdiction (the Commonwealth)
- stipulate clear requirements for the provision of reports and studies by the NWC to COAG and COAG's subordinate processes (ministerial councils and senior officials' groups)
- implement the internal governance and administrative measures recommended by this Review.

31. The Australian Government may consider options for funding arrangements for the NWC. If the recommendations in this review are adopted, this would require a government decision to confirm the provisional forward estimates and, depending on the final scale of the organisation, additional funding as required.

Appendix 2

Submissions and answers to questions taken on notice

Submissions

- 1** National Water Commission
- 2** CSIRO
- 3** Water Services Association of Australia
- 4** Australian Water Association
- 5** National Farmers' Federation
- 6** South Australian Government
- 7** GE Energy

Answers to questions taken on notice

Department of Sustainability, Environment, Water, Population and Communities – answers to written questions taken on notice on 20 April 2012.

