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FOUNDATION**

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13 October 2014

Submission to the Standing Committee on Environment and Communications Inquiry into the National Water Commission (Abolition) Bill 2014

The Australian Conservation Foundation has been active in advocating for the protection and sustainable use of Australia's freshwater ecosystems for 50 years. We have championed the need for water reform in the Murray Darling Basin for several decades and are actively working for a better future for people and nature in Northern Australia, including advocating for world's best practice in the use and management of water.

Overview

To abolish the National Water Commission (NWC) and give responsibility of water management to the Productivity Commission would be a short-sighted and backward step, particularly in the absence of substantial changes to the mandate and operation of the Productivity Commission. It would likely result in another wave of conflicts over water due to the absence of what all sides regard as a well-respected expert independent body.

National water reform, as envisaged under the National Water Initiative is a long term journey. While progress has been made, there is still a long way to go, particularly within the context of changes to the use of water resources in northern Australia.

The closure of the NWC would deliver minimal budget savings, but would effectively erode the foundation and institutional support of the National Water Initiative.

Recommendation 1: As the National Water Commission plays an important role holding governments to account on delivering significant water reforms across the nation, it should be maintained with its previous budget appropriation reinstated.

If the NWC is abolished ACF sees a number of significant shortcomings in the amendments proposed in the *National Water Commission (Abolition) Bill 2014*. These include the appropriateness of the legislative mandate, skills and resourcing of the Productivity Commission in being able to progress some of the major functions of the NWC, such as the triennial assessments of the National Water Initiative and auditing of the Murray Darling Basin Plan. It also views the lack of inclusion of a number of legislative policy advice

functions under the NWC Act as a backward step in the journey towards sustainable water management in Australia. If the NWC is abolished, ACF believes the following recommendations are essential minimum requirements that could go some way towards addressing these problems.

Recommendation 2: The Productivity Commission Act 1998 should be amended, especially Section 6, to include environmental sustainability, social and cultural considerations in the Commission's legislative mandate.

Recommendation 3: The Productivity Commission should be renamed the Productivity and Sustainability Commission.

Recommendation 4: Contingent on amendments to the Productivity Commission Act 1998, outlined at Recommendation 2, the Productivity Commission should be given additional resources to ensure it has staff who are sufficiently skilled and qualified in water resource management to complete relevant audits and assessments.

Recommendation 5 – Relevant legislation, such as the Productivity Commission Act 1998, should be amended to ensure that the Productivity Commission (or another appropriate independent institution) has legislative responsibility for driving policy leadership and innovation in water management nationally.

Why the Government should retain the National Water Commission

The significance of the National Water Initiative

The National Water Initiative (NWI) is a significant positive legacy of the Howard Government. It was developed and endorsed through COAG with the goal of delivering economically efficient water use and related investments in order to maximise the economic, social and environmental value of Australia's water resources.

It also sought to deliver improved environmental water outcomes, including the effective and efficient delivery of water to sustain the health of water-dependent ecosystems of waterways and wetlands.

The NWI provides a framework for how water is to be sustainably managed across the nation. It provides a mechanism to redress past mistakes in water management, such as over extraction and allocation, and embed sustainable management practices in all jurisdictions.

Specifically the NWI seeks to:

- prepare water plans with provision for the environment,
- deal with over-allocated or stressed water systems,
- introduce registers of water rights and standards for water accounting,

- expand the trade in water,
- improve pricing for water storage and delivery, and
- meet and manage urban water demands.

The importance of the NWI for delivering a sustainable Australia should not be understated. It plays a critical role in driving improvements in the health of degraded and regulated river systems in the southern states, as well as promoting the sustainability of largely unregulated freshwater ecosystems in the north.

The unfortunate reality is that freshwater ecosystems are the world's most threatened ecosystem type, outpacing terrestrial and marine environments in species loss and extinctions.¹

Our communities depend on the health of these freshwater ecosystems, for drinking water, livelihood, spirituality and recreation. As industries rapidly evolve they can outpace government capacity to safely regulate impacts on these resources, as has been seen with prevalence of coal seam gas projects. The importance of robust and NWI-compliant water resource plans that take account of these risks is critical to a prosperous and sustainable Australia.

The NWC has a critical role in future water reforms

The National Water Commission was established in 2004 to act as the custodian of the NWI. One of the Commission's primary responsibilities has been to drive national water reform through the NWI and assess progress by governments in delivering on their commitments under the initiative. In doing so the NWC has become known as an independent auditor, driver and custodian of the NWI. It is acknowledged as such by a broad cross section of organisations and individuals.

While there has been some progress in implementing the NWI, the implementation of water reform across the country, as envisaged under the NWI, has been relatively slow. The commission's 2011 NWI assessment said more work was needed to:

- tackle unplanned water interception,
- better represent Indigenous interests and participation in water planning,
- improve measurement of groundwater and surface water interactions,
- improve accountability within water plans and compliance measures when water is taken illegally.²

The NWC was pivotal in shining a light on these aspects where governments had fallen behind on their commitments under the NWI.

¹ WWF Living Planet Report 2014 - http://wwf.panda.org/about_our_earth/all_publications/living_planet_report/

² National Water Commission 2011, The National Water Initiative—securing Australia's water future: 2011 assessment, NWC, Canberra

In addition to the overarching framework of the NWI, water reform in the Murray-Darling Basin under the Basin Plan is only just beginning to take shape, with the full effect of the plan not expected until 2019.

In the intervening period there are a number of key milestones against which states and the Commonwealth will need to be held to account by an independent body with sufficient water expertise, such as the National Water Commission. These include progress against the recovery and delivery of environmental water, addressing constraints and adjustments to sustainable diversion limits within the Basin.

As part of previous sun-setting arrangements the Council of Australian Governments (COAG) initiated an independent review of the NWC, which finalised its report in 2011.

The review highlighted the importance of the NWC in performing these three primary functions:

- monitoring and auditing reform activities under the NWI,
- assess progress of states, territories and the Commonwealth in water reforms, and
- delivering 'knowledge leadership' in water reform matters.

Like the 2011 assessment this report concluded that progress on the NWI had been slow and, importantly, that the NWC played a number of critical roles in driving national water reform.³ Following the independent review COAG agreed to extend the life of the NWC without sunset until the full implementation of the NWI was considered complete. This was facilitated with the passing of the *National Water Commission Amendment Act 2012*.

The benefits of the NWC as a single entry point

The independent review for COAG stressed the importance of a single entry point for the monitoring, auditing, assessment and policy leadership functions undertaken by the NWC. The review highlighted that having these functions housed within a single institution ultimately improved the quality and efficiency of monitoring and policy work managed by the NWC.

Specifically the independent review noted in relation to the NWC's various roles that:

Combining all of these activities into a single entity ensures the free flow of information and a comprehensive understanding of the state of reform implementation. Further, each of these functions establishes relationships and generates information and knowledge which provides a solid foundation for subsequent audits and assessments and ensures relevant insights are

³ Dr David Rosalky, December 2011, COAG Review of the National Water Commission, <http://www.environment.gov.au/system/files/pages/8e67c6b4-c2f5-4747-b6cc-7a0aab52474b/files/coag-review-national-water-commission.pdf>

*captured and conveyed. Having a single entity responsible for monitoring, audit and assessment, and knowledge leadership therefore enhances the efficiency and effectiveness of each of the individual activities. This will become even more important in the future as reforms become more difficult.*⁴

The independent review went on to say:

*The NWC is in a strong position to ensure the reporting tasks it initiates through audits and assessments are rationalised and harmonised with other accountability obligations on jurisdictions and water managers. This would improve the cost-effectiveness of audits and assessments, reduce the reporting load on jurisdictions, reduce the effort required by the NWC to collect information and ensure its reports were more sharply focussed on issues pertinent to driving future water reform.*⁵

While the independent review acknowledged the efficiency benefits of the NWC as a single point of entry, this message seems lost in the context of the proposed Abolition Bill, which disperses monitoring, auditing and reporting functions across various agencies and portfolios, with some ceasing to exist completely.

It would appear to be a fallacy to argue that the closure of the NWC will improve efficiency through spreading its functions widely.

Savings over forward estimates are marginal

The Government has rationalised the closure of the NWC as part of its budget austerity, following recommendations from the Commission of Audit. However the potential budget savings from the proposed closure over forward estimates are extremely small. In fact they represent less than 0.0001 per cent of government expenditure over the relevant period.⁶

The NWC plays an important role in ensuring that more than \$13 billion that has been invested in water reform, particularly in the Murray-Darling, is delivering value for money.

The closure of the NWC would diminish oversight of water reform nationally and deliver extremely limited budgetary savings.

There has not been sufficient community consultation about the proposed closure

The government announced the closure of the NWC and reallocation of its functions without sufficient community consultation. There is broad support for the NWC across the environment sector and a number of other water related industry bodies and organisations. The NWC has adopted a highly collaborative approach to driving reform through the NWL, which included building positive and constructive relationships with stakeholders.

⁴ Dr David Rosalky, December 2011, COAG Review of the National Water Commission, - p V

⁵ Dr David Rosalky, December 2011, COAG Review of the National Water Commission – p V

⁶ As a percentage of total government spending - 2014-15 Budget Overview

This contrasts with the process of carving up its functions without appropriate legislative backing and resourcing, which is discussed further below.

Recommendation 1: As the National Water Commission plays an important role holding governments to account on delivering significant water reforms across the nation, it should be maintained with its previous budget appropriation reinstated.

Implications for Northern Australia

The proposed closure of the NWC has significant implications for the country's north, particularly in the context of the Government's *White Paper of Developing Northern Australia*. For a range of compelling reasons, including to address Indigenous disadvantage, northern Australia requires a sustainable economic development pathway.

This pathway needs to fit the nature of the country and capitalise on its natural assets, rather than turning to damaging large-scale irrigation or land-clearing projects, or the unfettered expansion of the mining sector.

Existing economic activities and natural values supported by the land and water resources of northern Australia, along with the uncertainties associated with development of water resources, demand best practice water management and planning before the allocation of water entitlement or use licences.

Australia must avoid repeating mistakes of the past, such as the over-extraction of water from the Murray-Darling Basin, which is now costing the taxpayer \$13 billion to restore.

The complex interconnections between surface and groundwater are poorly understood in northern Australia. Water extractions from one place could have significant impacts some distance away and some time in the future.

The National Water Commission has an important role to play in northern Australia, as it is imperative that scientifically robust, NWI-compliant plans, are set prior to changed arrangements for access to northern freshwater river systems.

In relation to Indigenous rights and interests the NWC has played a helpful role to provide independent information on water planning issues and to support appropriate engagement with Indigenous communities through, for example, establishing the Indigenous Water Policy Group and the Indigenous Community Water Facilitators Network.

Water is the lifeblood of communities in northern Australia. Indigenous people manage or have interests over nearly 80 per cent of the land and waterways in the north.

Concerns with the proposed amendments to the National Water Commission Act 2004 and Water Act 2007

Shifting audit functions and triennial assessments to the Productivity Commission

The Government proposes moving two of the NWC's key functions to the Productivity Commission (PC). These include the triennial assessments of the NWI and the auditing the implementation of the Murray Darling Basin Plan. While the Productivity Commission has played an important role in providing independent analysis for the Government on productivity and economic issues, in its current form it is not an appropriate institutions to have carriage of significant environmental and social reforms in its current form.

ACF does not believe the Productivity Commission is an appropriate institution to audit the Basin Plan or undertake triennial assessments of the NWI in the absence of substantial changes to its legislative mandate, operations and resourcing.

The PC does not have an appropriate legislative mandate

The PC's mandate, as outlined under Section 6 of the *Productivity Commission Act 1998*, is wholly focussed on industry, industry development and productivity outcomes (Appendix 1). This legislative mandate requires substantial revision to refocus the commission on broader matters as they relate to water reform, including the significant environmental, social and cultural aspects of water reform. ACF has previously advocated for an expansion of the Productivity Commission's mission, scope and mandate to include environmental sustainability as core to its functions. Such a move would involve amending parts of the *Productivity Commission Act 1998* to embed sustainability and social considerations, specifically incorporating sustainability and triple bottom line considerations under Section 6 of the Act and renaming the commission the Productivity and Sustainability Commission.

In the absence of changes to the *Productivity Commission Act 1998* it is completely inappropriate for the key functions of the NWC to be housed within the PC.

Recommendation 2: The Productivity Commission Act 1998 should be amended, especially Section 6, to include environmental sustainability, social and cultural considerations in the Commission's legislative mandate.

Recommendation 3: The Productivity Commission should be renamed the Productivity and Sustainability Commission.

The PC does not have sufficient resources and expertise in water reform

The PC lacks the depth in environmental and social research that exists within the NWC. The organisation generally approaches issues from a solely an economic viewpoint, consistent with its legislative mandate, as discussed above. While the NWC has five commissioners with the requisite skills in water and natural resource management, the PC currently has one. This leaves little confidence that there will be sufficient capacity and depth of skills to undertake audits and assessment of progress in delivering the most significant water reforms in our nation's history. There is some residual funding identified in the budget papers for various agencies to undertake some of the functions of the NWC, however this amount appears minimal, totalling \$6.6m over four years.⁷ It also appears that year-on-year funding for the PC is contracting and overall staffing is being reduced.⁸ This presents serious challenges in ensuring there are appropriate levels of institutional knowledge and resilience within the organisation to undertake any new responsibilities.

Recommendation 4: Contingent on amendments to the Productivity Commission Act 1998, outlined at Recommendation 2, the Productivity Commission should be given additional resources to ensure it has staff who are sufficiently skilled and qualified in water resource management to complete relevant audits and assessments.

The proposed amendments do not include many important statutory policy advice and reform functions

There are substantial elements of the NWC Act that are not replaced or replicated in the proposed amendments. This is particularly relevant for Section 7(d) – 7(j) of the NWC Act (Appendix 2), which outlines a number of key policy functions of the NWC. These include activities such as providing information and guidance that promote the objectives and outcomes of the NWI and providing leadership to the Commonwealth and COAG on water reform matters. There is nothing within the Abolition Bill and the Explanatory Memoranda that suggests the above functions will be replicated appropriately. This failure to have an institution, independent of government, with a legislative mandate for driving policy leadership and innovation in water management nationally may result in weakening the outcomes under the NWI. The NWC has been a strong advocate for significant reforms in water policy, including Indigenous rights and interests in water management, and this important role should continue.

Recommendation 5 – Relevant legislation, such as the Productivity Commission Act 1998, should be amended to ensure that the Productivity Commission (or another appropriate independent institution) has legislative responsibility for driving policy leadership and innovation in water management nationally.

⁷ Budget Measures Budget Paper No. 2 2014-15 – p 109

⁸ Productivity Commission, Portfolio Budget Statement 2014-15

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Appendix 1

Productivity Commission Act 1998

6 Functions of Commission

- (1) The functions of the Commission are:
 - (a) to hold inquiries and report to the Minister about matters relating to industry, industry development and productivity that are referred to it by the Minister; and
 - (b) to provide secretariat services and research services to government bodies as directed by the Minister; and
 - (c) on and after 1 July 1997, to receive and investigate complaints about the implementation of competitive neutrality arrangements in relation to Commonwealth government businesses and business activities and to report to the Minister on its investigations; and
 - (d) to provide advice to the Minister about matters relating to industry, industry development and productivity, as requested by the Minister; and
 - (e) to undertake, on its own initiative, research about matters relating to industry, industry development and productivity; and
 - (f) to promote public understanding of matters relating to industry, industry development and productivity; and
 - (g) to perform any other function conferred on it by this Act; and
 - (h) to do anything incidental to any of the preceding functions.
- (2) In this section:

matters relating to industry, industry development and productivity includes legislative or administrative action taken, or to be taken, by the Commonwealth, a State or a Territory that affects or might affect the productivity performance of industry, industry development, or the productivity performance of the economy as a whole.

Appendix 2

National Water Commission Act 2004

7 Functions of the NWC

- (1) The NWC has the following functions:
 - (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
 - (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;
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.