

COAG Review of the National Water Commission

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Executive summary

The National Water Commission (NWC) was created through the *National Water Commission Act 2004* (the NWC Act) which expires on 30 June 2012. The NWC Act specifies that a review must be conducted of the ongoing role and functions of the NWC by the end of 2011. Within its terms of reference the review examines what ongoing roles and functions should continue or commence, and provides advice and recommendations on appropriate options and institutional arrangements for implementing such functions.

Role of the NWC

The NWC was established through the intergovernmental agreement on the National Water Initiative (NWI) in 2004 under the auspices of the Council of Australian Governments (COAG). The NWC therefore has reporting obligations to COAG and the public. In carrying out its functions, it is independent of any jurisdiction but responsible to the collective. The NWI agreement established a schedule of deliverable outputs by the signatories which were to be largely completed by 2012. The NWC was set up to monitor and advise on the transition from then extant policy frameworks shaping water reform, namely the COAG Framework of 1994 and the National Competition Policy. The NWC was to establish benchmarks from which progress in reformed water management processes could be measured, and charged with monitoring that 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.

Status of the NWI

The NWI remains a relevant and active reform agenda supported by most stakeholders. It has matured in that essential elements have been implemented, but the full benefits from those initiatives require further elements of the NWI to be put in place. However, the timetable adopted for the completion of the NWI's milestones was ambitious and several of

the key reforms have not yet been implemented because they have proven to be technically and politically difficult and demanding of scarce resources.

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.

The reform environment

The implementation of the NWI has occurred within a highly complex policy environment, and there is increasing emphasis being placed on the need for a strategic focus on:

- the intersection and alignment of converging policy agendas, such as water, energy and carbon, water and sustainable development, water and landuse planning, or water and climate change
- rationalising performance metrics pertinent to NWI reforms and the achievement of triple bottom line outcomes, and
- enabling the community and private sector to actively engage in the design and implementation of future water reforms.

Further, the impact of NWI reforms has been widely felt, with many communities dependent on stressed water supplies and the broader Australian public sensitised to the importance of this critical national strategy. Government and stakeholders will continue to want a credible audit and assessment of the progress of the NWI, the value of its reforms, and their overall level of adoption within the water industry.

A platform will be needed to enable highly technical research on the state of Australia's water resources, riverine systems and their dependent communities and industries, to be brought to bear on policy formation and implementation. Access to an independent forum creates an environment where difficult and complex options for reform can be discussed between responsible policy makers, technical experts, and stakeholders, and enables technical advice underpinning decision making

and the costs and benefits resulting from those decisions to be made more accessible to the public.

Core functions for future reform

A number of core functions will be required to progress future reform. The NWC has provided key services in each of these areas, which can be used to illustrate the type of ongoing functions which will be required, as well as some of its key achievements. These core functions can be summarised as:

1. Monitoring and audit of reform activity

Intergovernmental agreements are not enforceable but subject to commitments made by participating governments. COAG has placed importance on monitoring and regular audits of its reform agendas as a key accountability mechanism and has established a non-statutory body, the COAG Reform Council (CRC), to review and to audit reform progress. However, in the case of water reform, through an earlier decision of COAG, there is a specialist and expert body in the NWC whose sole focus is the NWI, and for which auditing progress is but one component of its contribution. To have such a body perform the audits is a strength which serves COAG's purpose.

The audits performed by the NWC have been regular audits of reform action associated with the mandated biennial assessments, and forms of audit requested by COAG bodies or jurisdictions to fulfil emerging tasks. This ongoing activity reflects the relevance of the audit tool to maintain a focus on performance in the reform agenda, and of NWC as an appropriate body to conduct the audits.

2. Assessments of reform activity

Analyses and critiques of the activities of the parties in implementing elements of the NWI will continue to be required. The NWC has conducted biennial assessments of how well the objectives of the NWI are being achieved, where there has been progress and the value arising from that progress. Where there has been lack of progress, the NWC has

identified impediments and the likely costs of failure to implement. The reports have focussed on the whole of the NWI, and periodically on particular components of the agenda, such as water markets. They contain recommendations on actions considered by NWC as necessary to accelerate reform action. As a tool for progressing the NWI, the assessments made by NWC are arguably its most important product.

3. Knowledge leadership

There is an ongoing need for a centre for knowledge and discussion on water reform matters outside the various policy agendas to enable pertinent research and information to be drawn together and focused onto pressing policy issues. The NWC has played a key role in this area, and has been able to generate discussion amongst stakeholders through publications and round-table discussions. This role was seen as critical to many non-government stakeholders because, in their eyes, it provides the only forum for them to keep informed and abreast of the issues, to access essential information and to participate in public discussion of the issues.

The NWC has carried out other functions under the general heading of “promoting and advancing the objectives of the NWT”, mainly through application of resources from the \$250 million Raising National Water Standards (RNWS) program. They included investing in studies or research where knowledge gaps were identified on topics relevant to policy makers or implementers, and the development of tools to assist the delivery technical tasks.

It is likely that somewhat lower resources will be available when the RNWS funding ceases to be available on 30 June 2012. As such, a future NWC will need to constrain activity to judiciously chosen studies in areas it considers as having most impact on NWI implementation, to the dissemination of knowledge and innovative practices where appropriate and best achieved at a cross-jurisdictional level, and to the brokerage of jointly developed initiatives. The several publications resulting from these activities need to be of high quality and credibility and should be peer reviewed.

The advantages of a single entity

Each of the functions of monitoring, audit and assessment, and knowledge leadership requires engagement with the key players in water management. 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 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.

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.

The NWC has matured along with the reform agenda. It has built skills and methodologies and has become a credible, specialist organisation in water reform. Its independence is recognised and valued by stakeholders, especially those outside government.

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 emerged over the past seven years.

Conclusion

The Review concludes that the NWC should continue, without sunset, for the duration of the NWI agenda and within essentially the same governance arrangements that it now has with its legislation strengthening its independence as a COAG body. The structure of seven commissioners is appropriate and effective and provides a range of external views to bear on the issues confronting water reform.

The function of providing audits and assessments remains relevant and valuable and the NWC is best placed to continue in this role while the NWI is the operational agenda in water reform. The NWC makes useful recommendations in its 2011 biennial assessment about how future assessments might be conducted and they are largely endorsed by this Review. There should be assessments no less frequently than triennially and the effort should be concentrated on the issues most pertinent to successful implementation of the NWI at that time. The assessments should cover all applications of the NWI reform agenda, including the Murray-Darling Basin reforms, on a comparable basis to the national assessments. The NWC may carry out selective assessments of components of the water reform agenda, such as urban water reform, and incorporate those select assessments in the comprehensive triennial assessments.

The function of knowledge leadership needs to continue and by its nature should be operated by the NWC with a degree of flexibility to allow it to identify emerging issues in consultation with stakeholders, and to act nimbly to bring relevant knowledge and ideas to bear in a timely manner.

The future functions described all lead to information and advice for COAG and the NWC should be more readily engaged with the processes of deliberation that service COAG. Engagement between jurisdictions, individually and collectively, and the NWC needs to be strengthened so that the NWC's products are able to contribute more to deliberations on policy and implementation. The NWC can also be better informed about the circumstances and activities of jurisdictions and more in tune with

priority needs of COAG and its committees so its work can be made more relevant to contemporary debate within government.

The functions outlined above are those that should be carried out by the NWC during the implementation of the NWI in future years. They should remain central to ensuring accountability of the implementers of the program and fostering knowledge and debate about the reforms. The NWC should continue to perform these roles while the NWI is being implemented and should be reviewed after a further five years of operation as to its continued relevance and focus.

Abbreviations

ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AEMC	Australian Energy Market Commission
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
ANPHA	Australian National Preventive Health Agency
ANSTO	Australian Nuclear Science and Technology Organisation
AWRIS	Australian Water Resource Information System
Basin States	New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory
BoM	Bureau of Meteorology
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i> (Cth)
CEO	Chief Executive Officer
COAG	Council of Australian Governments
CRC	COAG Reform Council
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DPMC	Department of Prime Minister and Cabinet
DSEWPaC	Department of Sustainability, Environment, Population and Communities
FFR	Federal Financial Relations
FMA Act	<i>Financial Management and Accountability Act 1997</i> (Cth)
MDB	Murray-Darling Basin
MDB IGA	Agreement on Murray-Darling Basin Reform 2008
MDBA	Murray-Darling Basin Authority
MDBC	Murray-Darling Basin Commission
NCC	National Competition Council
NCP	National Competition Policy
NCVER	National Centre for Vocational Education Research
NGAP	National Groundwater Action Plan
NRMMC	Natural Resource Management Ministerial Council
NSW	New South Wales
NT	Northern Territory
NTC	National Transport Commission

NWC	National Water Commission
NWC Act	<i>National Water Commission Act 2004</i> (Cth)
NWI	Intergovernmental Agreement on a National Water Initiative
NWIC	National Water Initiative Committee
PC	Productivity Commission
RNWS	Raising National Water Standards
SA	South Australia
SCEW	Standing Council on Environment and Water
ToR	Terms of Reference
WA	Western Australia
Water Act	<i>Water Act 2007</i> (Cth)
Water TOG	National Water Reform Thematic Oversight Group
WFTF	Water for the Future initiative
Windsor report	Parliamentary Inquiry into the impact of the Guide to the Murray-Darling Basin Plan
WIST	Water Industry Skills Taskforce
WMPA	Water Management Partnership Agreement
WRC	Water Reform Committee
WSA	Water Smart Australia
WSAA	Water Services Association of Australia

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Chapter 1 – Requirement for the Review

The National Water Commission (NWC) was established by the Australian Government under the *National Water Commission Act 2004* (the NWC Act). The NWC Act came into force on 17 December 2004 and provides the statutory basis for the NWC to carry out a range of functions to assist with the implementation of the National Water Initiative (NWI).

The NWC Act will cease to be in force on 30 June 2012, and the NWC will cease to exist unless subsequent legislative arrangements are made.

The NWC Act requires under section 38 that a review of the ongoing role and functions of the NWC in relation to the management and regulation of Australia's water resources be conducted. The Council of Australian Governments (COAG) has commissioned this Review to meet the requirement.

The terms of reference (ToR) for the Review reflect the intent of the NWC Act and the NWI and can be found in full at appendix A.

Under the ToR the Review is intended to answer two key questions:

- i. Which functions of the NWC should continue or commence?
- ii. What are the options and institutional arrangements for carrying out these functions in the future?

Chapter 2 outlines the conduct of the Review. Chapter 3 provides a detailed outline of the context of the NWC's current functions. Chapters 4 and 5 answer the first key question by describing the current functions the NWC and assessing those which should continue, commence or be changed. Chapter 6 comments on overarching governance and engagement and examines how functions could be undertaken more effectively. The second key question is covered in chapter 7, which discusses options and institutional arrangements for functions that should continue, covering the merit of certain arrangements and describing how the recommended option needs to be constructed so as to be efficient, effective, credible, not duplicative and flexible to future changes. Finally, chapter 8 provides a complete listing of the Review's recommendations.

Chapter 2 – Conduct of the Review

Dr David Rosalky was appointed by Parliamentary Secretary for Sustainability and Urban Water, Senator the Hon Don Farrell, on 11 July 2011 as the external reviewer. Dr Rosalky was supported in this role by a secretariat from the Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) accountable to the reviewer.

The NWC's 2011 biennial assessment of the NWI was publicly released on 14 September 2011 and was taken into account in the undertaking of the Review.

In accordance with the NWC Act and the ToR, the Review must be submitted to COAG before the end of 2011 and the Minister for Sustainability, Environment, Water, Population and Communities (who delegated responsibility to the Parliamentary Secretary for Sustainability and Urban Water) must ensure a copy of the report is laid before each House of Parliament within 15 sitting days of receipt.

The Review process involved research from published documentation and consultation with stakeholders (see appendix B).

Primary research included reference to a number of reports on aspects of water reform and an examination of the range of NWC reports produced in the past seven years. The Review also gave consideration to recent documents which have proposed roles for the NWC: the Productivity Commission's (PC's) reports entitled *Australia's urban water sector* (Productivity Commission: 2011) and *Market mechanisms for recovering water in the Murray-Darling Basin* (Productivity Commission: 2010), and the Parliamentary Inquiry into the impact of the Guide to the Murray-Darling Basin Plan (the Windsor Report) (House Standing Committee on Regional Australia: 2011).

2.1 Consultation

The ToR state that the external reviewer will “*impartially determine the degree of communication and engagement with stakeholders and take such matters into account as he or she considers relevant, consistent with these terms of reference.*”

The Review conducted interviews with key stakeholders covering a range of topics. Stakeholders were asked about the value and effectiveness of the NWC's functions in assisting and driving the NWI reforms and the approaches and activities to advance those reforms. They were also asked to identify relevant functions for any future body.

Stakeholders consulted included:

- all states and territories, in particular departments and agencies whose roles include water policy and regulation, and, in some instances, central agencies
- Commonwealth departments and agencies including the Murray-Darling Basin Authority (MDBA) and the Bureau of Meteorology (BoM)
- the NWC, including each of its commissioners
- other monitoring and assessing agencies, namely the COAG Reform Council (CRC) and the PC
- water users and industry representatives in rural and urban sectors
- environmental groups
- Indigenous representatives
- experts and researchers in water and governance.

A number of stakeholders were invited to provide written submissions while others sought to submit on their own initiative. Eleven written submissions were received from stakeholders, some of whom were interviewed. A list of stakeholders consulted is included at appendix B.

Chapter 3 – Water reform and the NWC

Water reform in Australia is driven by the relative scarcity of water and the need to find approaches to allocating fresh water to communities, ecosystems and economic development.

Established by an intergovernmental agreement in 2004, the NWI is a comprehensive agreement which, amongst other things, aims at:

- expanding water markets for greater permanent trade in water
- promoting more flexible and profitable water use
- increasing confidence for those investing in the water industry
- improving water planning and accountability
- improving the way water is allocated, used and managed for environmental outcomes
- improving the efficient management of water in urban environments.

The NWI was agreed on 25 June 2004 by the Commonwealth, New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory and the Northern Territory. The Tasmanian Government signed the NWI in June 2005 and the Western Australian Government in April 2006.

3.1 National Water Commission

The establishment of the NWC, within the auspices of COAG, was agreed by all governments as part of the NWI. It was given legal effect through the passage of the NWC Act by the Commonwealth Parliament.

The statutory functions of the NWC are set out in section 7 of the NWC Act. These roles and functions incorporate and build upon those set out in the NWI (particularly in Schedule C). A description of the functions is provided in chapter 4. Subsection 7(1) of the NWC Act also allows for the NWC to undertake additional activities as agreed by governments or as set out in other Commonwealth legislation.

3.1.1 Early functions

When the NWI was agreed, water policy and implementation and the associated expertise resided in state and territory governments. Commonwealth responsibility for water-related issues rested with several separate agencies with

a coordinating water area within the Department of Prime Minister and Cabinet (DPMC). Given COAG's focus and agreement on the issue, and the Prime Minister's role as Chair of COAG, the NWC was initially a portfolio agency of DPMC.

These circumstances contributed to three specific aspects of the NWC's initial role, some of which are beyond the terms of the NWI:

1. National Competition Policy (NCP)

- In 1994 COAG committed all jurisdictions to implement a strategic framework for reform of the Australian water industry.
- In 1995 COAG established a NCP which included implementation of the 1994 COAG water reform agreement.
- On its establishment, the NWC was charged with the role of undertaking assessments of governments' progress with implementing these water reforms (previously undertaken by the National Competition Council). The NWC adjudicated on whether or not states and territories had met milestones and therefore had earned the right to receive related NCP payments. These assessments were undertaken in 2005 and 2007. No further assessments in water were required under the NCP.

2. Funding administration

- The NWC was also responsible for administering two programs under the Australian Government Water Fund, commencing in 2004-05.
- The larger of these programs was the Water Smart Australia program (WSA), worth \$1.6 billion, which aimed to accelerate the development and uptake of smart technologies and practices in water use across Australia.
- The second was the Raising National Water Standards program (RNWS), which offered support for projects that are improving Australia's national capacity to measure, monitor and manage water resources. RNWS was initially allocated \$200 million but this was later revised to \$250 million.

3. Policy advice to the Commonwealth Minister

- The NWC Act outlined general functions of the NWC which included the provision of advice to the Commonwealth, COAG and the Minister.
- The Minister is able to ask the NWC to advise and make recommendations on:
 - i. matters relating to water;

- ii. the Australian Water Fund; or
- iii. any other Commonwealth program that relates to the management and regulation of Australia's water resources.

3.1.2 Changing landscape

In the seven years since the NWI was agreed and the NWC created, important changes have had a significant impact on the role of the NWC and its position in the institutional landscape.

In 2007 a suite of significant institutional reforms was approved by the Australian Government. This included the consolidation of Commonwealth water policy and program functions in one department, (currently the Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC)) and the attribution of responsibility for water policy to a Cabinet minister. Responsibility for the WSA, policy development and advice transferred to that department. This established a more regular process of executive government to provide policy advice and to manage expenditure programs for the Commonwealth. At this time, administration of the NWC Act passed from the Prime Minister to the portfolio minister for environment and water (predecessor to DSEWPaC) and the NWC moved into the portfolio. The NWC retained responsibility for the RNWS program.

Commonwealth funding for water reform increased with the \$10 billion National Plan for Water Security announced in 2007. This was further increased by the funding introduced under the Water for the Future initiative (WTF) announced in April 2008 which now includes more than \$13 billion worth of funds to 2017, providing a long-term plan to secure the water supply of all Australians. The establishment of a department responsible for water policy, with significant funding including the WTF, resulted in a significant shift in the role for the NWC, as the department became the lead agency in water reform policy and funding for the Commonwealth.

3.2 Murray-Darling Basin arrangements

Various intergovernmental agreements have been operational in the Murray-Darling Basin (MDB) since 1915. In 1992 a new Murray-Darling Basin Agreement was signed and given full legal status by the *Murray-Darling Basin Act 1993*. This agreement created new institutions to underpin its implementation, including the Murray-Darling Basin Ministerial Council and the Murray-Darling Basin Commission (MDBC).

The NWI, when agreed in 2004, set the policy foundations for the continuing water reform initiatives of Australian governments. The NWI included recognition that the institutional arrangements in the MDB would need to be consistent with the new national framework. Relevant parties agreed under subclause 14(i) of the NWI to review the 1992 Murray-Darling Basin Agreement (which was signed by the Commonwealth, New South Wales, Victoria and South Australia), and where necessary to ensure consistency with the NWI. Further, all future arrangements in the MDB were to be consistent with the NWI.

After the agreement of the NWI, the MDB continued to experience significant stress from the combined impacts of over-allocation of water, severe drought and the early impacts of climate change. There was a marked decline in river health and it was considered imperative to take additional action to return the system to a sustainable footing. The Water Act was introduced to help implement the NWI within the MDB.

The Commonwealth gained additional responsibilities for water reform following the introduction of the Water Act and the signing of the Intergovernmental Agreement on Murray-Darling Basin Reform (MDB IGA) on 3 July 2008 by the Commonwealth, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory (the Basin States). The MDB IGA provided for the non-Commonwealth parties to enter into Water Management Partnership Agreements (WMPAs) with the Commonwealth under which assistance was provided to undertake water projects in the MDB subject to the achievement of agreed outcomes. Under the MDB IGA, the Commonwealth and the Basin States reaffirmed their commitment to implementing the NWI.

These changes involved an increase in the complexity of water governance, with most new functions relating to implementation and regulation assigned to agencies other than the existing NWC. The Water Act established two new statutory bodies (the Murray-Darling Basin Authority (MDBA) and the Commonwealth Environmental Water Holder (CEWH)) and expanded the functions of some existing agencies. Specifically:

- The MDBA was given responsibility for developing an enforceable Basin Plan (a high-level plan to ensure the water resources of the MDB can be managed in an integrated and sustainable way). All Basin States are to have water resource plans that are consistent with the Basin Plan.

- The CEWH was given responsibility for managing the Commonwealth's environmental water holdings, and protecting or restoring environmental assets in the MDB and in other areas where environmental water is held.
- The Australian Competition and Consumer Commission (ACCC) was given responsibilities relating to water market and water charge rules.
- The Bureau of Meteorology (BoM) was given responsibilities relating to the collection and dissemination of water information across Australia (not just in the MDB).
- The NWC was given responsibility to conduct audits of the effectiveness and implementation of the Basin Plan and associated water resource plans.

The CRC was given the lead role for assessing the performance of the Commonwealth and the Basin States in relation to WMPAs under the MDB IGA, of which it delegated one component to the NWC. The CRC was established by COAG in 2006 to assist COAG to drive its reform agenda. It is independent of individual governments and reports directly to COAG on reforms of national significance, including water, that require cooperative action by Australian governments. With this role assigned to the CRC, scrutiny of water reform activity was split between the NWC and the CRC.

The NWC remained relevant to overseeing the effective implementation of the NWI in the MDB through its general powers. Its role as an independent and external observer is distinct from the operational and regulatory roles carried out by the state and Commonwealth agencies involved, but its role was complicated by the additional reporting lines incumbent on all participants.

The expanded role of the Commonwealth in contributing directly to the achievement of the NWI objectives required the NWC to assess and report on the actions of the Commonwealth and its agencies, as well as on the actions of the states and territories.

3.3 Commonwealth/state reform mechanisms

As the mechanisms for reform evolved, the NWC's role in governance similarly changed. The Natural Resource Management Ministerial Council (NRMMC) was responsible to COAG for overseeing the implementation of the NWI at the time of its inception in 2004. An intergovernmental NWI Committee of Senior

Officials (NWIC), on which the NWC was represented, supported the advancement of the NWI under the NRMMC.

In 2008 all governments agreed the COAG Work Program on Water 2008-2011 to continue their commitment to advancing the NWI. A new officials' committee, the Water Reform Committee (WRC), was established in 2009 and subsumed the roles of the NWIC. WRC comprised representatives of signatories to the NWI, including formal representatives of the Australian Government (such as from the Department of Prime Minister and Cabinet or DSEWPac). The WRC was tasked to promote sustainable water use across Australia through inter-jurisdictional development, oversight, coordination and implementation of water reform policy initiatives, including those in the NWI and the 2008–2011 COAG Work Program on Water. It reported to NRMMC (and to COAG as required). The NWC during this time contributed to actions advanced through the working groups established under the WRC, but did not have membership on the WRC itself.

Significant changes in the COAG processes affecting water reform were introduced during 2011. At its meeting on 13 February 2011, COAG agreed to a 'more effective Ministerial Council system' taking effect from 1 July 2011, abolishing many Ministerial Councils including the NRMMC, and establishing the Standing Council on Environment and Water (SCEW) (COAG 2011). The government officials-level committee responsible to SCEW on water is the National Water Reform Thematic Oversight Group (Water TOG). The Water TOG has replaced WRC and reports directly to COAG on some issues. Water TOG has the same membership composition as the WRC and is composed of representatives from departments of Commonwealth, states and territories. These include water agencies, treasuries and first ministers' departments.

Chapter 4 – Description of functions

The functions of the NWC are authorised predominantly through section 7 of the NWC Act. Additional functions have been assigned to the NWC under the Water Act and from decisions made by Australian governments. The NWC 2011-12 Annual Report and the 2010-11 Portfolio Budget Statements describe the NWC's functions as contributing to:

“Informed decisions by governments on national water issues, and improved management of Australia's water resources, through advocacy, facilitation and independent advice” (DSEWPaC 2011: 4; NWC 2011: 30)

4.1 General functions

The NWC has four general functions under the NWC Act: assistance with implementation of the NWI, provision of policy advice to the Commonwealth Minister, provision of policy advice to COAG and program administration.

Communication and stakeholder engagement

To support and undertake its activities the NWC engages in consultation through a range of approaches. Chief among these is regular engagement with stakeholders through the NWC's Stakeholder Reference Group (comprising 14 organisations representing environmental, farming, irrigation, business and industry interests). The NWC also convenes, from time to time, stakeholder forums to explore various issues. Smaller workshops are run to address more specific matters. The NWC also participates in conferences and workshops convened by other organisations. To support its communication and dissemination activities, the NWC produces a series of *Waterlines* reports. This is used, in part, to publish some of the work commissioned by the NWC on key water issues.

4.1.1 Implementation of the NWI

Paragraph 7(1)(a) of the NWC Act provides for the NWC “to assist with the implementation of the NWI, and undertake activities that promote the objectives and outcomes of the NWI”. The NWC has undertaken discretionary activities on an ongoing basis under the authority of this section. The NWC's activities in implementing and promoting the NWI have taken place across a broad range of key areas in water reform.

The NWC has fulfilled this general function both as part of more general monitoring, audit and assessment responsibilities and in response to specific issues. Given the breadth of the activities of the NWC in this area, the Review does not seek to outline all activities undertaken by the NWC but to describe key activities which demonstrate the NWC's involvement and achievement in assisting the implementation of the NWI and promotion of the NWI's objectives and outcomes.

Position statements

In aiming to improve understanding of issues in water management in Australia and to inform debate, the NWC has been fundamental in identifying emerging issues and producing discussion papers and position statements on major water issues. The position statements suggest forward policy principles intended for consideration by COAG and Australian governments.

Water markets

Water markets and trading are a key focus of the NWI. Since 2008 the NWC has produced an annual water market report summarising water market trading activity across Australia. This provides information on water markets in all states and territories, including information on market structure and operation, and trading activity. The implications of trends discovered in this work was presented when in 2011 the NWC published *Australian water markets: trends and drivers*, which analysed water market trends and drivers influencing market outcomes and was based upon three years of data contained in the annual Australian water markets reports.

In 2011 the NWC published *Strengthening Australia's water markets*, which summarised recent water market reforms. The assessment began in late 2009 and consultation, research and analysis continued throughout 2010. The report summarised recent water market reforms and provided recommendations to overcome problems identified in key areas.

Groundwater

The work of the NWC seeks to identify and address significant knowledge gaps critical to implementing the NWI. An important example was development and implementation by the NWC of the \$82 million National Groundwater Action Plan (NGAP). This followed identification in the NWC's 2007 biennial assessment of groundwater management and capacity as an area of the NWI that required attention. The NGAP has included funding to overcome critical groundwater knowledge gaps; a research and training centre based at Flinders

University to build skills and knowledge in groundwater connectivity, policy and management; and funding for projects to develop principles, guidelines and good practice examples that can be used by groundwater managers, users and water planners to improve understanding and sustainable management of groundwater resources. Funding for the NGAP ceases with the termination of the RNWS in June 2012 but the research and training centre will continue with separate funding sources.

Coal seam gas

One of the NWC's findings in its 2009 biennial assessment (discussed below under 'specific functions') was that the circumstances in which water-related mining and petroleum sector policies could be addressed beyond the scope of the NWI were not defined and identified in a consistent and transparent manner. Subsequently the NWC released a position statement on coal seam gas and water which outlined approaches to ensure that risks to water resources are carefully and effectively managed.

National urban and rural utility national performance reports

The NWC has also taken on responsibility for activities initially designated to states and territories. It has been responsible for conducting annual 'report cards' on the performance of urban and rural water utilities. The function was established under clause 75 of the NWI and allocated to the NWC at the request of the jurisdictions. The reports have provided important data and information on industry trends and have been used by the NWC to contribute towards its specific function to report biennially on the performance of the water industry.

Northern Australia

As part of assisting and leveraging funding and priorities being pursued by governments, the NWC has significantly contributed to work in Northern Australia in partnership with the Commonwealth Environmental Research Facility program and on distinct topics such as the \$6 million Northern Australia Sustainable Yield Project and the Northern Australian Land and Water Taskforce report on *Sustainable Development of Northern Australia*, published in 2009.

There are also a number of projects under way to build knowledge of northern resources and to enhance Indigenous engagement in water planning.

4.1.2 Policy advice

Paragraphs 7(1)(b) and 7(1)(c) of the NWC Act provide for the NWC “if requested, [to] advise and make recommendations to the Commonwealth Minister on water matters (including matters of national significance relating to water)”. In practice, such advice was rarely sought because of the changes to ministerial arrangements. However, the NWC sees recommendations published throughout its many public reports, in particular the biennial assessments and position statements, noted elsewhere in this chapter, as falling within the definition of policy advice. It has also included the NWC’s participation in intergovernmental and industry working committees, as well as through submissions to various parliamentary committees.

4.1.3 Policy advice to COAG

Paragraph 7(1)(ba) of the NWC Act provides for the NWC to “advise and make recommendations to COAG on matters [of national significance relating to water]”. Advice of this kind has rarely been provided in specific form by the NWC; however, as noted above, the publication of reports and participation in working groups and committees constitutes the provision of advice.

4.1.4 Program management and advice

Paragraph 7(1)(d) of the NWC Act provides for the NWC “if requested, [to] advise and make recommendations on the Australian Water Fund or any other Commonwealth water program relating to the management and regulation of Australia’s water resource”.

This function has been performed principally through the provision of advice on the Raising National Water Standards (RNWS) program. Since administration of the \$1.6 billion WSA program was transferred from the NWC to DSEWPaC in 2007, the RNWS program has remained the sole source of funding in the Australian Water Fund Account, managed by the NWC under section 42 of the NWC Act. Under this section the Commonwealth Minister must approve particular projects before they can be funded by the NWC. The funding for the RNWS program will cease to be available on 30 June 2012.

Following approval from the Minister, the NWC has managed 177 Raising National Water Standards projects under 11 themes. The RNWS was reviewed in May 2010 and again in July 2011.

Subsection 42(b) also gives the NWC authority to use the Australian Water Fund to fund the performance of the NWC's functions, including specific functions under the NWC Act.

4.2 Specific functions

4.2.1 Initial functions

Initial assessment of water resources, governance and management

Under paragraphs 7(2)(a) and 7(2)(b) of the NWC Act, the NWC was required to undertake and advise COAG of an initial assessment of Australia's water resources and the governance, management and regulation of those resources.

The NWC has conducted two activities to complete this function:

- publishing *Australian Water Resources 2005*, which provided a snapshot of Australia's water resources at the beginning of the NWI reform in 2004-05
- releasing *Australian Water Governance* in 2006 as a companion to *Australian Water Resources*, which provided a baseline report of water governance arrangements. The report was updated in 2009.

Accreditation of NWI implementation plans

Authority for this function is paragraphs 7(2)(c) and 7(2)(d) of the NWC Act, which require the NWC to determine whether each party to the NWI had produced an NWI implementation plan that was consistent with the objectives, outcomes, actions and timelines stated in the NWI. By 2006 the NWC had completed this activity and had certified and advised COAG that all implementation plans were NWI-consistent.

Final assessment of compliance under the National Competition Policy in 2005

Authority for this function is paragraphs 7(3)(a) and 7(3)(b) of the NWC Act, which require the NWC to undertake NCP assessments of progress with implementing the COAG water reforms. This was consistent with the NWI requirement for the NWC to assess the parties' compliance with their obligations under the 1994 COAG Water Reform Framework. By undertaking the 2005 assessment, the NWC undertook the role previously performed by the National Competition Council to assess progress on water reform under the framework. The NWC's assessments against the 1994 COAG Water Reform Framework were taken into account by the Commonwealth in making decisions in relation to NCP payments.

In April 2006 the NWC released *2005 National Competition Policy assessment of water reform progress*. The NWC's assessment, provided to the Australian Government, found that NSW, Victoria and SA had made insufficient progress in meeting their interstate water trading commitments for the southern MDB. As a result, the Australian Government decided to withhold their competition payments.

Advise on the progress of COAG Water Reform Framework commitments

Authority for this function is paragraph 7(3)(c) of the NWC Act, which gave the NWC power to assess the implementation of any commitments which remained unfulfilled at the time of the 2005 assessment (outlined in the previous section).

In September 2007 the NWC released follow-up assessments covering water planning in NSW and WA, and water trading in the southern MDB. In line with the NWC's NCP recommendations, NSW, Victoria, SA and WA received previously suspended payments from the Australian Government following progress in implementing water reforms.

4.2.2 Subsequent functions

Advise the Commonwealth or COAG on whether the parties to the NWI are implementing their commitments under the NWI (where relevant)

Authority for this function is paragraph 7(2)(e) of the NWC Act, providing for the NWC to advise the Commonwealth or COAG on whether the parties to the NWI are implementing their commitments under the NWI on an ongoing basis. The activities performed by the NWC include the 2008 update on water reform progress that was provided to the COAG working group considering future water reform priorities, requested by the COAG working group. The report provided an update of progress in water reform for the Water Sub Group to the COAG Working Group on Climate Change and Water.

The NWC is also completing the National Water Planning Report Card. In its response to the NWC's 2009 biennial assessment, the WRC commissioned the NWC to conduct an assessment of the status of water plans in all water resource systems. The report card will be published in December 2011.

Biennial assessments

Authority for this function is paragraph 7(2)(g) through to paragraph 7(2)(i) of the NWC Act. As required by the NWC Act the NWC conducted biennial

assessments of progress against the objectives and outcomes of the NWI in 2007 and 2009, followed by a comprehensive review of the NWI conducted in 2011. The current NWC Act does not provide for any further biennial assessments.

These assessments were designed to chart progress towards the NWI's objective to achieve "economically efficient water use and related investment that maximises the economic, social and environmental value of Australia's water resources". The biennial assessments go beyond a core auditing function by making assessments of the NWI reforms. The NWI (subclause 104(ii)) required that a comprehensive national set of performance indicators for the NWI be developed by the Natural Resource Management Ministerial Council (NRMCC) in consultation with the NWC. The NWC Act (paragraph 7(2)(i)(ii)) required that the 2011 biennial assessment be conducted against these performance indicators.

Monitor and report on the impact of interstate water trade

Authority for this function is paragraph 7(2)(f) of the NWC Act. To fulfil this function the NWC produced a report in 2010 and has undertaken to complete a follow-up report in 2012. The 2010 report included assessment of the economic, social and environmental impacts of water trading in the southern Murray-Darling Basin from 1998-99 to 2008-09. The report also provided baseline data for future reports, including the planned second assessment by the NWC in 2012, when more evidence will be available on the impacts of recent Commonwealth purchases and increases in trading due to other factors.

Report on the performance of the water industry against national benchmarks

Authority for this function is paragraph 7(2)(g) of the NWC Act, for the activity to be conducted on an ongoing basis. The NWC has not produced a report specifically addressing this function as no national benchmarks have been agreed with all jurisdictions. However the NWC has addressed elements of the function through its biennial assessments and national performance reports on rural and urban utilities discussed earlier.

4.2.3 Conferred functions

Assessment of progress under the Water Management Partnership Agreements

Authority for this function is paragraph 7(1)(e) of the NWC Act which allows the NWC to advise whether the states or territories are implementing

commitments relating to the management and regulation of water resources made under an agreement with the Commonwealth. On delegation from the CRC, the NWC has completed two assessments of Basin State reform progress under the bilateral WMPAs outlined in chapter 3. The reports are provided to the CRC as an input into its overall task to assess performance against reform and project milestones.

Audit of the Murray-Darling Basin Plan

Authority for this function is paragraph 7(2)(f) of the NWC Act which allows the NWC to perform any function conferred by another piece of Commonwealth legislation. The Water Act gave the NWC the function to audit the effectiveness of the implementation of the Basin Plan and the water resource plans. All Basin States are to have water resource plans in place that are consistent with the Basin Plan. The NWC is to conduct its audits at least every five years, the first to be completed in 2013. Each audit report is to be provided to the MDBA, the Commonwealth Minister and the Basin States, and tabled in Parliament.

In preparation for the release of the Basin Plan, the NWC has been working on a draft framework in consultation with the MDBA, DSEWPaC and the Basin States. According to the NWC, the aim of the audit program will be to provide assurance on the extent to which the implementation of the Basin Plan and water resources plans is achieving the intended objectives. The audits will focus on outcomes, increase accountability and promote continuous improvement and adaptive management of water resources.

Advice on application of the risk assignment framework

As for the audit of the Basin Plan, authority for this function is paragraph 7(2)(f) of the NWC Act. Under subsection 74A(4) of the Water Act the NWC was also given an additional function to advise the Commonwealth Minister (if requested) on making or revoking a determination with respect to the risk assignment framework. Under section 74A the Minister must determine if a Basin State has applied the risk assignment framework provided for in clauses 48 to 50 of the NWI. No advice has been sought from the NWC as the risk assignment framework has yet to be applied.

4.3 Summary

This chapter has outlined both the NWC's 'general' and 'specific' functions. Under the NWC's 'specific' function, all initial functions have been completed and are unlikely to be of relevance in future, with the exception of the function

to advise the Commonwealth on the progress of a state or territory that has a commitment still to be implemented under the COAG Water Reform Framework. All subsequent functions have the potential to continue.

The NWC's general functions all are ongoing and have the potential to continue. The merit or otherwise of these functions continuing will be discussed in the following chapters.

Chapter 5 – Ongoing functions

This Review was provided with a summary list of functions of the NWC as part of the ToR (see appendix A). The Review will address the intent of the summary list through examining the underlying functions in this chapter and the modes of engagement, communication, transparency, independence, quality control and timeframes in chapter 6.

The Review recognises that entries in the summary list are not mutually exclusive. However, the Review has sought to bring clarity to the functions and their intended contributions. The list is not comprehensive as it excludes functions which were time-bound such as establishing initial benchmarks for water resources and assessments of the performance of jurisdictions in relation to obligations under the NCP. A broader description of the NWC's functions and activities was presented in chapter 4.

This chapter responds to the question 'which functions should continue or commence?' Comment is also provided on changes that can be made to enhance the value and effectiveness of functions in future. The chapter also examines proposed new activities. In the process of examination, the Review has identified those functions it regards as 'core functions'.

The specific existing functions are grouped under the following headings:

- monitoring
- audit
- assessment
- advice
- knowledge leadership (which covers a range of activities including studies and strategic analysis, tools, methods and science facilitation).

The NWC has general functions to assist with the implementation of the NWI and to promote and advocate the objectives and outcomes of the NWI. These general functions have been, and continue to be, in the view of this Review, appropriate descriptors of the focus of the NWC. They are connected directly to effective implementation of the NWI at the level of current actions being taken by the various players and of the emerging directions, influences and pressures on successful implementation.

Delivery of this general function was assisted by the role of the NWC under the NWC Act of managing the Australian Water Fund. The Water Fund, in particular through the RNWS, has remained the resource for pursuing this function through some of the activities discussed elsewhere in the Review. Despite the termination of the Water Fund and the RNWS when the current NWC Act expires, it is important to retain a focus on pursuing the objectives of the NWI. This is a more proactive and forward-looking role than ‘assistance’ and involves strategic scanning of the environment impinging on water reform, bringing information to bear and sponsoring public knowledge and debate.

The effectiveness of the NWC relates to its achievement in adding value to its general functions of assisting with the implementation of the NWI and promoting the objectives of the NWI. Neither of the key actions of “assisting” nor “promoting” is an absolute action that can be simply identified and measured. Both represent incremental or contributory elements of an outcome that may be collective in its nature. Moreover, whether an action by the NWC actually assisted or promoted is judgmental and depends on perceptions. It is a feature of the relationship between the NWC and groups of associated stakeholders in water reform that perceptions of the role that the NWC has played differ substantially.

5.1 Monitoring

Monitoring involves maintaining ongoing scrutiny of activities and performance. It requires engagement with key players in water management – government and non-government – to ensure a flow of information and comprehensive knowledge of the state of reform implementation. The NWI has used the term in different senses in relation to the collection of water data, or the effects of water plans or monitoring performance of reform actions.

The NWC has produced certain monitoring reports, including the series of water markets reports. The sequencing of these reports has provided a time series allowing trend analysis of impacts. They therefore constitute important data and information sources for a wide range of stakeholders.

The annual national performance reports on rural and urban water providers are conducted by the NWC by agreement with the jurisdictions in fulfilment of their commitment under clause 75 of the NWI. The reports are prepared in collaboration with industry. This is a monitoring function valued by jurisdictions and industry. It also contributes to the periodic assessments of NWI implementation.

Ongoing monitoring of a general nature forms an essential input to other audit and assessment activities of the NWC, and provides an information base for the NWC's wider work.

Recommendations

- *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.*
- *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.*
- *Monitoring of the performance of rural and urban water providers should continue for the duration of the NWI.*

5.2 Audit

Audits generally relate to formal processes of reporting on activity against specified or agreed actions or results. The NWC has undertaken audits both as separate activities and as part of broader assessments. Audits may be explicit and commissioned externally. An example is the Water Planning Report Card discussed below. Audits may also be undertaken as a periodic measure of progress and to establish critical input to assessments of the quality, timeliness and direction of reform action.

Consistent with the disposition of COAG in this and other areas of reform, strong transparent reporting of progress in implementing the agreed reforms provides public accountability and reduces the risk of stakeholders becoming disconnected and disillusioned. The audit function is a standardised method of holding accountable participants to an agreement that cannot be enforced in law but is a product of consensus. This is the nature of intergovernmental agreements within the Australian federation. Public reporting of compliance with agreed actions allows ministers, including heads of government for COAG initiatives, to track progress and to make decisions to push the agenda forward where it may be lagging. These reports also provide a channel for generating public awareness of government actions and their implications.

The NWC's audits of implementation advance the strategic objectives of the NWI and the immediate impacts of water reforms.

Audit requirements in legislation

The NWC has three explicit audit functions. Two are active (Basin Plan implementation and the role delegated by the COAG Reform Council with respect to the WMPAs) and one is quiescent (compliance with conditions relating to incentive payments).

The quiescent function relates to audits of jurisdictions' water reform commitments against the NCP undertaken in 2005 and 2007 (see chapter 4). The NWC Act (under paragraph 7(3)(c)) also allows for the NWC to undertake further assessments of the progress of a state or territory that has a commitment still to be implemented under the COAG Water Reform Framework. This function is not active and is not expected to be in the future.

The NWC Act (under paragraph 7(1)(f)) also allows for the NWC to undertake functions conferred by other Commonwealth legislation. As required through the Water Act, the NWC has been charged with auditing implementation of the Murray-Darling Basin Plan. This is a significant task as described in chapter 4.

It was observed earlier that the arrangements established in 2008 for the MDB have added layers of reporting to agencies responsible for implementation and regulation (such as the MDBA, the ACCC and the BoM, as well as state and territory governments). The audit role for the NWC under the Water Act, however, is distinct in that it constitutes an audit external to the jurisdictions encompassing all aspects of the plan, and serves to ensure consistency with national water reform and other areas of policy reform. Care will be required to ensure that the reporting requirements of all relevant agencies are clear and not duplicative.

As discussed above, Water Management Partnership Agreements (WMPAs) have been entered into between Basin States and the Commonwealth and involve payments to Basin States on milestones for agreed reform actions. Advising on the state of those commitments constitutes an ad hoc audit task. In this instance, the task was assigned under the MDB IGA to the CRC with the capacity for the CRC to delegate the function to the NWC. The CRC has chosen to delegate the task and the NWC performs this function under paragraph 7(1)(e) of the NWC Act. Reform obligations on the Commonwealth have also been identified and are monitored by the CRC. Assignment of monitoring the Commonwealth's commitments to the CRC rather than to the NWC possibly reinforces the perception that the audit of the Commonwealth is fully independent. The task, however, could logically be performed by an

independent NWC, thereby putting audits of reform commitments by the Basin States and the Commonwealth on a more consistent basis.

The functions currently assigned the NWC to audit the effectiveness of the implementation of the Murray-Darling Basin Plan and the performance of reform commitments under the bilateral WMPAs will remain relevant after 30 June 2012.

Other audit activities

As part of the response to issues raised in the NWC's 2009 biennial assessment, the WRC commissioned the NWC to assess the status of water plans in all water resource systems (the National Water Planning Report Card). The report card, which is still in development at the time of compiling this Review, will be assessed against a framework developed by the NWC in consultation with jurisdictions and based on the draft *NWI policy guidelines on water planning and management*.

During consultations, jurisdictions expressed concern about the burden of reporting requirements and the lack of direct benefits from auditing. Further, it was argued that audits should not be performed at the level of inputs or activities but rather on practical outcomes. The consultations involved in establishing the audits for the report card provide a model for a process that better addresses the concerns of the jurisdictions. Chapter 6 discusses processes by which these concerns may be addressed more effectively.

Recommendations

- *Audit of the actions and achievements of all jurisdictions in implementing the NWI against agreed commitments is essential to accountability and should continue.*
- *Audit of the effectiveness of the implementation of the Basin Plan and associated plans should be carried out in such a way as to minimise reporting requirements.*
- *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.*
- *Audits of Basin State reform actions agreed under the WMPAs, and associated Commonwealth commitments to reform action are an appropriate activity for the NWC.*

5.3 Assessment

Assessment involves a critical evaluation of reform action against the NWI objectives and outcomes. Assessments are dynamic in that they include evaluations of the pace and direction of reform and informed judgements on the value of implemented reforms, the costs of delays to implementation and the risks to effective achievement of the NWI objectives. The NWC has included recommendations about future actions that would accelerate implementation of the NWI in areas that are most pressing for reform.

Biennial assessments

The NWC Act required the NWC to carry out comprehensive assessments of the progress towards achieving the objectives and outcomes of the NWI and within agreed timelines. These periodic assessments were to be conducted in 2007, 2009 and 2011. The 2011 biennial assessment was also a comprehensive review of the achievements of the NWI.

The assessments draw upon other activities of the NWC, including its separate monitoring and audit reports, as well as requiring focused audit and monitoring activity specifically for the assessments. Information obtained from the audit elements of the biennial assessments has been used by the NWC to make judgements about the state of overall implementation of the NWI objectives through the actions of jurisdictions. It has also enabled recommendations as to the priority actions required to meet those objectives. The assessments add value to the audit process. They provide evidence about the value of the reforms already implemented and the potential value from reforms still to be implemented; they are able then to suggest a way forward to garner maximum benefit from water reform. Non-government stakeholders highlighted the value of the BAs in revealing to them the status of important reforms.

The biennial assessments have become a continuous activity and focus of the NWC and form one of its major outputs. Government stakeholders in agencies charged with implementing water reform were critical of the BAs, citing concerns about:

- insensitivity to the circumstances confronting individual jurisdictions
- the focus on what has not been done by a certain deadline rather than acknowledging what has been achieved
- the frequency of reporting and the reporting burden
- a lack of direct influence on decision-makers in their governments.

It was argued that the barriers to timely implementation of agreed reform actions under the NWI are the political issues and priorities in each jurisdiction, and the costs involved in a climate of fiscal constraint. A view is held quite widely by jurisdictions that assessments themselves are insufficient to drive reform action, but rather that the political and financial barriers need to be addressed. Some held the view that a stronger case could be made for funding priorities within jurisdictions if the assessments were written constructively, avoided unnecessary criticism of jurisdictions' performance, and were more forthright about the consequences of delays in implementation.

On the other hand, some non-government stakeholders held strongly that the assessments should be harder-hitting and thereby a vehicle for provoking more government action. Clearly the balance to be struck by the NWC in its assessments is a fine one, but it is important that the assessments are open, fulsome and revealing of the state of reform activity and the consequences, positive and negative, of that activity and its pace and direction.

Jurisdictions argued that reporting on outcomes every two years was too frequent. The NWC, in its 2011 biennial assessment, suggested that assessments continue to be carried out on a rolling schedule and that topics covered be selective and determined on a risk assessed basis. They further suggest that the NWI parties commit publicly to a triennial program of commitments to action which would form the basis for subsequent monitoring and reporting. This would deliver, in part, on the requirements of the NWI (clause 104) for a monitoring and evaluation strategy.

Impacts of trade in the Southern Murray-Darling Basin

As required by the NWC Act (paragraph 7(2)(f)), the NWC has conducted assessments of the impacts of inter-jurisdictional water trading in the southern MDB. A report was produced in 2010 and another is due in the first half of 2012. This function was seen as important when the NWC was created and the reports are pertinent and informative of the effects of a decade of the development of interstate trading.

The assessments have less operational immediacy following the introduction of the Water Act and the creation of the MDBA. The MDBA commissions reports with a similar focus as part of the development of the Basin Plan. There will still be a need for a periodic independent assessment but that may be best done by the PC if it carries out an assessment of the impacts of water reform in the Basin under its COAG remit to evaluate the economic and social impacts in all

areas of COAG reform. If the PC's agenda is unable to accommodate such an assessment in timely fashion, it would be appropriate for the NWC to carry out the task as it has now established a methodology and benchmarks for future assessments. For this to occur there is no need to mandate such a task explicitly but to view it as part of the NWC's general assessment obligations as they apply to the MDB.

Recommendations

- *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.*
- *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.*

5.4 Advice

Various advice roles have been allocated to the NWC. In some cases this is a general advice role and in others specifically to COAG, the Commonwealth or the Commonwealth Minister.

Several sections of the NWC Act relate to the capacity of the Minister to seek advice from NWC on water-related issues. In practice, such advice was rarely sought because of the changes to ministerial arrangements. As the Minister can seek advice from the department responsible for water (now DSEWPac), the NWC's role is more appropriately directed to COAG.

Although the role of advising the Minister directly should rest with the department of the Australian Government, the position statements and recommendations in public reports produced by the NWC are a vital source of advice for all governments and policy makers.

There are examples of where the NWC has been asked to advise on the compatibility of projects with the NWI and this indicates that a body focused on the implementation of the NWI is well placed to provide such ad hoc advice to any jurisdiction – and that the role remains relevant.

Recommendation

- *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.*

5.5 Knowledge leadership

Water reform is a technically complex area of policy which has incorporated scientific analysis, research and information from its inception. The NWC has become a centre of knowledge in bringing research and knowledge together to bear on policy and implementation issues within the NWI agenda. It is a leadership role in identifying and filling knowledge gaps – an activity given prominence in the NWI (clause 98). Non-government stakeholders have made mention of the importance of this output to the range of players in the water reform community and see the NWC’s effort as not being replicated elsewhere; they ask where such important activity would occur in the absence of a NWC.

The NWC has advocated priority actions needed to achieve the main objectives of the NWI, identified through its assessment role. In some cases these priority actions arose because of gaps in knowledge and understanding in particular areas (for example in ground water, northern rivers, skills development, cultural water). The NWC brought together parties of interest and knowledge to forge a knowledge base and capacity to tackle the issues. In some instances it thereby activated elements of the NWI that had not yet gained momentum, or brought critical mass to supporting the initiation of action by governments.

The NWC has identified a wide-ranging series of issues for which it has commissioned studies from academic or other experts and published material of interest and value to disparate stakeholders. Some of the issues have been current policy matters, such as the nature of property rights in water entitlements, and others have been focused on technical knowledge for practitioners (such as green plumbing). These matters have been published in the *Waterlines* series of papers covering some sixty publications to date.

The NWC has also identified topics which it regards as ‘particular reform challenges’ and on which it comes to views as to desirable actions it recommends to governments. Thirteen such ‘position statements’ have been published to date. They provide an agenda which the commission pursues through commissioned studies and round-table discussions to foster ideas and

public debate. Through these processes, important policy topics impinging on the water reform agenda, but which are not yet on governments' agenda, can be exposed and developed publicly without committing governments that have to meet political and fiscal priorities.

This discretionary activity comes under its general function to promote and advocate the objectives and outcomes of the NWI. It is discretionary in that it is not explicitly mandated and the NWC has a 'hunting licence' to discover and to examine important issues affecting water reform now and into the future. However, it is a critical value-adding role and the discretion that the NWC applies enables it to remain flexible to the changing environment. To have such professional bodies conducting policy-relevant research or generally acting as a centre of knowledge is a common practice across government, with varying forms and institutions. Appendix C describes examples of such activities in the Commonwealth administration.

The work carried out under this function was assisted by, and came under the NWC's role in managing, the \$250 million RNWS program to give effect to initiatives aimed at "provid[ing] information and tools to support the better management of Australia's water resources and accelerat[ing] the process of water reform" (Inovact Consulting 2011: 7). This permitted some 'gap-filling' initiatives to be implemented (such as ground water research) but mainly enabled a wider program of knowledge leadership. The Review of the RNWS conducted in 2011 concluded that the selective investments made by the NWC under the program were usually influential in decisions made by relevant parties but emphasised that the impact had to be seen in strategic context, and that focus needs to be continued on applying the knowledge (Inovact Consulting 2011).

Significant elements of the NWI still need to be fully implemented. As the agenda has matured with significant elements of the NWI already in place, the remaining elements are generally ones that attract higher political difficulty because of the adjustments that will have to be made by many people and communities when the reforms take effect. Generally, they are also the actions that are technically more difficult and costly in resource terms. Important issues are emerging or remain prominent in the water reform agenda, such as urban water, access of mining to water, water quality, environment and river health, and will form a significant component of the future agenda in water reform for the years ahead.

As new issues have emerged and continue to emerge, further areas of scientific knowledge are being brought to bear on the water reform agenda. This information will provide a basis for assessing the benefits and costs of interventions and the opportunity costs of not intervening, and thereby informs policy decisions. The research and information developed provide a consistent and comprehensive basis for stakeholders and policy makers to assess impacts of reform actions or actions being considered.

The need for support and coordination of water research was the passionate concern of a number of non-government stakeholders. One research organisation framed the current situation of water research in Australia as fragmented, ill coordinated, often poorly linked with policy and poorly linked to the long-term need for new capability in the water sector.

The functions under knowledge leadership have generally been of value to the advance of the NWI, and there remains just as much of a task today. If, as is likely, there are not resources available to the NWC comparable to the RNWS, any such activity will need to be chosen judiciously and selectively, based on consultation with jurisdictions and non-government stakeholders and the judgement of the NWC as to what areas are likely to be most productive in driving forward the objectives of the NWI.

Recommendation

- *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.*

Tools

Through its access to the RNWS funding source, the NWC has provided direct assistance to parties implementing elements of the NWI infrastructure through direct methods such as the provision of tools or transmission of best-practice methods or focused technical research and reports. The NWC has included these activities as a component of its 'facilitation' role.

Jurisdictions have argued that timely and relevant assistance of this sort is useful and there should have been more of it timed to the stage of development of the individual jurisdictions. Through providing this assistance, the NWC has been widely regarded as fulfilling an important facilitation role through the RNWS program and the production of *Waterlines* reports. The products from its work in these areas were described by most stakeholders as good investments. In particular, one said that funding from the NWC was used to set up enabling strategies for issues of significance to the industry, such as addressing skill shortages.

One jurisdiction also acknowledged that the knowledge dissemination function of the NWC and the funding of research and pilot projects the NWC has supported are useful to support jurisdictions in implementing the NWI. The same jurisdiction stated that it had a positive experience for the most part in developing projects in partnership with the NWC. This model, it further suggested, should be adopted more broadly by government agencies.

Assistance to some small non-government entities to introduce new methodologies was seen as both useful assistance and a demonstration of the NWC's competence and accessibility.

The NWC has undertaken the function to develop tools and methods to assist jurisdictions or non-government operators to overcome impediments. However, it is arguable that such development should be funded by the jurisdictions and that the appropriate role for the NWC is to disseminate innovative ideas and experience for jurisdictions to emulate where appropriate. The NWC should also take the initiative, when fruitful opportunities arise, to act as a broker between jurisdictions, and potentially with industry stakeholders, to promote and to coordinate joint development of innovative practices.

Recommendation

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

5.6 Additional functions

The NWC continues to be tasked with new functions in water reform. An additional audit function has been proposed relating to the Carbon Farming Initiative and its impacts on water availability. A number of reports released in the past year have also suggested specific activities, and in some cases additional functions, for the NWC. Examples of these are examined here, and their continuing relevance to those functions that are proposed to continue is assessed.

5.6.1 Carbon Credits (Carbon Farming Initiative)

It is proposed that the NWC audit compliance with NWI requirements for the Carbon Farming Initiative. While the authority for this function fits within existing legislation (paragraph 7(1)(f) of the NWC Act), it can be seen as an additional function for the NWC. Under the draft Carbon Credits (Carbon Farming Initiative) Regulations 2011, provisions are proposed that task NWC with determining whether state or territory jurisdictions have in place measures as required under the NWI to address the interception of water for forestry or other purposes.

5.6.2 The Productivity Commission's report on *Market mechanisms for recovering water in the Murray-Darling Basin*

This PC report was released in March 2011 (Productivity Commission 2010). It sought to report on market mechanisms for recovering water in the MDB, including identifying appropriate, effective and efficient mechanisms that could be used to diversify the range of options to purchase water entitlements, reviewing existing mechanisms in Australia and internationally and identifying impediments to the use of water purchase mechanisms and how these could be overcome.

Recommendation 10.2 of this report was that:

The National Water Commission should conduct a study into ways of expanding the ability of water users to carryover water, while adequately managing third-party impacts. This study should examine the suitability of capacity sharing, 'spillable water accounts' and other arrangements across different regions.

The NWC was seen as the best-placed body to undertake this activity under its remit to promote the sustainable management and use of Australia's water resources. This type of activity is an example of knowledge leadership that supports, and feeds into, a broader assessment of the implementation of the

NWI. The NWC has undertaken work in this area due for release around the same time as this Review.

5.6.3 Parliamentary Inquiry into the impact of the Guide to the Murray-Darling Basin Plan (Windsor report)

This inquiry, known widely as the Windsor report (House Standing Committee on Regional Australia: 2011), was set up to examine the impact on regional communities of the MDBA's Guide to the Proposed Basin Plan. It was tabled in May 2011 and had a strong focus on the social impact of any proposed changes.

Recommendation 21 of this report was that:

The Committee recommends that the Commonwealth Government charge the National Water Commission with responsibility for auditing and reporting on:

- the management and use of environmental water by the Commonwealth Environmental Water Holder and the manager of the proposed national water fund on an annual basis, including:
 - the volume of water recovered for the environment
 - use of the proposed national water fund, including investment in irrigation efficiency and environmental works and measures
 - the use of environmental water including volume, location, timing and outcomes achieved
 - entitlements and allocations strategically purchased or sold, including location, timing, products (security and reliability), average long-term volume and average value per megalitre.
- the transition to and implementation of the Basin Plan, on a five yearly basis, including:
 - the efficacy of state water resource planning
 - Commonwealth investment in irrigation and environmental infrastructure projects
 - the accumulation of environmental water, including any water purchase programs
 - the impacts of government reform activities on the socio-economic well being of communities
 - the influence of government purchasing activity on the water market
 - the use of environmental water and the achievement of environmental objectives.

The ‘bringing it all together’ chapter of the Windsor report described the roles and relationships of the existing and proposed agencies in water reform. The following points related to the proposed roles and functions of the NWC:

7.22 The report recommends that the Government charge the National Water Commission (NWC) with auditing and reporting to government on the progress of water reform, including the transition and implementation of the Basin Plan.

7.23 The agency would have responsibility for auditing the relevant activities of the MDBA, the reformed CEWH and the proposed manager of the national water fund.

7.24 The NWC would be responsible for providing a high level of accountability and transparency through an annual report on the use of the national water fund and Commonwealth environmental water holdings and a five-yearly report on the progress of water reform and the implementation of the Basin Plan.

7.25 The Government should consider proposing to Basin state and territory governments that the NWC take on the role of auditing the operation of the Murray-Darling Basin Agreement.

The Review notes that the function of auditing and reporting to governments on the progress of water reform already is captured in the existing functions assigned to the NWC. Similarly, auditing the effectiveness of the Basin Plan every five years is an existing function. These functions are recommended by this review as continuing.

Such audit functions often draw upon a range of specialised information. An example is the use of environmental water. Past work undertaken by jurisdictions and research institutions, as well as the National Land and Water Resources audit (national scale) and the Sustainable Rivers Audit (MDB-focused) can provide models for relevant specialised monitoring and information gathering programs in future. The Review understands that discussions between governments are under way on future approaches in this area relevant to the NWI. It is likely that such specialised monitoring and information-gathering programs would be carried out in a coordinated way in appropriate research institutions, with the NWC then drawing upon their outputs in undertaking its audit functions.

It is a matter for the Australian Government if it wishes to prescribe additional functions as described by the Windsor report on the NWC. Some proposed roles, such as auditing the operations of the CEWH and the MDBA, fall within the purview of performance audits of the Commonwealth Auditor-General, whose reports would be complementary to and assist the NWC's audit of the effectiveness of the implementation of the Basin Plan and the more general assessments made by the NWC of the implementation of the NWI in the MDB.

5.6.4 The Productivity Commission's report on *Australia's urban water sector*

This PC report was released in October 2011 (Productivity Commission 2011). It followed a COAG decision in which the PC was asked to examine the case for microeconomic reform in the urban water sector and to identify pathways to achieving improved resource allocation and efficiency.

Recommendation 14.5 of the PC report was that:

The National Water Commission and/or Water Services Association of Australia should provide ongoing support to utilities to build capacity and expertise in adopting a real options approach, determining a framework for calculating the marginal opportunity cost of water, and devising a range of retail tariff offerings.

The NWC has supported and worked in partnership with the Water Services Association of Australia (WSAA). This activity would constitute a useful tool and could be carried out by WSAA in partnership with the NWC as has been done in respect of the monitoring of urban water utilities.

Recommendation 14.6 of the PC report was that:

Progress against COAG-agreed water reforms should be subject to monitoring. The National Water Commission could perform this role.

This relates to the monitoring functions of the NWC in relation to the NWI but refers to future agreements. The current NWC Act allows for the NWC to carry out functions established in other agreements between the Commonwealth and states and territories if that agreement prescribes for the NWC to undertake them. The function fits comfortably within the ongoing assessment role of the NWC.

Recommendations

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

Chapter 6 – Governance and engagement

This chapter will examine the characteristics necessary for an agency in order to carry forward the functions recommended in chapter 5 effectively within the context of current water governance arrangements. Important consideration is given in this chapter to the need for such a body to have:

- independence from the ministerial and policy areas of governments
- clear lines of authority and accountability
- ability to engage effectively with external stakeholders
- strong engagement with decision makers, namely COAG and its subordinate structures
- transparency in its operations and disclosure of outcomes
- its products scrutinised for quality control
- a timeframe for its existence tied to its function.

6.1 Ministerial and portfolio responsibilities

The governance arrangements under which an organisation operates relate to the dynamics of authority, control and accountability that affect its operation. For a government agency like the NWC, they include enabling legislation, powers conferred under the legislation to the agency, its minister or other authorities, the portfolio placement within government and, in the case of inter-jurisdictional agencies, the powers afforded to, and the relationship with, the other governments involved.

In earlier chapters, it was explained that the NWC's Act provided for advice to be given to the appropriate minister and that, following the establishment of the Water Group in what is now DSEWPaC, the role became redundant and has not been used. The Minister's role in respect of the NWC's business has been related almost exclusively to one of approval of proposals for projects funded from the Water Fund. The Parliamentary Library, in its Bills Digest discussion of the NWC Bill, commented that "the NWC has a structure which appears to be more what one would expect of a ministerial advisory council than an 'independent statutory authority'" (Parliamentary Library of the Parliament of Australia 2004-05: 8). The practice, however, has not borne out this concern and stakeholders indicated that, with few exceptions, they considered the NWC to be independent of the Commonwealth Minister in its published views.

The role of the NWC evolved in a way that exploits its independent standing to promote the NWI in a number of ways that are of importance and value to non-government stakeholders with roles in water policy and management. It was this independence that non-government stakeholders, for the large part, have equated with the credibility of the NWC. One industry representative noted that the NWC was in a uniquely independent position which provided the opportunity for more candour. It was further noted that, to be effective, audits and assessments should be forthright about the delays in implementation and the consequences of those delays. It is a strength of the NWC that it is seen as not being a spokesman of any of the participant governments, and that it is firmly embedded in the agreed policy agenda of the NWI. Non-government stakeholders value the frank expression enabled by independence. Frustration was expressed about the pace of reform and the stretched timeframes of the NWI, and it was felt that this may be improved by the NWC being hard-hitting and more prominent in publicising impinging issues.

In order to carry out the proposed audit and assessment functions, which this Review believes remain of considerable importance, a future NWC would need to be independent from governments implementing water reform objectives. In particular, it should remain at arm's length from direct involvement in implementation action or policy development. That requires an enabling Act that ensures independence in the conduct of its business. It also requires that the NWC is not part of the policy deliberation process, but rather provides strategic advice to COAG and to the participating governments collectively.

6.2 Internal governance

Governance also relates to internal authority, control and accountability. The NWC is covered by the *Financial Management and Accountability Act 1997* (FMA Act) in respect of its financial governance and its staff is employed under the *Public Service Act 1999*. These existing governance arrangements provide a sound basis for an agency funded fully by the Commonwealth and should continue in future enabling legislation. The CEO is appointed by the Minister and is accountable to the Minister for administration. The commission comprises seven members appointed by the Governor-General on proposal by the Commonwealth Minister. Three of the commissioners are nominated by the states and territories. Commissioners are not part of the NWC staff. They are nominated on the basis of their experience in the water industry or in water science and are responsible and accountable to the Minister to carry out the functions specified in the NWC Act. There is a process, therefore, resolved

through the managerial engagement, by which the commissioners (with advice from the CEO) determine priority activities and the management needs to fit them to available resources. By that process, the commissioners' and the CEO's distinct responsibilities are reconciled.

6.3 Relationship to the states and territories

The establishment of the NWC was agreed by all jurisdictions and created under Commonwealth legislation. No power of request or reference was provided to state or territory ministers. Requests from state or territory governments are made collectively through COAG.

In order to perform its core function of auditing and monitoring the performance of jurisdictions in progressing the NWI objectives, the NWC relies on obtaining timely and pertinent information from the jurisdictions. The parties to the IGA agreed that they would cooperate with the NWC in providing access to relevant staff and timely information, but this was not given legal force in the NWC Act. As reporting responsibilities have increased over the years since the NWC was created, jurisdictions are finding the reporting burden to be difficult, so that providing information to the NWC is not always given the expected priority.

Other arrangements exist elsewhere. When the MDB arrangements were instituted, the Water Act provided the MDBA with powers to compel the provision of certain information. This would appear, however, to be justified by the MDBA's operational responsibilities which do not have a parallel in the NWC's case. Auditors-general also carry legislative power to compel information and this grew out of their role in monitoring financial propriety, which is not a parallel situation.

Imposing a reporting burden on participating jurisdictions is an inevitable concomitant of an audit and accountability function. It is important, therefore, that the NWC consults with jurisdictions about how the various audits fit together and how the reporting effort can be rationalised and phased. Good engagement and consultation should encourage the cooperation of the states and territories to continue to provide the required information in a timely fashion.

To increase its effectiveness in supporting the implementation of NWI reforms, the NWC should become well engaged with the jurisdictions in carrying out its various tasks. This means a closer understanding of the activities of the jurisdictions and the circumstances in which their priorities are decided. The

NWC's assessments of progress and associated recommendations should take into account such understandings.

Recommendation

- *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.*

6.4 Interaction with COAG

COAG comprises the nine jurisdictions in the Commonwealth and each comes to the table with the political and fiscal priorities of its jurisdiction featuring prominently in its considerations. It is difficult for these key players in water reform, with their long and individual histories, to judge their own actions against national priorities. External judgement independent of jurisdictions is an important input to the process. That process is commonly used in differing forms in other areas of policy where professional bodies with expertise in the policy area make public judgements and their reports are deliberated on. Examples are provided in appendix C. The process is not only to assist the COAG committees to reach conclusions but also to provide information for the lay and professional public to obtain an understanding of the state of government actions and thereby to build trust in the public view of government actions.

Distinct outputs can be discerned that are produced by this kind of process:

- Holding government organisations accountable for their actions and use of public funds – this is the task commonly pursued through auditors-general within single jurisdictions and with respect to discrete programs.
- Reporting to a decision-making body (like COAG) on the implementation of agreed agenda – this task is an explicit remit for CRC but for reasons described below is better carried out by the NWC.
- Making professional assessments of policy implementation and suggesting future actions.

The NWC has undertaken tasks which have produced these outcomes in various combinations, across different policy areas and through a variety of institutions. This has provided necessary external judgement to assist COAG processes.

The NWC is a COAG body in the sense that it was created through a decision of COAG (the NWI); it has a role to monitor the progress of the parties in implementing the milestones in the agreement; and it reports to and advises COAG on water issues. The NWC has a broad-based general brief “to assist the implementation of the NWI ... and ... to promote the objectives of the NWI” under subsection 7(1) of the NWC Act.

COAG and its subordinate ministerial and official bodies form a multi-government deliberative mechanism that responds to the political and fiscal priorities of its constituents and is influenced by many sources of information and advice, of which NWC reports are one source. The NWC reports provide an appropriate channel where assessments are made about the status of progress on reform action and meeting agreed milestones, and the appropriate actions to move the agenda forward in the most constructive manner. Those deliberations can lead to an agreed action agenda and recommendations to COAG to endorse strategic actions or commitments. In the case of water policy, the bodies, recently reconstituted that play that role, are the SCEW made up of ministers and the Water TOG made up of officials.

COAG has also established the CRC, whose central role is “to assist COAG to drive its reform agenda by strengthening public accountability of the performance of governments through independent and evidence-based monitoring, assessment and reporting” (COAG Reform Council 2011). The CRC’s objectives notionally give it a role to monitor implementation of the NWI to the extent that the NWI is included in COAG processes. Indeed the CRC sees it as logical and advisable that the water reform agenda be more formally reconstituted within the structures of the 2008 reforms to Federal Financial Relations (FFR). That would mean reconstituting the NWI as a national agreement under the FFR and would change the accountability mechanisms. It may be a worthwhile consideration if and when a new agreement on water policy and reform is struck. In the meantime, with the NWI only partly implemented, it is a more effective option to utilise the NWC, as a specialist water-reform body with expertise and credibility with stakeholders, to perform the integrated audit and assessment functions as a major channel of advice to COAG.

As COAG processes have developed, in 2010 the PC was also tasked with conducting a cyclical study of the economic impacts and benefits of the whole COAG reform agenda, within which it includes the NWI. When that schedule

is able to encompass water policy effects, it will be necessary for the PC and the NWC to harmonise their planned activities and avoid duplication in their investigations and reporting.

Reporting to COAG was intended, in part, to permit COAG to judge the state of progress in implementing its agreed policy agenda, and to make decisions to effect timely implementation. Through this channel, the NWC's formal reports have the potential to influence decisions and thereby to influence outcomes directly. The reality is that COAG operates at a strategic level which reflects the status of heads of government. Their focus shifts with the emergence of strategic policy issues and follow-up of agreed policies can be viewed as incumbent on portfolio ministers who, in turn, are accountable to COAG for implementation of COAG's agenda. The COAG reform agenda includes such weighty topics as business regulation, education and training, health and climate change. Water reform through the NWI - even though it was agreed before the new COAG arrangements were instituted - is retrospectively included within that agenda.

Engagement between the NWC and COAG should be activated through the forums for water ministers (SCEW) and senior officials (Water TOG). The purpose is to ensure that the views and reports of the NWC are instrumental in the deliberations leading to ministerial decisions and to ensure that the NWC work program is well informed about the interests, issues and priorities of the collective jurisdictions.

A recommended vehicle for effective engagement between the jurisdictions collectively is for the NWC to table its proposed forward work program at Water TOG annually for discussion. While the NWC would be expected to give due cognisance to the comments of Water TOG, it would be for the NWC to decide on its program and to make appropriate adjustments should circumstances require timely response to a particular issue.

Engagement between the NWC and Water TOG should become a regular and active vehicle for the two-way exchange of views and perceived priorities.

NWC's reports would form key agenda items for Water TOG deliberations. Water TOG meetings could be used to engage NWC officers directly in discussing the reports and the implications for action and policy decisions.

Water TOG meetings could also be used to provide the NWC with critical input regarding its intended priorities as expressed in its work program. That program would need to be developed following consultations with jurisdictions and with external stakeholders through the stakeholder reference group. Tabling of a work program for discussion at Water TOG also provides a channel through which the pertinent views of external stakeholders can be exposed to jurisdictions. While jurisdictions regularly consult relevant external parties on matters pertinent to their respective agendas, the NWC is in a unique position to bring forward a consolidated perspective of the views of users, industry and researchers, as expressed through its stakeholder reference group, and hence provide a national purview and voice which may not be heard through other forums.

Engagement on the work program also provides a form of ongoing performance scrutiny for the NWC. Consultations with Water TOG and with the external stakeholder reference group should include a discussion, at least annually, on how the jurisdictions and external stakeholders have valued the work done by the NWC, based on its quality, relevance and timeliness. This process would need to recognise that work carried out by the NWC will often be focused on the needs of particular stakeholders and not necessarily be of relevance or benefit to wider interests. That judgement is for the NWC to make and to explain to the consultative bodies.

Recommendations

- *NWC should have regular discussions with jurisdictions through Water TOG 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.*
- *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.*
- *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.*

- *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.*

6.5 Transparency and disclosure

Transparency of operations and disclosure of assessment, audit and monitoring outcomes are generally recognised as critical to good corporate governance. In the case of performing the functions outlined in chapter 5 effectively, transparency is critical in order to maintain accountability and certainty around operations and activities. Any lack of transparency could weaken the perception of the NWC's independence and diminish the quality of advice it provides to COAG.

Disclosure of assessment, audit and monitoring outcomes is important in making available to all stakeholders the state of progress, benefits gained and opportunity cost of failure to implement critical elements of water reform. Disclosure of material matters should be timely and balanced to ensure both government and non-government stakeholders have access to pertinent information. This requires that, subsequent to consultation with affected parties, NWC reports are made openly available through publication and outcomes are not provided privately to jurisdictions. Jurisdictions need to be treated equally through candid disclosure of the state of reform and the impediments to achieving agreed reforms. With the commitment of parties coming under political and financial pressure, the functions that the NWC plays are especially important.

Recommendation

- *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.*

6.6 Centre of knowledge

Delivery of the range of work described in this Review has enabled the NWC, over the past seven years, to respond, to evolve and to become a centre of knowledge on parts of the water reform work and its implementation. The NWC has contributed, and can contribute to an even greater degree in the future, through bringing that knowledge and experience to bear on issues and

challenges in the implementation of the NWI agenda and related water management and reform topics.

A number of stakeholders observed and welcomed the evolution of the NWC into a skilled and knowledgeable entity. They also commented on the importance of this to a range of participants in the water reform community, and further observed that this role and its breadth are not replicated elsewhere in water reform. Several stakeholders asked where this contribution would arise in the absence of a NWC.

The value of the NWC's contribution is also evident in the extensive instances of referencing of NWC material in documents produced by government and non-government organisations, including academic research activities. The NWC's website provides a repository of information and is a resource drawn upon by many stakeholders. It would enhance the value of this work if a publicly available register were maintained of the many reference and source documents accessed by the NWC in conducting its studies directly or through consultants. The register would be akin to an annotated bibliography and would allow interested stakeholders to gain quick access to listings of relevant source material for their own purposes.

Recommendation

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

6.7 Quality control

The studies and reports of the NWC are commonly generated by external consultants. Jurisdictions felt that the NWC may have lost some of its quantitative rigour, robustness and relevance. There have been claims of factual inaccuracy in some reports, which in turn have been disputed by the NWC.

While such occasional disputes will inevitably occur, it is important that the NWC's reports maintain a high degree of professional quality and be accepted as such by stakeholders. The lack of such could undermine the standing of the NWC as a centre of excellence and knowledge leader. Studies and reports

produced by NWC or by consultants on its behalf should be subjected to a process of peer review to ensure quality.

Recommendation

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

6.8 Timeframe for existence

Significant elements of the NWI still need to be fully implemented. The NWI is likely to be renegotiated and a replacement strategy adopted in future years. However, the various parties consulted were of a view that the NWI, with modifications to its priorities, is the strategy which will be in force over the next several years and to which they, as stakeholders, are committed and want to see implemented. It remains firmly on the COAG reform agenda. In that sense, the timing of the sunset provision for the NWC is inappropriate, being based on what was anticipated in 2004 as a phase of significant completion of the agreed NWI reforms. That proved to be an ambitious and unachievable timetable. The lifetime of the agency should be tied to the life expectancy of the NWI implementation timetable; its coverage should encompass all applications of the NWI and a review of its role conducted no later than five years after 30 June 2012.

Recommendations

- *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.*
- *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.*
- *The purview of the NWC should encompass all reforms associated with implementation of the NWI, including the MDB reforms, and all jurisdictions.*

Chapter 7 – Options and institutional arrangements

Chapter 5 has argued for the continuation of audit, monitoring, assessment and knowledge leadership functions in order to promote the objectives and outcomes of water reform. Chapter 6 highlighted the key characteristics necessary to allow the effective performance of such functions as well as recommending appropriate positioning within the governance framework for an organisation to carry out these functions. This chapter discusses possible delivery options for the functions recommended to continue, concluding that the NWC is most suitable to perform these functions for the duration of the NWI. The implications for these conclusions are also discussed here.

7.1 Delivery options

This Review has recommended that core functions of the NWC that have matured in their delivery over the lifetime of the organisation remain for the duration of the implementation of the NWI. The ToR seek recommendations about how the functions might be delivered without duplicating the functions of other agencies. There are agencies which can perform aspects of the functions within their own broad roles and methodologies. Relevant examples are mentioned in earlier chapters. They include the CRC and the PC.

The CRC, within its remit to conduct audits of COAG reform agendas across a range of policy areas, could, with an expansion of staff and skills, carry out the audits of reform under the NWI. That would sever the audit activity from the close and ongoing involvement of the NWC in water reform. It has been argued that the NWC's audits are integrally linked to its comprehensive assessments. In turn, the recommendations in the assessments provide strategic policy advice to COAG and may generate topics for the knowledge leadership role. The NWC's activities form a connected set and to sever one critical element would diminish the value of the whole.

In the assessment functions, there is a role for the PC in that its core business is conducting assessments of the economic and social impacts of economic reforms. The totality of the COAG reform agenda has been brought under the coverage of the PC over a multi-year cycle, and at some point in the future the water reform agenda will undergo such scrutiny. The Review has made

mention of some NWC functions that could well be done by the PC, provided it is able to do so in a timely way. One example is the assessment of the impacts of inter-jurisdictional trading in the southern MDB.

The series of water market reports and associated analytical papers produced by the NWC are seen by some stakeholders as duplicating reports performed by the ACCC, but the ACCC in its submission states that the roles of the ACCC, the MDBA and the NWC in respect of water markets in the MDB are complementary and that the NWC's functions should continue "into the foreseeable future". Under the Water Act, the ACCC has specific responsibilities for enforcing, and monitoring and reporting on compliance with, the water market and water charge rules. Similarly, the MDBA is responsible for implementing and enforcing the Basin Plan (which will include the water trading rules). In this light, while some complementary monitoring activities are carried out by the other players in water reform, there is a strong argument, consistent with good governance practice in public administration, for the audit and assessment to be carried out separately from the operational and regulatory agencies. The NWC is best placed to continue to do that. The NWC will still need to undertake some monitoring to support its audit and assessment functions. There remains an obligation for the NWC to coordinate its activities with those of other agencies so as to minimise overlap in the reporting requirements on jurisdictions and other water managers.

In the area of knowledge leadership, there are multiple agencies that conduct relevant research, including, within government, the CSIRO and ABARES. The role of the NWC though is not to carry out duplicative research but to coordinate and bring together the results of research and information to bear on current issues, and to commission studies where gaps exist. There have been close, collaborative and productive relationships between the NWC and research agencies valued highly by those agencies.

A future knowledge and research strategy may partially fulfil the function, but to be effective, such a strategy needs to connect to the strategic agenda in water reform and to reach policy-makers and end-users. Were that strategy managed within government, it would be likely to address the immediate and agreed policy agenda but not easily explore the space beyond current policy. Only an independent body will be able to provide arm's length commentary on the effectiveness of policy and the necessary next steps.

7.2 Continuation of the NWC

There is a need for governments to capitalise on their investments. It is the judgement of this Review that the NWC constitutes one of the investments that has been producing valuable products in pursuit of the NWI objectives. It has built a skill base, expertise and an information base positioning it well to contribute significantly to the effort that is still required. Most non-government stakeholders and some government stakeholders place considerable value on the NWC's hard-won expertise and credibility and on its products.

The NWC has brought particular value to these tasks through an expertise built from recruitment of skilled staff and their accumulated experience, and through the acceptance by stakeholders of the NWC's independence of jurisdictions.

As a specialist body whose purview and expertise focus on water reform and the NWI in particular, the NWC can play an important role beyond auditing and monitoring by making assessments of the situation with the reform action – not merely scoring actions against an agreed schedule. Assessments provide commentary, by informed parties and at arm's length from the participating governments, on the effects of successful implementation and the implications of falling short on agreed actions. They provide a mechanism to highlight the areas where priority action is required to gain major benefits from the reform actions.

The knowledge leadership activities performed by the NWC have set a strategic agenda and initiated essential elements of the reform activity. They are built on the assessments and a scanning of the strategic environment. That role remains relevant to the continued implementation of the NWI objectives.

These activities form an integrated whole of significant value to the water reform agenda and the NWC has honed its focus over time to perform those activities with proficiency.

7.3 Implications of these conclusions

The recommendations of this Review have implications for Commonwealth legislation and resourcing. The legal basis for the NWC's operation is the NWC Act, which expires on 30 June 2012. The Water Act also refers to the NWC and assigns certain functions to it in relation to auditing implementation of the MDB Plan and advising the Minister in relation to the application by jurisdictions of the risk assignment framework provided in the NWI. References to functions contained in the Water Act will extend beyond the sunset of the

NWC Act on 30 June 2012. The NWC is also provided with an additional audit function under the proposed Carbon Credits (Carbon Farming Initiative) Regulations 2011 due to take effect in December 2011. The NWC is established as a prescribed agency under the Financial Management and Accountability Regulations 1997.

The NWC receives a direct appropriation from the Commonwealth budget for departmental expenditures, which it expends on salaries of continuing and non-continuing staff, associated administration and for contracting external parties to conduct elements of its core activities. It also receives an appropriation for administered expenses for remunerating commissioners and the CEO. The NWC also manages the \$250 million RNWS program which generates research, information and tools for advancing the NWI agenda. The funding for this program will cease to be available on 30 June 2012.

Legislation

This Review has argued for the NWC to continue as a Commonwealth statutory agency with statutory provisions allowing conduct of its functions independently of any one jurisdiction's control of its operations and reporting to COAG in regard to the COAG agreed agenda.

The continuation of the NWC would require amendment to the NWC Act to clarify and ensure sufficient flexibility for governance and administration arrangements for the NWC, outline changes to the functions of the NWC and smooth transition from the NWC in its current form to a 'new' NWC.

An amended NWC Act would:

- Ensure the continuation of the NWC as a statutory agency, without a sunset clause, within the Sustainability, Environment, Water, Population and Communities portfolio.
- Maintain the NWC as an FMA Act agency.
- Outline the principal purpose of the NWC to
 - Assist and pursue, through strategic guidance and information, implementation of water reforms by all jurisdictions leading to the effective and timely achievement of the NWI objectives.
- Limit the powers and responsibilities of the relevant minister to oversight of the administration of the commission, including the receipt of statutory reports and making statutory appointments and not to direct the operations of the NWC.

- Impose an obligation on the NWC that any reports and studies provided to COAG, its relevant Ministerial Council or to the responsible Portfolio Minister are also provided to the other parties at the same time.
- Impose an obligation that all reports, studies and other products are made publicly available.
- Require the NWC to produce a work plan annually to be discussed with jurisdictions through Water TOG.
- Provide the ability for COAG or its relevant ministerial council to commission studies and reports from the NWC, but individual jurisdictions can do so only through the COAG processes.
- Provide the authority for the NWC to carry out the functions this Review recommends continue including but not limited to:
 - auditing of jurisdictions' activities in implementing reforms against commitments agreed through COAG processes or indicators set by the NWC in consultation with jurisdictions
 - monitoring reform activity and providing information on key focus areas for reform
 - assessing reform action focusing on elements judged critical at the time to the achievement of NWI objectives including:
 - mandating comprehensive assessments be undertaken on a triennial basis (triennial assessments to replace biennial assessments)
 - allowing discretion for additional assessments on particular elements of the NWI to be undertaken as necessary
 - developing knowledge and promoting public education on emerging policy and operational issues
 - bringing together pertinent research and information, focused on pressing policy issues and generating discussion amongst stakeholders through publications and round-table discussion sessions.
 - taking into account in the performance of these functions all NWI priorities including those internal and external to the MDB.
 - any other function that may arise and is consistent with the principal purpose and capacity of the NWC.
- Maintain the number, characteristics and selection of commissioners to be the same as in the present Act:
 - Commissioners to be representative of water industry, users, science and regional interests and all to be external to NWC staff.
 - The Chief Executive Officer is not also to hold a position as a commissioner.

- Provide for a review of continued relevance and usefulness of the NWC to be conducted five years after amendment of the Act, if the Act has not already been terminated through replacement of the NWI. A review of the NWC's roles and functions should take place every five years while its legislation remains in force.

Recommendations

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

Other legislation

Consequential amendments to associated legislation or regulations - for example, the Water Act - would only be required if the NWC was not to continue (and the NWC Act was allowed to expire) or if another entity was to subsume the NWC's functions. As this Review advocates the continuation of the NWC and amendment rather than replacement of the NWC Act, consequential amendments are not necessary.

Resourcing

The NWC has maintained an average staffing level in recent years of approximately 50 to 60 full-time equivalent staff. There has been a mix of continuing staff and staff on fixed term appointments. This has enabled the NWC management to maintain flexibility in terms of staff numbers as the range of tasks and the mix of skills required evolves with the functions at hand.

The NWC has also used a wide range of external consultants to carry out specific tasks both as part of its core business - for example, in preparation of

the biennial assessments - and many of the discretionary reports, such as the *Waterlines* series. Contracts for consultants have been funded through resources from both the NWC's departmental funds and the RNWS. Significant RNWS funds have been used for aspects of core or mandated functions, such as the reports on interstate trading in the Southern Murray-Darling Basin.

Under the arrangements proposed in this Review, the NWC would need to be resourced with departmental funds from the Commonwealth budget sufficient to conduct monitoring, audit and assessment activities and strategic or "knowledge leadership" studies. The nature of the business is such that significant components of the work program will need to be performed by consultants in addition to NWC staff. It is likely that with the termination of the RNWS, the NWC will become a smaller operation than it has been in the past. There is a challenge to be faced in resourcing of the NWC as the size of its operations is reduced. It will be critical that the NWC is able to maintain a professional work force of an adequate size to sustain itself as a skilled centre that can attract and retain appropriately skilled staff. This challenge can be addressed to some degree by a greater proportion of the NWC's business being able to be performed by staff rather than consultants and a high degree of flexibility to allocate resources to relevant functions.

To enhance the knowledge and capacity of staff and to assist the NWC's engagement with stakeholders, it would be desirable if it were able to organise exchanges of staff with government and non-government stakeholder groups, such as state water agencies and academic research areas.

In the absence of a renewal of the RNWS or similar program - a likely outcome in the view of this Review - it is desirable that the NWC be provided with sufficient resources within its departmental funds to be able to continue to provide knowledge leadership. This activity will need to be judiciously chosen to fit within more constrained resources. It needs to be clearly relevant to stakeholder interests and to the NWC's views of critical emerging issues. Quality and relevance will be essential characteristics. Ideally, the resources available to this activity could be comparable to the resources for monitoring, audit and assessment, but may have to build up to that level over the forward estimates period. The activity should be viewed as an important and time-critical component of research activity related to water reform. As governments allocate resources to such research, they should consider a modest component

provided to the NWC as an element of the total research effort, but one immediately focused on the current reform agenda.

Funding for the roles and functions addressed in this Review

Funding for the functions addressed in this Review and for a NWC to deliver those functions beyond the current funding year, which ends on 30 June 2012, would require a government decision to confirm the provisional forward estimates. The exception to that is for the audit functions assigned to the NWC under the Water Act, and the audit function in respect of the WMPAs, for which funding for some future years has been earmarked under the WFTF.

The decision about funding for the functions and role of the NWC is a matter for the Australian Government in the context of its budget considerations.

Recommendation

- *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.*

Chapter 8 – Recommendations

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 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, 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 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.*

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Appendix A – Terms of Reference for the Review

COAG Review of the National Water Commission

Terms of Reference

The Review is for the purposes of section 38 of the *National Water Commission Act 2004* (NWC Act) which requires that a review must be conducted of the National Water Commission's (NWC) ongoing role and functions in relation to the management and regulation of Australia's water resources by the end of 2011.

Based on the context attached, the Review will:

1. Assess the effectiveness and continuing appropriateness of the roles and functions of the NWC in promoting the objectives and outcomes of water reform, as follows:
 - assist with the implementation of the National Water Initiative (NWI);
 - promote and advocate the objectives and outcomes of the NWI;
 - assess the water reform progress of NWI parties and advise COAG;
 - report regularly and independently on opportunities to advance water reform;
 - provide independent advice to COAG, the Commonwealth or the Minister on matters relating to water;
 - advise the Minister in relation to any Commonwealth water-related program;
 - audit the effectiveness of the Murray-Darling Basin Plan and water resource plans;
 - as delegated to the Commission by the COAG Reform Council, assess the performance of Murray-Darling Basin states in meeting their reform commitments in the Commonwealth-State water management partnerships;
 - monitor and report on the impact of interstate water trade in the southern Murray-Darling Basin;
 - report biennially on the performance of the water industry against national benchmarks; and

- advise on the conformity of reforms and projects with the objectives of the NWI when requested.
2. Provide advice and recommendations on appropriate options and institutional arrangements for the implementation of those functions which the Review considers should continue or commence. The arrangements need to be:
- clear and specific;
 - efficient;
 - effective and credible;
 - not duplicative of other arrangements; and
 - flexible to future changes in function;

Conduct of the Review

The Review will be conducted by an External Reviewer, appointed by the Australian Government Minister for Sustainability, Environment, Water, Population and Communities (delegated to the Parliamentary Secretary for Sustainability and Urban Water).

The External Reviewer will be supported by a secretariat from the Department of Sustainability, Environment, Water, Population and Communities accountable to the Reviewer. States and territories will be invited to second officers to the Secretariat.

The draft Review report will be circulated to all COAG Water Reform Committee (WRC) members prior to completion of the final report

The Reviewer will impartially determine the degree of communication and engagement with stakeholders and take such matters into account as he or she considers relevant, consistent with these terms of reference. The Reviewer is, however, expected to consult fully with Commonwealth agencies, State and Territory governments, with key industry and environmental groups.

The Reviewer will submit a report to the Minister for Sustainability, Environment, Water, Population and Communities (delegated to the Parliamentary Secretary for Sustainability and Urban Water), who will provide the report to the Prime Minister for submission to COAG by the end of 2011 and tabling in both Houses of Parliament within 15 sitting days of receipt. Given the timing constraints, the Review will be conducted with a view to reporting by October 2011.

Context for the Review

The NWC Act states in section 39 that the NWC Act ceases to be in force on 30 June 2012.

The NWC Act requires, in section 38, that a Review must be conducted of the NWC's ongoing role and functions in relation to the management and regulation of Australia's water resources by the end of 2011.

Section 38 also states that the Review must be conducted in accordance with the processes provided for under the NWI or otherwise directed by COAG, and a written report about the Review must be made. The Minister must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the Minister receives the report.

Clause 108 of the NWI states that *drawing on the NWC assessment [of the NWI, as set out in subclause 106(a)] in 2010–11, COAG will review the objectives and operation of the NWC in 2011.*

Schedule C of the NWI states that *In 2010–11, COAG will review the ongoing role and function of the NWC following consideration of its third biennial assessment'. A report on the outcome of the review is to be tabled in each House of Parliament by the end of 2011.*

The NWC Act, under section 7, sets out the statutory functions of the NWC, and the NWC or its successor body has additional functions under the *Water Act 2007* and as delegated by the COAG Reform Council.

In the 2004–05 financial year the NWC became responsible for the administration of two new Commonwealth funding programs, the *Water Smart Australia* program and the *Raising National Water Standards* program.

In 2007, responsibility for the *Water Smart Australia* program transferred to the Commonwealth Department. Remaining funds for the *Raising National Water Standards* program held in the Australian Water Fund Account would cease to be available when the NWC Act ceases unless the government determines otherwise.

Since the NWC was established, there have also been significant institutional reforms approved by COAG and by the Commonwealth Government, including:

- in 2007, consolidation of Commonwealth water policy and program functions in the one department (currently the Department of Sustainability, Environment, Water, Population and Communities);
- in 2007, establishment of the Murray-Darling Basin Authority and the Commonwealth Environmental Water Holder as new statutory bodies;
- in 2008, establishment of the COAG Reform Council and the delegation by the Council of certain water assessment functions to the NWC.

* * * *

Appendix B – List of stakeholders consulted

Stakeholders consulted

States and territories

- ACT Department of Environment, Climate Change, Energy and Water (DECCEW)
- NSW Commissioner for Water, Office of Water
- NSW Department of Premier and Cabinet
- NSW Natural Resource Commissioner
- NSW Office of Environment and Heritage
- NSW Treasury
- NT Department of Natural Resources, Environment, The Arts and Sport (NRETAS)
- QLD Department of Environment and Resource Management (DERM)
- QLD Department of Premier and Cabinet
- SA Department for Water
- TAS Department of Primary Industries, Parks, Water and Environment (DPIPWE)
- VIC Department of Premier and Cabinet
- VIC Office of Water, Department of Sustainability and Environment (DSE)
- WA Department of Premier and Cabinet
- WA Department of Water

Commonwealth departments and statutory agencies

- Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES/DAFF)
- Bureau of Meteorology (BOM)
- Commonwealth Environmental Water Holder (CEWH)
- Commonwealth Treasury
- Department of Prime Minister and Cabinet (DPMC)
- Department of Regional Australia, Regional Development, Local Government (DRARDLG)

- Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC)
- Murray Darling Basin Authority (MDBA)
- Productivity Commission
- National Water Commission
- COAG Reform Council

Water user and industry representatives

- Australian Water Association (AWA)
- National Farmers Federation (NFF)
- National Irrigators' Council (NIC)
- Water Service Association of Australia (WSAA)

Environmental groups

- Australian Conservation Foundation (ACF)
- Queensland Conservation Council (QCC)
- World Wildlife Fund (WWF)

Indigenous groups

- The First Peoples' Water Engagement Council

Experts and researchers in water and governance

- Dr Daniel Connell
- Dr Jamie Pittock
- Professor John Thwaites
- Mr Ken Matthews AO
- Professor R. Quentin Grafton
- Professor Ray Ison

List of Submissions received

1. Australian Water Association (AWA)
2. National Water Commission (NWC)
3. WA Department of Water
4. Water Service Association of Australia (WSAA)
5. Australian Forest Products Association (AFPA)

6. Water for a Healthy Country Flagship, Commonwealth Scientific and Industrial Research Organisation (CSIRO)
7. Academy of Technological Sciences and Engineering
8. National Centre for Groundwater Research & Training, Flinders University
9. Australian Competition and Consumer Commission (ACCC)
10. NSW Government
11. Water Quality Research Australia (WQRA)

Appendix C – Research or policy agencies in other fields

While there are present and past examples of government institutions which perform some of the roles of the NWC, the NWC has important and unique features which justify its continuation. The NWC has built a skills base and experience in performing audits on water reform. It has developed and assumed a role as an expert body focused solely on the issues of water reform.

It is common practice across government to have professional expert bodies conducting policy-relevant research or generally acting as a ‘centre of knowledge’ in areas where Commonwealth and state and territory departments also provide advice. Despite this overlap these bodies are recognised as crucial to advancing research and reform in these areas. Nine examples from various fields are presented in table 1 below, including a description of the principal roles and governance arrangements. Most are statutory entities under Commonwealth legislation. Some agencies have operational roles (such as the Australian Nuclear Science and Technology Organisation (ANSTO)) and some provide policy advice (such as the Australian National Preventive Health Agency (ANPHA), the National Transport Commission (NTC) and ANSTO).

Policy-related research institutions exist under disparate governance arrangements in the areas of health and welfare (the Australian Institute of Health and Welfare (AIHW)), families (the Australian Institute of Family Studies (AIFS)) and vocational education (National Centre for Vocational Education Research (NCVER)). Institutions like the Australian Energy Market Commission (AEMC) and the NTC combine a regulatory role with policy advice and a knowledge base.

The ANSTO provides an interesting example of an institution designed, amongst other things, to carry out research, to act as a centre of expertise and to provide policy advice in a technical area where science and technical understanding bear significantly on policy. The ANSTO also carries responsibility for operating Australia’s nuclear facilities, but for the functions described it has a parallel to the role of the NWC. The NTC also has parallels to the NWC in that it was created via an intergovernmental agreement, has a role in developing consistent transport policies and has been expanded to become a centre of excellence following a recent review of its role.

Table 1 – Examples of research or policy agencies

Agency	Principal roles	Governance arrangements
Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES)	<ul style="list-style-type: none"> • Research, analysis and advice for government and private sector decision-makers on significant issues affecting Australia’s primary industries 	Research bureau within the Commonwealth Department of Agriculture, Forestry and Fisheries (DAFF).
Australian Energy Market Commission (AEMC)	<ul style="list-style-type: none"> • Strategic and operational advice to ministerial council • Conduct of energy market reviews for the ministerial council • Detailed rule maker for the National Energy Market and elements of natural gas markets 	Established as a statutory body under South Australian legislation with three commissioners (including a chairman) that perform role of a governing board. Responsible to COAG, and reports to the Ministerial Council on Energy and the South Australian Minister for administrative matters. Funded by all parties to National Energy Market (which excludes the NT).
Australian Institute for Health & Welfare (AIHW)	<ul style="list-style-type: none"> • Reporting on key health and welfare issues • Collection, analysis and reporting on information collected from relevant service bodies • Development of indicators and targets for national agreements 	Commonwealth statutory authority under the CAC Act with a managing board, reporting to the Commonwealth Minister.
Australian Institute of Family Studies (AIFS)	<ul style="list-style-type: none"> • Research and advice to policy makers, service providers and the broader community on matters that affect family wellbeing 	Commonwealth statutory authority under the FMA Act with an advisory council, reporting to the Commonwealth Minister.

Agency	Principal roles	Governance arrangements
Australian Institute of Marine Science (AIMS)	<ul style="list-style-type: none"> • Generation and transfer of knowledge to support the sustainable use and protection of the marine environment through research 	Commonwealth statutory authority under the CAC Act with a governing council accountable to the Commonwealth Minister.
Australian National Preventive Health Agency (ANPHA)	<ul style="list-style-type: none"> • Advise to the Minister or Ministerial Council or individual jurisdictions on preventive health • Information hub and clearing house for translation of research into better policies and programs • Biennial reporting on the state of preventive health • Promotion of preventive health • Development of national standards and codes of practice • Foster and fund through grants preventive health initiatives 	Commonwealth statutory authority under the FMA Act with an advisory board. Reports through the Commonwealth Minister to the Ministerial Council.
Australian Nuclear Science and Technology Organisation (ANSTO)	<ul style="list-style-type: none"> • Support for the development and implementation of government policies and initiatives in nuclear and related areas, domestically and internationally • Operation of nuclear science and technology based facilities, for the benefit of industry and the Australian and international research community • Research in advancing the application of nuclear science and technology 	Commonwealth statutory authority under the CAC Act with a governing board accountable to Commonwealth Minister.

Agency	Principal roles	Governance arrangements
National Centre for Vocational Education Research (NCVER)	<ul style="list-style-type: none"> • Research and data analysis on training • Collection, collation and publication of statistics and survey data • Development of international research links 	Not-for-profit company owned by state, territory and federal ministers responsible for training and managed by a board of nine directors, who represent state, territory and Commonwealth governments, industry, unions, and training authorities.
National Transport Commission (NTC)	<ul style="list-style-type: none"> • Development and coordination of regulatory reform for nationally consistent transport policies and legislation • Advice to the Ministerial Council on policy issues • Coordination and monitoring implementation of approved reforms • Assessment of impacts of infrastructure on regional and remote areas 	Commonwealth statutory authority under the CAC Act, funded by all governments and with six commissioners who perform the role of a governing board reporting to the Ministerial Council.