

# Chapter 1

## Background

### Introduction

1.1 On 25 September 2014, on the recommendation of the Senate Selection of Bills Committee, the Senate referred the National Water Commission (Abolition) Bill 2014 (the bill) to the Senate Environment and Communications Legislation Committee (the committee) for inquiry and report by 24 November 2014.<sup>1</sup>

1.2 The reasons for referral were that the National Water Commission (NWC):

- is the only independent federal body that tracks water policy;
- advises Council of Australian Governments (COAG) and the Australian Government on water policy;
- audits the effectiveness of the implementation of the Murray-Darling Basin Plan;
- promotes water reform; and
- that many organisations have expressed concern at its proposed axing.

1.3 The principal issues for the committee's consideration were the impact of the bill on the continuation of robust, independent and transparent monitoring and assessment of matters of national water reform and on the management of Australia's water resources.<sup>2</sup>

### Conduct of the inquiry

1.4 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals, organisations and state government ministers inviting submissions by 13 October 2014.

1.5 The committee received 32 submissions, which are listed at Appendix 1. The submissions may be accessed through the committee's website at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/NWC](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/NWC)

1.6 The committee held a public hearing in Canberra on 4 November 2014. A list of witnesses who appeared at the hearing may be found at Appendix 2.

1.7 The committee thanks all the organisations and individuals that made submissions to the inquiry and all the witnesses who participated in the public hearing.

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1 *Journals of the Senate*, No. 56, 25 September 2014, p. 1506.

2 Senate Selection of Bills Committee, *Report No. 12 of 2014*, appendices 8 and 9.

## Note on references

1.8 Hansard references in this report are to the proof committee Hansard. Page numbers may vary between the proof and the official Hansard transcript.

## Background to the bill

1.9 The following discussion provides a brief overview of the implementation of the National Water Initiative (NWI) and the establishment of the National Water Commission (NWC).

### *Intergovernmental Agreement on a National Water Initiative*

1.10 In June 2004, all members of COAG, except Western Australia and Tasmania, reached agreement to implement a National Water Initiative (NWI).<sup>3</sup> Tasmania subsequently became a party to the agreement in June 2005, as did Western Australia in April 2006.<sup>4</sup>

1.11 The NWI was intended to continue reforms that had been initiated by the 1994 COAG Water Reform Framework, under which most jurisdictions had undertaken significant reforms to their water management systems, including:

...separating water access entitlements from land titles, separating the functions of water delivery from that of regulation, and making explicit provision for environmental water.<sup>5</sup>

1.12 It was intended that the full implementation of the NWI would result in:

...a nationally-compatible, market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes...<sup>6</sup>

1.13 These overarching objectives were to be delivered by implementing the following specific reforms:

- (i) clear and nationally-compatible characteristics for secure water access entitlements;
- (ii) transparent, statutory-based water planning;
- (iii) statutory provision for environmental and other public benefit outcomes, and improved environmental management practices;
- (iv) complete the return of all currently overallocated or overused systems to environmentally-sustainable levels of extraction;
- (v) progressive removal of barriers to trade in water and meeting other requirements to facilitate the broadening and deepening of the water market, with an open trading market to be in place;

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3 Intergovernmental Agreement on a National Water Initiative (NWI), 25 June 2004.

4 Parliamentary Library, *Bills Digest No. 148, 2011–12: National Water Commission Amendment Bill 2012*, 14 June 2012, p. 2.

5 NWI, clause 3.

6 NWI, clause 23.

- (vi) clarity around the assignment of risk arising from future changes in the availability of water for the consumptive pool;
- (vii) water accounting which is able to meet the information needs of different water systems in respect to planning, monitoring, trading, environmental management and on-farm management;
- (viii) policy settings which facilitate water use efficiency and innovation in urban and rural areas;
- (ix) addressing future adjustment issues that may impact on water users and communities; and
- (x) recognition of the connectivity between surface and groundwater resources and connected systems managed as a single resource.<sup>7</sup>

1.14 Schedule A of the NWI sets out a timeline for the implementation of specific actions to be taken by the parties to the agreement, most of which were to be completed by 2012.<sup>8</sup>

### ***Establishment and role of the National Water Commission***

1.15 The first action to be completed under the implementation timetable of the NWI was the establishment of the NWC by the end of 2004.

1.16 The NWI further specified that the commission be established and funded by the Commonwealth and have up to seven members, including a chair, with expertise in audit and evaluation, governance, resource economics, water resources management, freshwater ecology and hydrology. Four of the members, including the chair, were to be appointed by the Commonwealth and three by the states and territories.<sup>9</sup>

1.17 The NWI also specified that the roles of the commission include 'to assist with the effective implementation' of the NWI, to accredit the progress of parties against the implementation timetable and to provide advice to COAG on national water issues.<sup>10</sup>

1.18 The NWC was subsequently established by the *National Water Commission Act 2004* (NWC Act), which commenced on 17 December 2004.

1.19 The NWC work program consists of a number of reporting and auditing mechanisms, including the statutory function of assessing progress towards the implementation of the NWI.<sup>11</sup> In addition, the NWC has acquired the role of auditing the effectiveness of the implementation of the Basin Plan.

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7 NWI, clause 23.

8 NWI, schedule A.

9 NWI, schedule C.

10 NWI, clauses 10 and 19; schedule C.

11 National Water Commission, 'Assessing and monitoring progress', <http://www.nwc.gov.au/our-work/assessments> (accessed 19 November 2014).

### *Assessments of the NWI*

1.20 Since its inception, the NWC has undertaken biennial assessments of progress made towards NWI objectives in 2007, 2009 and 2011. A final assessment was delivered in 2014, after amendments to the NWC Act in 2012 moved the reporting timetable to a triennial basis.

### *Functions in relation to the Murray-Darling Basin Plan*

1.21 With the introduction of the *Water Act 2007*, the NWC acquired a new function to conduct audits of the effectiveness of the implementation of the Murray-Darling Basin Plan (Basin Plan) and associated water resource plans.

1.22 The NWC published its first report on the Basin Plan in March 2013. As the plan only commenced in November 2012, this report does not constitute a full audit as there had been insufficient activity or reporting in the intervening period.<sup>12</sup>

1.23 The NWC concluded that, although a vast effort had gone into the preparation of the Basin Plan itself over the preceding five years, implementation planning remained at an early stage. In the NWC's opinion, 'the next two years will be critical in establishing momentum and direction for Basin Plan implementation'.<sup>13</sup>

### *COAG review of the National Water Commission*

1.24 The NWC Act originally included both a mandatory review provision and a sunset provision. Section 38 of the original NWC Act specified that a review must be conducted into the ongoing role and functions of the NWC by the end of 2011 and section 39 specified that the NWC Act would cease to be in force on 30 June 2012.<sup>14</sup>

1.25 The mandatory review called for by section 38 was completed by Dr David Rosalky in December 2011. The review found that, while some essential elements of the NWI had been implemented, the timetable for the completion of the NWI's milestones had proved to be ambitious as several key initiatives had, at that time, not been implemented due to technical and political constraints.<sup>15</sup>

1.26 The review further found that the NWC, or a body very similar to it, would play an important role in achieving those parts of the NWI that remained outstanding:

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.<sup>16</sup>

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12 National Water Commission, *Murray–Darling Basin Plan implementation: initial report*, March 2013, p vi.

13 National Water Commission, *Murray–Darling Basin Plan implementation: initial report*, March 2013, p vi.

14 *National Water Commission Act 2004*, s. 38 and s. 39.

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

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

1.27 The review identified three key activities that would be required to implement further reforms—monitoring and audit of reform activity, assessments of reform activity and knowledge leadership—and argued that having a dedicated and independent entity responsible for all three activities 'enhances the efficiency and effectiveness of each of the individual activities'.<sup>17</sup>

1.28 The review concluded 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'.<sup>18</sup>

### ***National Water Commission Amendment Act 2012***

1.29 The Commonwealth Government's response to the review was given legislative effect by the *National Water Commission Amendment Act 2012* which removed the sunset clause thereby allowing the NWC to continue to operate for the duration of the NWI. In addition, the functions of the NWC were reframed to focus on three main areas—monitoring, audit and assessment, the number of commissioners were reduced from seven to five, and the commission's performance was made subject to review once every five years.<sup>19</sup>

### ***Proposed abolition of the NWC***

1.30 The terms of reference for the National Commission of Audit, established after the 2013 federal election, included suggesting options for the consolidation of agencies and boards.<sup>20</sup> In phase one of its report, delivered in February 2014, the Commission of Audit suggested that the NWC could be either consolidated into the Department of the Environment with the intention of saving on administrative costs, or abolished, with its monitoring, audit and assessment functions transferred to the Productivity Commission.<sup>21</sup>

1.31 The latter suggestion was adopted by the Government, which announced in the 2014–15 Budget that it would achieve savings of \$20.9 million over four years by closing the NWC in December 2014 and transferring its statutory functions to other government bodies. These projected savings take into account the cost to other agencies of taking on NWC functions.<sup>22</sup>

1.32 The National Water Commission (Abolition) Bill 2014 would give effect to this plan. The bill would repeal the NWC Act and, by amending the *Water Act 2007*,

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

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

19 National Water Commission Amendment Bill 2012, Explanatory Memorandum, p. 2.

20 National Commission of Audit Terms of Reference, p. 2, [http://www.ncoa.gov.au/docs/NCA\\_TERMS\\_OF\\_REFERENCE.pdf](http://www.ncoa.gov.au/docs/NCA_TERMS_OF_REFERENCE.pdf) (accessed 11 November 2014)

21 National Commission of Audit, *Towards Responsible Government: the report of the National Commission of Audit, phase one*, p. 214.

22 Budget Paper No. 2: budget measures, p. 109, [http://www.budget.gov.au/2014-15/content/bp2/html/bp2\\_expense-11.htm](http://www.budget.gov.au/2014-15/content/bp2/html/bp2_expense-11.htm)

transfer the two statutory NWC functions to the Productivity Commission—triennial assessments of progress on implementation of the NWI and five-yearly audits of the implementation of the Basin Plan and associated water resource plans.<sup>23</sup>

1.33 The Productivity Commission will be required to provide its reports on the implementation of the Basin Plan to the Murray-Darling Basin Authority (MDBA) and each of the basin states. It will also be required to provide its reports on the implementation of the NWI to COAG.<sup>24</sup>

1.34 At its budget estimates hearings on 26 May 2014, the committee was informed that several functions currently undertaken by the NWC would cease with its abolition. These functions include:

- preparation, at the request of COAG, of a national water planning report card, which provides a summary of water planning across Australia and the level of progress that has been achieved in each planning area;
- preparation of a national performance report on urban water utilities, in accordance with clauses 75 and 76 of the NWI, which provides an annual, independent and public report by which to compare pricing and service quality; and
- assistance with the effective implementation of the NWI, which includes facilitating interaction between the states and providing 'thought leadership' on water reform.<sup>25</sup>

1.35 The committee was informed at its supplementary estimates hearing on 20 October 2014 that the Bureau of Meteorology had undertaken to continue the non-statutory function of reviewing the performance of urban water utilities for the next 12 months. A similar report on rural water utilities currently undertaken by the NWC will not be continuing.<sup>26</sup>

## Overview of bill provisions

1.36 The bill gives effect to the Government's announcement in the 2014–15 Budget of its intention to abolish the NWC by the end of 2014 while transferring key functions to existing Commonwealth agencies.<sup>27</sup>

1.37 The two statutory functions of the NWC that are maintained by the bill are triennial assessments of progress on implementation of the NWI and audits of the

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23 National Water Commission (Abolition) Bill 2014, Explanatory memorandum, p. 2.

24 National Water Commission (Abolition) Bill 2014, Explanatory memorandum, pp 4–5.

25 Ms Kerry Olsson, Acting Chief Executive Officer, National Water Commission, *Estimates Hansard*, 26 May 2014, p. 64.

26 Ms Kerry Olsson, Acting Chief Executive Officer, National Water Commission, *Estimates Hansard*, 20 October 2014, p. 78.

27 Senator the Hon Mitch Fifield, Assistant Minister for Social Services, *Senate Proof Hansard*, 25 September 2014, p. 33.

implementation of the Basin Plan and associated water resource plans. The bill proposes to transfer these two functions to the Productivity Commission.

1.38 To carry out these changes, the bill proposes to repeal the *National Water Commission Act 2004* and amend the *Water Act 2007*.

***Repeal of the National Water Commission Act 2004***

1.39 Item 1 of the bill proposes to repeal, in its entirety, the *National Water Commission Act 2004*.

***Amendments to the Water Act 2007***

1.40 The remaining items of the bill propose amendments to the *Water Act 2007*.

1.41 Items 2 to 4 insert new definitions into the *Water Act*.

1.42 Item 5 proposes to repeal subsection 74A(4) of the *Water Act*, which provides that the minister may seek advice from the NWC when making or revoking a determination that a basin state has applied the NWI risk assignment framework under state legislation.

1.43 Item 6 repeals part 3 of the *Water Act*, which currently provides the NWC with the power to conduct audits of the implementation of the Basin Plan, details when such audits must be completed and states to whom the audit reports must be provided.

1.44 Item 6 also substitutes a new part 3 which will require the Minister to refer to the Productivity Commission both the audit of the implementation of the Basin Plan and associated water resource plans, and the triennial assessments of progress on implementation of the NWI. This new part 3 also includes provisions for when these activities must be undertaken and to whom the resulting reports must be provided.

1.45 Items 7 to 11 contain transitional provisions, including the transfer of NWC records to the Department of the Environment, the transfer of Ombudsman investigations to the Department and the tabling of the NWC's final annual report.

