

Chapter 2

Key issues

Introduction

2.1 This chapter discusses the following main issues raised in submissions and evidence provided to the committee regarding the bill:

- the decision to abolish the NWC;
- the current state of water reform implementation;
- the reallocation of NWC functions; and
- cost savings and efficiency.

Decision to abolish the NWC

2.2 In the second reading speech to the bill, the Assistant Minister indicated that there was no longer a need for a stand-alone agency. The Assistant Minister stated:

Given both the substantial progress already made in water reform and the current fiscal environment, there is no longer adequate justification for a stand-alone agency to monitor Australia's progress on water reform. In line with reform priorities to improve efficiencies across the Australian Government and to improve the budgetary outlook, the NWC will cease its functions following the release of its assessment of national water reform in October this year.¹

2.3 The Assistant Minister also noted that the NWC's roles are of a monitoring and reporting nature and it does not deliver programs or have any approval or regulatory functions.² The Department of the Environment also added that the key functions currently performed by the NWC will continue to be performed by the Productivity Commission, the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) and the department itself. The department concluded that 'these agencies have all the skills necessary to continue the legacy of water reform analysis and reporting that has been set by the National Water Commission'.³

2.4 The committee received submissions putting forward a range of positions regarding the proposed abolition of the NWC, including: unqualified support, support with suggested amendments, opposition with suggested amendments and unqualified opposition.

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

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

3 Department of the Environment, *Submission 13*, p. 4.

2.5 The National Irrigators' Council (NIC) submitted that the abolition of the NWC, in conjunction with the current review of the *Water Act 2007*, would contribute to a reduction in the number of government agencies with responsibilities over water. This in turn would lead both to savings for the Australian Government and to a reduction in the regulatory burden carried by irrigation and rural water businesses.⁴

2.6 The NIC highlighted that, in addition to the NWC, the following bodies currently all have roles with regard to water: the Department of the Environment, the Murray-Darling Basin Authority, the Commonwealth Environmental Water Holder, the Bureau of Meteorology, the Australian Competition and Consumer Commission, the Australian Bureau of Statistics, ABARES, Standards Australia and state jurisdictions.⁵

2.7 The NIC therefore regarded the abolition of the NWC as an opportunity to consolidate these responsibilities in fewer agencies and to reduce the number of agencies to which irrigation and rural water businesses must provide data.⁶

2.8 In evidence given to the committee, the NIC also stated that the information produced by the NWC was not of great relevance to its members as reports and reviews were generally no longer current by the time they were released and therefore not useful when making business, farming and water purchasing decisions.⁷

2.9 The NIC also stated that it believed the abolition of the NWC would not materially affect progress on water reform as the NWC did not itself implement reforms. Rather, the NIC argued, the NWC was a creature of the NWI reforms agreed to by all COAG members. Mr Thomas Chesson, CEO, NIC, stated:

I would point out that the National Water Commission was the creature of major water reforms. It was not the instigator of major water reforms. I have never actually seen it instigate any reforms.⁸

2.10 The National Farmers' Federation (NFF) initially expressed disappointment at the decision to abolish the NWC,⁹ but is generally supportive of the Government's decision given the proposed reallocation of NWC functions to the Productivity Commission, the Department of the Environment, and the ABARES.

2.11 During the hearing the NFF expressed confidence in the ability of the Productivity Commission to undertake the statutory function of the triennial assessment, stating:

4 National Irrigators' Council, *Submission 11*, p. 1.

5 National Irrigators' Council, *Submission 11*, p. 1.

6 National Irrigators' Council, *Submission 11*, p. 1.

7 Mr Thomas Chesson, Chief Executive Officer, National Irrigators' Council, *Committee Hansard*, 4 November 2014, p. 14.

8 Mr Thomas Chesson, Chief Executive Officer, National Irrigators' Council, *Committee Hansard*, 4 November 2014, p. 12.

9 National Farmers' Federation, *Role of water authority should not go down the drain*, 28 April 2014, <http://www.nff.org.au/read/4508/role-of-water-authority-should-not.html>

When it was speculated that the NWC was to close we articulated quite clearly what we thought were the important roles of the NWC going forward. The key one is the assessment and audit function.¹⁰

2.12 In relation to ABARES, the NFF commented:

The NFF welcomes the decision to transfer water market reporting responsibility to ABARES. In our view, there is a great opportunity to build a strong connection between ABARES new role in water market reporting and their expertise in farm business analysis. Combining this expertise will help provide farmers with the useful tools and resources they need to make sound decisions to maximise the value of their water entitlements.¹¹

2.13 In regard to concerns raised that the abolition of the NWC may have a negative impact on continuing water reform, the NFF noted that:

The National Water Commission was never involved in actually doing water management or implementing water reform. In that respect, no, there is no change in terms of the roles and functions of those agencies that are actually responsible for water reform as part of these changes.¹²

2.14 The NFF, however, recommended that the bill be amended to ensure that some key aspects of the NWC's processes are adopted by the Productivity Commission when it takes on its new responsibilities.¹³ In particular, the NFF suggested that the bill be amended to ensure that the Productivity Commission adopts a triple bottom line approach; the expertise of Productivity Commissioners who carry out the new functions is specified; and the Productivity Commission establishes a stakeholder reference group to consult with the water sector.¹⁴

2.15 However, during the hearing Ms Knowles qualified this suggestion by stating that the proposed amendments were to ensure that stakeholders across the sector have 'confidence that the Productivity Commission is doing the job that needs to be done through its assessment and audit functions'.¹⁵ Further to this point, Ms Knowles stated:

We have suggested that perhaps amendments to the Water Act would ensure that that balance is retained to take away that view of risk that some stakeholders may have around the assessment process.¹⁶

10 Ms Jacqueline Knowles, Manager, Natural Resources Policy, National Farmers' Federation, *Committee Hansard*, 4 November 2014, p. 6.

11 National Farmers' Federation, *Submission 4*, p. 4.

12 Ms Jacqueline Knowles, Manager, Natural Resources Policy, National Farmers' Federation, *Committee Hansard*, 4 November 2014, p. 6.

13 National Farmers' Federation, *Submission 4*, p. 1.

14 National Farmers' Federation, *Submission 4*, pp 18–19.

15 Ms Jacqueline Knowles, Manager, Natural Resources Policy, National Farmers' Federation, *Committee Hansard*, 4 November 2014, p. 7.

16 Ms Jacqueline Knowles, Manager, Natural Resources Policy, National Farmers' Federation, *Committee Hansard*, 4 November 2014, p. 7.

2.16 Ms Knowles, on behalf of the NFF, went on to state that:

We are actually welcoming the transition to the Productivity Commission because we think that its voice without fear or favour will be a stronger voice in marking the homework of governments as they continue to implement water reform.¹⁷

2.17 Other submitters opposed the decision to abolish the NWC. In general, this opposition was founded on the view that the particular organisational structure of the NWC had played an important role in achieving reforms under the NWI and that such an organisation would be required in future if further progress is to be made.¹⁸

2.18 These submissions identified coordination and audit as the key roles of the NWC. For example, Professor Richard Kingsford, Director of the Centre for Ecosystem Science at the UNSW, submitted that, 'the NWC played a critical public coordination and audit role in water reform, overcoming many of the highly fractured institutional problems of the past and providing sound objective and transparent advice to governments and communities'.¹⁹

2.19 The arguments put forward by Professor Kingsford and the Australian Conservation Foundation (ACF) are representative of this position, which contrasts with the views of the Department of the Environment, the NFF and the NIC. Referring to the review of the NWC undertaken by Dr Rosalky in 2011, the ACF noted:

While the independent review acknowledged the efficiency benefits of the NWC as a single point of entry, this message seems lost in the context of the proposed Abolition Bill, which disperses monitoring, auditing and reporting functions across various agencies and portfolios, with some ceasing to exist completely.²⁰

2.20 Professor Kingsford also argued that the success of the NWC has stemmed from its character as an independent expert body:

17 Ms Jacqueline Knowles, Manager, Natural Resources Policy, National Farmers' Federation, *Committee Hansard*, 4 November 2014, p. 10.

18 For other expressions of this general position see: Dr S Khan, *Submission 2*, p. 1; Nyamba Buru Yawuru Ltd, *Submission 3*, p. 3; Environment Centre NT, *Submission 5*, p. 1; CRC for Water Sensitive Cities, *Submission 7*, p. 3; Environs Kimberley, *Submission 8*, p. 1; Arid Lands Environment Centre, *Submission 9*, Environmental Equity, *Submission 10*, p. 1; Stormwater Queensland, *Submission 12*, p. 1; Environment Victoria, *Submission 14*, pp 1–2; Consumer Utilities Advocacy Centre, *Submission 16*, pp 1–3; Nature Conservation Council, *Submission 17*, p. 1; Goulburn Valley Environment Group, *Submission 18*, p. 1; Inland Rivers Network, *Submission 19*, p. 8; Global Water Leaders Group, *Submission 20*, p. 1; Environmental Farmers Network, *Submission 21*, pp 1–2; Australian Water Association, *Submission 22*, p. 2; Water Services Association of Australia, *Submission 23*, p. 1; MidCoast Water, *Submission 24*, p. 1; Konfluence Pty Ltd, *Submission 25*, p. 1; Mr Geoffrey Hacquoil, *Submission 26*, p. 1; Watervale Systems, *Submission 27*, p. 1; Friends of the Earth, *Submission 30*, p. 1; Government of South Australia, *Submission 31*, p. 1; Institute for Sustainable Futures, *Submission 32*, p.1.

19 Prof Richard Kingsford, *Submission 1*, p. 2.

20 Australian Conservation Foundation, *Submission 15*, p. 5.

The National Water Commission has performed an excellent service in coordinating water reform in Australia, as an independent organisation at arm's length of state and Federal governments. This fundamentally reflects its charter, capacity and the expertise of the organisation, including the commissioners. In the difficult area of water resource management, the organisation was respected by all stakeholders. This resulted from its independent, objective and expert investigations, programs and publications.

In addition, the transparency of reporting information provided to governments and industry was welcomed by all key stakeholders, providing a credible source on complex issues relevant to water management. In particular the NWC assessments of water reform were particularly important.²¹

2.21 The Australian Water Association (AWA) gave evidence that it believed the NWC had played a vital role in furthering the NWI through its broad stakeholder engagement:

The National Water Commission has played a very pivotal and important role in facilitating broad stakeholder engagement on all the policy issues that surround the formation and the implementation of the National Water Initiative.²²

2.22 The AWA expanded on this concern regarding stakeholder engagement stating that:

The association's concern around the new structure relates principally to managing that stakeholder involvement, which we think has been done terribly well.²³

2.23 The Water Services Association of Australia (WSAA) also opposed the bill on the grounds that it 'removes national water leadership and the fearless advice and independent custodianship of the National Water Initiative that the commission has been able to provide'.²⁴

2.24 The WSAA echoed the AWA's comments regarding stakeholder engagement:

There is no doubt that the Productivity Commission does have the capability. It is the pre-eminent, independent research advisory body, but it does not have a traditional role in facilitating collaboration amongst

21 Prof Richard Kingsford, *Submission 1*, p. 1. See also Prof Richard Kingsford, *Committee Hansard*, 4 November 2014, p. 1.

22 Mr Jonathan McKeown, Chief Executive Officer, Australian Water Association, *Committee Hansard*, 4 November 2014, p. 27.

23 Mr Jonathan McKeown, Chief Executive Officer, Australian Water Association, *Committee Hansard*, 4 November 2014, p. 28.

24 Mr Adam Lovell, Executive Director, Water Services Association of Australia, *Committee Hansard*, 4 November 2014, p. 28.

stakeholders in ongoing programs, and this is what we think is required for the water industry.²⁵

2.25 The view that the Productivity Commission is an unsuitable body to take on the NWC's functions was expressed by Mr McKeown of the AWA:

...the expertise of the Productivity Commission is in their powers of analysis and in making recommendations. It has not demonstrated its role in ongoing reform projects or the implementation of those.²⁶

2.26 Representatives from both the AWA and the WSAA argued that the NWI should not only be continued but be expanded to more effectively address the urban water sector. On this theme of expanding the NWI remit, Mr Wilson from the WSAA stated:

In regard to what the Water Services Association are looking for, we see that we are at a pivotal point in the urban water sector and we are actually looking for greater COAG agreement and a development and extension of the National Water Initiative. We thought the National Water Commission was a good place to start to develop that, but we are really looking forward rather than looking at what its more limited remit has been.²⁷

Current state of water reform implementation

2.27 The committee notes that the Government recognises that the water reforms detailed in the NWI have not yet been fully completed and remains 'committed to continuing to progress national water reform and to supporting and promoting implementation of the NWI'.²⁸ However, the Government does not view the unfinished nature of water reform as evidence of a need to retain the NWC as a stand-alone auditing and monitoring body. As the explanatory memorandum to the bill stated:

Since the Australian Government and all State and Territory Governments agreed to the NWI in 2004, there has been considerable progress in enhancing the security of irrigation water entitlements, enabling water markets and trade, strengthening Australia's water resource information base and improving urban water security.

Although it is no longer necessary to retain a separate body to undertake the functions of the NWC, the Government remains committed to progress in

25 Mr Adam Lovell, Executive Director, Water Services Association of Australia, *Committee Hansard*, 4 November 2014, p. 28.

26 Mr Jonathan McKeown, Chief Executive Officer, Australian Water Association, *Committee Hansard*, 4 November 2014, p. 29.

27 Mr Stuart Wilson, Deputy Executive Director, Water Services Association of Australia, *Committee Hansard*, 4 November 2014, p. 29.

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

national water reform and to supporting and promoting implementation of the NWI.²⁹

2.28 This assessment of the state of water reform in Australia was shared by the NIC, which supported the proposed abolition as it argued that there are too many government bodies involved in water reform and there is a 'need for a more rational approach and less crowded space in the promotion of water reform because the related duplication is visited upon taxpayers'.³⁰

2.29 The NIC also argued that, while urban water management may still require considerable reform, the situation in rural areas was quite different:

We have had major reforms just about every four years, whether it was the reforms that spawned the National Water Commission, whether it is the Murray-Darling Basin reforms. We have them on a regular basis, and we do have reform fatigue out in your electorates and your states. That is a given.³¹

2.30 The committee also heard evidence from the Department of the Environment that the role of the NWC is not one of implementation and that some of the material presented to the committee appeared to attribute too great a role to the NWC in bringing about reforms:

Looking at some of the debate and some of the submissions, some of that blurring has arisen in the retelling of the story of water reform. As I mentioned in one of my earlier responses, it has been governments which have taken the substantive steps in water reform. Insofar as the reports of the commission have been relevant in that context, they have made recommendations. They are recommendations to government, and so it is a matter for governments to decide the extent to which and how those recommendations will be implemented. It has ever been thus in the field of water reform.

The way that those recommendations have been taken and assessed by governments and, ultimately, acted upon has been in responses by governments, collectively—I underline there; that is not just the Commonwealth but also of the states—to the previous reviews of the National Water Initiative. I imagine that the situation will be precisely the same under the effect of this bill: that is, that the Productivity Commission will do its triennial assessments, then make recommendations to government and then governments will respond.³²

2.31 While acknowledging that significant improvements had been made to water management in Australia over the last decade by Commonwealth, state and territory

29 National Water Commission (Abolition) Bill 2014, Explanatory Memorandum, p. 2.

30 National Irrigators' Council, *Submission 11*, p. 3.

31 Mr Thomas Chesson, Chief Executive Officer, National Irrigators' Council, *Committee Hansard*, 4 November 2014, p. 18.

32 Mr David Parker, Deputy Secretary, Department of the Environment, *Committee Hansard*, 4 November 2014, p. 51.

governments, some submitters noted recent NWC comments that the process of water reform has been at risk of losing momentum in recent years, and that this has occurred while important reforms are not yet completed. They went on to argue that the NWC is instrumental in facilitating national water reform and therefore should not be abolished.³³

2.32 The Wentworth Group of Concerned Scientists provided the committee with its 'Statement on the Future of Australia's Water Reform'. The statement provides a summary of the matters it deems outstanding under the NWI and matters that were not addressed under the NWI but which require attention.

2.33 Other evidence received by the committee also commented on a range of issues raised by the Wentworth Group including:

- the progress of legislating NWI principles in Western Australia and the Northern Territory;³⁴
- the inclusion of Indigenous rights and values in water planning;³⁵
- the need to better understand and manage the effects of coal seam gas extraction on water resources;³⁶ and
- the need to reform management of urban water in both metropolitan and rural areas to encourage greater investment.³⁷

Reallocation of NWC functions

2.34 The Department of the Environment's submission outlined where each of the continuing functions carried out by the NWC would be transferred upon the passage of the bill. This allocation will occur as follows:

33 See Dr S Khan, *Submission 2*, p. 1; Environment Centre NT, *Submission 5*, pp 3–4; Australian Conservation Foundation, *Submission 15*, p. 1; Consumer Utilities Advocacy Centre, *Submission 16*, pp 1–2; Inland Rivers Network, *Submission 19*, p. 3; Global Water Leaders Group, *Submission 20*, p. 1; Australian Water Association, *Submission 22*, p. 2; Water Services Association of Australia, *Submission 23*, p. 1; MidCoast Water, *Submission 24*, p. 2; Konfluence Pty Ltd, *Submission 25*, p. 1; Mr Geoffrey Hacquoil, *Submission 26*, p. 1; Watervale Systems, *Submission 27*, p. 1.

34 Arid Lands Environment Centre, *Submission 9*, pp 1–2; Environment Centre NT, *Submission 5*, p. 2.

35 Environs Kimberley, *Submission 8*, p. 2; Nyamba Buru Yawuru Ltd, *Submission 3*, pp 2–3; Friends of the Earth, *Submission 30*, pp 2–3; Inland Rivers Network, *Submission 19*, p. 7; Mr James Trezise, Australian Conservation Foundation, *Committee Hansard*, 4 November 2014, pp 21–22, 23.

36 Dr Stuart Khan, *Submission 2*, p. 2; Australian Conservation Foundation, *Submission 15*, p. 3; Australian Water Association, *Submission 22*, p. 4; *Committee Hansard*, 4 November 2014, p. 23.

37 Australia Water Association, *Submission 22*, pp 2–3; Water Services Association of Australia, *Submission 23*, pp 1–2; Institute for Sustainable Futures, *Submission 32*, pp 1–2; Dr Stuart Khan, *Submission 2*, pp 1–3; Cooperative Research Centre for Water Sensitive Cities, *Submission 7*, pp 1–3.

- the Productivity Commission will undertake 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;
- the Department of the Environment will undertake assessments of the performance of the basin states under the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin;
- the Department of the Environment will advise the Clean Energy Regulator on the eligibility of tree plantations to earn carbon credits under the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*;
- the Department of the Environment will commission ABARES to monitor and produce an annual report on water markets; and
- the Department of the Environment will 'continue to provide advice to the Government on any water related matters requested by the Minister, and to facilitate further national water reform work agreed through Commonwealth-State processes. The Department will continue to manage and chair Commonwealth-State processes that implement national water reform commitments.'³⁸

2.35 With regard to the transfer of functions to the Productivity Commission, the Assistant Minister stated:

As the Productivity Commission collates performance data for other National Agreements and National Partnership Agreements, it is well placed to take on the audit of progress in implementing the Basin Plan from 2018, the Triennial Assessment of NWI implementation and producing a biennial National Water Planning Report Card.

By allocating the assessment and audit functions to the PC [Productivity Commission], stakeholders will benefit from the PC's reputation for independence, the confidence in which it is held by the Australian public and governments, as well as its performance and benchmarking expertise. The Government is confident that the PC will strengthen and improve the reporting and analysis of the progress of water reform across Australia.³⁹

2.36 The Department of the Environment also emphasised the Productivity Commission's expertise:

...the Productivity Commission will provide high quality assessments of National Water Initiative issues, underpinned by its sound reputation for well-researched, thorough, balanced and independent analyses of a very wide range of public policy issues including water reforms.

38 Department of the Environment, *Submission 13*, pp 2–3.

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

Similarly the Department is confident that the Productivity Commission's audits of Basin Plan implementation will benefit from its consistent practice of effective public engagement in its enquiries.⁴⁰

2.37 The NIC stated that the transfer of these functions to the Productivity Commission would in fact improve the monitoring and assessment of water management in Australia. In the NIC's view, this is partly due to the Productivity Commission's history of providing sound and independent advice on a great range of public policy issues, and partly due to the fact that the Productivity Commission's mandate is directed explicitly at economic matters:

Finally, the PC examines issues as they relate to industry, industry development and productivity and will therefore provide a broader picture of the progress towards, and impact of, these key water reform initiatives than the singular water-based focus of the NWC.⁴¹

2.38 The general proposal to disperse the functions of the NWC among the Productivity Commission, the Department of the Environment and ABARES was strongly criticised by other submitters who were in favour of the retention of the NWC. Their general opposition to the proposal follows directly from their assessment, discussed above, that the success of the NWC arose in part from the way it combined a variety of water-related functions.

Productivity Commission—legislative mandate and expertise

2.39 More specific objections to the proposed role of the Productivity Commission were also raised. Contrary to the position put by the NIC, many submitters questioned whether the Productivity Commission's primary focus on 'industry, industry development and productivity', as outlined in section 6 of the *Productivity Commission Act 1998*, would prevent it from adequately carrying out the two functions attributed to it.

2.40 The ACF, for example, commented that:

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

40 Department of the Environment, *Submission 13*, p. 1.

41 National Irrigators' Council, *Submission 11*, p. 2.

Act and renaming the commission the Productivity and Sustainability Commission.⁴²

2.41 The NFF supported the Government's decision to transfer responsibilities to the Productivity Commission. The NFF, however, believed that the Productivity Commission must be provided with additional legislative powers to:

- adopt a triple bottom line approach to its assessments and audits;
- appoint Commissioners or Assistant Commissioners with the appropriate expertise;
- adopt a more collaborative approach to involving stakeholders in their audit processes than their standard business practice;
- consider the broader process of review of the Murray-Darling Basin Plan; and
- have access to the historical records of the NWC.⁴³

2.42 The NFF's recommendations are aimed at replicating in the Productivity Commission those elements of the NWC's practice that it believes are valuable—a triple bottom line approach; expertise and collaboration; and a broad view of water reform issues. Other submitters also highlighted these aspects of the NWC's practice as important to its success.

2.43 In its evidence, the NFF expanded on these suggested amendments by stating that they were put forward as a means of reassuring stakeholders about the new arrangements, not because the NFF lacked confidence in the Productivity Commission:

...for the umpire to have respect and standing then all stake holders should be able to have confidence in the way that they go about doing their work. We have had a number of discussions with other groups that are involved in the water reform space and they are concerned that the existing provisions will not enable that to be carried through, which is why we have suggested that some specific changes to the Water Act that requires those sorts of things to be carried across will provide people with some greater confidence that it will happen.⁴⁴

2.44 In response to these concerns about the focus of its legislative mandate on industry development, the Productivity Commission explained that, in practice, its focus is now much broader than that and is required to be so under section 8 of the Productivity Commission Act:

I think the emphasis on industry is probably more of historical interest than anything. It is listed as our first function because historically that was what the Productivity Commission and before it the Industries Assistance

42 Australian Conservation Foundation, *Submission 15*, p. 7.

43 National Farmers' Federation, *Submission 4*, p. 1.

44 Ms Jacqueline Knowles, Manager, Natural Resources Policy, National Farmers' Federation, *Committee Hansard*, 4 November 2014, p. 9.

Commission and before that going back to the Tariff Board that was the kind of thing we did. In more recent times a lot of our work has been in social policy and I have mentioned some of those today—child care, aged care and disability insurance. The reference to industry is more about the historical function. It would be worth you having a look at section 8 in our act, the general policy guidelines for the commission, which has a list of things the commission is required to have regard to in conducting any inquiry. That list includes such things as to ensure that industry develops in a way that is ecologically sustainable, Australia meeting its international obligations and commitments, some of which obviously would be Ramsar obligations and promoting regional development. There is a variety of things that we are required under the act to have regard to, whatever the issue is that we are looking at. I do not think that is a formal or a legal problem.⁴⁵

2.45 Due to its legislative mandate to focus on 'industry, industry development and productivity', the question of whether the Productivity Commission has the necessary expertise to adequately carry out the tasks attributed to it by the bill was raised by many submissions. All commissioners of the NWC are currently required to have expertise in water resource management; freshwater ecology or hydrology; resource economics; public sector governance; the audit, evaluation or implementation of programs relating to natural resource management.⁴⁶ Within the Productivity Commission 'At least one Commissioner must have extensive skills and experience in applying the principles of ecologically sustainable development and environmental conservation'.⁴⁷

2.46 Despite the concerns about the present level of expertise within the Productivity Commission, it was generally conceded by submitters and witnesses that the Productivity Commission had produced high-quality reports in the past and that it was certainly capable of acquiring the expertise required to complete the triennial assessments of the NWI implementation and audits of Basin Plan implementation.⁴⁸

2.47 In evidence provided to the committee, the Productivity Commission stated that productivity commissioners did not currently have all of the specific skills required of national water commissioners under the NWC Act. However, the Productivity Commission does have senior staff who have had 'extensive water policy knowledge, and some of them have a long-term engagement in water policy and water program administration'. In addition, it was noted that the Productivity Commission could 'buy in' the necessary expertise it required for any reviews it undertook, while

45 Mr Daryl Quinlivan, Head of Office, Productivity Commission, *Committee Hansard*, 4 November 2014, p. 45.

46 *National Water Commission Act 2004*, s. 11

47 *Productivity Commission Act 1994*, s. 24.

48 See also Prof Richard Kingsford, *Committee Hansard*, 4 November 2014, p. 2; National Farmers' Federation, *Committee Hansard*, 4 November 2014, p. 5; Australian Water Association and Water Services Association of Australia *Committee Hansard*, 4 November 2014, pp 29–31.

the Treasurer is able to appoint associate commissioners with specialist expertise where required.⁴⁹

Productivity Commission—stakeholder engagement

2.48 A further concern raised in submissions and evidence about the transfer of functions to the Productivity Commission was that it may not be capable of engaging stakeholders to the same degree, and with the same success, as the NWC has done.

2.49 The AWA stated that its concern about the proposed new arrangements related principally to the management of stakeholder engagement, which it believed had been done 'terribly well' by the NWC.⁵⁰ The WSAA expressed a similar view, stating that it was 'quite concerned about whether the Productivity Commission can develop a culture of an ongoing engagement with stakeholders. Even if it was put into legislation, this would take two to three years to put into place.'⁵¹

2.50 Environs Kimberley was strongly supportive of the work the NWC had undertaken to engage with communities across the country. As a result of the NWC's outreach work, Environs Kimberley stated:

We are not only more aware of the problems being faced in managing water nationally and in our regions, but we have been engaged in conversations about what options are available to us in facing them. In the Kimberley, for example, we have received NWC support for local participation in water planning and sustainable management through initiatives such as the Kimberley Water Forum in 2008.⁵²

2.51 The work of the NWC in promoting Indigenous water rights and in encouraging the participation of Indigenous communities in water planning and management was also strongly supported by Environs Kimberley. This work has included supporting the establishment of the Indigenous Water Policy Group and the Indigenous Community Water Facilitator Network.⁵³

2.52 As noted above, the NFF proposed that amendments be made to the bill to empower the Productivity Commission to 'adopt a more collaborative approach to involving stakeholders in their audit processes than their standard business practice'.

49 Mr Daryl Quinlivan, Head of Office, Productivity Commission, *Committee Hansard*, 4 November 2014, p. 42.

50 Mr Jonathan McKeown, Chief Executive Officer, Australia Water Association, *Committee Hansard*, 4 November 2014, p. 28

51 Mr Adam Lovell, Executive Director, Water Services Association of Australia, *Committee Hansard*, 4 November 2014, p. 28.

52 Environs Kimberley, *Submission 8*, p. 2. Nyamba Buru Yawuru Ltd was also supportive of NWC's stakeholder engagement work and promotion of Indigenous rights and interests regarding water. See Nyamba Buru Yawuru Ltd, *Submission 3*, pp 2–3. See also Friends of the Earth, *Submission 30*, pp 2–3.

53 Environs Kimberley, *Submission 8*, p. 2.

More specifically, the NFF proposed that the Productivity Commission be required to establish a stakeholder reference panel.⁵⁴

2.53 This proposal was aimed at replicating the engagement processes undertaken by the NWC, which the NFF described in the following terms:

NFF highly valued the collaborative approach adopted by the NWC when carrying out its functions. The formal mechanism to this approach was the NWC's Stakeholder Reference Group, which included representatives of industry, the environment, and indigenous stakeholders. This approach was a valuable conduit of information between water sector stakeholders with broad ranging interests and the NWC. It provided a platform to discuss and develop key positions, and to ground truth in a robust way the progress of jurisdictions in implementing reform. NFF would be very concerned if the Productivity Commission adopted a very narrow approach to consultation—for example through only submissions and/or public hearings—to inform its assessment and audit processes.⁵⁵

2.54 The Productivity Commission stated that it had not yet made a judgement on the establishment of such a stakeholder reference group, but that it would consider doing so. It went on to comment that as part of its normal procedures for running inquiries, the Productivity Commission attempts to be as open as possible and noted the process used for its recent inquiry into childcare and early childhood learning:

We do in the course of normal inquiries have a very open operating procedure. Just to describe the process we had with child care, for instance, which was a report we provided to the government last Friday, in that case we had in excess of 1,000 submissions, we had a set of hearings that went for nearly a fortnight with nearly 100 parties appearing, we have had over 100 separate meetings with stakeholder groups, some of them on a repeated basis, and we had a large body of submissions both initially and then on our draft report.

So I think we would try and follow that rough operating model because we found it to be a very successful one, not least because we get access to other people's thinking and other people get access to our thinking before it is final. We have found that to be a very important practice. We produce a draft report in a very transparent way. Everyone has a chance to comment on that, both in writing and in person. If there are any flaws in it or any contested positions, they get plenty of airing before we finalise our views. So that is the rough model we would follow, I think, for the two report publications.⁵⁶

54 National Farmers' Federation, *Submission 4*, p. 1

55 National Farmers' Federation, *Submission 4*, p. 2.

56 Mr Daryl Quinlivan, Head of Office, Productivity Commission, *Committee Hansard*, 4 November 2014, p. 43.

Discontinuing functions

2.55 A final substantial issue raised with regard to the proposal to disperse functions was that the bill does not make provision for the continuation of some functions currently carried out by the NWC. The ACF submitted:

There are substantial elements of the NWC Act that are not replaced or replicated in the proposed amendments. This is particularly relevant for Section 7(d) – 7(j) of the NWC Act...which outlines a number of key policy functions of the NWC. These include activities such as providing information and guidance that promote the objectives and outcomes of the NWI and providing leadership to the Commonwealth and COAG on water reform matters. There is nothing within the Abolition Bill and the Explanatory Memoranda that suggests the above functions will be replicated appropriately.⁵⁷

2.56 The loss of functions beyond assessment and auditing drew particular comment in the submission of the NWC:

...a concern is that the splitting of the NWC's various roles will inevitably lose the synergistic advantages of integration. Importantly, the NWC has sought to address water reform through a lens which values economic, social and environmental objectives, and in collaboration with stakeholders. While assessment and reporting roles are planned to continue, at risk are the 'soft' outcomes whose value is often underestimated in implementation of the complex water reform agenda—facilitation, knowledge sharing, advocacy and collaboration. We remain concerned that these roles and a 'triple bottom line' focus will be lost through the abolition of the NWC.⁵⁸

2.57 A further issue explored by the committee was whether the Productivity Commission would have the same capacity as the NWC to carry out work it deemed necessary to further the implementation of the NWI. The NWC stated in evidence that, as the bill stands, the Productivity Commission will not have the same mandate to promote the NWI that the NWC currently has:

The Productivity Commission is required to report as requested under the referral of powers for the reporting functions only; they do not have an ongoing role as per section 7(1)(e) of the National Water Commission Act, which is to undertake activities that promote objectives and outcomes of the NWI in addition to the reporting functions.⁵⁹

2.58 The Productivity Commission stated in evidence that it generally waited for a referral from the Treasurer before undertaking high-profile inquiries; however, it is

57 Australian Conservation Foundation, *Submission 15*, p. 8.

58 National Water Commission, *Submission 6*, p. 4.

59 The Hon Karlene Maywald, Chair, National Water Commission, *Committee Hansard*, 4 November 2014, p. 37.

empowered to undertake research and publish documents on matters it deems important.⁶⁰

2.59 The significant difference between the NWC and the Productivity Commission in this case would be that, for the Productivity Commission to undertake such a research project on a matter of water policy, the chair of the Productivity Commission would have to make a judgement that it warranted the allocation of resources over all other matters the Productivity Commission could potentially investigate. The Productivity Commission explained the decision that would have to be made by the chair in such a case:

If this issue had arisen as a contentious and potentially important one in the course of doing this work, then in making judgements about doing some further research on that he would have to be weighing that up against what is the best way of increasing workforce participation in Australia or enhancing the operations of the superannuation system or eliminating poverty traps. There are an infinite number of things we can deploy resources on and that is the judgement that has to be made.⁶¹

2.60 With regard to the specific audit and assessment functions the bill proposes to transfer, the Productivity Commission stated:

Our job is to assess the performance of the agreed plans and the parties in implementing them. That gives wide scope to comment on problems and issues and to devise potential means of fixing them, but not to actually fix them. That would be how I would conceive our role.⁶²

Cost savings and efficiency

2.61 When introducing the bill in the Senate, the Government outlined its intention of 'continuing to progress national water reform and to supporting and promoting implementation of the NWI'. However, the Government stated that this should be done 'as efficiently as possible'. To this end the abolition of the NWC is expected to realise savings of \$20.9 million over the forward estimates.⁶³

2.62 The NIC submitted that this is a saving worth pursuing as, in its view, the current arrangements are 'unsustainable given the national financial outlook'.⁶⁴

2.63 Other submitters questioned whether savings of this order are worth making when weighed against the loss of the NWC and against the quantity of government

60 Mr Daryl Quinlivan, Head of Office, Productivity Commission, *Committee Hansard*, 4 November 2014, p. 47.

61 Mr Daryl Quinlivan, Head of Office, Productivity Commission, *Committee Hansard*, 4 November 2014, p. 49.

62 Mr Daryl Quinlivan, Head of Office, Productivity Commission, *Committee Hansard*, 4 November 2014, p. 48.

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

64 National Irrigators' Council, *Submission 11*, p. 1.

funds committed to water reform. These submitters argued that the NWC plays a crucial role in ensuring that government spending on water reform is well-directed. For example, the ACF submitted that:

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

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

The closure of the NWC would diminish oversight of water reform nationally and deliver extremely limited budgetary savings.⁶⁵

2.64 A further argument put to the committee was whether the claimed savings could actually be achieved while transferring the auditing and assessment functions carried out by the NWC to the Productivity Commission. The Inland Rivers Network (IRN) raised the possibility that the Productivity Commission acquiring the necessary expertise to fulfil these functions would reduce the savings made by abolishing the NWC:

There is no indication that the PC can effectively perform this important role or has the necessary expertise to assess and audit the environmental outcomes achieved by the water reform process. These skills could not be acquired by the PC without the allocation of significant additional funding, which would negate one of the key justifications for abolishing the NWC.⁶⁶

2.65 The Department of the Environment responded to these concerns and commented that the stated savings of \$20.9 million over four years arising from the abolition take into account the cost of continuing functions in other agencies:

The net saving is the \$20 million. The amounts of money which are to be transferred to other agencies, including the Productivity Commission, have been agreed internal to government. That has gone through the normal detailed and, might I say, exhaustive costing process. They are agreed between agencies and between ministers. The intention is that those costings would then go into the appropriation bills which will be done later in the year, but contingent on the passage of this legislation.⁶⁷

2.66 The Department of the Environment also responded to a question on how the abolition of the NWC would affect oversight of future water infrastructure spending that may result from the Government's intention to increase Australia's water storage

65 Australian Conservation Foundation, *Submission 15*, p. 5. Also see Inland Rivers Network, *Submission 19*, p. 8; Stormwater Queensland, *Submission 12*, p. 1.

66 Inland Rivers Network, *Submission 19*, p. 7.

67 Mr David Parker, Deputy Secretary, Department of the Environment, *Committee Hansard*, 4 November 2014, p. 44.

capacity.⁶⁸ The department stated that it would not be the role of the NWC to ensure that such spending on water infrastructure was in keeping with NWI principles, even if it were to continue to exist. Rather it has been the role of governments to pursue NWI reforms and the role of the NWC to monitor their progress:

The role of the commission in this space has been to do its triennial assessment—effectively an audit and review process. It has not been the role of the commission to drive reform and to, if you like, be the guardian of the National Water Initiative on a day-to-day basis. That has effectively been a role collectively for governments, and for the Commonwealth government in particular.⁶⁹

Committee comment

2.67 The committee supports the National Water Commission (Abolition) Bill 2014 and considers it will play a significant part in achieving the Government's aim of reducing agency duplication and red tape.

2.68 The committee believes the proposals in the bill to transfer the statutory functions to the Productivity Commission to ensure that the auditing and monitoring functions of the NWC are continued are likely to address the concerns held by stakeholders.

2.69 While the NWC has played an important role in monitoring, auditing and advocating for the implementation of the NWI over the past decade, the committee agrees with the Government's contention that such a stand-alone agency is no longer required.

2.70 Some submitters expressed concern that the Productivity Commission will not have the same ability as the NWC did to undertake research and information gathering. However, the committee notes that the research activities of the NWC have also been restrained by annual budget allocations.

2.71 The committee notes that many submitters highlighted areas of water management in Australia where they believe further reform is required. However, the committee believes that addressing these issues is ultimately a matter for governments, both Commonwealth and State and Territory. In the committee's view, the transfer of the key audit and assessment functions of the NWC to the Productivity Commission will not significantly alter the prospects for future water reform.

2.72 The committee notes the various matters raised by submitters and witnesses regarding the abolition of the NWC; however, it believes the core NWC functions will

68 The Hon Mr Barnaby Joyce MP, Minister for Agriculture, *House of Representatives Proof Hansard*, 29 October 2014, p. 60; The Hon Mr Barnaby Joyce MP, Minister for Agriculture, 'National Roundtable on dams and water infrastructure announced', *Media release*, 14 October 2014, <http://www.maff.gov.au/Pages/Media%20Releases/national-roundtable-dams-water-infrastructure.aspx> (accessed 10 November 2014).

69 Mr David Parker, Deputy Secretary, Department of the Environment, *Committee Hansard*, 4 November 2014, p. 45.

be adequately carried out by the Productivity Commission, the Department of the Environment, ABARES and the Bureau of Meteorology.

2.73 In particular, the committee believes the Productivity Commission's history of providing high-quality, independent advice on a broad range of public policy issues indicates that it will be capable of taking on the tasks of triennial assessments of National Water Initiative implementation and five-yearly audits of Basin Plan implementation.

Recommendation 1

2.74 The committee recommends that the National Water Commission (Abolition) Bill 2014 be passed.

Senator Anne Ruston
Chair

