

Dissenting Report by Labor Senators

1.1 Labor Senators do not see merit in the National Water Commission (Abolition) Bill 2014 and oppose it.

1.2 Few agencies have been more successful at expert analysis and ongoing stakeholder engagement over such a long period of time as the National Water Commission (NWC).

1.3 The vast majority of the 32 public submissions to the inquiry support maintaining the NWC and its funding; yet most of the report is devoted to three submissions accepting the abolition of the NWC as long as its functions are satisfactorily continued.

1.4 One of the latter submissions was made by the National Farmers' Federation (NFF), whose position was made very clear during the public hearing, when Ms Jacqueline Knowles, Manager of Natural Resources Policy for the NFF, responded to the following question from the Committee Chair:

CHAIR: In 2002 during his second reading speech on the amendment bill 2012, Senator Birmingham said that the National Water Commission's role in holding the states and the Commonwealth to account for actually delivering on water reforms was critical. Do you agree with that statement?

Ms Knowles: I think the role is critical, yes, which is why we have called for it to be retained as part of the process of the winding up of the National Water Commission. When you look at our list of what roles are important, that assessment and audit function and making sure that states and territories do not mark their own homework was No. 1 for us.¹

1.5 Labor Senators note the imperative placed by all stakeholders on the NWC's monitoring of the progress of National Water Initiative (NWI) implementation and accelerating the implementation of the NWI consistent with the Government's 'National Plan for Water Security'.

1.6 However, Labor Senators forecast that stakeholders like the NFF will be extremely frustrated if, as is probable, the Government modifies these formal assessment tasks into a far less rigorous procedure of voluntary self-reporting by the Commonwealth, states and territories, merely coordinated by the Productivity Commission.

1.7 Most submissions dismiss the Government's claim that dispersing responsibility for the administration of the NWC's responsibilities between the Productivity Commission, the Department of the Environment and the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) would deliver on par with the effective and constructive contribution of the NWC to water reform priorities in Australia.

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

1.8 The proposed abolition of the NWC would also remove the current independent nature of oversight, analysis and advice as delivered by the NWC.

1.9 The Environmental Farmers Network was also clear about the need for independence from Government of a national water body:

An independent body with a professional approach and an untrammelled long term view is seen as invaluable in transcending the pressures of short term election cycles and in rationally assessing options and policy directions.²

1.10 Professor Richard Kingsford, the Director of the Centre for Ecosystem Science at University of New South Wales said in his testimony:

I think that one of the great strengths of the National Water Commission has been that it has been at arm's length from government. Not only that: it has had expertise in the fact that the water commission is at the top, representing the different water sectors. That was very important in criticising, often, the way water was managed in the states and by the Commonwealth. My biggest concern, which I have articulated in my submission, is the opportunity for shifting responsibility across different parts of government if we do not have this function at arm's length of government, as it was for the National Water Commission.³

1.11 Labor Senators note that the Minister's second reading speech advised that the Government's primary rationales for abolishing the NWC was because there has been considerable progress in national water reform and for an expected saving of \$20.9 million over the forward estimates.

1.12 Labor Senators note that 'considerable progress' does not mean all necessary water reforms in Australia have been achieved, or even partially completed. Labor Senators agree with Senator Birmingham's comments that the NWC is integral to getting water reform right in this country and that it must see through the unfinished National Water Initiative, see through the unfinished Murray-Darling Basin reform and hold governments to account to get sustainable management of Australia's water resources in a way that is market driven and that ensures that finite water is used for the best possible purchase at the best possible value and causes, be they in rural communities or in urban infrastructure.

1.13 Labor Senators also note that the abolition of the NWC for a saving of \$20.9 million over four years should be considered against the value of the corporate knowledge, subject expertise and universally acknowledged and accepted independence of the NWC.

1.14 Indeed, the Australian Conservation Foundation (ACF) noted in its submission that:

2 Environmental Farmers Network, *Submission 21*, p. 1.

3 Prof Richard Kingsford, *Committee Hansard*, 4 November 2014, p. 2.

...the potential budget savings from the proposed closure (of the NWC) over forward estimates are extremely small. In fact they represent less than 0.0001 per cent of government expenditure over the relevant period.⁴

1.15 Stormwater Queensland agreed with this assessment, saying in its submission:

The proposed cost savings associated with abolishing the NWC is estimated at \$20.9 million over the next four years. We believe the economic costs of abolishing the NWC, in terms of inefficient water management, are likely to far outweigh that cost.⁵

1.16 The NWC has been very successful delivering comprehensive, respected and expert audits of water reform implementations progress by stakeholders; analysing and critiquing the activities of the parties to the National Water Initiative in implementing the NWI; how well the objectives of the NWI are being achieved; and where there has been progress, including the value arising from that progress as well as identified impediments and the likely costs of failure to implement.

1.17 As noted in the report, many submitters maintained that the NWC's independence was in fact central to its transparency and efficiency. In varying degrees, these submitters also pointed to the NWC's ability to deploy specialised skills, experience and expertise skills and expertise, including staff and board members with research, technical and managerial skills and experience in water and legislative reform sectors.

1.18 Among other submitters, Dr Stuart Khan at the University of New South Wales was clear about the impact of the NWC on water reform in Australia:

Throughout the last decade, the oversight of the National Water Commission ensured the implementations of advances in many of the objectives laid out in the NWI. Water trading capacity has improved agricultural productivity for many rural Australians. Formal allocation of water to the environment has revived the long-term survival prospects for wetlands and other ecosystems. Major urban water supplies have been bolstered, drastically reducing the likelihood of water restrictions being imposed for most Australians in the coming decades. Drought-plagued States of the USA, such as California, Colorado and Arizona, now point to Australia's NWI as a successful example of cooperation to achieve more sustainable water management.⁶

1.19 This was seconded by Mr Jonathan McKeown, the Chief Executive Officer of the Australian Water Association in his testimony at the public hearing:

I think it has done a phenomenal task over the most extraordinary landscape of controversy in the period that it has existed...I think what we have actually seen driven and very well formulated by the work of the National

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

5 Stormwater Queensland, *Submission 12*, p. 1.

6 Assoc Prof Stuart Kahn, *Submission 22*, p. 2.

Water Commission is nothing short of probably Australia's most fundamental reform process in the last 100 years.⁷

1.20 While almost all of the submitters agreed that considerable progress had been made, most were definitive that the job of water reform in Australia was not finished and the NWC was critical to ongoing progress. Professor Kingsford's testimony again:

My concern is that given there is a lot more to be done in terms of the National Water Initiative, particularly the implementation of the Murray-Darling Basin Plan, the transfer of that function into the Productivity Commission might mean that there is a loss of engagement and accountability of the states and what they are doing. That is my biggest concern about the National Water Initiative.⁸

1.21 The Inland Rivers Network (IRN) noted in their submission that:

IRN considers that the important role of the NWC in assisting in the implementation of the NWI and providing advice to COAG on national water reform has not been completed because not all of the reforms in relation to environmental outcomes have yet been achieved.⁹

1.22 The Global Water Leaders Group stated in their submission that:

It appears to be a retrogressive act likely to set back Australia's ability to manage its water future, and extinguish a beacon of excellence to which the rest of the world looked for inspiration. Although it is arguably true that the Commission has successfully addressed many of the issues which accompanied the Millennium Drought, there is still considerable work to be done. In fact there is a strong argument in favour of extending the mandate of the Commission to include economic regulation. This is another area where Australia has potential to lead the world (other countries have been late to recognise the inherent conflict of interest in having utilities set their own tariffs and determine their own levels of service). However, it is clear that economic regulation of Australia's water sector will never be effective without the involvement of the Water Commission.¹⁰

1.23 In its submission the Australian Conservation Foundation was explicit about its concerns:

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

In the intervening period there are a number of key milestones against which states and the Commonwealth will need to be held to account by an independent body with sufficient water expertise, such as the National

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

8 Prof Richard Kingsford, *Committee Hansard*, 4 November 2014, p. 3.

9 Inland Rivers Network, *Submission 19*, p. 3.

10 Global Water Leaders Group, *Submission 20*, p. 1.

Water Commission. These include progress against the recovery and delivery of environmental water, addressing constraints and adjustments to sustainable diversion limits within the Basin.¹¹

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

The closure of the NWC would deliver minimal budget savings, but would effectively erode the foundation and institutional support of the National Water Initiative.¹²

1.24 The NWC also has a key role in providing water sector knowledge leadership, 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 of technical tasks and generating discussion amongst stakeholders through publications and round-table discussions of water reform matters outside the various policy agendas, enabling pertinent research and information to be drawn together and focused onto pressing policy issues. In many respects this role is critical to non-government stakeholders because it provides the only forum to be kept informed and abreast of the issues, to access essential information and to participate in public discussion of the issues.

1.25 The submissions from the Australian Water Association, the Water Services Association of Australia, Konfluence and Watervale Systems were unequivocal about the need for leadership:

We note the Bill abolishes the National Water Commission, while transferring only two statutory functions to the PC. As outlined above, there remains an imperative for a national water body that is independent from agencies and can provide strong leadership by supporting water reform for the benefit of Australia's economic and environmental future.¹³

1.26 In his testimony before the Senators, Mr Adam Lovell, the Executive Director of the Water Services Association of Australia was frank:

The potential closure of the National Water Commission along with the abolition of the COAG standing council this year means that water management is, almost inconceivably, left with no focus at the national level. From an industry managing more than \$120 billion worth of assets—at least in an urban sense—and \$15 billion in turnover, it seems almost

11 Australian Conservation Foundation, *Submission 15*, p. 4.

12 Australian Conservation Foundation, *Submission 15*, p. 1.

13 Australian Water Association, *Submission 22*, p. 6; Konfluence, *Submission 25*, p. 5; Water Services Association of Australia, *Submission 23*, p. 5; Watervale Systems, *Submission 27*, p. 5.

unbelievable that governments, both federal and state, would not see a need for national leadership.¹⁴

1.27 However, the Government's report has chosen to highlight its arguments claiming that the work being done by the NWC is no longer necessary, creates duplication, could be done just as stringently by other agencies such as the Productivity Commission, the Department of the Environment and ABRARES, even though the Government will considerably weaken these requirements.

1.28 Labor Senators note the submission and testimony of National Irrigators' Council Chief Executive Officer Tom Chesson, who noted that reporting requirements in the irrigation sector were duplicative, onerous and could be partly relieved by the abolition of the NWC:

Firstly, that is one less organisation that we have to report to, and, for irrigation infrastructure operators, that reporting requirement is quite onerous. We already report to some of these other bodies, and again we would stress that that 'single portal, many uses' model really needs to be developed. As I said before, a lot of the data is the same—they are after the same information but in different formats and different computer programs. So, if the Commonwealth could get its act together on that, that would take out a lot of the issues and dramas that we have.¹⁵

1.29 Labor Senators note that issues around multiple reporting systems and formats; and published analysis of the information gathered through these reporting frameworks, can be achieved without the abolition of the NWC.

1.30 Labor Senators agree with the submissions pointing out that the Productivity Commission isn't currently equipped under its enabling legislation nor its staffing profile to deliver the kind of collaboration and stakeholder engagement needed on this unimaginably important social, environmental and industrial issue.

1.31 The Yawuru Native Title Holders Aboriginal Corporation made a critical point in its submission to the effect that:

The proposed changes transfer the role of auditing the Basin Plan and water resource plans to the Productivity Commission in a general way. The change can only be robust, independent and transparent if the Productivity Commission engages people of the appropriate level of knowledge, training and experience to conduct the assessments.

The National Water Commission already has those people and the appropriate frameworks in place and has built up the appropriate systems and expertise. To abandon that organisational knowledge would be a false economy.¹⁶

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

15 Mr Tom Chesson, Chief Executive Officer, National Irrigators' Council, *Committee Hansard*, 4 November 2014, p. 13.

16 Yawuru Native Title Holders Aboriginal Corporation, *Submission 3*, p. 2.

1.32 The submission of the Australian Conservation Foundation concurs:

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

In the absence of changes to the Productivity Commission Act 1998 it is completely inappropriate for the key functions of the NWC to be housed within the PC.¹⁷

1.33 The Australian Conservation Foundation left no room for doubt in its submission:

To abolish the National Water Commission (NWC) and give responsibility of water management to the Productivity Commission would be a short-sighted and backward step, particularly in the absence of substantial changes to the mandate and operation of the Productivity Commission. It would likely result in another wave of conflicts over water due to the absence of what all sides regard as a well-respected expert independent body.¹⁸

1.34 The National Farmers' Federation (NFF), while generally supportive of the abolition of the NWC, acknowledged the importance of maintaining the ongoing stakeholder engagement functions of the NWC. In its submission it called for amendments to ensure the Productivity Commission established a stakeholder reference group to consult with the water sector.¹⁹

1.35 Labor Senators note that the Government has given no indication that it will address the weaknesses in the Productivity Commission's legislation to better equip it to carry out its new responsibilities somewhat effectively.

1.36 Australia's society, climate and reliance on water demands devoted, collaborative, whole-of-government and leading edge management of Australia's most valuable economic, societal and environmental resource.

1.37 Without an independent agency, not only is there a risk of inefficient management and thus the prospect of increased bills but a significant and entirely

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

18 Australian Conservation Foundation, *Submission 15*, p. 1.

19 National Farmers' Federation, *Submission 4*.

unnecessary threat of jurisdictional and stakeholder backsliding on water reform and the multi-party support that has been a hallmark of the NWI is in jeopardy of breaking down.

1.38 This risk has already become manifest, according to the submissions from the Australian Water Association, the Water Services Association of Australia, Konfluence and Watervale Systems:

Unfortunately we are already seeing backsliding from States in relation to implementing the National Water Initiative:

- Increasing politicised pricing determinations with rates of return that will not encourage private sector investment,
- In many growing regional centres the transition to upper bound pricing is slow to non-existent, and
- Poor governance arrangements, for example some governments have not moved towards upper-bound pricing for utilities which is a clause stipulated in NWI²⁰

1.39 Labor Senators maintain, along with the vast majority of submissions that a national, coordinated approach to water reform is needed to deliver on the National Water Initiative, give frank and fearless advice to Governments of all persuasions across jurisdictions, engage Australians and promote the need for and benefits of, ongoing water reform, ensure plans are made to secure Australia's economic future, improve vital economic regulation across the water sector, facilitate increased private sector investment, improve the robustness of urban water planning, and ensure the water sector maintains, and improves, its performance over the long-term.

1.40 The rationale presented to justify the abolition of the NWC lacks rigour. The NWC has been very effective promoting and progressing water reform and preparing Australia for the impacts of climate change and it still has much critical work left to do.

Recommendation

1.41 Labor Senators recommend that the Bill not proceed.

Senator Anne Urquhart
Deputy Chair

Senator the Hon Lisa Singh
Senator for Tasmania

20 Australian Water Association, *Submission 22*, p. 3; Konfluence, *Submission 25*, p. 2; Water Services Association of Australia, *Submission 23*, p. 2; Watervale Systems, *Submission 27*, p. 2.