

The Senate

Environment and Communications
Legislation Committee

National Water Commission (Abolition)
Bill 2014

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Abbreviations and Acronyms

ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
ACF	Australian Conservation Foundation
AWA	Australian Water Association
Basin Plan	Murray-Darling Basin Plan
COAG	Council of Australian Governments
IRN	Inland Rivers Network
MDBA	Murray-Darling Basin Authority
NIC	National Irrigators' Council
NFF	National Farmers' Federation
NWC	National Water Commission
NWC Act	<i>National Water Commission Act 2004</i>
NWI	Intergovernmental Agreement on a National Water Initiative
WSAA	Water Services Association of Australia

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 2014.¹

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.²

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

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.

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).³ Tasmania subsequently became a party to the agreement in June 2005, as did Western Australia in April 2006.⁴

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.⁵

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...⁶

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;

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.⁷

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 2012.⁸

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.⁹

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.¹⁰

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.¹¹ In addition, the NWC has acquired the role of auditing the effectiveness of the implementation of the Basin Plan.

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.¹²

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'.¹³

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 2012.¹⁴

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.¹⁵

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.¹⁶

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'.¹⁷

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'.¹⁸

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.¹⁹

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.²⁰ 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.²¹

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.²²

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 (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

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.²³

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.²⁴

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.²⁵

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.²⁶

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.²⁷

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

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.

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

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.

Australian Greens Dissenting Report

Introduction

1.1 The aim of the Inquiry was to consider the impact of the National Water Commission (Abolition) Bill 2014 which would dissolve the National Water Commission and significantly impact independent monitoring and assessment of water reform. The Greens thank the committee and public for their valuable input into the inquiry.

1.2 The National Water Commission was established in 2004 by the then Howard government and has had bipartisan support for its continuation until recently. In the lead up to the 2014 budget the Coalition government indicated that it would seek to shut down the Commission. This was confirmed in that budget.

1.3 The National Water Commission is the only federal, independent authority on water. While there are other government organisations which monitor aspects of water policy, none of these have the independence currently afforded the National Water Commission.

1.4 Given the current threats to our water supplies, from climate change and the mining industry in particular, as well as often competing priorities between water use for production and water for the environment, the Greens are concerned by the proposal to remove the Commission.

1.5 The Greens note that the vast majority of submissions to the Inquiry argued that the Commission should be kept; a number of submissions suggested amendments only in the event that the National Water Commission was to be abolished.

1.6 The life of the National Water Commission was recently extended, in 2012, after a COAG assessment which noted:

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.¹

1.7 The need for ongoing reform of water policy has been stated in a number of submissions to the Inquiry, and can also be seen in public statements from the Wentworth Group of Concerned Scientists² and the Australian Academy of Technological Sciences and Engineering.³ Given the ongoing experience of drought in parts of Australia and the risk of further drought, the need for forward thinking on water policy is glaringly apparent.

1 <http://www.environment.gov.au/system/files/pages/8e67c6b4-c2f5-4747-b6cc-7a0aab52474b/files/coag-review-national-water-commission.pdf>

2 <http://wentworthgroup.org/2014/10/statement-on-the-future-of-australias-water-reform/2014/>

3 <http://www.atse.org.au/content/publications/Media-release-content/2014/new-national-water-reform-strategy-needed.aspx>

1.8 The National Water Commission functions not only to audit the Murray-Darling Basin Plan and report on the progress of the National Water Initiative, but provides an ongoing leadership role in terms of water policy. It operates as a central space for the dialogue on water policy, including information on water from across the states. To this end, they have been crucial in highlighting problems around the coal seam gas industry, Indigenous water issues and the interaction of water policy with other agendas. The Greens are concerned that these functions will no longer continue if the Bill passes and the Commission is abolished.

1.9 The transferral of the monitoring of the National Water Initiative and the auditing of the Murray-Darling Basin over to the Productivity Commission presents a number of concerns. The Productivity Commission has a legislated emphasis on industry, with a minor mention of ecological sustainability in the context of industry development.⁴ The vast difference in expertise of the National Water Commission and the Productivity Commission is acknowledged in the majority committee report (section 2.45).

1.10 Further, the Productivity Commission does not have the level and range of expertise in water policy. This was acknowledged at the Inquiry hearing and the Productivity Commission said they would need to ‘buy them in’.

1.11 The Productivity Commission also has a range of other responsibilities and it is unlikely that the level of ongoing consultation offered by the National Water Commission is able to be replicated in this new model.

1.12 The savings from abolishing the Commission—\$20.9 million over four years—are extremely small, especially given the unique value that the Commission offers.

1.13 The Greens were concerned to hear that a similar amount of money is planned to be spent on setting up an Australian Water Centre which, as Professor Richard Kingsford told the Inquiry, appears aimed at ‘attracting business from the rest of the world about how we do our water management’.⁵ The Greens argue that this money would be better spent on maintaining the National Water Commission and continuing the unfinished business of water reform before we attempted to spruik our successes.

The Greens vision for Australian water policy

1.14 The Greens believe that the priority for water policy in Australia needs to be sustainability, aimed at ensuring resilience through periods of drought and supporting our ecosystems.

1.15 We note that there are difficulties in managing water between states and territories, and that some federal guidance is crucial in assisting this.

1.16 Independent analysis of these issues, which is not linked to industry, nor government agendas, but is instead based on scientific evidence, and carried out in

4 *Productivity Commission Act 1998*, subpara. 8(1)(i).

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

consultation with local communities, especially Aboriginal groups, is crucial for effective water policy.

Response to Committee Comments

1.17 The specific national, independent oversight offered by the National Water Commission is not duplicated by any federal or state body.

1.18 Numerous stakeholder concerns about the Productivity Commission have not been addressed by the majority Committee report—primarily, the lack of expertise, levels of consultation and continuity of work.

1.19 There has been no argument or evidence put for the case that a standalone agency is no longer required; rather, submissions and public comments from relevant bodies (mentioned above) have highlighted the opposite.

Dissenting report recommendations

- 1. The Greens recommend that the National Water Commission be maintained and its budget reinstated.**
- 2. A revived Commission should incorporate an Aboriginal Commissioner.**
- 3. A revived Commission should have, as part of its mandate, responsibility for making recommendations on water policy in the context of climate change.**
- 4. A revived Commission should be given responsibility for reviewing the potential impacts of mining on water supplies and suggested national policy responses to this.**
- 5. A revived Commission should also be given a mandate to investigate and report on any areas of water policy potentially assessed as in need of development.**

Senator Lee Rhiannon
Senator for New South Wales

Dissenting report by Senator Nick Xenophon

'Throwing the baby out with the bath water'

1.1 The National Water Commission (Abolition) Bill 2014 is a classic example of throwing the baby out with the bath water. It is a short-sighted cash grab by a Government that seems to have forgotten the mistakes of Australia's past water management policies.

1.2 Professor Richard Kingsford, the Director of the Centre for Ecosystem Science at the University of New South Wales shares these concerns:

We seem to be on a path to repeat the same mistakes we made in the past. As we know from the Murray-Darling experience, that will cost us an awful lot of taxpayer money and a lot of social capital as well.¹

1.3 I am deeply concerned the \$20.9 million over 4 years in expected savings following the abolition of the National Water Commission (NWC) will in fact end up costing us much more. As the Australian Conservation Foundation pointed out:

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.²

1.4 The Government argues that the Productivity Commission, together with various government departments will be able to continue the work of the NWC. While it is clear the Productivity Commission is experienced in analysing broader policy issues and making recommendations, it does not have the same mandate as the NWC, particularly in terms of promoting the objectives and outcomes of the National Water Initiative. Furthermore, the Productivity Commission conceded during the public hearing that it will need to 'buy' the necessary expertise in order to undertake the reviews with which it will be tasked following the closure of the NWC.³

1.5 There is also the matter of the PC having to balance the multiple competing issues which it is examining and allocating limited resources to each inquiry. Mr

1 Professor Richard Kingsford, Director, Centre for Ecosystem Science, University of New South Wales, *Committee Hansard*, 4 November 2014, p.4.

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

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

Daryl Quinlivan, Head of Office of the Productivity Commission explained to the committee:

There are an infinite number of things we can deploy resources on and that is the judgement that has to be made. If it is not triggered by the statutory functions and the terms of reference from the Treasurer, the logic that would lead us to be doing work in this area would be based on the best return for effort against any number of other things we might look at.⁴

1.6 There is a clear danger that water policy will be put further and further down the list of priorities of the PC, especially in the absence of any clear instructions from the Government to examine water related issues.

1.7 Further, the PC is not set up like the NWC, in that it does not have links to States and Territories through the NWC Commissioners who are highly trained in facilitating and driving reform implementation.

1.8 I refer to my comments at the Public Hearing, where I question the cost of establishing an Australian Water Centre, which would cost the same as the proposed cuts were the NWC to be abolished:

As I understand it, DFAT is going through a process of establishing the Australian Water Centre, with some \$20 million being set aside for that. Do you know anything about that? It seems curious that the government is looking at some savings of a similar amount with the NWC but is looking at setting up another body, but it was focused on Australian water expertise to the world, particularly our region.⁵

1.9 What is required is an oversight and auditing body with sufficient resources and staffing to allow for reforms to be properly carried out. We have this currently in the National Water Commission.

1.10 Without the NWC there will be no independent leader of water reform in Australia:

WSAA is not convinced the PC has a role in being able to lead the development of a new water reform agenda through a renewing of the NWI. The Independent Review of the NWC commissioned by the Commonwealth Government on behalf of COAG found that implementation of the NWI is occurring within a highly complex and evolving environment and that this requires an independent and specialist institution to credibly engage with, and report on, the progress of water reform. We agree with this finding and call for an independent body to provide this leadership for water reform.⁶

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

5 Senator Xenophon, *Committee Hansard*, 4 November 2014, p.3.

6 Water Services Association of Australia, *Submission 23*, pp. 4-5.

1.11 Whilst the reforms as part of the 2004 National Water Initiative were carried out over a ten year period, it must be acknowledged that there are new emerging environmental factors to consider.

1.12 Of note, the Wentworth Group of Concerned Scientists are particularly concerned with the impact of a changing climate, and the management of national water reforms across the mining, petroleum, carbon sequestration, and energy generators.⁷

1.13 With the debate on climate change on a global scale reaching new heights, it would be advisable to retain the NWC and retain this corporate knowledge base as we move into the next phase of Australian water management.

1.14 I do not want to see the world-class reforms introduced through the 2004 National Water Initiative be left to ruin, instead they need to be developed into the next phase of reforms. And I am not alone in my conclusion, with the Wentworth Group of Concerned Scientists stating:

Water reform must be seen as a long-term endeavour, rather than a one-off effort.⁸

1.15 I would also remind the Government of their proposal of development of further water resources in the agricultural competitiveness green paper, and how we need to retain the NWC now more than ever.

1.16 The NWC is the insurance policy for Australia's water policy. I believe that retaining the NWC is imperative to ensure that we continue to implement the National Water Initiative and properly deal with emerging challenges on water.

Recommendation: That the National Water Commission (Abolition) Bill 2014 not be passed.

Senator Nick Xenophon
Senator for South Australia

7 Wentworth Group of Concerned Scientists, *Submission 29*, p. 2.

8 Wentworth Group of Concerned Scientists, *Submission 29*, p. 0.

Appendix 1

Submissions, tabled documents and answers to questions taken on notice

Submissions

- 1 Professor Richard Kingsford
- 2 Dr Stuart Khan
- 3 Nyamba Buru Yawuru Ltd
- 4 National Farmers' Federation
- 5 Environment Centre NT
- 6 National Water Commission
- 7 Cooperative Research Centre for Water Sensitive Cities
- 8 Environs Kimberley
- 9 Arid Lands Environment Centre
- 10 Environmental Equity
- 11 National Irrigators' Council
- 12 Stormwater Queensland
- 13 Department of the Environment
- 14 Environment Victoria
- 15 Australian Conservation Foundation
- 16 Consumer Utilities Advocacy Centre
- 17 Nature Conservation Council
- 18 The Goulbourn Valley Environment Group Inc.
- 19 Inland Rivers Network
- 20 Global Water Leaders Group
- 21 Environmental Farmers Network
- 22 Australian Water Association
- 23 Water Services Association of Australia
- 24 MidCoast Water
- 25 Konfluence Pty Ltd
- 26 Mr Geoffrey Hacquoil
- 27 Watervale Systems
- 28 Victorian Government
- 29 Wentworth Group of Concerned Scientists
- 30 Friends of the Earth
- 31 Government of South Australia
- 32 Institute for Sustainable Futures

Tabled documents

National Irrigators' Council Media Release, tabled by Senator Rhiannon (at public hearing, Canberra, 4 November 2014)

Productivity Commission Act 1998 Proposed amendments, tabled by Mr Jonathan La Nauze, Australian Conservation Foundation (at public hearing, Canberra, 4 November 2014)

Answers to questions taken on notice

National Irrigators' Council – Answer to a written question taken on notice from Senator Urquhart (from public hearing, Canberra, 4 November 2014)

Australian Water Association – Answer to a written question taken on notice from Senator Urquhart (from public hearing, Canberra, 4 November 2014)

National Water Commission – Answers to written questions taken on notice from Senator Urquhart (from public hearing, Canberra, 4 November 2014)

Department of the Environment – Answers to written questions taken on notice from Senator Urquhart (from public hearing, Canberra, 4 November 2014)

Appendix 2

Public Hearing

4 November 2014 - Parliament House, Canberra

Centre for Ecosystem Science, University of New South Wales
Professor Richard Kingsford, Director

National Farmers' Federation
Ms Jacqueline Knowles, Manager, Natural Resources Policy

National Irrigators' Council
Mr Tom Chesson, Chief Executive Officer

Australian Conservation Foundation
Mr Jonathan La Nauze, Healthy Ecosystems Program Manager
Mr James Trezise, Policy Coordinator

Water Services Association of Australia
Mr Adam Lovell, Executive Director
Mr Stuart Wilson, Deputy Executive Director

Australian Water Association
Mr Jonathan McKeown, Chief Executive Officer
Ms Amanda White, National Manager, Communications and Policy

National Water Commission
The Hon Karlene Maywald, Chair
Ms Kerry Olsson, Acting Chief Executive Officer

Department of the Environment
Mr Richard McLoughlin, Assistant Secretary, Water Resources Branch,
Water Division
Mr David Parker, Deputy Secretary, Climate Change and Water Group

Productivity Commission
Mr Daryl Quinlivan, Head of Office

