

National Water Commission Bill 2004

Momentum and commitment to national water reform do not come easily. The advances made in the past year to develop the Intergovernmental Agreement for the National Water Initiative are unprecedented and enjoy widespread support across sectors.... it is vital – for the environment, the economy and for the Australian people – to maintain the commitment and momentum needed to implement the NWI.¹

Referral and conduct of the inquiry

1.1 On 1 December 2004, on the recommendation of the Selection of Bills Committee, the Senate referred the National Water Commission Bill 2004 to the Committee for inquiry and report by 7 December 2004.

1.2 The Committee contacted a number of state governments, national bodies representing farmers and the Australian Conservation Foundation and the WWF Australia to invite submissions. However, the short reporting timeframe prevented a number of these parties from participating in this inquiry. The Committee is disappointed not to have received the benefit of their perspective on the Bill.

1.3 The Committee received 6 submissions, which are listed in Appendix 1. The submission from the Victorian Minister for Water, the Hon. John Thwaites, was received after the Committee's report had been finalised. While it was not possible to incorporate the Victorian Government's views into the report, the Committee felt that it was important that the issues raised in this submission be considered with the report. Therefore the submission from the Victorian Government is included at Appendix 2.

1.4 The Committee thanks all those who assisted in its inquiry.

The Bill

1.5 The Bill was introduced into the House of Representatives on 18 November 2004. In his Second Reading Speech, the Deputy Prime Minister and Minister for Transport and Regional Services, the Hon. John Anderson MP, noted that:

We of all nations on earth have an enormous interest in using our water wisely. We are the driest inhabited continent on earth, with the most unreliable rainfall. We have five per cent of the world's land mass but only one per cent of the river and water basin runoff. Despite all of that, we also are the heaviest users of water per head of population in the OECD.²

1 WWF Australia, *Submission 5*, p. 1.

2 The Hon. John Anderson, Second Reading Speech, *House of Representative Hansard*, 18 November 2004, p. 2.

1.6 The purpose of the National Water Commission Bill 2004 (the Bill) is to establish a new national institution called the National Water Commission (NWC) as an independent statutory body. The Commission will have two key responsibilities:

- assessing the implementation and promoting the objectives and outcomes of the National Water Initiative Intergovernmental Agreement, and
- advising on financial assistance to be provided by the Commonwealth under components of the Australian Water Fund.

1.7 Schedule C of the Intergovernmental Agreement outlines the role and institutional arrangements of the NWC. The role of the NWC is:

- to provide advice on national water issues and, in particular, to assist with the effective implementation of the National Water Initiative (NWI) Agreement.
- in particular, the NWC will provide advice to COAG on the following matters:
 - a baseline assessment of water resources and governance arrangements nationally, based on existing work by the Parties and undertaking further work only where required;
 - accreditation of State and Territory implementation plans developed for the NWI Agreement by each jurisdiction, in accordance with paragraph 9 of the Agreement;
 - commencing in 2006-07, biennial assessments of progress with the NWI Agreement and State and Territory implementation plans, and advice on actions required to better realise the objectives and outcomes of the Agreement;
 - the third biennial assessment in 2010-11 will take the form of a comprehensive review of the Agreement;
 - the performance of the water industry against national benchmarks, in areas such as irrigation efficiency, water management costs and water pricing; and
 - compliance with any outstanding commitments under the 1994 COAG strategic framework for the efficient and sustainable reform of the Australian water industry.³

The National Water Initiative

1.8 The Commission's establishment is part of the NWI. The objectives of the NWI were to create more certainty for water users that would result in more

3 *Intergovernmental Agreement On A National Water Initiative Between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory and the Northern Territory* at:
http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.pdf.

productive use of water, healthy rivers and aquifers, and a self adjusting water trading system that is fair to all users.⁴ The NWI sets out objectives, outcomes and actions for the ongoing process of national water reform in the following areas:

- water access entitlements and planning;
- water markets and trading;
- best practice water pricing;
- integrated management of water for environmental and other public benefit outcomes;
- water resource accounting;
- urban water reform;
- knowledge and capacity building; and
- community partnerships and adjustment.

1.9 Full implementation of the NWI is intended to result in a nationally-compatible system for managing surface and groundwater resources for rural and urban use based on market mechanisms, regulatory solutions and water resource planning. The NWI seeks to optimise economic, social and environmental outcomes and will achieve:

- clear and nationally-compatible characteristics for secure water access entitlements;
- transparent, statutory-based water planning;
- statutory provision for environmental and other public benefit outcomes, and improved environmental management practices;
- the return of all currently over-allocated or overused systems to environmentally-sustainable levels of extraction;
- 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;
- clarity around the assignment of risk arising from future changes in the availability of water for the consumptive pool;
- 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;
- policy settings which facilitate water use efficiency and innovation in urban and rural areas;

4 Bill McCormick, *National Water Commission Bill 2004*, Parliamentary Library, Draft Bills Digest, p. 5.

- addressing future adjustment issues that may impact on water users and communities; and
- recognition of the connectivity between surface and groundwater resources and connected systems managed as a single resource.

1.10 The NWC will be a key driver for national water reform. To achieve this, the bill assigns to it several key functions, including to:

- evaluate governments' progress in implementing the outcomes, objectives and actions under the National Water Initiative and report to COAG on their progress;
- conduct the scheduled 2005 assessment of commitments under the national competition policy water reforms, which was to have been undertaken by the National Competition Council; and
- undertake an initial stocktake of Australia's water resources and water management arrangements.⁵

1.11 The NWI was signed by the Australian Government and the Governments of New South Wales, Victoria, Queensland, South Australia, the Northern Territory and the Australian Capital Territory at the Council of Australian Governments (COAG) meeting on 25 June 2004.

The Australian Water Fund

1.12 The Commission has a role in relation to the Australian Water Fund. The government has pledged \$2 billion over five years to establish the Australian Water Fund⁶. This represents a major investment by the Commonwealth in water infrastructure, improved knowledge and water management, and better practices in the stewardship of Australia's scarce water resources. Investment under the Australian Water Fund will be made on the basis that it is consistent with, and helps to achieve, the objectives, outcomes and actions of the NWI.

1.13 The Commission will advise and make recommendations to the Commonwealth in relation to two programmes under the Australian Water Fund.

- The \$1.6 billion *Water Smart Australia* programme will accelerate the development and uptake of smart technologies and practices in water use across Australia. To gain greatest effect from these investments, competitive bidding will be the primary mechanism for allocating grants.

5 The Hon. John Anderson, Second Reading Speech, House of Representative Hansard, 18 November 2004, pp. 4-5.

6 The Hon. John Anderson, Second Reading Speech, House of Representative Hansard, 18 November 2004, p. 5.

- The \$200 million *Raising National Water Standards* programme will invest in Australia's national capacity to measure, monitor and manage its water resources. These investments will be designed to help achieve NWI outcomes.

1.14 A third programme under the Australian Water Fund – the \$200 million Water Wise Communities - will be administered by the Department of the Environment and Heritage jointly with the Department of Agriculture, Fisheries and Forestry. The aim of the programme will be to promote a culture of wise water use.

Establishment of the National Water Commission

1.15 On 22 October 2004, the Prime Minister, the Hon John Howard, announced that he would be appointing the Secretary of the Department of Transport and Regional Services, Ken Matthews, to be the first CEO and Executive Director of the National Water Commission. The NWC would be established in the Prime Minister's portfolio.

1.16 The NWC will comprise of seven members with relevant expertise, four (including the Chair) of which will be appointed by the Commonwealth and three by the state/territory governments. It will be divided into three groups: the reform evaluation group; the corporate, legal and communications group; and the water programmes group. It will have a staff of 40-50.⁷

1.17 While the Bill reflects standard practice regarding the appointment of Commissioners, remuneration and procedural and reporting requirements for an organisation of this kind, the Commission is a unique statutory agency within the Commonwealth in view of its dual role in assessing the progress of Australian governments in water reform, and in advising on and administering Commonwealth financial assistance under the Australian Water Fund. The Minister has noted that:

The bill allows for commissioners to be nominated by the Commonwealth and by the states and territories. The bill also requires the commissioners to act in the best interests of the commission—it certainly does not envisage a disparate set of commissioners each representing and advocating different sectoral or government interests. The cause of water reform needs to rise above that, and so does the commission. In the same way that our rivers do not respect state boundaries or even regional boundaries, the commission must ensure that it does not pay undue heed to sectoral, state based or regional differences. It must act in the interest of coherent national approaches to water management on this continent.⁸

7 Bill McCormick. *National Water Commission Bill 2004*, Parliamentary Library, Draft Bills Digest, p. 9.

8 The Hon. John Anderson, Second Reading Speech, House of Representative Hansard, 18 November 2004, p. 7.

Discussion

Support for the Bill

1.18 There was strong support for the National Water Commission Bill 2004 by both agricultural and environmental sectors. Cotton Australia submitted:

Cotton Australia welcomes the introduction of this Bill into the Parliament as the first legislative step following the groundbreaking Council of Australian Governments (COAG) Agreement giving rise to the National Water Initiative (NWI). ... The establishment of the National Water Commission (NWC) is crucial to the on-going roll out of the many aspects of the Initiative, as well as overseeing the disbursement and use of the monies in the National Water Fund.⁹

1.19 Similarly, the National Farmers' Federation submitted:

NFF supports the National Water Commission Bill and urges the Senate to pass it into legislation as soon as possible. The establishment of the National Water Commission is vital as it will be responsible for ensuring that the commitments and specific actions outlined in the National Water Initiative are implemented in full.¹⁰

1.20 The Australian Conservation Foundation (ACF) submitted:

In general, ACF welcomes the National Water Commission Bill 2004 and supports the establishment of this new agency. ... The Commission will be an important element in assessing the implementation and promoting the objectives of the National Water Initiative and in advising on financial assistance to be provided through the Australian Water Fund.¹¹

1.21 In its submission WWF Australia said:

WWF strongly supports the National Water Initiative and its full, effective and timely implementation.

WWF sees the National Water Commission as pivotal to achieving effective implementation of the National Water Initiative and notes that the primary function of the Commission is to help implement the National Water Initiative (Clause 7, Explanatory Memorandum).¹²

1.22 The Committee was told that generally, there was good agreement between the Bill and what was agreed by COAG in the NWI Intergovernmental Agreement.¹³

9 Cotton Australia, *Submission 2*, p. 1.

10 National Farmers' Federation, *Submission*, 3. p. 1.

11 Australian Conservation Foundation, *Submission 1*, p. 1.

12 WWF Australia, *Submission 5*, p. 1.

13 WWF Australia, *Submission 5*, p. 2.

However, a number of submitters identified issues which were apparently inconsistent with the NWI.

Concerns about the Bill

1.23 Concerns about the Bill were limited and could best be described as requests for 'fine tuning'. WWF Australia highlighted the fact that:

the purpose of this Bill is to establish the National Water Commission as agreed in the National Water Initiative on 25 June 2004. The Bill is not designed to set out the terms of the National Water Initiative, nor is it a vehicle to rewrite the Inter-governmental Agreement for a National Water Initiative (NWI).

The forum to amend the NWI is through COAG and with the agreement of all parties to the NWI.¹⁴

1.24 The Western Australian Government, which is not a party to the Intergovernmental Agreement on a National Water Initiative (NWI) signed on 25 June 2004, raised a number of concerns.

s-cl 7(1)(b), (c) and (d) are too restrictive and each should be amended to:

“if requested to do so by the Minister or COAG, or on its own volition, to advise and make recommendations...”.

While inclusion of COAG may have no practical effect, it better reflects the NWC as a collegiate organisation, rather than an instrument of the Commonwealth. A role of the NWC in identifying and providing advice on matters that it determines as important and relevant needs to be recognised.¹⁵

1.25 With regard to clause 7(1)(d) WWF Australia noted that there was a need for NWC to be strategic in funding projects under the Australian Water Fund:

Clause 7(1)(d) provides for the National Water Commission to provide advice and recommendations, if requested to do so by the Minister, on projects to be funded out of the Australian Water Fund...

It is how that funding is spent in line with the NWI objectives and deadlines, and the smart sequencing of the projects, that will determine the success of the Government's election policy and the National Water Initiative. The Australian Water Fund must be targeted at delivering outcomes set out in the National Water Initiative.¹⁶

1.26 Assessments relating to the Water Reform Framework agreement, currently assessed by the National Competition Council (NCC), and the assessment of States' or

14 WWF Australia, *Submission*, 5, p. 1.

15 Western Australian Government, *Submission* 4, p. 1.

16 WWF Australia, *Submission* 5, p. 3.

Territories' implementation of the COAG Water Reform Framework were raised. The WA government submitted:

Western Australia feels strongly that the role of the NWC in assessing States' or Territories' implementation of the COAG Water Reform Framework should require the concurrence of that State or Territory.

Therefore, s-cl 7(3)(b) and (c) should be amended to:

"...if requested to do so by the Minister, and agreed to by the State or Territory, to assess..."

Assessments relating to the Water Reform Framework agreement are currently assessed by the National Competition Council (NCC). Details need to be provided on how the NWC would undertake this function so that a determination can be made on whether it would be an improvement on the current arrangements.

In addition, the NWC Bill does not provide for the NWC to make recommendations to the Commonwealth on competition payments as part of its assessments. This contrasts to the NCC. This raises a question of who will then decide, from the assessments, the implication for competition payments for 2005/06.¹⁷

1.27 Concern were expressed about the lack of clarity with regard to the appointment of Commissioners. Cotton Australia submitted that:

While s.8(1) describes the constitution of the Commission, neither s.8(2) or s.8(3) describes who actually does the appointment. Would it be correct to assume that the parties to the Agreement each make their nominations and then it is the COAG that makes the appointments? This needs to be clarified.¹⁸

1.28 Submitters highlighted the need to ensure that Commissioners were people with high levels of expertise and clear distinctions should be made between scientific disciplines to ensure expert knowledge in a range of relevant areas:

Clause 11(3) of the Bill sets out a list of expertise to be included on the Commission, including experts in freshwater ecology or hydrology. WWF understands that the range of expertise is not limited to the list provided for in the Bill but notes the NWI implies experts in both freshwater ecology and hydrology will be included on the Commission (Schedule C). These are quite different scientific disciplines, and both highly relevant to the NWI. WWF is concerned that it is possible that only one relevant scientific expert may be appointed to the Commission.

WWF recommends that there be at least two experts in relevant scientific fields on the Commission.¹⁹

17 Western Australian Government, *Submission 4*, p. 1.

18 Cotton Australia, *Submission 2*, p. 1.

19 WWF Australia, *Submission 5*, p. 3.

1.29 The need for clear and transparent reporting was raised by a number of submitters. Cotton Australia submitted:

Also of importance is the issue of transparency and clear reporting. Water using industries have for too long borne the burden of inadequate consultation compounded by insufficient, if any, reporting pathways.²⁰

1.30 The National Farmers' Federation urged:

NFF welcomes the introduction of the National Water Commission Bill and looks forward to it ensuring that the National Water Initiative and Australian Water Fund are implemented in a consistent and transparent manner.²¹

1.31 It was noted that under NWI there is currently a commitment to make a number of documents publicly available. The Committee were told:

WWF works from the premise that all water information should be readily and publicly available to the Australian people, and it should be shared between governments, water agencies, irrigation companies, individual users and the public.

The Commonwealth, as signatory to NWI, has committed to public release of National Water Commission Reports as follows:

Section 107 of the NWI IGA says:

The NWC reports to COAG will be publicly available.

And in Schedule C of the NWI IGA:

All reports of the NWC will be publicly available.

Section 9(iv) of the NWI IGA also provides that implementation plans developed by States and Territories will be made publicly available.²²

1.32 A number of submitters raised concerns about clause 44 which only allows certain National Water Commission's reports to be available to the public, and these may only be released with the agreement of the Minister. In a supplementary submission to the inquiry ACF noted:

It has come to our attention that clause 44 of the Bill imposes onerous restraints on the transparency of the Commission's processes and assessments. We oppose the clause and urge its removal. It should be noted that the clause is in opposition to principle 2 of the position of the ACF, NFF and ABA.²³

1.33 The Western Australian Government contended:

20 Cotton Australia, *Submission 2*, p. 1.

21 National Farmer's Federation, *Submission 3*, p. 1.

22 WWF Australia, *Submission 5*, p. 4.

23 Australian Conservation Foundation, *Submission 1a*, p. 1

Western Australia disagrees with cl 44, which prohibits the National Water Commission from making its advice or recommendations public, except in limited circumstances and with the agreement of the Commonwealth Minister. Unless the Commonwealth Government can justify why particular categories of advice should remain confidential, the Bill should provide that all of the Commission's advice should be made publicly available.²⁴

1.34 Specifically, the Bill allows the NWC to release the following assessments/reports publicly, with Minister's approval [clause 44(1)]:

- Baseline Assessment [Clause 7(2)a];
- 2006-07 and 2008-09 assessments [Clause 7(2) h];
- 2010-11 comprehensive review [Clause 7(2) i];
- Biennial water industry performance [Clause 7(2) g]; and
- 2005 COAG water reform framework assessment [Clause 7(3)a and b].

1.35 The following assessments and advice will not be made publicly available by the National Water Commission (Clause 44)

- Assessment/accreditation of NWI implementation plans [Clause 7(2)c]; and advice to COAG on these [Clause 7(2)d];
- Advice to Commonwealth or COAG on whether the parties to the NWI are implementing their commitments under the NWI [Clause 7(2)e];
- Advice on interstate trading impacts [Clause 7(2)f];
- Advice to COAG on baseline assessment [Clause 7(2)b]; and
- Advice to Minister on progress toward COAG Water Reform Framework beyond 2005 [Clause 7(3)c].²⁵

1.36 While the Committee believes that as a general rule all information should be made publicly available it concedes that there are possible situations in which the NWC may be required to ensure the confidentiality of some advice or information.

It is in the public interest to release all the reports/assessments provided for in Clause 7(2) and (3) – these assessments were all agreed in the NWI. Other advice and recommendations should also be available publicly unless there is good reason to withhold (such as, project proposals which are commercial-in-confidence, whistleblower) and any withholding information must be in the national interest.²⁶

1.37 The Committee comments in paragraph 1.23 that the NWC Bill simply deals with the establishment of the Commission. However, the Committee notes the views

24 Western Australian Government, *Submission 4*, p. 2.

25 WWF Australia, *Submission 5*, p. 4.

26 WWF Australia, *Submission 5*, p. 5.

expressed by ACF which argued that the NWC provides an opportunity to strengthen the NWI:

ACF urges that in establishing the National Water Commission (NWC) there is an opportunity to strengthen the terms of the National Water Initiative. ...

The NWC should oversee a strengthening of the NWI so that it requires the complete adjustment of all over allocated and/or overused systems by 2014. Such a strengthening would greatly assist the NWC in fulfilling its function of implementing the NWI and undertaking activities that promote the objectives and outcomes of the NWI (Part 2, Section 7(1)(a) of the National Water Commission Bill).²⁷

1.38 Additionally, ACF argued that:

the NWC should also oversee a strengthening of the NWI by including a national heritage rivers reserve system as a further objective.²⁸

1.39 The Committee notes that the forum to amend the NWI is through COAG, with the agreement of all parties to the NWI. In its submission WWF expects that:

Amendment and addition to the NWI will occur from time to time to refine and improve the implementation of the National Water Initiative. WWF also notes that the National Water Commission itself will have a role in advising COAG on changes needed to better achieve the objectives and outcomes of the National Water Initiative [Clause 7,2(i)].²⁹

Conclusions and recommendations

1.40 The purpose of this Bill is to address the growing issue of water management in Australia. The National Water Commission will ensure that Australian governments work together to implement practical water solutions.

1.41 The Committee endorses the observation of the Deputy Prime Minister and Minister of Transport and Regional Services that:

The National Water Commission will be instrumental in ensuring that water issues in Australia continue to capture the public's imagination and energy in working towards practical water solutions. The importance of water to securing Australia's economic and environmental future demands no less.³⁰

1.42 It has to be stressed that it was impractical in the time allocated by the Senate to conduct a comprehensive review of the Bill. The Committee believes that the

27 Australian Conservation Foundation, *Submission 1*, p. 1.

28 Australian Conservation Foundation, *Submission 1*, p. 2.

29 WWF Australia, *Submission 5*, p. 1.

30 The Hon. John Anderson, Second Reading Speech, House of Representative Hansard, 18 November 2004, p. 8.

legislation is an important first step towards advancing the sustainable use of water in Australia. Given its significance, the Committee strongly endorses that the Bill proceed as a matter of priority.

1.43 The Committee recommends:

That the National Water Commission Bill 2004 be agreed to without amendment.

Senator Alan Eggleston
Chairman