

2013-2014

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

NATIONAL WATER COMMISSION (ABOLITION) BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Parliamentary Secretary to the Minister for the
Environment, Senator the Hon Simon Birmingham)

NATIONAL WATER COMMISSION (ABOLITION) BILL 2014

GENERAL OUTLINE

1. The National Water Commission (Abolition) Bill 2014 (the Bill) will abolish the National Water Commission (NWC) with effect from 1 January 2015.
2. The Bill delivers on the Government's commitment announced in the 2014-15 Budget to cease the operations of the NWC by the end of 2014, while transferring key NWC functions to existing Commonwealth agencies.

The NWC

3. The NWC is an independent statutory body established by the *National Water Commission Act 2004* (NWC Act).
4. Under the NWC Act, the NWC is responsible for assisting in the implementation of the Intergovernmental Agreement on a National Water Initiative (NWI) and providing advice to the Commonwealth and the Council of Australian Governments (COAG) on national water reform. The principal role of the NWC is to provide oversight and assessment of national water reforms.
5. 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.
6. 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 national water reform and to supporting and promoting implementation of the NWI. For this reason, key NWC functions will be retained and transferred to existing agencies.

Continuing functions

7. The Bill retains two key statutory functions of the NWC; triennial assessments of progress on implementation of the NWI and audits of the implementation of the Murray-Darling Basin Plan and associated Basin State water resource.
8. Under the NWC Act, the NWC is responsible for triennial assessments of progress of the NWI parties toward achieving the outcomes and objectives of the NWI, and making recommendations on actions that NWI parties might take to better implement the NWI within specified timeframes.
9. This triennial assessment function will be transferred to the Productivity Commission (PC).
10. Under the *Water Act 2007* (Water Act), the NWC is responsible for five-yearly audits of the effectiveness of the implementation of the *Basin Plan 2012* (Basin Plan) and water resource plans accredited under the Basin Plan.
11. The five-yearly audits of Basin Plan implementation and water resource plans will also be transferred to the PC.

FINANCIAL IMPACT STATEMENT

12. The closure of the NWC, as effected by the Bill, will provide a saving of \$20.9 million over four years.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

13. The Bill repeals the NWC Act, abolishing the NWC, a Commonwealth agency established by the Act. The principal role of the NWC is to provide oversight and assessment of national water reform. The Bill will also transfer two functions, the triennial assessment function and the Basin Plan audit function, to the PC.
14. The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.
15. The Bill does not engage any of the applicable rights or freedoms. The proposed amendments are of a machinery of government nature and do not limit any human rights or provide for any offences or penalties.

Conclusion

16. The Bill is compatible with human rights as it does not engage any of the applicable rights or freedoms.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 – Short Title

17. This clause provides that the Act is to be cited as the *National Water Commission (Abolition) Act 2014* (Act).

Clause 2 – Commencement

18. This clause provides that the Act will commence on 1 January 2015.

Clause 3 – Schedule

19. This clause provides for the repeal of the *National Water Commission Act 2004* (NWC Act) and amendments to the *Water Act 2007* (Water Act) as specified in the Schedule.

Schedule 1 – Amendments

Part 1 – Repeals

National Water Commission Act 2004

Item 1 – the whole of the Act

20. This item repeals the NWC Act.

Part 2 – Amendments

Water Act 2007

Item 2-4 – Subsection 4(1)

21. These items insert new definitions into subsection 4(1), which sets out defined terms used throughout the Water Act.

Item 5 – Subsection 74A(4)

22. This item repeals subsection 74A(4) of the Water Act to reflect the closure of the NWC. Subsection 74A(4) provides that the Minister may seek the NWC's advice when considering whether to make or revoke a determination that a Basin State has applied the NWI risk assignment framework under state legislation. Determinations must be made prior to the Basin Plan first having taken effect.
23. Determinations have been made for only two Basin States (New South Wales and Queensland). No more determinations can be made under this section following the commencement of the Basin Plan in November 2012. The section has a limited ongoing operation because it is possible for a determination to be revoked. There is no current intention to revoke either determination, and the Minister can seek advice if necessary and does not require a statutory power to do so.

Item 6 – Part 3-Productivity Commission inquiries

24. This item repeals Part 3 of the Water Act and substitutes a new Part 3 providing for the referral of matters to the PC for inquiry. The new Part will provide the PC with responsibility for undertaking future triennial assessments of progress toward implementing the NWI and five-yearly audits of implementation of the Basin Plan and water resource plans accredited under the Water Act. These functions were formerly undertaken by the NWC.
25. The matters that may be referred to the PC under the new Part 3 are taken to be matters relating to industry, industry development and productivity under paragraph 6(1)(a) of the *Productivity Commission Act 1998*.

Productivity Commission inquiry – Basin Plan and water resource plans

26. The new Part 3 will provide for the PC to undertake, on a five-yearly basis, the inquiry into implementation of the Basin Plan and water resource plans.
27. Item 6 inserts new section 87, which requires the Productivity Minister to refer the matter of the effectiveness of the Basin Plan and water resource plans to PC. The Productivity Minister must refer the matter to the PC during the 5-year period ending on 31 December 2018, reflecting the fact that the NWC's initial Basin Plan assessment was conducted in 2013.
28. To allow for ongoing assessment of Basin Plan implementation, new subsection 87(2) requires the Productivity Minister to refer the matter to the PC during the 5-year period following the completion of the PC's most recent inquiry.
29. The Productivity Minister's referral must specify the 5-year period in which the referral occurs as the period within which the PC must submit its report on the inquiry to the Productivity Minister. The effect of this is that the inquiry must be completed and report submitted to the Productivity Minister within the five year period specified.
30. The Bill also retains the requirement in the current provisions of the Water Act for the Basin Plan inquiry reports to be provided to the Murray-Darling Basin Authority (Authority) and Basin States as defined by section 4(1) of the Water Act. This will ensure that the Authority and Basin States remain apprised of progress toward implementation of the Basin Plan and opportunities for strengthening work toward implementation.

31. A copy of the report will also be provided to the Commonwealth Minister with portfolio responsibility for water ('Water Minister') as part of the PC's usual practices.

Productivity Commission inquiry – National Water Initiative

32. The new Part 3 will provide for the PC to undertake, on a triennial basis, assessments of progress by NWI parties toward achieving the NWI outcomes and objectives. The assessments are designed to comprehensively assess progress toward implementing the NWI and make recommendations on actions that NWI parties might take to better achieve national water reform objectives and outcomes. Consequently, it is important for the PC's report on the inquiry to continue to be provided to the Council of Australian Governments (COAG) and relevant COAG subcommittees to ensure that all NWI parties remain apprised of the implementation of the NWI and opportunities to strengthen its implementation.
33. Item 6 inserts new section 88, which requires the Productivity Minister to refer the matter of the progress of parties to the NWI towards achieving the objectives and outcomes of the NWI within the timelines required by the NWI. The matter must be referred during the 3-year period ending on 31 December 2017.
34. As part of the referral, the Productivity Minister must require the PC to make recommendations on actions that the parties to the NWI might take to better achieve NWI outcomes and objectives.
35. To allow for ongoing assessment of NWI progress, new subsection 87(2) requires the Productivity Minister to refer the matter for inquiry during the 3-year period following the completion of the PC's most recent inquiry.
36. The Productivity Minister's referral to the PC must specify the 3-year period in which the referral occurs as the period within which the PC must submit its report on the inquiry to the Productivity Minister. The effect of this is that the inquiry must be completed and report submitted to the Productivity Minister within the three year period specified.
37. New subsection 87(4) requires the PC to give a copy of the report to COAG and to any COAG subcommittee that deals with matters relating to water. The report is required to be provided to these parties, after it has been provided to the Productivity Minister but before it is tabled in Parliament. A copy of the report will also be provided to the Water Minister as part of the PC's usual practices.

Part 3 – Transitional provisions

Item 7 – Definitions

38. This item sets out the definitions used in this Part.

Item 8 – Transfer of records to the Department

39. This item provides that any records or documents that were in the possession of the NWC immediately before the transition time (the date on which this Part commences) will be transferred to the Department.

Item 9 – Transfer of Ombudsman agencies

40. This item sets out how outstanding complaints to the Ombudsman and Ombudsman investigations about NWC actions that are not finally disposed of by the Ombudsman by the transition time are to be dealt with.
41. After the transition time, the Department will be substituted for the NWC in any unresolved matters in which the NWC was involved before the transition time.
42. It provides that the *Ombudsman Act 1976* will apply as if the NWC's action had been taken by the Department.

Item 10 – Final annual report – National Water Commission

43. This item provides for the final NWC annual report.
44. It requires the Secretary of the Department to prepare and give to the Minister a report on the operations of the NWC during the final reporting period. 'Final reporting period' is defined in Item 7 and means the period beginning on 1 July 2014 and ending on 31 December 2014.
45. The Secretary must submit the report to the Minister within 3 months after the end of the final reporting period. The Minister may grant an extension of time in special circumstances.
46. The Minister must table the report in each House of the Parliament as soon as is practicable, and the Secretary of the Department must publish the report on the Department's website as soon as practicable after the report is tabled in the House of Representatives.
47. This item ensures that the NWC's annual reporting obligations to the Minister and to the Parliament are met for the final period of the NWC's operations.

Item 11 – Transitional rules

48. This item provides that the Minister may, by legislative instrument, make rules in relation to transitional matters arising out of the amendments and repeals made by this Schedule.