



# **National Water Commission Act 2004**

**Act No. 156 of 2004 as amended**

This compilation was prepared on 28 June 2012  
taking into account amendments up to Act No. 70 of 2012

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# **An Act to establish the National Water Commission, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title** [see Note 1]

This Act may be cited as the *National Water Commission Act 2004*.

### **2 Commencement** [see Note 1]

This Act commences on the day on which it receives the Royal Assent.

### **3 Object of this Act**

The object of this Act is to establish the National Water Commission, as an independent statutory body, as required by the National Water Initiative.

### **4 Definitions**

In this Act, unless the contrary intention appears:

*Australian Water Fund* means the Australian Water Fund announced by the Minister on 13 September 2004.

*Australian Water Fund Account* means the Australian Water Fund Account established by section 40.

*CEO* or *Chief Executive Officer* means the Chief Executive Officer appointed in accordance with section 25.

*Chair* means the Chair of the NWC.

*COAG* means the Council of Australian Governments.

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**COAG Water Reform Framework** means the agreement, executed by COAG in 1994 to reform the management and regulation of Australia's water resources, as incorporated into the Agreement to Implement National Competition Policy and Related Reforms, and as amended from time to time.

**Commissioner** means a Commissioner of the NWC appointed in accordance with section 11 and includes the Chair.

**full-time CEO** means a CEO appointed on a full-time basis.

**full-time Commissioner** means a Commissioner appointed on a full-time basis.

**Natural Resource Management Ministerial Council** means:

- (a) subject to paragraph (b), the Natural Resource Management Council established by COAG in June 2001; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body.

**NWC** or **National Water Commission** means the National Water Commission established by section 6.

**NWI** or **National Water Initiative** means the 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, signed on 25 June 2004, and as amended from time to time.

**part-time CEO** means a CEO appointed on a part-time basis.

**part-time Commissioner** means a Commissioner appointed on a part-time basis.

## 5 This Act binds the Crown

This Act binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

## **Part 2—Establishment of the National Water Commission (NWC)**

### **6 Establishment of the NWC**

The National Water Commission (*NWC*) is established by this section.

### **7 Functions of the NWC**

#### *General functions*

- (1) The NWC has the following general functions:
  - (a) to assist with the implementation of the NWI, and to undertake activities that promote the objectives and outcomes of the NWI;
  - (b) if requested to do so by the Minister, to advise and make recommendations to the Commonwealth on matters of national significance relating to water (including the sustainable management of water resources and access to, and use of, water);
  - (ba) to advise and make recommendations to COAG on matters referred to in paragraph (b);
  - (c) if requested to do so by the Minister, to advise and make recommendations to the Minister on matters relating to water;
  - (d) if requested to do so by the Minister, to advise and make recommendations to the Minister in relation to:
    - (i) the Australian Water Fund; or
    - (ii) any other Commonwealth program that relates to the management and regulation of Australia's water resources;
  - (e) to advise the Commonwealth or COAG, where relevant, on whether a State or Territory is implementing its commitments under any agreement (other than the NWI or the COAG Water Reform Framework) between the Commonwealth and the State or Territory relating to the management and

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regulation of Australia's water resources, if the agreement provides for the NWC to have this function;

- (f) any other function conferred by another law of the Commonwealth or prescribed by the regulations.

*Specific functions relating to implementing the NWI*

- (2) The NWC has the following specific functions relating to implementing the NWI:
- (a) to undertake an initial assessment of:
    - (i) Australia's water resources; and
    - (ii) the governance, management and regulation of those resources;having regard to work already carried out by parties to the NWI and, if required, undertaking further work in order to make that assessment;
  - (b) to advise COAG of the NWC's initial assessment under paragraph (a);
  - (c) to determine whether the plans of the parties to the NWI for implementing the NWI are consistent with the objectives, outcomes, actions and timelines stated in the NWI, and to accredit those plans in accordance with the NWI;
  - (d) to advise COAG of the NWC's determination and any accreditations under paragraph (c);
  - (e) to advise the Commonwealth or COAG, where relevant, on whether the parties to the NWI are implementing their commitments under the NWI;
  - (f) to monitor the impact of interstate trade in water access entitlements in the Southern Murray-Darling Basin, and to advise the relevant parties to the NWI on that impact;
  - (g) every 2 years starting in 2006-07, to assess against national benchmarks the performance of the water industry in managing and using Australia's water resources (for example, in water pricing, water management costs and irrigation efficiency), and to advise COAG of those assessments;
  - (h) for 2006-07 and 2008-09:
    - (i) to assess the progress of parties to the NWI towards achieving the objectives and outcomes stated in, and within the timelines required by, the NWI; and



- (ii) to advise COAG of those assessments; and
- (iii) to advise and make recommendations to COAG on actions that the parties might take to better achieve those objectives and outcomes;
- (i) in 2010-11, to review the NWI comprehensively, including assessing:
  - (i) the NWI against performance indicators that are developed by the Natural Resource Management Ministerial Council in consultation with the NWC; and
  - (ii) the extent to which actions taken under the NWI have improved the sustainable management of Australia's water resources and have contributed to the national interest; and
  - (iii) the impact of the implementation of the NWI on regional, rural and urban communities;and to advise COAG of the outcome of the review and the assessment.

*Specific functions relating to implementing the COAG Water Reform Framework*

- (3) The NWC has the following specific functions relating to implementing the COAG Water Reform Framework:
  - (a) for 2005, to assess whether the parties to the NWI have implemented their commitments under the COAG Water Reform Framework, and to advise the Commonwealth of that assessment;
  - (b) for 2005, if requested to do so by the Minister, to assess whether States or Territories that are not a party to the NWI have implemented their commitments under the COAG Water Reform Framework, and to advise the Commonwealth of that assessment;
  - (c) for subsequent years, if requested to do so by the Minister, to advise the Commonwealth on the progress of a State or Territory that has a commitment still to be implemented under the COAG Water Reform Framework towards implementing that commitment.

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*Giving advice and making recommendations*

- (4) The NWC is to give all advice and make all recommendations under this section by giving the advice and making the recommendations to the Minister.
- (4A) The NWC is to give advice and make recommendations to COAG under this section by giving the advice and making the recommendations to the parties to the NWI at the same time as the advice is given, and the recommendations are made, to the Minister. Parties to the NWI that are given advice and to whom recommendations are made under this subsection are not required to be given the advice or the recommendations by the Minister.

*Parties to the NWI include the Commonwealth*

- (5) To avoid doubt, a reference in this section (other than in paragraph (2)(c) or subsection (4A)) to the parties to the NWI includes a reference to the Commonwealth.

## **Part 3—Constitution of the NWC**

### **8 Constitution of the NWC**

- (1) The NWC consists of:
  - (a) the Chair; and
  - (b) at least 3, but no more than 6, Commissioners nominated in accordance with subsection (2) or (3).

Note: The Chair is also a Commissioner: see the definition of *Commissioner* in section 4.

- (2) The Commonwealth must nominate a person to be appointed as the Chair in consultation with the other parties to the NWI. The Commonwealth may nominate no more than 3 other persons to be appointed as Commissioners.
- (3) The parties to the NWI (other than the Commonwealth) may nominate no more than 3 persons to be appointed as Commissioners.

### **9 Duty of Chair**

The Chair must keep the Minister informed of the general operations of the NWC in respect of the performance of the NWC's functions.

### **10 Conduct of Commissioners**

Each Commissioner must act in the best interests of the NWC.

### **11 Appointment of Commissioners**

- (1) A Commissioner is to be appointed by the Governor-General by written instrument, on either a full-time or part-time basis.

Note: A Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

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- (3) A person is not eligible for appointment as a Commissioner unless the person has a high level of expertise in an area relevant to the functions of the NWC. Relevant areas include, but are not limited to, the following:
- (a) water resource management;
  - (b) freshwater ecology or hydrology;
  - (c) resource economics;
  - (d) public sector governance;
  - (e) the audit, evaluation or implementation of programs relating to natural resource management.

## 12 Acting appointments

The Minister may appoint a person to act as a Commissioner:

- (a) during a vacancy in the office of the Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note 1: The Chair is also a Commissioner: see the definition of *Commissioner* in section 4.

Note 2: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## 13 Remuneration

- (1) A Commissioner is to be paid remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed by the regulations.
- (2) A Commissioner is to be paid the allowances that are prescribed by the regulations.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

**14 Leave of absence**

- (1) A full-time Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Chair may grant leave of absence to any part-time Commissioner on the terms and conditions that the Chair determines.
- (4) If the Chair is a part-time Commissioner, the Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.

**15 Outside employment**

- (1) A full-time Commissioner must not engage in paid employment outside the duties of the Commissioner's office without the Minister's consent.
- (2) A part-time Commissioner must not engage in paid employment that conflicts or could conflict with the proper performance of the Commissioner's duties without the Minister's consent.

**16 Other terms and conditions**

A Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

**17 Resignation**

- (1) A Commissioner may resign his or her appointment by giving the Governor-General a written resignation.
- (2) If the Chair resigns his or her appointment, then he or she must resign as both the Chair and a Commissioner.

Note: This does not prevent a person who has been appointed as both the Chair and a Commissioner from being re-appointed only as a Commissioner.

## 18 Termination of appointment

### *All Commissioners*

- (1) The Governor-General may terminate the appointment of a Commissioner:
  - (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the Commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (c) if the Commissioner fails, without reasonable excuse, to comply with section 22.

### *Additional grounds: full-time Commissioners*

- (2) The Governor-General may terminate the appointment of a full-time Commissioner if:
  - (a) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (b) the Commissioner engages, except with the Minister's consent, in paid employment outside the duties of his or her office.

### *Additional grounds: part-time Commissioners*

- (3) The Governor-General may terminate the appointment of a part-time Commissioner if:
  - (a) the Commissioner is absent, except on leave of absence, from 3 consecutive meetings of the NWC; or
  - (b) the Commissioner engages, except with the Minister's consent, in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office.

## 19 Meetings

- (1) The Chair must convene at least 8 meetings of the NWC in each calendar year.

- (2) Meetings of the NWC must be held at such places as the Chair determines.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

- (3) At a meeting of the NWC, 4 Commissioners constitute a quorum.
- (4) The Chair must preside at all meetings of the NWC at which he or she is present.
- (5) If the Chair is absent from all or part of a meeting of the NWC, a Commissioner chosen by the other Commissioners present is to preside as Chair.

## **20 Notice of meetings**

Each Commissioner is entitled to receive reasonable notice of the NWC's meetings.

## **21 Conduct of meetings**

- (1) Subject to this Part, the NWC must make rules of procedure, in writing, for dealing with potential conflicts of interest. The NWC may make other rules of procedure to be followed at meetings.
- (2) The NWC may alter its rules of procedure from time to time.
- (3) The NWC must make its rules of procedure, as altered from time to time, available to the public.
- (4) The NWC must ensure that minutes of its meetings are kept.

## **22 Disclosure of interests**

### *Disclosure by the Chair*

- (1) If the Chair has any direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the NWC, being an interest that could conflict with the proper performance of the Chair's functions in relation to a matter arising at a meeting of the NWC, then the Chair must disclose that interest to the other Commissioners as soon as practicable.

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- (2) If the Chair has disclosed an interest, the Chair must not participate in the NWC's consideration of the matter unless the other Commissioners agree.

*Disclosure by a Commissioner other than the Chair*

- (3) If any other Commissioner has any direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the NWC, being an interest that could conflict with the proper performance of the Commissioner's functions in relation to a matter arising at a meeting of the NWC, then the Commissioner must disclose that interest to the Chair as soon as practicable.
- (4) If any other Commissioner has disclosed an interest, the Commissioner must not participate in the NWC's consideration of the matter unless the Chair and the other Commissioners agree.

*Disclosure to be recorded in the minutes of the meeting*

- (5) Any disclosure, and any decision made by the Commissioners in relation to the disclosure, must be recorded in the minutes of the meeting.



## **Part 4—The CEO and staff of the NWC**

### **Division 1—The CEO**

#### **Subdivision A—Establishment and functions of the CEO**

##### **23 The CEO**

There is to be a Chief Executive Officer (*CEO*) of the NWC.

##### **24 Functions of the CEO**

- (1) The functions of the CEO are:
  - (a) to administer financial assistance, awarded by the Minister to particular projects relating to Australia's water resources, from:
    - (i) the Australian Water Fund Account; or
    - (ii) any other Commonwealth program referred to in subparagraph 7(1)(d)(ii); and
  - (b) to manage the day-to-day administration of the NWC.
- (2) All acts and things done in the name of, or on behalf of, the NWC by the CEO are taken as having been done by the NWC.

#### **Subdivision B—Appointing the CEO**

##### **25 Appointing the CEO**

- (1) The CEO is to be appointed by the Minister by written instrument, on either a full-time or part-time basis.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.
- (2) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (3) A person may be appointed as both the CEO and a Commissioner (including the Chair). However, one of those appointments must be made on a part-time basis.

## **26 Acting CEO**

The Minister may appoint a person to act as the CEO:

- (a) during a vacancy in the office of the CEO, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the CEO is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## **27 Remuneration**

- (1) The CEO is to be paid remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

## **28 Leave of absence**

- (1) A full-time CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Chair may grant leave of absence to a part-time CEO on the terms and conditions that the Chair determines.
- (4) If the Chair is a part-time CEO, the Minister may grant leave of absence to the part-time CEO on the terms and conditions that the Minister determines.

## **29 Outside employment**

- (1) A full-time CEO must not engage in paid employment outside the duties of the CEO's office without the Minister's consent.
- (2) A part-time CEO must not engage in paid employment that conflicts or could conflict with the proper performance of the CEO's duties without the Minister's consent.

## **30 Other terms and conditions**

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## **31 Resignation**

- (1) The CEO may resign his or her appointment by giving the Minister a written resignation.
- (2) If the CEO is also a Commissioner, his or her resignation does not affect his or her appointment as a Commissioner.

## **32 Termination of appointment**

### *Full-time or part-time CEO*

- (1) The Minister may terminate the appointment of the CEO:
  - (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the CEO:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (c) if the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (d) if the CEO fails, without reasonable excuse, to comply with section 33.

*Additional ground: full-time CEO*

- (2) The Minister may terminate the appointment of a full-time CEO if the CEO engages, except with the Minister's consent, in paid employment outside the duties of his or her office.

*Additional ground: part-time CEO*

- (3) The Minister may terminate the appointment of a part-time CEO if the CEO engages, except with the Minister's consent, in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office.

### **33 Disclosure of interests**

The CEO must give written notice to the Minister of any direct or indirect pecuniary interest that the CEO has or acquires and that conflicts or could conflict with the proper performance of the CEO's functions.

### **34 Delegation**

The CEO may, in writing, delegate any of his or her functions to an SES employee or acting SES employee of the NWC staff.

Note 1: Section 2B of the *Acts Interpretation Act 1901* contains the definitions of *SES employee* and *acting SES employee*.

Note 2: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*, which contain extra rules about delegations.

## **Division 2—Staff etc. to assist the NWC**

### **35 Staff of the NWC**

- (1) The staff necessary to assist the NWC are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the CEO and the APS employees assisting the NWC together constitute a Statutory Agency; and
  - (b) the CEO is the Head of that Statutory Agency.

### **36 Secondment of persons to assist the NWC**

#### *Secondment of Commonwealth officials*

- (1) The CEO, on behalf of the NWC, may arrange with:
  - (a) an Agency Head within the meaning of the *Public Service Act 1999*; or
  - (b) an authority of the Commonwealth;for the services of officers or employees of the Agency or the authority to be made available to assist the NWC in the performance of its functions.

#### *Secondment of State officials*

- (2) The CEO, on behalf of the NWC, may arrange with the appropriate authority of a State or Territory for the services of officers or employees of the Public Service of the State or Territory to be made available to assist the NWC in the performance of its functions.

#### *Reimbursement by the Commonwealth*

- (3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State with respect to the services of a person to whom the arrangement relates.

### **37 Consultants and independent contractors**

- (1) The CEO, on behalf of the NWC, may engage consultants and independent contractors to give advice to, or perform services for, the NWC.
- (2) A person may only be engaged under subsection (1) if the CEO considers that the person has suitable qualifications and experience.
- (3) The terms and conditions of engagement are as determined by the CEO in writing.

## **Part 5—Review of the NWC**

### **38 Review of the NWC**

- (1) After the NWC has reviewed the NWI comprehensively and advised COAG of the outcome of the review (as required by paragraph 7(2)(i)), a review must be conducted of the NWC's ongoing role and functions in relation to the management and regulation of Australia's water resources.
- (2) The review must be conducted by the end of 2011 in accordance with the processes provided for under the NWI or otherwise directed by COAG, and a written report about the review must be made.
- (3) The Minister must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the Minister receives the report.

## **Part 6—The Australian Water Fund Account**

### **40 Establishment of the Australian Water Fund Account**

- (1) The Australian Water Fund Account is established by this section.

Note: The Australian Water Fund Account represents only part of the Australian Water Fund.

- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

### **41 Credits of amounts to Account**

There must be credited to the Account amounts equal to amounts that are given or bequeathed for the purposes of the Account.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

### **42 Purposes of Account**

The purposes of the Special Account, in relation to which amounts may be debited from the Account, are:

- (a) to provide financial assistance that is:
  - (i) awarded by the Minister to particular projects relating to Australia's water resources; and
  - (ii) determined by the Minister to be provided from the Account; or
- (b) to pay or discharge the costs, expenses or other obligations incurred by the Commonwealth in the performance of the NWC's functions under this Act or the regulations; or
- (c) to pay any remuneration or allowances payable to any person under this Act.



## **Part 7—Miscellaneous**

### **43 Confidentiality**

A person commits an offence if:

- (a) the person obtains information in, or in connection with, the performance of the person's function or duty for the purposes of this Act; and
- (b) the person makes a record of or discloses that information; and
- (c) the record or disclosure:
  - (i) is not made in the course of performing that, or any other, function or duty for the purposes of this Act; and
  - (ii) is not required or permitted by any other law.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **44 Public availability of assessments**

- (1) The NWC must make its assessments and recommendations under subsections 7(2) and (3) available to the public unless the Minister does not agree.
- (2) The NWC must not make any other advice or recommendations available to the public without the agreement of the Minister.
- (3) If agreement is not given under subsection (1), the Minister must advise the NWC of the reasons why agreement has not been given. The NWC must make these reasons available to the public.

### **45 Annual report**

- (1) The NWC must, after the end of each year ending on 30 June, give the Minister a report on its operations during that year, for presentation to the Parliament.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

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- (2) If financial assistance from the Australian Water Fund Account or another Commonwealth program referred to in subparagraph 7(1)(d)(ii) was administered during a year under this Act, then the report relating to that year must set out:
  - (a) the name of the individual or body to whom financial assistance was given; and
  - (b) the amount and purpose of the financial assistance.
- (3) If a person was engaged under section 37 during a year, then the report relating to that year must set out:
  - (a) the name of the individual or body who was engaged; and
  - (b) the manner in which the individual or body assisted in the performance of the NWC's functions.
- (4) The Minister must give a copy of the report to the relevant Minister for each of the parties to the NWI (other than the Commonwealth) at the same time as the report is presented to the Parliament.

#### **46 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Table of Acts****Notes to the *National Water Commission Act 2004*****Note 1**

The *National Water Commission Act 2004* as shown in this compilation comprises Act No. 156, 2004 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Water Commission Act 2004</i>	156, 2004	17 Dec 2004	17 Dec 2004	
<i>Water (Consequential Amendments) Act 2007</i>	138, 2007	3 Sept 2007	Schedule 1: 3 Mar 2008 (see s. 2(1)) Remainder: Royal Assent	—
<i>Acts Interpretation Amendment Act 2011</i>	46, 2011	27 June 2011	Schedule 2 (items 837–845) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
<i>National Water Commission Amendment Act 2012</i>	70, 2012	27 June 2012	Schedule 1 (items 1–24): [see Note 2 and Table A] Remainder: Royal Assent	Sch. 1 (items 5, 7, 12, 24, 28)



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 2</b>	
S. 7 .....	am. No. 138, 2007
<b>Part 3</b>	
Note to s. 11(1) .....	rs. No. 46, 2011
S. 12 .....	am. No. 46, 2011
Note 2 to s. 12.....	rs. No. 46, 2011
<b>Part 4</b>	
<b>Division 1</b>	
<b>Subdivision B</b>	
Note to s. 25(1) .....	rs. No. 46, 2011
S. 26 .....	am. No. 46, 2011
Note to s. 26.....	rs. No. 46, 2011
Note 1 to s. 34.....	am. No. 46, 2011
<b>Part 5</b>	
S. 39 .....	rep. No. 70, 2012
<b>Part 7</b>	
S. 43 .....	am. No. 70, 2012
S. 45 .....	am. No. 70, 2012

## **Note 2**

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### **Note 2**

*National Water Commission Amendment Act 2012* (No. 70, 2012)

The following amendments commences on 1 July 2012:

#### **Schedule 1**

##### **1 Section 4 (definition of *Australian Water Fund*)**

Repeal the definition.

##### **2 Section 4 (definition of *Australian Water Fund Account*)**

Repeal the definition.

##### **3 Section 4 (at the end of the definition of *COAG*)**

Add “, and includes any subcommittee (however described) of COAG that deals with matters relating to water”.

##### **4 Section 4 (definition of *Natural Resource Management Ministerial Council*)**

Repeal the definition.

##### **6 Subsections 7(1), (2) and (3)**

Repeal the subsections, substitute:

- (1) The NWC has the following functions:
  - (a) if requested by COAG, to carry out audits to determine:
    - (i) whether parties to the NWI are implementing their commitments under the NWI, or any other agreement between the Commonwealth and a State or Territory, in relation to the parties’ management and regulation of their water resources; and
    - (ii) the effectiveness of that implementation;
  - (b) every 3 years:
    - (i) to assess the progress of parties to the NWI towards achieving the objectives and outcomes of, and within the timelines required by, the NWI; and
    - (ii) to advise COAG of those assessments; and

**Note 2**

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- (iii) to advise and make recommendations to COAG on actions that the parties might take to better achieve those objectives and outcomes;
- (c) to conduct any other assessments in relation to matters relating to:
  - (i) the NWI; or
  - (ii) any other agreement between the Commonwealth and a State or Territory, but only if that other agreement provides for the NWC to have this function; particularly in relation to matters that are significant for achieving the objectives and outcomes of the NWI;
- (d) to monitor areas that are significant for achieving the objectives and outcomes of the NWI;
- (e) to assist with the implementation of the NWI by providing information and guidance in relation to the functions mentioned in paragraphs (a) to (d), and to undertake activities that promote the objectives and outcomes of the NWI;
- (f) if requested to do so by the Minister, to advise and make recommendations to the Commonwealth in relation to the functions mentioned in paragraphs (a) to (d);
- (g) if requested to do so by the Minister, to advise and make recommendations to the Minister in relation to any Commonwealth program that relates to the management and regulation of Australia's water resources;
- (h) to advise COAG on whether a State or Territory is implementing its commitments under any agreement (other than the NWI) between the Commonwealth and the State or Territory relating to the management and regulation of Australia's water resources, but only if the agreement provides for the NWC to have this function;
- (i) if requested by COAG, to conduct any study or analysis, or to provide any report, in relation to:
  - (i) matters of national significance relating to water (including the sustainable management of water resources and access to, and use of, water); or
  - (ii) the COAG Water Reform Framework;
- (j) any other function conferred by another law of the Commonwealth or prescribed by the regulations.

## **Note 2**

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### **8 Subsection 7(5)**

Omit “paragraph (2)(c) or”.

### **9 Paragraph 8(1)(b)**

Omit “3, but no more than 6,”, substitute “2, but no more than 4.”.

### **10 Subsections 8(2) and (3)**

Omit “3”, substitute “2”.

### **11 Subsection 19(1)**

Omit “8 meetings”, substitute “5 meetings”.

### **13 Subsection 19(3)**

Omit “4 Commissioners”, substitute “3 Commissioners”.

### **14 Paragraph 24(1)(a)**

Repeal the paragraph, substitute:

- (a) to administer financial assistance, awarded by the Minister to particular projects relating to Australia’s water resources, from any Commonwealth program referred to in paragraph 7(1)(g); and

### **15 Subsection 25(2)**

Omit “3 years”, substitute “5 years”.

### **16 At the end of subsection 25(3)**

Add:

Note: A person who is appointed as both the CEO and a Commissioner would be appointed for up to 5 years as CEO, and up to 3 years as a Commissioner (see subsection (2) of this section and subsection 11(2)).

### **17 Part 5 (heading)**

Repeal the heading, substitute:

## **Part 5—Reviews of the NWC**

### **18 Section 38 (heading)**

Repeal the heading, substitute:



### **38 Reviews of the NWC**

#### **19 Subsection 38(1)**

Omit “After the NWC has reviewed the NWI comprehensively and advised COAG of the outcome of the review (as required by paragraph 7(2)(i)), a review”, substitute “Reviews”.

#### **20 Subsection 38(2)**

Repeal the subsection, substitute:

- (2) A review must be conducted before the end of:
  - (a) 2017; and
  - (b) every following 5 year period.
- (2A) If COAG has provided for a review to be conducted in accordance with a process, the review must be conducted in accordance with that process.
- (2B) A written report must be made about a review.

#### **21 Part 6**

Repeal the Part.

#### **22 Section 44**

Repeal the section, substitute:

#### **44 Public availability of certain documents**

- (1) The NWC must make any audit or assessment done for the purposes of paragraph 7(1)(a), (b) or (c) (including any advice given or recommendation made for the purposes of any of those paragraphs) available to the public on the NWC’s website, unless the Minister does not agree.
- (2) If the Minister does not agree under subsection (1), the Minister must advise the NWC of the reasons for not agreeing. The NWC must make these reasons available to the public on the NWC’s website.
- (3) The NWC must not make any advice or recommendation (other than an advice or recommendation referred to in subsection (1)) available to the public without the agreement of the Minister.

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**23 Subsection 45(2)**

Omit “the Australian Water Fund Account or another Commonwealth program referred to in subparagraph 7(1)(d)(ii)”, substitute “a Commonwealth program referred to in paragraph 7(1)(g)”.

As at 28 June 2012 the amendments are not incorporated in this compilation.

**Table A**

**Application, saving or transitional provisions**

*Acts Interpretation Amendment Act 2011* (No. 46, 2011)

**Schedule 3**

**10 Saving—appointments**

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

**11 Transitional regulations**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

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*National Water Commission Amendment Act 2012* (No. 70, 2012)

**Schedule 1**

**28 Application provision—annual reports**

The amendment of subsection 45(1) of the *National Water Commission Act 2004* made by this Schedule applies in relation to the financial year ending on 30 June 2012 and later financial years.

The following provisions commence on 1 July 2012:

**5 Saving provision—repeal of definition**

Despite the repeal of the definition of *Natural Resource Management Ministerial Council* by this Schedule, that definition continues to apply, after this item commences, for the purposes of the *Water Act 2007* as if the repeal had not happened.

**Table A**

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**7 Transitional and application provision—functions**

- (1) The National Water Commission is to conduct the first assessment for the purposes of paragraph 7(1)(b) of the *National Water Commission Act 2004* (as inserted by this Schedule) in 2014.
- (2) A function that is conferred on the National Water Commission, or prescribed, for the purposes of paragraph 7(1)(f) of the *National Water Commission Act 2004* (as in force immediately before this item commences) by a law that is, or regulations that are, in force at that time is taken, after that time, to have been conferred for the purposes of paragraph 7(1)(j) of that Act (as inserted by this Schedule).

**12 Application provision—meetings**

The amendment of subsection 19(1) of the *National Water Commission Act 2004* made by this Schedule applies in relation to 2012 and later calendar years.

**24 Application provision—financial assistance and annual report**

The amendment of subsection 45(2) of the *National Water Commission Act 2004* made by this Schedule applies in relation to the financial year ending on 30 June 2013 and later financial years.