

2004

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL WATER COMMISSION BILL

EXPLANATORY MEMORANDUM

(Circulated by authority of the Prime Minister, the Honourable John Howard MP)

NATIONAL WATER COMMISSION BILL 2004

OUTLINE

The purpose of the National Water Commission Bill 2004 (the Bill) is to establish the National Water Commission (the Commission) 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.

The National Water Initiative (the NWI)

The National Water Initiative (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. It will be possible for the Governments of Western Australia and Tasmania to become parties to the NWI at a later date, should they wish to do so.

The NWI was signed in recognition of the continuing national imperative to increase the productivity and efficiency of Australia's water use, the need to service rural and urban communities, and to ensure the health of river and groundwater systems. The NWI builds on the 1994 strategic framework for the efficient and sustainable reform of the Australian water industry (the COAG Water Reform Framework).

The NWI sets out objectives, outcomes and actions for the ongoing process of national water reform in the following areas:

1. water access entitlements and planning;
2. water markets and trading;
3. best practice water pricing;
4. integrated management of water for environmental and other public benefit outcomes;
5. water resource accounting;
6. urban water reform;
7. knowledge and capacity building; and
8. community partnerships and adjustment.

Full implementation of the NWI will 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:

1. clear and nationally-compatible characteristics for secure *water access entitlements*;
2. transparent, statutory-based water planning;
3. statutory provision for *environmental and other public benefit outcomes*, and improved environmental management practices;

4. the return of all currently overallocated or overused systems to *environmentally-sustainable levels of extraction*;
5. 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;
6. clarity around the assignment of risk arising from future changes in the availability of water for the *consumptive pool*;
7. 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;
8. policy settings which facilitate water use efficiency and innovation in urban and rural areas;
9. addressing future adjustment issues that may impact on water users and communities; and
10. recognition of the connectivity between surface and groundwater resources and connected systems managed as a single resource.

The NWI also sets out the processes for ongoing implementation of reform actions. Central amongst these is the establishment of the Commission.

The Commonwealth is seeking to establish the Commission to drive the national water reform agenda. The NWI specifies that the Commission will be established by the Commonwealth as an independent statutory body. The Commission will be responsible for providing advice to COAG and the Commonwealth on national water issues and to assist in implementation of the NWI. This Bill provides for the Commission to be established consistent with the form and function in respect of the NWI which was agreed by parties to the NWI, with additional functions in regard to the Australian Water Fund.

The Australian Water Fund

The Commonwealth has decided to give the Commission a role in relation to the Australian Water Fund.

The Australian Water Fund 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.

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

The 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. Examples of the type of projects that could be eligible are outlined in the policy statement *Securing Australia's Water Future*, which was released by the Prime Minister on 13 September 2004. They include:

- improving river flows;

- on-farm water use efficiency improvements;
- cost effective recycling and reuse of urban stormwater and grey water; and
- more efficient water storage and transmission facilities.

The 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. Projects that could be eligible are outlined in the policy statement Securing Australia's Water Future, which was released by the Prime Minister on 13 September 2004. They include the following areas:

- facilitating a nationally consistent system for collecting and processing water data;
- strategic assessment of groundwater resources;
- working with local communities to improve the conservation of water systems with high environmental values through measures such as planning, voluntary conservation agreements and improved knowledge; and
- establishing and promoting the Water Efficiency Labelling Scheme for household appliances, and implementation of the Smart Water Mark regime for household gardens.

A third programme under the Australian Water Fund – Water Wise Communities - will be administered by the Australian Department of the Environment and Heritage jointly with the Department of Agriculture, Fisheries and Forestry.

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.

Financial Impact Statement

The Commonwealth will fund the establishment and running costs of the Commission from the Australian Water Fund. The Commonwealth will fund the Australian Water Fund, which includes two programmes to be administered by the Commission, namely the Water Smart Australia programme (\$1.6 billion over 5 years) and the Raising National Water Standards programme (\$200 million over 5 years).

NATIONAL WATER COMMISSION BILL 2004

NOTES ON CLAUSES

PART 1 – PRELIMINARY

Clause 1: Short Title

1. This clause provides for the Bill, when passed, to be cited as the *National Water Commission Act 2004*.

Clause 2: Commencement

2. This clause deals with the commencement of the proposed Act on Royal Assent. The NWI requires the Commonwealth to have established the Commission by December 2004.

Clause 3: Object of this Act

3. This clause outlines the purpose of the proposed Act which is to establish a National Water Commission (the Commission) as an independent statutory authority as required by the NWI.

Clause 4: Definitions

4. This clause defines certain terms used in the proposed Act. These terms include *COAG Water Reform Framework* which refers to the 1994 strategic framework for the efficient and sustainable reform of the Australian water industry, as amended in 1996 to include groundwater and stormwater management revisions, and in January 1999 by the so-called Tripartite agreement. The Tripartite agreement emerged from a meeting to consider issues surrounding the implementation of the water reform framework and the timeframe for implementation. The meeting involved representatives from all jurisdictions, the Committee on Regulatory Reform, the High Level Steering Group on Water and representatives from the former Australian and New Zealand Environment and Conservation Council (ANZECC) and the National Competition Council. The term *NWI* allows for the possibility that the Agreement may be amended from time to time. This is consistent with all such agreements where COAG may decide to amend the terms or substance of the agreement. It also leaves open the possibility that the governments of Western Australia and Tasmania, which were not signatories to the NWI in June 2004, may sign the NWI at a future date.

Clause 5: This Act binds the Crown

5. This clause specifies that the proposed Act binds the Crown, but does not make the Crown liable to be prosecuted for an offence.

PART 2 – ESTABLISHMENT OF THE NATIONAL WATER COMMISSION

Clause 6: Establishment of the NWC

6. This clause provides for the establishment of the Commission.

Clause 7: Functions of the NWC

7. The general and specific functions of the Commission are set out in this clause. The Commission's functions will be those set out in the Act, which also allows for additional functions to be at the direction of the Minister in relation to advice on water reform matters and advice on the Australian Water Fund, and at the direction of COAG where the NWI is amended with the agreement of the parties.

Subclause 7(1)(a) One of the Commission's primary functions will be to help implement the NWI. This reflects the role provided for the Commission in the NWI itself, and the Commonwealth's announced intention that the Commission should drive the cause of national water reform. Amongst other activities, the Commission could be expected to: undertake analysis; inform policy making by governments, help facilitate coordinated government action to achieve national outcomes; promote debate; enhance communication with (and between) communities, stakeholders and decision makers; and otherwise promote national water reform through initiatives and actions to advance the objectives and outcomes of the NWI.

Subclause 7(1)(b) provides for the Commission to advise the Commonwealth or COAG on any water matter of national significance. A matter may be nationally significant, for example, because of the scale of its impacts on water resources or communities, by virtue of its involving more than one government, or its importance to the overall progress of water reform within a jurisdiction.

Subclause 7(1)(c) provides for the Minister to request the advice and recommendations of the Commission on any water-related matter;

Subclause 7(1)(d) provides for the Commission, where requested to do so by the Minister, to provide advice on projects under the Australian Water Fund, or any other programme requested by the Minister .

Specifically, where requested to do so by the Minister the Commission will provide advice on potential projects under the Water Smart Australia programme and the Raising National Water Standards programme. The Water Smart Australia programme will invest \$1.6 billion over five years to accelerate the development and uptake of the best technologies and practices in water use across Australia. The Raising National Water Standards programme will invest \$200 million over five years to lift Australia's national capacity to measure, monitor and manage its water resources.

Amongst other things, the Commission will be advising on the extent to which proposed projects are consistent with, and help to achieve, the objectives, outcomes and actions of the NWI.

Subclause 7(1)(e) provides for the Commission to have a role in assessing the implementation of any other agreement between the Commonwealth and a State or Territory on regard to water management, where the agreement provides for the Commission to have such a role.

Subclause 7(1)(f) allows for other functions to be prescribed for the Commission through regulation.

Subclause 7(2)(a) and (b) The Commission is required by the NWI to undertake an initial assessment of Australia's water resources, and water management arrangements around Australia, and to advise COAG of its assessment. This work will draw on work already undertaken by the parties, including information provided and analysis made in the context of assessments of parties' progress under the COAG Water Reform Framework.

Subclauses 7(2)(c) and (d) As a precursor to assessing parties' progress with the NWI, the Commission will determine by mid-2005 whether State and Territory plans for implementing the NWI are consistent with the commitments made under the NWI. Where they are assessed as being consistent, the Commission will accredit those plans. 'Accredit' is a term used in the NWI and does not refer to regulatory accreditation, but to formal approval by the Commission that an implementation plan is a suitable basis for implementing the NWI and that, taken as a whole, the plan is likely to achieve the objectives and outcomes of the NWI.

Subclause 7(2)(e) At the heart of its role in helping to implement the NWI, the Commission will assess the progress of parties in implementing the objectives, outcomes and actions under the NWI, and advise COAG on the progress of the parties in meeting these commitments under the NWI.

Subclause 7(2)(f) provides for the Commission to monitor and advise the Commonwealth and the governments of New South Wales, Victoria and South Australia on the impact of opening up interstate water trade in the Southern Murray Darling Basin. Opening up water trading in this region is a key reform action under the NWI, and the NWI stipulates this role for the Commission in this matter.

Subclause 7(2)(g) provides for biennial assessment of the water industry against national performance benchmarks, to be established or adopted by the Commission.

Subclause 7(2)(h) In each of its biennial assessments of parties' progress in implementing the NWI, the Commission will also advise COAG on actions which might be required to better realise the objectives and outcomes of the Agreement. The experience with the COAG Water Reform Framework was that adjustments to the reform framework were sometimes required to better achieve the desired outcomes. The Commission will be advising COAG on extending or adjusting actions to better realise the gains from water reform.

Subclause 7(2)(i) The Commission's biennial review role will culminate with a comprehensive review by the Commission in 2010-11 of the NWI itself, including the extent to which it has improved sustainable management of Australia's water resources. This review will also be against the national performance indicators for the Agreement which are to be developed by the Natural Resource Management Ministerial Council in consultation with the Commission.

Subclause 7(3) Consistent with the NWI, the Commission will also assess parties' compliance with their obligations under the 1994 COAG Water Reform Framework (as amended). In undertaking this assessment for 2005, and advising the Commonwealth, the Commission will be stepping into the role filled previously by the National Competition Council (NCC) in assessing progress on water reform under the Framework. While the Commission will not itself be making recommendations in relation to National Competition Payments, the Commission's assessments against the 1994 COAG Water Reform Framework will be taken into account by the Commonwealth in making decisions in this regard.

The Commission's assessment role is confined to the Water Reform Framework, and does not extend to undertaking the functions of the NCC for other elements of National Competition Policy, or for any related reforms other than water.

The Commonwealth may also request the Commission to undertake this 2005 assessment for those States or Territories who are not parties to the NWI. In subsequent years, the Commission may be asked to assess the implementation of any commitments which remain unfilled at the time of the 2005 assessment.

Sub clause 7(4) provides for all NWC advice to COAG to be made through the Minister. This is standard COAG procedure where reports are typically provided through the relevant jurisdiction's first minister.

PART 3 – CONSTITUTION OF THE NWC

Clause 8: Constitution of the NWC

8. This clause provides for a Commission of up to 7 members, including the Chair. In recognition of the partnership approach to water reform represented by the NWI, the Commonwealth can nominate up to 4 Commissioners (including the Chair), with the States and Territories who are party to the NWI able to nominate up to 3 Commissioners

Clause 9: Duty of Chair:

9. The Chair is required by this clause to keep the Minister informed of the operations of the Commission, reflecting the significance accorded to the issues of water management and reform by the Commonwealth.

Clause 10: Conduct of Commissioners

10. This clause provides that Commissioners are to act in the best interests of the NWC in carrying out their duties. The provision is designed to reinforce the intent that Commissioners will work collaboratively and not see their role as 'representing' particular sectors (such as the water supply industry), interest groups (such as environmental interests), nor governments (Commonwealth or State and Territory) in exercising their duties. Consistent with the NWI, the proposed Act establishes the Commission as an independent statutory body with the intent that it will provide independent advice to governments on water matters.

Clause 11: Appointment of Commissioners

11. This clause provides for the Governor-General to appoint Commissioners for up to 3 years. Consistent with the NWI, the clause also gives as examples some relevant areas of expertise required by those appointed to the Commission. They include water resource management (which would include irrigated agriculture), relevant science disciplines, public sector governance, since so much of the Commission's work centres on dealing with government policies and programmes, and experience relating to natural resource management programmes, in view of the Commission's functions in relation to the Australian Water Fund.

Clause 12: Acting Appointments

12. This clause provides for the Minister to appoint acting Commissioners. This includes the ability to appoint an acting Chair when there is no Chair or if the Chair is absent from duty, overseas or unable to perform his or her duties.

Clause 13: Remuneration

13. This clause provides that a Commissioner is to be paid remuneration determined by the Remuneration Tribunal, with any allowances not provided for by Remuneration Tribunal determination to be prescribed by the regulations. The Remuneration Tribunal is required to determine remuneration for offices that meet the definition of 'public office' in s3(4) of the *Remuneration Tribunal Act 1973*, this definition includes all offices established under statute.

Clause 14: Leave of absence

13. This clause provides that a full-time Commissioner will have the leave entitlements determined by the Remuneration Tribunal. The Minister may grant leave to full-time Commissioners and to a Chair who is also a part-time Commissioner. The Chair may grant leave to part-time Commissioners.

Clause 15: Outside employment

15. This clause provides that a full time Commissioner will not engage in outside employment without the Minister's consent on the basis that it may detract from the performance of their full time duties. For part time Commissioners, the clause provides that they must not engage in paid employment that conflicts or could conflict with their role as a Commissioner without the Minister's consent. However, since people appointed to the Commission will be engaged for their relevant experience and expertise, many part time Commissioners will have outside employment in the water field. The Minister will need to weigh up these factors in giving consent to outside employment. As further protection, the proposed Act provides separately for disclosure of interests by Commissioners.

Clause 16: Other terms and conditions

16. This clause provides for terms and conditions of office for a Commissioner not otherwise provided for in the Act, to be determined by the Governor-General.

Clause 17: Resignation

17. This clause provides that a Commissioner may resign his or her appointment by writing to the Governor-General. Where the Chair resigns, he or she must do so as both Chair and Commissioner, but he or she may be re-appointed as a Commissioner.

Clause 18: Termination of appointment

18. This clause set outs the circumstances under which the Governor-General may terminate a Commissioner's appointment.

Clause 19: Meetings

19. This clause deals with the arrangements for Commission meetings, including the requirement for the Chair to convene 8 meetings in each calendar year. This reinforces the intention that the Commission will be an active Commission in promoting water reform consistent with the NWI. The quorum for a meeting is four Commissioners, and meetings may be conducted via teleconference. The Commission may also conduct business out of session.

Clause 20: Notice of meetings

20. This clause provides for each Commissioner to receive reasonable notice of NWC meetings.

Clause 21: Conduct of meetings

21. This clause provides for the Commission to establish rules for the conduct of Commission meetings, in particular rules for dealing with conflicts of interest. These rules of procedure must be made publicly available.

Clause 22: Disclosure of interests

22. This clause requires the Chair to disclose to the other Commissioners any pecuniary interest that could conflict with matters under consideration by the Commission. Commissioners are likewise required to disclose to the Chair any pecuniary interest that could conflict with matters under consideration by the Commission. The clause also sets out how Commissioners are to behave in relation to Commission matters relevant to that interest. Any disclosure is to be recorded in the meeting minutes.

PART 4 – THE CEO AND STAFF OF THE NWC

Division 1 – The CEO

Subdivision A – Establishment and functions of the CEO

Clause 23: The CEO

23. This clause specifies that there is to be a Chief Executive Officer (CEO) of the NWC.

Clause 24: Functions of the CEO

24. This clause sets out the functions of the CEO as being to administer financial assistance given to projects approved by the Minister under the Australian Water Fund Account, and any other Commonwealth programme where requested by the Minister, and to manage the day-to-day operation of the NWC.

Sub-clause 24(2) provides that anything done by the CEO in the name of, or on behalf of, the NWC will be taken to have been done by the NWC.

Subdivision B – Appointing the CEO

Clause 25: Appointing the CEO

25. This clause sets out arrangements for the appointment, up to 3 years, of the CEO of the NWC. It provides that a Commissioner may also be appointed as CEO, and this includes the possibility that the Chair may be appointed as CEO.

Clause 26: Acting CEO

26. This clause provides for the Minister to appoint a person to act as CEO when there is no CEO or if the CEO is absent from duty, overseas or unable to perform his or her duties.

Clause 27: Remuneration

27. This clause provides that the CEO is to be paid remuneration determined by the Remuneration Tribunal. If no determination of remuneration or allowances provided by the Remuneration Tribunal is in operation, remuneration or allowances will be paid as prescribed by the regulations. The Remuneration Tribunal is required to determine remuneration for offices that meet the definition of ‘public office’ in s3(4) of the *Remuneration Tribunal Act 1973*, this definition includes all offices established under statute.

Clause 28: Leave of absence

28. This clause provides that a full-time CEO will have leave entitlements as determined by the Remuneration Tribunal. The Minister may grant leave to a full-time CEO. The Chair may grant leave to a part-time CEO. If the Chair is also a part-time CEO, the Minister may grant leave.

Clause 29: Outside employment

29. This clause provides that a full time CEO will not engage in outside employment without the Minister's consent, in order not to compromise performance of his or her full time duties. A part-time CEO must seek the Minister's consent to engage in any outside duties which conflict or may conflict with the proper performance of their CEO duties.

Clause 30: Other terms and conditions

30. This clause provides for terms and conditions of office for a Commissioner, not otherwise provided for in the Act, to be determined by the Minister.

Clause 31: Resignation

31. This clause provides that a CEO may resign his or her appointment by writing to the Minister. If the CEO is also a Commissioner, his or her resignation does not affect their appointment as a Commissioner.

Clause 32: Termination of appointment

32. This clause set outs the circumstances under which the Minister may terminate a CEO's appointment.

Clause 33: Disclosure of interests

33. This clause requires the CEO to give written notice to the Minister of any pecuniary interest that could conflict with the performance of the CEO's functions.

Clause 34: Delegation

34. This clause provides for the CEO to delegate any of his or her functions to an SES employee or acting SES employee of the NWC staff. This would include functions related to administering financial assistance under the Australian Water Fund, and engagement of staff, consultants and contractors.

Division 2 – Staff etc. to assist the NWC

Clause 35: Staff of the NWC

35. This clause provides that the Commission will employ staff under the *Public Service Act 1999*. Those staff and the CEO constitute a Statutory Agency for the purposes of the *Public Service Act 1999*.

Clause 36: Secondment of persons to assist the NWC

36. This clause provides that the NWC may second staff from the Commonwealth or from State and Territory agencies or statutory authorities. Secondment of State and Territory agencies was specified in the NWI and reflects the partnership between governments on water reform which the Commission is expected to bring to the performance of its functions.

Clause 37: Consultants and independent contractors

37. This clause allows the CEO, on behalf of the NWC, to engage consultants and contractors under terms and conditions that he or she determines.

PART 5 – REVIEW OF THE NWC

Clause 38: Review of the NWC

38. This clause provides for a review of the NWC by the end of 2011 in accordance with the processes in the NWI or as otherwise specified by COAG. The NWI currently specifies that COAG will review the ongoing role and function of the NWC, and that the outcome of that review is to be tabled in each Commonwealth, State and Territory House of Parliament by the end of 2011.

Clause 39: Sunset provision

39. This clause provides for a sunset of the proposed Act on 30 June 2012.

PART 6 – THE AUSTRALIAN WATER FUND ACCOUNT

Clause 40: Establishment of the Australian Water Fund Account

40: This clause sets up a special Account for the purposes of the *Financial Management and Accountability Act 1997*. Special Accounts provide a mechanism for recording moneys set aside (hypothecated) for a particular purpose (e.g. a levy collected from an industry and applied in making grants for the development of that industry). Under the *Financial Management and Accountability Act 1997* (FMA Act), the money will remain in the Consolidated Revenue Fund until it is spent.

Section 21 of the FMA Act allows amounts to be paid out of the CRF and debited to a Special Account established by another Act. Subsection 21 (1) provides a standing appropriation of the CRF to enable payments up to the balance for the time being of the Special Account for the purposes of a Special Account.

Clause 41: Credits to the Account

41: The Account will be credited with appropriations to the Water Smart Australia and Raising National Water Standards elements of the Australian Water Fund which are to be administered by the Commission, and any other appropriations of the purposes and functions of the Commission.

Clause 42: Purposes of the Account

42. The funds in the Account may be expended for projects under the Water Smart Australia and Raising National Water Standards programmes under the Australian Water Fund which have been approved by the Minister, and the performance of the functions of the Commission.

PART 7 – MISCELLANEOUS

Clause 43: Confidentiality

43. This clause provides for an offence where a person obtains information in connection with the performance of their duties and makes a record or discloses that information and the record or disclosure is not made in accordance with the functions of the Commission or not permitted by law. The maximum penalty for this offence is 2 years imprisonment

Clause 44: Public availability of assessments

44. This clause sets out the conditions under which the NWC may make its assessments public. These include the Commission's initial assessment of Australia's water resources and the governance, management and regulation of those resources, biennial assessments of the performance of the water industry against national benchmarks, assessments of the implementation of the NWI and the COAG water Reform Framework, and the 2010-11 review of the NWI. These assessments may be made publicly available with the agreement of the Minister. Advice and recommendations, however, will not be made public.

Clause 45: Annual report

45. This clause requires the NWC to prepare an annual report on its operations for presentation to the Commonwealth Parliament. The report must also be provided to each of the Parties to the NWI.

Clause 46: Regulations

46. This clause enables the Governor-General to make regulations for the purposes of the proposed Act.