

COAG Review of the National Water Commission

Terms of Reference

The Review is for the purposes of Section 38 of the *National Water Commission Act 2004* (NWC Act) which requires that a review must be conducted of the National Water Commission's (NWC) ongoing role and functions in relation to the management and regulation of Australia's water resources by the end of 2011.

Based on the context attached, the Review will:

1. Assess the effectiveness and continuing appropriateness of the roles and functions of the NWC in promoting the objectives and outcomes of water reform, as follows:
 - assist with the implementation of the National Water Initiative (NWI);
 - promote and advocate the objectives and outcomes of the NWI;
 - assess the water reform progress of NWI parties and advise COAG;
 - report regularly and independently on opportunities to advance water reform;
 - provide independent advice to COAG, the Commonwealth or the Minister on matters relating to water;
 - advise the Minister in relation to any Commonwealth water-related program;
 - audit the effectiveness of the Murray-Darling Basin Plan and water resource plans;
 - as delegated to the Commission by the COAG Reform Council, assess the performance of Murray-Darling Basin states in meeting their reform commitments in the Commonwealth-State water management partnerships;
 - monitor and report on the impact of interstate water trade in the southern Murray-Darling Basin;
 - report biennially on the performance of the water industry against national benchmarks; and
 - advise on the conformity of reforms and projects with the objectives of the NWI when requested.
2. Provide advice and recommendations on appropriate options and institutional arrangements for the implementation of those functions which the Review considers should continue or commence. The arrangements need to be:

- clear and specific;
- efficient;
- effective and credible;
- not duplicative of other arrangements; and
- flexible to future changes in function;

Conduct of the Review

The review will be conducted by an external reviewer, appointed by the Australian Government Minister for Sustainability, Environment, Water, Population and Communities (delegated to the Parliamentary Secretary for Sustainability and Urban Water).

The external reviewer will be supported by a secretariat from the Department of Sustainability, Environment, Water, Population and Communities accountable to the reviewer. States and territories will be invited to second officers to the Secretariat.

The draft review report will be circulated to all COAG Water Reform Committee (WRC) members prior to completion of the final report

The reviewer will impartially determine the degree of communication and engagement with stakeholders and take such matters into account as he or she considers relevant, consistent with these terms of reference. The reviewer is, however, expected to consult fully with Commonwealth agencies, State and Territory governments, with key industry and environmental groups.

The reviewer will submit a report to the Minister for Sustainability, Environment, Water, Population and Communities (delegated to the Parliamentary Secretary for Sustainability and Urban Water), who will provide the report to the Prime Minister for submission to COAG by the end of 2011 and tabling in both Houses of Parliament within 15 sitting days of receipt. Given the timing constraints, the Review will be conducted with a view to reporting by October 2011.

Context for the Review

The NWC Act states in Section 39 that the NWC Act ceases to be in force on 30 June 2012.

The NWC Act requires, in Section 38, that 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 by the end of 2011.

Section 38 also states that the Review must be conducted 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. 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.

Paragraph 108 of the NWI states that *drawing on the NWC assessment [of the NWI, as set out in paragraph 106(a)] in 2010–11, COAG will review the objectives and operation of the NWC in 2011.*

Schedule C of the NWI states that *In 2010–11, COAG will review the ongoing role and function of the NWC following consideration of its third biennial assessment'. A report on the outcome of the review is to be tabled in each House of Parliament by the end of 2011.*

The NWC Act, under Section 7, sets out the statutory functions of the NWC, and the NWC or its successor body has additional functions under the *Water Act 2007* and as delegated by the COAG Reform Council.

In the 2004–05 financial year the NWC became responsible for the administration of two new Commonwealth funding programs, the *Water Smart Australia* program and the *Raising National Water Standards* program.

In 2007, responsibility for the *Water Smart Australia* program transferred to the Commonwealth Department. Remaining funds for the *Raising National Water Standards* program held in the Australian Water Fund Account would cease to be available when the NWC Act ceases unless the government determines otherwise.

Since the NWC was established, there have also been significant institutional reforms approved by COAG and by the Commonwealth Government, including:

- in 2007, consolidation of Commonwealth water policy and program functions in the one department (currently the Department of Sustainability, Environment, Water, Population and Communities);
- in 2007, establishment of the Murray-Darling Basin Authority and the Commonwealth Environmental Water Holder as new statutory bodies;
- in 2008, establishment of the COAG Reform Council and the delegation by the Council of certain water assessment functions to the NWC.

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