

26 February 2016

Review of the Natural Resources Commission Act 2003
Resources & Land Use Branch
Department of Premier and Cabinet
GPO Box 5341
Sydney NSW 2001

By email: nrcact@dpc.nsw.gov.au

Dear Review Committee,

Review of the *Natural Resources Commission Act 2003*

EDO NSW welcomes the invitation to comment on the Review of the *Natural Resources Commission Act 2003* (**Review**). As a community legal centre specialising in public interest environmental law, EDO NSW has had extensive engagement in the operation of the Natural Resources Commission (**NRC**) and with the legislation under which its functions arise.

EDO NSW strongly supports the continuation of an independent body tasked with establishing a sound scientific basis for the properly informed management of natural resources in the social, economic and environmental interests of the State. All Government decision making and policy making in relation to natural resource management (**NRM**), should be based on sound, independently verified science. As such, we support the continuation of the NRC but make a number of recommendations for improving the framework in which the NRC operates, and therefore harnessing the benefits that arise from having such a body.

We note that there are significant legislative reform processes underway in relation to both biodiversity legislation (including native vegetation regulation) and coastal management. EDO NSW has significant concerns about the scientific robustness of a number of these reforms.¹ These are key issues that the NRC has provided advice on since it was established - see the summary of NRC activities in the **Attachment**. Given these critical reform processes, we submit it is essential that the NRC is retained and has appropriate functions to independently monitor and analyse the effectiveness of the new legislation as it is developed and implemented.

We explore this further in relation to the Terms of Reference below.

¹ For example, see our submission to the Independent Biodiversity Legislation Review Panel *A legal assessment of NSW biodiversity legislation - Submission to independent review of biodiversity legislation in NSW* October 2014 [Download PDF](#); Submission on the Draft NSW Biodiversity Offsets Policy for Major Projects May 2014 - [Download PDF](#); and Submission on the Draft Landholder Guides and Draft Orders to implement self-assessable codes under the Native Vegetation Regulation 2013, May 2014 - [Download PDF](#); and Submission responding to the NSW Coastal Management Reforms, February 2016 - [Download PDF](#).

1. Whether the policy objectives of the Act remain valid and whether its terms remain appropriate for securing those objectives.

The objectives set out in section 3(a) and (b) remain valid and appropriate.

Section 3(c) will need to be amended once the *Native Vegetation Act 2003* is repealed. The NRC has played an important role in native vegetation management until now. Removing or weakening the oversight role would be a retrograde step. We support retaining a specific objective regarding assessing clearing of native vegetation under the new biodiversity laws (i.e., the operation of the proposed Biodiversity Assessment Methodology (**BAM**) under the proposed Biodiversity Conservation Act).

2. Whether the NRC's statutory functions remain appropriate for meeting the Act's objectives, or if they should be revised or new functions added.

We support the general function and specific functions identified in sections 12 and 13 of the current Act. We also submit that those functions that have been removed by changes to other Acts are still appropriate roles for NRC. For example, we recommend reinstating a clearer role in relation to overseeing Local Land Services (**LLS**).

The repeal of the *Catchment Management Authorities Act 2003* (**CMA Act**) and establishment of the *Local Land Services Act 2013* (**LLS Act**) substantially removed the NRCs statutory oversight role. Further consideration needs to be given to how the NRC and LLS relate to each other. The NRC should have a clear role in setting standards, auditing plans and providing scientific input into LLS activities, as it previously did for CMAs. The recent LLS 'strategic planning process' demonstrates a degradation in NRM planning processes without NRC input. In our submission on the process we recommended three areas for reform.² The NRC should have a clear role in reviewing strategic plans and performance indicators and auditing progress against those indicators, and a role to report on compliance and enforcement with NRM legislative requirements. The NRC as auditor would help to ensure good science and adequate consultation in LLS functions.

In relation to functions under other Acts, we support an ongoing role under the *Forestry Act 2012*. For example, the NRC should have a role in reviewing the upcoming renewal of Forestry Agreements. The Issues Paper (p6) notes future changes to the regulation of forestry as recommended by the Biodiversity Legislation Review panel may render NRC input unnecessary. As noted above, we submit that the NRC should have a specific role in evaluating the proposed reforms to ensure they are based on sound science. Repealing the NRC's forestry functions would be inappropriate given the need for scientific oversight of the reforms.

² Our 3 recommendations are: (1) Local Land Services Strategic Plans should not be finalised until the full suite of LLS responsibilities has been clarified, given the significant changes that have been foreshadowed in relation to native vegetation and biodiversity legislation in NSW. Alternatively, the Strategic Plans should build in a formal review process when a new Biodiversity Conservation Act is passed; (2) Strategies and performance indicators should be made 'SMART' (Specific, Measurable, Attainable, Relevant and Timely); and (3) The Strategic Plans should better articulate the clear role of LLS in ensuring compliance with environmental and natural resource management legislation. See EDO NSW submission on Local Land Services Draft State and Local Strategic Plans, 20 November 2015 - [Download PDF](#).

We also support an ongoing role under the *Water Management Act 2000*. Maintaining a science-based, independent review role for Water Management Plans is essential given both the ongoing reform processes in the broader context of the Basin Plan, and local changes that are constantly occurring, often to the detriment of the environment.

The role of the NRC in relation to coastal NRM will need to be clarified. We note that the NRC has completed a significant number of advices on coastal development (for example, SEPP 71 applications – see the **Attachment**), however SEPP 71 is to be repealed and replaced under proposed coastal reforms. The ongoing role of the NRC should be clarified to specifically relate to the new legislation.

In relation to the ‘Guiding Principles’ in section 14 of the NRC Act, we note that there is a double counting of socio-economic considerations. Having regard to the principles of ecologically sustainable development (as required in (a)) already involves considering social, economic and environmental impacts. If the preference is to have a separate principle on social and economic impacts, then there should also be a separate principle explicitly identifying environmental implications.

3. Whether there are any synergies between the NRC’s audit, review and reporting roles and the roles of other government agencies or statutory bodies which perform similar functions.

There are situations where a clearer review role for the NRC should prevail over other government body processes – in order to remove inconsistencies, avoid duplication of effort and enhance synergies. This is illustrated by the case study below.

Case study: Water Management Plan Review processes

In our submission on the 10 year review of the water management plans³ we noted that different terms of reference (**ToR**) guide the review processes being undertaken by the Natural Resources Commission (**NRC**) and the Department of Primary Industries – Water (**DPI Water**).

*While the NRC is constrained by ToR contained in the Water Management Act 2000 (**WM Act**) and in turn the Local Land Services Act 2013 (**LLS Act**), DPI Water has broader discretion to determine how it will review the Relevant Groundwater Plans. First, as the definition included in the LLS Act only refers to ‘State-wide standards and targets, and any State and national priorities... identified in a State Government **policy or plan or an intergovernmental agreement...**’, it would be possible to argue that the NRC’s review of the Relevant Groundwater Plans may exclude standards, targets and priorities outlined in legislation (such as the WM Act) or legislative instruments (such as the Basin Plan). The same is true of the requirement ‘to have regard to any other relevant State-wide and regional government policies or*

³ Available at:

https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2662/attachments/original/1457064433/sub_Groundwater_WSPs_EDONSW_0815.pdf?1457064433

agreements.’ This is clearly problematic insofar as WSPs are produced pursuant to the WM Act, while the Basin Plan now guides water management across much of NSW.

Second, the ToR do not impose a direct requirement for the NRC to assess WSPs against best available science or ESD. While s. 3A (b) of the WM Act implies that the former is permissible and some relevant policies, plans and agreements do state that NRM should be based on latest evidence and ESD, we are of the view that a clear, legislative requirement to consider these two elements is vital. This is particularly true given the NRC’s role as ‘an independent body set up to help government find evidence-based solutions to complex natural resource problems.’⁴

In our view, WSPs should be assessed **by the NRC** against clear criteria including: WM Act; Basin Plan (where relevant); ESD; best available science; intergovernmental agreements, including Intergovernmental Agreement on a National Water Initiative (NWI); and whether or not the yield is sustainable.

The fact that the NRC is only advisory, arguably weakens the ability to implement recommended changes. However, a strength of the NRC is that its reports are generally published (section 15(3)). In contrast, when an audit is performed internally by a government department or by a consultant, there is not always the same level of independence or transparency.

We support retaining the independent role of the NRC, and a requirement that all NRC reports are made public.

We also note that under the proposed NSW coastal reforms, a NSW Coastal Council will be re-established. The NRC Act may need to be amended as it currently abolishes such a body. The relationship (if any) between the new Council and the NRC should be clarified in relation to providing advice on coastal NRM issues. Similar clarifications will be required if a Biodiversity Advisory Council is established under the biodiversity legislation reforms.

4. The most appropriate governance arrangements for the NRC to fulfil its objectives.

EDO NSW supports an independent body. In this respect, the Act should clarify the extent to which it is under control of direction of the Minister. Section 11(1) currently states: *The Commission is not subject to Ministerial control in respect of the preparation and contents of any advice or recommendation of the Commission, but in other respects is subject to the control and direction of the Minister.* Such clarification would address community concerns about independence and to what degree the NRC is directed regarding certain outcomes.

The NRC currently reports to the Premier, however a requirement to report to the NSW Parliament would increase transparency and independence. Transparency and

⁴ <http://www.nrc.nsw.gov.au/our-functions-and-structure> (Accessed 6 August 2015).

responsibility to the NSW Parliament in the appointment of Commissioners and Assistant Commissioners is also important. Consideration should be given to specifying a minimum term of appointment for Commissioners and Assistant Commissioners to remove any perception of appointments being dependent on personal alignment with the policy of the Government of the day. We note that there is a precedent for this in the *Independent Pricing and Regulatory Tribunal Act 1992*.

An independent secretariat is important for maintaining both the independence and the perceived independence of an organisation such as the NRC. While administrative functions may be able to be shared, and agency advice can and should be sought on relevant issues, the NRC's substantive functions should be performed by individuals with independent scientific expertise and experience.

5. Whether legislative amendments should be made to update the Act, and to provide recommendations on the detail of any amendments, and any implementation and transitional issues.

As noted above, there are amendments that could be made to clarify the independence and strengthen the role of the NRC, as well amendments that will need to be made once new biodiversity and coastal legislation is passed. Other Acts may also need to be amended to ensure the NRC function of independent scientific input is retained or reinstated.

Thank you for the invitation to comment on the Review, and we look forward to discussing these issues at our upcoming meeting.

Yours sincerely,
EDO NSW



Rachel Walmsley
Policy & Law Reform Director

Attachment – Summary of NRC activities – 10 year review

Annual Report – 2004-2005

- Reports on State wide Standards and Targets (included a consultation paper and framework)
- Released 3 main case studies on the Murrumbidgee, Southern Rivers and Western Catchment Management Authority
- Released a number of documents regarding Standards and targets, and fact sheets regarding the NRC's role
- Reviewed the Cloud Seeding trial by the Snowy Hydro
- Gave 50 separate advices to the Minister in relation to SEPP 71 Coastal Master Plans

Annual Report 2005-2006

- Made further recommendations regarding additional targets and arrangements for the official *Standard for Quality NRM*
- Undertook extensive research and consultations regarding the Native Vegetation Act
- Provided secretarial support for the Ministerial Review Committee (which deal with Natural Resources and the Environment)
- Provided advice to the Government regarding changes to the salinity module in the Native Vegetation Act
- Began to organise a systemic review of Catchment Action Plans
- Provided advice based on the Snowy Hydro's first annual report on cloud seeding
- Provided 109 pieces of advice on SEPP 71 applications
- Commenced research and monitoring for the future review of water sharing plans

Annual Report – 2006-2007

- Undertook a review and gave recommendations regarding 12 CMAs Catchment Action Plans
- Published a report examining 8 of the Catchment Action Plans
- Investigated the economic impacts of purchasing water to increase river flows and improve river health
- Examined the science and made recommendations regarding the Lower Lachlan Groundwater Sharing Plan
- Made recommendations regarding the regulation of native vegetation
- Started work on the draft Catchment Action Plan audit framework
- Reviewed different monitoring frameworks and worked with government agencies to implement the NSW Monitoring, Evaluation and Reporting Strategy
- Provided further advice on the Snowy Hydros cloud seeding trial
- Started work on a revised guide to the Standard for Quality Natural Resource Management
- Engaged consultants to provide CMAs with support in developing their management systems
- Provide 6 pieces of advice regarding the Native Vegetation Act, and responded to 61 requests for advice under the Coastal Protection SEPP

Annual Report 2007-2008

- Developed a system for auditing CMAs (*continued from 2006-7*)
- Reviewed and made recommendations on the Catchment Action Plan of the Lower Murray Darling and the Sydney Metro CMAs
- Recommended a new process for allocating natural resource management funding among CMAs, and reviewed all the CMA's annual investment programs
- Produced a guide to help CMA managers understand the Standard (a quality assurance tool)
- Provided 13 separate advices for whether proposals for large scale coastal development were consistent with the coastal protection SEPP
- Provided advice on proposed improvements to the methodology for assessing applications to clear native vegetation should be adopted
- Provided further advice regarding Snowy Hydro environmental management plan for cloud seeding

Annual Report 2008-2009

- Completed 7 audits of the CMAs
- Reviewed and released a report regarding state wide progress in implementing Catchment Action Plans
- Commissioned research into alternative models for natural resources management (finding that the current model used by the NRC was the best model)
- Provided advice on whether more than 100 proposed changes to the Environmental Outcomes Assessment Methodology for assessing applications to clear native vegetation should be adopted
- Provided 5 separate advices on whether proposals for large scale coastal development were consistent with the Coastal Protection SEPP
- Provided further advice on Snowy Hydro cloud seedling trial and its environmental impacts
- Provided advice on whether the 13 CMAs investment programs should be approved
- Initiated and began work on a mid term review of natural resource management in NSW

Annual Report 2009-2010

- Recommended actions to ensure a sustainable future for river red gum and cypress forest
- Developed a framework to guide CMAs in upgrading their regions catchment action plans
- Conducted six audits of CMAs
- Reported on the native vegetation extent and condition target
- Provided advice on proposed amendments to Chapter 7 (Invasive Native Scrub Assessment)
- Provided advice on 7 Coastal development applications and whether they were consistent with coastal protection SEPP

Annual Report 2010-2011

- Reviewing the implementation of the 10 year state wide targets and catchment action plans, made 7 recommendations based on this review

- Released a framework for assessing and recommending upgraded catchment action plans
- Began a second round of CMA audits, starting with the Murray CMA
- Provided further advice on whether Snowy Hydro cloud seeding trial had an environmental impact
- Provided advice on the decision making process and the funding profile for allocating the pool of Catchment Action NSW funding
- Provided advice as to whether there is sound scientific and social evidence underpinning the proposed amendments to streamline the process for clearing native vegetation
- Advised whether 7 coastal development proposals were consistent with the coastal protection SEPP

Annual Report 2011-2012

- Recommended a new state wide goal and 5 new state wide targets to refocus NSWs efforts on the most critical NRM challenges
- Recommended governance as a new component of the Standard for Quality NRM
- Reviewed the state wide monitoring evaluation and reporting arrangements (MER) in NSW, and made recommendations to better focus the available resources
- Developed an assessment framework to evaluate upgraded catchment action plans (*continued from 2010-11*)
- Gave 8 presentations showing their work and vision
- Toured 9 of the 13 CMAs to familiarise the new Commissioner with CMA operations
- Assessed the Central West and Namoi Upgrade Catchment Action Plans and recommended both plans to be approved
- Gave the Government recommendations regarding the remaining 11 Catchment Action Plans
- Visited 11 CMAs to clarify their expectations, plans etc
- Reviewed socio-economic analytical tools to assist catchment action plan development
- Completed a repeat audit of the Lower Murray Darling Catchment Action Plan and commenced repeat audits of the Border Rivers-Gwydir and the Sydney Metropolitan Catchment Action plans
- Reviewed 8 strategic progress letters from CMA Boards
- Planned the approach for the next round of audits
- Continued review of the Snowy Hydro cloud seedling trial
- Gave advice regarding proposed adjustments to the boundaries of the river red gum reserves
- Commenced planning to review the first set of water sharing plans
- Provided advice on 7 coastal development proposals were consistent with the coastal protection SEPP
- Made two submissions to the NSW Planning System Review calling for better alignment of land use planning, catchment management, mining and water resource management systems

Annual Report 2012-2013

- Commissioner chaired a Stakeholder Reference Panel to oversee the establishment of Local Land Services
- Reviewed the state-wide monitoring, evaluation and reporting (MER) arrangements in NSW and made recommendations (*continued from 2011-12*)
- Provided input to the Native Vegetation Regulation Review
- Held a Natural Resource Management Roundtable to identify best practice
- Gave 4 presentations to share their work and vision
- Assessed and provided recommendations for upgraded catchment action plans in nine regions
- Advised Government on lessons learned from assessment catchment action plans (used to develop strategic plans)
- Completed repeat audits of the implementation of Border Rivers-Gwydir and Sydney Metropolitan Catchment Action Plans
- Reviewed nine strategic progress letters from CMA Boards
- Reviewed 31 water sharing plans and provided advice on these plans
- Recommended a funding profile regarding the Catchment Action NSW funding to maximise Government ROI)
- Reviewed the proposed listing of Yellow Mimosa as a feral native species
- Provided advice to the Minister for Environment on proposed adjustments to boundaries of the south-western cypress reserves
- Provided advice on whether 9 coastal development proposals were consistent with the coastal protection SEPP

Annual Report 2013-2014

- Independent evaluation of the effectiveness and efficiency of weed management arrangements
- Assessed and released a Draft report regarding potential environmental and socioeconomic impacts and benefits of undertaking active and adaptive management of white cypress pine forests in the Brigalow and Nandewar State Conservation Areas
- Commenced an independent evaluation of pest control
- Developed a Better Practice Guide that presented examples from nine catchment action plans assessed by the NRC in 2013-14
- Reviewed the transition of catchment action plans to Local Land Services and provided advice as to whether they meet legislative requirements
- Developed a draft standard for landscape management that sets performance expectations for Local Land services
- Recommended improvements for the process of allocating government funding to maximise return on investment (ROI) and applied this process to Catchment Action NSW funding (*continued from 2012-2013*)
- Developed a draft audit strategy which sets out risk-based approach to auditing outcomes
- Provided advice on a range of issues, from biosecurity, threatened species, strategic planning etc
- Gave seven presentations to conferences

- Provided advice on whether six coastal development proposals were consistent with the requirements of the coastal protection SEPP

2014-2015 Annual Report

- Released a report on the environmental and socioeconomic impacts and benefits of undertaking active and adaptive management of cypress forests in the Brigalow and Nandewar State Conservation Areas (*continued from 2013-14*)
- Evaluated the design of NSW Government Pest Control Trial (*continued from 2013-14*)
- Developed the Performance Standard for Local Land Services
- Developed a funding model regarding unlocking the full potential of Landcare volunteers
- Undertook a comprehensive assessment of risks to Local Land Services
- Commenced an initial audit of Local Land Services governance
- Recommended an allocation profile for Catchment Action NSW funding to Local Land Services
- Evaluated NSW Environmental Trust's Roadside Vegetation Implementation Project and identified priorities for potential future investment
- Commenced reviews of 7 water sharing plans in the Murray Darling Basin to help NSW office of water deliver 22 water resource plans by 2019
- Provided a submission to the Independent Biodiversity Legislation Review Panel regarding a model that addresses the principles and objectives of the Panels review
- Commenced an independent review of Local Land Services delivery of Catchment Action NSW funding from the Waste and Environment Levy Envelope
- Developed a framework to examine compliance of a Local Land Services strategic plan with legislative requirements
- Provided advice on whether six coastal development proposals were consistent with the coastal protection SEPP