

**Friends of the Earth Melbourne
Submission: National Water Commission Abolishment Bill**

Thank you for the opportunity to comment on the National Water Commission (Abolition) Bill.

Friends of the Earth has played an active advocacy role over for over a decade, promoting water reform and working to ensure a sustainable future for the ecosystems and communities of the Murray Darling Basin. We are encouraged by the progressive reforms and improvements that have been mandated by the National Water Initiative (NWI) and overseen by the National Water Commission (NWC).

We do not support the Abolition Bill and wish to convey our concerns about its implications for effective oversight and leadership of crucial water reforms.

There are worrying implications for communities and ecosystems that depend upon the achievement of water reform and best-practice water management. We believe the Abolition Bill will lead to less effective oversight of crucial, ongoing reforms. The abolishment of the NWC will deliver marginal savings and risk imposing considerable on-going costs to taxpayers, communities and the environment.

Role of the National Water Commission

The need for strong, capable and independent oversight of the national water reform process is as strong as ever, given the delayed implementation of the Murray Darling Basin Plan and future water resource management challenges.

The NWC has delivered frank and detailed advice to all governments on their implementation of the NWI requirements. This oversight remains crucial to guiding effective reform. While some components of the NWI have been successfully implemented, the 2011 COAG Review of the National Water Commission identified that “the full benefits from those initiatives require further elements of the NWI to be put in place.”¹

One key component of the NWI that has not been adequately implemented to-date is the requirement for improving Indigenous access to water resources and engagement in water planning. Friends of the Earth works closely with a range of Traditional Owner groups across the Murray Darling Basin. We wish to highlight the crucial role of the NWC in helping to guide reform that promotes equitable resource distribution and human rights for First Nations people. Indigenous water rights remain a key unfinished business in water reform and loss of the commission will mean the loss of a powerful voice, helping to promote equitable access to this country’s most precious resource.

Crucially, the 2011 COAG review found that

“the timetable adopted for the completion of the NWI’s milestones was ambitious and several of the key reforms have not yet been implemented because they have proven to be technically and politically difficult and demanding of scarce resources. The elements of the NWI still to be implemented are, by their nature, the more difficult ones and the role that can be played by a specialist and independent body like the NWC is likely to be even more important in the future.”ⁱⁱ

The 2011 COAG review strongly endorsed the role of the NWC and recommended that it continue without a sunset provision until the NWI is substantially replaced. Friends of the Earth wishes to reiterate the authoritative conclusions of the 2011 Review.

The assessment and monitoring role of the NWC is especially important considering the delayed implementation of the Murray Darling Basin Plan. This crucial and complex reform is still some way from completion. Many challenges remain in Basin Plan implementation including constraints management, the SDL adjustments mechanism, Water Resource Plan development and Indigenous rights. Friends of the Earth wish to stress that the NWC is undoubtedly the most appropriate and qualified agency to undertake up-coming audits of Basin Plan implementation.

Rigorous and reliable auditing is needed to ensure that the enormous investments made in the Basin Plan process are not squandered. Failure to ensure successful implementation of the Plan will impose costs far in excess of the funding required to maintain the NWC.

We wish to highlight the value of the NWC role in monitoring jurisdictions’ performance and providing leadership through triennial and biennial assessments. The assessments and policy advice produced by the Commission have provided leadership and encouraged innovation. This is powerfully illustrated through the NWC’s work promoting the recognition of Indigenous rights and interests in water management.

Case study: Indigenous water rights

The NWC has played a leading role in advocating for water management regimes that give effect to the principles of equitable distribution and human rights. Indigenous Australians’ rights to own and manage water are recognised in various international instruments, such as the UN Declaration of the Rights of Indigenous People, and are included within the NWI itself. Despite this recognition, reform to meet Indigenous values and uses has been one of the most challenging aspects of the NWI.

The NWC has an admirable track record of engaging with Indigenous people, advocating for Indigenous rights in water management and providing practical advice on how to achieve the later.

In 2009, the NWC created a dedicated, representative body of Indigenous Nations (the First People's Water Engagement Council) to advise the Commission on national Indigenous water issues. The Council consulted widely with Indigenous communities and water planners, held a First People's National Water Summit and provided clear advice to the NWC, which was subsequently incorporated into a position statement on Indigenous access to water resources. The Commission's position statement became a powerful tool for Indigenous Communities to progress their human rights.

Phil Duncan, former Chair of the FPWEC describes the importance of the Commissions role:

"The NWC took the initiative...They brought together a group of people in 2009... and out of that, a tool that was respected and resourced was born under the NWC and the main focus was to look at the Indigenous components of the NWI and provide the strategic advice on how we go about it. I think that was a wonderful time. I think that the products we developed under the trust of the Commission...gave us an opportunity formulate strategic partnerships."ⁱⁱⁱ

Through biennial assessments and ongoing policy advice, the NWC has continued to create an opportunity for Indigenous voices to be heard and to ensure that human rights are progressively recognised in Australia's water management systems.

Deficiencies of the Abolition Bill

The NWC is a very important voice, encouraging equity, human rights and innovation in water management.

The Abolition Bill transfers the Commission's functions to an agency that is not designed, nor able, to fulfill them. This is a fundamental flaw in the Bill.

The Productivity Commission's (PC) legislated role is limited to matters of "industry, industry development and productivity", and must have regard to other strictly economic matters listed in section 2(8) of the Productivity Commission Act. The Abolition Bill states that, for the purposes of the *Productivity Commission Act*, the audit of the Basin Plan and the assessment of the NWI are deemed to be 'matter[s] relating to industry, industry development and productivity'. This description clearly demotes the human rights and environmental components of this oversight process.

The PC was never intended, nor is it capable of overseeing the politically sensitive, environmental and rights-based reforms that are so vital to a sustainable future for ecosystems and communities in the Murray Darling Basin. The PC's role to advise on matters strictly related to industry and economic development effectively limits its ability to provide leadership on Indigenous water rights and other important issues.

We are extremely concerned that the loss of the NWC and the transfer of its powers to the PC will undermine the future of water reform and implementation of human rights for Indigenous Australians.

At this stage, we are not aware of any additional funding or resources being provided to the PC, to enable it to fulfill these vital functions. Given these limitations, it is highly likely that more complex and politically sensitive aspects of water reform will not receive due consideration.

In conclusion, Friends of the Earth believes that the NWC should be retained. The very marginal costs savings do not justify the abolition of this important agency. The PC is not an adequate body to replace the NWC's functions and we do not believe that the current Bill serves the national interest.

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- ⁱ COAG, Rosalky, D. (2011), *COAG Review of the National Water Commission*, p. i.
ⁱⁱ COAG, Rosalky, D. (2011), *COAG Review of the National Water Commission*, p. i-ii.
ⁱⁱⁱ National Water Initiative, 'Phil Duncan on 10 years of the National Water Initiative,' Video. <http://www.youtube.com/watch?v=UzXIINJayT4>