

**Report on the Review of the
*Natural Resources Commission Act 2003***

December 2009



**Premier
& Cabinet**

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Premier's Foreword

The Natural Resources Commission is a critical component of the natural resource management framework in NSW.

The *Natural Resources Commission Act 2003* (NRC Act) was introduced to establish an independent Commission to provide advice on specific issues as directed by the Government. Its core tasks include making recommendations on natural resource management standards and targets, auditing the performance of the catchment management authorities, reporting on the achievement of targets, and conducting inquiries. The NRC has fulfilled or made significant progress towards these core tasks, and continues to be a valued source of advice on natural resource management in NSW.

The Department of Premier and Cabinet has conducted the first statutory review of the NRC Act at my request. Key stakeholders and the wider community had the opportunity to comment during the review. There was strong agreement that the policy objectives of the NRC Act remain valid.

I am pleased to submit this report to Parliament.

A handwritten signature in black ink, appearing to read 'Nathan Rees', written in a cursive style.

Nathan Rees, MP
Premier
Minister for the Arts
Minister for the Central Coast

Summary

The purpose of this review of the *Natural Resources Commission Act 2003* (NRC Act) is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act are appropriate for meeting these objectives.

The NRC Act establishes a Commission to provide independent advice to the Government on natural resource management. It, along with the *Catchment Management Authorities Act 2003* and the *Native Vegetation Act 2003*, comprise a package of natural resource management reforms.

This review was informed by submissions from major stakeholders. Overall, stakeholders are supportive of retaining the NRC's role in providing independent advice on natural resource management to the Government. A number of comments focussed on supporting and improving the NRC's role in delivering an integrated approach to NRM issues.

Most of the issues raised do not warrant legislative change, and could be addressed through policy mechanisms.

This review provided an opportunity for analysis and comment by key stakeholders, most of which support the retention of the key provisions in the NRC Act. Some minor issues for further Government consideration have been identified. However, the report concludes that the statutory framework for the establishment of the NRC has been effective, and no significant legislative amendments are proposed.

Introduction to the review

The purpose of this review of the NRC Act is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act are appropriate for meeting these objectives.

Section 25 sets out the terms for the review of the Act.

1. The Minister is to review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
2. The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
3. A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Method for the review

The Premier issued a Background Paper in August 2009 which summarised the objects of the Act and the functions of the NRC. The paper was circulated to key stakeholders (listed below) and posted on the Department of Premier and Cabinet website.

A letter inviting submissions was sent to the following key stakeholders:

- Natural Resources Commission
- Department of Environment, Climate Change and Water
- Department of Industry and Investment
- Department of Services, Technology and Administration
- Department of Planning
- Office of Local Government
- Department of Human Services
- Catchment Management Authorities (CMA Chairs)
- Natural Resources Advisory Council

Public submissions formally closed on 25 September 2009. Seven (7) submissions were received. This report summarises the results of this consultation.

Overview of the Natural Resources Commission Act

The *Natural Resources Commission Act 2003* (the NRC Act) establishes the Natural Resources Commission (NRC) to provide independent advice to the Government on natural resource management (NRM). All NRC reports are made publicly available.

The NRC is a body corporate under the authority of a Commissioner. The Commissioner exercises the functions of the NRC Act and provides independent advice to the Government. Assistant Commissioners advise and support the Commissioner in providing advice to the Government.

The Act was assented to on 11 December 2003 and commenced on 23 January 2004. The five-year statutory review of the NRC Act is to be completed before 11 December 2009.

The NRC also performs functions conferred or imposed upon it by other legislation, including the:

- *Catchment Management Authorities Act 2003*
- *Native Vegetation Regulation 2005*
- *Threatened Species Conservation Act 1995*
- *Water Management Act 2000*
- *Snowy Mountains Cloud Seeding Trial Act 2004*
- *Forestry and National Park Estate Act 1998*
- *State Environmental Planning Policy 71 - Coastal Protection*
- *Fisheries Management Act 1994*

However, these NRC functions are not the subject of this review.

Who administers the NRC Act?

The Premier is responsible for the administration of the NRC Act.

Objectives of the NRC Act

The objects of the Act are defined in section 3 as follows:

The object of this Act is to establish an independent body with broad investigating and reporting functions for the purposes of:

- (a) establishing a sound scientific basis for the properly informed management of natural resources in the social, economic and environmental interests of the State, and*
- (b) enabling the adoption of State-wide standards and targets for natural resource management issues, and*
- (c) advising on the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for the purposes of the Native Vegetation Act 2003.*

The content of the NRC Act

Part 1 of the NRC Act includes the objects of the Act, definitions and lists the matters relating to the management of natural resources for the purposes of the Act.

Part 2 of the Act concerns the establishment of the Commission, including the appointment of the Commissioner, Assistant Commissioners and staff. Section 11 provides that *the Commission is not subject to Ministerial control in respect of the preparation and contents of any advice or recommendation of the Commission.*

The functions of the NRC are set out under Part 3 of the Act. It provides that *the Commission has the general function of providing the Government with independent advice on natural resource management.* The NRC's specific functions are set out in section 13:

- (a) to recommend State-wide standards and targets for natural resource management issues,*
- (b) to recommend the approval, under the Catchment Management Authorities Act 2003, of catchment action plans of catchment management authorities*

- that are consistent with State-wide standards and targets adopted by the Government for natural resource management issues,*
- (c) to undertake audits of the effectiveness of the implementation of those plans in achieving compliance with those State-wide standards and targets as it considers appropriate,*
 - (d) to undertake audits of those plans and other natural resource management issues as required by the Minister,*
 - (e) to coordinate or undertake significant natural resource and conservation assessments as required by the Minister,*
 - (f) to undertake inquiries on natural resource management issues as required by the Minister,*
 - (g) to assist in the reconciliation of particular complex natural resource management issues that are referred to the Commission by the Minister,*
 - (h) to advise the Minister on priorities for research concerning natural resource management issues,*
 - (i) to arrange for information to be gathered and disseminated on natural resource management issues.*

Part 3, section 14 identifies guiding principles for which the Commission must have regard in exercising its functions. Section 15 sets out the reporting requirements of the Commission, including that each report must be made public within a reasonable time after it is provided to the Minister. Section 16 allows the Commission to engage assistance from any government agency or other body or person as needed.

Part 4 contains a number of miscellaneous provisions, including prohibiting the Commission from accessing confidential Cabinet documents and proceedings. Section 25 provides for the review of the Act.

Schedule 1 contains the provisions relating to the Commissioner and Assistant Commissioners, including acting arrangements, the terms of office, remuneration and personal liability.

Schedule 2 lists the amendment of other Acts and instruments that were required upon the formation of the NRC to replace ten separate NRM bodies.

Schedule 3 Part 1 provides for savings and transitional arrangements that are consequent on the enactment of the Act. Part 2 abolishes the NRM bodies which the NRC replaced.

Progress after five years of the Natural Resources Commission Act

In 2005, the NRC developed and recommended a Standard for Quality Natural Resource Management (the Standard) and State-wide targets for NRM. The Government adopted the Standard and targets, and has reaffirmed its commitment to the State-wide targets in the revised NSW State Plan.

Each Catchment Management Authority (CMA) is responsible for developing a Catchment Action Plan (CAP) in partnership with its community and government agencies. These regional plans are intended to drive and integrate community and government investment and action in NRM. They are a primary mechanism for delivering the State-wide targets for water, land, biodiversity and community.

The NRC is responsible for auditing the implementation of the CAPs. The NRC is required to report on the effectiveness of CAP implementation in terms of progress in achieving compliance with the State's *Standard for Quality Natural Resource Management* (the Standard) and meeting the State-wide targets. In 2008, the NRC began an ongoing program of audits to assess whether catchment action plans are being implemented effectively, in compliance with the Standard and targets.

The NRC has completed audits on seven of thirteen CAPs. These found that the CMAs are effectively implementing the CAPs; however, both CMAs and CAPs are still at a relatively early stage of development. The NRC concluded that NSW needs to support continual improvement of CAP implementation and CMA performance by addressing the issues that reduce their effectiveness and efficiency.

The NRC has a role in two key projects:

- The Premier has instructed the NRC to conduct a regional forest assessment of the red gum and woodland forests in the Riverina, and cypress forests in south-western NSW. The assessments will determine conservation outcomes and a sustainable future for the forests, the forestry industry and local communities. The final reports will be completed by 21 December 2009 and 30 April 2010 respectively. The NRC has sought the views of the community as it carries out the assessments.
- The NRC has a role under the *Snowy Mountains Cloud Seeding Trial Act 2004* to supervise and review the trial. The trial commenced on 1 June 2004. The Act was amended in 2008 to extend the duration of the trial (taking the total trial period to 11 years) and the area of the trial.

Outcomes of the review

This section summarises the responses from the stakeholder consultation and the proposed actions as a result of those submissions.

Submissions received

A total of seven submissions were received.

Table 1: Submissions received for the review of the NRC Act.

Type of submission	Number
Catchment Management Authorities	3
State Government agencies	3
Natural Resources Advisory Council	1
Total	7

Themes and issues raised by submissions

All the submissions support the ongoing role of the NRC to provide advice to the Government on natural resource matters. A number of submissions noted that the NRC is integral to the effective operation of the NSW regional natural resource

management model, and that its contribution to a wide range of NRM issues has been positive and wide ranging.

Responses from submissions fell into five themes and have been presented here in the general order they arise in the Act. The majority of comments concentrated on Section 13 of the Act, which deals with the specific functions of the NRC. The themes are:

1. the objects of the Act
2. specific functions of the NRC
3. guiding principles
4. implementation of the Act
5. general/miscellaneous comments

The responses are arranged under these themes with options that the Government might employ as a result of the review.

Theme 1: Objects of the Act

The review considered whether the objects of the NRC Act are still valid or if additional concepts should be defined in the Act.

State-wide standards and targets

Most submissions expressed support for the NRC's continued role in enabling the adoption of the State-wide standards and targets. The CMAs discussed options to strengthen that role. For example, defining the State-wide targets in the Act or a Regulation or more clearly defining their purpose.

One CMA suggested replacing the reference to State-wide *standards* in 3(b) to State-wide *objectives* to avoid confusion between standards and targets.

Response

The Standard for Quality Natural Resource Management and State-wide Targets have been adopted by the NSW Government and the targets are included in the State Plan. There is no need for the Targets to be legislated.

Broadscale clearing under the Native Vegetation Act

One CMA suggested amending 3(c) to clarify the intention to obtain advice when broadscale clearing might be consistent with the Native Vegetation Act. For example: *advising when the circumstances in which broadscale clearing can be consistent with improving or maintaining environmental outcomes for the purposes of the Native Vegetation Act 2003.*

Response

The current object clearly defines the role of the NRC in relation to the consideration of when broadscale clearing is improving or maintaining environmental values and this proposed minor change is not considered necessary.

Catchment Planning Outcomes

One agency suggested adding an object to reflect the NRC's role in relation to catchment planning outcomes, as per the specific functions identified in Section 13 of the Act.

Response

It is preferable to retain the catchment planning role of the NRC in Section 13 to ensure its role in this area is clearly defined.

One agency recommended including an object to reflect the independent nature of the NRC's role.

Response

Section 3 clearly defines the objects of this Act is to establish an independent body.

Theme 2: Functions of the NRC

Section 12 of the Act provides the general functions of the NRC, and Section 13 identifies the specific functions of the NRC. The review considered whether these remain appropriate. The submissions from the CMAs concentrated on strengthening the NRC's role as a primary coordinator for NRM in NSW.

Submissions proposed the following additional functions for inclusion in Section 13 of the Act:

- to coordinate, direct and monitor implementation of State-wide NRM targets, and direct actions where needed to give effect to the achievement of the targets
- to investigate new NRM opportunities to maximise partnerships and investment in NRM
- to coordinate all NSW NRM Monitoring, Evaluation and Reporting (MER) through development of a suite of environmental performance indicators, store all NSW MER data, undertake quality assurance, and State of the Environment reporting
- align NRM investment programs of both Commonwealth and NSW Governments and facilitate a better interface with NSW regional NRM bodies
- to establish a standard for best practice management of natural resources
- to advise on coordination of funding sources and allocation of funds among NSW CMAs
- to undertake a state-wide assessment of the CAPs to analyse the collective impact of investment to meet state-wide resource condition targets as identified by the NRC and adopted by the NSW Government

Response

The Act allows the Minister to request that the NRC coordinate or undertake a range of tasks in relation to natural resource management, and the NRC has been involved in a number of the tasks proposed above. Consequently, it is not considered necessary to amend the Act.

Theme 3: Guiding Principles

Section 14 of the Act lists the guiding principles for which the NRC is to have regard in exercising its functions. The review considered whether these principles are still valid, or if additional concepts need to be defined.

Submissions made the following suggested additions:

- the anticipated impacts of climate change
- food security

- water availability and supply
- the principles of the National Framework for NRM Standard and targets

Response

The proposed inclusion of a guiding principle to consider the anticipated impacts of climate change has merit. However the Act does not preclude the consideration of the potential impacts of climate change and climate change adaptation. The Government will consult the NRC and key stakeholders as it considers this issue further.

The matter of food security could reasonably be considered under an existing guiding principle (b) *the social and economic implications of its recommendations and advice*.

Water availability and supply is an important factor, which the NRC already applies to its work. Water is included in the list of matters relating to natural resources in section 5. Its inclusion as a guiding principle is therefore not needed.

The NRC must consider national policies, such as the National Framework for NRM Standards and Targets under guiding principle (f) *State and national legislation and policies that are relevant to natural resource management*. It is not necessary or appropriate to single out a particular policy.

Theme 4: General / Miscellaneous Comments

A number of submissions commented on several matters of NRM policy that are outside the scope of the review of the NRC Act.

Response

These matters have been noted, but do not require amendment of the Act.

CMAs noted the importance of the NRC having access to staff or consultants with the appropriate current and correct technical advice, particularly in relation to auditing. It was noted in a submission that the Act limits the NRC from employing the most appropriate staff and engaging consultants. It was recommended that the Act be amended to enable the Commission to employ staff under the *Public Sector Employment and Management Act 2002*.

Response

The Act does not inhibit the NRC from recruiting appropriate staff or engaging consultants. Section 10 *Staff of the Commission* provides for employment under the *Public Sector Employment and Management Act 2002*, and for the use of services of any staff of a government agency. Section 16 (1) provides that *The Commission may enter into arrangements with any government agency or other body or person (including the engagement of consultants) for the provision of assistance to the Commission in connection with the exercise of its functions*.

Minor amendments – Statute Law Revision

The following minor amendments may, in the future, be proposed for inclusion in the Statute Law Revision program under the *Subordinate Legislation Act 1989*.

Section 16 (4) refers to the *Premier*. For consistency with the rest of the Act, it is suggested this be changed to *Minister*.

The reference to The Cabinet Office at section 19 (2) should be updated to reflect the current name of the Department.

Conclusion

The NRC Act is an important part of a legislative package, introduced in 2003, which established the regional delivery model for natural resources management.

This review has found that the Act is meeting its objectives and, on the whole, the terms of the Act remain valid for achieving these objectives.

Major stakeholders are supportive of the role of the NRC and the terms of its operation as established by the Act.