



New South Wales

Natural Resources Commission Act 2003 No 102

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New South Wales

Natural Resources Commission Act 2003 No 102

Act No 102, 2003

An Act to establish the Natural Resources Commission; to confer functions on the Commission with respect to natural resource management; to amend various Acts consequentially; and for other purposes. [Assented to 11 December 2003]

See also *Native Vegetation Act 2003*, *Catchment Management Authorities Act 2003*.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Natural Resources Commission Act 2003*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects

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*.

4 Definitions

In this Act:

Assistant Commissioner means an Assistant Commissioner for the Natural Resources Commission.

catchment management authority means a catchment management authority established under Part 2 of the *Catchment Management Authorities Act 2003*.

Commission means the Natural Resources Commission established under Part 2.

Commissioner means the Commissioner for the Natural Resources Commission.

exercise a function includes perform a duty.

function includes a power, authority or duty.

government agency means any public or local authority, and includes:

- (a) a government department, State owned corporation and council of a local government area, and
- (b) the head of a government agency.

natural resource management—see section 5.

5 Natural resource management—application of Act

For the purposes of this Act, **natural resource management** extends to the following matters relating to the management of natural resources:

- (a) water,
- (b) native vegetation,
- (c) salinity,
- (d) soil,
- (e) biodiversity,
- (f) coastal protection,
- (g) marine environment (except a matter arising under the *Fisheries Management Act 1994* or the *Marine Parks Act 1997*),
- (h) forestry,
- (i) any other matter concerning natural resources prescribed by the regulations.

Part 2 Establishment of Natural Resources Commission

6 Establishment of Commission

- (1) There is established by this Act a Natural Resources Commission. The Commission is a body corporate.
- (2) The functions of the Commission are exercisable by the Commissioner, and any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Commission.

7 Commissioner

- (1) The Governor may appoint a Commissioner for the Natural Resources Commission.
- (2) The Commissioner has the functions conferred or imposed on the Commissioner by or under this or any other Act.

8 Assistant Commissioners

- (1) The Commissioner may, with the concurrence of the Minister, appoint Assistant Commissioners for the Natural Resources Commission.
- (2) An Assistant Commissioner has the functions conferred or imposed on the Assistant Commissioner by or under this or any other Act.
- (3) An Assistant Commissioner is to assist the Commissioner, as the Commissioner requires.

9 Provisions relating to Commissioner and Assistant Commissioners

Schedule 1 has effect with respect to the Commissioner and an Assistant Commissioner.

10 Staff of the Commission

- (1) The staff of the Commission are to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Commission may arrange for the use of the services of any staff or facilities of a government agency.

- (3) For the purposes of this Act, a person employed under subsection (1) or whose services are made use of under subsection (2) is a member of staff of the Commission.

11 Ministerial control and functions

- (1) 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.
- (2) The Minister may delegate any of the Minister's functions under this Act (other than this power of delegation) to another Minister.

Part 3 Functions of Natural Resources Commission

12 General functions

- (1) The Commission has the general function of providing the Government with independent advice on natural resource management.
- (2) The Commission has such other functions as are conferred or imposed on it by or under this Act.

13 Specific functions

The Commission has the following functions:

- (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 co-ordinate 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.

14 Guiding principles

In exercising its functions, the Commission is to have regard to:

- (a) the principles of ecologically sustainable development, and

- (b) the social and economic implications of its recommendations and advice, and
- (c) an integrated approach to natural resource management issues, and
- (d) regional variation in the environment, and
- (e) indigenous knowledge of natural resource management, and
- (f) State and national legislation and policies that are relevant to natural resource management.

15 Reports

- (1) The Commission is to provide the Minister with reports on the exercise of all its functions under section 13.
- (2) The Commission is to provide the Minister with annual reports on its work and activities, including on:
 - (a) the outcomes of any audits or inquiries it has undertaken during the reporting period, and
 - (b) the progress in achieving compliance with State-wide standards and targets adopted by the Government, including the effectiveness of the implementation of catchment action plans in achieving compliance with those standards and targets.
- (3) Each report of the Commission is to be made public within a reasonable time after it is provided to the Minister.
- (4) A report of the Commission may be included in the annual report of the Commission under the *Annual Reports (Statutory Bodies) Act 1984*.

16 Assistance to Commission

- (1) The Commission may enter 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.
- (2) The Commission may obtain advice from any advisory committee appointed by the Commission.
- (3) The Commission may, for the purposes of exercising its functions, direct a government agency to provide the Commission with any relevant information held by the agency, and the agency must (subject to subsection (4)) comply with the direction.

- (4) If a dispute arises about any such direction, the dispute may be referred to the Premier for resolution.

17 Delegation of Commission's functions

The Commission may delegate any of its functions, other than this power of delegation, to:

- (a) an Assistant Commissioner, or
- (b) a committee of persons (at least one member of which is the Commissioner or an Assistant Commissioner).

Part 4 Miscellaneous

18 Act binds the Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

19 Cabinet documents and proceedings

- (1) This Act does not enable the Commission:
 - (a) to require any person to give any statement of information or answer any question which relates to confidential proceedings of Cabinet, or
 - (b) to require any person to produce a Cabinet document, or
 - (c) to inspect a Cabinet document.
- (2) For the purposes of this section, a certificate of the head of The Cabinet Office that any information or question relates to confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.
- (3) In this section:

Cabinet includes a committee of Cabinet or a subcommittee of such a committee.

Cabinet document means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 of the *Freedom of Information Act 1989*.

20 Proof of certain matters not required

In any legal proceedings, proof is not required (unless evidence is given to the contrary) of the appointment of, or the holding of office by, the Commissioner or an Assistant Commissioner.

21 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court.

22 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the disclosure of pecuniary interests by the Commissioner and an Assistant Commissioner.
- (3) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

23 Amendment of other Acts and instruments

The Acts and instruments specified in Schedule 2 are amended as set out in that Schedule.

24 Savings, transitional and other provisions

Schedule 3 has effect.

25 Review of Act

- (1) The Minister is to review this 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.

Schedule 1 Provisions relating to Commissioner and Assistant Commissioners

(Section 9)

1 Acting Commissioner or Assistant Commissioner

- (1) The Minister may appoint a person to act in the office of Commissioner during the illness or absence of the Commissioner.
- (2) The Commissioner may, with the concurrence of the Minister, appoint a person to act in the office of Assistant Commissioner.
- (3) A person, while acting in the office of Commissioner or Assistant Commissioner under this clause has all of the functions of the Commissioner or Assistant Commissioner (as the case requires).
- (4) A power to appoint a person to an office under this clause includes the power to remove the person from that office at any time.
- (5) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.
- (6) For the purposes of this clause:
 - (a) a vacancy in the office of Commissioner or Assistant Commissioner is to be regarded as an absence from the office of the Commissioner or Assistant Commissioner, and
 - (b) during any period when an Assistant Commissioner acts in the office of Commissioner under this clause, the Assistant Commissioner is to be regarded as absent from office as Assistant Commissioner.

2 Basis of offices

- (1) The office of Commissioner or Assistant Commissioner may be a full-time office or part-time office, according to the terms of appointment.
- (2) The holder of such a full-time office is required to hold it on that basis, except to the extent permitted by the Minister.

3 Terms of office

- (1) Subject to this Act, the Commissioner or an Assistant Commissioner holds office for such period (not exceeding 5 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

- (2) The instrument of appointment of an Assistant Commissioner may provide that the person holds office until:
- (a) the expiry of a specified period (not exceeding 5 years), or
 - (b) the completion by the Assistant Commissioner of a specified report, audit or inquiry,
- whichever first occurs.

4 Remuneration

- (1) A full-time Commissioner or Assistant Commissioner is entitled to be paid:
- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
 - (b) such travelling or subsistence allowances as the Minister may from time to time determine in respect of the person.
- (2) A part-time Commissioner or Assistant Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

5 Vacancy in office

- (1) The office of the Commissioner or an Assistant Commissioner becomes vacant if the person:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause or the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or

-
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove the Commissioner or an Assistant Commissioner from office for misbehaviour, incompetence or incapacity.

6 Filling of vacancy

- (1) If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) If the office of an Assistant Commissioner becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

7 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of the Commissioner or an Assistant Commissioner.
- (2) If, by or under any Act, provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time Commissioner or Assistant Commissioner or from accepting and retaining any remuneration payable to the person under this Act as a part-time Commissioner or Assistant Commissioner.

8 Personal liability

A matter or thing done or omitted to be done by the Commission, the Commissioner, an Assistant Commissioner or a person acting under the direction of the Commission does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject the Commissioner, an Assistant Commissioner or a person so acting personally to any action, liability, claim or demand.

Schedule 2 Amendment of other Acts and instruments (Section 23)

2.1 Coastal Protection Act 1979 No 13

[1] Long title

Omit “to constitute the Coastal Council of New South Wales and to specify its functions;”.

[2] Section 3 Objects of this Act

Omit section 3 (h).

[3] Section 4B Inspection of maps outlining coastal zone

Omit “Director-General of the Department of Urban Affairs and Planning” from section 4B (1).

Insert instead “Director-General of the Department of Infrastructure, Planning and Natural Resources”.

[4] Section 4B (2)

Omit “Director-General of the Department of Land and Water Conservation”.

Insert instead “Director-General of the Department of Infrastructure, Planning and Natural Resources”.

[5] Part 2 The Coastal Council of New South Wales

Omit the Part.

2.2 Fisheries Management Act 1994 No 38

[1] Section 7A Definitions

Omit the definition of *Fisheries Resource Conservation and Assessment Council*.

[2] Section 7C Fishery management strategy for designated activities

Omit section 7C (3).

[3] Section 7F Revision of draft strategy and publication of approved strategy following environmental assessment

Omit section 7F (2).

[4] Part 8, Division 1A Fisheries Resource Conservation and Assessment Council

Omit the Division.

2.3 Fisheries Management (General) Regulation 2002

[1] Part 12, Division 2 Fisheries Resource Conservation and Assessment Council

Omit the Division.

[2] Clause 348 Establishment of advisory councils

Omit clause 348 (c).

[3] Clause 351 Advisory Council on Fisheries Conservation

Omit the clause.

2.4 Forestry and National Park Estate Act 1998 No 163

[1] Section 3 Definitions

Omit the definition of *Resource and Conservation Assessment Council*.

[2] Section 15 Requirement for NRC forest assessment before agreement made

Omit “Resource and Conservation Assessment Council” and “Council” wherever occurring.

Insert instead “Natural Resources Commission” and “Commission” respectively.

[3] Section 25 Purpose of integrated forestry operations approvals

Omit “Resource and Conservation Assessment Council” from section 25 (a).

Insert instead “Natural Resources Commission”.

2.5 Freedom of Information Regulation 2000

Schedule 3 Public authorities

Omit the matter relating to the following from Part 3:

Healthy Rivers Commission

NSW Coastal Council

2.6 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “Coastal Council of New South Wales”.

Insert instead in alphabetical order “Natural Resources Commission”.

2.7 Public Finance and Audit Regulation 2000

Clause 17 Definitions of “authority” and “officer of an authority”

Omit “Coastal Council of New South Wales” from the Table to clause 17 (4).

2.8 State Environmental Planning Policy No 71—Coastal Protection

[1] Clause 3 Definitions

Omit the definition of *Coastal Council* from clause 3 (1).

[2] Clauses 18 (1) (e), 21 (2) and 22 (1) (b)

Omit “Coastal Council” wherever occurring.

Insert instead “Natural Resources Commission”.

2.9 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 2 Public offices

Insert at the end of Part 1 of the Schedule:

Commissioner for the Natural Resources Commission (being a full-time office holder)

Assistant Commissioner for the Natural Resources Commission (being a full-time office holder)

2.10 Water Management Act 2000 No 92

[1] Chapter 8, Part 1 Water Advisory Council

Omit the Part.

[2] Section 397 Exclusion of personal liability

Omit section 397 (2) (b).

[3] Schedule 6, heading

Omit “**Water Advisory Council and management committees**”.

Insert instead “**Management committees**”.

[4] Schedule 6

Omit “Sections 13 and 369”. Insert instead “Section 13”.

[5] Schedule 6, clauses 1, 4–6, 7 (1) and (7) and 8–14

Omit “the Water Advisory Council and” and “the Water Advisory Council or” wherever occurring.

[6] Schedule 6, clause 3 (a)

Omit the paragraph.

[7] Schedule 6, clauses 5 (1) (b) and 7

Omit “the Council or” wherever occurring. Insert instead “the”.

[8] Schedule 6, clause 7 (3), (4) and (6)

Omit “Water Advisory Council or” wherever occurring.

[9] Dictionary

Omit the definition of *Water Advisory Council*.

Schedule 3 Savings, transitional and other provisions

(Section 24)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Abolition of existing advisory bodies

2 Abolition of existing bodies

- (1) The following bodies are abolished:
Resource and Conservation Assessment Council (also called the Resource Assessment and Advisory Council)
Healthy Rivers Commission
Coastal Council
State Catchment Management Co-ordinating Committee
Native Vegetation Advisory Council
Water Advisory Council
State Wetland Advisory Committee
State Weir Review Committee
Advisory Council on Fisheries Conservation
Fisheries Resource Conservation and Assessment Council

- (2) Any person holding office as a member of any such body immediately before its abolition:
 - (a) ceases to hold office, and
 - (b) is not entitled to any compensation because of the loss of that office.
- (3) On the abolition of any such body, any assets or liabilities of the body become the assets and liabilities of the Commission.
- (4) A reference in any other Act, statutory instrument or document to any such body is to be construed as a reference to the Commission.

[Second reading speech made in—
Legislative Assembly on 12 November 2003
Legislative Council on 4 December 2003]

BY AUTHORITY