

Natural Resources Commission Act 2003

As at 24 May 2018

See also:

Government Sector Finance Legislation (Repeal and Amendment) Bill 2018

Long Title

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.

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- (c) (Repealed)

4 Definitions

(1) In this Act: "**Assistant Commissioner**" means an Assistant Commissioner for the Natural Resources Commission. "**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 Public Service agency, State owned corporation and council of a local government area, and
- (b) the head of a government agency.

"**natural resource management**" --see section 5. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

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*),
- (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

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Commission to exercise its functions.

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Commission makes use of) may be referred to as officers or employees, or members of staff, of the Commission. Section 47A of the *Constitution Act 1902* precludes the Commission from employing staff.

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

- (1) The Commission has the following functions:

- (a) to recommend State-wide standards and targets for natural resource management issues,
- (b) (Repealed)
- (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.

(2) (Repealed)

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 local strategic plans under the *Local Land Services Act 2013* 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.

16A Assistance from Scientific Committee

The Commission may seek and obtain the advice of:

(a) the Scientific Committee under the *Threatened Species Conservation Act 1995* on matters of a scientific nature relating to threatened species, populations and communities, such as the setting of state-wide and regional standards or targets for biodiversity conservation, and

(b) the Biological Diversity Advisory Council under that Act on matters of biological diversity, and

(c) the Social and Economic Advisory Council under that Act on matters relating to the social and economic impact of natural resource management.

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 information 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 disclose Cabinet information, or

(c) to inspect Cabinet information.

(2) For the purposes of this section, a certificate of the Secretary or General Counsel of the Department of Premier and Cabinet that:

(a) any information or question relates to confidential proceedings of Cabinet, or

(b) information is Cabinet information,

is conclusive of that fact.

(3) In this section: "**Cabinet**" includes a committee of Cabinet or a subcommittee of such a committee. "**Cabinet information**" means information that is Cabinet information under the *Government Information (Public Access) Act 2009*.

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 the 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 (Repealed)

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 Part 6 of the *Government Sector Employment Act 2013*, 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) The offices of Commissioner and Assistant Commissioner are statutory offices and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to those offices.
- (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 (Repealed)

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.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

See also *Native Vegetation Act 2003*, *Catchment Management Authorities Act 2003*.
Table of amending instruments *Natural Resources Commission Act 2003 No 102*. Second reading speech made: Legislative Assembly, 12.11.2003; Legislative Council, 4.12.2003. Assented to 11.12.2003. Date of commencement, 23.1.2004, sec 2 and GG No 16 of 23.1.2004, p 259. This Act has been amended as follows:

2004	No 88	<i>Threatened Species Legislation Amendment Act 2004</i> . Assented to 30.11.2004. Date of commencement of Sch 3.4, 31.10.2005, sec 2 (1) and GG No 132 of 28.10.2005, p 8940.
	No 91	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2004</i> . Assented to 10.12.2004. Date of commencement of Sch 1.21, assent, sec 2 (2).
2005	No 64	<i>Statute Law (Miscellaneous Provisions) Act 2005</i> . Assented to 1.7.2005. Date of commencement of Sch 3, assent, sec 2 (1).
2006	No 2	<i>Public Sector Employment Legislation Amendment Act 2006</i> . Assented to 13.3.2006. Date of commencement, 17.3.2006, sec 2 and GG No 35 of 17.3.2006, p 1378.
2007	No 27	<i>Statute Law (Miscellaneous Provisions) Act 2007</i> . Assented to 4.7.2007. Date of commencement of Sch 2, assent, sec 2 (2).
	No 94	<i>Miscellaneous Acts (Local Court) Amendment Act 2007</i> . Assented to 13.12.2007. Date of commencement of Sch 2, 6.7.2009, sec 2 and 2009 (314) LW 3.7.2009.
2009	No 54	<i>Government Information (Public Access) (Consequential Amendments and Repeal) Act 2009</i> . Assented to 26.6.2009. Date of commencement, 1.7.2010, sec 2 and 2010 (248) LW 18.6.2010.
2013	No 51	<i>Local Land Services Act 2013</i> . Assented to 1.7.2013. Date of commencement of Sch 7, 1.1.2014, sec 2 (1).
2014	No 72	<i>Marine Estate Management Act 2014</i> . Assented to 11.11.2014. Date of commencement, 19.12.2014, sec 2 and 2014 (833) LW 19.12.2014.
2015	No 15	<i>Statute Law (Miscellaneous Provisions) Act 2015</i> . Assented to 29.6.2015. Date of commencement of Sch 3, 15.7.2015, sec 2 (3).
2016	No 63	<i>Biodiversity Conservation Act 2016</i> . Assented to 23.11.2016. Date of commencement, 25.8.2017, sec 1.2 and 2017 (459) LW 25.8.2017.

Table of amendments

Sec 3	Am 2016 No 63, Sch 11.6.
Sec 4	Am 2007 No 27, Sch 2.36; 2013 No 51, Sch 7.35 [1]; 2015 No 15, Sch 3.44 [1].
Sec 5	Am 2014 No 72, Sch 4.10.
Sec 10	Am 2004 No 91, Sch 1.21 [1]-[3]. Rep 2006 No 2, Sch 4.40 [1]. Ins 2015 No 15, Sch 3.44 [2].
Sec 13	Am 2006 No 2, Sch 4.40 [2]; 2013 No 51, Sch 7.35 [2]; 2015 No 15, Sch 3.44 [3].
Sec 15	Am 2013 No 51, Sch 7.35 [3].
Sec 16A	Ins 2004 No 88, Sch 3.4.
Sec 19	Am 2009 No 54, Sch 2.32 [1]-[5]; 2015 No 15, Sch 3.44 [4].
Sec 21	Am 2007 No 94, Sch 2.
Sec 23	Rep 2005 No 64, Sch 3.
Sch 1	Am 2015 No 15, Sch 3.44 [5] [6].
Sch 2	Rep 2005 No 64, Sch 3.