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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-910738

**MR B. WALKER SC, Royal Commissioner**

**IN THE MATTER OF THE MURRAY-DARLING BASIN ROYAL COMMISSION**

**ADELAIDE**

**10.00 AM, TUESDAY, 24 JULY 2018**

**Continued from 19.7.18**

**DAY 12**

**MR R. BEASLEY SC, Senior Counsel Assisting, appears with MR S. O'FLAHERTY,  
Junior Counsel Assisting**

MR BEASLEY: Ready when you are, Commissioner. Before we commence we acknowledge this land that we meet on today is the traditional lands of the Kurna People. Sorry. We might just need to – thanks. Of the Kurna People, and we respect their spiritual relationship with their country. We also acknowledge the  
5 Kurna People as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kurna People today. We also pay respect to the cultural authority or Aboriginal people visiting from other areas of South Australia or Australia present here.

10 Commissioner, today the two witnesses are a Mr John Clements, who is on the Northern Basin Review Advisory Committee. He has provided the Commission with a witness statement, and I will shortly call him. We also have Emma Bradbury, from the Murray-Darling Association, which is the peak body for local government in the Basin. She will be the second witness. I was unavailable for her proofing session, so  
15 Mr O’Flaherty will take her through her evidence. Tomorrow, we have Mr Johnson, Bill Johnson who has also provided a statement to the Commission. He was an employee of the Basin Authority and did some particular work in relation to the Northern Basin Review. Also tomorrow is Dr Mallen, M-a-l-l-e-n, dash Cooper, who is an aquatic scientist who has supplied us with a submission and wishes to give  
20 evidence concerning the ecological element scoring method in schedule 6 of the Basin Plan, concerning SDL adjustments.

And on Thursday we have Professor Grafton, who is a water economist, who has written a number of papers, both on his own and with Professor Williams, who has  
25 already given evidence, concerning the issue of return flows in efficiency measures amongst other things and also giving evidence on Thursday is Mr Ian Cole, who is the Chair of Barwon-Darling, which is the – it is a representative group for irrigators in the Barwon-Darling region. And he’s giving joint evidence with Tony Thomson, who is an irrigator and a member of the group. He might be on the board. So that’s  
30 the evidence for this week.

Before we commence, there’s a couple of reports that I haven’t tendered yet and that are relevant for the evidence today that I thought I would just briefly take you to. The first is a report prepared by Bewsher Consulting entitled ‘Review of the  
35 Hydrological Modelling Frameworks Used to Inform Potential Basin Plan Amendments’. It’s a report concerning frameworks used for modelling for both the Northern Basin Review and the SDL adjustments. It’s dated September 2016. Can the Commissioner be given a copy of that report?

40 THE COMMISSIONER: I have it.

MR BEASLEY: On page 4 you will see the Terms of Reference for this particular report. Key objective:

*This review is to assess whether all hydrological model-based components of the SDLA assessment framework in the Northern Basin Review are technically sound and compliant with relevant aspects of the Basin Plan.*

5 There's a note under the three steps that:

10 *It is not the objective of this hydrological modelling review to vet any particular SDL adjustment quantity or any numerical revision of the SDL in any valley within the Northern Basin. Rather, the purpose of the review is to identify whether the MDBA modelling framework is an appropriate tool from which to make these determinations in the future.*

The ultimate conclusion is the framework is the best available science. Page 5, it's noted that:

15 *All of the modelling is based on historical climate conditions, which raises the issue as to whether the modelling is in fact based on the best available science given the modelling is based on historical climate conditions rather than having any input for climate change projections.*

20 There's a discussion on page 6 of how the modelling was put together. There's a reference to it being stitched together from 24 individual catchment models of the Basin's major river systems with the link modelling platform being described as the Integrated River System Modelling Framework, or RSMF. The two modelling scenarios that we know about: the without development scenario, which was modelled, and the base-line scenario, without development obviously trying to estimate how the natural river system worked. Baseline scenario including all entitlements, water allocation policies, water sharing rules, operations rules and infrastructure, etcetera.

30 To give a representation of the impact of human development and, of course, the modelling then goes on to – has gone on to attempt to determine what is the water required for the environment so as to reflect an environmentally sustainable level of take in a sustainable diversion limit. Page 7 provides a description of the modelling:

35 *Model runs used to base the benchmark model –*

40 which is described as run 847, and how the modelling worked by – at the bottom paragraph:

*Introducing time series, demands at key hydrological indicator sites, in an attempt to reinstate part of the without development flow behaviour –*

45 etcetera. There's a reference on page 8 to the ESLT report and the process referred to is an Environmental Event Selection Tool. And described in the middle of the paragraph:

5            *Whilst the Environmental Event Selection Tool process assisted in providing some repeatability, nevertheless it remains somewhat subjective. In fact, the reviewer understands one of the principal criticisms of the EEST was that two operators of the EEST could produce two different demand time series. In addition, because the process was manual and iterative, it was very time consuming.*

Then it goes on to say:

10            *There has been a development of a software module which ensures repeatability of the process.*

15            What that doesn't describe is how social and economic outcomes were also factored into the determination of the ESLT, as we know they were. There's then a description of six principles to guide the preparation of the environmental event sequence, which were – doesn't look like you would find them in any report. You will see at the footnote to 18, based on an email advice the reviewer, on 9 August 2016, from someone called Gavin Pride at the MDBA. There's – page 9 starts a commentary on the environmental equivalency requirement under the Basin Plan and second to last paragraph:

20            *Environmental scores are then calculated based on preference curves –*

25            sorry:

*The flow regime characteristics of flow event targets in the ESLT method comprise both the frequency of occurrence of the events and the length of dry spells between events.*

30            So that's obviously a reference to – in respect to each valley, the environmental watering requirements such as this amount of flow is needed for this amount of time and this percentage of years to achieve a certain environmental watering requirement, which ecologist expects – sorry, expect will have certain ecological outcomes that are desirable. Environmental scores are then calculated based on preference curves which describe a relationship between environmental outcome and a flow statistic such as frequency or dry spell. There's then, on page 10, commences a description of the model components of the Northern Basin Review.

40            THE COMMISSIONER: The Northern Standard.

              MR BEASLEY: Yes.

45            THE COMMISSIONER: Which is the term given to something described as a “new initial SDL model scenario”.

              MR BEASLEY: Are you on page 10? Yes. Sorry, I see, “consequent”. Yes.

THE COMMISSIONER: Yes. That – as I read this, that encompasses only river flow and environmental matters; is that correct?

5 MR BEASLEY: Yes. What that is leading up to is the difficulties – and this is something picked up by Mr Clements in his statement, but the difficulty of modelling a system that often has low flow, and whether the modelling can be considered to be entirely reliable when there's low flows such as those commonly experienced in the Northern Basin as distinct from the Southern Basin.

10 THE COMMISSIONER: I don't know whether somebody can explain this to me. I'm struggling a bit with the explanation on the foot of page 10, top of page 11, which - - -

15 MR BEASLEY: Existing recovery.

THE COMMISSIONER: Particularly item B. Perhaps just flag it, and come back to it later.

20 MR BEASLEY: Yes. I'm not sure I completely understand that either.

THE COMMISSIONER: I wonder if Mr Clements might be able to explain it.

MR BEASLEY: Not sure; I will ask him.

25 THE COMMISSIONER: Thanks.

30 MR BEASLEY: Then at page 11 it talks about time series of environmental demands and general terms delivery of water to meet demands and models are achieved through a system of ordering where downstream demands are passed upstream to water storage.

35 THE COMMISSIONER: It seems an odd review. If you look at footnote 27 on page 11, the reviewer more or less blandly notices that he hasn't been given access to material to enable - - -

MR BEASLEY: No, he hasn't. I was – I'm going to come to that.

40 THE COMMISSIONER: - - - an opinion as to whether the components of the Northern Standard have been appropriately optimised.

MR BEASLEY: Yes. There are some very heavy qualifications in this report, when we come to the conclusions. You will see on the page 12 demand time series for downstream outcomes.

45 THE COMMISSIONER: Yes.

MR BEASLEY:

*Flows through the Barwon-Darling system are almost entirely reliant on inflows from upstream tributaries. In order to maximise environmental outcomes, some amount of flow coordination from releases from the tributaries is desirable.*

5

THE COMMISSIONER: So what does that statement actually mean?

MR BEASLEY: Well, I think that's coming to ultimately what became one of the toolkit – part of the toolkit for the Northern Basin and the Northern Basin Review.

10

THE COMMISSIONER: This is the coordination and shepherding?

MR BEASLEY: Yes. One of which is protection of environmental flows; the other which is coordination and shepherding of water flows, which obviously requires the cooperation of - - -

15

THE COMMISSIONER: It's just that earlier statement:

*Flows through the Barwon-Darling system are almost entirely reliant on inflows from upstream tributaries.*

20

MR BEASLEY: Yes.

THE COMMISSIONER: That means as opposed to - - -

25

MR BEASLEY: Rain or snow.

THE COMMISSIONER: - - - rain in the immediate vicinity.

30

MR BEASLEY: Yes. Yes.

THE COMMISSIONER: I mean, it is in the nature of upstream contributors to contribute to flow.

35

MR BEASLEY: Exactly.

THE COMMISSIONER: That's why they're called upstream tributaries.

MR BEASLEY: Yes. So:

40

*Because of these difficulties, the reviewer understands the MDBA modelled two possible water delivery strategies. Strategy 1 assumed a fully managed system that was in place whereby coordinated releases were made from each tributary so as to supplement unregulated flows in the Barwon-Darling in order to meet the environmental demand time series at Burke and elsewhere. Development of demand time series within the Barwon-Darling EEST included the added complexity of coordinating regulated releases from multiple catchments with*

45

*varying levels of connectivity conveyance and travel times that are highly dependent on antecedent conditions.*

5 *Strategy 2 assumed low flow connectivity between the various tributary systems in the Barwon-Darling. In this strategy individual demands targeting the delivery of low flows to the Barwon-Darling were developed for each individual regulated catchment. The demand series for strategy 2 were simpler, targeting lower flows and developed without the use of a separate EEST. Individual demands for each catchment were independent of each other and as such no flow coordination was assumed. It is not within the terms of the*  
10 *reference for the current review to assess the practicality of implementing the strategies, particular strategy 1.*

15 *There are currently no operating arrangements and there is possible insufficient knowledge of losses and travel times to allow strategy 1 to be implemented at present. However, the MDBA advisor review of strategy 1 had been predicted on significant advances in knowledge and the desire –*

20 the desire –

*to maximise the efficiency of water recovered.*

25 THE COMMISSIONER: What does that mean, “advances in knowledge”? What, to which the reviewer had not been made privy?

30 MR BEASLEY: Well, if the reviewer was made privy to them, he hasn’t specified them in the report such that it wouldn’t be admissible in a court. I don’t have Mr Bewsher here and so I don’t know. I have suggested we now write to him to see if he’s – we can’t summons him, because he is interstate, but see if he is willing to come.

THE COMMISSIONER: That’s not a reason why we can’t summons him. It’s not because he is interstate that we can’t summons him.

35 MR BEASLEY: I apologise.

THE COMMISSIONER: It is because he may have a connection which may give him the shield of the Crown.

40 MR BEASLEY: You’re correct.

THE COMMISSIONER: Which is yet to be tested.

45 MR BEASLEY: Well, I don’t know whether he does. I mean, he shouldn’t.

THE COMMISSIONER: That’s what I mean.

MR BEASLEY: He should be an independent - - -

THE COMMISSIONER: I don't want to canvas any of the issues that may arise in the High Court, but let me make it clear: I don't understand that there's any issue in  
5 the High Court concerning the operation of the Service and Execution of Process Act.

MR BEASLEY: No. You're probably right. Yes. Page 14 starts at a discussion of the SDL adjustment overview and the various provisions in the Basin Plan in  
10 sections 17 and also schedule 6. The default method, the commentary there at pages 14, 15 and 16 are straight out of what's in the Basin Plan that we've gone through.

THE COMMISSIONER: Yes.

15 MR BEASLEY: And our discussion of the limits of change and environmental equivalency that are required for SDL modelling. Page 16, application within the modelling framework:

20 *Because of the requirements described above, the process of determining SDL adjustment volume requires numerous iterations within the modelling framework. The attached figure 1 illustrates this iterative process, and was provided by the Authority during interviews conducted.*

25 You will see there's a somewhat complicated diagram on page 17, which you follow the arrows depending on what happens. You've got your SDL volume, your environmental demand sequence, pre-process – I'm not sure what that refers to.

30 THE COMMISSIONER: I'm bound to say this is yet another picture that is useless because it requires verbal description.

MR BEASLEY: It does.

35 THE COMMISSIONER: You would be better off with an accurate verbal description.

MR BEASLEY: You would be better off with that. There's no box here for social and economic outputs, which we know have been factored into both the NBR and  
- - -

40 THE COMMISSIONER: I assume that's true because third party impacts, one of the diagrams on the right, normally in this area of discourse seems to refer to the physical impact of water, either its presence or absence.

45 MR BEASLEY: It might. I'm not sure whether that's a reference to impacting - - -

THE COMMISSIONER: Well, you wouldn't know because the picture, in the interests of supposedly conveying a thousand words, doesn't tell you.

MR BEASLEY: When I remind you of the Northern Basin Review report, though, it makes it absolutely clear that in some unspecified way or unparticularised way, social and economic outputs have been reflected in the 70 gigalitre reduction, but you won't find any further description or analysis as to how that's occurred. The  
5 point you were picking up before about the footnote, page 18 – which commences with the Northern Basin Review – it talks about the 390 gigalitre recovery for, in the first paragraph, recovery of water for the environment made up 247 gigalitres for local catchments and 143 to be shared. Modelling documentation:

10 *There is currently no formal documentation of the modelling undertaken for the Northern Basin Review, but the reviewer understands a report is in preparation. An early draft of this report has been shown to the reviewer. As the modelling framework is essentially the same as that used during the preparation of the Basin Plan and includes enhancements, the reviewer*  
15 *endorses the modelling framework. Whilst it's not within the Terms of Reference of this review to assess the IRSMF that forms the basis – the integrated river system framework that forms the basis of the modelling for the NBR - - -*

20 THE COMMISSIONER: Can I interrupt you.

MR BEASLEY: Yes.

25 THE COMMISSIONER: Why not? I'm just looking at what you said on page 4:

*The purpose of this review is to identify whether the MDBA's modelling framework is an appropriate tool from which to make these determinations in the future:*

30 Wouldn't you therefore need to be able to opine about the basis of the modelling?

MR BEASLEY: I think – I read that as – well – yes, I can't see how the IRSMF is not part of the modelling.

35 THE COMMISSIONER: Look, it's – he describes it - - -

MR BEASLEY: Base components, though.

40 THE COMMISSIONER: - - - as forming the basis for the modelling of the Northern Basin Review. I may be old-fashioned, but doesn't that mean by definition it is something that you need to look at in order to determine whether the modelling framework is an appropriate tool?

45 MR BEASLEY: I would need Mr Bewsher to - - -

THE COMMISSIONER: Well, I suffer from simply reading the English.

MR BEASLEY: Yes. If you – if you look further down, I don't know whether this is an answer, but further down on page 41.3:

*As noted in the Terms of Reference, the following –*

5

I don't know whether this is noted, maybe it's noted in the more expanded Terms of Reference in appendix A. It says at the bottom of 4:

*As noted in the Terms of Reference, the following modelling components were not the subject of this review. This is because they have been subject of previous reviews and validity checks and one is the Integrated River system Modelling Framework.*

10

I think the Terms of Reference are page - - -

15

THE COMMISSIONER: I think that's my point. Namely, the Terms of Reference for a review - - -

MR BEASLEY: Are pretty narrow.

20

THE COMMISSIONER: Well, no. They seem to deprive the review of the capacity to be one; isn't that right?

MR BEASLEY: Again - - -

25

THE COMMISSIONER: "Review this for me, but you're not allowed to look at these essential components because they have already been reviewed," is what is said in 1.3.

30

MR BEASLEY: And, in terms of those previous reviews, there's some important notes on page 19 of this report.

THE COMMISSIONER: Yes.

35

MR BEASLEY: Talking about – commencing at 18:

*It is appropriate that some comment be made about the manner in which the modelling framework is to be used particularly having regard to known deficiencies and inaccuracies in the individual models that make up the IRSMF.*

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THE COMMISSIONER: This reviewer makes it pretty plain in that passage that although he has been told by the Terms of Reference, "Hands off the IRSMF," he's not willing to allow that to pass as him being mistaken as endorsing it.

45

MR BEASLEY: Correct. And just on page 19, there's one matter of significance regarding Mr Clements's evidence that I wanted to take you to. Obviously, there's a qualification paragraph, second paragraph:

*All hydrologic models are only approximations of reality.*

And I think we know that. But dropping down to his previous assessments regarding the modelling from 2010, you will see:

5

*c) average without development conditions are represented poorly in the Namoi, and the Namoi is therefore not suitable for modelling environmental demands. The Namoi unaccounted losses and gains are large, which suggests that the model would benefit from a calibration with more realistic estimates of ungauged inflows.*

10

But importantly, from Mr Clements's point of view:

15

*Care should be taken in using models for any low flow environmental water demands.*

And that's part of Mr Clements's evidence, that there needs to be logistical planning – sorry, there needs to be a logistical approach to meeting environmental water demands in the Northern Basin.

20

*(g) in all cases, models will be improved –*

no doubt they would –

25

*by a more consistent method of calibration.*

THE COMMISSIONER: It's the last sentence of 3.2.3, which is deadpan but significant.

30

MR BEASLEY: Yes. Yes, it may be significant, yes.

THE COMMISSIONER: Well, this reviewer seems to be saying, rather politely, that the MDBA was aware of deficiencies.

35

MR BEASLEY: Yes.

THE COMMISSIONER: And proceeded nonetheless.

MR BEASLEY: Well, I think that's reflected in (a) to (d) on page 20.

40

THE COMMISSIONER: Yes.

MR BEASLEY: Where it mentions the matters in (a), (b) and (c) and (d) says:

45

*Despite the discussion above, the deficiencies and inaccuracies in the underlying models must be considered when evaluating the model outcomes. In this regard, the reviewer understands that the MDBA will also utilise other*

*non-modelling procedures that are not specified and information which is not specified when recommending revised SDLs for the Northern Basin.*

5 THE COMMISSIONER: I gather from the way – the rather circumspect way this report is written that when the author uses the expression “the reviewer understands that the MDBA,” etcetera, we are having here relayed in summary form something that the MDBA officers have informed him.

10 MR BEASLEY: I would - - -

THE COMMISSIONER: Certainly, if the MDBA thinks what I have just said is wrong, they are very welcome to send me a note to that effect.

15 MR BEASLEY: Yes. I would read into it – and this is – there’s an element of speculation in this, because that’s what we have to go on, but it doesn’t sound as though the reviewer was given a great deal of detail about these things. Otherwise, you would expect a - - -

20 THE COMMISSIONER: This is a review to which the MDBA takes some trouble on the second page of print to claim it. I don’t mean to endorse it; I just mean to claim it. One would have thought that if there’s anything seriously wrong in it, attributed to the MDBA, then the entity – being the MDBA – that claims the copyright of this report might have had something to say about it.

25 MR BEASLEY: No doubt that’s right, but my – perhaps it’s more than speculation: I would have thought that it’s likely that if Mr Bewsher was informed of the details of what the non-modelling procedures and information were going to be used by the MDBA in recommending revised SDLs for the Northern Basin he, as a competent scientist, would likely have provided some detail in the report about what those matters were. Now, it’s not impossible he was told and he just didn’t put it in the report, but I don’t mean – I don’t mean to be critical of Mr Bewsher at all, but saying, “The MDBA will utilise other procedures and information,” without saying what they are, is next to useless.

35 THE COMMISSIONER: Well, to be fair to Mr Bewsher, perhaps I should publicly say I may well be critical of Mr Bewsher. If you look at what he writes on page 21, it may well be he should have an opportunity – that he can create, of course, by contacting us – to dispel a concern that is provisionally aroused by this sentence:

40 *The information presented above –*

and in something in the attachment B –

45 *as well as the discussions of modelling procedures that were undertaken during the review.*

MR BEASLEY: Yes.

THE COMMISSIONER: Apparently those are procedures that include what he has just described as “non-modelling procedures”:

5                   ...did not indicate any inconsistencies of the modelling approach with the requirements of the Basin Plan.

Now, I don't think Mr Bewsher is a lawyer, but let me assume that many laymen are perfectly competent and may be indeed expert at expressing certain legal opinions in the area of their expertise. I have in mind engineers, for example, concerning  
10 compliance with the standard that has been legislated. Assuming that he has that expertise, I don't find in the review anything at all satisfying as to how that could possibly be true bearing in mind the deficiencies identified in relation to a procedure which by statute has to have the best available science.

15 MR BEASLEY: Yes.

THE COMMISSIONER: I mean, I think it is as simple as that, and maybe Mr Bewsher will be criticised by me along those lines. I've now made that public and Mr Bewsher can or cannot respond as he sees fit. The MDBA can respond as they  
20 see fit.

MR BEASLEY: I read this report for the first time last night and I have been informed about a 2013 Bewsher report that was only produced under an FOI request, and I think it's part of the documents that the Environmental Defenders Office of  
25 New South Wales obtained, although it's possible that it was obtained by an FOI request from the Australia Institute; I am not quite sure which one. That's a report I haven't read. But as a result of being made aware of those two reports is why I have suggested we contact Mr Bewsher and either invite him to come along or do something else. You will note there's some tables commencing at page 22,  
30 summarising a response to the Terms of Reference.

THE COMMISSIONER: Yes.

MR BEASLEY: One, the SDL modelling frameworks and modelling processes  
35 implemented by the MDBA are compliant with default method ..... says they're fully consistent with the default method in the Basin Plan. Appropriate for the supply contribution of the 715. He says modelling frameworks are appropriate for calculating supply contribution. Transparent, repeatable and objective:

40                   *Repeatability and objectivity have been enhanced by the ..... procedures.*

THE COMMISSIONER: Well - - -

MR BEASLEY: Now, “enhance” may not be good enough for science. We have  
45 heard some evidence about that.

THE COMMISSIONER: Well, just “transparency” which is of some interest to me. This is a review.

MR BEASLEY: Well, it can’t be transparent based on this report.

5

THE COMMISSIONER: This is a reviewer that says “transparency would be improved” by - - -

MR BEASLEY: “Would be improved,” yes.

10

THE COMMISSIONER: - - - supplying further documentation.

MR BEASLEY: Yes. Well, “improved” might be one word. You could also say transparency might be achieved.

15

THE COMMISSIONER: Well, that’s what I mean. It’s not very impressive that that happened. But then if you go to the Terms of Reference in appendix A, there are a number of things that I probably will criticise about it, including the uncertain and unspecific language of paragraph 3 under the Scope of Work, which after a number of items which are, as a matter of language, comprehensive in the scope of the review – as you might expect would be necessary for there to be any review – the idea of a mechanic finding out whether 90 per cent of my car is operating is just ridiculous. And similarly here, review of the modelling, hydrologically modelling frameworks is surely the whole.

20

25

They have excluded it as if it’s designed to avoid duplication, wasteful duplication. They have excluded from it items, only four of which are specified, you will see that (e), (f), (g) and (h) which include the IRSMF as not being included because they’ve already been reviewed, those four items are preceded by the words “these include”. Any reader would say and what else? In other words, how imperfect, how incomplete, and deliberately so, is this review? But it gets worse. Top of A3.

30

MR BEASLEY: Can I just pause though before you say it gets worse. I mean, (h) to the extent there might be a claim that (e), (f) and (g) have been looked at previously, in terms of (h) I’m not sure anyone could convince me that there has been any explanation by the Basin Authority that can be tested by science as to how they arrived at ESLT.

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THE COMMISSIONER: And therefore how any reviewer could simply opine that there has been consistency with the Basin Plan, which itself must be consistent with the Act, is of great concern because I’m sure this review cost quite a bit of public money and it seems to me it was set up to be deficient. On page A3, I note the intended procedure for this review called independent. That’s the first word of the appendix:

40

45

*Independent review is sought. This independent review is to be provided by way of a draft to the Authority for comment.*

MR BEASLEY: Yes.

THE COMMISSIONER: I mean, in a sense, it is funny, but it's laugh rather than cry. This is not the way an organisation should set up an independent review.

5

MR BEASLEY: But we know it does because we know from the CSIRO report that Dr Colloff gave evidence on that this isn't new.

THE COMMISSIONER: Yes. So this is an independent review where a draft is commented upon the body responsible for the activities being reviewed, that insists that its comments must be taken into consideration – that's the second last line of this document – for the final report. There is no – I have not seen any trace in this review telling the reader what comments were received by the MDBA and how they've been taken into consideration.

15

MR BEASLEY: What's – yes.

THE COMMISSIONER: Which seems, if I may say so, very considerably less than transparent.

20

MR BEASLEY: There's probably nothing wrong with a report being provided to the client with the client saying, "Look, I think you have missed this up or you got this fact wrong, what do you think about that?" With the independent reviewer then giving - - -

25

THE COMMISSIONER: So long as all that was recorded.

MR BEASLEY: But giving a draft is different.

THE COMMISSIONER: So long as the to and fro by which correction is undertaken is recorded, so much the better, footnote to say this statement was challenged in the – by the MDBA upon provision of the report.

35

MR BEASLEY: Yes.

THE COMMISSIONER: The author has taken that challenge into account and either modifies or maintains the author's original position, giving reasons for any modification.

40

MR BEASLEY: All right.

THE COMMISSIONER: That's transparency.

MR BEASLEY: Yes.

45

THE COMMISSIONER: And that would preserve the independence of a review.

MR BEASLEY: Page 24, term of reference modelling methodologies used by the MDBA to support the Northern Basin Review are (a) transparent, repeatable, practical and objective. Again, transparency would be improved, etcetera. Practicality and objectivity has been enhanced.

5

THE COMMISSIONER: Well - - -

MR BEASLEY: The same problem.

10 THE COMMISSIONER: - - - Mr Bewsher, perhaps, might like to consider whether he should not answer this question: don't you mean it is not transparent?

MR BEASLEY: I would have thought, if that was put to him, he would have to say yes. Now, page 25 – sorry – it starts at the bottom of 24:

15

*In assessing the above, the reviewer should consider whether the methods and approaches used to (c) produce environmental demand time series and representation of water recovery strategies are evidence based, technically sound and fit for purpose.*

20

At the bottom of 24, the box there:

*The biggest challenge for the procedure in the Northern Basin is the manner in which demand time series are generated at the bottom of the regulated tributaries in order to meet environmental demands in the Barwon-Darling at Bourke.*

25

The top of 25:

*It must be recognised there are currently no management arrangements in place that would allow the necessary flow coordination to take place so that releases from the tributaries could be synchronised to achieve environmental flow targets in the Barwon-Darling.*

30

35 Just pausing there, that's still the case:

*Nevertheless, these could be developed in the future.*

Like many things can be:

40

*Leaving aside the institutional arrangements that would be needed, the hydrological issues associated with such flow coordinated procedure presents some challenges. These are the prediction of flow losses and flow routing, the influences of operational constraints –*

45

That's just limited channel capacity –

*and the uncertainty and variability introduced by antecedent moisture conditions.*

5 I would add to antecedent moisture conditions, you could probably add in the  
uncertainty and variability of not including climate change projections. Bottom  
paragraph of this box on 25:

10 *There is also the issue of protection of environmental flows passed along  
unregulated reaches where the existing irrigator access rules would allow  
extraction within licenced flow ranges.*

This is, obviously, a reference to the Barwon-Darling water sharing plan:

15 The reviewer understands that no flow protection arrangements have been included  
within the current scenarios under consideration within the NBR.

THE COMMISSIONER: The next sentence is pretty remarkable, isn't it?

20 MR BEASLEY: Yes.

THE COMMISSIONER: ..... records that an individual irrigators access would be  
limited to his entitlement - - -

25 MR BEASLEY: Well - - -

THE COMMISSIONER: - - - which – I suppose that's why it's called an  
entitlement – which in turn is subject to the cap. I suppose that's why it's called a  
cap. And the water sharing plan access limits. I suppose that's why they're called  
limits. I mean, that is a - - -

30 MR BEASLEY: All that's fine, but all that's - - -

THE COMMISSIONER: I mean, that is a derisory sentence for a reviewer to have  
included.

35 MR BEASLEY: Well, it's also irrelevant to the protection of environmental flows.  
I mean, of course an irrigator is limited to the amount of water they're allowed to  
extract based on their license.

40 THE COMMISSIONER: I have no idea what that sentence was intended to add by  
way of intelligent consideration of the matter.

45 MR BEASLEY: Yes. Well, I don't understand the linking between that and the  
"issue" of protection of environmental flows. But that was, obviously, part of the  
toolkit and its part of the concern of the Advisory Committee when they did their  
final report to the Basin Authority.

THE COMMISSIONER: Are you tendering Mr Bewsher's final report?

MR BEASLEY: I am. I just want - - -

5 THE COMMISSIONER: Which is, I infer, a report that takes into consideration unknown, that is, non-transparent, comments of the MDBA on his draft.

MR BEASLEY: Yes. Can I just take you, though – there's an addendum to this report, which is important, because it's clearly – there's responses from the MDBA that were responded to. And I think they may have all come through the Advisory Committee.

THE COMMISSIONER: Yes.

15 MR BEASLEY: I will be corrected about that if I'm wrong. And, see, there's a concern – the first one is a concern that the achievement of specific flow indicators was optimised so they overstate the frequency and likelihood of achievement. Then there's Mr Bewsher's commentary on that:

20 *Note existing models only achieve specific flow indicators at Bourke roughly 50 per cent of the time. The practicality and feasibility of achieving flow coordination and flow preservation in actual practice are outside the Terms of Reference of this model review*

25 THE COMMISSIONER: Is that right? Was that outside the Terms of Reference?

MR BEASLEY: Well - - -

THE COMMISSIONER: Anyhow, well, perhaps we can explore that.

30 MR BEASLEY: It depends on how you construe the Terms of Reference, of course.

THE COMMISSIONER: I'm afraid it does. It's just that that leaves open the possibility that this is a completely meaningless review, because it leaves out everything that would be of any practical significance.

MR BEASLEY: Page 4 of this addendum, the concern is no quantification of risk, likelihood of results being achieved, which is, I would have thought, a fundamental concern. Answer:

40 *Analysis of all information resulted in the identification of a range of other management actions to be considered as part of the Northern Basin Review. As many of the other management actions require the involvement of a range of stakeholders, ultimately, success will come down to a willingness for the Australian State Governments, as well as the community, to work together.*

I don't know what that means, but I assume it's a reference to part of – the toolkit that we were discussing of protecting environmental flows, coordinating environmental flows, none of which has been sorted out yet, and yet those matters are crucial to the 70 gigalitre reduction.

5

THE COMMISSIONER: It's not a direct response to the proposition that there was no quantification of risks or likelihood of results being achieved of a kind - - -

MR BEASLEY: No. No. No.

10

THE COMMISSIONER: - - - that would allow the MDBA – is it the MDBA? To place emphasis on other tools to deliver results. It seems to be a “yes, but” answer.

MR BEASLEY: Yes. Addendum page 5, you see there was, obviously, a concern about failing to incorporate climate change projections. It is simply a statement that the model is run using the climate conditions over the 114 years from 1895 to 2009.

15

THE COMMISSIONER: Now, that – is that – I notice the report itself says that's derived from the notion of historical experience. Why or how would it be useful not to take into account climate change, bearing in mind what the statute says about that?

20

MR BEASLEY: Well, it's not. It's not useful not to. We have already had evidence about that and there will be some more.

THE COMMISSIONER: The definitions in the Basin Plan define the expression, which this reviewer refers to, of “historical climate conditions”. But it's an artificial definition - - -

25

MR BEASLEY: Yes.

30

THE COMMISSIONER: - - - because it ceases at June 2009, no doubt for what I will call baseline purposes. History is right up to date, as a matter of concept of language.

MR BEASLEY: Yes.

35

THE COMMISSIONER: So historical climate conditions, if we were using that as an undefined expression, would mean up to yesterday.

MR BEASLEY: Well, even when the review was – yes. Review was done 2017. They would have at least been able to go from 2009 to 2017.

40

THE COMMISSIONER: The Basin Plan is dated 2012.

MR BEASLEY: Yes.

45

THE COMMISSIONER: So what I'm saying is the concept of historical climate conditions expiring at June 2009 - - -

MR BEASLEY: I don't understand.

5

THE COMMISSIONER: - - - is, obviously, for baseline purposes.

MR BEASLEY: Yes.

10 THE COMMISSIONER: Perhaps someone can take this on notice. I don't currently understand how the reference to historical climate conditions authorises, let alone mandates, leaving the best available science on climate change out of the modelling to inform, for example, the Northern Basin Review.

15 MR BEASLEY: Neither do I. There will be some evidence called later on from a witness who will tell you – this is a significant paraphrase on my behalf, but that CSIRO's climate change projections had been modelled in a way that that data could have been fed into the modelling used for the Basin Plan, the SDL adjustments, the Northern Basin Review.

20

THE COMMISSIONER: Well, the MDBA responded to this comment by asserting, I suspect correctly, that the modelling assumes the climatic conditions experienced over the 114 year sequence, concluding 2009, are representative of future weather patterns, weather patterns, I suppose standing for the word "climate" - - -

25

MR BEASLEY: Yes.

THE COMMISSIONER: - - - if the word "climate" is one you're a bit nervous to actually put in that sentence, because the statute says you have got to proceed to consider the question of climate change. You don't do that by making an assumption it's not going to change, or at least I don't think so. Very likely to report that. And if the MDBA doesn't think that's correct, no doubt they can correspond with me.

30

MR BEASLEY: Yes. Okay. Page 8 of this addendum, unresolved issues regarding the application of the 2012 version of the Barwon-Darling Water Sharing Plan, answer:

35

*No, the 2012 version of the Barwon-Darling Water Sharing Plan has not been used, but it was tested.*

40

What that means, I have no idea, other than it wasn't tested. Then, page 9:

*Had the MDBA adequately modelled the fact that the northern system cannot be joined up.*

45

I assume those words refer to issues of flow preservation and flow coordination, given the answer, which is a response by Mr Bewsher himself:

*Further clarification of this question may be required. It's assumed the question means had the MDBA adequately modelled the process of flow coordination and flow preservation in the Barwon-Darling.*

5 So Mr Bewsher has made the same assumption I made in relation to that question.  
Answer:

10 *Each model's parameters relating to flow timing, losses, routing, etcetera, are unchanged for the parameter values set by the State agency and development model. Accordingly, the prediction of the joining up of the northern system is replicated by the model. The practicality and feasibility of achieving flow coordination and flow preservation in actual practice are matters for governments to work through.*

15 THE COMMISSIONER: Actual practice means reality, does it?

MR BEASLEY: In reality. So I think this all leads to the criticism that seems to be made by a number of people that the Northern Basin Review is – it may in some way be based on modelling, but it's not based on reality, and the toolkit measures that are  
20 said to justify it are not in place. I will tender that report. Can I just remind you, Commissioner, there was another Bewsher report dated a year later, September 2017, that I have - - -

25 THE COMMISSIONER: Just before you leave it, the last item on the end of page 10 - - -

MR BEASLEY: Yes.

30 THE COMMISSIONER: - - - under the heading Transparency relayed an NBAC - - -

MR BEASLEY: Sorry. Yes. Thank you.

35 THE COMMISSIONER: - - - proposition that the Authority hadn't shared all assumptions, so this reduces confidence, to which the MDBA responded that all relevant modelling assumptions have been presented to NBAC previously.

MR BEASLEY: Yes.

40 THE COMMISSIONER: So that seems simply to be disagreeing with the statement, no doubt based on recollection and experience, on the part of the NBAC, that they hadn't shared all the assumptions.

45 MR BEASLEY: I think we are – apart from Mr Clements, I think we're calling three members of the Advisory Committee, including the chair. And I think they will all say that they weren't given all the modelling assumptions and other matters that they wanted to be.

THE COMMISSIONER: Well, I'm now suspicious enough of the MDBA's use of English that I wonder what significance is conveyed by the word "relevant" - - -

MR BEASLEY: "Relevant", yes.

5

THE COMMISSIONER: - - - in the – the proposition by the MDBA is, "You're not sharing all assumptions."

MR BEASLEY: No.

10

THE COMMISSIONER: The response summarised from the MDBA is, "All relevant assumptions have been presented previously and they will be described in detail in the hydrological modelling report." That's as may be. That is a separate question.

15

MR BEASLEY: Yes.

THE COMMISSIONER: That rather, I have to say, arouses my concern that that is not a whole hearted public-spirited response to a concern by their own Advisory Committee.

20

MR BEASLEY: Well, that and, to the extent that you're going to hear evidence from the Advisory Committee, it is inconsistent with their view.

25

THE COMMISSIONER: Thanks.

MR BEASLEY: There's another Bewsher report that I've referred to but I've forgotten to tender. And so I will do that now. It's called the 'Hydrologic Modelling for SDL Adjustments: Final Report', 30 September 2017. Has the Commissioner got that?

30

THE COMMISSIONER: Yes.

MR BEASLEY: I don't want to go right through this report again, because we have once.

35

THE COMMISSIONER: No, don't.

MR BEASLEY: But in the vein of what we were discussing about the limitations of the report of September '16 I've just tendered, if you look at the Terms of Reference at page 5 of this report into the modelling for SDL adjustments:

40

45

*Qualifications to the scope of the current review which are listed above are confirmed in the Terms of Reference state. The scope of the review is limited to how the benchmark conditions and supply measures are representative of a model through the review of the reports documenting the model representation.*

*It does not include the suitability of the overall approach for calculating the SDL adjustment that has previously been reviewed, including - - -*

5 THE COMMISSIONER: What does it include? I'm serious.

MR BEASLEY: Well - - -

THE COMMISSIONER: What does it include?

10 MR BEASLEY: Well - - -

THE COMMISSIONER: It doesn't include the method for determining ESLT - - -

15 MR BEASLEY: No.

THE COMMISSIONER: - - - and it doesn't include the SDLA modelling framework and modelling processes. So it doesn't include setting the original level or adjusting that level. What else is there?

20 MR BEASLEY: Can I – in relation to what else is there, can I – the only other part of the report I wanted to draw your attention to for current purposes is page 16, which is headed Assessment of SDLA Modelling.

25 THE COMMISSIONER: Why wouldn't an Authority interested in having the best available science be happy to get a second review by somebody taking an overall look, rather than just looking at part of it?

MR BEASLEY: You mean in relation to a \$13 billion spend?

30 THE COMMISSIONER: Yes.

MR BEASLEY: Probably it would have been a good idea.

35 THE COMMISSIONER: 13 billion of our dollars spent, not their dollars.

MR BEASLEY: No. 16 – again, this qualification:

40 *Because all hydrological models are only approximations of actual or proposed behaviour. The model representations in the SDL projects are also approximations. However, through the inclusion of more detailed information, it's always possible to improve a model simulation. As a result, the modeller has had to make subjective assessments of the level of detail to include, noting that typically the law of diminishing returns applies, i.e., increasingly greater effort was required to improve simulation accuracy. In the vast majority of*  
45 *projects that include physical works these projects have not been designed or constructed. This means there is also uncertainty concerning the final characteristics of the projects that will be - - -*

THE COMMISSIONER: You don't say. Really.

5 MR BEASLEY: Yes. Now, that comment in the vast majority of projects, "they have not been designed or constructed", that is as true now as it was in September '17.

THE COMMISSIONER: The reviewer expects - - -

10 MR BEASLEY: The adjustment has been made.

THE COMMISSIONER: The reviewer expects, furthermore, that there will be changes to the projects prior to implementation.

15 MR BEASLEY: Well, he's an optimist.

THE COMMISSIONER: He says that generally a simplified conceptualisation has been prepared for inclusion in the adjustment calculation.

20 MR BEASLEY: Yes. Anyway, that report should have been tendered, so I tender it now, the September '17 Bewsher Consulting Pty Ltd final report, 30 September 2017, hydrologic modelling ..... SDL adjustments – sorry – 'Independent Review of Hydrologic Modelling for SDL Adjustments'. I'm just wondering whether this report also says – I should draw attention to page 20, the very last paragraph:

25 *The review has not sought to endorse any proposed numerical SDL adjustment. Rather, it's a review of the representation of the best benchmark in SDL ..... consistent with the sign-off by SDL ..... endorsed by the Basin officials .....*

30 Page 17, having given the qualifications on page 16, page 17, the first line:

*All 36 SDL projects have been endorsed by .....*

35 Anyway, I'm not sure whether endorsement refers to being satisfied with the criteria that the Authority has to be under 7.17 of the Basin Plan, but at some stage they have to be satisfied of it.

THE COMMISSIONER: Well, there's no sign of that - - -

40 MR BEASLEY: No.

THE COMMISSIONER: - - - in the process, but it's fair to say that it might inform every step of the process, depending on what one is told about that process.

45 MR BEASLEY: And finally for the purposes of Mr Clements's evidence, can I remind you of some of the material in exhibit RCE50, which is 'Environmental Outcomes of the Northern Basin Review'. It's an MDBA - - -

THE COMMISSIONER: Just before you move on – sorry – could I just flag - - -

MR BEASLEY: Yes.

5 THE COMMISSIONER: I think last week in the evidence the question arose as to whether the provisions of 7.11 of the Basin Plan required consideration by the Authority of the possibility of an amendment of the SDL in 2024.

MR BEASLEY: Yes.

10

THE COMMISSIONER: And I expressed a tentative view that it certainly required them to think about whether one was necessary.

MR BEASLEY: Yes.

15

THE COMMISSIONER: This reviewer predicts, it can be seen in 4.3 on page 17, second paragraph under that heading that they will have to think about it:

20

*Given the nature of many of the proposals and the current stage of their development –*

Which is not developed –

25

*The reviewer would expect some differences when the implemented projects are reconciled with the current SDL, following the adjustment.*

So - - -

30

MR BEASLEY: Well, the language of 7.11 is if it appears to the Authority .....

35

THE COMMISSIONER: I understand. That's why I raised the question I did last week, "Will there be anybody who would seriously argue that there will be no adjustment or audit or reconciliation, as it has been called, if the Authority simply decides not to think about it?" I think not, as a matter of administrative law. I think that has an implicit requirement to think about whether that condition exists.

MR BEASLEY: In terms that it doesn't seem to use mandatory language ..... it appears to the Authority, your view is that they must think about it.

40

THE COMMISSIONER: Yes. It doesn't say "You must think about it and if, upon thinking about it, you believe there should be an adjustment, you shall make an adjustment."

45

MR BEASLEY: But the other interpretation defeats the purpose of 7.11 ..... think about it .....

THE COMMISSIONER: At the moment I don't think that is a defect in the drafting of the Basin Plan, but if there's anybody, including the MDBA or the Commonwealth, who thinks that 7.11 provides an unexaminable description for the Authority not to think about the possibility of a reconciliation in 2024, then they  
5 better let me know.

MR BEASLEY: Well, I would be surprised, because the Authority in its press releases and public statements are saying that this reconciliation process is the answer to everything in relation to the SDL adjustment.  
10

THE COMMISSIONER: I appreciate that, but I am bound to say I do not regard consistency as a hallmark of the MDBA's published statements over a number of years.

15 MR BEASLEY: No. It would be a surprising about-face, though, is what I suggest.

THE COMMISSIONER: Well, I'm bound to say it would not surprise me.

MR BEASLEY: I don't want to push that any further.  
20

THE COMMISSIONER: I'm not suggesting you should.

MR BEASLEY: No. RCE50 is 'Environmental Outcomes of the Northern Basin Review' October 2016. Only very briefly to this report, what's, I think, the significant matters about it are, firstly, page 9 in the bold print "about this report",  
25 second paragraph:

*This report should be read in conjunction with other reports from the review that address the social, cultural and economic – cultural and economic impacts associated with the water recovery scenarios. The decision on whether or not to amend the current legislated sustainable diversion limit for the Northern Basin is based on finding a balance between social, cultural and economic.*  
30

Now, cultural is not used – is that used in the Act? Where does that come from?  
35 Social, cultural and economic – I thought it was social and economic.

THE COMMISSIONER: Once upon a time, one of the three – in the useless and unfortunate expression "triple bottom line" was environmental, you may recall.

40 MR BEASLEY: Yes. No, well - - -

THE COMMISSIONER: It doesn't seem to be in the triple of social, cultural and economic.

45 MR BEASLEY: No.

THE COMMISSIONER: I don't take it seriously.

MR BEASLEY: It looks like there's a quadruple bottom line now.

THE COMMISSIONER: I do not take that expression seriously. Let's move on.  
It's the MDBA engaging in extra-statutory expression of a propagandist view; I will  
5 not take it seriously.

MR BEASLEY: Well, just to make it clear, my understanding is everyone has  
always pointed to section 20(d) as the triple bottom line, that is:

10 *the use and management of the Basin water resources in a way that optimises –*  
  
no doubt somehow simultaneously –  
  
*economic, social and environmental outcomes.*

15 THE COMMISSIONER: That was my point. The word "environmental" seems to  
have slipped out of the copywriter's lexicon at page 9 of that report. That's why I  
won't take it seriously, because the MDBA normally is only too happy to put the  
word "environmental" into the triple bottom line. When they slip and don't put it in,  
20 I'm not going to hang them for that, no.

MR BEASLEY: Yes. Now, I said I don't recall "cultural" being in the Act. That's  
not correct. Mr O'Flaherty has just pointed me to 21(4)(c)(v) which we talked about  
with the Aboriginal witnesses last week that says that the Authority when performing  
25 its function must have regard to social, cultural, Indigenous and other public benefit  
issues. Of course there's a difference between optimising a cultural outcome,  
however that might be done and whatever that would mean, and having regard to it.  
At the bottom - - -

30 THE COMMISSIONER: Not for the first time, triple bottom line is not a useful tool  
for analysis.

MR BEASLEY: No. Page 10, similar vein, second line:

35 *We recognise hydrological models provide important planning insights, but are*  
*necessarily an approximation of the true complexity of the system –*

etcetera:

40 *Thus, although model results are important tools the Authority uses in coming*  
*to a decision on recommending SDLs, they are not the only line of evidence.*  
*Management actions required to effectively manage and deliver environmental*  
*water are also considered. In addition to the environmental assessment, the*  
*outcomes of economic and social studies, and community views –*

45 there's five bottom lines, now –

*are also included with equal importance in the Authority's decision-making process.*

5 THE COMMISSIONER: I have a feeling I know your answer to this, but what does "equal importance" mean there?

10 MR BEASLEY: There is no way of properly understanding that, left as it is, and there is no way of properly equating that statement with anything that's in the Water Act.

THE COMMISSIONER: So if a body of scientists said you really do need to deliver flows at a certain level at a certain time of the year to certain places to avoid identified compromise of an environmental outcome.

15 MR BEASLEY: Yes. But - - -

THE COMMISSIONER: And what is condescendingly called the community, assuming wrongly that that's a monolith says, "No, you shouldn't."

20 MR BEASLEY: "You shouldn't take a drop out that's not for irrigation."

25 THE COMMISSIONER: Now. But how do you call them equal importance? Someone says you should do something, and somebody else says you shouldn't do something, and you give them equal importance. What do you do? Resign, I suppose, because decision-making is impossible. I mean, that - - -

MR BEASLEY: Well, for - - -

30 THE COMMISSIONER: If I may say so – well, I can say so and I will say so, that is a fatuous statement by whoever wrote that.

35 MR BEASLEY: Well, it's particularly fatuous when what is claimed is that this review is based on science because the community's view, with all due respect to the community, whose views no doubt have to be listened to in some way and should be, their views are not scientific.

THE COMMISSIONER: Well, they may be political, religious.

40 MR BEASLEY: They may be emotional, who knows.

THE COMMISSIONER: They may be ill-informed.

45 MR BEASLEY: It may be all of them. Page 11 and 12 is the toolkit, the bottom of the bullet points:

*Protecting environmental flows.*

Somehow, not yet legislated how that will happen:

*Targeted recovery of water entitlements and high priority.*

5 THE COMMISSIONER: Could I, at the risk of repeating myself, note again it's almost a tick in the style of the MDBA's copywriters, page 11, preceding those dot items, they include opportunities such as - - -

10 MR BEASLEY: I know. I know.

THE COMMISSIONER: The carriage of actually categorically stating what's on the agenda is strikingly absent. Triple bottom line, by the way, refers to orthodoxy on page 12 third last paragraph.

15 MR BEASLEY: Yes. Use the triple bottom line framework, yes.

THE COMMISSIONER: Social, economic, and environmental. It has been recovered.

20 MR BEASLEY: No. So they've forgotten cultural and community views there, but - - -

THE COMMISSIONER: Well, that's why I say I won't take the earlier statement seriously.  
25

MR BEASLEY:

*Improved coordination of environmental water.*

30 How that's to occur, no one knows. Constraint management, often talked about, doesn't seem to have much progress. Infrastructure, implementation of fishways. I mean, how that translates to a gigalitre of water is very difficult to understand, but no doubt they're good for the fish.

35 THE COMMISSIONER: I don't know and I'm just thinking aloud: I suppose patterns of flow and levels of flow may permit, at certain extremes, survival of fish life cycles.

40 MR BEASLEY: Yes.

THE COMMISSIONER: Which might also survive at different levels and patterns of flow if you add fishways. I don't know. That's an entirely hypothetical speculation. But you're right: a fishway doesn't seem to come, as it were, budgeted with an equivalent megalitre.

45 MR BEASLEY: No, the fish get a mention in mitigation of cold water pollution caused by release of water from lower depths at dams:

*Information and implementation of mitigation measures at large dams, for example the thermal curtain that was installed at Burrawang Dam could result in enhanced water outcomes, especially for fish.*

5 THE COMMISSIONER: Look, one of the slogans that we have to attend to is “just  
add water” as a scornful attack on what I think has been travestied as some  
environmental suggestions. I’m bound to say, in all my reading and hearing  
evidence, I’ve not heard anyone suggest that just add water is a proper environmental  
10 approach, let alone one in accordance with the best available science. Indeed, I  
understood it was above all environmental scientists who have identified the risk of  
artificial watering, such as occurs with intensely cold, deep water dam releases, as  
well as so-called blackwater events which of course occur in nature as well as  
artificially.

15 So I presently don’t regard there as being any evidence of anybody saying “just add  
water”. And if there’s anybody who thinks the slogan “just add water” is an  
appropriate way to refute some environmental proposals or environmental science,  
then it’s high time that they actually gave particulars of who it is that has proposed,  
let alone with any credibility ..... the eyes of any decision-maker, that the response of  
20 the country to the Murray-Darling Basin Authority position should be just to add  
water.

MR BEASLEY: I don’t want to take up further time. Suffice to say that this report,  
as you will remember, models various scenarios from 323 to – sorry, from 278,  
25 maybe, gigalitres, through to 415, none of which meet all of the – 278 through to 415  
– none of which meet the flow indicators that have been set for the Northern Basin,  
suggesting that 415, let alone 320, may not have been enough. That’s all I wanted to  
remind you about of that report. I don’t need to take you to it because of time, but  
there is a report that’s just called the ‘Northern Basin Review’. It’s RCE3, just to  
30 remind you what that says, I will just read these two paragraphs. In talking about the  
toolkit measures, the Authority says:

*The Authority proposes that water recovery target be reduced in the Northern  
Basin –*

35 this is page 12 for the purposes of the transcript:

*The Authority proposes that water recovery target be reduced in the Northern  
Basin be reduced in the Northern Basin from 390 gigalitres to 320 providing  
40 there are commitments from the Australian, Queensland and New South Wales  
governments to implement a number of toolkit measures to improve water  
management in the Northern Basin.*

45 Well, “providing there are commitments”.

THE COMMISSIONER: What does that actually mean?

MR BEASLEY: I don't know.

THE COMMISSIONER: Does it mean the 70 reduction in recovery doesn't happen until something called commitment has been demonstrated?

5

MR BEASLEY: Well, commitment can't be enough, can it? It has to be an implementation, surely.

10 THE COMMISSIONER: Well, you anticipate my next question, because I'm not quite sure what "commitment" means.

MR BEASLEY: Well, the commitment might mean, "We are going to think about it," or it might mean, "We are going to do it." And it might mean, "We are going to do it one day," or "We're going to do it now."

15

THE COMMISSIONER: I don't think, if one is talking in marital terms, that your spouse would regard you as displaying commitment by saying, "I'm going to think about it."

20 MR BEASLEY: You're getting on dangerous territory now, but let's stick to the face of the Review.

THE COMMISSIONER: I don't know what "commitment" means. It could certainly mean legislation but as a constitutional lawyer, the first response out of that is, well, statutes can be repealed. So I don't know what that means.

25

MR BEASLEY: The toolkit is not statutory, but it might end up as a statutory commitment. Who knows?

30 THE COMMISSIONER: New South Wales might legislate, for example, for the Menindee Lakes exercise.

MR BEASLEY: It might. Sorry. And just at page 6 of this same report, having said that the toolkit, the 70 gegalitre reduction is based on the toolkit recommendations, the Authority helpfully says this:

35

*The Authority acknowledges that these measures are not within our remit and cannot be implemented without commitments from the Australian, New South Wales and Queensland Governments.*

40

THE COMMISSIONER: Have there been amendments to the New South Wales legislation to permit shepherding? Not yet?

MR BEASLEY: There has been a – there's an amendment to allow tradeable individual daily extraction limits, but the criticism that I've read is that without – for each zone of the river – a total daily extraction limit.

45

THE COMMISSIONER: Shepherding won't happen.

MR BEASLEY: Yes. It's more difficult to protect an environmental flow, unless  
5 you use an embargo, of course, in which case you could. But the irrigators aren't all  
that thrilled with non-stop embargoes. But they were the reports that I wanted to  
remind you of.

THE COMMISSIONER: Thank you very much.

10 MR BEASLEY: I'm sorry that took so much time. And Mr Clements is here.

**<JOHN EWEN CLEMENTS, SWORN**

**[11.13 am]**

15

**<EXAMINATION-IN-CHIEF BY MR BEASLEY**

THE ASSOCIATE: Please state your full name.

20

MR CLEMENTS: John Ewen Clements.

MR BEASLEY: Mr Clements, can you – you can give a work address - - -

25 THE COMMISSIONER: Well, please sit down, Mr Clements.

MR BEASLEY: Yes, sorry.

THE COMMISSIONER: Thank you.

30

MR BEASLEY: Do you have a copy of your statement?

MR CLEMENTS: I do, yes.

35 MR BEASLEY: You've provided to the Commissioner a statement dated 23 July  
2018.

MR CLEMENTS: Yes.

40 MR BEASLEY: And that statement is true and correct to the best of your belief?

MR CLEMENTS: Yes, it is.

45 MR BEASLEY: I will tender that statement of Mr Clements, 23 July 2018. Can  
you give the Commissioner your work address please, Mr Clements.

MR CLEMENTS: My work address?

MR BEASLEY: Yes.

MR CLEMENTS: My work address is the Australian Parliament House.

5 MR BEASLEY: You are currently employed as an adviser to a Federal Member of Parliament?

MR CLEMENTS: I am. A Senator, yes.

10 MR BEASLEY: You say you've got 18 years in development and implementation of water policy. In 2002 you were a contractor to Cotton Australia. What was your role there?

MR CLEMENTS: 2002, we were – as an industry. So in those days I was a share  
15 farmer, a contractor, and we were concerned that the promises – the property rights which were delivered through the earlier intergovernmental agreement in the late 90s, perhaps 1999, which led to the National Competition Council review, so water reform became part of the national competition reviews. Water, gas, electricity, transport. We were concerned that in that intergovernmental agreement we gave  
20 away certain rights in the Water Management Act 2000, but in return we would have a form of property right and a tradeable entitlement.

THE COMMISSIONER: This was the – these were the reforms – economic  
25 reforms that broke the nexus between land and water rights?

MR CLEMENTS: Yes, that's correct.

THE COMMISSIONER: And made the right closer to property, not least by  
30 enabling it to be alienated in open trade.

MR CLEMENTS: Correct. And interestingly, it's forgotten. I mean, there's the  
problem with so much of what I said .... in the policy areas: so much has been  
forgotten of the foundations, and the foundations are important, and we understood  
35 in the late 90s and early 2000s that we were gaining a significant benefit in having a tradeable right. We could move it to a better place of land, to a better developed property and that has greatly increased wealth. But we understood that to have a secure property right we actually needed to ensure that the environment was also secure. There can never be a security property right in that particular form of  
40 property.

Many people were offended at the notion of property, but the licence to the right is a  
form of property. We understood very clearly as an industry that you couldn't have a  
secure form of property over that licence if the environment's needs weren't met and  
we understood the balance.

45 THE COMMISSIONER: This is probably all captured by the word "sustainable"  
that one finds in the statute.

MR CLEMENTS: Yes, and I see that that has been lost in the debate. The debate has become so entrenched. People have formed positions that have become so politicised that those notions have been lost. And I – you know, myself and others are really keen to see them reinstated in the thinking of - - -

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THE COMMISSIONER: Just take as long as you like on this, but I'm not asking for a treatise. I've read your statement with interest, could you give me your view of the commendable elements that you are recalling in general terms when you have just spoken to me now that you think have been lost and how they came to be lost and how you think they could be restored. I may have an idea of what you are talking about, but I think I would rather have it in your words.

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MR CLEMENTS: We have lost the notion that as an industry and as individuals we received rights which were predicated on recognising the rights of the environment. And we have lost that notion – I can't fully explain why – because new staff have entered into the policy areas of the peak groups. They weren't there, you know, in those days, they didn't fight the battle. As I say, we had to fight for our property right. It was meant to be recognised. We had to fight for it. So, you know, that Cotton Australia, you know, funded exercise where I actually provided the secretariat to the National Farmers Federation we were actively engaging with the National Competition Council, Graham, Samuel and Ed Willets in those days and with the Commonwealth Government, the Howard government, saying that we were not receiving the property right in reality.

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And that was recognised and we were successful in that and we were successful – you know, I fought the tax cases, not as a tax lawyer but as a policy person. We were seeking not structural adjustment, which is income, but recognition of a lost asset, which is compensation and entirely a different tax situation, but also – and we were successful. You know, and they were important battles for the industry. And they were hard fought battles and we knew all the time that we needed to honour the full agreement, otherwise we had no standing in talking to politicians and to - - -

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THE COMMISSIONER: Honour the full agreement, including what you, I think, called earlier the rights of the environment.

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MR CLEMENTS: Yes. And, you know, that has been lost. It has been lost because the industry groups have, because of big battles were won, you know and through the 2007, 2008 even we were still making we had recognition and there would be compensation for loss of an asset. When the big battles were won, the people who had the capacity for that sort of dialogue and policy debate went on to other things. And that included the farmers. I had a board at Namoi Water of very astute, great farmers who understood that we were in a battle. And Namoi Water has a great board today, but I'm just saying the board I had retired as soon as those battles – they went back to their businesses. So we won the battles and we have got a different sort of a group.

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THE COMMISSIONER: Imagine preferring farming to politics. Extraordinary.

MR CLEMENTS: Anything is preferable to politics.

MR BEASLEY: Just for the record, Namoi Water, which you were the first  
Executive Officer of between '05 and '10, was the representative body for water  
5 access holders in the – water license – water access license holders in the Namoi and  
the Peel catchment. Is that right?

MR CLEMENTS: That's correct, yes.

10 MR BEASLEY: And what did the role of Executive Officer involve for Namoi  
Water?

MR CLEMENTS: They knew that, you know, the groundwater, which is a very  
significant resource in the Namoi and, you know, six other valleys in New South  
15 Wales, we still hadn't fully - - -

MR BEASLEY: Namoi is northern New South Wales. Correct?

MR CLEMENTS: Yes.  
20

MR BEASLEY: What are the major towns?

MR CLEMENTS: Well, you leave the Peel valley, which is a tributary, into the  
Namoi.  
25

MR BEASLEY: Yes.

MR CLEMENTS: So Gunnedah, Narrabri, Wee Waa would be the major towns.

30 MR BEASLEY: Yes. All right. Sorry. I interrupted your answer about your role  
as Executive Officer for Namoi Water.

MR CLEMENTS: The people there understood that the particular the groundwater  
debate – the property right wasn't being honoured. And then the Commonwealth  
35 Water Act 2007 turned up, which is two years later. But they knew this was on and  
they had approached me and said, "We really want you to apply for inaugural job of  
pulling together all these disparate groups across the valley." And, you know, I  
actually wasn't particularly – I was actually sitting on my cotton picker having left  
political work. I had worked for Tony ..... for Dubbo, I had worked for Tony  
40 Windsor and - - -

MR BEASLEY: As an adviser?

MR CLEMENTS: As a policy adviser.  
45

MR BEASLEY: Yes.

MR CLEMENTS: Yes. And, yes, I sort of was sitting on a cotton picker thinking this is the life. And I had a number of people, one of whom will give evidence this week, ringing up and say, "You're piking out. There's a big fight on and we would like to see you in it."

5

MR BEASLEY: Who is that, Mr Peters?

MR CLEMENTS: Yes.

10 MR BEASLEY: Yes.

MR CLEMENTS: Mal and others.

15 MR BEASLEY: So he was the Chair – he ultimately became the Chair of the Northern Basin Advisory Committee. Correct?

MR CLEMENTS: That's correct, yes.

20 MR BEASLEY: Yes. Sorry. Go on.

MR CLEMENTS: At that time, I mean, without trying to be political, John Anderson Deputy Prime Minister, you know, had a significant area of the Namoi and I thought they will never employ me, so I will just apply for the job, because I had worked for Tony Windsor and there was a great deal of friction between these two

25 politicians. So I thought I will apply for the job. It will stop people ringing me up.

MR BEASLEY: Was Mr Windsor still in the National Party at the time or was he an independent by then?

30 MR CLEMENTS: Mr Windsor has never represented either State or Federal seats as a National Party politician.

MR BEASLEY: Well, that's my error. I don't know where I got that from.

35 MR CLEMENTS: He was pre-selected as a National candidate - - -

MR BEASLEY: There you go.

40 MR CLEMENTS: - - - and head office overrode it, so - - -

MR BEASLEY: That's where I got it from. I see. Hence the independence.

MR CLEMENTS: Absolutely.

45 MR BEASLEY: Thank you.

MR CLEMENTS: So I thought, you know, I wouldn't get the job. And I applied for the job and they liked me enough to ring me. I was picking cotton at Condamine and out of range. And after three days I picked up a signal on top of a ute on a storage and talked to a person who has become a personal friend, James Carlin. He offered me the job. He said, "We were really worried. You just haven't responded." I said, "I couldn't hear you, James." I said, "I can't take the job. I think that it wouldn't be good for your organisation, given my relationship to John Anderson." He said - - -

10 MR BEASLEY: Right.

MR CLEMENTS: - - - "well, we know that." So I took the job. My job was to pull all the groups together and actually get a policy footing, which is, you know, what I do and what I enjoy doing. And, you know, we pull together a proper property rights policy and other policy, tax policies on capital gains triggers. And, you know, we began the task of talking to our communities, which is not done enough today, in further answer to your question. These groups do not engage properly with their communities and council. We engaged with our community and councils.

20 And when we sort of won that part of the battle, if you like, of those people thinking, "These guys are right. They're on to something here." And we took that down to a variety of parliaments and were successful in prosecuting our cases. And I stayed there five years. I thought after five years it would be better for them, you know, to get somebody new and better for me to go and find something new. And I actually went into the hung parliament with Tony Windsor at that time. So - - -

MR BEASLEY: All right.

30 THE COMMISSIONER: Have you noticed an improvement in the MDBA's community engagement after, say, the release of the 'Guide to the Draft Basin Plan'?

MR CLEMENTS: I think their community engagement is – they just see it as a function of doing what they want to do anyway. I'm reminded of my first ministerial appointed commit on groundwater where I saw a note being passed back and forth continually. And I'm naughty at the enough at the coffee break to pick it up between the Secretariat and the Chair. And there was this term DAD used. The term is an agency term in New South Wales, decide, advise, defend. And that's the MDBA's approach to community engagement.

40 MR BEASLEY: Sorry, I didn't quite pick up what DAD - - -

MR CLEMENTS: Decide, advise, defend.

45 MR BEASLEY: Right.

MR CLEMENTS: And that is their approach to community engagement.

THE COMMISSIONER: And the community consultation comes in at the defend point.

5 MR CLEMENTS: Absolutely. There's a bit of advise. You tell them what you're doing and then you defend it. So they are not a genuine organisation, in my view.

10 MR BEASLEY: You were also a board member of Macquarie River Food and Fibre, which is described as the peak industry group representing irrigators in the Macquarie Valley. Where is the Macquarie Valley? I know it's in New South Wales, but - - -

15 MR CLEMENTS: Macquarie Valley is further west to the Namoi. It has the main centres of Dubbo, of Narrabri, of Warren, of Trangie. And the Cudgong is the upper reaches, which is also represented. So, you know, Mudgee and around those areas.

20 MR BEASLEY: All right. You say, in your capacity as a board member of Macquarie River Food and Fibre and the Lower Macquarie Groundwater Irrigators Group, you were a representative stakeholder in the development of the Water Management Act for New South Wales, as well as the Commonwealth Water Act in 2007. What did that involve?

25 MR CLEMENTS: Well, it was an earlier period of time, the Namoi Water, and the, you know, New South Wales Water Management Act 2000 was under debate. It was a bill. And, you know, we were very concerned as an industry what it meant. And it's there first I began to work out that competition payments were driving much of the process, so I became aware as a committee member, ministerial committee on groundwater that every June and every November the agency representatives became very twitchy and very aggressive about getting certain things finished off. And I 30 actually was the first person to meet Graham Samuel and put it to him whilst the states were assuring him – New South Wales assuring him that they were engaging with us and talking about property rights, the reality was they were actually actively denying to us they were in any competition policy process.

35 MR BEASLEY: All right.

THE COMMISSIONER: They were in any what process?

40 MR BEASLEY: Competition.

MR CLEMENTS: The states were on record in response to questions I asked in public meetings. So they're called the secretaries these days, but he was a Director General – in a public meeting denied that they were actively engaged in any reform process with the Commonwealth. We went to Samuel and finally won a meeting.

45 THE COMMISSIONER: Mr Samuel would have been interested to know that.

MR CLEMENTS: Absolutely. Ed Willets. He is CEO – and they were both very interested to know that. And that led to a dramatic change in the attitude of the New South Wales agencies to the engagement processes.

5 MR BEASLEY: Now, you were on the Northern Basin Review Advisory Committee from 2012 to 2016. Who invited you or suggested that you become a member of that committee?

10 MR CLEMENTS: I received a letter from Craig Knowles, who was the - - -

MR BEASLEY: Right. He was the Chair at the time.

MR CLEMENTS: Yes. And, you know, he invited myself and others, and - - -

15 MR BEASLEY: Did you know Mr Knowles?

MR CLEMENTS: Yes, I knew him from New South Wales Parliament. He was a member in New South Wales. He was the health Minister. And, working for Tony and Graham in Dubbo, we were always after the ..... hospital.

20 MR BEASLEY: Right. Okay.

MR CLEMENTS: So I knew Mr Knowles from there.

25 MR BEASLEY: All right. Now, also on the Advisory Committee was, we discussed, Mal Peters. He was the Chair.

MR CLEMENTS: Yes.

30 MR BEASLEY: What was Mal's background that brought him to the committee?

MR CLEMENTS: He doesn't have a strong water background.

35 MR BEASLEY: He's an irrigator as well, isn't he?

MR CLEMENTS: No, he's not.

MR BEASLEY: No?

40 MR CLEMENTS: He may have a small license, but - - -

MR BEASLEY: Right.

45 MR CLEMENTS: - - - I don't think Mal has never claimed to have a strong water background, but he's - - -

THE COMMISSIONER: He's cattle, is he?

MR CLEMENTS: Yes, mainly beef cattle.

MR BEASLEY: Yes, you're right. Yes.

5 MR CLEMENTS: And, you know, his strength in that role is that he understands rural people. And he has chaired many committees in reform processes. And I think that's the basis of Mal being Chair. And I've known Mal for many years, you know, when we were - - -

10 THE COMMISSIONER: He has, by way of understatement, quite a deal of experience with government and administration.

MR CLEMENTS: Absolutely, yes. Absolutely. No question of that.

15 MR BEASLEY: And Geoff Wise has also provided us with – or is in the process of providing us with a statement. He was a member of the Committee. What was his background?

20 MR CLEMENTS: Geoff Wise was Western Lands Commissioner for the Western Lands area in New South Wales, a lease area. I knew Geoff a little. I had met him in different processes over the years. And, again, you know, Geoff brought – and he had been quite actively involved, from my recollection, in earlier iterations of, you know, the cap debate, which is always raised on the Barwon-Darling. You know, it has been very settled for the rest of the northern Basin, but the Barwon-Darling has had a disagreement with government and with the audit group – independent audit group on cap for many years. I know that Geoff was, as Western Lands  
25 Commissioner, quite involved in that.

30 MR BEASLEY: And, roughly, how many times did the Committee meet per year? Did it vary or was it consistent each year from 2012 to 2016 when you were on the Committee?

35 MR CLEMENTS: I think it probably varied a little, once we worked out the task, and we were intent on engagement, on meeting in regional communities so people could get some access to us and see what we were doing. We were very concerned that we were an anonymous committee and, you know, the MDBA was rolling out press releases in our name, so we became more insistent on meeting. And subcommittees were formed to try and deal with the workload.

40 MR BEASLEY: Just to ask you about that, the MDBA is rolling out press releases in your name, I assume these were approved press releases?

MR CLEMENTS: Look, they may have been approved by the Chair - - -

45 MR BEASLEY: Right.

MR CLEMENTS: - - - you know, but – as the Committee and the Chair himself were increasingly uncomfortable with the anonymity of the Committee and the role the MDBA was .....

5 MR BEASLEY: All right. And can I ask you, just before we have a break, when the Committee met, was it just the members of the Committee or were there representatives from the MDBA or other – or state agencies present when you had your meetings or did it vary?

10 MR CLEMENTS: Look, it varied a little, but consistently Queensland and, when they could be bothered perhaps, New South Wales would attend. I found those attendances very valuable, particularly the Queensland guys, you know were just very knowledgeable and had a good input. And for New South Wales, for the greater part, if they did turn up, we got some good people earlier. Later on I think we got  
15 people that were probably more political. Too many MDBA staff in the room, which myself and other Committee members discretely complained to Mal about. We felt it difficult to have a fulsome discussion at times when staff – the room was just packed with staff - - -

20 MR BEASLEY: Sorry. Were employees from the Basin Authority always present at all of your meetings? All the - - -

MR CLEMENTS: They were always present at all the meetings. We excluded occasionally, you know, when we really needed to talk about something. But, look,  
25 I'm not disagreeable to that, but you can't have a room packed with MDBA staff.

MR BEASLEY: When you say packed, how many are you talking about?

MR CLEMENTS: It would be seven or eight or nine staff.  
30

MR BEASLEY: Staff.

MR CLEMENTS: Yes.

35 MR BEASLEY: With expertise in what areas? Were they policy people or were they scientists or a mix?

MR CLEMENTS: Communication people – a mix. Communication people and policy people.  
40

MR BEASLEY: Communications people.

MR CLEMENTS: And policy people.

45 MR BEASLEY: Right. Okay. So not the modellers?

MR CLEMENTS: The modellers were mostly present, yes.

MR BEASLEY: They were?

MR CLEMENTS: Yes.

5 MR BEASLEY: All right. Ecologists? You know, those sorts of scientists?

MR CLEMENTS: At times. Yes.

MR BEASLEY: Yes. Okay.

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MR CLEMENTS: You will hear from Bill Johnson. I'm not sure if Bill is an ecologist, but he should be. He should be known as an ecologist. So Bill attended many meetings. And, again, you know, a person like Bill had a great connection and great personal history in the area. So, you know, no problems with that.

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MR BEASLEY: And was there a particular people on the MDBA staff that consistently attended all of your meetings or did it vary depending on the topic that was up for discussion on the agenda that was up for discussion?

20 MR CLEMENTS: Well Frank Walker would attend all meetings. I guess he was  
- - -

MR BEASLEY: Who was he?

25 MR CLEMENTS: Frank is an ex Queensland water agency staff person and member of the MDBA. I think Frank was our minder, possibly our contact with the secretariat.

MR BEASLEY: What was his position or title within the MDBA, if you recall?

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MR CLEMENTS: I don't know. He was there to keep an eye on us.

MR BEASLEY: I take it from you saying that that, whatever he was, he wasn't a scientist.

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MR CLEMENTS: No, not at all.

MR BEASLEY: No. All right.

40 MR CLEMENTS: Frank wouldn't claim to be either.

MR BEASLEY: Yes. No. Okay.

MR CLEMENTS: Frank was a minder.

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MR BEASLEY: A minder. All right.

MR CLEMENTS: That's what he was. I know what a minder looks like.

MR BEASLEY: Is that a convenient time to have a break - - -

5 THE COMMISSIONER: It is.

MR BEASLEY: - - - Commissioner?

THE COMMISSIONER: It is.

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MR BEASLEY: When would you like to break till?

THE COMMISSIONER: Until 10 to.

15 MR BEASLEY: 10 to. All right.

THE COMMISSIONER: Till 10 to. 10 to noon. Yes.

MR BEASLEY: Thank you. We're just going to have a break until 10 to 12.  
20 Thank you.

**ADJOURNED**

**[11.33 am]**

25

**RESUMED**

**[11.52 am]**

MR BEASLEY: I wanted to take you to page 2 of your statement and the  
30 experience you say you have had with understanding how hydrological modelling works. Paragraph 15, I just want to understand what you mean by when you say:

*Water sharing plans are underpinned by hydrological modelling.*

35 I understand that. Then you say:

*There's a statutory model underpinning each resource plan for each valley.*

Is that a reference to, for example, the Barwon-Darling Water Sharing Plan when –  
40 in clause 33, when it talks about establishing long-term average annual extraction limits, it actually refers to, in a note, the IQQM computer model and a system file. Is that what you mean by statutory modelling underpinning it?

MR CLEMENTS: That's correct.  
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MR BEASLEY: Yes.

MR CLEMENTS: And that reference actually refers to a known model run and known assumptions within that model run.

MR BEASLEY: Yes. It's 92 something, whatever it's.

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MR CLEMENTS: Yes.

MR BEASLEY: Now, I obviously can read what you've said in paragraphs 18 to 20 about the distinction that you say is important to draw between a planning instrument and a logistical instrument. Can you explain in your words, though, what you mean about – what is the distinction you're seeking to draw between a planning instrument and a logistic instrument – logistical instrument and why it's important in relation to the Barwon-Darling?

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MR CLEMENTS: It's certainly important that every Water Sharing Plan – I know you're focusing on the Barwon-Darling – the intergovernmental agreements relating to the competition reforms which we spoke of earlier, demand that there be no growth in use over the 93, 94 developed area. So that area, that developed area in 93, 94 has been turned into a water number for each valley.

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MR BEASLEY: Yes.

MR CLEMENTS: And the model run equates to that level of development. So IQQM has all sorts of assumptions in it. It has a growing area. So each year you will say, "Well, I'm going to put in the 94/94 crop area." And you still should do that until Basin Plan accreditation. And you assume certain weather antecedent conditions which you talked about earlier. And again that's not an assumption you're allowed to make while you're actually guided by the Murray-Darling Basin Ministerial Council. 2000/2001, they set these things in stone. They have been varied slightly since, by agreement.

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MR BEASLEY: Yes.

MR CLEMENTS: I have no idea what has happened since 2010. I haven't been questioned on that. But that means that there's a known area. You plug that in. You run the assumptions of the Water Sharing Plan and that also equates to our property right. It says we should be allowed to stay at that level of development. And, for instance, if we as an industry include – we achieve greater efficiencies of water use we can actually increase our area, based on ..... increased water use, but we can't exceed that water use. So it is the way you check compliance for a Water Sharing Plan for growth in use. It's a way, for instance, an irrigator group may push back on the government, say, "you're impinging unnecessarily on us."

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But there's one caveat – particular caveat that on that, which is you – the Water Sharing Plans will impinge on that property right to protect certain environmental aspects. This isn't a new concept. This is 2000 in New South Wales, as agreed by that competition policy agreement across all Basin States, so whilst you might have

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an area, a target if you like, that you're allowed to get to, you will be impinged upon your capacity to get there by protection of certain things. Low flows is one of those. So it's 170 gigs for the Namoi. On average, for the Namoi, we know from long run modelling that 67 per cent of the time you will get 100 per cent of entitlement.

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You won't get it 100 per cent of the time because of weather, but you won't get it also because the Water Sharing Plan says, "We are going to hold you back to protect certain things." And in return for that we're allowed, for instance, to have a three year rolling average where we exceed that annual average, and that's a bit of a quid pro quo on that low flow restrictions.

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MR BEASLEY: What you say a hydrological model might be the right tool if you want to test whether you need to water a wetland over a 114 year ..... by that do I understand that it's a model that can tell you that a particular wetland might need a certain amount of flow for a certain number of days, and a certain percentage of years, to achieve certain ecological – expected ecological benefits.

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MR CLEMENTS: And the model won't tell you that as such. You tell the model that. So that time series will mean - - -

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MR BEASLEY: You will put those assumptions into the model and the model will tell you how much water you need to do that?

MR CLEMENTS: That's right. So the time series demand you talked about earlier on would be the way you would inform it of what you think the environment demand should be.

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MR BEASLEY: Yes. But then you say – then you say that's a planning exercise, but when precisely to water a wealth is a logistical exercise, what do you mean by that?

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MR CLEMENTS: IQQM is a planning tool. It's a very important planning tool, and it's a compliance tool. It's a very important compliance tool. It is not a tool that will deliver, in a logistical sense, a particular flow of water. It's not for that. Can't

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THE COMMISSIONER: By logistical you mean the delivery of resources at certain times and at certain places?

MR CLEMENTS: Yes.

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THE COMMISSIONER: I don't think I fully appreciated this. The IQQM model, does it not take into account seasonality?

MR CLEMENTS: Yes, it does. But it does it in a 114 year framework, for instance. So if you wanted to deliver water today or next week or in a month's time, it will only tell you what will happen – likely to happen. But if you've got some - - -

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THE COMMISSIONER: This is on the basis that long-term averages are a bit like in the long-term .....

MR CLEMENTS: Yes.

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THE COMMISSIONER: Meantime, you've got to get on with something .....

MR CLEMENTS: And that is a huge distinction and is so – it was so difficult in that Northern Basin Advisory Committee to communicate that to MDBA staff, that their safety zone of running the model and doing it all on a desk top, which gave them comfort because they don't – the Commonwealth doesn't have a history of this work. The states have a hundred years of knowledge, and that knowledge is conveyed to cadets and staff and, you know, the Commonwealth just doesn't have that.

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MR BEASLEY: When you say knowledge, you mean knowledge of, "If it rains, this amount – this is what will happen in the river system"?

THE COMMISSIONER: Well, they haven't administered the water system.

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MR CLEMENTS: Yes. And it's just a big difference. It's the difference between funding a hospital and running a hospital. States run hospitals; Commonwealth funds hospitals. They have a huge learning curve that they are struggling with, and too proud to acknowledge they are struggling with it, and that drives a lot of the problem here. Yes. And the states are increasingly quite disparaging, because they are dealing with people who clearly do not have the core deep knowledge.

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MR BEASLEY: So, what, 270 – 50 gigalitres for the environment is funding the water – the river system but actually implementing that water in the best available way is a management thing that the states have the knowledge about?

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MR CLEMENTS: Yes. And including, for instance, in New South Wales, OEH – Office of Environmental Heritage, understand how to deliver water to wetlands. And honestly, if I ran the world for a week, I tell you, I would have a bilateral between the Commonwealth and OEH, for instance, on the – why is the Commonwealth trying to build site specific knowledge that it can never really understand, when you've got agencies out there that have site specific knowledge and actually have proper community engagement? This is the whole struggle they have, and that's why they revert to desktop because their comfort is you just go to the desktop and the computer says, "Yes."

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And they are struggling with the reality of delivering in a real sense, in a real system. You know the planning stuff they sort of get. And I say "sort of get". They don't get the logistical side. They're learning. They're learning slowly, but they're learning on everyone's account. You know, they make mistakes.

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MR BEASLEY: Is it – when you say paragraph 18:

*Measuring and managing low flows requires logistical assumptions to be made and relied upon.*

5 You're talking about the knowledge of how to get the water to specific spots when it's needed?

MR CLEMENTS: Yes. And Bewsher, you know, in his report – I would differ from you two gentlemen. Bewsher knew what he was saying there. He was actually putting a strong caveat in that he did not agree with the fact that they disconnected all that required knowledge. Bewsher knows that knowledge and - - -

THE COMMISSIONER: I think between the lines, as I say politely, he was making comments of the kind you've just described.

15 MR CLEMENTS: And they disconnected. So you know, the disconnect – you know, as you read out earlier, knowledge of the losses in system and flows, which differ in that report. That report assumes there are no losses. There are huge losses in the Northern Basin. It's a highly ephemeral system. So doing that the report commits itself to failure immediately and on top of that - - -

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MR BEASLEY: When you say – we need to be precise, when you say huge losses, you're talking about huge losses of water from inflow or rainfall, or - - -

MR CLEMENTS: Transmission losses - - -

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MR BEASLEY: Transmission losses?

MR CLEMENTS: - - - in the Namoi, which was referenced – I think I underlined it, perhaps you read that. We know in the Namoi there's an end of system flow requirement in July, every year, depending on storage capacity. We know – you know, when I was the Executive Officer in Namoi Water, Maurice Gleeson – who has sadly passed away – but Maurice ran the river system for years. He was the guy who actually delivered the water, you know, made sure it got to a place on time, made sure that everybody was behaving, that the things worked right. The Lower Namoi, you know, is a system that actually will shut off at times for irrigation, the losses are so high. And - - -

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THE COMMISSIONER: When you say “the losses”, you mean the failure of the connection of the river downstream?

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MR CLEMENTS: The antecedent conditions are such that the capacity for variation is such that - - -

MR BEASLEY: Is this – does this depend whether it's particularly hot and there is extra evaporation or the ground is dry, so there's more water losses through the - - -

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MR CLEMENTS: There's a vernacular that agency uses, it's the system – whether the system is greased or not, whether it's fat, and if the system is not greased, the losses are huge because it just flows out in under the banks, into sand bars.

5 MR BEASLEY: Right.

MR CLEMENTS: Into aquifers. So - - -

10 THE COMMISSIONER: So on a large and riverine scale, this is the thing familiar to all of us who pray for rain, that the first fall really runs off, the second runs better, and the third starts to .....

15 MR CLEMENTS: Yes. And the Lower Namoi has the Pilliga Forest, which is hard ground. It runs a lot of water in. And this is the lack of knowledge that's – for the northern system. The Lower Namoi, for instance, is a good case study. It has got a system that will leak water like a sieve, but it's also got the Pilliga system which can have a random storm, pour a huge amount of water in overnight, and suddenly you've got a greased system. And it's a lack of knowledge of that, those toolkit measures – I was not a strong supporter of the toolkit for the reasons it was not  
20 funded, it was multi-jurisdictional, all the problems that are inherent.

THE COMMISSIONER: What, you think there may be problems with cooperation between governments .....

25 MR CLEMENTS: I'm sure that to lumber on governments, you know, a view that we will have some non-legislative tools here.

THE COMMISSIONER: Well, like, where does the expression toolkit come from?

30 MR CLEMENTS: It came out of the Committee I was on and as I say, I was - - -

THE COMMISSIONER: That's why I'm asking.

35 MR CLEMENTS: Perhaps Bruce .....

THE COMMISSIONER: And what's the figure of speech meant to indicate?

40 MR CLEMENTS: It's the – it's the – when you're trying to solve a problem, and I concur with your remarks earlier will, it's not always water that solves the problem. The water – Commonwealth Water Act 2007 is specifically a Water Act; it does not contemplate landscape management. Myself – I made submissions back in 2007, I said you need to consider landscape management. So it cuts off landscape management, and even riverine – you know, bank management. So it has sort of got an inherent deficiency there, in that there's all sorts of other things you should be  
45 doing if you are managing a river that that Act can't contemplate, but that battle was lost over 10 years ago. So the toolkit was an attempt to have non-water measures that helped the environmental situation of the river.

THE COMMISSIONER: So first to find your desired environmental outcome recovery or protection?

MR CLEMENTS: Yes.

5

THE COMMISSIONER: And then ask yourself, as well as water, perhaps apart from water, how might that be achieved?

MR CLEMENTS: Yes. So you know, a fish ladder – a fish ladder aids with fish passage and fish breeding events and that's a key indicator of river health. You know, it's – it was well intended.

10

THE COMMISSIONER: You need water for a fish ladder, but you - - -

MR CLEMENTS: Well, where you have a structure that obstructs – you know, fish passage, like a causeway or a weir. You know, we've learnt the hard way – myself and many others – you know, that you need to do some things where you go and change the natural environmental. You need to do some things or you're just going to destroy the environment and, you know, they were lessons we learnt a long time ago. It was a genuine attempt to do that. I – my concern as a Committee member, and perhaps knowing a little about politics, was that it's multi-jurisdictional, it was unfunded, and it could be used perhaps as a fig leaf, you know, which I will note that the ministerial council meeting in November 2016 agreed to the toolkit measures put forward by the MDBA, not the NBAC tool measures, which are different.

20

25

I will come back to that, but they should be implemented by March 2017. I know nothing was done until Four Corners and the disallowance motion, and suddenly the toolkit is something that has to be done. Well, it's a year past their deadline for it being done. They had no – in my view, they had no particular intention of doing it until they struck some trouble with the disallowance motion. Suddenly, the toolkits were the way around it.

30

THE COMMISSIONER: That which was disallowed, and that which has now been dis-disallowed, that produces an immediate reduction - - -

35

MR CLEMENTS: It does.

THE COMMISSIONER: - - - of 70 gigalitres in that which is to be recovered in the northern Basin.

40

MR CLEMENTS: Yes.

THE COMMISSIONER: So, like the southern Basin SDL adjustment it takes, as it were, the full credit for a suite of measures before they've started to have any effect.

45

MR CLEMENTS: Yes. And questionable modelling, you know.

THE COMMISSIONER: And as you say, with overlay on that the modelling question to which a deal of the material that Mr Beasley referred to this morning, in taking me through some of these reports, contains commentary, including by your Committee.

5

MR CLEMENTS: Yes. Look, I have to say that as a person who lives there, and my boys are contractors of the cotton industry, that anything that returned water, you know, would be a benefit to the economics of the area. But I will match that statement with a statement that if it's not honest, then I don't want to be involved in it, and I have grave concerns about the accuracy of that work. And I just think we have to get this right because we are, I feel, obligated to keep the commitment, which is made not only by the Australian Parliament but made by many people, that we get the balance right. So I'm concerned about the modelling.

10

15 THE COMMISSIONER: Just to continue: you said you will come back to the question, or come later to the question of the NBAC's view of measures, which you contrasted with the Authority's view of measures. Is it convenient for you to tell me about that now?

20 MR CLEMENTS: Look, I can provide further documentation to Senior Counsel, but the toolkit measure put forward by the NBAC to the Murray-Darling Basin Board are not the toolkit measures that have been put forward by the Murray-Darling Basin.

25 MR BEASLEY: Are your recommendations the ones that are contained at pages 6 and 7 of the final report of the Northern Basin Advisory Committee? If you look at tab 2 of the folder in front of you, just see whether this helps you. There's an executive summary starting on page 6 and it will have the first – NBAC contends the Basin Plan will only succeed only if one of those things is the toolkit, then you've got 2 through to 9.

30

THE COMMISSIONER: What's the toolkit with the capital T there?

MR CLEMENTS: I think it's just the generic name for these measures.

35 THE COMMISSIONER: Where would we find – if you turn to page 12, you will find a definition. Where would we find what was the NBAC's toolkit? Is it starting on page 13, is it?

40 MR CLEMENTS: Look, this is the final report, but if I could supply the discussions in the Committee, you know, I feel that the final report was a little bit pushed back on and edited. The gauging stations, for instance - - -

THE COMMISSIONER: Where do I find that reference?

45 MR CLEMENTS: Page 10, HS4.

THE COMMISSIONER: Yes.

MR CLEMENTS: You know, if you want to understand the logistical issues which Bewsher refers to - - -

THE COMMISSIONER: Yes.

5

MR CLEMENTS: - - - then you need to have a huge increase in the gauging station network and greater use of telemetry.

10 THE COMMISSIONER: I don't mean to be dismissive. Far from it. But, in a sense, that could be boiled down to this: you need to know more about the water that you are intending to dispose of.

15 MR CLEMENTS: And how weak the system is. Because it's a large unmonitored system. I gave the instance of the Namoi. If there has been a storm in the Pilliga, and suddenly the system is wet, you know, that's 30 gigs less it will take to transmit that water through the lower stretch. Now, they're pretty big numbers.

20 THE COMMISSIONER: It seems to be pretty common ground, by which I mean even people who have disagreements – such as NBAC with MDBA – nonetheless, there seems to be common ground that one really needs a deal more information from the northern Basin, much less studied than the southern Basin.

25 MR CLEMENTS: Much less studied, there's not the economic sort of community and all the resources that that sort of drags with it, and the southern Basin is wet; it has got end of system flows pretty much all the time.

30 THE COMMISSIONER: Explain to me – I'm from the city and I'm not a farmer. Explain to me why the distinctly smaller economic presence in the northern Basin compared to the southern Basin justifies so much less scientific knowledge?

MR CLEMENTS: I can't explain that, because I don't think it does justify it.

THE COMMISSIONER: Seems odd, doesn't it? Yes.

35 MR CLEMENTS: But it's just resources going to resources, I think that's the nature of government, perhaps.

40 THE COMMISSIONER: Well, I'm asking you on policy now. Why shouldn't we the taxpayers, not the farmers – distinctly not the farmers – why shouldn't we, the taxpayers, be funding proper science in relation to the Basin?

45 MR CLEMENTS: Well, we should. And I will give you a reason that I feel it's hard to argue against: the Commonwealth Environmental Water Holder holds now several billion dollars' worth of water assets. Just simply as protection on their asset they should be investing in further, better knowledge of the northern Basin. They want their asset deployed appropriately and efficiently, they would have a business case just by themselves to invest into - - -

THE COMMISSIONER: Have a look at that map to see that it's a hugely significant part of the national environment, physical, economic and social.

5 MR CLEMENTS: Yes. And this big Commonwealth owned asset that any private corporation that owned an asset of that size would be investing in protection of the asset.

10 THE COMMISSIONER: You had better – I think it might be a provocative description. What do you mean by Commonwealth owned asset?

MR CLEMENTS: The water they purchased.

THE COMMISSIONER: So you're talking about the CEWH water.

15 MR CLEMENTS: CEWH's water. They are in a system where they have little knowledge, they're doing something no one else has ever done before, they are transferring through the system. Well, we have never done that before because we know how difficult it is and problematic. Well, they have a task that requires them to do that.

20 THE COMMISSIONER: Your Committee contains recommendations, which I'm bound to say I find very impressive, concerning the willingness to experiment but on the basis that you actually will gather information by which you can improve things as you go. Partly that's adaptive management, but partly it's just science, isn't it?

25 MR CLEMENTS: Yes, it's an attitude that because of the pressure MDBA staff are under, and you know I've been a little critical of them, but the middle staff – not the people who, you know, are paid to deliver outcomes – the middle staff who are paid to hopefully carry out good science, are under huge pressure.

30 THE COMMISSIONER: Is that what you are referring to in your paragraph 37? Your statements at paragraph 37?

35 MR BEASLEY: Just while the witness is turning to that, I've had put in front of you the toolkit measures, appendix B in that report. Yes. The MDBA's toolkit measures. Sorry.

MR CLEMENTS: Yes. That's - - -

40 THE COMMISSIONER: This is a pressure – you refer in that first sentence to:

*If the MDBA would admit failure, we could work together to overcome the failures and achieve the environmental outcomes.*

45 And then you say the staff are under huge pressure to make the outcomes happen.

MR CLEMENTS: Yes.

THE COMMISSIONER: Are they different outcomes?

MR CLEMENTS: Well, they're under pressure to make it look like they happen. And I will stand by that statement. They are under pressure to produce - - -

5

THE COMMISSIONER: This is you being a little critical of the MDBA.

MR CLEMENTS: Yes. And I feel that it's a culture of delivery at all costs. If their culture were that their staff were allowed to tell them things didn't work, then, as I said to a particular person that we set up ..... set up a subcommittee and I dealt with one of the modellers, you know, extensively. And, as I said to him, if you just – the demand series they call pick a box – okay? They call it pick a box, because if it doesn't work, you go back and you pick another box.

10

15 THE COMMISSIONER: The definition of not working means not supporting a reduction of a certain size. Is that right?

MR CLEMENTS: Yes, and not delivering. So Bewsher points out that if you – they've removed - - -

20

MR BEASLEY: Not delivering an environmental flow, not meeting an environmental watering target.

MR CLEMENTS: And also producing results that indicate you can do something that you can't do with the water you're .....

25

MR BEASLEY: Yes. Yes.

MR CLEMENTS: And that's the pressure they're under. Well, you know, if they could have a discussion - - -

30

MR BEASLEY: Pick a box means going outside the modelling. Correct?

MR CLEMENTS: Yes. Pick a box means going outside the modelling and keep picking a demand series - - -

35

MR BEASLEY: Yes.

MR CLEMENTS: - - - until you find the one that works in the model. That's not science.

40

THE COMMISSIONER: Well, is this the kind of thing that informs your concerns expressed in your paragraph 42? You question Mr Bewsher as to whether the Authority was using correct information for the IQQM model.

45

MR CLEMENTS: The NBAC committee – you know, we were attempting to engage the community, we were hearing from the community in the Barwon-Darling

that the Barwon-Darling Water Sharing Plan was undermining the community's faith that really anything was happening. So the community's concern, expressed to us and we expressed back to the MDBA, was, "You're buying all this water, but are you sure that it's not being pumped?" Now, I can't answer that question – no one can  
5 answer that question – until the compliance issues are dealt with. But, more significantly, it's the Plan issues. And we went back to MDBA and said, "the Northern Basin Review is not going to have any credibility if you can't deal with the concerns of the community and others over that Barwon-Darling plan."

10 And, again, you know, I was put on a subcommittee and we dealt with Bewsher and others and the main committee dealt with, at times, Bewsher. Now, in a meeting – look, I know enough about the system. I was a contractor up there. And I know from IQQM – I was a cotton contractor in my day. I know from IQQM that it won't deal with low flows. Okay? It just can't. And I became increasingly concerned over  
15 this process, that we are just getting told that it could and it can't, and that there was no change – significant rule changes had led to no change ..... MDBA.

THE COMMISSIONER: Mr Bewsher, according to his Terms of Reference, was told to stay out of reviewing IQQM.

20

MR CLEMENTS: Yes. And he's – he said all the code that he could, I believe.

THE COMMISSIONER: I'm sure. Who had reviewed IQQM?

25 MR CLEMENTS: Look, Bewsher at a different time, but in terms of the 16 process he was told not to dig into certain areas. He had previously provided documentation in 2013.

30 THE COMMISSIONER: Well, now, in your paragraph 42 you say that the MDBA responded aggressively to Mr Bewsher confirming that it wasn't running the IQQM for the Barwon-Darling using the current rules - - -

MR CLEMENTS: Yes.

35 THE COMMISSIONER: - - - under the Water Sharing Plan. Who was – who do you recall being the person or persons who responded aggressively on behalf of the MDBA?

40 MR CLEMENTS: Paul Carlisle and Peta Durham, P-e-t-a. This was a meeting at a motel near the airport. We were travelling through different people. So we got off a plane and went into a meeting room just quite close to the airport. During the course of that meeting – you know, we were strongly questioning the MDBA, just two of us in the subcommittee. And irrigators were actually present at that meeting. And I just felt that they weren't working with the current rules. The current rules is actually,  
45 you know ..... modelling terms. So the current rules in 2016 would have been the exact 2012 Barwon-Darling Water Sharing Plan rules. It should have been plugged into the IQQM.

THE COMMISSIONER: Well, the IQQM is a model into which you would plug that variable - - -

MR CLEMENTS: Yes.

5

THE COMMISSIONER: - - - of the current rules.

MR CLEMENTS: And that Barwon-Darling plan has a gazetted model run. So that's the model run that the MDBA should have - - -

10

THE COMMISSIONER: So you had a suspicion that was not being plugged in?

MR CLEMENTS: I had a suspicion the MDBA did not have the operative model. And I asked the question and I was – had a very disparaging response from the two  
15 MDBA staff, that it was a stupid question, that I was a person of no skill. And Bewsher waited his time and very quietly said, “He is correct. You do not have the current rules”.

15

THE COMMISSIONER: And then what did they do or say that you have summarised as - - -

20

MR CLEMENTS: They shut that - - -

THE COMMISSIONER: - - - responding aggressively.

25

MR CLEMENTS: They shut that meeting down as quick as they could, within minutes. And we reconvened, I don't know, perhaps a month later, somewhere in that timeframe. And Paul Carlisle was not of any view that there had ever been a  
30 problem, but they now had the current rules, and perhaps they had always had the current rules. That's the nature of that particular individual.

30

MR BEASLEY: But the people you have mentioned from the Basin Authority, at that meeting, what roles did they have – or do they have – or did they have in the Basin Authority?

35

MR CLEMENTS: Well, their role is to take charge of this – of modelling. So, you know, obviously, when you are testing things as they must - - -

MR BEASLEY: Were they modellers?

40

MR CLEMENTS: No, they're not modellers, no. But they're in that area and they had that area.

THE COMMISSIONER: They're hydrologists?

45

MR CLEMENTS: Carlisle, I understand, is a hydrologist. I think Peta Durham is, as well, yes.

THE COMMISSIONER: Paragraph 35 you refer to a senior relevant staff member of the MDBA. Who was that?

5 MR CLEMENTS: I'm putting him in a little bit. Matt Coleman, who I have a lot of time for. I think Matt has integrity.

10 MR BEASLEY: When you say – the Commissioner took you to, “My point is that the MDBA – if the MDBA would admit failure.” Is that another way of saying if they would be honest about the science, then - - -

15 MR CLEMENTS: Yes. Look, if you put in the fact that there are huge losses in the system and you've got a demand series, they acknowledge meeting demands was not the real world – was not how you would do it in the real world, you know ..... style approach. If you decided that all that was correct and you had a discussion about that, you might find a different way of doing things. And Matt Coleman, you know, he acknowledged just in a one-on-one meeting – I said to him one meeting, “Look, 20 Matt just say that this doesn't work – as I was leaving the meeting. I said, “I'm back in two weeks. I want you to think about the two weeks. If you finally acknowledge it doesn't work - - -”

20 MR BEASLEY: If what doesn't work precisely?

25 MR CLEMENTS: The demand series you're feeding in, the fact that you haven't got the system losses fed in, you know - - -

MR BEASLEY: If you haven't got a comprehensive model, you mean?

MR CLEMENTS: Yes.

30 MR BEASLEY: Yes.

MR CLEMENTS: If you haven't got a process that is valid for the northern system.

35 MR BEASLEY: Yes. Right. Okay.

40 MR CLEMENTS: I said, “Matt, think about it. When I come back I'm going to ask what you would do if you just contemplated that.” And when I came back he actually said, “There are different things you would do.” And this is my point. If you lock yourself into defending something that is frankly indefensible, you don't look for what the real solutions are, and they don't. You know, and - - -

MR BEASLEY: Did he say what he would do differently or what should be done differently?

45 MR CLEMENTS: We talked about it a little. I didn't push him on it, because I placed him then and place him today in an awkward spot. You know, he's - - -

THE COMMISSIONER: So what's the awkward spot?

MR CLEMENTS: Well, he's – he clearly operates in a culture where they expect certain outcomes. You know, and I know that, you know, as a person who is a staff  
5 member that that would be awkward for him, because I feel he has integrity. You know, and I think this is a problem with the organisation. There is no one I know in the northern Basin who doesn't want the Commonwealth purchased water to go to its purpose, but we just can't see that they're doing it in any sensible way in terms of how they're going to get it there in the way they say they are.

10 THE COMMISSIONER: Now, I see that the Terms of Reference for the NBAC, which you will find recorded on 31 of thirty - - -

MR BEASLEY: Can I ask one question before you go to the Terms of Reference  
15 - - -

THE COMMISSIONER: Sure.

MR BEASLEY: - - - just before we get to 22 of your statement where the  
20 Commissioner is going to bring in the Terms of Reference. I just want to understand what you meant by paragraph 20 where you said:

*Hydrological models are the correct tool to assess growth and used by irrigators above the agreed cap on extractions.*

25 And you say:

*MDBA recently carried out and released the cap reports for all years 2009 to 2010 until 2016/17. This is a significant failing.*

30 Do I read the comment "this is a significant failing" the fact that they haven't gone beyond '16/17?

MR CLEMENTS: Well, the fact that they weren't produced annually. You know, that's – you know, as .....

THE COMMISSIONER: So they were released in one rush, is what you're saying?

MR CLEMENTS: Everything other than '16/17 was released in one rush, then  
40 '16/17 was released not that many months ago.

THE COMMISSIONER: Yes. So the failing is not producing them regularly and frequently?

45 MR CLEMENTS: Annually - - -

THE COMMISSIONER: Yes.

MR CLEMENTS: - - - as required.

MR BEASLEY: This is linked to 44 of your statement, is it? If you - - -

5 MR CLEMENTS: Well, if I could just talk a little, the MDBA has made a great  
play in terms of the Four Corners report that they have no compliance role. That's  
patently incorrect. The Water Act – Commonwealth Water Act 2007 assumes  
responsibilities ..... Murray Darling Basin Commission into the new MDBA. As you  
would understand, these are savings provisions. And the savings provisions include  
10 explicitly that they will take over the annual cap audit, and they will do it according  
to, you know, the terms set 2000, 2001.

THE COMMISSIONER: It's possible, isn't it, that there's just a terminology  
question there. There's no doubt about the MDBA's legislated function and powers  
15 to obtain information, including – including from State authorities. But it may be –  
and I can see this point – that that in itself is not compliance; it's essential to  
compliance, but it's not compliance in itself.

MR CLEMENTS: So the MDBA made a great play that they aren't involved in the  
20 issue of a non-compliant irrigator, you know, taking water without an order and  
perhaps doing something to their meter.

THE COMMISSIONER: Well, leaving to one side that they are not the Director of  
Public Prosecutions for any of the states - - -

25 MR CLEMENTS: I agree that's not their role in law or even in the Constitution - - -

THE COMMISSIONER: Yes. Yes.

30 MR CLEMENTS: - - - of which you know far more than I ever will.

THE COMMISSIONER: But they do have all these powers to get information.

MR CLEMENTS: Well, more importantly, a cap audit is an incredibly strong  
35 compliance tool. It's a compliance tool not for an individual irrigator, but for a  
whole valley. It will tell you, as is required by previous agreements and the Water  
Sharing Plan, whether the industry is growing in use. It was the mainstay. It was the  
local government fear of ICAC in New South Wales, you know, "Behave yourself.  
You might get caught." Well, the annual cap audit for irrigators was always that. It  
40 was something that we poured over and checked. We weren't growing in use.

THE COMMISSIONER: I think I understand your point and I think, with respect, it  
must be right when I said it was just a matter of terminology. When the Authority  
says it's not responsible for compliance, it may only be a matter of terminology,  
45 because, one thing is clear, it has tools which the Water Act describes as being "for  
compliance purposes".

MR CLEMENTS: Yes. And I would submit - - -

THE COMMISSIONER: So it has powers under section 223 to enter premises to monitor compliance. I'm just quoting from the Act.

5

MR CLEMENTS: Absolutely, yes.

THE COMMISSIONER: So it may only be a matter of terminology, because I know the MDBA appreciates it has those powers.

10

MR CLEMENTS: They made a great play of not being involved in compliance. The most - - -

THE COMMISSIONER: Well, they couldn't possibly mean that they had forgotten that they have the powers they have under part 10 of the Water Act - - -

15

MR CLEMENTS: Absolutely.

THE COMMISSIONER: - - - I hope.

20

MR CLEMENTS: And in the savings provisions, they had the obligation and the responsibility of carrying out the annual cap audit. They failed to do that for almost six years.

THE COMMISSIONER: Has there been any – have they been pulled up for that or have they offered an - - -

25

MR CLEMENTS: No.

THE COMMISSIONER: - - - explanation for that?

30

MR CLEMENTS: No. They're sort of like a good army. They just keep moving on. You know, they don't stay in one spot too long.

MR BEASLEY: I was brave enough to interrupt. You wanted to take the witness to the Terms of Reference on page 31 of - - -

35

THE COMMISSIONER: Yes. In 31 of the report by your Committee, it includes in the Terms of Reference something called a protocol, I suppose as assistance by the Authority to people who may have lacked committee experience. And you see that item (c) of that meeting protocols, promulgated by the MDBA, which is attached to the Committee's Terms of Reference, was that members will participate in rigorous and respectful discussion, including challenging assumptions.

40

Now, this is a general proposition for all MDBA meetings, apparently. But in relation to the subject matter of your MBAC committee, the assumptions, including those that were, to use your expression, plugged in to a model, were, I think you've

45

told me, in fact challenged by questioning whether they were realistic, because to the extent that the assumption was not realistic, then the result of the model run would not be useful. Because nothing is exact, and neither a model nor an assumption nor indeed our attempts to describe reality, there's an acceptable loose fit, as it were, an approximation.

MR CLEMENTS: Yes.

THE COMMISSIONER: And that's why we – I think this is the point you made and the Committee made, that's why we are interested in so-called risk assessments including levels of uncertainty. Have I gathered correctly something that you've been telling me in that – what I've just put to you?

MR CLEMENTS: The risk assessment – you know, in any process, you know there's – complex risk assessment is crucial. They didn't want to go to risk assessment. I had a very specific request. It has been referenced today: the joining of IQQM series models together, which it's just – you know, the old assumption which has served us well for 20 years is that if every valley is kept in order and under control the system would be better off. The new assumption, which the Commonwealth being involved with allows, is we will actually cooperate between valleys and states. So you're asking something from IQQM and the other modelling tools which hasn't been done before, particularly.

It has been done a little. You want to join a whole series of those model run together. That's quite appropriate. It's actually beneficial. But, you know, Bewsher talks about it and this report here, which is a draft report January 2013 Barwon-Darling independent audit of cap.

MR BEASLEY: That's the one that was FOI'd. I haven't read it yet, so - - -

MR CLEMENTS: So the draft report, being a draft report, Bewsher actually displays his considerable knowledge of modelling. He certainly, as you pointed out, doesn't have a great knowledge of the Water Act and the requirements of it.

THE COMMISSIONER: He probably does.

MR CLEMENTS: But he knows modelling, and he does. This document, he talks about how you should carry out a cap audit and he talks about it extensively. This is a preparatory document and I guess once everybody has agreed that, "Yes, that's how you do it," he has gone and produced a draft – a final report. You know, this is the – you know, the question that – and he deals with it in here, when you want to link models together, there's a way of doing that which is appropriate, and in the northern Basin, if we can talk about bandwidth, the bandwidth of the northern Basin events would be very, very wide. It is very wide. It's a highly ephemeral system. I just can't understate that. The southern system has end of system flows virtually permanently. It's always fat, in the vernacular, and it's always greased. Its bandwidth would be like that.

THE COMMISSIONER: Yes. I do understand.

MR CLEMENTS: You can make an assumption within that narrow bandwidth that will always be pretty close to right. In the northern Basin, your capacity to make  
5 assumptions that are outliers and unlikely is far greater. So if you are picking events to make something work, if you're out playing the pick a box version of IQQM, that doesn't achieve the task. But if I get the Peel ..... but if I get the Peel, you know, running hot and I get the Namoi running hot, and then I get the Barwon running hot, and then I get the Darling running hot, I get the water to Bourke. Well, you have  
10 done something unusual there. It's not just one times one, it's one times, times, time, four times. The number gets very big, very quickly, statistically.

THE COMMISSIONER: As to uncertainty, you mean?

15 MR CLEMENTS: If you – as to uncertainty and if you were choosing an outlier, it could be that it's not just this sequence of events will occur a few times in 114 years. It may not occur in 500 years. You are choosing.

THE COMMISSIONER: Yes, I understand.

20

MR BEASLEY: Is this what you are talking about in paragraphs 30 through to 37 of your statement? You wanted a statistical analysis done, you had a suspicion they were picking different years, etcetera, to authorise water delivery, etcetera.

25 MR CLEMENTS: Yes. I – I was suspicious that they were optimising the sequence of IQQM model runs that they were putting together, and I wanted to know some of the assumptions. As Bewsher has pointed out, I wanted to know when they were joining the rivers together whether they were taking into account losses, or whether there was a brief little period between one model running into the next where they –  
30 where they pulled some assumptions. And then - - -

THE COMMISSIONER: Who were the people at the MDBA who said they would do the analysis but later wouldn't talk about it?

35 MR CLEMENTS: Peta Derham, Matt Coleman, and Frank Walker, you know, confirm this. It will be in – if it's of use, I will search through the meeting notes and the to-do list which was published every meeting. It will be in there. And, you know, they didn't think it was too bad an idea until I expressed – just a speculation here – that I think they went away and did a few and then they came back and  
40 thought the resourcing issue was too great and they couldn't do it at all.

THE COMMISSIONER: The resourcing issue?

45 MR CLEMENTS: Well, they told us it was just a huge resourcing issue, they didn't have time. Typical resourcing issue. They did it for the southern Basin, which is a far bigger – you know, resourcing issue than the northern Basin, if you're doing a statistical analysis. So they did the - - -

THE COMMISSIONER: Why is that such a large resourcing issue?

MR CLEMENTS: It was never explained to me. I think that it was just that the answer was not a good answer. That's my opinion.

5

THE COMMISSIONER: I mean the data in question is historical hydrology.

MR CLEMENTS: Yes. And I would think that a statistical analysis – you know, they're tried to say it involved running the – it doesn't involve running the models. It involves questioning the assumptions.

10

THE COMMISSIONER: Running a model doesn't – why was that such a huge resource question?

15 MR CLEMENTS: It can be. But these - - -

THE COMMISSIONER: Making a model may be, but why would running the model be?

20 MR CLEMENTS: These are model runs that had already run. All I wanted to know was - - -

THE COMMISSIONER: That's my point.

25 MR CLEMENTS: All I wanted to know was how likely are these sequences to occur? They did that for the southern Basin. They initially agreed for the northern Basin, and then they said it was a resourcing issue and couldn't be done. That's – to come back to your point earlier, Commissioner that is risk assessment for that complex process.

30

THE COMMISSIONER: Quite so.

MR BEASLEY: I wanted to ask you about the final report of the Advisory Committee behind tab 2 of your statement, the report dated 9 October 2016. 'Finding the Balance: Final Report of the Northern Basin Advisory Committee', 9 October 2016. I will tender that. Was that – the Committee members are photographed on page 5, was this report the work of everyone on the Committee?

35

MR CLEMENTS: I think generally it was. You know, it was a good Committee. It – very harmonious committee and people, you know, they tried to – tried to get it right.

40

THE COMMISSIONER: Who is the writer?

45 MR CLEMENTS: Michelle Ramsay particularly worked on that, and certainly MDBA staff put in a huge effort, the secretariat staff.

MR BEASLEY: And Michelle Ramsay, what was her background? I can see her in the photograph, but - - -

5 MR CLEMENTS: Michelle is a farmer's wife, and therefore a farmer herself, at Bonshaw in northern New South Wales, and Michelle was actually the Executive Officer for Macquarie River Food and Fibre when I was on the board. So – yes.

10 MR BEASLEY: Right. Okay. And just looking at the executive summary on pages 6 and 35, some of the matters we've discussed are – and you've mentioned in your statement, and given in your evidence today, number 3:

*The plan will only succeed if the models are correct*

15 That's relating to your – the entire Committee lacked confidence, did it, in relation to what the Authority was doing in relation to the matters that you've raised in your evidence? It was a unanimous sort of view, was it, or - - -

20 MR CLEMENTS: I think that that would be true to say. I think it would also be correct – I don't think the Committee would disagree that for most of the Committee members they didn't have the technical background to hold the view possibly in their own right, but they were convinced over time, I think perhaps by the evasiveness of the MDBA - - -

25 MR BEASLEY: Right.

MR CLEMENTS: - - - that there was an issue.

30 MR BEASLEY: And that point 3 also mentions the 2000 auditor's assessment report. That's the Bewsher report of January 2013 you were referring to - - -

MR CLEMENTS: Yes.

MR BEASLEY: - - - that has been produced by – for someone under FOI:

35 *A standard error of 380 gigalitres in the five northern Basin valleys.*

What does that mean? What is that a reference to?

40 THE COMMISSIONER: That is the statistical concept of standard deviation.

MR CLEMENTS: Yes. And it's – you know, the system is highly ephemeral and Bewsher not only in that – in the 2016 report, which I think you read earlier on, identifies – you know, gaps in models and other things. I'm actually not myself particularly around that – that 380 figure, to be honest.

45 MR BEASLEY: We will have to have a look at that report. 5, the passage of environmental flows - - -

THE COMMISSIONER: Before you go to 5, would you mind if I just ask a question about 4?

MR BEASLEY: Yes, sure, go ahead.

5

THE COMMISSIONER: Going back to an earlier comment of yours that I'm interested in, you referred to the relationship between flow regimes and ecological outcomes as being a fundamental underpinning of the Basin Plan. Would it be correct to say that in your view that's because the Water Act defines the sustainable diversion limit and, on the way to it, the environmentally sustainable limit of take – level of take, by reference to what I call environmental and ecological outcomes?

MR CLEMENTS: Well, I think that that's the key to it. I read your Issues Papers and I think you reference this in the Issues Paper, there's a reference to Mike Taylor's resignation and advice at the time, and concern your Royal Commission holds over the leakages, and the - - -

THE COMMISSIONER: It's certainly true it's all about water level. Environmentally sustainable level of take for a water resource means the level – I'm reading from section 4 – the level at which water can be taken from that water resource which, if exceeded would compromise key environmental assets, key ecosystems functions, the productive base, and key environmental outcomes. Now, I'm just trying to – earlier you had said that you think it's a deficiency of the Plan, and I think also of Act – you refer to it being called a Water Act that it, as it were, either overemphasises or, indeed, deals only with water flows and there's more than one way of skinning the cat of environmental recovery and protection. Have I captured your notion correctly?

MR CLEMENTS: You have. If I could point you briefly to the National Action Plan on Salinity, which is a Commonwealth intergovernmental agreement with the states, and the catchment management authorities, which was a New South Wales term, but was again all the states. The Commonwealth got involved in landscape management through both of those processes. It understood the benefits of landscape management, and I think it's a deficiency of the – you have to focus on the water numbers, but it's a deficiency that you don't include the landscape around the river.

THE COMMISSIONER: Well, I think it's a very interesting point. You refer to that link as being the most common science related question asked by communities. So have I gathered from your earlier comments that the problem is of this kind, if you will forgive me putting, as it were, words into some imaginary community member mouth: "We, in this location, have suffered a diminution in the level of consumptive use for irrigation, I would feel a whole lot better about that, or less bad about it, if I knew it was actually helping the fish, the waterbirds, etcetera, etcetera." Is that the point you're trying to make?

45

MR CLEMENTS: That was a repetitive conversation we had.

THE COMMISSIONER: It seems - - -

MR CLEMENTS: They raised it consistently.

5 THE COMMISSIONER: It seems a modest request, doesn't it?

MR CLEMENTS: Yes. And it was raised – in every community meeting, that question was raised. That statement was made in the talk afterwards over a drink.

10 THE COMMISSIONER: Well, if I may say so, it strikes a chord with some fairly fundamental approaches we take politically, legally, and socially. Thus, for example, it's one thing compulsorily to acquire a person's property because the public needs it for a roadway. It would be another thing for the property to be acquired and not to be used for the roadway and, for their inquiries as to what it is being used for, being  
15 rebuffed.

MR CLEMENTS: Yes.

THE COMMISSIONER: We would, I think, all treat the latter as an unthinkable  
20 abuse of power. I gather, from what you've said earlier about the important economic reform of making water rights tradeable property, that in your – that you would urge on me, I take it, that there needs to be an appreciation that reallocating what might be called that form of property for the environment must come at a price of public accounting for its benefit.

25 MR CLEMENTS: That's absolutely strongly my understanding and belief in this matter, having been in – at the highest level, at times – for almost 20 years, is that the accountability is required both ways. And I have not – I've been through three water reforms now, you know, the first driven by competition policy in the rivers, then the  
30 groundwater, the first two, then the third being the Commonwealth, you know, turning up in 2007. The consistent message myself and others had been through the reforms and dealt with communities in those reforms is that you have to be able to show these people where the benefits are.

35 You need, you need to spend time – and not words, people are used to being lied to by governments. Show them the benefits and demonstrate them. And they just never do. And I don't know why. And you're right: if you acquire a form of property from somebody, you had better use it to the purposes you've acquired it. And there is a question on that, whether it's simply a lack of resolution on the part of  
40 the government to communicate effectively, or whether they can't come up with the goods. That's a great deal of conjecture about that and truth probably lies a little in between. But, you know, it's very important.

THE COMMISSIONER: Would it improve the Water Act and the Basin Plan if it  
45 was made clear that the environmentally sustainable level of take is a measure that must be assessed taking into account the seasonality and physical distribution of the water and not merely its so-called level?

MR CLEMENTS: I will come back in my answer to that, that OEH – who I think, you know, they’re a pretty good organisation, Office of Environment and Heritage – do a good job because the staff are located in regional communities and we sit on these EWAG environmental – don’t even know what it stands for you, but  
5 environmental water committees.

THE COMMISSIONER: Advisory group, isn’t it?

MR CLEMENTS: Yes. That’s exactly – environmental advisory group. There’s a  
10 strong engagement and, you know, out of that people who are representing industry or community will talk to others, will make reports to their peers that, “Hey, this thing is working and we’re seeing results.” Or not. And that works, you know, that process works. I just don’t see the MDBA ever – the first engagement we had, perhaps 2011 or – yes, pre-Plan when they were starting to get it – actually, it would  
15 be early 2012, they turned up in the Namoi, two guys, Pride and Hide, one of whom now works for New South Wales. And sat in a room and talked to us about these key indicator sites and we said, “Well, your indicator sites are actually gauging stations,” and they were. We said, “What’s the environmental significance of the gauging station?” And they couldn’t explain to the room what was going to be achieved in  
20 the Namoi with this water. Now, I’m sure there will be a benefit, but - - -

THE COMMISSIONER: Well, this is your point about proxies.

MR CLEMENTS: Yes.  
25

THE COMMISSIONER: To look at levels at a gauging site could only ever be a proxy.

MR CLEMENTS: Yes.  
30

THE COMMISSIONER: Because it would be the biggest fluke in the world if the gauging site happened to be - - -

MR CLEMENTS: A significant environmental site.  
35

THE COMMISSIONER: A significant environmental site.

MR CLEMENTS: Probably at a great environmental site.

THE COMMISSIONER: Yes. All right. Yes.  
40

MR CLEMENTS: So you know – and one of the things that myself and other Committee members tried to communicate to the MDBA: you have to show people what’s improving. You know, if you can’t show them what’s improving they are not  
45 going to sign on board this thing, because there is economic harm out of it.

THE COMMISSIONER: I gather you also reckon that might turn the other way as well, that is that local people might be able to show them what's not working, what is working and what might work better.

5 MR CLEMENTS: Yes. That always – and that works. And it's why I say, you know, I can't see how the Commonwealth can run this properly. I would prefer a bilateral with OEH and their peers in other states. At least you will get down to a community level and have people who are agency staff who live in Moree or Narrabri, or Tamworth, who will talk to people, turn up at a land care group, and the peer representative of the industry or the community will talk to their groups and people will be convinced – or not – that something is happening. And I just think it's a big risk.

15 THE COMMISSIONER: Could I just come back to this criticism you've got of the Act and the Plan in relation to an excessive attention to water level, perhaps at the cost of what I will call the environmental outcomes. I will be corrected by someone at the bar table if this is wrong, but I think that what we call EWRs, environmental watering requirements, are to each and every one that I've become familiar with – devised by reference to desired conditions to recover and protect various life-forms, be they plants or animals, tiny animals or very large animals, and that - - -

MR BEASLEY: Or plants.

25 THE COMMISSIONER: Or plants. And the – they're called watering requirements because, yes, levels of water but – much more particularly – physical distribution and seasonality of the water, timing of the water is devised by these environmental and ecological scientists in consultation with their hydrologist colleagues in a way that says – and this is a gross oversimplification of it – to get appropriate conditions for the maintenance of a particular bird population, a particular place needs to be inundated so much but no more for at least X weeks but no more than Y weeks, in a particular time of the year, at least once every four years. And each one of those, apparently, cut and dried water-level measures has in fact been produced by a study of the behaviour of the birds and their life cycles et cetera. Is – that's – would accord with your understanding of how these things are meant to work?

35 MR CLEMENTS: Working properly, that's how it works. Yes.

THE COMMISSIONER: Yes.

40 MR CLEMENTS: And there are instances of that being the case.

THE COMMISSIONER: And that would not – you would not criticise that. You would - - -

45 MR CLEMENTS: Never.

THE COMMISSIONER: No. That, I think, would accord with your evidence to me that you think it really does need for the environmental outcomes to be properly stated up front – no doubt – revisited with science but stated, because then – if you will forgive the expression – there’s more ways than one – of skinning that cat, and it may involve different levels of water, depending upon the conditions for the watering.

MR CLEMENTS: And co-operated on. You know – if you have that proper community engagement with that process – I – we live on rivers. And rivers are – they’re their own little place, but they’re alive, and I don’t know anybody who would knowingly harm a river. And we have harmed rivers with our practices decades ago, but when we were informed that we were harming it and we understood that, we changed our ways. So I just think that, if you properly and appropriately engage people, they will work with you. I met Mark Taylor from CEWH in Narrabri eight weeks ago, and I mean – I get along well with Mark, and I said to him “If you tell us what you want to do, we will try and work with you”. And there’s nobody who doesn’t have that view. The water that they own was bought in recognition of our property right. We should be so grateful of that.

THE COMMISSIONER: Yes. No. There was a price attached, because it was .....

MR CLEMENTS: 15 years ago it would have been, just been taken.

THE COMMISSIONER: Yes. Quite.

MR CLEMENTS: You know? We should be so grateful that they’re honouring the property right alone; let alone wanting to help – you know – good old taxpayer who has got all this investment actually get a result.

THE COMMISSIONER: Now, can I ask you with the Commonwealth-state – the co-operative – co-operation that you’ve urged is insufficiently in the current regime. Again I will be corrected from the bar table, if I’m wrong, but the way in which the Basin Plan is to be implemented from, supposedly, mid next year will be through Water Resource Plans, which are really creatures of state action. Now, there are provisions for steps – step-in provisions, if the state doesn’t take the prescribed action either on time or properly, but the expectation of the Act and so far at least the expectation in the evidence such as it is – that I’ve seen on this point – suggests that everyone is proceeding solidly on the basis that the states will be responsible for the preparation of the WRP. They then need to be accredited by the Authority, but it’s the states, that will do it. Now, is – does that constitute the kind of co-operation you are talking about or not?

MR CLEMENTS: I think it’s pragmatic, as much as anything. The states hold the knowledge of the water-sharing-plan processes, and the Commonwealth is reasonably engaged in vetting those early on. I think next year is going to be a pretty optimistic time-frame, but it’s fairly immutable time-frame. I’m not that involved these days. My work is elsewhere. But I talk to the people who are involved, and I

meet with them. And there's a level of frustration about that process. There's just a natural level of frustration. There's a level of concern. But I understand it's progressing.

5 THE COMMISSIONER: So in that last answer, in particular, you have in mind that there's a so-called deadline that is looming close.

MR BEASLEY: Not that the provisions of the Act are that relevant, but the Authority recommends an accreditation to the Minister; the Minister actually has the  
10 power to accredit or not. Can I ask you - - -

THE COMMISSIONER: Does the – can the Minister – I don't think the Minister can disagree with the Authority other than by, simply, refusing. Is that right? I can't  
15 remember.

MR BEASLEY: I think he can. Just the Authority - - -

THE COMMISSIONER: No. You're right. I was - - -

20 MR BEASLEY: The Minister must accredit the plan, if the Minister is satisfied that the plan is consistent with the Basin Plan.

THE COMMISSIONER: That's ..... I see.

25 MR CLEMENTS: And he would be a brave Minister.

MR BEASLEY: Yes. Can I ask you about 6 on – point 6 on page 7 of the Committee's report? The topic, the rationale for water recovery is convincingly  
30 explained. And then the second sentence:

*At this stage it is not clear, how the socio-economic research has been factored into the locations, volumes and classes of water to be recovered.*

35 Just picking up that sentence – was that a matter that the Committee was asking the Basin Plan to explain?

MR CLEMENTS: Yes. So you touched upon this earlier. We were not clear – you know – and you looked at that very complex diagram, and you know - - -

40 MR BEASLEY: Yes.

MR CLEMENTS: All sorts of things happened, and then – as explained to NBAC, the MDBA board then took in a report on the social and economic risks, I guess, and then made a decision on how to weigh that. We were not privy to that. We sought to  
45 be privy to that. We're concerned about that. I've no idea how they weighted - - -

MR BEASLEY: What – doing the best you recall – when at a – at Committee meetings you raised or someone raised the issue, how you’re factoring in socio-economic research or socio-economic outcomes into the amount of water that’s got to be recovered, what was the answer given?

5

MR CLEMENTS: A report is yet to go to the board, the board will make the decision.

MR BEASLEY: Right.

10

THE COMMISSIONER: Well, now, the next sentence,

*Water purchases to date have not been strategic or guided by socio-economic considerations –*

15

Does that include a concern that some people have described to me by the colourful expression the Swiss-cheese effect that ought to be avoided?

MR CLEMENTS: Yes; the Swiss-cheese effect was actually – my former employer as Chair of a committee coined the phrase. Tony Windsor, Mr Windsor – it’s where there’s an offer of a scheme with significant infrastructure, and you – if you accept a willing seller’s approach, you may damage the economics of that infrastructure. But  
- - -

25 THE COMMISSIONER: So that’s what you – that – your Committee, when they said the purchases haven’t been strategic or guided by socio-economic considerations – if they had been strategic and had been guarded by socio-economic considerations, they would have tried to avoid the Swiss-cheese effect reducing the critical mass of infrastructure support.

30

MR CLEMENTS: The Swiss-cheese effect is more a southern Basin, where they have got large off-river schemes.

THE COMMISSIONER: Yes. Yes.

35

MR CLEMENTS: We have a few off-river schemes in northern Basin. That comment or statement is really in reflection that – this is what I find quite remarkable – most of the water was purchased before there was a Basin Plan.

40 THE COMMISSIONER: Yes.

MR CLEMENTS: The water is purchased by the department of environment; has a different name today. It’s overseen by another department, the Commonwealth Environmental Water Holder. The planning is done by another agency of government, the Murray-Darling Basin Authority. There are inherent problems in that. Much of the water was purchased before the MDBA had appropriate knowledge or even the Plan.

45

THE COMMISSIONER: I see.

MR CLEMENTS: CEWH does not have a big say in the water that's purchased. So the Department of Environment buys water at times, even today, that CEWH doesn't want. But worse than that, prior to there being a Basin Plan gazetted and prior to there being proper environmental watering plans made, Department of Environment bought water that you would never buy. It's just in the wrong spot, and it's just not water you would buy. So they are lumbered with water in locations that you would never – with the knowledge that they have today, you wouldn't purchase it. You know – it's inefficient water in terms of delivery. It was expensive. It's a big problem for the Plan. And you know – I – if they were behaviour and could admit mistakes, I think you would just sell a lot of that and go and buy somewhere else – to be honest.

15 THE COMMISSIONER: So you think I should consider giving the Commonwealth holder powers to sell?

MR CLEMENTS: Under a strict caveat of replacement with more-appropriate water. Where there's water that's not appropriate – so there's a sell agreement aside from that, not that agreement.

THE COMMISSIONER: Let me ask you a policy and political question. What would be the chances of the Basin states agreeing to amend – to have the Commonwealth amend the Act that way?

25 MR CLEMENTS: I think – virtually none.

THE COMMISSIONER: So I won't spend too much time on that on then.

30 MR BEASLEY: Page 22 of this report – these are your high-priority “do soon” recommendations. I want to take you to HN10;

35 *‘Committee recommends that New South Wales floodplain harvesting policy implementation process be completed as soon as possible so that reliable information can be incorporated into the modelling. MDBA approves estimates of baseline-diversion limits and corrects any errors’.*

40 This – I take it, the concern here is that, without an implementation of the floodplain-harvesting policy and without knowing how much water is being taken by people off the floodplains in an accurate way, you don't know what the actual consumptive take is.

MR CLEMENTS: Yes, and if I could add one further point - - -

45 MR BEASLEY: Yes. Go ahead.

MR CLEMENTS: Without knowing what number is going to be attributed, regardless of what people are taking – you need to know what numbers are going to be attributed.

5 MR BEASLEY: Yes.

MR CLEMENTS: And there's such doubt over that now. I mean – the requirement to license – to give a hydrological number to – a volumetric number to floodplain water is a requirement of the New South Wales Water Management Act 2000.  
10 That's 18 years old, shy of a few months. So you know – this is a very old bit of work, and the longer you take to carry it out, the bigger the risk to everybody involved.

MR BEASLEY: Yes.  
15

MR CLEMENTS: And - - -

THE COMMISSIONER: ..... unpleasant surprises, you mean?

20 MR CLEMENTS: Well, unpleasant surprises, but also you – outside of the agreements, the best way to tie down overland flow, floodplain harvesting – you know – it has got couple of – New South Wales's floodplain harvesting is the terminology you settled on – is under the old cap arrangements, 93, 94 development. We're so far outside those agreements that that's not what's being used today. It's  
25 quite significant, that the discussion on this between the MDBA and the states and the states' view of this is now unfettered by the old agreements. It's in this new world of 2019 accreditation. I think there's some real risks that – I will be crude – that deals are going to be done here. You know?

30 And I think it should be fettered by the old agreements that you need to show me that – you got two substantive ways of doing this in New South Wales up until – you know – the MDBA became the team leader, 93, 94 development and then year of plan, which is 99, 2000, mostly, and the then water Minister – terrible – I've forgotten his name – became premier for a little while – Nathan Reese – in 2007 or  
35 perhaps 8 drew a line in the sand, as I said, and said "I won't accept any floodplain development after this date". Well, we're 10 years after that, and they are negotiating, unfettered by previous agreements. Now, I think that – you know – there's a risk in that, and it has just gone on too long. It should have been dealt with a decade ago.

40 THE COMMISSIONER: I see the time.

MR BEASLEY: I've nearly finished. I've really only got, subject to anything further you want to ask - - -

45 THE COMMISSIONER: No. No. That's good.

MR BEASLEY: I just wanted to go back to the Terms of Reference on page 31. Consistent with the name of the Committee, the Committee's role was to advise the Authority in relation to all these things, maybe improve modelling, ways of delivering environmental outcomes, impacts, implications for SDLs et cetera, all the things that are mentioned in A, B, C, D and F – E and F there.

MR CLEMENTS: Yes.

MR BEASLEY: This is your report, the Committee's report, with a number of recommendations set out through it that was provided to the Basin Authority in October 2016. Can you tell me what response you got from the Basin Authority to the advice contained in the report?

MR CLEMENTS: There was a briefing session, perhaps on 21 November, which I didn't attend. I was working in the Parliament at the time. And, you know, given the Minister was Barnaby Joyce, who was going to be at the attendance, I thought it was inappropriate for me to attend. It was a conflict of my employed role at the time. I felt – I didn't attend. I understand from people that attended that it was, you know, a bit of congratulations committee, which is always nice. I'm too old to need that, so didn't worry about that. Some concern by the Committee over some of the numbers. The impact numbers in Menindee in South Australia changed during that briefing, which I find very odd. You've probably - - -

MR BEASLEY: Why was Menindee raised in relation to this report?

MR CLEMENTS: Well, it's predicated on the 70 gig reduction – is the impacts of South Australia and Menindee.

MR BEASLEY: Right. Okay. Yes.

MR CLEMENTS: And I understand it changed during the briefing, which is a little bit of a - - -

MR BEASLEY: It changed many times, yes.

MR CLEMENTS: Yes.

MR BEASLEY: Sorry. Who was there at the briefing from the Basin Authority, that you know?

MR CLEMENTS: Look, I - - -

MR BEASLEY: Or you don't know, because you weren't there.

MR CLEMENTS: You will get evidence from - - -

MR BEASLEY: That's fine.

MR CLEMENTS: - - - Committee members next week who were present.

MR BEASLEY: Yes. All right. Was there any written responses to your report?

5 MR CLEMENTS: They provided - - -

MR BEASLEY: I don't mean a letter saying, "Thanks for the report."

10 MR CLEMENTS: Yes. I - - -

MR BEASLEY: I mean a substantive response.

MR CLEMENTS: I didn't get one.

15 MR BEASLEY: Right.

MR CLEMENTS: I wasn't present on the day. I actually rang up and said if I could the little package that was given to the Committee, but that wasn't forthcoming. They were so displeased with me.

20 MR BEASLEY: Right.

THE COMMISSIONER: To your knowledge, what success was achieved by the Committee in effecting decisions later made by the MDBA?

25 MR CLEMENTS: I think we held them appropriately to task. And that was difficult. They were very resistant to that. I think the report is an honest report and an accurate report of the problems and risks. It's a little muted perhaps, but if it would have been less muted, it wouldn't have got through. And certainly we held  
30 them to account. I mean, they know that we know that they've got something called pick a box. They know that we know there are concerns over how they join models together. They know that we know that, you know, we're not satisfied with their capacity to produce results. And these are important things, I think.

35 THE COMMISSIONER: Appendix 3, on the next two pages, Adaptive Management, that's attached because the Committee urged the Authority to adopt an adaptive management approach. Is that right?

40 MR CLEMENTS: Yes, and that's probably the thing. Look, I've seen the minute from the November MINCO meeting, perhaps on the 18th. I don't think there's much of the toolkit. You know, I hear it talked about and then MDBA has got some published sort of things of what they're going to adopt from the toolkit and how to  
..... the minute that went to the Basin committee is far less – its toolkit gets very short  
45 in that.

THE COMMISSIONER: To the Ministerial Council?

MR CLEMENTS: Yes, three days before this report was formally released. So, you know, I think that our impact on them was we held them to account. And they needed to be held to account. We communicated honestly with our communities. We communicated the views of our community. Adaptive management would be one of the things you do when you admit that you can't do what you're doing.

THE COMMISSIONER: Well, you can see probably where it's heading. How are the ticks going? Are there any ticks? Toolkit implementation committees.

10 MR CLEMENTS: No. Toolkit implementation, according to the MINCO minute, was meant to be carried out by March 2017. Well, you know, here we are in 2018 and well past March and it hasn't been implemented. And it has been revived because a disallowance motion was successful.

15 THE COMMISSIONER: The recommendation of ticks is, partly at least, in order to advance the appropriate degree of localism. Is that right?

MR CLEMENTS: Yes.

20 THE COMMISSIONER: Yes.

MR CLEMENTS: No. They've - - -

25 THE COMMISSIONER: That has not happened?

MR CLEMENTS: They've not stuck with that. They don't have any meaningful communication with the committee, individually or as a committee. They just – you read my view – is that we were there to rubber stamp and to communicate back. We didn't properly serve that purpose for them. They became reasonably disgruntled with us. So - - -

MR BEASLEY: The only other question I have, subject to anything the Commissioner might ask is, Mr Clements, is there anything further that you want the Commissioner to know that either you want to cover in slightly more detail or is there something further you would like to say about your statement or the evidence relevant to the Terms of Reference?

MR CLEMENTS: Look, I think that the questioning today sort of fleshed out most things. I'm not sure – and you will stop me if I'm out of order – but if I can comment on Cotton Australia's references to Maryanne Slattery.

MR BEASLEY: I won't stop you.

MR CLEMENTS: I thought that they were very inappropriate. Maryanne Slattery is a very intelligent person, she has a very good policy brain.

MR BEASLEY: Is this in relation to her report dealing with the claim that irrigators only take 6 per cent of water out of the - - -

5 MR CLEMENTS: Yes, I thought they were reasonably disparaging towards her. I think that that's inappropriate in these debates. You know, Cotton Australia needs to get its policy process operative again, and I don't think it's appropriate that we attack individuals or disparage individuals in these processes.

10 MR BEASLEY: Well, I think the only point she was seeking to make in that report was that averaging – and I think this comes out of the evidence you've given – that averaging doesn't make much sense in the northern Basin because it's so variable. If you take out a couple of massive floods, the inflow to the northern Basin historically is completely different. It's what's taken out – what's taken out of the water resources at times when the flows are low that's more significant than what's taken  
15 out when there's a massive flood.

MR CLEMENTS: And the question of the Barwon-Darling Water Sharing Plan will be answered by a proper cap audit and I will note that the MDBA, through Tony McLeod, published a cap report recently. I don't think it's done to the standard of –  
20 that's required. The savings provisions are very clear in the Commonwealth Water Act 2007: you are to use the standards previously adopted. I will actually dig into this. I want to see they have altered the standards. But you, know, the question of the Barwon-Darling will be answered by the prosecution of people who may be not compliant, successful or otherwise, it will be answered by a proper cap report ..... has  
25 the 2012 Plan led to growth in use and a proper cap report, not a Clayton's version. That's how those questions will be answered. They won't to be answered by limited little ..... reports that are highly caveat and shrunk in; they won't be answered by slinging matches. They will be answered by proper process.

30 MR BEASLEY: All right. Because this is an investigation, not a trial, please feel free to come back to the Commission staff with any – given what you want to look into and draw to our attention any further matters you want to. We would be grateful for that, and we will obviously consider that report that I haven't read, and if there's any questions of that, we will do the same thing.

35 MR CLEMENTS: If I may say.

MR BEASLEY: Yes.

40 MR CLEMENTS: I think it's just – you know, the most – I think refreshing thing I've seen in years, is there's a proper review of this going on. It's happening in South Australia. I don't know why that is the case. We've lost the resourcing of independent assessment of a very complex process and we need – if you look at the old national competition council reports on water reform, they were thousands of  
45 pages of detailed and intelligent reports.

MR BEASLEY: Please don't ask me to read them.

MR CLEMENTS: Well, it's insightful - - -

MR BEASLEY: The Commissioner will.

5 MR CLEMENTS: - - - of what a proper review process would look like. You know  
– and that's a lack. And MDBA, with the culture it has, not being examined  
intelligently and knowledgeably is just set for problems.

MR BEASLEY: Thank you.

10

THE COMMISSIONER: Thank you very much.

MR BEASLEY: Yes, thank you for attending.

15 THE COMMISSIONER: Can I make it clear I have really benefitted from your  
evidence and I thank you very much for your help.

**<THE WITNESS WITHDREW**

**[1.14 pm]**

20

MR BEASLEY: Now, Ms Bradbury has waited patiently, I'm told if we start at 2,  
she will be finished by the time she has to get a plane at 3.30.

25 THE COMMISSIONER: I'm much obliged. If we need to start it earlier – if 2  
o'clock is fine.

MR BEASLEY: Mr O'Flaherty is in charge; he is nodding that 2 o'clock is fine.

30 THE COMMISSIONER: Very well.

MR BEASLEY: It's his witness, so - - -

MS BRADBURY: I'm flying out tomorrow. The flights have been changed.

35

MR BEASLEY: Okay. There's no drama at all. Thank you for that.

THE COMMISSIONER: So, what, 3 o'clock? No, no. None the less, if we can all  
do it in three quarters of an hour that would be good. So - - -

40

MR BEASLEY: So it will be disappointing if Mr O'Flaherty doesn't stretch it out  
to 3 o'clock now.

THE COMMISSIONER: So we will adjourn to 2 o'clock. Thank you very much.

45

**ADJOURNED**

**[1.15 pm]**

**RESUMED**

**[1.59 pm]**

5 MR O'FLAHERTY: Commissioner, I'm ready whenever you are.

THE COMMISSIONER: Yes.

MR O'FLAHERTY: Commissioner, the next witness will be Ms Emma Bradbury.

10

**<EMMA BRADBURY, AFFIRMED**

**[2.00 pm]**

**<EXAMINATION-IN-CHIEF BY MR O'FLAHERTY**

15

THE COMMISSIONER: Please sit down.

20 MR O'FLAHERTY: Ms Bradbury, you're the Chief Executive of the Murray-Darling Association Incorporated. Is that right?

MS BRADBURY: That's correct.

25 MR O'FLAHERTY: How long have you been in that position?

MS BRADBURY: Four – since May 2014.

30 MR O'FLAHERTY: Could you just briefly describe what the Murray-Darling Association is.

MS BRADBURY: So the Murray-Darling Association is a peak representative body for local government, councils across the Murray-Darling Basin and those who – those councils which rely on the resources from within it.

35 MR O'FLAHERTY: When was it formed?

40 MS BRADBURY: 1944. Established in 1944 as a result of a number of mayors and councillors recognising that there was opportunity for greater development across the Murray-Darling – sorry – the Murray Valley footprint, then the Murray Valley footprint, and that a greater level of collaboration and working relationships with state and federal government authorities was needed to properly realise that opportunity and manage the sustainability of the resource within that footprint.

45 MR O'FLAHERTY: Am I right in thinking that a primary remit, not the only remit, but a primary remit is water resources both as a consumptive use but also for use in the hydro-electricity as well?

MS BRADBURY: Certainly. Again – and you pick up on it; one of the opportunities that was recognised very early on by those councillors was the legislation that was then being considered by the Parliament for the diversion of the Snowy River and its associated use for hydro-electricity as well as enhanced  
5 irrigation. The recognition that that water is essential to the economic development and viability of the region was and continues to be a core tenet of the organisation's focus.

MR O'FLAHERTY: So it originally formed in the Murray Valley, but I assume,  
10 given its name now, it has expanded to be inclusive of the entire Basin?

MS BRADBURY: Sure. So at the time of its formation the Murray Valley was a footprint that was extended more broadly than is currently recognised, I think, in  
15 common parlance.

MR O'FLAHERTY: Right.

MS BRADBURY: So it extended north to the reaches above the Murrumbidgee and was a recognised mapping footprint, I guess.  
20

MR O'FLAHERTY: Sure.

MS BRADBURY: In - - -

MR O'FLAHERTY: Effectively – it's what we are now describing as the southern Basin.  
25

MS BRADBURY: Southern connected Basin, essentially, yes, absolutely. In 1983 the organisation recognised that planning provisions and the development of the resource-management capability across that footprint was extending to encompass an  
30 entire Basin, the hydrological footprint of the Basin, and they recognised also the need for extending our remit.

MR O'FLAHERTY: Now, you've – the – sorry. The Murray-Darling Association Incorporated has produced a submission to the Royal Commission dated 27 April  
35 2018.

MS BRADBURY: Yes.

MR O'FLAHERTY: I think there might be a copy in front of you.  
40

MS BRADBURY: Sure.

MR O'FLAHERTY: Were you the author of that submission?  
45

MS BRADBURY: I was.

MR O'FLAHERTY: Was it just yourself, or did you have any other input from other people?

5 MS BRADBURY: I authored the submission. There is substantial input from the members of Region Six in the final parts of the submission that talk to climate change. And beyond that, it was broadly informed by member contribution.

10 MR O'FLAHERTY: You've just fore-shadowed a question of mine. I've heard – I've seen references to 12 regions.

MS BRADBURY: Yes.

MR O'FLAHERTY: Is that, essentially, an apportion tool for your members? Is it?

15 MS BRADBURY: Yes.

MR O'FLAHERTY: As to – across the entire Basin?

20 MS BRADBURY: Yes; that's right.

MR O'FLAHERTY: And whereabouts is Region Six?

25 MS BRADBURY: Region Six takes in the Coorong and the lower reaches of the – so it's Coorong, Alexandrina and, I think - - -

MR O'FLAHERTY: Up to Murray Bridge or - - -

MS BRADBURY: Yes.

30 MR O'FLAHERTY: Yes.

MS BRADBURY: Yes.

35 MR O'FLAHERTY: You mention in the submission – sorry. I might as well do it now. I tender the submission of 'The Murray-Darling Association Incorporated' dated April 2018. You mentioned there's about 167 councils within the Basin. I think I've read elsewhere that there's approximately – about a hundred members of the Murray-Darling Association.

40 MS BRADBURY: Not all of those members are all member councils, but, yes, we have approximately a hundred members.

45 MR O'FLAHERTY: What other organisations or individuals are members other than councils?

MS BRADBURY: Okay. So the organisation is largely a local-government-council-based membership group. We have four categories of membership. We

have local government, non-local-government organisation – that is to say – to take in organisations such as statutory agencies, authorities, community groups that may have an interest in forming and contributing to that decision-making process. We have individual members, and we have life members.

5

MR O’FLAHERTY: So with statutory agencies – would they be like catchment-management organisations and water-utility providers?

10 MS BRADBURY: Yes; worth noting that currently there are no members within that category. The membership is predominantly made up of local government – so councils and – councils and council groups of councils; yes.

15 MR O’FLAHERTY: In your – in the association’s submission – you helpfully distilled it into three key points, which I might describe as local government’s role, need for consistency with respect to compliance and monitoring aspects and considerations of the social and economic impacts of the implementation of the Plan and the potential for legislative change. I wanted to touch on those three points individually. Turning first to the first one, the role of local government – over the page, on page 2, you talk about – this is in the third paragraph, under the two 20 headings, which are the two Terms of Reference ..... this Commission – you talk about – there’s a reference to – local government is adroit and well equipped in balancing complex and often competing social, economic, environmental needs within and across municipalities. Just wondering if you could explain what local government’s particular expertise is in relation to the implementation of the Basin 25 Plan and what it could, possibly, bring to the table – so to speak?

MS BRADBURY: Look. I think it’s fairly broadly recognised, that local government has a role in managing the delivery of services and the development of economic opportunity within their communities. We do that as a level of 30 government with all of the discipline and capacity that that implies. Councils across the Basin broadly, I guess – there’s an absence of direct connectivity with the role of local government and the implementation of the Basin Plan, and I think that’s – partly goes to the point. Having said that – local government has within it the capacity to manage and administer economic development, environmental 35 management and, I guess, the interface between those across their respective communities. I think the absence of structural arrangements that incorporate that local knowledge is, I guess – whether you call it a challenge or an opportunity – but there is a real opportunity to enhance a lot of the processes around the Basin Plan implementation by tapping into that local knowledge. Referring back to Mr 40 Clements’ testimony this morning – I think that was really well illustrated, that the local knowledge and the local – you know – the information that is held at local level is essential to the implementation of the Plan and the integrity of it.

45 MR O’FLAHERTY: When you talk about the absence of connectivity – is that the – are you referring to the decision-making process required in the Basin Plan ..... this is specifically in relation to – this commentary at least is in relation to water-resource plans. Is that the sort of thing?

MS BRADBURY: Both in terms of decision-making process and consultative processes. So as a level of government, obviously, local government doesn't have constitutional recognition and therefore doesn't have a role at either ministerial council or at the Basin official's committee level. So it doesn't have a role in  
5 decision-making at the implementation stage.

MR O'FLAHERTY: You wouldn't be suggesting that it would require constitutional recognition to be part of that process, though .....

10 MS BRADBURY: No. I – I – I guess the only explanation I can grasp as to why there isn't a stronger connection between local government and the other levels of government, so State and Federal Governments in the decision-making and information and consultative processes is perhaps that because there isn't constitutional recognition, local government isn't afforded that seat at the table that  
15 the - - -

MR O'FLAHERTY: There's no constitutional requirement for them to be there?

MR CLEMENTS: Yes.  
20

THE COMMISSIONER: Now, under section 202 of the Act, there is a requirement for the Basin Community Committee - - -

MS BRADBURY: Yes.  
25

THE COMMISSIONER: And in order to be eligible to be appointed you have to be what is called a "water user" unless you're an Authority member or a relevantly expert Indigenous person. Otherwise it's – you have to be an individual who is a water user or representative of water users. But water user doesn't just mean  
30 "human". A water user means a person, among other things, who is engaged in environmental water management. I would have thought that would include many local government people.

MS BRADBURY: Absolutely. And it's – a point I'm happy to make is the Murray Darling Association has advocated for some time for a greater level of inclusion of local government participation in the decision-making processes. While we sought an opportunity to be a representative at the Basin Officials Committee or even at ministerial level in an advisory capacity, the response we received mid-last year from the Department of Water and Ag was that they would encourage the Murray-Darling  
40 Basin Authority to consider an enhanced representation of local government at the Basin committee. Now, the Murray-Darling Authority has announced last week its newly appointed committee of which four of the 16 members are local government representatives.

45 THE COMMISSIONER: So the encouragement seems to have worked to that extent.

MS BRADBURY: Yes. It appears to have.

THE COMMISSIONER: Then I notice that under section 204, advisory committees other than the Basin Officials Committee and for that matter above and beyond –  
5 well, in order to be eligible as a member of the Basin Community Committee, there needs to be nomination by the Ministerial Council and you have to have a high level of expertise or interest in, among other things, local government matters relevant to the water resources. So that the Act – I saw your suggestion that I should consider recommending moves to amend the Act in relation to local government  
10 representation. It's the difference, I take it, between the explicit recognition of local government on committees and what you, I gather, are suggesting; namely, that there ought to be a mandated presence.

MS BRADBURY: That's right. It would be a contention if there's a mandated  
15 presence for local government to contribute to the body – information that informs decision-making under the implementation of the Basin Plan that that would enhance implementation outcomes and build on the capacity for more structured and – and I got pulled up for the use of this term the other day, but I'm going to use it again anyway – but meaningful engagement with our local community. So going back to  
20 the point that you made earlier that you know, local government – sorry, that you picked up on in the submission, that local government is adroit and well-equipped at balancing competing priorities within and across communities.

That capacity has a really valuable role, we would contend, to play in the  
25 implementation process that as, I mean all of us in this room recognise is incredibly complex, not only across communities but across competing interests within communities. Having said that, that complexity ought not to be an opportunity for division. It is essential that the implementation of the plan achieves its balanced outcomes and its intention in recognition of those complex and often competing  
30 priorities, not in spite of them.

MR O'FLAHERTY: To follow up from the Commissioner's line of questioning with respect to the advisory committees. You draw a distinction, do you not, being involved in consultation as a consultee and being involved in the process – what I  
35 might call the decision-making process? Do you draw that distinction?

MS BRADBURY: Absolutely. I think – I think consultation – okay, a couple of things in relation to consultation. So local government has largely been categorised as a community group in terms of consultation processes in terms of the  
40 implementation of the Basin Plan and in fact even in the drafting of the Plan. Local government was generally treated as a – as a community group. Now, I think that's a deficit in that local government isn't a community group. We represent our communities very well. We serve and represent our communities at that very base level, but we have the capacity and a discipline inherent within each organisation to  
45 make a far more valuable contribution.

But that must be structured, must be recognised as an organisation – its organisational capacity needs to be recognised and resourced to be incorporated into the decision-making process and engage in those communities – sorry, and engage their communities. A great deal of the – I guess, a great deal of the tension that  
5 arises around the implementation of the Basin Plan is around the nature and consistency of consultation across communities. The MBA – we would contend that local government has a very direct capacity to broaden out that consultation, both the outcomes of the consultation and the consistency of its nature so that, you know, issues that are raised – and we heard this articulated so well this morning – can I just  
10 comment on this morning’s testimony?

One of the notes that I took while listening to it, and I was very pleased to have had the opportunity to hear it, was that it drew very, very neatly that connection between the technical and the social. So I guess the complexity that arises out of marrying up  
15 technical issues around the implementation of the Basin Plan and social issues around community consultation, capturing and application of local knowledge and those more, I guess if you like, social issues, social capacities, is often really hard to marry up and is often, again, used as an excuse not to bring together a more cohesive set of outcomes in terms of the implementation processes.

20 I think this morning’s discussion recognised and reflected that really, really well and saw a really neat combination of the two. I think that capacity could be far more broadly extrapolated. You know, that resource could be better used if local government had the opportunity to bring that local knowledge and that community  
25 consultation and engagement in a more structured way to the decision-making processes around the implementation of the Basin Plan.

MR O’FLAHERTY: In terms of the consultation process, is a part of that – you make the point on page three of the submission that there was a significant lack of  
30 detail about the supply measure projects. Is that provision of that technical knowledge a key part of that process?

MS BRADBURY: I think so. Look, in considering that question, so much of the process around the implementation is – in my view, appears to be back to front. So –  
35 and we talked about – we heard about that again this morning, but we have situations where, you know, it’s claimed that communities aren’t necessarily, you know, contributing effectively to an understanding of local issues, but communities are being expected to accept projects and outcomes for which they have no knowledge, they have no technical detail provided to them before the consultation process  
40 occurs.

And so we’re seeing examples also, and I mean I had the opportunity to participate in a meeting of Region Four last week – Region Four takes in the councils of Broken Hill, Wentworth, Mildura, Central Darling, so down through that system. And so  
45 they were being consulted with by the State Government in relation to a project for which they had a real deficit in terms of the technical knowledge provided to them.

MR O'FLAHERTY: This being the Menindee Lakes project, I assume.

MS BRADBURY: Yes, that's it.

5 MR O'FLAHERTY: Yes.

MS BRADBURY: So – and they were quite explicit. As a group of councils, they were very explicit in saying to the Department, “Look, we need more information here.” You know, “We will not allow the department to consider this as consultation  
10 when we don't have adequate information to be sufficiently informed to make constructive decisions and contributions.”

THE COMMISSIONER: What was the departmental response to that?

15 MS BRADBURY: They were actually quite supportive of that. Obviously, the officers themselves were struggling with the fact that they had to – you know, they had a job to do, they were required to go out and consult with the group of councils.

MR O'FLAHERTY: Sorry. Was this the MDBA or the New South Wales  
20 Government or both?

MS BRADBURY: No, Department of Industry in New South Wales. So - - -

THE COMMISSIONER: Consult about what?  
25

MS BRADBURY: Consult on the details of the project. And I – with all apologies, I'm not across the details of that particular project.

THE COMMISSIONER: Did you have the business case?  
30

MS BRADBURY: No. So the - - -

THE COMMISSIONER: What did you have? When you say you were being  
35 consulted about the details of the proposal, what did you have by way of details?

MS BRADBURY: A – a process. So there was – in fact, I may have it.

MR O'FLAHERTY: If I might assist, this is an issue that you raised – that the  
40 Association raised in a submission in respect of the draft determination.

MS BRADBURY: Yes.

MR O'FLAHERTY: Which you provided the Commission's officers a copy of that  
45 submission - - -

MS BRADBURY: Yes.

MR O'FLAHERTY: - - - this morning. I wonder if – do we have copies of that to  
- - -

MS BRADBURY: Sorry, can I just say also while we are doing that.

5

MR O'FLAHERTY: Sure, while we're finding that, yes.

MS BRADBURY: Going back to the Commissioner's question on what was the  
officers' response.

10

MR O'FLAHERTY: Yes.

MS BRADBURY: It was positive. In my view, it was positive in that the officers  
were quite, you know, the councils said, "Look, we will come back to you with an  
outline of the expectation that we have in terms of consultation and the information  
that we're seeking in order to be effective and consultative." The officers responded  
by saying "That's great. Let's reconvene, you come back to us with that information,  
we will see what we can do and then we will go from there." So I have to say the –  
working with the various different departments across the Basin, it has been my  
observation that there is a strong appetite to see successful processes. I think this is  
why, in our submission, we say that these - - -

15

20

MR O'FLAHERTY: Sorry. Strong appetite within whom?

25

MS BRADBURY: Within the various States. So the - - -

MR O'FLAHERTY: State Governments?

MS BRADBURY: Yes, Basin State Governments, to achieve a high level of  
consultation with their communities. So that said, without the frameworks  
underpinning that process, then they're ad hoc. So this is why it is our contention  
that these need to be developed into the institutional and governance arrangements  
that will then incorporate local government's role in the process.

30

35

MR O'FLAHERTY: And I wanted to take you to page three of this submission that  
the Association made on 3 November 2017. Under the heading 1.2 Lack of  
Information on Individual Projects.

MS BRADBURY: Yes.

40

MR O'FLAHERTY: There's a series of dot points that I have read as essentially the  
wish list of information that is required for each one of these projects. Key one  
being, about five dot points down, the business case. Now, the Commissioner asked  
you whether you had the business case in the most recent meeting and I think the  
answer to that was no. But did – what information did you have? Did they give you  
any documentation? Was this meeting accompanied by documentation?

45

MS BRADBURY: Yes.

MR O'FLAHERTY: Or was it a slide show?

5 MS BRADBURY: No. The meeting was accompanied by documentation and that was a flyer, if you like. So - - -

MR O'FLAHERTY: Okay, yes.

10 MS BRADBURY: - - - a brief that outlined the process. So the five separate assessment and approval processes, and I'm happy to forward this.

MR O'FLAHERTY: That would be great, thank you.

15 MS BRADBURY: Yes. And I guess this is where the tension arises between local government and the States in relation to the projects or the MDBA, is that it appears to be a process that is relying on information that has not yet been developed, in terms of – sorry, in terms of the projects.

20 THE COMMISSIONER: How do you do that? How do you rely on information that doesn't exist?

MS BRADBURY: I think that's where the tension arises.

25 THE COMMISSIONER: Why is that a tension? It's just absurd, isn't it?

MS BRADBURY: It's – it certainly leaves room for a better way of doing it. So - - -

30 THE COMMISSIONER: It sounds to me like a fiction. I have in mind the Basin Plan with the adjustment process defined, for example, the total supply contribution of the notified measures:

35 *As the total increase in SDLs for all the units affected by notified supply measures that will ensure that, calculated in accordance with the applicable method –*

etcetera, etcetera –

40 *there are equivalent environmental outcomes, there are no detrimental impacts on reliability.*

That's just an example from 7.15. If you go to 7.20, you find that:

45 *The Authority, may make a determination to propose adjustments only if –*

among other things –

*it's satisfied that the proposed adjustments meet the criteria under 7.17.*

15 It has got to be satisfied that they meet those criteria. The first of those criteria, relevantly, is that the supply contributions achieved equivalent environmental outcomes compared with the benchmark environmental outcomes. Now, we know we are talking about a projection into a future time, but you can't do that without information, can you?

10 MS BRADBURY: And - - -

THE COMMISSIONER: You need to know, surely, what the notified measure was.

15 MS BRADBURY: And certainly, Commissioner, our members express frustration over the absence of that information. And have sought, on a number of occasions, to get a better understanding of how those projections can be made.

THE COMMISSIONER: It's interesting you use that expression.

20 MS BRADBURY: Sorry.

THE COMMISSIONER: It's interesting you use English in the colloquial way you just did because for once you find it reflected in the Basin Plan. 7.17(1) says:

25 *If after calculating the contributions –*  
etcetera –

30 *the Authority is not satisfied the determination of proposed adjustment based on those amounts can be made –*  
your language –

35 *under this division that satisfies the criteria –*  
the first of which I just read to you –

*the Authority may reduce the total contribution to a level at which such a determination can be made.*

40 Now, it's a mouthful but it translates to say that, "When in doubt reduce the risk of the proposed reduction by reflecting your doubt in a lower contribution." In other words, the Basin Plan in an indirect, but nonetheless clear, way does say there has to be sufficient information so that you can determine – that means a mental conclusion – what the supply contributions will achieve. So I understand and share the  
45 frustration that you've just referred to. I suppose I'm saying that I don't understand why the Authority would not give you the material you sought. Have you got any

recollection of – have you been present when they have explained why they’re not going to give you the details?

5 MS BRADBURY: The MDBA have run a number of workshops at which concerns have been – so one of the workshops I’m referring to, and I’m sorry I’m not great with dates and I don’t have them in front of me, but the – a number of the workshops have been held for peak bodies, national peak bodies in Canberra, and the discussion around how the balancing of – you know, how the understanding is developed when  
10 projections lack sufficient detail for those laypersons among us to make informed decisions or understandings of the projected achievements. If we don’t have that information, how are we going – how does the process roll? How does the process roll and how does the process then incorporate local knowledge and its contribution to a desired set of outcomes? Right? So - - -

15 THE COMMISSIONER: Well, you can even put it this crudely. How do you consult with the public without telling the public sufficient about what is proposed so that their response may be regarded as a consultation?

20 MS BRADBURY: That’s certainly – nicely put, yes. I mean, it’s a question that our members share.

MR O’FLAHERTY: It’s a question of timing, as well.

25 MS BRADBURY: It’s absolutely - - -

MR O’FLAHERTY: You make the point early in this document that – actually, no, I think it was on page four of the submission – that you were given one month to provide feedback on the draft determination report. Is that a common occurrence in  
30 MDA’s experience, that you get these tight timeframes with little information?

MS BRADBURY: Yes, look, it is. I think there’s a broad concern among our membership and across the community more broadly, so the Basin related stakeholder community, I guess – more broadly around the process of determining the projects and their – not only their individual, but their cumulative impacts and  
35 their cumulative capacity to deliver on expected outcomes.

THE COMMISSIONER: By cumulative you mean net?

40 MS BRADBURY: Yes. Yes. So - - -

THE COMMISSIONER: There will be ups and downs, won’t there?

MS BRADBURY: Well, not only net as in ups and downs and seasonal adjustment and things like that, but - - -  
45

MR O’FLAHERTY: A lot of these supply projects are linked with one another, aren’t they?

MS BRADBURY: I was going to say the linkages between supply projects to achieve cumulative outcomes across the Basin-wide – so Basin-wide outcomes. And not all of them will be connected; a lot of them will be ephemeral. But having the absence of an overarching snapshot or perspective that gives the community a clear  
5 line of sight between the projects – and I know a lot of time was spent this morning on the toolkit measures, but we focus particularly on the – you know, in this submission on the projects themselves. But a clear line of sight between an understanding of the projects and the end game, the objectives. And then on the way through, of course, the opportunity for communities that will be, you know, I guess,  
10 hosting these projects. So where the projects will be located, to have an opportunity to contribute to that body of work. So it seems to be backwards.

THE COMMISSIONER: I assume that's the purpose of stipulating for consultation, or one of the purposes.

15

MS BRADBURY: Again - - -

THE COMMISSIONER: The hope that the experts may learn something.

20 MS BRADBURY: Well, look, if I can comment – one of the notes, again, I made this morning in terms of that connection between the science and the community. So much was made this morning in the discussion of reliance on the science. And, I mean, it is –reliance on the science is absolutely essential to the implementation of the plan and to developing good, strong – you know, well-informed strategies to  
25 deliver that. Looking at where that science comes from, there is such a direct connection to community level.

30 So I think it's really important to reflect that, you know, if we look at the science as being the intellectual and practical activity encompassing the systems – the systemic structures and behaviours of the natural world through observations and experiment that comes from no stronger point than the local community in which those observations are made. And our argument that local government has that technical capacity to harness and capture that in a structured and disciplined way and to add to the body of science that contributes to the decisions we make around the  
35 implementation of Basin Plan is essential. And - - -

THE COMMISSIONER: So should I, for example, recommend that we learn from the experience you've been through and provide for a much more orderly, timely and detailed provision of information about proposals and a much more orderly, open  
40 process of public comment and, on top of all of that, with a specific designated role for local government? Is that what you think I should recommend?

MS BRADBURY: Absolutely. Absolutely. My sense, Commissioner, is that that would be intuitive, in that it would – such a recommendation would establish a  
45 logical and sequential process of consultation to better inform the decisions and the processes.

THE COMMISSIONER: Well, it's possible the MDBA doesn't want to be better informed.

5 MS BRADBURY: I will try to avoid the speculation, I guess. It's probably not my role to - - -

THE COMMISSIONER: Have you been present at any meeting where they actively sought information?

10 MS BRADBURY: It's a broad question.

MR O'FLAHERTY: Has the nature of the consultation been telling you what they want, what they're going to do or has it been more of a, "We're here to listen to you"?

15 MS BRADBURY: Look, our members over a long period of time have expressed a level of frustration with the absence of any reflection of their contribution in the decision-making processes and the decisions that are then made subsequent to consultation. So I think that's a fair - - -

20 THE COMMISSIONER: I should just take it that you are kinder than I am.

MS BRADBURY: That's - that's my remit.

25 MR O'FLAHERTY: In consultation, does the Association or the members feel like they're being at least listened to, even if they may well be ignored later on?

30 MS BRADBURY: Look, I think - I think there's a level of maturity among our members that is reflective of the fact that simply being listened to is not adequate, and that there is certainly a very strong appetite for far more meaningful - and I'm quite happy to back that term - meaningful consultation and collaboration. I mean, if we look at the - - -

35 MR O'FLAHERTY: And by "meaningful" you mean it's not just the information providing - - -

MS BRADBURY: Yes.

40 MR O'FLAHERTY: - - - after a decision has been made.

MS BRADBURY: Yes.

MR O'FLAHERTY: It's more the consultation during the decision-making process.

45 MS BRADBURY: Exactly. And, look, I think - I think the experience in the meeting between Region Four and the Department of Industry on the Menindee Lakes Water Savings Project is really illustrative of that process. So meaningful

consultation is more than coming to inform a community of a set of decisions that have been made on assumptions that have already been established to deliver an outcome and then asking them to make a contribution somewhere in that. There needs to be a structural approach that reflects or that provides an adequate  
5 opportunity for local knowledge to inform not just a process but the content, as well.

THE COMMISSIONER: Well, the way the Act and the Plan are drawn, I think there's no doubt that the consultation is intended to be anterior to the decision and to contribute to it beneficially. But what you've just described is after the decision and  
10 in terms of what might be called a conditioning of the public.

MS BRADBURY: Perhaps, Commissioner, I am a bit kinder than you, because I would argue that the Act and the Plan as instruments are adequate to the task.

15 THE COMMISSIONER: I think they are, too.

MS BRADBURY: Yes.

THE COMMISSIONER: In terms of consultation.  
20

MS BRADBURY: Yes. Yes. Absolutely.

THE COMMISSIONER: So the consultation calls for the – the Act and the Plan call for consultation.  
25

MS BRADBURY: Yes.

THE COMMISSIONER: To come before a decision is made.

30 MS BRADBURY: Yep.

THE COMMISSIONER: In order that the content of the decision would be informed by what might be learned by those who make the decision by reason of the consultation - - -  
35

MS BRADBURY: And, Commissioner, that is exactly - - -

THE COMMISSIONER: - - - making it a better decision, one hopes.

40 MS BRADBURY: And that is exactly what we've argued as an organisation for a long time. In fact, as far back as – and, you know, I've just been writing the annual report for the organisation over the last couple of weeks, so there has been a lot of history and research and just double-checking facts and things like that. And it appears that, you know, since long before my tenure, local government – and as a  
45 peak group, we've – you know, as an organisation this group has been advocating for that since – since before the Basin Plan, there has been a number of – you know, obviously, there has been a number of arrangements prior to the Murray-Darling

Basin Plan. And it has long been the position of local government that there is an opportunity for a better way of consulting with our communities.

5 THE COMMISSIONER: But why do you think there is such a deficiency to your perception in the way it has been carried out to date, the consultation?

10 MS BRADBURY: I think it's because there is a lack of institutional and governance arrangements requiring it to be. I mean, people are – again, you know, it might be something - - -

MR O'FLAHERTY: Because there's no compulsion, they're not going to volunteer it.

15 MS BRADBURY: There's no compulsion. There's absolutely no compulsion. And there's no structural arrangements. Now, with the best intentions – and if I might use this as a bit of an illustrator. But with the best of intentions we see – you know, and this is well outside the Basin Plan or any other single process. All right? But as a – I've served also as a councillor, so I've been a councillor and an executive in local government in this space. And time and again we see departments – you  
20 know, State departments, Federal departments come into communities and say, “Look, we've consulted with local government.” Now, they will invariably go away quite frustrated saying nobody turned up or we didn't have – you know, how can you consult with local government? Local government is a very difficult beast to consult with. Right.

25 Now, there's a number of challenges inherent in consulting with local government that can only be addressed through structured compulsory arrangements. We see departments come out to communities and say, “Well, look we're going to consult with you about the Murray-Darling Plan, the National Carp Control Plan, you know, waste management processes and proposals – any number of anything. They will  
30 come out and they will either go town hall meeting style. Now, the challenge with that is that councillors invariably have very busy community lives and incredibly busy calendars, and families and all the other things that community representatives and leaders have.

35 And so they've got – and I know as a councillor, my diary was full of, you know, anything up to 30, 40, 50 community engagements per week. You have to select those ones that you feel you can make a difference in. The other thing that that lack of structural and compulsory arrangements with local governments make is that it  
40 discounts or disregards all of that capacity that exists within the organisation. So that technical, that organisational and professional capacity that rests within the organisation itself as a statutory agency of government, with all the capacity that that brings with it. So all of your offices, all of your departments.

45 THE COMMISSIONER: So something we are used nowadays to calling a workshop between, say, MDBA or State department, depending on what's being

done, and the relevant councils, that's something that you think would be a more structured mandated approach to consultation?

5 MS BRADBURY: Yes. Certainly. Certainly. I think the other key element in it is structured, mandated and adequately resourced. Now, one of the challenges that exists for local government, in fact for all level of government, but particularly for local government – and if we consider local government in hierarchical terms, I think the reality is that you've have got the Commonwealth, State and local government sitting at that community level, most directly connected and certainly third in the chain of resource capacity.  
10

THE COMMISSIONER: I should say, subject to section 109 of the Constitution, you shouldn't take from my silence that I'm assenting to the Commonwealth being superior to the States in that hierarchy.  
15

MS BRADBURY: Noted. Now I've lost my thread. But one of the things that we really - - -

THE COMMISSIONER: But clearly local government is a creature of and totally subject to - - -  
20

MS BRADBURY: States.

THE COMMISSIONER: - - - the State legislation.  
25

MS BRADBURY: Of course.

THE COMMISSIONER: As you've pointed out there's no requirement in any constitution, Commonwealth or State, for local government to exist. It's a social habit or custom. It's highly regulated. It has the striking characteristic, probably not unique, but striking characteristic of being democratic. So it's not an appointed board. It's an elected – ultimately they're elected bodies, except when they've been sacked and that's only temporary. That's in the areas where, of course, there is local government. Not all areas have local government.  
30  
35

So it does seem to me that your point, with respect, is well made about the opportunities there may be to consider different ways of involving local government. But if we think about consultation as involving more than just local government, could it be that local government has its own lessons from its own consultations with its own communities about how you inform people of what is proposed so that their responses may be more likely to be useful?  
40

MS BRADBURY: Look, I think – I think any organisation or institution has got the opportunity for continuous improvement, if I can be so glib about it. And, you know, I don't sit here purporting to say that every council across every region has their community consultation capacities - - -  
45

THE COMMISSIONER: That would be a big ask.

MS BRADBURY: - - - as stand-outs. That's right. Having said that, though, they are held to a tremendously high level of account by their communities in that  
5 consultation process and practice. And it is something that consumes a great deal of the time, energy and resources of local government, because it's a yardstick measure against which they're assessed on an annual basis. So I think the opportunity to tap into an existing resource in terms of community consultation, while it may not be perfect, it's no more or less imperfect than other systems that are inherently within  
10 other levels of government. And I think it's a ready-made resource that is there to – and that can, and would and should naturally fill a challenge that we've got in terms of the implementation of a Plan.

THE COMMISSIONER: Apart from the dealing that you've told us about where  
15 representations have been made to that effect, particularly in terms of formal governance, and the response was the community committee can have bolstered local government representation, which has been successful to the extent of the four new appointments you've referred to, is there anything else that you're aware of has been sought by way of enhancing consultation with local government expertise?

20

MS BRADBURY: No. No.

MR O'FLAHERTY: It might assist you answer that question, I am going to go to  
25 the memorandum of understanding that has been - - -

25

MS BRADBURY: I was happy to do that, yes.

THE COMMISSIONER: Sure.

30 MR O'FLAHERTY: That was entered into back in 2013.

MS BRADBURY: Yes.

MR O'FLAHERTY: I was going to go to that, but I've got one more question in  
35 relation to this document.

THE COMMISSIONER: Are you going to tender the document of 3 April?

MR O'FLAHERTY: Yes. Just before I do, one – well, singular question. On page  
40 one you refer to the – this is page one of the 'SDL Adjustment Submission' dated 3 November. You talk about the absence of timely, relevant and factual information and then over the page, on page two, under the heading 'Opportunity' you talk about:

45 *It is important –*

This is in the second-last paragraph:

*It is important that they have access to accurately, timely and relevant information.*

5 Is there a suggestion that's being made in this that there hasn't been factual or accurate information given, that there has been inaccurate information or - - -

MS BRADBURY: Only through omission.

10 MR O'FLAHERTY: Right.

MS BRADBURY: So, you know, I would regret any suggestion that I had reason to think that misinformation has been provided, but absence of timely, relevant and factual information by omission is - - -

15 MR O'FLAHERTY: Yes.

MS BRADBURY: - - - something that I think goes to what we were talking about earlier.

20 MR O'FLAHERTY: The fact you haven't been - - -

THE COMMISSIONER: In that part of your submission you talk about, as it were, the horse has bolted, but I wonder whether that is true. That is, there's a period between now and 2024 during which those of those projects that will ever be  
25 implemented are presumably intended to be commenced, at least, to be implemented. But as their designs are worked up, it will surely be possible – you don't have to wait until 2024. It will surely be possible for information to be made available more or less on a real time basis, so that local government and communities can say, "Hold your horses" or "that sounds terrific" or "Have you thought of this other way?" or  
30 "that seems expensive" or whatever.

MS BRADBURY: Do we really need this or - - -

THE COMMISSIONER: Even, "Do we really need this?" Yes. And very old-fashioned types might even be able to say this is not complying with the law. Now, I  
35 take it from your enthusiastic nods that you agree with me all that could and should be done from now on.

40 MS BRADBURY: Absolutely.

THE COMMISSIONER: Even though the SDL adjustment has been made - - -

MS BRADBURY: Yes.

45 THE COMMISSIONER: - - - that's the beginning of the process, not the end of it.

MS BRADBURY: I guess it springs to mind that, you know, doesn't matter how far you head down the wrong path it's never too late to turn back.

5 THE COMMISSIONER: I wish that were always true, but I understand the point.  
Yes.

MS BRADBURY: Yes. So I'm – you know, I'm sure we live in – and we do, I mean our organisation, I can speak on behalf of our members, we live in hope that at some point in this process that we will – we, our members, our councils across the  
10 Basin, will be provided with sufficient information and process to enable us to inform the development of these projects. You know, one of the arguments for – by the councils of Region Four in relation to the Menindee Lakes Water Saving Project and the pipeline heading back up from the Murray back up to Broken Hill is that, you know, they're looking for more information to determine whether or not.

15 And this goes to this connectivity or a cumulative impact, that if the issues pertaining to compliance are clearly addressed and adequately addressed and that, you know, other challenges upstream, is this still going to be required? So this issue of timeliness and relevance is really important in terms of connectivity and the overall  
20 objectives of the project. So the cumulative objectives of the projects.

THE COMMISSIONER: Thank you.

MR O'FLAHERTY: Yes. I tender the Murray Darling Association submission to  
25 the Murray-Darling Basin Authority dated 3 November 2017.

THE COMMISSIONER: Thank you.

MR O'FLAHERTY: In respect of the Commissioner's question about what I might  
30 inexpertly paraphrase "what was asked for", I referred to the memorandum of understanding. Now, I've got a document which is called the 'Murray Darling Association Report on the Social and Economic Impacts of the Basin Plan,' local government data collection project, which has just been turned up for you now.

35 MS BRADBURY: Thank you.

MR O'FLAHERTY: This is a convenient document because I've got a few questions on the balance of the document. But if we go to the appendix on page 11, that's the memorandum of understanding which I understand was signed December  
40 2013 between the MDBA and the MDA. I just wanted to just touch on some relevant parts. The last paragraph on page 11 talks about – is headed Nature of the Collaboration. A couple of lines in:

45 *The MDBA recognises the valuable role of the MDA in drawing on local government knowledge from across the Basin and respects the insight, expertise and understanding of its more than 100 member local government councils.*

THE COMMISSIONER: This was executed by Mr Knowles on behalf of the Authority?

MR O'FLAHERTY: Yes.

5

THE COMMISSIONER: And by both your National President and your immediate past President. And you were Chief Executive at the time this was negotiated, I take it.

10 MR O'FLAHERTY: Might have just predated.

MS BRADBURY: Just preceded me. I was aware of its negotiation at the time but it predated my involvement with the organisation.

15 THE COMMISSIONER: So the message for you on the flyleaf of this report must have been a very early act by you as a Chief Executive?

MR O'FLAHERTY: Yes. I think the report itself is dated 2015, but the memorandum of understanding that is attached to it is a preceding document.

20

MS BRADBURY: Yes.

THE COMMISSIONER: So by 2015 when this report was done - - -

25 MS BRADBURY: Yes.

THE COMMISSIONER: - - - there must have been some capacity to have evaluated how successful this MOU had been.

30 MS BRADBURY: I think this report was the – so the MOU was negotiated at about the time that I commenced with the organisation and we were really pleased with the MDBA's demonstrated commitment to rely on the information that local government held, that was evidenced by - - -

35 MR O'FLAHERTY: And by "commitment" do I take it, this is on page 12 of this document, I read that the commitment, insofar as it is a commitment in a memorandum of understanding, paragraph one – which talks about provision of advice, exchange of information and such – that's what you're talking about there?

40 MS BRADBURY: Yes.

MR O'FLAHERTY: Sorry, I interrupted you.

45 MS BRADBURY: No, that's okay. Thank you. So the MDBA at that time – we executed the memorandum with the MOU with the then-President, and immediate past President, and followed that up with a task, grant, fund. So a contribution of

\$50,000 in resourcing to develop a report on what local government had available to it that might better inform the Plan.

MR O'FLAHERTY: I see. And this report is a product of that, is it?

5

MS BRADBURY: This report is the product of that. So in my first year in the role, or I think it was eight or nine months or something in the role, I worked with MDBA staff to assess what local government may have that could meaningfully contribute to the MDBA's decision-making process. Now, a result – one of the results or one of the recommendations in the report is that yes, local government had a very, very broad base knowledge and valuable information to contribute, but it was not in such a framework as to be easily accessible. So what we actually found in doing this study was that local government, through its structural arrangements, has a great capture of local knowledge and information that is generally pretty reflective of its community's aspirations and direction and, you know, hydrology, topography, you know, whatever it might be.

Now, given that water resource management is not in the bailiwick of local government generally, generally speaking, unless it's a key priority for that particular region, then – you know, the capture and harnessing of that information and that data will be challenging, will be very, very difficult. So one of the recommendations out of the report was that a further body of work needed to be done in order to engage with and resource local government to structure their data and their capacity to contribute information in a way that's more accessible to other levels of government and to agencies that might benefit from access to that information. We have subsequently advocated for that further work to be done quite vigorously.

THE COMMISSIONER: That's an area where the dreaded IT budget comes in, doesn't it?

30

MS BRADBURY: The dreaded everything budget, I think, Commissioner. Yes.

THE COMMISSIONER: It's – but nowadays, the way you collect your information affects how you can collate and analyse it.

35

MS BRADBURY: Look, one of the things that – I guess, following on from this – and – and we haven't been able to resonate, we haven't been able to follow up with this work in a way that – with the MDBA, that has provided that mutual benefit.

THE COMMISSIONER: Why is that?

40

MS BRADBURY: Why is that? Because as an agency, local government, we don't have the resources to progress it independently. And we've not been able to, I guess, convince the MDBA of the merits of collaborating and resourcing our ability to then do that.

45

THE COMMISSIONER: So this MOU, when it says that the parties seek to establish a strategic alliance, I don't want to be too pessimistic, but it doesn't sound like too much of a strategic alliance.

5 MS BRADBURY: Look, I would certainly agree that we would welcome an opportunity to strengthen and develop that strategic alliance, and we've made that very clear to the MDBA.

10 THE COMMISSIONER: Under the shared objectives the MDBA agreed to provide the MDA, regularly, relevant updated information. Do you think that has happened?

15 MS BRADBURY: Technically, I guess it could be reflected that from time to time I will travel to Canberra and meet with the MDBA. Again, I think there's an opportunity for us to do that better in a way that more – that provides greater value to both parties.

20 MR O'FLAHERTY: Yes. Perhaps the kicker in that relevant, is that they may not have – they may have – they may consider that they've given you relevant information, but you may differ in that assessment.

MS BRADBURY: Yes. Look, I think there are elements of this MOU that we have sought to progress quite actively sought to progress and have not – haven't managed to achieve that.

25 MR O'FLAHERTY: I just wanted to ask you a couple of questions on the substantive aspects of this report. And on page eight there's a discussion of the responses that were provided as a result of this survey. And this is a survey, as I understand it, to local governments themselves.

30 MS BRADBURY: Yes.

MR O'FLAHERTY: And the responses were from the relevant councils.

35 MS BRADBURY: Yes.

40 MR O'FLAHERTY: Under the heading 'Open Handed Responses' in the second paragraph, there's a reference to – and this is queries about the – am I right in thinking this is the queries about what are the changes in the local community that have arisen as a result of the Basin Plan implementation? And in that second paragraph, there's one open-ended response being described as increased tourism opportunities as a result of the implementation, which I understand – my understanding is that, at a very simplistic level, the greater level of water in these catchments will give rise to greater opportunities for boating and fishing, generally speaking, at least.

45 The next paragraph, though, talks about a loss of social and recreational opportunities. And I just wanted to explore what the difference was between – on

one hand you've got one area which is talking about increased tourism and the other one – I interpret that to be a detrimental impact on tourism. I wonder if you could explain what the difference there was?

5 MS BRADBURY: Okay. So without going back to the individual responses per se, and just - - -

MR O'FLAHERTY: Sure.

10 MS BRADBURY: - - - drawing on my knowledge and understanding of our member councils and their experience. So there are councils across the Basin, particularly across the Riverlands, that are able to attract greater visitation and tourism and to quantify that, as a result of, you know, enhanced river health, flow levels, increased flow levels, that sort of thing. The majority of respondents  
15 indicated that changes due to the Basin Plan had been negative. So, quite specifically in relation to river flows, there is an experience for river communities where rivers – the river heights drop in response to demand from irrigation deliveries. And so at peak periods visitation can be very adversely impacted. So - - -

20 MR O'FLAHERTY: So this is a timing of flows issue.

MS BRADBURY: It's a timing thing. Yes. Yes. Yes. So - - -

25 THE COMMISSIONER: So why is it a consequence due to the Basin Plan, as opposed to irrigation?

MS BRADBURY: Actually, I was just going to kind of go to that. So the Basin Plan is largely regarded as the instrument by which river regulation occurs. Rightly or wrongly, it's - - -

30 THE COMMISSIONER: Wrongly, I would have thought, but anyhow.

MS BRADBURY: Yes. Yes. So councils and communities will often – and this is part of the complexity of the problem, I think, in incorporating technical and social,  
35 you know, knowledge and understanding – is that quite often communities will be so frustrated with outcomes that they perceive to be the responsibility of the plan and that – and as a consequence of not feeling like they have an active role in participating in the decision-making process.

40 THE COMMISSIONER: But they don't, do they?

MS BRADBURY: They don't. They don't have an active role in the decision-making process and so, therefore, they don't have a detailed understanding and knowledge or any capacity to actually influence decisions that impact their  
45 communities. So it becomes this catch-all of blame it on the plan. You know, if the river has dropped, blame it on the plan. We've just lost, you know - - -

THE COMMISSIONER: So this is the river dropping, as opposed to irrigation dropping?

5 MS BRADBURY: Both. So both. Yes. So – sorry – we were just focussing on the river heights and increased - - -

THE COMMISSIONER: Yes.

10 MS BRADBURY: - - - you know, river health. The other very major argument from communities across the Basin is that the impact of the implementation of the Basin Plan has had consequences for irrigation, secondary and tertiary industries within communities. And, again, that frustration that's felt by local communities from the absence of that capacity to inform and influence the processes that impact their communities elevates or escalates that sense.

15 I think, you know, if we look at the basic principle that people who have an opportunity to participate in a process – and I think it was alluded to this morning in Mr Clements's testimony around – what was the point they were making – you were talking about? But the capacity for – about, you know, irrigators, farmers,  
20 communities being much, much more likely to support a reduction in available water to them if they know that the water is going to its intended use and that they had a role in contributing to the decision of diverting that water to that other use. You're going to have increased level of buy-in.

25 I think the absence – and this goes right back to our base point. The absence of having local government and the communities that ..... involved in the decision-making process has created this massive disconnect between our communities and their understanding of their contribution to the outcomes designed under the Plan. Now there's no one I speak to across the Basin – no one – that doesn't want to see a  
30 healthier riverine environment that supports their communities. It doesn't matter what their perspectives or priorities are. It is a universal – universally accepted that a healthier river system is essential to all of us. And so communities with the capacity to contribute to that outcome in a way that takes into consideration their concerns and assists them to ameliorate adverse impacts on the way through will infinitely  
35 enhance the ability to deliver the Basin Plan.

MR O'FLAHERTY: To go back to the specific example of loss of social and recreational opportunities, you mentioned river heights and timing of flows. Is that  
40 an issue relating to timing of flows for irrigation as well as timing of flows for environmental purposes that they don't always match up with when flows may be required for peak tourism opportunities?

MS BRADBURY: Yes. Absolutely. And, look, you know, one comment I would make in relation to this particular issue specifically - - -

45 MR O'FLAHERTY: Yes.

MS BRADBURY: - - - is that with the benefit of relationship building, advocacy, three years of visits, all of that, the MDA has now been able to establish an annual triparty catch-up between the MDA, the MDBA and the ..... in order to at least discuss - - -

5

MR O'FLAHERTY: Coordinate those flows - - -

MS BRADBURY: Well - - -

10 MR O'FLAHERTY: - - - as best you can.

MS BRADBURY: Wouldn't go quite that far.

MR O'FLAHERTY: Okay.

15

MS BRADBURY: But certainly at least to provide an opportunity for communities to contribute to an understanding of – you know, like we've got an event here, an event there. That said, even that, I think, would – even that process, which is a great – it's a good gain. It is a good gain. Having said that, for it to be genuinely  
20 meaningful and informative, it needs to be better resourced to ensure that, you know, rather than just a meeting between the General Manager and the CEO – sorry – the national President and the CEO, and those two agencies, each year – needs to be adequately resourced to be a far more informative- and, again, you know there needs to be structural arrangements in there.

25

THE COMMISSIONER: I think you've referred to resources which I think is euphemism for money, isn't it?

MS BRADBURY: Yes.

30

THE COMMISSIONER: About three times. You may assume I'm sympathetic. But it does occur to me that, the way you've talked about it, it's as if you have gained the impression that money spent on consultation is in the nature of an add-on or a luxury or something that is not core, whereas I am minded, at least, to see  
35 consultation in regimes such as the Basin needs, a core expenditure, not an add-on to be had when the GST has been particularly lucrative, but to be a constant expenditure. Do I gather that you also think that these consultation expedients - - -

MS BRADBURY: Yes.

40

THE COMMISSIONER: - - - should not be seen as supplementary or add-on or luxury, but should be seen as part and parcel of the exercise?

MS BRADBURY: My belief is that it's absolutely fundamental. Absolutely  
45 fundamental to - - -

THE COMMISSIONER: It's tempting to say, "Well, it is, after all, government".  
Yes.

5 MS BRADBURY: Well, and, look, quite glibly – you know, I just said, "Yes,  
resourcing is all about the money." But I think it is actually more than just the  
money. Obviously - - -

THE COMMISSIONER: Without money, obviously - - -

10 MS BRADBURY: Yes.

THE COMMISSIONER: - - - there can't be the provision of staff by local  
governments - - -

15 MS BRADBURY: Yes.

THE COMMISSIONER: - - - by central government - - -

MS BRADBURY: Yes.

20

THE COMMISSIONER: - - - etcetera, etcetera.

MS BRADBURY: So - - -

25 THE COMMISSIONER: And travel.

MS BRADBURY: Yes.

THE COMMISSIONER: The Basin covers a lot of country.

30

MS BRADBURY: Of course. Of course. And, you know, that resourcing – money  
is important, obviously. Well, you know it's really important. Without it we don't  
get the travel, we don't get the time, the officer time or the knowledge and  
information that we need in order for that consultation to be meaningful. So, and  
35 when I say – and, look, because I was pulled up on this the other day, I just want to  
clarify.

THE COMMISSIONER: Why are you sensitive about the word "meaningful"? I  
understand it. It has meaning for me.

40

MS BRADBURY: Okay. Excellent. I am happy about that. I was in a meeting in  
Canberra last week where a great deal of time and consideration was devoted to  
whether or not "meaningful" was in meaningful terms.

45 THE COMMISSIONER: Whether the word "meaningful" was meaningful.

MS BRADBURY: So consultation that actually informs a process it was intended to inform. So – and resourcing for that, in my view, incorporates not only the finances that we have just been – you know, to deliver what we’ve just been talking about, but also the structural arrangements that make it inherent in the process. So,  
5 you know, to me that’s a very significant resource, also. So whether it’s by legislation, by regulation, by process, by memorandum, whatever it is, but that – that structural arrangement that then makes the process structured and accountable is a significant resource.

10 And I guess I make that distinction because, I mean, as an organisation the MDA is – you know, and it can be argued it’s a membership-based organisation, we have to deliver value to our members. We need to be seen to deliver value to our members. Now, unless and until there are structural arrangements that require and enable us to commit to that delivery of value, then it’s optional. And much like, I guess, a union  
15 process or some other, you know, optional arrangements, there’s ebbs and flows in appetite, depending on other, you know, demands on resources.

THE COMMISSIONER: Yes.

20 MR O’FLAHERTY: I will tender the Murray-Darling Association document report  
- - -

THE COMMISSIONER: Thank you.

25 MR O’FLAHERTY: - - - on the Social and Economic Impacts of the Basin Plan  
- - -

THE COMMISSIONER: Thanks.

30 MR O’FLAHERTY: - - - Local Government Data Collection Project. I just wanted to ask you some questions about your submissions on pages two to three of your submission about the social and economic impacts. And there’s a proposal to – am I right in thinking there’s a proposal to legislate for a more comprehensive or a  
35 different test than that which is currently being applied? And do I take the – the starting point that we’re dealing from is what’s sometimes called the single property test in the Basin Plan? Is that – what do you understand to be the current analysis that’s being undertaken for the social economic impacts - - -

MS BRADBURY: Yes.

40

MR O’FLAHERTY: - - - for the mutual improved social economic outcomes?

MS BRADBURY: Yes. So a key point of contention in the implementation process is the definition of socio-economic neutrality. So the delivery of the 450 gig above  
45 water – and I’m sure you are familiar with the test required - - -

MR O’FLAHERTY: Yes.

MS BRADBURY: - - - being that the recovery of that 450 gig is dependent on - - -

THE COMMISSIONER: You can assume I am familiar with it - - -

5 MS BRADBURY: Yes. Okay.

THE COMMISSIONER: - - - because it's true.

MS BRADBURY: With it being mutual or beneficial.

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MR O'FLAHERTY: Yes.

MS BRADBURY: Now, our position is that the definition of socio-economic neutrality is the sticking point, in that in the Basin Plan the definition of socio-economic neutrality or that test is one that provides that socio-economic neutrality is met if it involves willing sellers selling water back and so on.

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MR O'FLAHERTY: Yes. So it's the idea that the participation of consumptive water uses in projects - - -

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MS BRADBURY: Voluntary participation.

THE COMMISSIONER: The single site is one farmer's farm.

25 MR O'FLAHERTY: Yes.

MS BRADBURY: That's right. So – well, I'm not sure that it's helpful for me to go into where the deficits of that particular definition sit. I guess our contention is that the fundamental deficit is in the fact that the definition is neither consistently applied nor agreed. So it is not consistent with Commonwealth's own standards for socio-economic neutrality, which do consider cumulative impacts across community. So whether or not that's in forestry or fisheries.

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MR O'FLAHERTY: When you talk about Commonwealth standards of socio-economic neutrality, to what are you referring there?

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MS BRADBURY: I just walked right into that one, didn't I. I'm sorry. Can I take that on notice and refer that back to you definitely.

40 THE COMMISSIONER: Nothing is meant to be a trap.

MS BRADBURY: No. No. No. And I didn't mean to imply - - -

MR O'FLAHERTY: No. No. No. I'm not trying to trap you at all.

45

MS BRADBURY: - - - but I just – I actually don't have the reference - - -

THE COMMISSIONER: We would be very - - -

MR O'FLAHERTY: Yes.

5 MS BRADBURY: - - - material for that. Sure.

THE COMMISSIONER: - - - grateful if you can supply that.

MS BRADBURY: Yes.

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THE COMMISSIONER: That would be - - -

MS BRADBURY: Which we will be happy to do.

15 MR O'FLAHERTY: Do I take it from your evidence that those standards, whatever they might be, that that is a more comprehensive assessment and that's what you would advocate for being applied - - -

MS BRADBURY: Yes.

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MR O'FLAHERTY: - - - in this area?

MS BRADBURY: Absolutely.

25 THE COMMISSIONER: Now, just let me get our references clear.

MS BRADBURY: Yes.

30 THE COMMISSIONER: You are in the course, I think, of proposing improvements to what presently appears in the Basin Plan as 7.17(2)(b), namely that the efficiency contributions to the proposed adjustments – this is as a criterion of needing to be met before you can adjust – that the efficiency contributions to the proposed adjustments achieve neutral or improved socio-economic outcomes compared with the outcomes under benchmark conditions of development, as evidenced by – and then it goes 1,  
35 1(a), 2.

The first is the participation of consumptive water users in projects that recover works on-farm. The second is the participation of consumptive water users in projects that recover water off-farm. And the third, numbered two is the possibility  
40 of other things proposed by a State, assessed by the State. Is there some other provision that you have in mind that you would – where you would want to see a change?

45 MS BRADBURY: No. Well, no is the wrong answer to that question, probably only because we haven't turned our mind to it, but - - -

THE COMMISSIONER: No. On that topic, I mean. On that topic. Yes.

MS BRADBURY: What the MDA is proposing is that a body of work is undertaken to revise that particular provision specifically - - -

THE COMMISSIONER: Yes.

5

MS BRADBURY: - - - such that it – and such that the body of work would then take into consideration – would have a look at what other industries are doing, what the Commonwealth standards are on socio-economic neutrality, what other industries are doing to apply those standards and develop models and frameworks for application for that. So, you know, I mean changes in industry or industry disruption isn't new at all. We've got, you know whether it's forestries, fisheries, other - - -

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MR O'FLAHERTY: Manufacturing.

MS BRADBURY: Yes, manufacturing. But particularly in the natural resource, primary, secondary and tertiary industries. There's a lot of work being done. That said – and there's – you know, there's expertise that exists within the Basin community that picks up that work and recognises where the shortfalls in it sit as compared to what's needed for a meaningful definition of socio-economic neutrality in the context of the Basin Plan.

20

So what we have been proposing is that there needs to be a – you know, a bit of a pull up and let's have a look at what is the – this provision within the Basin Plan that is such a sticking point to the recovery of the 450 gig above water. And, you know, I've observed over the last four years, and at the last year and a half particularly, this issue around the 450 gig above water absolutely tearing communities apart. Absolutely tearing - - -

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THE COMMISSIONER: Can you explain that.

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MS BRADBURY: Yep.

THE COMMISSIONER: What tears them apart? That's disagreement among themselves, is it?

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MS BRADBURY: So there's division between and among States. There's division between and among governments. There's division within communities on what – so if we look at the fact that every community has varying levels of interests inherent within it to – with a view to, you know, environmental health and wellbeing, industry, economic development, industry, survival and benefit. All of those things. Now, while ever the recovery of the 450 gig is articulated as a binary process, we have got winners or losers, across governments, across communities, across States, across everyone, even within communities, within industries. And so what we're saying is that the dialogue around the recovery of the 450 gig – and again this goes to, if you like, the structural arrangements that underpin a particular argument or process and the recovery of the 450 is one such process that needs to be redefined in

45

order to be achieved in a way that doesn't tear apart the communities and achieve winners and losers.

5 THE COMMISSIONER: I'm finding it difficult at the moment, when you look at those three ways in which the efficiency contributions may evidence achievement of a neutral or improved socio-economic outcomes - - -

MS BRADBURY: Why don't they work.

10 THE COMMISSIONER: They don't include buyback. So it's on-farm efficiency.

MS BRADBURY: Could I just, Commissioner – refer me to the page.

15 MR O'FLAHERTY: Page 48, it should be, on that document.

THE COMMISSIONER: Mr O'Flaherty, that is the provision we're talking about, isn't it?

20 MR O'FLAHERTY: Yes.

THE COMMISSIONER: You've got on-farm efficiency, off-farm efficiency that is recovery of water through on-farm efficiency or recovery of water through off-farm efficiency, and then alternative State arrangements which are still involving water recovery with neutral or improved socio-economic outcomes.

25 MR O'FLAHERTY: It could be that (ii) has got a lot of work to do.

MS BRADBURY: Sorry.

30 THE COMMISSIONER: Well, yes, but it still has to be achieving water recovery.

MR O'FLAHERTY: Yes.

35 THE COMMISSIONER: Now that could be, I suppose, a buyback by a State, but - - -

MR O'FLAHERTY: And the alternative arrangements could be the structural adjustment, as sometimes referred to.

40 THE COMMISSIONER: Yes, unquestionably.

MS BRADBURY: And I think that that – and I'm sorry, I've still not found it.

45 THE COMMISSIONER: Well, why does this tear a community - - -

MS BRADBURY: But - - -

THE COMMISSIONER: What tears the community apart?

MS BRADBURY: Okay. So - - -

5 THE COMMISSIONER: Characterising a consequence as neutral, adverse or improved.

MS BRADBURY: Okay. So the recovery of water by willing participants, so the selling of water by willing participants, contributes significantly to the Swiss cheese effect which was referred to this morning. It also - - -

10 THE COMMISSIONER: I haven't – I have not – I've still not seen a concrete example of it. I'm not saying it doesn't exist.

15 MS BRADBURY: The – no, no, yes, sure.

THE COMMISSIONER: It's just people use the figure of speech far more frequently than they actually demonstrate a case study.

20 MS BRADBURY: Sure. The Goulburn-Murray Irrigation District, I think, is a good example of where the risk of diminishing – so, the risk of water of such volume leaving a particular system as to compromise the infrastructure underpinning that region.

25 THE COMMISSIONER: Too few cost contributors - - -

MS BRADBURY: Yes.

30 THE COMMISSIONER: - - - for the maintained infrastructure and pumping.

MS BRADBURY: Yes. Not only too few cost contributors - - -

THE COMMISSIONER: Well, not just pumping. Some of it would just be flow.

35 MS BRADBURY: Yes. But not - - -

MR O'FLAHERTY: Too spread apart as well.

40 MS BRADBURY: Too sparse in their location.

THE COMMISSIONER: All that has happened now.

45 MS BRADBURY: So there's, under point three – and again I'm sorry, I'm not following, but under point three it does leave open the option of States recovering water through buyback further down the track. And when you are looking at communities that are doing – sorry at industries and farmers that are doing their business plans for, you know, 2024 – 2024 is not that far away.

MR O'FLAHERTY: No.

MS BRADBURY: So the spectre of water recovery through buyback; the spectre of  
diminution of total water availability within a particular system, such that it  
5 compromises the capacity of that particular region to continue its productive capacity  
or to maintain it or grow it.

THE COMMISSIONER: Here is where we do have a tension, don't we, between  
10 the environmental target and the economic effect?

MS BRADBURY: We would argue - - -

THE COMMISSIONER: To put it another way - - -

15 MS BRADBURY: Yes – yes.

THE COMMISSIONER: - - - there's a danger, isn't there, of saying anything more  
than a trivial reduction in water available for, say, irrigation, will reduce one of the  
essential inputs to irrigation farming, namely water, in the vicinity. And any  
20 reduction in an essential input will be an inhibition on the prosperity of that sector  
and any inhibition on the prosperity, and certainly any reduced inhibition of the  
sector, is by definition not a neutral or improved economic outcome. And then I  
suppose to recognise the hyphenated phrase socio-economic, you would say and that  
would be reflected in employment, which is commonly regarded as a social aspect of  
25 economics.

MS BRADBURY: Okay.

THE COMMISSIONER: So that thereby, by those steps, we seem to have equated  
30 that which the Basin Plan is about, which is reducing the amount of water taken to,  
by definition not a neutral or improved socio-economic outcome, which means of  
course that the 450 is illusory it will never happen.

MS BRADBURY: I don't know that I support the progress of logic in that.  
35

THE COMMISSIONER: And you shouldn't take I do either.

MS BRADBURY: Yes – yes – yes.

40 THE COMMISSIONER: I'm trying to test that idea as to what that is – is that how  
people are reasoning?

MS BRADBURY: No, I don't believe so. And I think, again, that – that rationale  
or logic that you've just articulated, I guess somewhat oversimplifies the process and  
45 reduces it back to a binary dialogue. A binary – you know, winners and losers; that's  
it. And again, going back to the points we've been talking about earlier, if we have –  
you know, and there's resourcing, if we have a resource that requires a

consistent application of consultation, an agreed definition of socio-economic neutrality, a clear line of sight between water being recovered and its end benefit being environmental health and systemic improvement, then you're going to have community buy in, you're going to have community capacity. People are going to be more likely to agree with decisions, even if it goes against their core interests, if they had a role in participating in developing the process that delivers that final determination.

MR O'FLAHERTY: You point to one of the projects, or maybe the only project I'm aware of that is aimed at the 450 gegalitres, namely the South Australian River Murray Sustainability Project. In your submission at page three, you suggest that that should be replicated. Does that project contain what you've just described, the level of integration, the consultation, the broader socio-economic test.? Is that why you're saying it's a good example of what ought to be occurring?

MS BRADBURY: The reason it's, in our view, a good example of why – of what should be occurring is because it was such a rigorous process. So from that project and talking to staff involved with the project, and they presented to the Murray-Darling Association's national conference in Renmark last year, they presented on this project, and what we were able to learn from that presentation and from subsequent discussions with the project team was that they recognised that there – you know, that a binary approach to the recovery of the 450 is, you know, a hiding to nothing, and that there were successes inherent within that project that could be replicated at a broader scale. There were failings within that.

And this is the powerful thing that I guess recommended this project to, you know, to me and to the MDA, was that there was a clear recognition of the failings within that project and what you wouldn't do next time. Or how you wouldn't necessarily up-scale it. But the other incredibly valuable point that this particular project had was that it was driven – so government went out to the communities and said, "You tell us." Went out to industry, it went out to business and said, well, you know, "What have we not thought about, how would you do this if you had the money?" And they actually worked with the communities, with business and industry, with individuals.

It was very much a government resourced, but ground-up, project that achieved a number of recoveries in a way that didn't create the pain and anguish within community. And look, I know that's strong and emotive language, but just to go back to making that distinction between social and economic impacts, and I'm absolutely not a fan of the term socio-economic, it's – to me they're two very distinct.

THE COMMISSIONER: We have .....

MS BRADBURY: Yes, and I noted that.

MR O'FLAHERTY: I think you have an ally in the Commissioner on that front.

MS BRADBURY: So the social impacts that I observed is – are more along the lines of – and they are tangible, and they are measurable, and they are evident across community, but even anecdotally I can say that when you’ve got economic impacts that are very, very easy to define and measure, you’ve got social impacts that are  
5 much more challenging to define and articulate, but you have – it has been my observation over the last couple of years that there are communities that really are struggling to, I guess, capture and harness the opportunity within them because they are still in stages of trying to establish what do these changes mean to us individually and collectively as a community?

10 We have got other communities that are just bounding ahead. They are getting on with the job. They know that living in a world with less water means being more innovative, being – working together, working harder, working stronger. And so, you know, from a social science perspective – you know, the observation of  
15 communities and individuals that are still struggling because of their disconnectedness to a particular process is very real and very tangible and something that I think could also be addressed significantly through greater participation in the process.

20 THE COMMISSIONER: If the breadwinners of a household in an irrigation town lose their jobs because failing to scale back to reflect lower allocation, whatever else might be said about the matter, could that ever be said to be a neutral or improved socio-economic outcome? I’m actually testing it with just one person. One person loses a job. One person loses a job, and a household loses their breadwinner.

25 MS BRADBURY: Yes, yes.

THE COMMISSIONER: And the family either leaves the town or finds social participation very difficult because they’re poor, very poor.

30 MS BRADBURY: Yes – yes – yes.

THE COMMISSIONER: Why wouldn’t that, by definition, be a - - -

35 MS BRADBURY: A negative outcome.

THE COMMISSIONER: A negative outcome, and that’s the end of – that is the end of counting that recovery of water towards 450 gigalitre upwater?

40 MS BRADBURY: I - - -

THE COMMISSIONER: I don’t know whether the action plan means that, but why doesn’t it?

45 MS BRADBURY: I think that’s really – I think that’s a tremendous question because it goes directly to the issue of an agreed process. Okay. So while ever perhaps yourself, Commissioner and I sit here and argue whether or not that is or it

isn't an adverse social or economic outcome, the rest of the conversation is swept by the bye and we could argue it ad infinitum. Add any number of other perspectives and we're gone, we are still here arguing it in 20 years. If, however, we set that question to one side and say, "Well, it's not for you or me to answer or determine."

5 But we collectively establish an agreed process by which that determination can be made and say, "Okay, well, you know I'm not going to love every bit of it, you know, go back to the workshopping process." But if we establish and adopt an agreed process by which that definition can be established and then applied and assessed then we have progress towards achieving that 450 gig of upwater.

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THE COMMISSIONER: I think I understand why you say that, but it sounds to me, then, that you are suggesting that the provisions governing the possibility, at least in the accommodation of the Act and the Plan, maybe the intergovernmental agreement, that the provisions governing the condition for the 450 upwater, that there be neutral or improved socio-economic outcome, ought to be extensively revisited so as to enable a workable, pragmatic approach to assessing the impact of what is, after all, by definition a reduction in water for consumptive use.

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MS BRADBURY: We are proposing not that the provision for the recovery of the 450 gig of upwater to be held to that higher standard of account, socio-economic neutrality for want of a better word. We're proposing that the definition – what constitutes neutrality be revisited; not the provision that the recovery of the 450 of upwater be required to be - - -

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25 THE COMMISSIONER: So let me use another example.

MS BRADBURY: Yes.

30 THE COMMISSIONER: The measure can be seen to cost five people their jobs in farming and to give six people – and to create six jobs in the vicinity, in some other discipline, perhaps.

MR O'FLAHERTY: Construction.

35 MS BRADBURY: Construction, mechanical ..... yes.

THE COMMISSIONER: Is that neutral, improved or adverse?

40 MS BRADBURY: Does it – I guess my response to that, Commissioner, respectfully, is that that my view doesn't matter. It means - - -

THE COMMISSIONER: I'm just – but you've got a lot of experience and insight and I would be interested in your view.

45 MR O'FLAHERTY: If you are in the shoes of the Authority, having to assess this.

THE COMMISSIONER: I agree, none of our views about this can possibly be definitive or categorical.

MS BRADBURY: Yes – yes – yes.

5

THE COMMISSIONER: Because the questions are too evaluative. What is neutral or improved socio-economic outcome is essentially evaluative. It depends upon vantage points, emphases, all sorts of things.

10 MS BRADBURY: It's - - -

THE COMMISSIONER: But I'm really interested in yours. What did you think in that simplistic example I gave: you lose five jobs but you get six. Is that – do we do a – do you do a netting like that? I don't know.

15

MS BRADBURY: Okay. I will qualify this. This is absolutely my personal opinion.

THE COMMISSIONER: Sure.

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MS BRADBURY: But of course the nature of humanity is that progress is part of what we are.

THE COMMISSIONER: Creative destruction.

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MS BRADBURY: Whatever.

THE COMMISSIONER: That's one definition of capitalism: creative destruction.

30 MS BRADBURY: Yes. Well – but no, I mean just in terms of – you know, the nature of society is progressive by definition. We can argue that point all day as well, but, you know, we change, we evolve, and so industries will change and evolve with that, and there will be evolution within that. So that, by definition, means – you know some jobs are lost here and gained here and created here.

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THE COMMISSIONER: Not a lot of ostlers anymore, but there are quite a few car mechanics.

MS BRADBURY: Not a lot of?

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THE COMMISSIONER: Not many ostlers.

45 MS BRADBURY: Ostlers – not for the number of mechanics, of course. So, you know, my personal view is that there is – there's no great requirement to stay – in fact, there's no requirement at all to stay static. So losses and gains on the way through is part of the human condition, and that's fine, so but - - -

THE COMMISSIONER: Now, this one may be in the nature of a trick question, but it's important to me. To use the two simplistic examples, a measure produces one job loss or a measure produces five job losses, but can be seen to open the door to six new jobs. Now let's assume that that's not – doesn't come from water efficiency, but that it comes because the farmer buys a new gee whiz harvester. Is it  
5 an adverse socio-economic outcome for the people with whom the farmer used to contract no longer being called on, which is a bit like losing your job?

MS BRADBURY: Yes – yes – yes. So - - -  
10

THE COMMISSIONER: Is that adverse or is it neutral, improved, adverse or are those epithets irrelevant to what happens when progress, in the form of mechanisation, reduces employment?

MS BRADBURY: So your question goes directly to the issue that we think is absolutely important and that is cumulative impacts. And one of the - - -

THE COMMISSIONER: On what? Employment or productivity?

MS BRADBURY: So the cumulative impacts of a whole range of circumstances affecting Basin communities, so that's Basin Plan, world prices, commodities, drought, mechanisation, new industries, new technologies, blah, blah, blah.  
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THE COMMISSIONER: Plant genetics.  
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MS BRADBURY: Plant genetics.

THE COMMISSIONER: Chemicals.

MS BRADBURY: Human genetics.  
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THE COMMISSIONER: Yes.

MS BRADBURY: You know, whatever. So the whole – the whole box and dice.  
35 But largely, we can look at the cumulative impacts of a range of circumstances on Basin communities. And I guess this is the point at which I, you know, raise my eyes a little bit higher than the Basin Plan and its road ahead and look at how we, as governments and society, manage the cumulative impacts of a range of circumstances, including the implementation of the Basin Plan, to ensure that our  
40 communities have a role in participating in those decisions that impact their local regions.

So, you know, whether or not that's broadening out the scope of a definition of socio-economic neutrality in the implementation of the Basin Plan to other policy  
45 settings, there needs to be pathways to, and instruments for, communities to participate and inform the decisions that impact their local areas.

THE COMMISSIONER: But they don't get – they don't participate in decisions by farmers to buy a gee whiz harvester that does away with 10 jobs.

5 MS BRADBURY: That's not a policy decision, though. So - - -

THE COMMISSIONER: Sure is. It's an individual policy decision, not a government policy decision.

10 MS BRADBURY: Well, it's an individual policy decision, though - - -

THE COMMISSIONER: The farmer doesn't have to do that.

MS BRADBURY: That's right.

15 THE COMMISSIONER: It often involves borrowing.

MS BRADBURY: Yes.

20 THE COMMISSIONER: So it's a policy decision by the individual farmer.

MS BRADBURY: Sure. So - - -

25 THE COMMISSIONER: My point is that I, at present, don't understand with any clarity what we are looking for when we are looking for mutual or improved socio-economic outcomes, bearing in mind that productivity improvement very often reduces employment.

30 MS BRADBURY: I think that's actually the point. So the point is anyone looking at the provision within the Plan on the recovery of the 450 is saying, "What do we mean by socio-economic neutrality?" If the plan incorporates a provision that says the recovery of this water must be held to a standard of account that delivers neutral or beneficial social and economic outcomes.

35 THE COMMISSIONER: Yes.

MS BRADBURY: Okay. If it's going to be in there - - -

40 THE COMMISSIONER: That's why I'm fearful that it is an illusory 450 gegalitres upwater. It can't happen, because people have talked themselves into a position whereby if there's less consumptive water by irrigation, by definition that is neutral or improved socio-economic outcome.

MS BRADBURY: I don't know that I share that level of pessimism for it.

45 THE COMMISSIONER: But how do you get – this is not a challenge, this is really a quick inquiry. How do we get less water used for irrigation and mutual or improved socio-economic outcomes?

MS BRADBURY: By involving those who have the expertise to achieve it in the development of the process.

5 THE COMMISSIONER: Well, can I entice you off the abstract nouns. What would you actually look for in terms of human behaviour?

MS BRADBURY: Yes.

10 THE COMMISSIONER: To say, “That is a socio-economic outcome which is better than neutral?” When somebody has lost water for irrigation.

MS BRADBURY: Yes. So - - -

15 THE COMMISSIONER: And willingly given it up.

MS BRADBURY: Yes – yes – yes. So I think in terms of how you do that, you go and sit down with – case in point, Goulburn-Murray Irrigation District, GMIG, there is expertise within that community and an appetite for river health and recovery that surpasses a lot that I’ve seen across communities. There is an incredibly high level of that balanced capacity within that community. The absence of engaging local government to tap into, or you know local government or communities but, you know, local government as a conduit to that expertise, is a real miss.

25 Now, you know, in terms of what kind of behaviour do we change, I certainly don’t sit before the Commission with that level of expertise on board with me today. But I do know that if we went down and – if we went out and sat down with – with individuals and agencies within – and, I mean, the GMID is not unique by any stretch. You know, right across the Basin there are institutions, agencies, communities and individuals with expertise that is breathtaking in its capacity to achieve the objectives of the Plan.

30 THE COMMISSIONER: You see, no – I will be corrected again if I’m wrong, but no other recovery of water is subject to this condition, that it happens only if there is neutral or improved socio-economic outcomes. True, the whole Act talks about optimising, among other things, social and economic outcomes, but that is a different question. It’s only the 450 so-called upwater that won’t happen unless it can meet that condition. And the way I read the history, it was intended to be the special case, there was a political negotiation and at that stage it could be seen as a way of moving from 2750, which didn’t please some of the players, to 3200 which didn’t please other players.

45 And so the 450 so-called upwater, it’s actually intended for downstream really, but you know what I mean, but think it goes up. The – has attached to it by way of, as it were, a reassurance to those who resisted it that it won’t happen unless, and the longer I’ve read about it, the longer I’ve heard about it – I can’t make the word – as a lawyer, I can’t make the word neutral not mean neutral. The longer I’ve read and heard about it, the more I’m coming to the view that it would be very difficult ever to

argue that reduced irrigation input, that is water, can satisfy that condition. I don't mean that to be cynical at all.

MR O'FLAHERTY: Is it a - - -

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MS BRADBURY: No, no. Yes.

THE COMMISSIONER: I'm very pessimistic about how that can be done.

10 MS BRADBURY: Look, to be perfectly honest, Commissioner, I don't share that same level of pessimism. I think if we get the settings underpinning this provision right, there is an opportunity for a bit of brilliance here.

THE COMMISSIONER: Do you look at employment figures?

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MS BRADBURY: This is why we are advocating for the development of an instrument that – or a framework, call it a framework. So a definition and assessment framework. Now, over the last two years I've had extensive meetings, discussions, consultation, and even collaboration with the CSIRO and with the  
20 University of Canberra, recognising that I don't have – and you know even my members collectively, without being able to tap into it in a structured way, don't have the expertise to develop a framework that can achieve that. Having said that, I am absolutely of the view that it can be.

25 So the MDA, the CSIRO and the University of Canberra, particularly Dr Jacki Schirmer, who is the author of the Regional Wellbeing Survey and an incredibly highly regarded social economist in – regarded for a great deal of her work across the Basin. As agencies, the three of us have collaborated to really push for the case of the development of an agreed definition of socio-economic neutrality and a  
30 framework for assessing it that can, in my view, and again I qualify that in my view, that can deliver the 450 gig – well, that can assess the recovery of water for the 450 gig in socio-economically neutral terms. But, you know - - -

35 THE COMMISSIONER: Would you mind if the Commission staff is in touch with you to make sure that we have got whatever we need to understand what you just referred to, that work?

MS BRADBURY: Absolutely. I would be delighted.

40 THE COMMISSIONER: Thank you.

MS BRADBURY: Absolutely delighted.

THE COMMISSIONER: .....

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MS BRADBURY: And just further to that, Commissioner, I can advise that – so we've developed this proposal for the development of a framework and put that

proposition to the MDBA, and we have subsequently put that proposal to the Department of Water and Ag and we have again also subsequently put that proposal to the Basin Officials Committee.

5 THE COMMISSIONER: With what success?

MS BRADBURY: Depends on how you define success.

THE COMMISSIONER: Have you persuaded - - -

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MS BRADBURY: I have not yet – it's – look, I guess my ultimate definition for success would be that the Department and the MDBA said, "Look, let's collaborate, let's fund this body of work and let's make it happen."

15 THE COMMISSIONER: That hasn't happened.

MS BRADBURY: That hasn't happened. Having said that, I see that reflected in the Ministerial Council Communique of the last meeting of the Basin Ministers there was an elevated recognition for revisiting the issue of socio-economic neutrality, and its definition, and means to assess it. So I do note the MDA presented that proposal to the Basin Officials Committee in the days immediately prior to that Ministerial Council. So I would be happy to provide that.

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MR O'FLAHERTY: Thank you very much. One final question on page five of your submission, you talk about a public register and various aspects on that. About the middle of the page you're talking about, you refer – the submission refers to what information should not be made public. There's a reference to commercial information and any sensitive information. Is that a reference to any particular information that you have in mind or is that essentially just in case there is any commercially sensitive information that should be made public?

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MS BRADBURY: I know we've discussed this earlier, and there is nothing specific that comes to mind either to my mind or through our membership, that would necessarily be precluded. That said, our members are quite cognisant of the fact that commercial interests will be better informed to determine whether or not there are sensitivities of which we may not otherwise be aware. So, you know, we're mindful of that.

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THE COMMISSIONER: I take it that your suggestion is that something be stringently administered rather stridently administered.

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MS BRADBURY: Possibly.

THE COMMISSIONER: It's just that it sounds as if – the latter sounds as if you're going to yell at them, but anyway.

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MS BRADBURY: And far be it from me.

THE COMMISSIONER: I'm sure. That's why I asked.

MR O'FLAHERTY: Now there are aspects of your submission that I haven't asked you questions on. Don't take that that I – that we are not interested in them.

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THE COMMISSIONER: It's all considered in detail and I'm much obliged for it.

MS BRADBURY: Thank you.

10 MR O'FLAHERTY: Was there anything that you wanted to raise with us, with the Commissioner this afternoon that we haven't covered?

MS BRADBURY: I think I would make the observation that in the time that I've been in this role – and I don't come from a background in water, and in fact I don't even come from a background in public policy or government. My background - - -

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THE COMMISSIONER: It sounds like you have worked yourself into both of those.

20 MS BRADBURY: It happens to the best of us. But the observation that I would make in my time in this position is that for all its challenges, the Basin Plan is an instrument that is highly aspirational but, in my view, infinitely achievable and is something that I've grown to regard very, very highly. It's something that I've observed that, among and across communities, there's a far higher level of common ground than there is difference, and that we have the resources at our disposal to absolutely capture that common ground, the expertise which we heard from this morning as well and deliver what is an internationally significant piece of legislation that is in the interests of our collective community right across Australia, in a way that other nations will look to. I think there's real opportunity for this Commission to reflect the positivity underpinning that and to really look into how we better harness that common ground and that expertise that exists across the Basin.

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THE COMMISSIONER: Thank you very much. And, again, I'm obliged for your attendance and I'm very grateful for your evidence.

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MS BRADBURY: Thank you. Thank you for the opportunity.

MR O'FLAHERTY: Thank you. That's it for today.

40 THE COMMISSIONER: We will adjourn until 10 o'clock here tomorrow. Thank you.

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<THE WITNESS WITHDREW

[3.53 pm]

**MATTER ADJOURNED at 3.53 pm UNTIL WEDNESDAY, 25 JULY 2018**

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