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TRANSCRIPT OF PROCEEDINGS

O/N H-945335

MR B. WALKER SC, Royal Commissioner

IN THE MATTER OF THE MURRAY-DARLING BASIN ROYAL COMMISSION

ADELAIDE

12.04 PM, THURSDAY, 27 SEPTEMBER 2018

Continued from 26.9.18

DAY 31

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

THIS PROCEEDING WAS CONDUCTED BY VIDEO CONFERENCE

MR BEASLEY: Hello.

5

THE COMMISSIONER: Hello, Emma, how are you?

MR BEASLEY: Dr Carmody, hello? Can you hear us? Can you see us?

10 DR CARMODY: I can see you.

MR BEASLEY: Right.

DR CARMODY: Am I partially obscured?

15

MR BEASLEY: You are.

DR CARMODY: I'm not sure what's causing that.

20 MR BEASLEY: If you move to your right a little bit – that's better. Is that okay?

DR CARMODY: I don't know – I'm sorry, I don't know what's causing that.

MR BEASLEY: We can see you, so it's all fine.

25

DR CARMODY: All right, thank you.

MR BEASLEY: Okay. So just before we begin, Commissioner, it's Mr Kwong's birthday. K-w-o-n-g. Happy birthday to him. A valuable member of this team. Can I just make a transcript correction please, which is important. Page 3348, line 40, records me as yesterday saying:

30

Mr Alexandra was an executive of the MDBA who also gave evidence recently – yesterday was it? Jesus.

35

The word "Jesus" can be removed from the transcript.

THE COMMISSIONER:

40 MR BEASLEY: I was looking at my Instagram feed and Ms Masters husband came up I must have said cheeses. Alternatively, I may have found a document behind the wrong tab and I may have said freezer. But I didn't say "Jesus". As a committed Anglican, three times Divinity Prize Winner at St Peters College, and a member of the St Peters Cathedral Choir, as a choir boy, I would never say the word "Jesus"

45 flippantly. Certainly not in a hearing. So that word can be removed, please. But I'm

completely sympathetic to the transcript people mishearing me. So, Dr Carmody, we are ready for to you resume now, please.

5 DR CARMODY: Good morning. Commissioner, did you want to start by continuing our discussion about 6.14 and the associated provisions in the Water Act?

10 THE COMMISSIONER: Yes. As you know, there is a notion abroad that that is a provision which applies across the whole of the Basin Plan so as to dispense compliance with whenever what might be called reliability might be affected. Is that your understanding of the idea?

DR CARMODY: That's my understanding of the idea, and it is expressed in a document published on the Basin Authority's website, position statement 1H.

15 THE COMMISSIONER: Yes, I've read that.

20 DR CARMODY: Yes, I thought you would have. It's not a view that I am inclined to agree with, that that clause would automatically override a potentially inconsistent provision within the Basin Plan. That document cites, for example, 10.17 to 10.21 as well as 10.26 of the Basin Plan as potentially triggering subdivision (b) of division 4 of part 2.

25 THE COMMISSIONER: Yes. Now, that's why I was – I was embarking on the question of how one is to understand that rolled up reference to what is triggered.

DR CARMODY: Yes.

30 THE COMMISSIONER: And I had suggested to you that it needs to be understood as being restricted to a change to the Basin Plan otherwise than because of a reduction in the SDL. Is that your understanding?

DR CARMODY: Yes. My – well, it is interesting what constitutes triggering that subdivision.

35 THE COMMISSIONER: Yes.

40 DR CARMODY: My view – and I would be interested to hear your thoughts on this – is that it would be triggered by the satisfaction of section – the description provided for in section 84. So if, despite the Commonwealth's efforts, there is a change in the reliability of the water allocations of the holder of a water access entitlement, and so on.

45 THE COMMISSIONER: Sorry you've lost me there. Which reference? It is section – I thought it was section - - -

DR CARMODY: So it's section 84.

THE COMMISSIONER: Is 84 - - -

DR CARMODY: Sorry, subsection as in a section 4. And then - - -

5 THE COMMISSIONER: I was actually looking at section 83.

DR CARMODY: And then section 83. That section 83.

THE COMMISSIONER: I'm old fashioned.

10

DR CARMODY: And if you

THE COMMISSIONER: I tend to ignore simplified outline provisions.

15

DR CARMODY: Yes.

THE COMMISSIONER: Because they are not really simplified and they're dangerous as an outline. That is, I look to the provisions in question. But I take your point. So let's ignore section 80 and then - - -

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DR CARMODY: And go to 83.

THE COMMISSIONER: And go to 83.

25

DR CARMODY: Yes.

THE COMMISSIONER: And it provides for what's called qualification for payments.

30

DR CARMODY: Yes.

THE COMMISSIONER: And as we all know the size of that will depend, amongst other things, on the so called share to be attributed to the Commonwealth of the change in the reliability of the relevant allocations. That is something which is ultimately determined by the Authority, one of the subject matters where the Authority can't be directed by the Minister.

35

DR CARMODY: Yes.

40

THE COMMISSIONER: But all of this obviously is intended one way or the other to reflect if it not the legal effect, certainly the social concept, behind 51(31) of the Constitution.

DR CARMODY: Yes.

45

THE COMMISSIONER: And none the worse for that, I would not presume to say that was a bad idea, but it does mean that one needs to understand when all of this is triggered and it – doesn't that start with section 81?

5 DR CARMODY: Yes. Well, is it triggered merely by the fact that the change in the Basin Plan will give rise to an alteration in the reliability of allocations, or is it only triggered when that occurs and that can't be managed by the Commonwealth pursuant to section 82?

10 THE COMMISSIONER: Yes, it is. Don't you need to combine 81 and 82 in order to produce the possible entitlement under 83?

DR CARMODY: Yes. That was my understanding.

15 THE COMMISSIONER: Yes.

DR CARMODY: And my understanding was that for the purposes of 6.14 trigger is satisfied by 83 if the criteria in 83 are met. That it – it wouldn't necessarily.

20 THE COMMISSIONER: I was about to say, all of this is subject to two things.

DR CARMODY: Yes.

25 THE COMMISSIONER: Which both give and take. There's 84 - - -

DR CARMODY: Yes.

30 THE COMMISSIONER: Which extends the operation so as to include changes to transitional WRPs – so the Water Sharing Plans, for example, of New South Wales - - -

DR CARMODY: Indeed.

35 THE COMMISSIONER: And then 85(a), curiously, provides that the National Water Initiative is a fundamental source of obligation.

DR CARMODY: Yes. The risk assignment provisions therein.

40 THE COMMISSIONER: Yes. Now, I don't pretend off the top of my head therefore to give an automatic answer to how 6.14 operates with its reference to a trigger, but those are the matters that occur to me – I will be interested to know your views - - -

45 DR CARMODY: Yes.

THE COMMISSIONER: - - - all have to receive a tick in the box - - -

DR CARMODY: Yes.

THE COMMISSIONER: - - - before 6.14 can operate.

5 DR CARMODY: Indeed. And then I think the question remains, if another provision in the Basin Plan – take for example 10.17 and 10.26 – does indeed require a change in the reliability of allocations in order to satisfy - - -

THE COMMISSIONER: Yes.

10

DR CARMODY: - - - those provisions and more generally the requirements of chapter 8, in the Environmental Watering Plan, do we then find ourselves in a position that those provisions are automatically overridden, or that result is automatically overridden by 6.14, which seems to be suggested in the position statement published by the MDBA. And that's – that I find to be a questionable analysis when one looks at chapter 8 and the purpose of chapter 8 and the substance of those provisions - - -

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THE COMMISSIONER: Yes.

20

DR CARMODY: - - - within the context of chapter 8. To automatically assume that it would switch off any requirement arising from chapter 8 that would change the reliability of allocations, I have difficulty with that when one considers that chapter in its totality as well as specific clauses. Given that that chapter really, to me, goes to the heart of the Basin Plan: it's about the volume and timing of delivery of environmental water in order to discharge international obligations.

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THE COMMISSIONER: Well, is the effect of section 84, as I say, subject to canons of interpretation that include the external affairs foundation?

30

DR CARMODY: Yes.

THE COMMISSIONER: Does section 84 have the effect that one is to treat the provisions of the Basin Plan when it first takes effect as possibly, and oddly, constituting a change to the Basin Plan because of the deemed state of affairs in section 84(2)? I find those provisions very hard.

35

DR CARMODY: The drafting – I do find the drafting odd. My interpretation was that the interim and transitional Water Resource Plans that were in place, or became in place at the time the Basin Plan was passed became, became part of the Basin Plan. Therefore if one changes the rules in those, at the time of accreditation for example, and that change triggers subdivision b of division 4 of part 2, then we would be in 6.14 territory. Potentially.

40

THE COMMISSIONER: Well, except for the fact that paragraph 81(1)(b) excludes from this – excludes from the trigger changes affecting reliability by reason of a reduction in the SDL.

45

DR CARMODY: Yes. I guess I'm talking more about a rule change, Commissioner, as opposed to an amendment to the SDL that's prescribed in the Water Resource Plan.

5 THE COMMISSIONER: So what - - -

DR CARMODY: So for example a change in rules which affect when water is delivered for consumptive purposes or for environmental purposes.

10 THE COMMISSIONER: Would the paradigm case be shepherding?

DR CARMODY: Possibly, although I think there has been some confusion there. To my mind a rule which protects environmental water – so a cease to pump rule or increasing the threshold – the pumping threshold that's applicable in a water resource area, I don't think that triggers subdivision (b) or division 4 of part 4 because that – those provisions concern – and 6.14 concerns a change in the reliability of allocations and allocations are not the same in changing one's ability to access water. So an allocation is attributed to a licence pursuant to an annual water determination. There's no obligation on the part of the licence holder to physically use that water: they may wish to carry it over if that's provided for in the relevant rules, they may wish to sell it temporarily or permanently. Use is affected, however, by rules in Waters Resource Plans or Water Sharing Plans which prescribe when one can or cannot pump. And that to me is categorically different and - - -

25 THE COMMISSIONER: I understand that.

DR CARMODY: 6.14 or by those provisions in the Water Act.

30 THE COMMISSIONER: Now, this is mostly – the concerns you and I have been sharing are triggered by a wariness, I suppose, aroused by the Authority's gloss of 6.14 - - -

DR CARMODY: Yes.

35 THE COMMISSIONER: - - - as potentially removing from operation some very important provisions of the Basin Plan.

40 DR CARMODY: Indeed. I don't think they are inconsequential or negligible provisions, which is why I don't think one can automatically assume that the wording of 6.14 automatically switches off other requirements that could flow from chapter 8 of the Basin Plan, and by way of connection 10.17, 10.28 of the Basin Plan, for example.

45 THE COMMISSIONER: So in a sense we won't know about any eyebrow raising operation of 6.14 according to the MDBA's gloss of it until we see WRPs?

DR CARMODY: Yes. Although I have had conversations with clients who are on Stakeholder Advisory Panels, and I suspect that what I perceive to be the misinterpretation of 6.14 is colouring the way those Water Resource Plans are being developed. It is assumed that 6.14 prevents what is generally known as any third party impacts, which has been interpreted to mean any changes to rules in the interim or transitional Water Resource Plans, which is a view I don't agree with at all as a lawyer.

THE COMMISSIONER: Well, it rather is at odds with an ideal of adaptive management.

DR CARMODY: Yes, yes. And I do think it's at odds with specific provisions provided for in chapter 8 - - -

THE COMMISSIONER: Yes.

DR CARMODY: - - - of the environmental watering plan.

THE COMMISSIONER: I think we have reduced that elephant to a great smear. We can move on to the next topic.

DR CARMODY: Good. Very good. Thank you. If you could just give me one moment I will find the necessary piece of paper. So the next part of my oral submissions concerns come enforcement. So I would firstly like to acknowledge the significant progress that has been made in New South Wales since the Four Corners episode Pumped, which aired on 24 July 2017, notably in relation to the National Resource Access Regulator. However, the continued success of the Regulator will depend on ongoing funds coming, which has proven problematic in the past. There is also significant room for improvement with respect to your favourite word, I'm sorry, Commissioner, transparency.

At present licence usage and account data is not publicly available, which you are no doubt aware, and as amply demonstrated by the request case study which I referred to last week, it is extremely difficult for the public to obtain this information under Freedom of Information laws.

THE COMMISSIONER: Could I ask you, to be devil's advocate?

DR CARMODY: Yes.

THE COMMISSIONER: What are the reasons why those data might be justifiably kept private?

DR CARMODY: The reasons – well, the principle reason provided by members of the irrigation industry is that it would result in price gouging. That - - -

THE COMMISSIONER: How does that follow?

DR CARMODY: So if, for example, a water broker or other people who had water to trade knew that your account balance was running low and you needed water to grow your crop, they may inflate the price of the water that they have to sell because they have that knowledge. My response – and I included this in the submission that we made to the NSW Government responding to the recent proposed amendments to the Water Management Act – my response was that the Corporations Act, legislation all over the world, has anti-market manipulation provisions. Why would we not include such provisions in the Water Management Act, for example, in New South Wales, to make it illegal for anyone selling water to artificially inflate the price because they had that knowledge?

THE COMMISSIONER: I don't quite understand what is meant by artificially inflating the price. Do you mean - - -

DR CARMODY: Well, sure.

THE COMMISSIONER: That is, a market is a market and all vendors evaluate the willingness of a purchaser to pay more than they last offered.

DR CARMODY: Yes. Well, that is just – that's the argument that has been put forward to those who are opposed to the publication of those data.

MR BEASLEY: If you are seeking to buy water, surely they know that you need it.

DR CARMODY: sorry?

MR BEASLEY: If you are seeking to buy water, surely the seller knows that you need it anyway.

DR CARMODY: Well that was – again, that was one of the points that I made in the submission, the submission on behalf of EDO New South Wales. It's very well-known how much water is available in storage, it's very well-known when crops are grown and when they need water. You can see at the moment - - -

THE COMMISSIONER: Anyhow, that's valuable. That gives me an insight I didn't have. Thank you.

DR CARMODY: Yes. And, look, if it generally is a problem and it can't be dealt with by amending the law to include a prohibition on price gouging to reflect provisions in the Corporations Act for example, and other legislation in Australia and internationally, if that is not going to work, then perhaps the argument that at the very least that data be made available after the fact.

THE COMMISSIONER: I have never heard any farmer protest about having intelligence concerning the need of their ultimate purchases for their commodity in order to drive a better bargain for the farmer. So I'm not particularly impressed by the idea of price gouging. That seems to me to be a term of denigration applied to

something which, if you are on the other side of the transaction, is the healthy operation of a market.

5 DR CARMODY: Well, I'm just repeating the argument that's been put forward by those who are opposed to the publication.

THE COMMISSIONER: No. I understand. That's what I asked you to do and I'm very grateful. Thank you. Right. Let's move on from that.

10 DR CARMODY: Yes, okay. So I will just make a few brief comments regarding my concerns with respect to compliance and enforcement in Queensland. Some of these concerns echoed in the Basin Authority's 2005 Compliance Review and related the percentage of unmetered take in the northern Basin, which is almost 70 per cent, poor enforcement of existing laws, inadequate staff and funding for audits and
15 compliance activities, and poor reporting of monitoring and compliance. To this I would add very low levels, again, of that word transparency with respect to allocations, licences and works approvals in Queensland.

For example, and this is based on my own experience of drafting advice for clients in
20 Queensland, the publicly available datasets for allocations and licences comprise Excel spreadsheets with administrative references which do not correspond to searchable title references, and that's for entitlements that are unbundled from the land. To obtain information regarding overland flow licences, which is still bundled to land in Queensland, it is necessary to formally apply to the local council which is
25 both time consuming, and I would argue, impractical. In reality, I believe that this information should be publicly available on an easy to search register, as is the case in New South Wales, noting however the significant limitations in respect of the New South Wales Water register.

30 THE COMMISSIONER: What are your, in your view, the cardinal shortcomings of the New South Wales register?

DR CARMODY: It doesn't include the names of the licence holders. You need to
35 know what the WOL number is before you can undertake a meaningful search for a client. In the alternative, you are faced with the prospect of clicking on every single WOL contained in the register and then trying to deduce which one potentially belongs to the individual or the corporation in question, and then running subsequent to that a proper title search in order to verify the identity of the owner of that entitlement. It's quite a cumbersome process, it also means that you are charging
40 your client – assuming your client has money to pay for this – for title searches which may or may not be the ones that you are looking for, because it's - - -

THE COMMISSIONER: Is this more cumbersome than what's involved in finding
45 out the owner of land?

DR CARMODY: Potentially, yes.

THE COMMISSIONER: In what sense?

DR CARMODY: I'm just trying to think. Well, possibly it's the multiple steps.

5 THE COMMISSIONER: See, when I - - -

DR CARMODY: And the cost. If you are talking about - - -

10 THE COMMISSIONER: You can search a land register, you will be given a register proprietor. You aren't told anything about trusts, so you don't know whether it's a beneficial owner.

15 DR CARMODY: Yes. Well, I guess it depends exactly on how much information you want to obtain about property. Because you could undertake multiple searches which are quite complicated and can be quite costly for a client, about property – physical property.

20 THE COMMISSIONER: So let's – that's right. So let's bring it down to in the context of enforceability and transparency, why the – I take it beneficial ownership of what I will call water rights - - -

DR CARMODY: Yes.

25 THE COMMISSIONER: - - - should be publicly available. I mean, it's attractive proposition in the abstract.

DR CARMODY: Yes.

30 THE COMMISSIONER: But could you make it more concrete for me? Why is that useful for you, your clients, the community?

35 DR CARMODY: Yes. Well, I mean, the underlying idea really is that water is vested in the Crown in New South Wales and to that extent it's a shared resource. So - - -

THE COMMISSIONER: I have problem with that and that's why I brought up land as an analogy.

40 DR CARMODY: Yes. Land.

45 THE COMMISSIONER: I think land is a Crown resource and you don't need to go into fictions of Crown grants or allodial title in order to say it has always been a matter of public interest to know and to a degree control the ownership of land. So much more so, I would have thought, with water. So far so good, but can you make it more concrete for me. How does it help in practice? Why does it matter to know who owns water?

DR CARMODY: Well, to give you a concrete example, if a client comes to me and says, "I suspect that person or company X is taking water in contravention of the conditions on their licence or works approval," I then am faced with the prospect of going and first working out the appropriate resource area. There could be five or six
5 hundred licences that are listed for that water resource area. You are given the WOL number. You can click on the WOL and you can get all the licence conditions. That's then connected to a works approval. So all that information is publicly available, but if I don't have any additional information to help me identify which of the 500 licences could belong to this person in question, it becomes quite
10 cumbersome.

If I'm able to obtain the lot and DP for the property in question, then you can search using lot and DP. That's not always – sometimes I can do that using SIX Maps, which is a publicly available mapping resource, it's provided by the NSW
15 Government. If the client can give me enough information about the probable location of the property, I can start to try and find it SIX Maps, obtain lots and DPs and then plug them into the water register. But you can see it's a very cumbersome and time consuming process before I get to the point of potentially identifying all of the licences. The other thing is that – I mean, technically I could run a title search
20 against the name of the person who we think owns the property.

First of all, we need to know what the name is. Second of all, we need to know that the licences aren't held in the names of other family members or of companies, which then takes us into the realm of running company searches which is costly for
25 the client. So it is feasible and I – the civil enforcement case that EDO NSW Government is currently running was put together by going through all of these steps. But it is extremely – it is extremely time consuming and to the extent that you then have to run quite a few paid searches, some of which may end up being redundant, it can be costly for the client.
30

THE COMMISSIONER: Thank you.

DR CARMODY: And our clients are not necessarily – they are not particularly wealthy for most part.
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THE COMMISSIONER: But costly searches are, regardless whether the rich or the poor would resort to them, they are bad in themselves. I understand that. Yes.

DR CARMODY: Yes. So - - -
40

THE COMMISSIONER: This is similar to the experience I think most of us in practice in this area have in relation to the ease or otherwise of discovering the conditions and the administration of conditions of compliance with ordinary land development in New South Wales. It's not straightforward.
45

DR CARMODY: Yes. Although there is – I mean for development applications all of those development applications are publicly available.

THE COMMISSIONER: No, I understand.

DR CARMODY: On either the council or state government's website.

5 THE COMMISSIONER: They are not straightforwardly, however, searchable as to what I might call administration of compliance with them.

DR CARMODY: That's true.

10 THE COMMISSIONER: Finding out not only what the conditions are but what various officials have recorded as compliance or not can be quite difficult. All ultimately obtainable, there is no doubt about that.

15 DR CARMODY: If I may, I think that's a separate issue. This is really being able to access – easily access the licence information.

THE COMMISSIONER: I understand that.

20 DR CARMODY: When we talk about compliance, then we are talking about water usage and account balance data, which is not available on the register, and is something that's being considered by the NSW Government, but I understand there's considerable pushback for the reasons we have just discussed.

25 THE COMMISSIONER: I understand that. Good. Let's move on.

30 DR CARMODY: Okay. The commitments made by Queensland in schedule 4 of the compliance compact entered into by Basin states and the Commonwealth, unfortunately, do little to assuage my concerns. For example section 1, which concerns transparency, does not provide for a publicly available register containing all allocations, licensing, and works approval. In my view, in the absence of this information the community can have little faith in the government's commitment to true transparency. Section 2 which concerns compliance and enforcement does not include any tangible key performance indicator, only general statements about reviewing and improving upon existing systems which are in themselves inadequate.

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40 Just finally, if I could refer you Commissioner to item 12 of the index, which is an advice that I prepared for our client, Mr Chris Lamey. I don't wish to rehash its contents, but the material point that I would like to make in relation to this advice is that there is not, to the best of my knowledge, an obvious legal mechanism at the state level allowing the responsible government agency to order the removal of unlawfully constructed levies after the limitation period for enforcement has expired.

45 THE COMMISSIONER: Well, now, am I being old-fashioned in suggesting that it's the Supreme Court in its civil jurisdiction adjudicating on the law of nuisance that is the obvious place?

DR CARMODY: I'm talking about the state government enforcing.

THE COMMISSIONER: I understand.

DR CARMODY: Yes.

5 THE COMMISSIONER: And my response is, well, if rights have been infringed – again, I’m sure I am being old fashioned, I don’t look to the executive government to help me, I would rather look to the judiciary.

10 DR CARMODY: Yes. Well, the difficulty for many of our clients is they simply don’t have the money - - -

THE COMMISSIONER: I understand that.

15 DR CARMODY: - - - to undertake a civil procedure in the State.

THE COMMISSIONER: I understand that. That’s an access to justice point.

DR CARMODY: It is an access to justice point.

20 THE COMMISSIONER: A very important one – I’m not sweeping it under the carpet, but what I’m saying is it vastly transcends the particular subject matter of water nuisance.

25 DR CARMODY: Yes. Could – Commissioner could one request as a remedy – let’s say one did go to the Supreme Court arguing nuisance in relation to potentially unlawful levies, could one seek as a remedy the removal of those levies?

30 THE COMMISSIONER: It is the quintessential remedy. That is, mostly we don’t care about damages – you might get damages say for a lost crop or whatever.

DR CARMODY: Right.

35 THE COMMISSIONER: But mostly – though it is common law, it is equity in its axillary jurisdiction is classically engaged for a nuisance.

DR CARMODY: Yes.

40 THE COMMISSIONER: Which is why the cases can become quite complicated by references to delay or references to earlier litigation and being bound by what predecessors in title have suffered or not suffered, etcetera. But, no, the classic remedy is an injunction, and they are mandatory injunctions and nearly always accompanying the prohibitory injunctions. And in nuisance jurisprudence that’s where you will find a classic example of equity shaping its remedies according to the exigencies of a case. Thus, for example, a mandatory injunction requiring something to be done, say, within six months or a prohibitory injunction not operating until, say, 45 six months after the judgment so as to give time for works to be done, for example. So, yes, it’s well established, centuries old jurisdiction, involving injunctions and all

mandatory and prohibitory, suspended and immediate, to remedy nuisance. It's a state of affairs that lends itself to the injunctive jurisdiction.

DR CARMODY: To the removal of - - -

5

THE COMMISSIONER: A mandatory injunction that hereby orders – the court hereby orders the defendant to take all steps necessary to remove the embankment shown with a hatched line on the attached plan to - - -

10 DR CARMODY: Yes.

THE COMMISSIONER: - - - a level of AHD such and such within six months.

15 DR CARMODY: Yes. And thank you for explaining that. But then what happens to somebody who simply is unable to go to the Supreme Court?

THE COMMISSIONER: Then, like all rights that we supposedly enjoy, it will be hollow.

20 DR CARMODY: Which I guess brings me back to my original point. It seems somewhat perverse that a structure can be constructed unlawfully, the government fails to enforce the law within the statutory limitation period, that period expires - - -

25 THE COMMISSIONER: What do you mean – what do you mean by the statutory limitation period?

DR CARMODY: Well, in Queensland under the relevant state laws there is a limitation period within which the government can enforce those laws in relation to alleged - - -

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THE COMMISSIONER: Now, you're talking about planning laws?

35 DR CARMODY: Yes. Yes. Sorry for not clarifying. That's correct. So if they don't undertake to enforce those laws within that timeframe, barring the exception where the court grants them leave to commence proceedings outside of time, then there's nothing more than can be done. The landholder continues to benefit from the allegedly unlawful structures. If they sell the property, they then may reap further financial benefit, because those structures may increase the capital value of the property.

40

THE COMMISSIONER: I don't think those laws, however, prevent a neighbour from suing in nuisance.

45 DR CARMODY: Not at all. No. No. I don't disagree with you at all, Commissioner, at all on that point. I guess I'm making a separate point.

THE COMMISSIONER: No. I understand. No. I really do understand the point, but I think it's beyond my capacity in this Royal Commission to suggest that some special provision be made to recognise the universal phenomenon of the expense of civil litigation, especially with respect to water nuisance. I think you are right:
5 where the executive has standing and specific laws by which it can obviate the need neighbours to risk their fortune in that way, then it should be up to the executive in the public interest to act. If they don't act, as you know, as an administrative lawyer, you might dream of getting a Mandamus to make them act, you might even get it occasionally, but, I mean, basically, the response will be, "In your dreams."

10 DR CARMODY: Yes. Well, and I find myself telling clients time and time again it's virtually impossible to compel - - -

THE COMMISSIONER: Quite.
15

DR CARMODY: - - - the government to enforce its own laws. And the usual response is complete and utter astonishment. But that's how it works.

THE COMMISSIONER: I understand that. But one normally then asks a person,
20 "Do you think that every case of suspected criminality should be prosecuted?" After a bit of uhming and ahing they realise that the answer has to be no. So - - -

DR CARMODY: Yes.

25 THE COMMISSIONER: - - - basically, you are right, people are innocent about this until it affects their own interests. And I'm not – as a Royal Commissioner I'm not going to suggest that we make some special or remarkable general departure from the executive discretion whether to enforce the law. It seems to me that's a matter of political sanction.

30 DR CARMODY: Yes.

THE COMMISSIONER: Which, as we know, varies from the extremely powerful
35 to the utterly weak.

DR CARMODY: I guess it wasn't so much – I wasn't so much suggesting that discretionary power be removed, because I don't think that's at all practical.

40 THE COMMISSIONER: No, and I think it would be a bad thing. I want people to have a discretion whether to prosecute or not.

DR CARMODY: Yes. It was more whether or not, for example, the inclusion of a statutory limitation period is necessary in those state laws. Could that be removed?

45 THE COMMISSIONER: Well, as you know, there are large social differences of opinion about that. I don't know about you. I'm surprised every time I hear of a serious offence being out of time to be prosecuted in more or more of the United

States of America, because in this country serious criminal offences are not subject to time limits. Well that's a cultural difference and that has to be politically mediated. Again, this Royal Commission is too specific for me to - - -

5 DR CARMODY: All right.

THE COMMISSIONER: - - - suggest that there ought to be something about water offences, or that cuts across what is otherwise provided for the planning regulation in Queensland. I am very sympathetic - - -

10

DR CARMODY: because they're physical structures which remain in place. It's not a one off offence.

THE COMMISSIONER: I'm bound to say I am in a sense shocked by the idea that such alterations of the Earth's surface can be carried out with consequences for neighbours without the local authorities being concerned and energetic. But I guess you would know better than most that there comes a time when you can't keep being shocked.

20 DR CARMODY: Well - - -

THE COMMISSIONER: It may be shocking, but, I mean - - -

DR CARMODY: - - - I have received so many complaints – I have received so many complaints about possibly unlawful structures, in particular, levies, that I am no longer shocked. But I am as a consequence aware that it's a systemic problem, and it's – I cannot recall one instance in which the government has taken enforcement action and ordered the removal of levies in inland New South Wales where it has been found that they're non-compliant.

30

THE COMMISSIONER: Now, I think we've covered three possibilities: (1) the Rolls Royce solution of private nuisance actions.

DR CARMODY: Yes.

35

THE COMMISSIONER: Suits for injunctions in relation to them. (2) the in your dreams notion of getting government to do its job.

DR CARMODY: Yes.

40

THE COMMISSIONER: And (3) the ancillary removal or relaxation or extension of time limits within which government might do its job. Is that it?

DR CARMODY: I think that's a fair summary. Thank you.

45

THE COMMISSIONER: Thanks. I do understand all of that. And you may gather I have some sympathy, but I don't have any particular magic remedies.

DR CARMODY: All right. Thank you. Well, I will move on then.

THE COMMISSIONER: Please.

5 DR CARMODY: So part 11 deals with the sale of environmental water and water markets.

THE COMMISSIONER: Now apropos to that - - -

10 DR CARMODY: Yes.

THE COMMISSIONER: - - - you probably read the article this morning, the newest candidate for the Senate in New South Wales for the National Party - - -

15 DR CARMODY: Yes.

THE COMMISSIONER: Is – has had attributed to her a notion that what I think she calls surplus – water surplus to environmental requirements could be sold by the CEWH for – to people who might want to take advantage of no doubt the very keen market for fodder at the moment.

DR CARMODY: Yes.

25 THE COMMISSIONER: For growing fodder, that is.

DR CARMODY: Yes.

30 THE COMMISSIONER: Now, it's already true, isn't it, that as a matter of law, if the CEWH makes a decision that it's appropriate, according to his or her assessment of the strategy, to produce revenue by selling to irrigators, then that's perfectly permissible.

35 DR CARMODY: Yes. As long as the sale is undertaken in accordance with section 106 - - -

THE COMMISSIONER: Yes.

DR CARMODY: - - - of the Water Act. Indeed.

40 THE COMMISSIONER: So the statement attributed to this particular candidate seems to me to be in accordance with the law, if you read on the basis that, as I think it was intended to be read, that's not proposing an amendment of the law.

45 DR CARMODY: Yes. That was my understanding. Although, I would hasten to add that – and this is commonly misunderstood, and I understand that it's commonly misunderstood based on conversations with various clients and people in the community, that one cannot impose a condition at the point of sale which states that

this water must be used to grow fodder. That is prohibited under the trading rules set out in chapter 12 of the Basin Plan which was one of the points that I was going to make. Specifically, if one looks at clause 12.08 and – then clause 12.09, it’s very clear that that is prohibited. I think it is - - -

5

THE COMMISSIONER: That’s cognate with the prohibition on third line forcing, isn’t it?

DR CARMODY: Sorry?

10

THE COMMISSIONER: It is cognate with the prohibition on third line forcing in anti-trust regulations.

DR CARMODY: Right.

15

THE COMMISSIONER: You want to prevent markets being distorted by people who acquire property or services being restricted in the beneficial use to which they want – may want to put it.

20

DR CARMODY: That’s right.

THE COMMISSIONER: Because alienability is regarded as a social good.

25

DR CARMODY: Yes. I think the issue has been that certain people have suggested in Parliament and to the media that that is what the water would be used for, however, they failed to say that it is not legal to impose any limitation on the eventual use and to require that it be used for fodder. In actual fact, what will happen is it will go to market and it will be purchased in order to grow the crop that is worth the most amount of money.

30

THE COMMISSIONER: Well, I hope so, because that’s the theory of the market.

35

DR CARMODY: That is the theory of the market that water will move to its highest value use, for better or for worst. To me, it’s problematic that the idea of selling environmental water is somehow yoked to this concept that it will automatically be used to grow fodder – which is desperately needed by graziers, I’m aware of that fact because we represent many graziers across the Basin.

40

THE COMMISSIONER: But of course, there, there is presently water available. I don’t mean held by the Commonwealth - - -

DR CARMODY: Yes.

45

THE COMMISSIONER: There is presently water available to be purchased by somebody who wants to grow a lovely expanse of lucerne.

DR CARMODY: Well, yes. That’s what water markets are for: trade.

THE COMMISSIONER: But what I'm saying there is water available now, still available.

5 DR CARMODY: Well, in the southern Basin, last time I checked, there was almost 4000 gegalitres of water in storage that was held for consumptive purposes by irrigators. It may not be physically available, but that's as a consequence of allocation policy, not because there is no water actually in storage and all the water is being held for the environment. That's just simply untrue.

10 THE COMMISSIONER: That's my point. That this is the intended operation of the market, that there comes a point beyond which there can't be delivery, but up to that point the market will ascertain by the striking of prices the purpose for which the water will be used.

15 DR CARMODY: Yes.

THE COMMISSIONER: As I understand it there's absolutely no reason why a water trader can't buy it.

20 DR CARMODY: If the water is available it can be traded within the limits of the law. That's correct.

THE COMMISSIONER: Which is, again, the purpose of setting up a market.

25 DR CARMODY: Yes – yes. It does – I do think – I do think it calls into question, though, the idea that moving Water to its highest value use is, in all instances, a good thing. Because one of the unintended consequences of that is potentially a dearth of fodder, because fodder wasn't the most valuable crop, it was - - -

30 THE COMMISSIONER: Isn't that the market saying to people, "You are in a business that is unsustainable, because you can't pay the input necessary at a price which is justified by your likely output."

DR CARMODY: Well - - -

35

THE COMMISSIONER: Unlike the almond farmers, who can pay for it and can get an output which will justify that.

40 DR CARMODY: Yes. Well, if we think it's socially desirable for the Basin to be covered in almond trees and cotton plantations then I think that argument is completely watertight. Forgive the pun.

45 THE COMMISSIONER: I have to be very careful that I'm not suspected to be a member of commentator at this point, but there is a – there is a problem, isn't there, as soon as you admit of a relatively free market as the means by which you will allocate water, then you run up – as you correctly point out, you run up against what may be to some eyes, maybe my eyes, the highly undesirable, for example,

monoculture that might follow. Which I might think for environmental and social reasons would be highly undesirable, but I am pretty sure that neither my Royal Commission nor indeed I think any Parliament at the moment would seriously envisage requiring people to use the countryside in ways that are what I will call
5 picturesque or interesting from a tourist point of view rather than to run their land in a way that maximises their return in financial terms.

That's a very large social question about which I may well have views that people may well be able to easily guess at, but it seems to me that unless you undertake the
10 tremendously significant project of planning the countryside, in a way that some European countries have done, unless you do that then you really can't complain about people buying water for cotton or almonds at prices that prevent graziers from buying it.

15 DR CARMODY: Well, I wasn't proposing that we impose some kind of social utopia. I was really thinking about, for example, the use of planning laws, overlaying planning laws on water markets.

20 THE COMMISSIONER: What, a planning law that would say, "We have had quite enough almonds thank you very much, we want more beef?" That's – because that would be an unusual planning law outside wartime in this country.

DR CARMODY: Well, more is it – well, to move away from the fodder example, is it environmentally sustainable and socially sustainable in the longer term to plant this
25 concentration of almonds? For example, it could be anything - - -

30 THE COMMISSIONER: I don't mean this – I don't mean this flippantly at all, but doesn't – don't you then ask yourself, is it environmentally sustainable to run so many beef cattle?

DR CARMODY: Well, that could be an argument as well.

THE COMMISSIONER: Well, it is, but what I mean is these are then giant issues.

35 DR CARMODY: Yes.

40 THE COMMISSIONER: Well beyond this Royal Commission and, I suspect, incredibly challenging for any of the Parliaments in this country. I am not even sure the Commonwealth Parliament would have enough legislative power to venture into it at all.

45 DR CARMODY: So you think it's beyond the scope of a local council, for example, to include, in its local environmental plan, planning laws pertaining to agricultural production?

THE COMMISSIONER: No more cotton, you mean.

DR CARMODY: No. That's not what I was suggesting at all, no.

THE COMMISSIONER: What would you suggest?

5 DR CARMODY: Well, some kind of objective for the zone which takes into consideration the medium and longer term impacts of concentrating certain types of crops at certain sizes within that area.

10 THE COMMISSIONER: Well, if on the merits that could be justified that would be no different from taking an approach that you will only have so much of your land surface devoted to, say, the production of petrochemical pollutant materials. I understand that as a planning notion. I find it quite problematic, I have to say, of saying to farmers, "Sorghum, yes, wheat no," for example. Unless you can point up a planning reason why sorghum is more attractive than planting. Otherwise, we start
15 looking like a Soviet exercise where people who think they know better tell farmers what they should grow, which is not really the tradition in this country. Except in war time.

20 DR CARMODY: I'm not sure I would go so far as to say it's a Soviet exercise, but - - -

THE COMMISSIONER: You know what I mean though. The idea of central planning - - -

25 DR CARMODY: If it's taken to the Nth degree – if it's taken to the Nth degree, yes. I guess I'm looking at, you know, what – what happens – what happens if one has a very high concentration of permanent plantings in a particular area and water availability continues to diminish.

30 THE COMMISSIONER: Look, may I say we have asked that question and it seems to me that these are the things that may be an answer to a question that is not merely rhetorical. I know you don't intend it rhetorically, but these are some of the things that seem entailed, I think as deliberate consequences of the social choice we've made to come commodify access to water add to talk about the trade in water. The
35 following things happen. Whilst however a commodities market, now more or less globalised, will value the output of an almond grove more highly than the output of a cabbage patch then – and one is permanent, the other is annual. Then one thing seems clear, that in times of shortage, the almond farmer will outbid the cabbage grower for the water each considers necessary or desirable for their output.

40

DR CARMODY: Yes.

THE COMMISSIONER: Eventually, that will lead to the incapacity of the cabbage grower to a crop that year or perhaps forever, depending upon how critical the matter
45 becomes for business viability. Equally, the almond grower takes the risk that the global commodity market will turn adverse to almonds, Marzipan will fall out of

fashion, and the expense on water will become too great to be justified by the output. And there will be business collapse.

5 And we have all seen – I don't think with almonds, but we have seen with the other permanent tree crops the hundreds, thousands of hectares that you can fly over between Sydney or Melbourne of abandoned orchards where the money, the finances mean that it collapses. But, third, and most importantly, in times of water shortage, eventually, you won't be able to buy money – buy water at all at any price. And the trees will die. That being a risk that those who devised a water market understand is
10 one of the business risks involved in irrigated permanent cultivation. One of the risks is in our climate, in our continent, that you will plant more than can be sustained through a period of drought.

15 DR CARMODY: Might I suggest - - -

THE COMMISSIONER: Again, you can fly over the results of that as well.

20 DR CARMODY: Before we get to the point of that happening – and I think history has shown that this is the case – it's more likely that environmental water will be made available to those consumptive users so that they can maintain their productivity.

25 THE COMMISSIONER: The purpose of Basin Plan is to prevent that from happening.

30 DR CARMODY: Well, unfortunately, the Basin Plan won't necessarily prevent states from switching off Water Resource Plans during periods of significant water shortage which would then mean that greater volumes of water are available for consumptive use unless available for the environment.

35 THE COMMISSIONER: And so we then have the ultimate sanctions under the water Plan and Water Act and the intergovernmental agreement by which excesses over local SDLs have to be (a) explained and (b) remedied, and you know better than anyone that the system of sanction and remedy is not quite so rigorous as it would be if it was a single polity rather than a federation.

40 MR BEASLEY: Mr Andrew, the Chair of the MDBA, has put out a statement today again saying that using environmental water and giving it to people to grow fodder is not a great idea. Amongst other things, he said that others have suggested changing the legislation that determines when and how Commonwealth environmental water can be traded so it can be made more readily available to farmers. The current rules says the Commonwealth can only sell water at market prices and must have confidence that trading of water will not diminish environmental outcomes. These are the right rules if we want to ensure the Basin will be healthy in the long term.

45 THE COMMISSIONER: And that, I think, sounds – that, I think, is what I've been suggesting to you that the Basin Plan at least as intended with all the weaknesses it

has inherently because of our federation as to enforcement – it is intended to say L stands for limit. D, meaning diversion, is water for almonds, and it has got to be S, sustainable and so there is a limit. And the limits matter most when there is what I will call an overall shortage. It doesn't really matter when we have marvellously wet years.

DR CARMODY: When there is a shortage I would have thought it is perhaps more difficult to exceed the long term annual average SDL.

10 THE COMMISSIONER: To exceed it?

DR CARMODY: Yes.

15 THE COMMISSIONER: It depends on – I suppose it literally depends on where you have reached. Yes.

DR CARMODY: Yes. Well, I guess it depends on the overall quantum of water that's available in a drought.

20 THE COMMISSIONER: Exactly.

DR CARMODY: I guess we have covered quite a few different issues there. And but as I said my concern is that – is that we will find ourselves as we have during this drought in a situation where there is a considerable amount of pressure to sell environmental water. There is no framework – analogous framework at the state level in New South Wales protecting the state's water holdings which are admittedly much smaller than the Commonwealth's.

30 THE COMMISSIONER: I agree. It's a reason to say of the Water Act and the Basin Plan it is at least vis-à-vis New South Wales's arrangements superior with respect to the dedication of the CEWH's holds.

DR CARMODY: Yes.

35 THE COMMISSIONER: To uses which are either directly or indirectly for environmental protection. Yes. I agree.

40 MR BEASLEY: One of the other things that Mr Andrews said this morning is that if we did put environmental water up for sale, it wouldn't be bought by people that are growing fodder. Someone would jump in that's got a higher value crop, and they will be the one that would be buying it.

45 THE COMMISSIONER: I think that's the point that we have been all making, that this naïve idea that everyone will step back and allow water to be bought at a lower price than the CEWH is allowed to sell it at in order to provide fodder in a market which by the way is already being affected by people buying up fodder to give to

graziers. So surprise, surprise, as you increase demand, prices go up. Who would have believed it?

DR CARMODY: Yes.

5

THE COMMISSIONER: Yes.

DR CARMODY: Yes.

10 THE COMMISSIONER: So these are called perverse effects for good reason. This Royal Commission is not going to go back to Adam Smith fundamentals in order to explain this at too much length, but I can assure you that I will be considering and saying something about the ramifications of encouraging sale in water so to use the jargon as to transfer it from one place to another, according to the commercial
15 choices of growers, either of permanent or annual crops, that the ramifications include not only the socially beneficial freedom of choice that that represents, or free enterprise, as some would call it, but also the much less obvious social benefits query social detriments of the effect on communities of a new lucrative crop destroying the capacity of more traditional less financially ambitious growers to continue in
20 business. And thus in residence. Which is not something which is always to be seen to the forefront of the submissions by some irrigators. That is, there are socio-economic effects of the capacity of large enterprises to raise the price of water, thereby pricing humbler growers out of the market, and you don't find that often talked about, but it is part of the creative destruction of capitalism as I understand it,
25 and apparently one is meant to applaud it. I simply with some irony note that the effects of the water plan on communities attract a lot of language which might equally be regarded as referring to the creative destruction of environmental regulation. That is, that there are some activities that have to stop.

30 DR CARMODY: Yes.

THE COMMISSIONER: Now, where are we up to?

35 DR CARMODY: Well, I think that covers off on that issue. And the final part of my submissions concerns – this is part 12 the Water Sharing Plan for the Barwon-Darling and unregulated sources, and I have tendered an advice which is available at item 9 for your consideration.

40 THE COMMISSIONER: Yes. No. I have read that. Thank you. What do you want to emphasise about that? That is, you don't need to tell me about it because I have read it.

45 DR CARMODY: Yes. Really, I just – if you could bear with me for one second. I would really just draw attention to the fact that the advice sets out the changes between the draft version of the Water Sharing Plan, the gazetted version, which have generated considerable debate over the last couple of years. They – those issues are yet to be resolved. Our clients are still concerned about them. In particular, the

fact that it is now possible since the gazetting of that Water Sharing Plan, it is possible to attach very large pumps to A class licences. So for low flow water. The accounting rules are considered problematic, that you can take three times your allocation plus anything that you temporarily trade. You can put A class water into storage which historically was not permissible under the 1912 Act. A class water was really just to be used to grow perennials. So it had to go straight on to the crop. If you combine that with the large person pumps attached to those A class licences. It means quite a lot of water can be taken out of the river during low flows and then put into storage for future use. So those issues - - -

10 THE COMMISSIONER: No. If I may say so your advice collects these matters, which we have heard about from a number of people, a number of different players.

15 DR CARMODY: Indeed.

THE COMMISSIONER: It collects them extremely conveniently. I'm much obliged.

20 DR CARMODY: Thank you. I just really wished – I wanted to just highlight those changes because there is no guarantee they will be addressed, and I know that we have clients that are on the Barwon-Darling Stakeholder Advisory Panel, and the notion of third-party impacts is frequently invoked when they ask questions about changes to some of those rules.

25 THE COMMISSIONER: Yes. And so this again - - -

DR CARMODY: And we have covered that issue already.

30 THE COMMISSIONER: Again, we are all, as it were, watching the WRPs supposedly in process of being readied for the middle of the year next year.

DR CARMODY: Yes.

35 THE COMMISSIONER: And you are – I think pointing out in a way that I intend to report on, that there will be the proof of the pudding for a number of these matters when one sees the WRPs that are promulgated. It's at that point that the real quality of the administration will be seen.

40 DR CARMODY: Yes. Well, and the concern in the interim is that they are being developed on the basis of perhaps a misinterpretation or misapplication of certain legal provisions.

THE COMMISSIONER: I agree. And that is something I intend to report on, yes.

45 DR CARMODY: Thank you. Well, that really brings to a conclusion my oral submissions.

THE COMMISSIONER: Again, I have said this before, let me say it again, I'm really obliged. I greatly appreciate all the efforts you have made, and it has been very valuable for me to be able to discuss them with you.

5 MR BEASLEY: Can I just ask a question though of Dr Carmody. I had to clarify a question on a email she sent today. Dr Carmody, there is a – the two documents you sent through this morning is one involving an email chain between – it's – I'm not sure who is sending it, whether it's you, it's involving Michael Slezak of the ABC.

10 DR CARMODY: Yes, he sent it. Michael Slezak from the ABC sent it to the MDBA, and he passed it on to me because he sought my advice about their response.

MR BEASLEY: It contains a four-paragraph answer from someone called Dominique from the MDBA media team who is no doubt the best person to talk
15 about sustainable diversion limits. But the question is, sustainable diversion limits for the plan estimated that there was about 210 gigalitres of floodplain harvesting occurring across the entire Basin. New South Wales estimates there is three times that amount occurring in the Gwydir catchment alone and proposes to licence that harvesting. If that happens, what happens to the SDL?

20

And the answer really is that the – seems to be that from the third paragraph, an increase in the BDL to account for a wider range of water use will not impact the amount of water returned to the environment under the Basin Plan. If the BDL is changed the SDL will also be changed to reflect the additional water use. This will
25 not impact the achievement of environmental outcomes. I'm just trying to get my head around why the SDL will also change. If there is a sustainable diversion limit, why does that change if we find out that because there is more floodplain harvesting going on than we estimated, that the BDL goes out? Do you have a view about that?

30 DR CARMODY: Yes, I do. So the determination of the sustainable diversion limit, keeping in mind the requirement that it reflect an environmentally sustainable level of take, that is in part influenced by the baseline diversion limits. So the volume of water that was assumed to be consumed as at 2009. It might - - -

35 THE COMMISSIONER: Isn't it simply this algorithm: a sustainable diversion is the difference between your baseline and your – the amount that the environment requires.

40 DR CARMODY: Yes. And if the baseline, if you realise on the basis of improved data, and this is something we discussed last week, and in fact I was providing this email, as you requested a copy of it, if the data shows that at the baseline year in 2009 we were consuming more water than we had originally thought - - -

45 THE COMMISSIONER: Yes.

DR CARMODY: - - - I would assume that we would then have to recover more water, not the same amount.

THE COMMISSIONER: And so if you just look at that algorithm you see how a change in the baseline may affect the SDL.

5 DR CARMODY: Yes. And when I was sent this email I contacted some scientific colleagues to verify that my understanding was correct and they said in their view absolutely, if you increase the BDL, you don't increase the SDL by the corresponding volume. In fact, it would probably be the reverse, to take into account the improved data about increased consumption in 2009. That is why I deemed the response to be nonsense.

10 MR BEASLEY: All right. Just on that, then, has there been any follow-up with Dominique from the MDBA media team or perhaps someone else in a different division of the MDBA about this view that you know of?

15 DR CARMODY: No. I wasn't privy to those communications. I wasn't directly involved, but because I was interviewed by the journalist - - -

MR BEASLEY: This only happened in May this year. This email exchange.

20 DR CARMODY: That's correct. And you will read that was authored by Michael Slezak. It was on the ABC news and there was some print media. I was interviewed for that.

MR BEASLEY: Right.

25 DR CARMODY: I was asked for a legal opinion about that matter.

MR BEASLEY: Yes.

30 DR CARMODY: Which is why he passed it on to me.

MR BEASLEY: Okay.

DR CARMODY: My comments are publicly available.

35 MR BEASLEY: Right. Where are they publicly available?

DR CARMODY: Google. ABC News.

40 MR BEASLEY: Right. Okay. Thanks. What's Google? Forget that.

DR CARMODY: I don't think it's defined in the Water Act. I'm sorry.

45 MR BEASLEY: Okay. Well, I will tender the documents behind, I think, tabs 1 to 24 - - -

THE COMMISSIONER: Yes.

MR BEASLEY: - - - of the volumes of material for Dr Carmody. I will also tender – I take it you want to tender – us – you want to tender, or want me to tender the case study you did concerning the GIPA search?

5 THE COMMISSIONER: Yes. I would like that tendered.

MR BEASLEY: Dr Carmody, yes?

DR CARMODY: Yes, the Commissioner requested that last time.

10

MR BEASLEY: So included in that – it will have to be a separate exhibit, I think – there is a document entitled part 8 access to information, case study, Macquarie Marches Environment Land Owners Association and Floodplain Harvesting. That can be tendered, as can the email exchange I just discussed which is emails between
15 Michael Slezak and Media at MDBA, both dated – well, it’s all dated either 14 and 15 May 2018 provided by Dr Carmody.

THE COMMISSIONER: Thank you.

20 MR BEASLEY: Thanks again. Very sorry.

THE COMMISSIONER: Thank you very much for making yourself available.

DR CARMODY: Thank you. Thanks for your time. Okay. Goodbye.

25

THE COMMISSIONER: Goodbye.

MR BEASLEY: Cheers.

30 THE COMMISSIONER:

MR BEASLEY: I have to tender this now because there may not be another.

THE COMMISSIONER: Sure. Away you go.

35

MR BEASLEY: So - - -

THE COMMISSIONER: By the way, I can do what I like, so you can tender it by note to that effect.

40

MR BEASLEY: I would have thought we could.

THE COMMISSIONER: It doesn’t have to be done at the hearing.

45 MR BEASLEY: Yes.

THE COMMISSIONER: If you want to put it on transcript, that’s fine.

MR BEASLEY: See this document, I tender the material that's referred to in it.

THE COMMISSIONER: So how do we describe that? It's a list of - - -

5 MR BEASLEY: That's probably a - - -

THE COMMISSIONER: Don't read them out, is what I mean.

10 MR BEASLEY: In the document headed Materials for Tendering on 27 September 2018, I tender - - -

THE COMMISSIONER: All of them.

15 MR BEASLEY: No. Five through to - five through to eight and the documents referred to as 10 and 11.

THE COMMISSIONER: Thank you.

20 MR BEASLEY: And I also tender in the document headed Index to South Australian Supply Measures - Business Cases. The documents that are referred to at items 1 through to 12.

THE COMMISSIONER: Good. Thank you.

25 MR BEASLEY: Everyone happy now? Excellent.

THE COMMISSIONER: And so we now adjourn sine die.

30 **MATTER ADJOURNED at 1.20 pm INDEFINITELY**