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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-952878

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

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

**ADELAIDE**

**10.01 AM, TUESDAY, 30 OCTOBER 2018**

**Continued from 23.10.18**

**DAY 33**

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

MR BEASLEY: Before we begin, Commissioner, we acknowledge this land that we meet on today is the traditional lands of the Kurna people and that we respect their spiritual relationship with their country. We also acknowledge the 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 our respects to the cultural authority of Aboriginal people visiting or attending from other areas of South Australia or Australia that are present here today.

Before I commence, Commissioner, I'm going to hand up a document called an exhibit register which has on it a record of exhibits RCE461 through to RCE901. I will just hand that list up. When I finish, Mr O'Flaherty will read the title of the reports on to the record while the rest of us go to lunch.

THE COMMISSIONER: After the rest of us have already left?

MR BEASLEY: Yes.

THE COMMISSIONER: So these are all tendered now?

MR BEASLEY: They are all tendered now. Commissioner, the Water Act and the Basin Plan have been hailed as ground-breaking reform. They are. What this Commission has learnt, however, from the evidence it has gathered, and from the witnesses that have informed us, is that it's one thing to enact transformative legislation like the Water Act and the Basin Plan, it's quite another thing to faithfully implement it. Sadly, the implementation of the Basin Plan at crucial times has been characterised by a lack of attention to the requirements of the Water Act and a near total lack of transparency in an important sense.

Those matters have had, and continue to have, a negative impact on the environment and probably the economies of all the Basin Plan states but the state that will suffer the most is the state at the end of the system, South Australia. The Water Act was a giant national compromise. At its heart was a recognition that all of the Basin states – Queensland, NSW, Victoria and South Australia – were taking too much water from the system and had been for a long time. That, as a matter of statutory fact in the Water Act, and as a matter of reality, has led to serious degradation of the environment of the Basin. The Millennium Drought of 2000s underscored the fact that, if nothing was done, over-allocation of the water entitlements in the Basin would inevitably and quickly lead to irreversible damage to the Basin environment.

The Water Act was a response to that. It was the statutory means by which the process of restoration and protection of environmental assets would begin. I say the Water Act was a compromise because the Act contemplates that water will be taken from our rivers and used consumptively for irrigation, the growing of crops and permanent plants. Of course, also for human water needs. But it sets a limit. That limit is that no more water can be taken beyond the point where key areas of the environment and its ecosystems might be damaged. In an environment that's already

degraded, that means the Water Act requires the environment to have both enough water to restore degraded wetlands and the like and also, of course, to maintain them.

5 That's not just the right thing to do. It's what Australia's international obligations require. That task, setting a limit on the extraction of water, is to be based on the best available science. Not guided by the best science, not informed by the best science but based on the best available science. It also has to be achieved by taking into account the well-known principles of ecologically sustainable development. What the Commission has learnt from the evidence presented to it is that the  
10 implementation of the Basin Plan, at crucial stages, has not been based on the best available science. Further, ecologically sustainable development has either been ignored or, in some cases, in relation to supply measures, actually inverted.

15 I want to read to you a peer review of the Guide to the Basin Plan from some international scientists in 2010 because it demonstrates that they were well aware, even back then, of what was actually going on in the early stages of drafting the Basin Plan. This is a peer review report by Professor Gene Likens of the Cary Institute of Ecosystem Studies, Mr Per Bertilsson of the Stockholm International Water Institute, Professor Asit Biswas from the Third World Centre for Water  
20 Management and Professor John Briscoe, Gordon McKay Professor from Harvard University. What they said was this, in reviewing the Basin Plan, at page 34 of what became exhibit RCE38:

25 *It is a fundamental tenet of good governance that scientists produce facts and the government decides on values and makes choices. We are concerned that scientists in the Murray-Darling Basin Authority, who are working to develop the facts, may feel they are expected to trim those so that the sustainable diversion limit will be one that is politically acceptable. We strongly believe that this is not only inconsistent with the basic tenets of good governance but that it is not consistent with the letter of the Water Act. We equally strongly believe that government needs to make the necessary trade-offs and value judgments and need to be explicit about these, assume responsibility and make the rationale behind these judgments transparent to the public.*

30

35 If all the MDBA had been done in the past eight years since that review was written is "trim the facts", that would be bad enough. But it's worse than that. The implementation of the Basin Plan has been marred by maladministration. By that I mean mismanagement by those in charge of the task in the Basin Authority, its executives and its board, and the consequent mismanagement of huge amounts of  
40 public funds. The responsibility for that maladministration and mismanagement falls on both past and current executives of the MDBA and its board. Again, while the whole of the Basin environment has and will continue to suffer as a result of this, the state whose environment will suffer the most is South Australia.

45 The principal task of those implementing the Plan is to set the Basin-wide sustainable diversion limit. How much water can be taken from the rivers before the environment suffers? You've heard evidence that has been unchallenged that this

task was infected by deception, secrecy and is the political fix. The modelling it has been said to have been based on is still not available seven years later. The recent adjustment of the sustainable diversion limit by raising it by 605 gigalitres, on the evidence you've heard, is best described as a fraud on the environment. That's a phrase I used in opening. It was justified then. It's re-enforced by the evidence you've heard subsequently. The so-called 450 gigalitres of upwater, the water that the then South Australian Government fought for, for this State's environment, is highly unlikely to ever eventuate. The constraints to the system are just one major problem in the delivery of that water.

Like all aspects of the implementation of the Basin Plan, efficiency measures or infrastructure projects that form the basis of how the 450 gigalitres of water is to be attained, and which are funded by public money, lack any reasonable form of transparency and, as the Productivity Commission recently, and witnesses to this Commission, have noted, are hugely more expensive and less reliable than purchasing water entitlements. I will discuss this in detail but I will give you one quote from an expert who can talk with real authority about the extra 450 gigalitres proposed for South Australia under the Basin Plan. That's the former Commonwealth Environmental Water Holder, David Papps. In his evidence to you said:

*I would bet my house that South Australia is not getting that water.*

Mr Papps' prediction seems safe when one considers the proposed amendments to the Basin Plan by the governments of NSW and Victoria concerning the 450 gigalitres that I will come to shortly. Everything that I have just said to you is based on the views of eminent scientists and other people who have given evidence and lodged submissions. However, neither the Commonwealth Department of Agriculture and Water, the Murray-Darling Basin Authority, or any Commonwealth government agency has provided any answer to anything I have just said or to the evidence before the Commission that I will refer to shortly. They have no answer. The submissions provided to you very recently by the Murray-Darling Basin Authority, and the DAWR, Department of Agriculture and Water Resources, demonstrate, as did their unwillingness to give evidence, culminating in proceedings to the High Court, that they do not have any answer.

The MDBA, you will recall, were even too busy to meet you. The States also have no answer, as demonstrated in their somewhat thin submissions to you, with the exception of the South Australian Government. When I say the MDBA has no answer to the expert evidence given in this Commission, I should emphasise also that it clearly has no answer to the maladministration and unlawfulness of its implementation of the Basin Plan. It is nevertheless a great pity that relevant persons from the Basin Authority, and other Commonwealth agencies, were not required to give answers to you under oath concerning the scientific evidence the Commission gathered.

The opportunity may have been there had the High Court decided those proceedings in your favour. I'm not going to speculate on what the High Court would have done but, regrettably, the South Australian Government chose not to extend your Commission in order to provide you with the opportunity that may have been  
5 available to you to question those relevant people. You made it clear to the South Australian Government that was your strong preference. You advised them that the Commission had potential witnesses that wanted to give important evidence, evidence relevant to the South Australian environment, but only if they were compelled by summons.

10

In other words, they were too scared to talk about the implementation of the Basin Plan without the force of a summons. Why the Commission was not extended to explore these crucial matters is something upon which you can draw inferences as you see fit. I will only say that it's a great opportunity lost.

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So many witnesses have given evidence and made submissions on complex scientific matters to this Commission that I am not going to attempt today to summarise all of that evidence, nor do I intend to address every issue relevant to your terms of reference. There's a limit to what needs to be said in closing in an inquiry like this  
20 where there has been no challenge to the expert evidence or the factual evidence, either orally or in submission. Opening and closings in either a trial or an inquiry, obviously, have one goal, of assisting a court or a Commissioner as to what the relevant issues are, what crucial evidence has been or will be led and what conclusions should or should not be drawn.

25

There are some aspects of procedural fairness. I don't need to cover all that ground, all the ground covered by the Commission in closing address. Any person or entity that may be the subject of criticisms or adverse findings by you has had procedural fairness in spades. You've given multiple warnings about potential adverse findings.  
30 Evidence has been given by witnesses at this Commission of careless administration and worse. That evidence has been publicly available in real time. Many potential witnesses have been invited to come and give evidence and give explanations and have chosen not to. Every relevant person and entity has been given the opportunity to make a submission.

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The topics that I intend to address, necessarily briefly, in this submission are these issues: (1) proper construction of the Water Act, (2) setting an ESLT, (3) adjustment to the SDL by supply measures, (4) the 450 gegalitres of upwater, Aboriginal consultation, submissions of the states, submissions by the MDBA and the  
40 Department of Agriculture and Water and, finally, a thank you to some of the people that have given evidence.

45

I will move to the proper construction of the Water Act. Before dealing with that topic, I know part of your final report will touch on relevant constitutional issues. I don't intend to make submissions to you on matters of constitutional law. Suffice to say that it has never been the position of this Commission that the Water Act lacks validity.

I also don't intend to make lengthy submissions now about the proper construction of the Water Act. I opened at length on this topic and I have no intention of repeating what I said then. Nothing has changed. It's even more obvious to me now that there is no good answer to the concerns you raised in Issue Paper 2 concerning  
5 construction of the Water Act. I make these brief points, however, because the proper construction of the Water Act is crucial to the proper implementation of the Basin Plan and also to the lawful implementation of the Basin Plan.

10 I will make these short points. There is no triple bottom line in the Water Act. It's not in its text, it's not in its context, it's not in its purposes. That is a public relations sound bite made up by the Basin Authority, perhaps for what it perceives, either or both of, that the government or some parts of the Basin community want to hear. Whether the MDBA or any government likes it or not, the Water Act is an environmental statute. It gains its constitutional validity from the implementation of  
15 our international ecological and environmental obligations. It demands special measures to protect and restore an over-allocated system.

20 There is no trade-off within it between the environment, on one hand, and social and economic considerations on the other. To the extent that it has one objective of using the water resources to optimise environmental, social and economic outcomes, which can't, except in odd cases, be simultaneously optimised, that is beyond doubt subordinate to giving effect to our international obligations and providing special for measures to restore damage to the environment and prevent further damage.

25 It's nauseating to me to hear people, or anyone, assert a triple bottom line whereby there's some so-called marriage of convenience or ménage between the environment, society and the economy. I don't want to take you back to the definition of "environmentally sustainable level of take" in the Water Act, because you would know it off by heart by now. We all do. But it's clear that all the features in that  
30 definition are components or phenomena of the natural environment. The definition of ESLT requires assessment of the conditions of water resources and their ecosystems and the nature and extent of any adverse impacts to them caused by diversions.

35 The Water Act does not define key – that is key ecosystem functions or key environmental assets – for the purposes of the definition. But that term is readily understandable in English. It refers to qualities of importance and essentiality. Its statutory meaning can be inferred from the objects in section 3 and our relevant international agreements and also by the guiding principles in section 21, and also  
40 from ecologically sustainable development.

45 You've heard from various scientific experts about aspects of connections and independencies in the environment. The Water Act as a scheme requires special measures to be taken to protect each ecosystems and the Basin's biodiversity as a whole from "compromise". The Water Act doesn't define compromise, but it's another well and easily-understood English word. At a minimum, compromise should mean the infliction of, or unacceptable risk of, material damage to the

environment. That is something that exists well before you would get to the stage of something like irreversible damage or even serious damage.

5 In requiring the Basin Plan to promote sustainable use of the Basin's water resources, including in order to conserve biodiversity, there's an element of both protect and restore. The word "restore" recognises that degradation, as is the statutory fact, has actually occurred. You can't protect something unless you first restore it. The sustainable diversion limit must be set, acknowledging that enough water needs to go to the environment, not only to protect the environment, but also to restore it where  
10 it's degraded.

The definition of ESLT does not explicitly stipulate a maximum volume of water to be determined for the environment, but a result has to be achieved. That is, as I said, not compromising. Now, common sense and the nature of things ..... range of risks  
15 to the environment has to be determined and, depending on different levels of extraction, there may be an upper limit or a maximum beyond which the risk of compromise to key ecological features is too high. The definition of ESLT posits a level which, if exceeded, would compromise the specified environmental values. Determining that level will involve steps in the process that are, unavoidably,  
20 approximate in their conclusion. But, in the end, the Act demands that a single figure is the only way that a limit can operate as such.

The requirement that a sustainable diversion limit must reflect an environmentally sustainable level of take allows for the possibility of a sustainable diversion limit that  
25 is more generous to the environment, ie, an SDL lower than the ESLT maximum. One reason for that is that the Basin Authority must always act by taking into account ecologically sustainable development and the precautionary principle. That means that a buffer is perfectly appropriate, because otherwise there is the risk that, if it's set a too precise figure, damage might occur.  
30

The determination of an ESLT is also not a set and forget exercise. As a matter of sound policies, SDL should always reflect an ESLT and must always be guided by section 21 of the Act, but science evolves. The MDBA must prepare the Basin Plan, but also must occasionally review it and amend it. By necessary implication, any  
35 amended plan must contain an SDL reflecting an ESLT. In fact, that's what the Act demands when the ESLT or the SDL is adjusted.

It's also significant the ESLT is not just for the Basin as a whole. Every water resource or part of a resource in a Water Resource Plan area must have an SDL that  
40 reflects an ESLT. If there has been an error made in the overall setting of the SDL, then there's queries about the lawfulness of the water resource plans that underpin the entire Basin-wide SDL. The view that I've expressed concerning the proper construction of ESLT is not just my opinion. It's not just the concern you raised in Issue Paper 2. It's the view, bar one, of any thoughtful opinion on this issue.  
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Amongst a plethora of views by eminent lawyers, there's one contra view. It's from the AGS in late 2010. I'm not going to stand here and pick that opinion apart, not

the least reason for which I would hate that to be done publicly to one of my opinions. But the opinion is wrong. It's almost written as though it concedes that. I'll mention just one thing about it. The idea that you can give a tick to an area of the environment as key, based on social and economic considerations, is, frankly, a very  
5 strange argument. It's nonsense and it's wrong.

You should, in your report, reject any notion that social or economic optimisation or consideration has anything to do with setting a sustainable diversion limit that reflects an environmentally sustainable level of take. Those considerations don't  
10 play any role in the exercise of judgment required to determine what is a key environmental asset or a key ecosystem function or any other aspect of the definition of ESLT. The Murray-Darling Basin Authority has misinterpreted the Water Act, not in a minor way, not in an unimportant way, in a crucial way. They've misinterpreted the Act in the most important and fundamental task they had to  
15 perform in respect to the Basin Plan, setting the sustainable diversion limit.

That's not only error, or worse than error, it's a massive one with regrettable consequences for the lawfulness of that part of the Basin Plan. In saying that, I make the assumption that I think is reasonable that you don't need to hear from me as to  
20 the importance of observing the law, nor do you need to hear from me on the importance of the consequences of not doing that, either through ignorance, carelessness or knowingly.

Can I turn to the factual matters concerning the determination of the environmentally sustainable level of take by the Basin Authority? The Guide to the Basin Plan was  
25 published in October 2010. It set out what was then considered to be the amount of water needed to be returned to the environment to meet the environmental watering requirements for the Basin's key environmental assets and key ecosystem functions and the like.

30 Forgive me for using the term "asset", but it's in the Act. I otherwise wouldn't. Achieving those environmental watering requirements was set through flow objectives – volume of flow, duration of flow, percentage of years in which a particular volume of flow was required and for how long, etcetera. They all form the  
35 basis for setting the Basin-wide sustainable diversion limit reflecting an environmentally sustainable level of take. In the Guide, the Basin Authority said that approximately 3,900 gigalitres of surface water on average per year was needed to be returned to the environment for there to be a "high uncertainty" of achieving the environmental water requirements, leaving aside constraints for the time being.

40 An amount of approximately 6,900 gigalitres of water needed to be returned to the environment for there to be a "low uncertainty" of achieving environment watering requirements. Taking into account margins for error, the MDBA said at the time that they considered environmental watering requirements could be met with a return of  
45 water for the environment in a volume of 3,000 gigalitres per year on average "with a high level of uncertainty". The plain English translation of that is that it can't be done at 3,000 gigalitres per year to the environment.

Professor Williams, who gave evidence, described the phrase as meaning you've got "Buckley's" of achieving your environmental watering targets with a 3,000 gigalitres per year plan. Mr Bruce from the South Australian Department of Environment considered that the word "uncertainty" has a slightly different meaning, equating it to something like the word "confidence" used recently in the IPCC report. There's no other support for that view, however.

A high level of uncertainty, of course, does not fit comfortably with the mandate not to compromise key environmental assets and ecosystems. There's an argument that high levels of uncertainty have no business even being considered seriously, given that the MDBA, in the performance of all of its functions, must have regard to ESD. It's notorious that the Guide was not well received in Basin communities. It's possible that the Basin Authority's processes of consultation did not meet world's best practice.

Twelve months after the Guide was the subject of an unfortunate book burning, the MDBA published its ESLT determination report in which it determined that a sustainable diversion limit based on a baseline diversion limit, less the amount of 2,750 gigalitres to be returned to the environment, was a Basin-wide SDL for surface water that reflected an environmentally sustainable level of take. In that report, the Basin Authority said its modelling was now "more robust". It also said it had factored into its determination social and economic considerations. Regrettably, neither the so-called more robust modelling, nor the means by which social and economic factors were considered has ever been made publicly available by the Basin Authority.

A number of short points are relevant to the setting of the SDL and the determination of the ESLT. First of all, in the ESLT report itself, exhibit RCE6, even at the modelling for 2,800 or 3,200 gigalitre volumes of water to be returned to the environment, environmental watering requirements are often not met for key valleys in the Basin. And, Commissioner, you would be familiar with pages 199 and onwards of that report where that's made clear.

Also in evidence before the Commission was the CSIRO's report, exhibit RCE9, where the CSIRO were asked to consider a 2,800 gigalitre plan. That report makes it absolutely clear that a 2,800 gigalitre plan only achieves 55 per cent of the environmental watering requirements, and even some of those are at high levels of uncertainty. You also heard the evidence of Professor Brookes, who was one of the authors of that 2011 CSIRO report. At transcripts pages 953 to 954 he conceded that a 2,800 gigalitre plan, if it has to meet the environmental watering requirements set by the Basin Authority, would be a plan in which the sustainable diversion limit does not reflect an environmentally sustainable level of take. Professor Williams gave similar evidence at transcript at T302.

We also had evidence from the retired former chief modeller of the Basin Authority, Mr Andy Close. In questions from you, he conceded that the modelling from the guide through to the ESLT report simply didn't change enough to warrant the

reduction in water said to be required by the environment from the nearly 4,000 to 7,000 gigalitre range down to the 2,750 gigalitre range.

5 There has also been, of course, a number of complaints about lack of transparency in relation to the MDBA's modelling. In its recent submission to you, the South Australian Government has told you, astonishingly, that it has never been provided with the MDBA's modelling for the determination in the ESLT report, neither with the CSIRO in its report in 2011. So while the CSIRO said, "We're in the dark about the modelling" in 2011, the South Australian Government and everyone else is still  
10 in the dark in 2018. That's a fairly extraordinary way for a science-based Commonwealth agency to behave. This level of secrecy is utterly unwarranted for the task the Basin Authority has.

15 Almost every scientist who gave evidence to the Commission – I will change that. Every scientist that gave evidence to the Commission, when asked, described the process of setting the sustainable diversion limit and the determination of the environmentally sustainable level of take as not being science. Science involves peer review. Science involves, as you heard, the full disclosure of a method so that it can be tested whether it is right or wrong. For reasons known only to it, this was not, and  
20 still is not, the approach of the Basin Authority.

I can pause now to say the scientists who gave evidence to you Commissioner, are without exception, highly regarded. It seems an unforgiveable state of affairs that the Basin Authority, a publicly-funded Commonwealth body in charge of a vital national  
25 reform, is so against transparency that it won't expose its own science and decision-making processes to academic and other non-government scientists and science-based organisations, so that not only their work can be checked, but perhaps they could be helped. Perhaps the nation could be helped. A summary of the views of the various scientists who gave evidence to you, Commissioner, are this.

30 Dr Colloff, who formerly worked at the CSIRO, described the approach of the Basin Authority as not being science. Professor Williams said the same thing at transcript 287. He described the ESLT report as a muddle and not defensible. Professor Richard Kingsford at transcript 306 said he had never seen anything justifiable for a  
35 2,750 gigalitre plan. Associate Professor Pittock, Dr Steinfeld, Professor Thoms and Mr Cosier from the Wentworth Group said the same thing at T627, that they had seen nothing from a scientific point of view justifying the 2,750 gigalitre plan. And I've already mentioned the CSIRO report, RCE9 of 2009, who had not even seen the modelling. Can I refer you, however, to what Professor Williams said at transcript  
40 263, because I think he summed it up best. And I will actually read what he said. I think this is a lament that every scientist that gave evidence to you would share. 263, line 38, Professor Williams:

45 *As a scientist, I find it just so disappointing, when we are a very able community scientifically as Australians, that we are investing all this money and we do not have the scientific analysis open and before us and available for scrutiny.*

It gets worse than non-transparency, however, Commissioner. You heard the evidence of David Bell, who was a former MDBA employee. And Mr Cosier gave evidence along a similar line that he had heard something similar. But Mr Bell's evidence, you would recall, was:

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*It has to start with a 2.*

In other words, it was openly being said at the Basin Authority, prior to the Basin Plan being enacted or released, that whatever the amount of water to be returned to the environment was, that figure had to start in volume terms with a 2. Mr Bell was the Director of Environmental Water Planning at the MDBA until he retired in November last year. Because he's retired, he wasn't afraid to talk to us. In my submission, what he said was obviously the truth. He was even able to give the anecdote of the joke of different postcode numbers between Mr Windsor and Mr Joyce.

Furthermore, that evidence was unchallenged. There's no doubt that that is what happened. That is not a careless error or a misinterpretation of the Water Act. It involves the knowing or reckless disobedience of the law in implementing the Plan, which itself involves expenditure of billions of dollars of public funds. When asked about this unchallenged evidence when he was in the witness box, Mr Bruce from the South Australian Government said that he preferred to look to the future when I asked him whether the MDBA could be trusted. That is a perfectly reasonable and understandable response from the South Australian public servant. It is, however, evidence that you cannot ignore, in my submission, and that should not be ignored by the current MDBA management or its board. It's conduct they should undo.

We then have the evidence of Dr Colloff who, for many years, was a senior scientist at the CSIRO until he retired in 2016. Again, because of his retirement, he wasn't caught up with the Commonwealth Government's High Court proceedings. Throughout the course of his career, Dr Colloff worked on climate change adaptation, but also ecosystem ecology. In 2011, he was a team leader working on a report that the CSIRO was commissioned to write by the Basin Authority. That report was on the ecological and ecosystem benefits of a 2,800 gegalitre plan. It's called the 'Multiple Benefits Report' and it's exhibit RCE16.

Dr Colloff's evidence was that this report was altered by the CSIRO management under pressure from people at the Basin Authority. There is absolutely no doubt that this happened. Dr Colloff kept the draft report before it was altered. That's exhibit RCE17. And he was so concerned as to what was going on, he made detailed handwritten diary notes that went into evidence as RCE19.

The evidence Dr Colloff gave was this. He said the report was altered in a way that made it misleading. He said it was altered in a way that amounted to scientific censorship. Such was the disgust of Dr Colloff and his CSIRO scientist colleagues who contributed to this report that a mediator had to be brought in to deal with staff unrest. This clearly happened. The Basin Authority paid Commonwealth funds to

the CSIRO for a report that they then pressured the CSIRO to change in an improper and misleading way. That conduct cannot be swept under the carpet. The fear was, as expressed to Dr Colloff, “If we don’t change this report the way the Basin Authority wants us to, we may not get paid. “ That is maladministration.

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I also want to talk briefly about climate change, because it’s a glaring omission from the way that the Basin Plan has – the way that the SDL has been set for the Basin Plan, because the MDBA has failed to deal with or engage with the climate science in any meaningful way. Acknowledging that there is a risk created by climate change is not addressing that risk. As I discussed earlier, the Basin Plan must be based on the best available science. I’m not going to waste time making submission on whether or not the work done by, amongst others, the CSIRO in its sustainable yields project or the IPCC represents the best available science. It is.

10

In 2008, the CSIRO released its sustainable yields report on climate projections for the Basin. That’s exhibit RCE13. The summary is likely to get hotter and drier in the southern part of the Basin. And the likelihood is there will be a significant drop in run-off into the rivers, even with the same amount of rain. The median projection for 2030 was for an 11 per cent reduction in the availability of surface water. In 2009, the CSIRO told the Basin Authority what to do regarding climate change. This is RCE392 and this is what they told them to do:

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*The climate sequence for modelling over the period of implementation of the first Basin Plan (The next 10 to 15 years) should be based on scenarios ranging from the recent climate over the past 10 to 20 years and future climate scenarios obtained using the daily scaling method described above.*

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In the Guide to the Basin Plan, the Basin Authority said it took climate change projections seriously. And, at pages 32 to 34 of exhibit RCE1, they indicated how they made a three per cent adjustment to the sustainable diversion limit as a result of climate change projections. After the Guide, the Basin Authority chose to ignore entirely climate change projections in its determination of an environmentally sustainable level of take. There is not one word about climate change in the 2011 ESLT determination report. This prompted these comments by the CSIRO in 2011, which is exhibit RCE9, when it was considering the work done by the Basin Authority on a 2,800 gigalitre plan. I’m reading, first of all, from page 20:

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*The MDBA has made a policy choice not to directly address the projected impacts of future climate change on water availability in the determination of SDLs for the proposed Basin Plan. The panel understands MDBA’s policy approach to climate change to be an extension of an underlying policy position of not requiring a change to water users’ rights. The Australian Government’s policy position of bridging the gap by acquiring entitlements means the Basin Plan will not require a change in entitlement reliability. Future climate change is expected to reduce entitlement reliability both for irrigators and the Commonwealth Environment Water Holder. The policy position on climate change has been explained to the panel by the MDBA as “accepting the climate*

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*change risk, sharing amongst users represented in the current water sharing plans.”*

5 As a consequence of that, the CSIRO said this in its conclusion to this report at page 30:

10 *With respect to climate change, it is recommended the MDBA indicate whether, if the drying projections for the Basin come to pass, the MDBA’s intention would be to revise the environmental objectives for the Basin Plan, enforce more stringent SDLs to ensure environmental protection or adopt some compromise between the two.*

15 The reason the CSIRO scientists were raising climate change in that report is because it is a big issue and a big miss by the Basin Authority. It ignores entirely what the Water Act says about acting on the best available science and taking into account ESD. The MDBA’s approach to climate change can best be summed up by two things. The first is chapter 4 of the Basin Plan, which I won’t take you through; you’re more than familiar with it. It gives – I think your words were that chapter 4 was in entirety a waste of printer’s ink but it pays, at best, lip service to the fact there is a risk of climate change and then proposes nothing else.

25 The other way of showing an example of what the Basin Authority’s approach to climate change was and still is, is exhibit RCE352, which is a technical paper prepared by the authors Neave, Mcleod, Raisin and Swirepik entitled ‘Managing Water in the Murray-Darling Basin Under a Variable and Changing Climate’. This is what those authors said was how climate change was taken into account in the Basin Plan. The first way, the authors say, is by modelling the development of sustainable diversion limits by looking at the climate sequence from 1895 to 2009. The next way the Basin Plan takes into account climate projections is that it identifies climate change as a risk.

30 The next way it takes into account climate change is by saying that States must consider the risks of climate change and determine how to respond. As recently as the Senate estimates last week, Commissioner, when officers of the MDBA were asked whether the Basin Plan took into account climate change, one answer I heard given was to repeat the fact, as though it were relevant, that the Basin Plan modelling for the SDL took into account climate data from 1895 to 2009. That is, as you have heard, utterly irrelevant in relation to climate change and represents a fundamental error.

40 That allows me to say a sentence I never thought I would. The sentence is, “Stationarity is dead”. It is smack bang. The approach of the Basin Authority is smack bang against the advice the CSIRO gave in 2009. CSIRO said look at more recent climate; factor in climate change projections. What happened in the year 1907 will tell you about climate and rainfall in that year but it is a year before mass transport of cars and airplanes and the burning of huge amounts of coal for electricity, etcetera. The better view was given to you in evidence by Mr Alexander,

Professor Pitman and Professor Howden. I would like to refer to that evidence if I could now, please, first of all to Mr Alexander, again, a former employee of the MDBA not concerned to give evidence to you. I'm sorry; it's Alexandra. I'm just not saying it right. This is asking him questions about not factoring in climate  
5 change modelling.

*The question of how to use the best available models and how to, if you like, set them up with the right questions is critically important. And I've made this clear in my report to you and my evidence that the modelling that was relied on  
10 did not incorporate any of the climate projections.*

*Sure, yes.*

Mr Alexandra:  
15

*Right. So it seems to me this is flawed. Just from a standard risk management approach, if the climate science is – if the science is so – I wouldn't want to over-emphasise this. It's a very important thing. Good practice in terms of risk management and the Water Act is very clear about the requirement for a  
20 risk-based approach. The science is, I would say, emphatic that there is a high probability of drying.*

Professor Pitman from the University of New South Wales and the Climate Centre for Excellence said this when asked again about the failure of the MDBA to  
25 incorporate climate change into their SDL modelling. Professor Pitman:

*I think you need to unpack what we mean by certainty and uncertainty. The fact is it's going to get warmer is certain. The fact that hot extremes will deteriorate – become worse is certain. The areas where you get uncertainty is  
30 by how much it will get hotter and by how much periods of extremely hot weather will increase, but the fact that it will get hotter and those hot periods will become longer is not in discussion.*

Continuing on then at 3093, he made the point about stationarity is dead; that is, we  
35 don't look, when we consider climate change, into what happened between 1895 and 2009. He also said this about climate change:

*Climate change can occur very rapidly. Very abruptly. And that is something that is very difficult to adapt to and it's very hard to build up resilience to. So  
40 you're looking at risk perspective over the Basin. The impact of long-term gradual increase in CO<sub>2</sub> translated through classical climate science wouldn't necessarily give you a major concern over a 10-year scale, but superimposed on that is emerging science about how climate can change dramatically and rapidly.*

45 Professor Pitman's other evidence, which I won't read to you, was that climate change projections should have been incorporated in the modelling to set a

sustainable diversion limit, and that should have occurred at the beginning of the Basin Plan and not been left for 10-year intervals as proposed by the Basin Authority. Precisely the same evidence was given by Professor Howden from the Australian National University, who had one of the roles in the recent IPCC report for 2018 and was a key drafter of the section on Australasia of the same report of 2014. He, again – the effect of his evidence was it’s a mistake not to incorporate climate change projections in the setting of an SDL and, furthermore, it should have happened from the beginning. We should not be waiting for 10-year intervals to start that process.

In summary, then, Commissioner, the environmentally sustainable level of take for surface water in the Basin was set in breach of the Water Act. The volume of water to be returned to the environment was arbitrarily fixed to begin with the numeral 2. The Basin Authority bullied the CSIRO to change an important report about the ecological impacts of a 2,800 ggalitre plan, and the Basin Authority has ignored climate science in any meaningful way. Further, the Basin-wide SDL has been set without any proper transparency. I go back to what I read from the beginning of the 2010 peer review report which indicated the science was being trimmed. That is a very polite description of what has happened.

Can I say something briefly about the recent SDL adjustment and supply measures. Chapter 7 of the Basin Plan and sections 23A and 23B of the Water Act were introduced just prior to the enactment of the Basin Plan. It’s very clear that Victoria and NSW always wanted a 2,100 ggalitre plan. That’s what they’ve got. South Australia always contended for 3,200 ggalitre plan. Chapter 7, as we know, of the Basin Plan allows for adjustments to be made in the long-term average Basin-wide SDL and in relation to supply measures provided for an adjustment of up to 650 ggalitres. That 650 ggalitres became 605 ggalitres on the basis of the 37 approved supply measures. I’m not going to take time reading out definitions of supply measures and what not. We’re all familiar with it.

The Basin Authority composed a three-step process for supply measures. Phase 1 required a feasibility report from the States or the proponents of the supply measures. Phase 2, business cases. Phase 3 would be confirmation. The process works this way: supply measures are notified to the Basin Authority by the Basin Officials Committee, which is made up of Basin State representatives, section 7.12 of the Basin Plan. The Basin Authority then determines whether the supply measures should be adopted and determines whether a recommendation should be made to the relevant Minister for an adjustment of the Basin Plan as a result of a supply measure. The power then to make the adjustment rests with the Minister.

There’s a crucial criteria for the MDBA’s recommendation about adjustment to the SDL based on supply measures. They must have “equivalent environmental outcomes” when compared to “benchmark environmental outcomes”, and there must be no detrimental impacts on the reliability of the supply of water to the holders of water access entitlements. The guidelines for the business cases, which are in

evidence, for supply measures, amongst other things, state that those business cases must:

*...clearly describe the ecological justification –*

5

for the supply measure and an assessment:

*...of potential adverse ecological impacts resulting from the operation of the proposed measure.*

10

With transparency typical of the Basin Authority, the businesses cases for the supply measures and the MDBA's own analysis of these business cases were only first made available through an order for production in the Senate. Subsequently, the South Australian Government has recently provided to this Commission copies of the  
15 business cases and the MDBA's analysis. Of the 605 gigalitres of water that these supply measures are alleged to represent, over 300 gigalitres and, according to the recent Productivity Commission report, possibly as high as 400 gigalitres is said to be potentially contributed by two supply measures: what's called the Hydro-cue Supply Measure and the Menindee Lakes Reconfiguration Measure. They're the  
20 only two measures I wish to discuss.

The business case analysis by the MDBA for Menindee Lakes you are familiar with; it's exhibit RCE51. It contains some fairly alarming indications of risk to habitat to Golden Perch, something like potentially 23,000 hectares of Golden Perch habitat  
25 affected potentially by this supply measure. I don't need to say more about that. In relation to Hydro-cues, I'm content for current - - -

THE COMMISSIONER: Perhaps except for this. That's not just habitat in that location; that's habitat that is critical for Golden Perch throughout the Basin.  
30

MR BEASLEY: Correct, yes. In relation to Hydro-cues, I'm content, for current purposes, to simply refer to what the Productivity Commission said recently in its draft report on the implementation of the Basin Plan. I would refer you to pages 113 and their finding at page 115. I'm not going to read them out, but the critical issue in  
35 relation to these supply measures is little progress seems to have been made in relation to them. But they're also highly dependent, as are efficiency measures, on the removal or easing of constraints. I will say something about that in a moment but that's a matter in relation to which there has been absolutely no progress – discussion but no progress in five years.

40

THE COMMISSIONER: You've referred to findings of the Productivity Commission. These are all provisional?

MR BEASLEY: They are. It's a draft report.  
45

THE COMMISSIONER: May change, even reverse, given comment.

MR BEASLEY: That's not impossible.

THE COMMISSIONER: Okay.

5 MR BEASLEY: And obviously that's something you will take into account and  
perhaps before your report is finished, there will be a final Productivity Commission  
report. I'm only referring to its draft findings. I've also read into evidence – and I  
won't do it now – other fairly alarming environmental risks concerning other supply  
10 Authority's own analysis of these business cases is enough to indicate that at least in  
relation to Menindee Lakes, probably Hydro-cues and some of the other supply  
measures, that they should never have been nominated by the Basin Officials  
Committee. They should never been approved by the Basin Authority, nor should  
they have been recommended to the Minister that they form the basis for an  
15 adjustment of the SDL.

Turning back to the law, though, the Water Act mandates that the Basin-wide  
sustainable diversion limit must reflect an environmentally sustainable level of take;  
we know that. But it also expressly states that that must occur even after an SDL  
20 adjustment. Section 23A(3)(b). If the SDL that has been set ever did reflect an  
environmentally sustainable level of take in 2012 – and the evidence is that it didn't  
– it certainly will not on 1 July 2019. The SDL has been adjusted upwards by at least  
543 gigalitres on the basis of these supply measures, taking into account the five per  
cent rule there. In many cases, these supply measures are still at a concept level.

25 They obviously have not been implemented and they don't have to be implemented  
until 30 June 2024 and, as the Productivity Commission again recently said in its  
draft report, there are real doubts about that. Adjusting the sustainable diversion  
limit on the basis of unimplemented supply measures must mean, as a matter of  
30 logic, that the sustainable diversion limit will not reflect an environmentally  
sustainable level of take on 1 July 2019. The whole process is unlawful and it's no  
answer to that unlawfulness to say something like "be patient", or that, when read in  
totality, the Water Act allows for the SDL in the Basin Plan to be phased in over  
time. That's not what the text of the Water Act says.

35 It would also be an interpretation inconsistent with the purposes of the Water Act  
that requires special measures now to protect and restore a degraded Basin  
environment. The leisurely approach to setting a sustainable diversion limit that  
reflects an environmentally sustainable level of take is not only against the best  
40 science but clearly at odds with ecologically sustainable development. The fact that  
the Basin Plan may be an adaptive plan, of necessity, and as a matter of common  
sense in order to reflect the best available science, as the best available science  
evolves and becomes known, does not permit the Basin Authority to set a lawful  
sustainable diversion limit at any time that suits it. Nothing in the Act allows that.

45 Can I turn to efficiency measures and the 450 gigalitres of so-called upwater? The  
Basin Authority has asserted, since November 2011, that a Basin-wide long-term

average SDL of two – 10,873 gigalitres a year representing the recovery for the environment of 2,750 gigalitres a year on average compared to the 2009 baseline reflects an ESLT. As I've submitted to you, and as many of the witnesses have told you, it does not. It's disappointing that the Basin Authority persists with that fiction, particularly given the expenditure of billions of dollars of public funds. What's important to this section of what I'm submitting to you, is, of course, that the State of South Australia has always argued that a level of take equivalent to water recovery of 2,750 gigalitres for the environment does not set a SDL that reflects an environmentally sustainable level of take.

The maintenance of that position was confirmed in the South Australian government's primary submission to this Commission in June of this year. They based that position on reports that the South Australian Government commissioned prior to the enactment of the Basin Plan, it is also a position consistent with reports from the CSIRO. As a result, South Australia sought a further 450 gigalitres of water largely for its environmental assets to make the plan a 3,200 gigalitre plan. That's incorporated now in section 86AA of the Water Act which describes the requirement for the – I won't say the requirement – describes the so-called 450 gigalitres of upwater and sets objectives for what are called "enhanced environmental outcomes" mentioned in that section almost all of which relate to the environment of South Australia.

Section 86AA, Commissioner, is a very strange provision but it's at least clear, from that strange text, that any 450 gigalitre increase in the volume of water for the Basin available for the environment is not a mandatory requirement. Nor, perhaps for obvious reasons, is it mandatory for the environmental outcomes to be enhanced in the ways that are set out in section 86AA(2). These environmental outcomes can be enhanced in the ways listed but that leaves open the real possibility that that desire will remain unfulfilled. The object of achieving the enhancement of the environmental outcomes is to be achieved by two actions. One is increasing the volume of water available to the environment by the 450 gigalitres. That's section 86AA(3)(b).

Importantly, however, there also has to be an easing or removing of constraints. You don't get the enhanced environmental outcomes without both of those things. As a matter of logic, obviously, getting another 450 gigalitres a year doesn't do you much good if you can't get it down the system because of constraints. I will come to the issue of constraints shortly but the evidence that has been given in this Commission would provide you with little confidence, in my submission, that constraints will be eased or removed to enable the enhancement of the environmental outcomes that are listed in section 86AA(2)(a) to (h) of the Water Act and are also similarly listed in schedule 5 of the Basin Plan.

I do want to say this about constraints, though. The constraints projects and the easing or removal of constraints has the purpose of increasing the volume of flow that can be delivered down the river so that greater areas of floodplains and other environmental assets can be watered. That is currently the case without removing

constraints. At present, there's a limit to the amount of water that a river operator can release from our storages in the Basin at a certain flow rate because it might either cause physical damage to infrastructure – roads, bridges, etcetera, their constraints, or private property gets inundated.

5

So, in order to do that, you would have to reach some agreement with private land owners or occupiers of land with an easement etcetera. That's going to be, and has proven to be so far, an extremely difficult process. The Basin Authority has modelled flow rates for a 3,200 gigalitre plan on what are called a relaxed constraints scenario. They did that in 2012. The report is in evidence. That modelling is completely meaningless, though, unless constraints are actually removed because, as I said before, as a matter of logic, there's no point in returning another 450 gigalitres of water to this system if you can't get it where it needs to go. The efficiency measures scheme, Commissioner, is funded by the Federal Government. \$1.77 billion of money has been set aside for the efficiency measures scheme to achieve this 450 gigalitres of extra water for South Australia.

Only 200 million of that has been allocated for the removal of constraints. The rest is for the infrastructure projects funded by what's called the SRWUIP Commonwealth Government program for – the SRWUIPs for on-farm efficiency measures. And we know what we're talking about there, things like drip irrigation, lining of channels, etcetera. Again, the matters that are set out regarding efficiency measures and the precise definition of efficiency measures are set out in chapter 7 of the Basin Plan. I'm certainly not going to read those provisions to you. We are, again, well familiar with them.

What, of course, is the matter of real controversy – I will change that – one of the matters of controversy concerning efficiency measures and the returning of this – or the gaining of this extra 450 gigalitres of water for South Australia, is that the Basin Plan requires that the efficiency measures have positive or neutral socioeconomic impacts, which is a defined term in the Basin Plan. And I will come to that bit because there has been a great deal of public commentary, in particular by State water ministers, about the requirement for efficiency measures to have neutral or improving social and economic outcomes. Regrettably a number of the State ministers with responsibility for the Basin Plan appear unaware of the text of the Plan, or they've only just wised up to it.

The pessimism with which I think you should view the efficiency measures projects for gaining an extra 450 gigalitres for South Australia, though, begins with Mr Joyce, the current Drought Envoy. On 17 November 2016, Mr Joyce, when he was, at the time, the Minister for Agriculture and Water Resources, wrote to the then South Australian Minister for Sustainability, Environment and Conservation, Mr Ian Hunter, in these terms – I will quote directly from the letter but not read the entirety of the letter but Mr Joyce said this:

45

*If it was genuinely possible to put an additional 400GL down the river without hurting people, then none of us would have a problem with it. The reality is that it will. I believe that we are heading into an unprotracted –*

5 I think he means protracted –

*and unsolvable stalemate where the funding will stay on the books for recovery but it will be impossible to make in accordance with the legislative requirements – that the recovery must have –*

10

I think he means have –

*positive or neutral social and economic outcomes.*

15 That's the beginning of why you should view the recovery of 450 gigalitres of water through efficiency measures with a great deal of pessimism. The position has, however, since gotten worse. The Victorian minister with responsibility for the Basin Plan, Lisa Neville, has made it particularly clear in her public statements that there's no way that Victoria can sign up to 450 gigalitres unless it can be delivered  
20 with neutral or better socio-economic impact and all the evidence they have is that 450 gigalitres "could significantly harm our communities". Similar statements have been made by New South Wales in similar terms.

25 The thing is this, though: the maintenance or improvement of social and economic outcomes in relation to efficiency measures is not determined by any particular whim or sound bite or public utterance or press release or letter by state or federal minister. Rather, right at the moment, at least, there is a test set out in the Basin Plan. It's in section 7.12(2)(b).

30 THE COMMISSIONER: 7.12?

MR BEASLEY: (2)(b). Sorry. 7.17(2)(b). My mistake:

35 *Neutral or improved socio-economic outcomes. The efficiency contributions to the proposed adjustments achieve neutral or improved socio-economic outcomes compared with outcomes under the benchmark conditions of development as evidenced by –*

40 and then you have (i), for some reason (i)(a), and then (ii). That must have been added in later, I imagine.

THE COMMISSIONER: I apologise. Where do I find the upwater – the 450 tied to that criteria? I accept that it is. It's just - - -

45 MR BEASLEY: Well, that's the definition of improved socio-economic outcomes. If you go to 7.09, Objective, if yours is the same as mine, 47 - - -

THE COMMISSIONER: Yes.

MR BEASLEY:

5           *For efficiency measures – environmental outcomes are increased while maintaining or improving social and economic outcomes.*

7.09(a).

10       THE COMMISSIONER: Yes, I know the – and the upwater is referred to in paragraph (e) of seven - - -

MR BEASLEY: Yes. In note 1.

15       THE COMMISSIONER: Where I do find the link between that and the requirement of maintenance or improvement of social and economic outcome?

MR BEASLEY: Because in 7.17(2)(b) it refers to the efficiency contributions.

20       THE COMMISSIONER: The 450 gigalitres upwater – how do I link that to efficiency contributions?

MR BEASLEY: Because that's the program, the Commonwealth program to ease or remove capacity constraints and deliver 450 gigalitres of additional environmental  
25       water, and it has all been funded, if you go to note 2 – \$1.77 billion under the proposed water for environment special account.

THE COMMISSIONER: So law-making by notes to a plan?

30       MR BEASLEY: I didn't draft it.

THE COMMISSIONER: No.

MR BEASLEY: I won't take responsibility for that. If you're suggesting to me that  
35       all of this could be clearer, I'm going to agree. One of the things I didn't mention in relation to supply measures because we would be here for too long and it's not necessary – but in relation to that itself and chapter 7 of the Basin Plan, the equivalent environmental outcomes test is, in my submission, madness. I will provide you with something in writing about that, but the entire process is so  
40       complex that it becomes, in my submission, a nonsense.

THE COMMISSIONER: Optimistically, it contemplates what alternative arrangements proposed by a Basin State - - -

45       MR BEASLEY: Yes.

THE COMMISSIONER: - - - just one, assessed by that state – again, just the one – as achieving water recovery with neutral or socio-economic outcomes.

MR BEASLEY: Yes.

5

THE COMMISSIONER: So each of, say, Victoria or New South Wales could propose such arrangements assessed by it as having neutral or improved socio-economic outcomes, and that would evidence the satisfaction of criterion (b) of those measures.

10

MR BEASLEY: Yes. I'm going to come to it, but both – it seems as though Mr Littleproud, the current Commonwealth Minister For Agriculture and Water, and the New South Wales and Victorian Governments want an amendment made to the Basin Plan in relation to the definition of socio-economic impacts that I've just read at 7.17(2)(b) of the Basin Plan. I think I said 7.12(2)(b) because the Basin Authority has referred to the wrong section themselves in some of their literature.

15

THE COMMISSIONER: Someone has misread a two for a seven or a seven for a two.

20

MR BEASLEY: Yes. I'm going to come to those proposed changes because if they are made to the Basin Plan, then the little prospect of South Australia ever getting this 450 gigalitres becomes zero. Zero.

25

THE COMMISSIONER: It doesn't sound very high now, though?

MR BEASLEY: No, it's not. Well, we can remind ourselves of what a former Commonwealth environment water holder said. He would put his house on the fact South Australia is not going to get the 450 gigalitres. Do you want to take a break now, Commissioner?

30

THE COMMISSIONER: Yes. Yes.

MR BEASLEY: I'm not going to be talking for that much longer.

35

THE COMMISSIONER: No. We will take a break for 15 minutes.

MR BEASLEY: Please the Commission.

40

THE COMMISSIONER: So 20 to 12 we'll resume.

**ADJOURNED**

**[11.25 am]**

45

**RESUMED**

**[11.41 am]**

MR BEASLEY: In April 2017, the Department of Agriculture and Water, on behalf of the Basin Ministerial Council, commissioned the accounting firm Ernst & Young to provide a report on the recovery of the 450 gigalitres of water for South Australia through efficiency measures and to advise on, amongst other things, the potential socio-economic impacts of such measures. The Ernst & Young report was published in January 2018. It's in evidence.

Very brief summary is that it reaches – the authors reach the conclusion that off-farm and urban efficiency supply measure projects generally have positive socio-economic impacts and on-farm efficiency measures generally create at least positive socio-economic impacts – I guess this is obvious – for the participating farmers or participating farming or irrigation businesses. Obviously, that's because participating farmers can use water savings to increase their productivity. And there also appears, according to Ernst & Young, to be limited employment impacts from on-farm efficiency measures.

The report also concluded, however, that the benefits experienced by participants of on-farm efficiency measures may put non-participating farms and industries at a competitive disadvantage. It's not mentioned in that Ernst & Young report, but there is something that seems strange in the efficiency measures' entire program, whereby if farmers or irrigators or irrigation businesses have already spent their own money updating their water efficiency prior to this program being implemented, they are automatically put at a disadvantage and those inefficient irrigators get to reap the rewards of government funding to upgrade their infrastructure for what may be a modest return by way of a water entitlement.

It's fair to say that the Ernst & Young report, Commissioner, was met with a lukewarm response by Victoria and NSW governments. One of the notable things about that report, also, is that it queried whether there were sufficient Commonwealth funds currently set aside to even achieve the 450 gigalitres of water for South Australia through efficiency measures. And I will come to that shortly. The report is prepared in a way that ignores the actual text of 7(17)(2)(b) of the Basin Plan, but there's no criticism of the authors of the Ernst & Young report because that wasn't their brief.

Can I make this submission, however, Commissioner, that the probable – despite the Ernst & Young report, the probable death knell for the 450 gigalitres can be found most recently in comments by the Federal Minister, Minister Littleproud, who has suggested there needs to be changes to the definition in the Basin Plan, and also from what has been released recently by the NSW and Victorian governments, who are contending for a change to section 7(17)(2)(b).

On 15 October this year, the Victorian Government published a media release outlining an agreement that had been reached between the Victorian and NSW Governments about agreed socio-economic criteria to determine the requirements for any future water recovery under the Basin Plan, in particular the extra 450 gigalitres. What the release says is this:

5 *These criteria are designed to ensure that any new projects that could contribute to additional water recovery must have neutral or positive socio-economic outcomes for Basin community. The criteria below agreed by the two states requires project applications to be public and that any project: first criteria, identifies potential impacts on the districts and explains any benefits; second criteria, does not directly increase the price of water; third, contributes to the current and future financial viability of irrigation districts.*

10 Not sure how that will be tested:

*Four, supports regional economies by not impacting on irrigation jobs now and in the future.*

15 THE COMMISSIONER: I take it that means adversely impacts?

MR BEASLEY: Yes. Well, I would assume so. But does it mean if a project might cost one job, that's the end of it? Next criteria:

20 *Does not have negative third party impacts on the irrigation system, water market or communities.*

I'm not sure I understand, for the moment, without more, what a negative third party impact on the community might be. Next criteria:

25 *Is supported by the community.*

Now, how is that to be tested?

30 THE COMMISSIONER: A referendum.

MR BEASLEY: No, plebiscite. That's the way we go in this country. Next criteria:

35 *Identifies and improves social and environmental outcomes and does not negatively impact them.*

Next criteria:

40 *Identifies, protects and improves Aboriginal values.*

45 Now, I'm going to come to the evidence we heard from leaders of Aboriginal Nations, but one thing I'm fairly confident they didn't spend a lot of time telling us about is their particular views about efficiency measures program. Anyway, given that, if they become the criteria in the Basin Plan, then the little prospect of the 450 gegalitres, in my submission, becomes almost zero. But, frankly, in my submission, on the evidence that you've heard, no water or little water should be recovered from the environment through this efficiency measures scheme.

The ironic part of the efficiency measures program, on the evidence you've heard, is that these measures are an inefficient and hugely expensive means of recovering water from the environment. They benefit private individuals or businesses, not the public at large. They're extravagantly costly compared to what are described as  
5 buybacks, the purchase by the government of water entitlements. There's also real doubts that they've actually returned the amount of money to the environment that's claimed by either the government or the Basin Authority.

10 THE COMMISSIONER: Water, not money.

MR BEASLEY: Yes. One amendment that was made to the Water Act in 2015, as you're aware, was the 1,500 gigalitre cap on the Commonwealth entering into water purchase contracts in order to purchase water access entitlements. That's section 85C of the Water Act. Up until that time, or just before it, the Commonwealth had  
15 purchased about 1,100 gigalitres of water through purchasing water entitlements, which I will call buybacks. There has now been about 1,300 gigalitres of water purchased through buybacks.

For some reason, all Basin State Governments and including South Australia appear  
20 in favour of efficiency measures as a means of recovering the 450 gigalitres of so-called up water. Now, this is in the face of the Productivity Commission and its 2010 report, which was entitled Market Mechanisms for Recovering Water in the Murray-Darling Basin, finding that the purchase of water entitlements from willing sellers was the most effective and efficient means of acquiring water. That was  
25 finding 6.3 in that report. That Productivity Commission report of 2010 also made findings in terms of the disadvantages of subsidising infrastructure upgrades such as efficiency measures.

It's always a curiosity when a government requires a report from an expert body.  
30 They make findings and recommendation and then they get ignored. That's the prerogative of government. But, in my submission, on the evidence you've heard, the Productivity Commission was correct in 2010 and it's correct now. During the site visits that this Commission made to towns and communities in the Basin, it was not uncommon for the buyback program to be criticised frequently in emotional  
35 terms. I make no criticism of that. You heard all the complaints about "destroying our community", "destroying our schools", "destroying our economy", the Swiss cheese effect, etcetera.

The evidence that was given to this Commission, however, of an expert nature would  
40 lead you to the conclusion that buybacks did not have the extent of negative impacts claimed. Moreover, the community itself, there's evidence, doesn't necessarily favour efficiency measures over buybacks in overwhelming terms. There was a report done by Professor Wheeler, who did a survey, where it wasn't much more than a 50-50 split. A number of expert witnesses also gave evidence to this  
45 Commission. I'm talking about Professor Wheeler, Dr Loch, Dr Adamson, Professor Grafton, all economists, who gave evidence to you about the positive effects of a buyback scheme.

First of all, as they pointed out, only about 30 per cent of buybacks were what I will call full buybacks. In other words, it involved – the contract involved a partial purchase of an entitlement. So 70 per cent of the participants in the buyback program stayed in irrigation. As you also heard, most of the money was spent  
5 locally. It reduced debt, etcetera. None of that evidence was challenged by any of the oral or documentary evidence of any other witness, nor is it challenged in any of the submissions made by the Commonwealth Department or the Basin Authority or any of the Basin States.

10 The Basin Authority prepared or commissioned the preparation of a number of reports concerning socio-economic impacts of water recovery in the Basin. The Department of Agriculture and Water also commissioned a report from Marsden Jacobs on the economic impacts of water recovery in the Murrumbidgee irrigation area. RM Consulting Group were commissioned by various stakeholders within the  
15 Goulburn-Murray Irrigation District to study, amongst other things, the economic impacts of water recovery in that district.

With the exception of the Marsden Jacobs report, the other reports tendered in evidence were the subject of significant and detailed criticism by the experts that  
20 gave – economic experts that gave evidence to this Commission, again, Professor Wheeler, Professor Grafton, Dr Loch and Dr Adamson. As a result of that criticism, you invited all of the authors of those reports to give evidence at the Commission. Only Mr Rendell from RMCG took up that invitation. While those reports were criticised by the Commission witnesses as being fundamentally misconceived at a  
25 very basic level, the thrust of the criticism were that the reports, first of all, significantly overstated the negative impacts of buyback and hence gave the impression that efficiency measures should be the preferred means of recovering water for the environment. Those criticisms were not directed to the Marsden Jacobs report in relation to the Murrumbidgee Irrigation District. That report found that any  
30 impact of buybacks in the Murrumbidgee district was either very small or probably neutral.

As to the more detailed evidence of criticism of the Basin Authority and the Basin Authority's commission reports, the expert witnesses I mentioned had this core  
35 criticism. They said that these reports falsely assumed a proportional relationship between water use and farm production. What was suggested is that what should have been looked at was revenue or profit. I think it can also be noted that there's some rich irony in the matter in which certain people and interest groups raise asserted economic and social impacts of buyback, yet fail to acknowledge or dare  
40 criticism what, in truth, have been the real driver of contraction of jobs or the economies in parts of the Basin where water is recovered.

Again, Professor Wheeler, Professor Grafton, Dr Loch, Dr Adamson, apart from the core criticism of falsely assuming a proportional relationship between water use and  
45 farm production, gave evidence of the lots of other long-term influences on irrigated farm production that should have been considered in the reports. For example, increased urbanisation, increases in temperature – and I'm sure all farmers could give

evidence about that – and, of course, importantly, technological change and mechanisation. The only challenge to any of that evidence was from Mr Rendell, who took up your invitation to give evidence. And I certainly do not doubt the genuineness of Mr Rendell’s views, but, in my submission, he didn’t really provide a  
5 real answer to the criticisms raised by the other witnesses.

I mention that, in their submissions, neither the Basin Authority or the Federal Government have raised any answer to the criticisms from Professor Wheeler and others that I referred to. Professor Wheeler, of course, in unchallenged evidence,  
10 told you that she had raised many of these criticisms with the Basin Authority itself and has simply been told that she fails to understand politics or government policy. Her expert views, however, have not been challenged.

This raises the question of why does the government and the state governments  
15 persist with efficiency measures as a means of recovering water? The answer is certainly not that efficiency measures are cost effective. As I mentioned before, they are significantly more expensive than buyback, the evidence being probably 2.7 times more expensive and possibly even more than that. Given that efficiency measures are vastly more costly to taxpayers than buyback as a means of recovering  
20 water, one must turn to whether there is some other reason why they are of benefit to the public generally, as distinct from being of benefit to the successful people or enterprises that applied for the funding.

To inquire into that matter, full transparency is required. That involves transparency  
25 and complete disclosure of at least the following: who has applied for the funding? How much money have they been given? For what new or upgraded infrastructure? To reduce their water use by how much? In order to return how much water to the Commonwealth? All of the witnesses that I’ve mentioned recommended that you make a recommendation that there be a full and complete audit of why  
30 Commonwealth money is being spent on these efficiency measures programs and a water audit about how much water has been returned to the environment. Sadly, no such transparency or disclosure exists, despite the fact that the money that is being spent is public money.

One thing I haven’t said anything about at the moment in these submissions is the  
35 issue of return flow. You heard a lot of evidence about that issue from not only the witnesses that I’ve mentioned but also from Dr Perry who gave evidence about the Australian Government seeking to have this matter, the return flows matter, removed from an international report.  
40

I don’t want to go into the issue of return flows in detail. The evidence was very clear. It is at least a factor that the Basin Authority should have taken into account in the setting of the SDL. Instead, they completely ignored the issue in setting the SDL. No one knows for sure how much water is lost in relation to return flows from  
45 efficiency measures, but the evidence before you was, it is something and it should have been taken into account by the Basin Authority instead of them completely ignoring it.

THE COMMISSIONER: It is particularly important for chapter 7 adjustment.

MR BEASLEY: It is. It is. I mentioned before that efficiency measures are useless, or next to useless, without the easing or removal of constraints. I don't want  
5 to spend any more time discussing progress in relation to the easing or removal of  
constraints because there has been no progress made and, without reading from it,  
can I refer you, Commissioner, to what the Productivity Commission has said, albeit  
in their draft report, at pages 140 and 145 where that Commission exhibits real  
pessimism about progress or the ability to achieve easing or removal of constraints to  
10 the system.

The Commission heard evidence from a number of Aboriginal elders concerning  
Aboriginal consultation in relation to the preparation of both the Basin Plan and the  
water resource plans that are currently being prepared. Those witnesses provided  
15 you with personal stories of both the relationship that First People have with rivers  
and wetlands but also their own observations and changes they've seen in the  
environment. They also gave evidence that raises serious questions about the level  
of consultation given to Aboriginal values and interests in rivers and the environment  
of the Basin. The problem here probably starts with the text of the Water Act and the  
20 Basin Plan.

All of the witnesses made it clear that they found the words "have regard to" in  
section 10.54 of the Basin Plan and, worse still, buried in section 21(4)(c)(v) of the  
Water Act as tokenism and insulting. We can certainly do better than that, and all of  
25 those witnesses gave examples and provided reports to the Commission for processes  
for real and genuine consultation and they, in my submission, should be adopted.  
Perhaps the biggest issue raised, however, by the Aboriginal witnesses related to  
cultural flow. That is a real issue of practical importance. It was not put forward by  
the Aboriginal nations as tokenism or for some meaningless gesture. They want real  
30 water for a variety of real purposes that are important to Aboriginal people, for  
cultural reasons, historical reasons, social reasons, spiritual reasons and also  
economic reasons.

The Basin Authority and the government should take their proposal seriously. They  
35 should consult and again engage with Aboriginal nations on this issue seriously and  
meaningfully. A strong case has been made for cultural flows on the basis of the  
evidence that you heard from the representatives of both NBAN and MLDRIN and  
other Aboriginal witnesses, and that kind is of a kind that should be respected by the  
Basin Authority and the government, is credible and, in effect, is a form of expert  
40 evidence. Expert evidence in a very broad sense.

That brings me to the submissions made to you, Commissioner, by the States. All  
Basin States made a submission to you in writing. New South Wales, Victoria,  
Queensland, South Australia. Those submissions are not going to be the subject of  
45 any further submission by me other than to say this: in relation to the New South  
Wales, Victorian and Queensland submissions, they are incredibly thin, lacking in  
detail and, with respect, either totally unhelpful or not particularly helpful. It

should also be noted that you asked a series of questions of the New South Wales, Victorian and Queensland Governments. They declined to answer any of those questions. Those governments also declined your invitation to give evidence at this Commission.

5

The New South Wales Government's response from the Crown Solicitor's Office to your request to answer questions contained an incredibly brief letter and then a list of websites that the Crown Solicitor's Office suggest you have a look at. I would be very surprised if the Attorney-General of New South Wales saw that letter because it seems to me an extraordinary response to a Royal Commission. You've also received submissions now, many months after the deadline, from the Basin Authority, the Department of Agriculture and Water, and I believe the CSIRO has said they're going to provide you with a submission but it has not yet arrived. I will make the assumption that it comes before your report is concluded.

15

With respect, those submissions are light on, not particularly helpful, don't really address the terms of reference, don't really address in a meaningful way the issues that have been raised at this Commission, the issues that have been raised by the eminent scientists that have given evidence to you, don't address at all the factual matters raised by, for example, Mr Bell, "It has to start with a 2", or Dr Colloff that I've already mentioned in these submissions. That is an extremely surprising approach. Obviously, we know about the High Court proceedings. Many invitations have been made to Commonwealth bodies for people to give evidence and they have declined that invitation.

25

At one stage very early on – and I can't remember when – the Basin Authority agreed to meet with you and, after the publication of Issues Paper 2, you received a letter saying they had become too busy to meet. Again, in my submission, that is a very poor and surprising means of interacting with a Royal Commission. Finally, I would like to mention some individuals who gave evidence at the Commission. Obviously, I've mentioned by name a number of witnesses, almost all experts. I'm personally very grateful for the evidence they gave because it was of tremendous assistance to me and all of the Royal Commission team and, no doubt, you will be saying similar things in your final report.

35

What I've done, though, in the course of these submissions, is, of necessity, discuss matters that are largely either of legal interpretation or science. A number of witnesses, however, gave evidence to you that put a human dimension to the impacts of the implementation of the Basin Plan and of over-allocation, degradation of the environment, lack of water generally, and I think I should acknowledge them. You heard evidence from Mr Alan Whyte and Ms Rachel Strachan who are irrigators in the Lower Darling, who gave evidence to you concerning the effect that low flows in the Darling have had on their businesses and lives. You heard evidence from Robert and Katharine McBride, who were sheep farmers on the Lower Darling, again greatly affected by low flows on the Darling both in terms of their business and their lives.

45

Louise Burge, who's a sheep and crop farmer near Deniliquin, gave evidence to you about being flooded out in an environmental flow, which is an issue in relation to constraints. You heard evidence from Justin McClure and Stuart Le Lievre, who are graziers south of Bourke about floodplain issues and about the Northern Basin review. You had two days of submissions from Dr Emma Carmody from the NSW Environmental Defenders Office, who gave real and valuable submissions on every issue that has been considered by this Commission and every issue relating to your terms of reference. She has also published many papers concerning the lawfulness or otherwise about the implementation of the Basin Plan, and everyone at the Commission is grateful for her contribution.

You heard from Mr Lamey, Chris Lamey, about floodplain harvesting and the impacts on his family concerning unnatural flooding, a matter I – we can't get into too much detail about for obvious reasons concerning his neighbour. Maryanne Slattery, a former employee of the Basin Authority, gave lengthy evidence to the Commission and detailed submissions concerning serious defects – concerning, in her submission, what are serious defects and the decision-making processes of the Basin Authority in a variety of aspects of the performance of its functions, monitoring of take, the Northern Basin Review, the lawfulness or otherwise of supply measures, the reliability or probity of purchases of certain entitlements, the probity and reliability of modelling and, of course, the dark arts of cap factors I haven't addressed and I think I'll leave to Mr O'Flaherty at some stage this afternoon.

Bill Johnson gave evidence about defects in the processes of the Northern Basin Review, another ex-MDBA employee, and about floodplain harvesting. John Clements, Mal Peters and Geoff Wise, who are members of the Northern Basin Review Committee gave evidence about a lack of transparency about the MDBA generally but particularly the modelling for the Northern Basin Review. Karlene Maywald, the former South Australian Minister for Water from 2004 to 2010, gave evidence to you about negotiations regarding the Basin Plan, the fact that it was a political compromise and, amongst other things, her concern that there has simply been – not that her view was the Basin Plan shouldn't be a compromise, but she was concerned about the lack of honesty that people have had about the fact that it is a compromise. David Harriss, H-a-r-r-a-s-s, a former senior - - -

THE COMMISSIONER: I-s-s, I think.

MR BEASLEY: You might be right. My apologies. Former New South Wales senior water bureaucrat, gave helpful evidence about the New South Wales experience, its history with the Basin Plan, the protection of environmental water, and, of course, the Menindee Lakes issue. Mr Whan, Steve Whan, W-h-a-n, from the National Irrigators' Council, and Mr Mark McKenzie from the New South Wales Irrigators' Council, gave helpful and considered views about the Basin Plan.

We heard from witnesses from Cotton Australia concerning their views of the Basin Plan. We heard from witness Juliet Le Feuvre from Environment Victoria about her

concerns about the Basin Plan generally and, in particular, the setting of the ESLT. Hugo Hopton and Natalie Stalenberg gave evidence – they’re from the Nature Foundation of South Australia – who gave evidence to you about watering projects for smaller wetlands in South Australia.

5

I’m also grateful to the Mildura Council, in particular Jason Modica and Mark Jenkins but the whole of that council who discussed the impact of the Basin Plan in Sunraysia, the importance of connectivity, a focus of restoring the river and they also touched on overdevelopment. I do want to thank again the three South Australian Government witnesses, Ben Bruce, the Director of Water from the Department of Environment and Water, Chris Morony who is from the Emergency Response Unit for the Murray-Darling Basin Royal Commission and Dr Theresa Heneker, who is a hydrologist. Those three witnesses and other South Australian government officials assisted in giving thoughtful and helpful submissions to this Commission and those three people gave thoughtful and helpful evidence on all aspects of your terms of reference.

I’ve probably mentioned them but, again, Professor Mark Howden, Professor Petra Tschakert who worked on the IPCC recent report and Professor Pitman and Mr Alexandra made very helpful contributions to issues relating to climate change. The Wentworth Group has made a significant contribution to matters, all matters, relating to the Basin Plan and I was helped, and the Commission staff were helped and no doubt you, Commissioner, by the evidence of Associate Professor Jamie Pittock, Professor Bruce Thom, Mr Cosier, the head of the Wentworth Group and Dr Celine Steinfeld. I do thank Mr Rendell from RMCG for accepting your invitation to come and defend his report.

I think I have mentioned Mr Papps, the former Commonwealth Environmental Water Holder, who gave helpful evidence about all aspects of that body’s operations. I haven’t thanked and need to thank Professor David Paton who gave evidence to you concerning the South Australian South East flows supply measure but also in relation to the condition of the Coorong generally. Ms Emma Bradbury gave evidence in relation to the Basin Plan and interaction with local government. I mentioned MLDRIN and NBAN but I do in particular want to thank Mr Hooper from NBAN, Will Mooney and Rene Woods from MLDRIN, Grant Rigney of the Ngarrindjeri and Mr Badger Bates who all gave evidence concerning the Aboriginal issues that I’ve discussed along with Monica Morgan from the Yorta Yorta Nation in Shepparton.

I think that is everyone I should mention that has given a human dimension. I apologise profusely if I’ve missed anyone. There’s always the danger when you thank so many people that you miss anyone. That’s not my intention. Just to make sure I haven’t missed anyone, of course, I personally want to thank, for his contribution to this Royal Commission, the Mayor of Renmark who gave me half an hour of my life that I’ll never forget. Those are the submissions I wish to make, Commissioner.

45

THE COMMISSIONER: Thank you, Mr Beasley. I just want to add a small number of comments about the people who have assisted in assembling the material, presenting evidence and making submissions. Like you, I'm very grateful for their evident effort. I was struck very frequently by the combination of care and passion and, in particular, by the capacity of many of the people who gave evidence before me to ensure that they were not overly influenced by the unquestioned passion that informed a lot of their positions. I'm much obliged for the objectivity that was displayed in the evidence and submissions of many people who have every reason to be very personally concerned about the positions they found themselves in.

I wish just compendiously to thank, with a real component of admiration, the experts who have assisted by way of evidence and submission. I hope we will do decent credit to the assistance they provided by helping somebody who is not an expert, namely myself, to try to understand the areas to which they've often devoted professional careers. In case it will assist anybody who even this late, particularly if they are involved in any of the governments of the Basin States or of the Commonwealth, I should mention a person who is dead whose opinions I am likely to take into account. They have already been published publicly by the Senate Standing Committee on Legal and Constitutional Affairs but it is likely they will get some further prominence in my report. I'm referring to someone that Mr Beasley mentioned today in the course of referring to a deal of the evidence, and that is the late Professor John Briscoe, who became, at the end of his professional career, the Gordon McKay Professor of the Practice of Environmental Engineering in Harvard University.

He was a most distinguished worker in the field. He gave particularly pointed, one might even say unbuttoned, evidence to that Committee of the Senate by his letter of 24 February 2011, during the course of which he referred to a book that I perhaps should have mentioned much earlier in this Royal Commission as one that I myself read many years ago and have had recourse to in considering the subject matter of this Commission. The book was by David Blackbourn called 'The Conquest of Nature'. Notwithstanding the title, it was largely concerned with historical German efforts in relation to the control and harnessing of water in that country. I share Professor Briscoe's great regard for that book.

People should proceed on the basis that that alone is a reason why there is no prospect of this Royal Commission regarding the economic use of water as being somehow alien or inappropriate, neither does the Water Act, as Mr Beasley has made crystal clear. However, I wanted to draw to attention by way of this emphasis, Professor Briscoe's words, because of the importance of the themes that Mr Beasley has very carefully and, with respect, cogently outlined with which I'm going to grapple in my final report, and in particular concerning the critical role of the environmentally sustainable level of take in order to fix a sustainable diversion limit for the purposes of the environmental restoration and which is at the heart of Australia's international obligations, which themselves are a large part of the Constitutional foundation for the statute that we have.

Professor Briscoe's letter to the Senate's Committee raises, incidentally, questions of parliamentary privilege. This is not the time for me to deliver a disposition on it, except to assure those interested that, of course, I have given consideration to section 16 of the Parliamentary Privileges Act and article 9 of the Bill of Rights, topics on  
5 which I feel entitled to express professional opinions. I do not regard any of those provisions as ever requiring the fiction to be adopted of pretending that people have not said things in parliamentary proceedings. I do not wish to impeach or call into question in any of the ways that I understand the law of parliamentary privilege to be concerned with, any of the words of Professor Briscoe in the letter to which I have  
10 referred.

Anyone who thinks differently and considers that parliamentary privilege is an issue with which I should grapple more closely than I just have, had better speak now or perhaps forever hold their peace. With that, we will now not merely adjourn but  
15 conclude the hearings of this Royal Commission - - -

MR BEASLEY: Just before you do that, can I interrupt and apologise?

THE COMMISSIONER: You have.  
20

MR BEASLEY: Yes, I have and I've also apologised. There's a couple of other names I really must mention that I didn't. Only a few. It's Mr O'Flaherty's fault for giving me a sheet of paper in eight-point print. There was no disrespect intended. I simply don't have the eyesight to read such compacted print. I failed to mention Mr  
25 Cole and Mr Thompson who are irrigators on the Barwon-Darling who gave evidence to the Commission about all aspects of impacts of the Basin Plan in that region. I also, again because of the print, failed to mention Mr Hall and Mr Bucknell who gave evidence concerning the Macquarie Marshes. And also I forgot to mention Mr Chris Bagley, who is a dryland farmer from the north-west of this State who gave  
30 evidence concerning Lake Alexandrina.

Professor Rebecca Lester gave evidence to the Commission concerning her role in the CSIRO's multiple benefits report. Professor Mallen-Cooper, you will recall, Commissioner, gave important evidence concerning fish ecology, the hydraulics of  
35 water and also the operation of the Chowilla regulator and how fantastic it is for carp. And Jan Beer, who is a cattle farmer from Shepparton, also gave evidence to you concerning being flooded from an environmental flow and Dr Anne Jensen from Nature South Australia also gave evidence concerning aspects of the Basin Plan and the environment here. Finally, I failed to mention Professor Mike Young who gave  
40 evidence about the development of the Basin Plan and views he has concerning treating water entitlements as shares. Anyone that has now been missed, I do sincerely apologise.

THE COMMISSIONER: Thank you, Mr Beasley. Again, I add my thanks to  
45 everybody. I have been greatly assisted and I am almost oppressed by the weight of the care with which the material has been assembled. I promise I will try not to give into that sentiment and will try to report appropriately. As I say, we are not now

adjourning, this is the end of the hearing, subject only to the inevitable possibility of what I will call the emergency. I repeat: if somebody thinks, as a result of what Mr Beasley has said today, or what I've said today, that he, she or it would like an opportunity to respond in any way as a matter of procedural fairness, they had better  
5 act pretty quickly because we are moving towards an end. 1 February is the due date for the report and I make it very clear that means that I will deliver my report to the Governor on or before 1 February next year.

10 MR BEASLEY: It probably should be noted, Commissioner, in terms of what you just said, that the report has to be at the printers by 10 December.

THE COMMISSIONER: Thank you.

15 MR BEASLEY: You may adjourn now.

THE COMMISSIONER: With that, I'm not going to adjourn. I close the hearings of this Commission. Thank you very much.

20 **MATTER ADJOURNED at 12.31 pm INDEFINITELY**