



Victorian Government  
Solicitor's Office

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Your reference:

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Mr Bret Walker SC  
Commissioner  
Murray-Darling Basin Royal Commission  
Level 9 East, 50 Grenfell Street,  
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**By email: [joanne.masters@mdbrc.sa.gov.au](mailto:joanne.masters@mdbrc.sa.gov.au)**

Dear Commissioner

**Murray-Darling Basin Royal Commission**

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I refer to recent remarks made by you and Counsel Assisting the Murray-Darling Basin Royal Commission at a public hearing of the Commission on 20 September 2018 (P-2948, lines 9-15; P-2952, lines 22-46). I refer also to a conversation between the Senior Instructing Solicitor and officers of the VGSO on 24 September 2018.

In the 20 September remarks Senior Counsel Assisting states that the Victorian Government has not either indicated yet whether it will be answering the Commissioner's questions or whether it will appear at the Commission. Senior Counsel Assisting then says this Office has 'been incredibly rude to Ms Masters' and, without providing any details of a version of events says that he 'completely accepts Ms Masters' version of events'. Senior Counsel Assisting later says the 'solicitor dealing with that for the Victorian Government may feel as though she's giving that non-answer to an interstate colleague, but she is, in effect, refusing to tell a Royal Commission whether the Victorian Government is going to answer a Royal Commissioner's question'. You are then recorded as saying:

Be that as it may in relation to the Royal Commission or the Royal Commissioner, I should say, bearing in mind the way in which these dealings have been carried out, that is, through lawyers, as a lawyer, I am entitled to say that I regard that as substandard and rude professional behaviour. Lawyers are not authorised to be rude because their clients may be obdurate, and the lawyers in the Victorian Government should understand that they personally make themselves available for condemnation by their colleagues for such shoddy behaviour.

You can be assured that each time that the Commission has asked the VGSO to inform it of the State's position, this Office has sought instructions. It sent letters to the Commission in response to the Commission's letter of 7 September 2018 on 14 September 2018 (stating that the Victorian Government was presently considering the Commissioner's letter and intended to respond next week) and on 21 September 2018 (stating that the Victorian Government is still considering its position, and that we would provide a response as soon as possible). Further, following the telephone call with the Senior Instructing Solicitor on 24 September 2018, this Office has again passed on the Commission's concerns about the State's non-response.

In conveying the State's response, this Office has corresponded with the Commission within the limit of its instructions. Subject to a solicitor's obligation to the court, and given the obligations of confidentiality imposed on a public servant, a government lawyer can do no other.

More particularly, I am concerned that you decided to publicly criticise an unnamed solicitor in this office and to draw adverse conclusions about her professional conduct. I also understand, from today's unofficial transcript, that Senior Counsel Assisting has withdrawn and apologised for his remarks to the extent that they gave the impression that he considered that this Office (and, at least by inference, the solicitor) had been rude.

The public subjection of the professional conduct of a lawyer to criticism by a senior practitioner of your standing in your capacity as a Royal Commissioner has the potential to do reputational harm. That the solicitor concerned is not named is irrelevant as she will be capable of being identified by her professional colleagues.

Having investigated the matter, I reject any suggestion that the manner in which the status of our instructions was conveyed was anything other than professional and courteous. As noted, this office has kept the Commission regularly informed of the State's position in as much detail as it could. Given that your letter of 7 September 2018 said that any response would be published on the internet, and was, in fact, referred to in a public hearing, we could do no more.

Given the matters outlined above, in my view, your criticisms of both this Office and the solicitor concerned were unwarranted. I ask that they be retracted. Given that the criticisms were made in public, I ask that the retraction be so too, including on the transcript of 20 September 2018.

Yours faithfully  
Victorian Government Solicitor's Office



Alison O'Brien  
Acting Victorian Government Solicitor