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10 August 2018

Hon Vickie Chapman MP
Attorney-General
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Dear Attorney

Thank you for your prompt response to my letter of yesterday. I have just received your response dated 9th August.

I am afraid that there has been some misunderstanding. It should be cleared up as soon as possible.

My letter did not say that because I have not requested any extension of time within which to report that I am obliged to withdraw the summonses with the likely consequence of rendering the High Court proceedings moot.

To the contrary, my letter was written on the following basis. First, I issued the summonses because I considered I was empowered to do so and they were appropriate.

Second, although I can make what I hope would be a useful report without the benefit of the material and evidence sought by the summonses, I would much prefer to obtain that benefit. That material and evidence, I stress, is regarded by me as highly desirable to be considered by my Commission, in the interests of everyone, including South Australia and South Australians, affected by the Basin Plan.

Third, my best estimate is that a report date of 1st February 2019 would not permit the fair enforcement of the summonses, and a reasonable consideration of the material and evidence sought under them.

Fourth, it follows that the question in the proceedings whether the summonses are within power is in real danger of being hypothetical.

Fifth, it is unthinkable that I or South Australia would conduct litigation on a feigned basis – with me standing by so as to allow the Court to proceed as if their decision in our favour would have utility, if that were not true.

Sixth, therefore, when I noted that the proceedings could properly continue were the Government to decide definitely to extend the reporting time for an appropriate period, I was of course making it clear that an appropriate extension would in fact be used by me (or any substituted Commissioner) for the purpose of permitting the fair enforcement of the summonses and the reasonable consideration of the material and evidence to be obtained under them. Otherwise, the position would be an unthinkable deception of the High Court.

Seventh, whether an extension of reporting time becomes necessary to accommodate enforcement of the summonses depends upon the decision of the High Court, whenever that may occur. The whole point of my letter to you was to know whether the proceedings were proper, in the sense that there definitely would be an appropriate extension of reporting time.

Unfortunately, your response does not engage with my request at all. It is quite beside the point to note that I have not requested an extension of reporting time – unless the summonses can be enforced, I will not need an extension of time. In order to know whether the summonses can be enforced, the High Court proceedings must be argued, and that cannot be so on a hypothetical basis. To remove that hypothetical basis, it must be known – not possibly but definitely – that an appropriate extension will be made if the summonses can be enforced as a result of a decision by the High Court.

I respectfully and urgently seek your statement whether or not there will definitely be an appropriate extension of reporting time if the High Court decides that the summonses can be enforced.

To be very clear, if you inform me that the Government has decided not to be definite about an extension, then I will withdraw the summonses. If you inform me that the Government has decided to be definite about an extension, then I will not withdraw the summonses and the High Court proceedings can continue.

This is a decision for the Government and the Government alone. If you or those advising you choose to characterize my request to know the Government's position as a kind of request for an extension of time, so be it. It would be quite wrong for anyone to proceed on the false basis that I would withdraw the summonses simply because I have not formally asked for an extension of time, in advance of knowing whether it would be necessary at all.

Since reading your response and during my writing this reply, I have been informed of a public statement from your office about these matters. It is wrong, discourteous and inappropriate. In particular it is wrong to anticipate the withdrawal of the summonses by me, when that would follow only if the Government's position was not definitely to extend the reporting time to enable their fair enforcement. The media release should be completely withdrawn. I am owed an apology.

I intend to publish my letter of yesterday to you, your response, and this reply, given the public character of a Royal Commission.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Bret Walker', written in a cursive style.

Bret Walker
Royal Commissioner