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## SENATE

STANDING COMMITTEE ON RURAL AND REGIONAL AFFAIRS  
AND TRANSPORT

**Reference: Water Amendment Bill 2008**

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**SENATE STANDING COMMITTEE ON  
RURAL AND REGIONAL AFFAIRS AND TRANSPORT**

**Wednesday, 12 November 2008**

**Members:** Senator Sterle (*Chair*), Senator Milne (*Deputy Chair*), Senators Heffernan, Hurley, Hutchins, McGauran, O'Brien and Williams

**Participating members:** Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Humphries, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McLucas, Marshall, Mason, Milne, Minchin, Moore, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Troeth, Trood, Wortley and Xenophon

**Senators in attendance:** Senators Birmingham, Farrell, Fisher, Heffernan, Hurley, McGauran, Nash, Siewert, Stearle, Williams and Xenophon

**Terms of reference for the inquiry:**

To inquire into and report on: Water Amendment Bill 2008

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**Committee met at 3.36 pm**

**CHAIR (Senator Sterle)**—I declare open this public hearing of the Senate Standing Committee on Rural and Regional Affairs and Transport. The committee is hearing evidence on the committee's inquiry into the Water Amendment Bill 2008. I welcome you all here today. This is a public hearing and a *Hansard* transcript of the proceedings is being made. Before the committee starts taking evidence, I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they do intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time. I would also ask witnesses to remain behind for a few minutes at the conclusion of their evidence in case the Hansard staff need to clarify any reference terms. I remind people in the hearing room to ensure their mobile phones are either turned off or switched to silent.

Finally, on behalf of the committee I thank all those who have made submissions and sent representatives here today for their cooperation in this inquiry.

**YOUNG, Professor Michael Dennis, Professor, Water Economics and Management, University of Adelaide**

**CHAIR**—I welcome Professor Michael Young, representing the Wentworth Group. Do you wish to make a brief opening statement?

**Prof. Young**—I would. I have circulated to the committee a document called 'Suggested amendments to the Water Act'. I would like to start by praising everybody—the governments of Australia, the state and the Commonwealth. The rest of the world is watching how Australia struggles to solve the Murray-Darling's crisis and we really are at the eleventh hour. I would like to start by congratulating everybody on the progress made. It has been a very difficult journey in negotiating all of the amendments that have been put forward.

I would like also to recommend that the Senate pass all of the amendments that are before your consideration at the moment. The time has come to expedite implementation. We could go on arguing about reforms and trying to improve things, but the cost to communities and to the river itself is too high. We need a new authority. Having said that, I would like to identify four amendments that could be made to the legislation that would make it easier for the authority to start the next stage of implementing all of the reforms that are necessary in establishing a basin plan.

The first one is to give the authority an explicit responsibility for pursuing the objects of the act and to do that in partnership with other agencies. The act at the moment as drafted is not clear in its instruction to the authority. We have committed to setting up an independent authority and I would like to recommend to you that it would be useful if the authority were explicitly invited to pursue the objectives of the act.

The second amendment focuses on the extreme complexity of the Murray-Darling Basin and particularly the fact that the basin is not uniform in its water supply systems from one end to the other, particularly in terms of variability. The act as drafted at the moment talks about using averages, but this misunderstands the skewed nature of water supplies. In particular, if you work it out, the variability for the River Murray system is 15.5, but for the Darling system it is 300 times greater than that. It is actually 4,705.2. Hence to put into a basin plan a framework that says manage on averages overconstrains the options. I would like to recommend that we delete the word 'average' so that the authority when it prepares the basin plan can contemplate using means, medians, shares and all other mechanisms to set a sustainable limit. To constrain it to averages makes a mistake for the future of Australia. I recommend to you that you consider taking the word 'average' out so that we invite the authority in its basin plan to define the long-term sustainable diversion limit.

**CHAIR**—You know how these committees go. We really are interested in hearing about your amendments, but would it be possible to shorten them because I am sure there will be a lot of questions from senators?

**Prof. Young**—Could I have another one minute? That is what I was planning to do. I am almost there. The third amendment is to add in the option for the authority to define the sustainable diversion limit using shares as recommended in the National Water Initiative. The fourth is to include in there a reference that requires the

plan to consider the implications of management in one part of the basin for all other parts of the basin. At the moment there is no clear instruction for that to happen.

In conclusion, I urge the committee to adopt all of the recommendations before it, and to give consideration to including a reference that invites the authority to pursue the objectives of the act, to take away the constraint of an average so that we can use other mechanisms where appropriate, to introduce the idea of shares as required under the National Water Initiative, and to require a basin-wide consideration.

**CHAIR**—Thank you. Through no fault of yours, we were a bit late in starting. We will go to questions. Senator Farrell.

**Senator FARRELL**—My question relates to the matters you have just spoken about. Is it not true that all of the things that you are proposing are things that are capable of being done under the current water act; that you do not actually need further amendments to the legislation to do what you are seeking to do?

**Prof. Young**—Yes, you are correct. It is possible to do all of these things now without amending the act. The difference is that it is harder for the authority to start the discussion in an open way. For example, if you read the fine print you discover that you do not have to use averages. You can use other methods. It would be much easier for an authority if it could go out and ask the community in which parts of the basin you should shares, in which parts you should use quantities, in which parts you should use an average and in which parts you should use a mode or a median. By putting in these extra words it makes it easier for the authority to start. You are correct that it is not necessary, but it does make it much easier for an authority to start from the objective basis of science rather than having to say, ‘Look, averages don’t work for half of the system.’

**CHAIR**—Senator Xenophon.

**Senator XENOPHON**—An integral part of this plan are savings from infrastructure where those savings are real. How do you make sure that those savings from infrastructure are real and what is the best way to achieve them? In relation to that, are you in a position to comment on the north-south pipeline from northern Victoria to Melbourne?

**Prof. Young**—Firstly, in terms of savings as I understand them, they should all come out from below the cap. There is a very important arrangement in the Murray-Darling Basin Agreement that makes a clear distinction between rules based water, which is above the cap, and water which is allocated for use, for example, to Goulburn Murray water and their bulk water entitlement. As I understand it, savings would need to come from below the cap, and therefore where they are made you would expect them to be demonstrated by the willingness of the person who holds that bulk water entitlement to amend their licence. If there are 100 gigalitres of savings to be returned to the environment, the first action you would expect to see would be the chair of that authority or the person who holds the licence amending that licence and reducing it by the size of the savings. If they are prepared to do that, it should be a reasonable deal, because they are forced to do the due diligence themselves and give up the water right in proportion to the savings they think they can achieve.

**Senator XENOPHON**—How are you suggesting the basin plan would best be developed? Would it be by being more prescriptive or by schedules?

**Prof. Young**—There is a tension in the way the basin plan is set up at the moment in that the basin plan is structured to deal with everything. Hopefully a mechanism can be found perhaps in the way we—

**CHAIR**—I am sorry. We will be back shortly after the division.

#### **Proceedings suspended from 3.47 pm to 3.52 pm**

**CHAIR**—Senator Xenophon will be back shortly. Senator Nash has some questions on the same topic.

**Senator NASH**—On the issue of the pipeline, a broader question just for your opinion is: given the nature of the decisions being made around the basin and the sustainability of the basin, especially given that at this stage only 849 megalitres of real water have been savings in the basin, do you think it is appropriate to suck 75,000 megalitres of real water out of the basin for Melbourne, in terms of the future sustainability of the basin?

**Prof. Young**—Let me comment on this carefully. Several years ago I was commissioned to write a study that looked at the implications for Australia of what would happen when we had another five million people in Australia and we had a reduction of 15 per cent in water supply across Australia. It became clear from the economic modelling that we did that, if Adelaide remained connected to the River Murray and Melbourne did not, jobs would shift from Melbourne to Adelaide. In an economy access to cheap water generates jobs. That is

the reality. This has to be seen as part of which cities are allowed to connect and which cities are allowed to extract. That is background to what I am about to say, which is important.

The second part of it is that the accounting must be done very carefully and properly. When water is taken out of a basin 100 per cent of water is taken out and there is no return back. Under the current accounting arrangements we have we give people licences to take water out, but we do not require them to return water back. A lot of the water does return back through the groundwater systems and back into the river. When you pipe water out of a basin you pipe 100 per cent out and none returns. The second point is that the connections need to be understood very carefully and particularly return flows. Hopefully the new basin plan will deal properly with return flows and for the first time ever we will account for connections between ground and surface water systems particularly.

**Senator NASH**—I understand the premise of what you are saying, but that is all very well historically. We are now in a situation with the basin where perhaps jobs through cheap water out of the basin is not necessarily a good reason to do something considering the state of the basin at the moment. As you quite rightly said, if we pipe it out of the basin to Melbourne it is out. How do you see any water being returned to the basin?

**Prof. Young**—That is my point. No water would be returned.

**Senator NASH**—I just wanted you to clarify that. No water will be returned.

**Prof. Young**—There is an increased water use, because you are moving it out of the basin. If you are going to do that in a way that accounts properly for the water resource, you would say that, if you are going to take out, the amount you take out is not the amount you secure in the basin. If you do reduce somebody's entitlement and, say, for example, Goulburn Murray's water entitlement goes down and Melbourne water receives an entitlement, the amount that goes out of the basin would be less than the amount that is taken off Goulburn Murray water's entitlement, so that the connections are properly accounted for.

**Senator NASH**—Given the nature of all of the work that is being done at the moment to ensure the sustainability of the basin, in your opinion is it sensible to be taking that much water, that 75,000 megalitres, out when we are trying to do everything we can to promote water efficiency and better water use within the basin itself? It seems a bit illogical.

**Prof. Young**—I think it is wiser if I do not make political judgements about choices between efficiency and equity, and about trade-offs between regional development. That is what you are really asking me to do. I understand exactly where you are coming from. That is a political judgement as to whether or not we favour one over the other.

**Senator NASH**—No. I am asking you as a professor what your informed opinion would be on the sustainability—not the politics of where that water is going, but the impact on the sustainability of the basin—of taking that much water out. That was the intent of my question. I am sorry, I may not have been very clear.

**Prof. Young**—The sustainability of regions is compromised by taking water out, unless it is done at a very high price and then that money can be reinvested. There are exceptions. If the price is very high and the regions receive enough money to develop in ways they otherwise would not have had to, then you can have a win-win. Whether or not that is occurring I do not know at this stage.

**CHAIR**—Senator Xenophon, you were part way through a question before the bells went.

**Senator XENOPHON**—I seek some clarity from Professor Young in relation to the issue of what would be the best way to develop the basin plan. Given the government's position will be that there is an IGA and to depart from it would mean going back to the states, so allowing for that constraint to what extent can the basin plan be better developed, in your view, to deal with the crisis of the basin?

**Prof. Young**—It would be desirable if we could find a way to establish a basin plan that is a core document that can endure forever. Attached to that plan would be some things that are like regulations in parliament that can be alive and adaptive through time. We do not have to have, as the act envisages at the moment, an entire plan that is cast in stone. We need a core plan that is cast in stone and then parts that can adapt and evolve through time. I can see mechanisms and tricks to write a plan that creates the opportunity to do this, but it is a problem in the way it is crafted at the moment.

As I have tried to stress to the committee, I think we should sign off on the legislation as it is, or as proposed with the amendments, possibly making the major ones that I have identified today, and then expect to come back in perhaps a year or a year-and-a-half's time to facilitate those sorts of changes. It is important for the sake of the communities involved and for the sake of the river itself that we move forward.

**CHAIR**—Thank you. Senator Fisher.

**Senator FISHER**—I would like to ask you about the human critical needs provisions in the bill. In that context, what are your views of the categories of users of the Murray-Darling Basin system? Who are they? Are they humans, the environment? How would you rank them in priority when there is not enough water for all of those users? What are the categories? How would you rank them? What are your view as to the effect of the bill on those outcomes?

**Prof. Young**—We need to be very careful. In the River Murray, which is separate from the Murray-Darling and separate from ground water, in the river system the water we always dream of is floodwater, underneath that there is shared water, and then there is what Jim McColl and I call maintenance water, which is water that includes the water that is needed to be conveyed to the end of the system. The amendments that are proposed provide for conveyance water as far as Wellington, which opens up the possibility that the lower lakes have now been discovered as the basin's newest dam. What we are using is a mechanism where we can run down the lakes, just like you run down any dam. It is counterintuitive, but it is the other end.

With regard to your question about critical human needs, the framework that is put in there at the moment is some of the maintenance water—what I would call the minimum amount—can be used for critical human needs. That is a judgement. You could craft the basin plan and you could craft the categories either way. You can put critical human needs on top of conveyance water or you can mix it with conveyance water. What they have done at the moment is they have mixed it with conveyance water. It is an academic choice and, depending on the fine print of how you write it, either way would work, because what we have not done is go past concept. The concept at the moment is that when push comes to shove, if there is not enough water for conveyance and for critical needs, then conveyance does not necessarily have priority over critical human needs.

**CHAIR**—There was a third part to that question. Are you satisfied that Professor Young has answered your three questions, Senator Fisher?

**Senator FISHER**—Not yet.

**CHAIR**—We really are tight for time. If it is the same question I will have to pass to your colleagues and if there is any time I will come back to you.

**Senator FISHER**—Does the bill do that? Does the bill attempt to prioritise human critical needs water and conveyancing water at the top?

**Prof. Young**—It tries to achieve it all the way down.

**Senator FISHER**—As the first priority?

**Prof. Young**—I think the bill attempts to do it, but what it really does is it passes a lot of judgement to the basin plan. There is so much grey area in there that it is really at the next level that the basin plan will determine the answer to your question. That is a matter for the authority to work very carefully through in a lot of detail.

**Senator FISHER**—Chair, I would like to place these on notice.

**CHAIR**—I will come back to you at the last minute to put them on notice. Senator Birmingham, I will ask you to be very short with your questions.

**Senator BIRMINGHAM**—Following on from where Senator Nash was at with the north-south pipeline, you indicated, in a sense, that if you were to give a 75 gegalitre licence to pipe water to Melbourne you would need to take, for example, a 100 gegalitre licence out of the Goulburn catchment area. Is that a first step?

**Prof. Young**—Conceptually, yes. I have not assessed whether they are the right numbers, and I am not an expert in that. You would expect an adjustment.

**Senator BIRMINGHAM**—Obviously the Victorian government's promise is that they are saving more than that from their infrastructure bill from the food bowl modernisation project?

**Prof. Young**—The acid test is: are they prepared to reduce Goulburn-Murray Water's licence by that amount?

**Senator BIRMINGHAM**—Your contention would be that in a sustainable management approach they should reduce that licence before they start to pipe any water? In a sense, they should transfer the licence.

**Prof. Young**—There would have to be a legal mechanism in place that ensured that the adjustment of the licence would occur. If the pipeline took five years to build, I could see an arrangement where they could go on using the water until such time as they switched on the pipeline, but you would expect the adjustment to be made before the pumps were switched on.

**Senator BIRMINGHAM**—At present it looks like the pipeline will be built before the modernisation project is completed. Would that be the wrong way around?

**Prof. Young**—I have not inspected the contracts, so I do not know the answer to that. I presume that they have been signed and it is all watertight.

**CHAIR**—Senator Heffernan.

**Senator HEFFERNAN**—According to my calculations, if we spend this \$10 billion in the way it is proposed to be spent, and if the science is 50 per cent right on the future of the median flow of the system, we could find ourselves after spending the money still with a zero allocation generally for low-security licences. Do you agree with that?

**Prof. Young**—If it remains very dry, yes. The reality is that we have a system that has very large evaporative losses from top to bottom and, if we try to maintain that, it does not work as a system. This is why I recommended previously to this committee that now is the time to review the structure of the entire system to work out how you would operate it if it remains dry.

**Senator HEFFERNAN**—Take the Murray, which has 600,000 to 700,000 gigalitres, 50 are median, and 5,700 licences. We got in 1,200 gigalitres last year, and we took out 4,100 gigalitres. We are obviously depleting the reserves. Does that mean that, if we do not do that and we reconfigure the whole of the run-off against some actuarial assumption of the future, we could waste a lot of money? Given that entitlements these days are a percentage of the water that is available, and that most people do not understand the gross versus the net run-off—even with forestry interception where those fires in the Snowy are going to take about 1,000 gigalitres for nine years of the regrowth life gross and about 600 gigalitres net because some of it is going to return—if we do not reconfigure the whole thing against the science, are we not just, as they say, blowing in the wind?

**Prof. Young**—You are right; there is a real risk that we could spend on infrastructure that proves to be redundant. It is a very difficult time. The National Water Initiative, which all governments agreed to comply with, requires a level playing field. What is happening at the moment is that we are finding bits of the system that are inefficient and we are upgrading them. That breaches the National Water Initiative. There is a real risk this could come at a cost to the nation. While investment goes into the core bits of infrastructure, which you would expect to survive no matter what happens, there is no problem. If we go one step further than that, my strong advice as an economist dealing with issues like this is that we reset the system in terms of the overall plan, first, which includes looking at the structure of the river, because there is natural infrastructure, and then there is built infrastructure for supplying water. We are upgrading the built infrastructure, but we have not yet looked at the natural infrastructure, the river itself, and that must also be a priority.

**Senator HEFFERNAN**—I would like to take you to the water act regarding the final veto power of the states not on the act but on the water. Are you across this? I think there is a flaw in this act, if we do not do something about the final veto power of the states. Have you any comments to make about that?

**Prof. Young**—My earlier work recommended a different structure. As I stressed to the committee at the start, all governments should be congratulated on coming to an agreement. For the sake of the irrigators who are really careful, for the sake of communities and for the sake of the river, it is better to go forward than to have another two, three or four years arguing over what is the best way to do this. We must go forward as a nation for the sake of our own international reputation, people, our climate and river.

**Senator HEFFERNAN**—At the end of the day an individual state does have a final veto on the water under the water act; is that right or wrong?

**Prof. Young**—It has a near final veto. There are some ways of doing things that would make it not a final veto.

**Senator HEFFERNAN**—That is something that this committee ought to turn its mind to.

**CHAIR**—Senator Siewert.

**Senator SIEWERT**—The original submissions on the bill last year raised a number of needs for amendments. Peter Cullen was very strong on what he thought we should be doing, particularly around the

environmental health issues. Do you still believe that those amendments are appropriate to the bill? Should they still be included in the bill? The Greens took them up—and they are not exactly how they were put to the committee—but are they still relevant?

**Prof. Young**—Yes, I think they are. If you compare the document that I tabled today with the document I submitted, it is almost the same. I have dropped out two recommendations. One was a recommendation for a basin register. Under the new arrangements we have sort of agreed to do that. The second one is a recommendation to include a power for compulsory acquisition. I have heard time and time again from the community their concern about how that might be abused. I think it is better, at this stage, to leave it out.

**Senator SIEWERT**—I would like to discuss the issue around the independence of the authority. I appreciate the situation between last time and this time is different. Do you think the authority has the appropriate level of independence now?

**Prof. Young**—I have recommended one minor change, which is that the authority is given a responsibility for pursuing the objectives of the act. I am comfortable with that in there. I understand the nervousness that as yet the members of the authority have not been chosen. When push comes to shove, authorities earn respect. I have a vision that we will all wake up in two years time and be very proud as a nation that we chose the right people, in that they have produced a basin plan that has celebrated a tremendous step forward and everybody has confidence in them. They will earn their independence through competence.

**Senator SIEWERT**—I am going to put you on the spot. If you had to pick what were the most important changes or amendments that we should or could be arguing for to the current bill, what would you suggest they be?

**Prof. Young**—The four I have put forward are the most important. I have put a lot of time and thought into that. The first one is a link to the objects of the act. The second one is about removing averages, because I really stress that an average in Victoria is not the same as an average up at Cubbie Station. If you think Victoria is the same as Cubbie Station, then I would love to spend several hours with the committee explaining the difference. I am sure that is not necessary. Thirdly, we need to open up the opportunity to say we might include shares. The first step that an authority can do, which is really important, is go out to the community and say, ‘Let’s now talk about the best way to put a cap together.’

**CHAIR**—Sorry to cut in on you. You made it very clear that the whole four are very important. There are still questions and we are running out of time. Senator Siewert.

**Senator SIEWERT**—I would like to know the fourth one.

**Prof. Young**—The fourth one is about understanding tradeoffs between different parts of the basin. As phrased at the moment there is no clear instruction that requires the basin to be looked at as a whole. The opening words are: ‘We have to set up the environmental objectives.’ I would have thought the parliament of Australia could go as far as to set up a requirement for the authority to start by looking at the basin as a whole and understand the nature of trade-offs between different parts of the basin, particularly if it becomes drier. It is clear we cannot keep it all going and somebody is going to have to make some very difficult choices about which bits get developed and which bits lose out.

**Senator SIEWERT**—Thank you.

**CHAIR**—You can ask another question because Professor Young did give that as part of his opening statement.

**Senator SIEWERT**—I apologise; I was stuck in the chamber.

**CHAIR**—That happens to all of us. Do you have any question before we go to the questions on notice?

**Senator SIEWERT**—I did have, but I cannot locate them.

**CHAIR**—I will go to Senator Williams, who has one very quick question.

**Senator WILLIAMS**—Do you see the priority of the environment in the Murray basin as being the biggest issue by far? I heard the words just a minute ago about the environmental priority of the whole basin. The point I am getting at is whether that consideration for the little economies, the production of food and so on, the balanced way for this whole scheme?

**Prof. Young**—It must be in a balanced way. My greatest concern is that we put in place a regime that works and can cope with change.

**Senator WILLIAMS**—When you say that works, how do you define ‘works’?

**Prof. Young**—It can deal with long, dry periods, as we are going through now; it can deal with floods; and it can deal with total changes in technology and in the way water is used. I am very aware of the fact that the last time we had an overbank flow was back in 1998. That was at Euston. It is now 10 years since we have had an overbank flow. There is a very important issue now about the environment in how long we can go without giving those important parts of the Murray-Darling Basin system a drink because we got the management wrong much earlier. What we need is a new system, and that is why I am so enthusiastic that we move forward to a new authority, a new plan and a new management regime as quickly as possible. This is also important for the irrigation communities. I am continuously being phoned by irrigators who are very concerned because they do not know what the future is and they cannot predict it. They want certainty; everybody needs certainty; and we could decide now to give them that certainty.

**CHAIR**—Good. We are on the right track. Senator Fisher.

**Senator FISHER**—I have some questions on notice. You can provide answers to these in writing subsequently. In respect of section 86A of the bill, what is your understanding of the meaning of communities who are dependent on basin water resources?

What is your understanding of the meaning of highest priority water use, in terms of critical human needs water and first priority water use in respect of conveyance water?

Secondly, in respect of 86A(2), what is your understanding of the meaning of ‘minimum water that can only reasonably be provided from basin water resources’? What is your understanding of the meaning of ‘core human consumption requirements’, what is your understanding of the meaning of ‘non-human consumption requirements’, and what is your understanding of the meaning of the subsequent reference in 86A(2)(b) to high social economic or national security costs?

Finally, you indicated earlier that effectively the Water Amendment Bill will cause the lower lakes to be a dam. Can you confirm whether that is a result of the lack of provision for conveyance water to go from the lower lakes to anywhere else, and does that effectively cut off the Coorong?

**CHAIR**—There is a lot there that are on notice. We will get that to you in writing.

**Prof. Young**—Thank you very much. I would like to add that it would be wiser if the committee does not try to play with those sections of the bill because it relates to the referral of powers. If you chose to change those words then we would have to go back to all the parliaments of Australia again, or all of the basin states, and the cost to the basin of doing that would be enormous.

**CHAIR**—Thank you. It is a pleasure to see you in such high spirits. We do thank you for your time. I am sorry that we messed you around with the division half way through.

[4.20 pm]

**FARGHER, Mr Ben, Chief Executive, National Farmers Federation**

**KERR, Mrs Deborah, Manager-National Resource Management, National Farmers Federation**

**CHAIR**—I welcome representatives of the National Farmers Federation Water Task Force. Would you like to make a brief opening statement?

**Mr Fargher**—Yes, I will be brief. First, Laurie Arthur, the chairman of our task force, apologises for not being able to be here today. I am a substitute, for which I apologise, but Mrs Kerr is the expert.

I thank you for the opportunity to attend today. We have provided some written advice for the committee in regard to the amendment bill. We are supporting the amendment bill. There is one issue that I will ask Mrs Kerr to explain. It is the issue around reserves and critical human needs in the bill. We understand that state shares will be protected, but if there is any uncertainty or modification to the state shares, we do believe that clause 50 of the National Water Initiative should apply, which relates to risk assignment, with that risk being borne by government. We feel that will provide certainty to irrigators, which is what they need, and also to the environment. Under the National Water Initiative obviously the environment has that status as well. We want to make a case about that particular policy issue today, if we may.

**CHAIR**—Thank you, Mr Fargher. Mrs Kerr.

**Mrs Kerr**—I would like to build on what Mr Fargher has spoken about. With regard to the introduction through the intergovernmental agreement of new policies for critical human needs and for reserves, both carryover and human needs reserves, once the state’s shares are protected there is no guarantee that that protection will flow on to entitlement holders. It is our position to clarify and make sure that that is a policy

change of governments and that it is covered by clause 50. Including as an amendment to the bill will remove any area of misconstruing or misunderstanding that that applies or may not apply in the future. What we are after is some certainty now to avoid an argument later.

**CHAIR**—Thank you. I will go to questions. Senator Heffernan.

**Senator HEFFERNAN**—I have a couple of quick questions, which are slightly out of context. Mr Fargher, where will you be tomorrow?

**Mr Fargher**—I believe I will be in Canberra tomorrow?

**Senator HEFFERNAN**—Is there a reason why you cannot come to the fertiliser inquiry?

**CHAIR**—Probably because it is Friday.

**Senator HEFFERNAN**—You have been invited and you have said you are not available.

**Mr Fargher**—I will do everything I can to make it.

**CHAIR**—Senator Hurley.

**Senator HURLEY**—I would like to deal with your recommendation 2 from your submission about reviewing the impacts. My understanding is that there are a couple of reviews built in. Are you not happy with that regime, or how would you want to vary that?

**Mrs Kerr**—The provisions in the bill and the current act are certainly worthwhile and we do not take anything away from those reviews. What we are suggesting in that particular review is a review of entitlements to see if those new policy changes actually impact on entitlement holders. If that impact occurs then risk assignment is triggered. It is a specific review about the risk assignment and not about the review of the bill, the basin plan or anything to do with that. We certainly support those reviews. It could happen and coincide with those reviews, but just for clarity and conciseness it would be fair to have it as a separate review.

**Senator HURLEY**—In terms of that risk assignment, is it not true that the issues there are dealt with either in the bills or are provided for by the state government in the case of changes arising from state government policy? Why is it that you feel that is not sufficiently covered as it is in the bills or by the state governments themselves?

**Mrs Kerr**—As I understand it, the provision of the bill relate to the clause 48 risk assignment, which is the risk borne from climate variability and climate change where irrigators wear the first three per cent and, under the changes and where the states accept it, the federal government will wear the remainder of that change. Clause 50 relates to change of government policy itself. It is a distinct part and, as I understand it, is not provided for in the bill.

**Senator HURLEY**—My advice is that it is provided for then by state governments. Do you feel that is not sufficiently covered?

**Mrs Kerr**—These amendments are in federal legislation; they are not in state legislation. Whether or not those amendments are included in relevant state legislation will be up to the relevant jurisdictions. If they are and there are state government policy changes that impact on entitlement holders, then the state government NWI risk sharing should be triggered for clause 50. This is to do with federal government legislation and policy changes that are in federal legislation, not state legislation.

**Senator HURLEY**—I am still unclear about what specific risks would not be provided for under the existing provisions or by the state government. Where do you see the main danger there?

**Mrs Kerr**—What has not been clarified in the bill are the detailed provisions about how both the critical human needs at the various tiers and the reserves that will occur. What I am talking about are things like: what are the trigger mechanisms between tier 1 and tier 2, what are the trigger mechanism between tier 2 and tier 3, and when do they move out of that. For example, how does the reserves policy for carryover occur and what happens with the dam spill. There are quite detailed things that will be set in the basin plan that are not provided for in the bill. We are saying that NWI clause 50 might occur and governments might accept that. We are just saying let us remove the uncertainty for irrigators and provide for it in the bill.

**Senator HURLEY**—Thank you.

**CHAIR**—Senator Siewert.

**Senator SIEWERT**—In terms of the changes that we are talking about here, are you concerned about the new policies for critical human needs, or are there other issues that you are concerned about that should be used as triggers under clause 50 as well?

**Mrs Kerr**—We are specifically talking about new policies. The new policies in the amendment bill are the critical human needs—the tiers 1, 2 and 3—and both the critical human needs and carryover reserves policy. They are new policies and so we are concerned about how that may impact on entitlement holders. The bill and the act before it clearly provide that state shares are enshrined and will not be changed. That does not actually translate at an entitlement holder effect. What we are saying is: let us clarify that and remove the uncertainty. Even though we represent irrigators, and make no apologies for that, quite rightly these changes and the concerns that we have will also apply to the Commonwealth government's share of water entitlements when those are required. In 10 years time the government is going to be a significant holder of water entitlements, so this is as much protection for environment entitlements as it is for irrigation entitlements.

**Senator SIEWERT**—The submission we received from the New South Wales Irrigators Council, which was endorsed by the National Irrigators Council, raises the issue of the separation of climate change from new knowledge. If I understand their submission correctly, they are arguing a similar sort of issue. They are commenting on the separation out of climate change and say that the definition of climate change is not new knowledge and they are concerned about the trigger there as well. Have you looked at that angle of the issue? It seems to me that they are arguing a similar sort of issue.

**Mrs Kerr**—They are different risk assignment clauses. I am aware of their submission and understand where they are coming from. The irrigation sector has had a view for a long period of time that the unfinished business in the NWI is what is 'climate change'. Do you define the new basin plan, for example, as being 'climate change', or is that new policy? They are concerned with how we define what climate change is, when does the risk assignment for that apply, when do we define what 'new policy' is and how do we define that. What they are seeking is clarity around those definitions and, because the discussion has not occurred, they view that the amendments in the bill may preclude that discussion from taking place.

**Senator SIEWERT**—Were you here when Professor Young was outlining it?

**Mrs Kerr**—I was here for the end of it.

**Senator SIEWERT**—I go to issues around the independence of the authority. We had discussions when the bill first came in about the issues around the independence of the authority and now, of course, it is changing a bit. What is your opinion in terms of the level of independence for the authority?

**Mrs Kerr**—The authority is a new regime. It reports to the minister on the basin plan and it has close working relationships with both the new ministerial council and the new basin officials committee. It does have a fair degree of autonomy. There is some clear delineation of what is referred to the minister and what is referred to the basin officials committee and the ministerial council. I think the autonomy of the authority is defined in the act and we do not have any issues with the way it has been provided for in the act.

**Senator SIEWERT**—What is your opinion about putting some objectives into the act.?

**Mrs Kerr**—That is tightening up the authorities and being able to take into account the objectives of the act. The amendment is a minor one, but the view of NFF would be that the objectives of the act are the minister's and the department's to enforce, and obviously the authority, and that they are bound by what is in the act. I do not have a strong opinion of it.

**CHAIR**—Senator Fisher.

**Senator FISHER**—You have suggested a risk assessment under clause 50 of the National Water Initiative to ensure that water access entitlements are not affected by the change in government policy in respect of critical human needs. How will that achieve non-deprivation of those users?

**Mrs Kerr**—It will not affect those users. What we are saying is that over 100 years if the reliability of an entitlement holder that is currently enjoyed is affected by that particular policy change, then those entitlement holders have a right to have some risk assignment under clause 50 applied. It does not affect the way that the operation occurs. Critical human needs will occur as it is defined in the act. The reserves policies will still occur as defined in the act. What we are saying for existing entitlement holders is that if any individual entitlement holder is affected in a negative way, then that should trigger that clause.

**Senator FISHER**—How will triggering that clause stop any entitlement holder being immediately impacted negatively?

**Mrs Kerr**—It will not stop them being impacted. Clause 50 triggers compensation.

**Senator FISHER**—Money?

**Mrs Kerr**—Yes.

**Senator FISHER**—Money does not necessarily buy water today.

**Mrs Kerr**—No, it does not, but it does provide irrigators with some security that if their entitlements are being affected then compensation is triggered. It also provides some rigour to government decisions and how that occurs.

**Senator FISHER**—Is NFF saying that it is all right for a city like Adelaide to take water from an irrigator for critical human needs provided that the government pays the irrigator money?

**Mrs Kerr**—In terms of providing for critical human needs no irrigator will win an argument in saying, ‘A human can’t have water ahead of me.’ They are not going to win that argument.

**Senator FISHER**—What are NFF’s views of the meaning of the term ‘critical human needs’ in the bill, and in particular the meaning of ‘core human consumption requirements in urban and rural areas’?

**Mrs Kerr**—Our view is that critical human needs are the needs that are required to address core human drinking water requirements. I know some of the states have reserved critical human needs for particular industries where there would be economic and social impacts.

It leads to the broader question, and I note that you have raised this issue on a number of occasions. It probably brings to the fore the broader question of a shared understanding of what critical human needs is. It is like overallocation. Everybody talks about overallocation and we all have different views about what that might mean, and in this case it is a similar term that probably needs the development of a shared understanding about what that might be.

**Senator FISHER**—So there is no shared understanding at the moment of the meaning of ‘critical human needs’?

**Mrs Kerr**—With the way it has been implemented there are different aspects in different states that are probably causing some confusion, and the development of a shared understanding or defining of ‘critical human needs’ might be appropriate.

**Senator FISHER**—Will the bill achieve that shared understanding?

**Mrs Kerr**—The basin plan will achieve that.

**Senator FISHER**—How will it do that?

**Mrs Kerr**—It will be provided for as part of the definition of what is included in the basin plan, so it will come out. Otherwise my suggestion would be that COAG deals with it. They are dealing with the issue of overallocation, as I understand it, trying to define what overallocation is, along with a number of other terms, and I think ‘critical human needs’ falls into that as well.

**Senator FISHER**—I have one final question and I will place the rest on notice. You indicated that NFF has views about the meaning of the term ‘critical human needs’. Are those views implemented by the bill?

**Mrs Kerr**—I do not think that we have a strong view one way or the other, but the bill provides for the ability for that to occur through the development of the basin plan and for us to have input through that process into what that might be.

**Senator FISHER**—Thank you.

**CHAIR**—Senator Nash.

**Senator NASH**—I came in on the end of Senator Siewert, so she may have already asked this. My question is around the issue of climate change not being classified now as new knowledge. Did Senator Siewert already ask you that?

**Mrs Kerr**—Yes.

**Senator NASH**—I will go back and read the transcript. Within the bill itself there is the issue of requirement for infrastructure and efficiencies. Do you think there is enough within the bill itself that provides for a legislative requirement for that to happen, given the priority that communities see in that efficiency taking place for the water savings, or would you like to see more defined within the legislation for that to happen?

**Mr Fargher**—I would need to take Mrs Kerr's advice on the specifics. I do not think that it has really articulated that issue in the bill itself. We do see that as an issue.

**Senator NASH**—No, it is not, and that is why I am asking.

**Mr Fargher**—We do see it as an issue that we are pursuing separately. It is the whole issue of the reconfiguration of irrigation communities, the efficiency, on-farm and through system, as part of the package, along with the buy-back consideration. That is an important issue for us, but we are not taking that up in the context of deliberation on this bill.

**Senator NASH**—Is it something that should be considered through a legislative capacity, along with things like community impact statements? Is that something we should be leaving aside, or is that something we should be looking at in the context of a legislative requirement?

**Mrs Kerr**—The bill provides for social and economic impacts. You could say that that could be drawn into that discussion or that assessment.

**Mr Fargher**—We have not got a specific position on legislating the on-farm or through system efficiency component of the package. We think it is important. We are pursuing it, but we have not taken a position to try to somewhat legislate it as this time.

**Senator NASH**—Can you give that some consideration over the coming days? I know there is a short time frame before this comes to the Senate, but I would like to ask the NFF to formulate whether or not, as part of your position, that should be included?

**Mr Fargher**—Sure.

**CHAIR**—Senator Birmingham.

**Senator BIRMINGHAM**—I wanted to turn to the issue of how water resources are allocated and how entitlements are issued. This may be stepping out of where we are specifically, but does the NFF have a policy in regard to uniformity or national consistency of licensing arrangements across the basin?

**Mrs Kerr**—We do not support one type of allocation or one type of entitlement regime. In Australia, irrigative production occurs right across the basin. Historically, it depends on what type of production you are, whether you are a permanent planting or whether you are a rice grower—

**Senator BIRMINGHAM**—My question was not necessarily for a single national regime, but a uniform, consistent national approach, so a single national licence versus a single national system of licensing which could encapsulate various types of entitlements.

**Mrs Kerr**—I suppose we would be prepared to look at that, as long as we do not go down the track of having one water product, one entitlement type and one allocation regime. The issue, from a national perspective, is the states have jurisdiction over entitlements and I would say that you would need to go down the track of another IGA to determine that with the states. We do not support one product or one allocation regime. There are very good reasons for the system that we have.

**Senator BIRMINGHAM**—Thank you.

**Senator XENOPHON**—You referred to the South Australian private carryover. Has that been covered? Have you been asked about that?

**Mrs Kerr**—Only in terms of risk assignment.

**Senator XENOPHON**—Can you elaborate on that?

**Mrs Kerr**—In terms of our position?

**Senator XENOPHON**—Yes.

**Mrs Kerr**—We support the provision for carryover. Our view is that in determining how that will occur—for example, things like what water spills, when the dam spills, how do we determine when reserves start and finish and so on—if there is an impact on other entitlement holders, along with the human needs reserves, then we believe that clause 50 of the NWI should apply. We do not have an objection to the reserve in principle. What we are saying is that, if in setting up that particular reserve there are impacts on other entitlement holders within South Australia or in other states, then NWI clause 50 should apply.

**Senator XENOPHON**—Thank you.

**CHAIR**—Senator McGauran.

**Senator McGAURAN**—I have an interrelated matter. I guess all things to do with the Murray are interrelated. What is the status of the \$6 billion allocated for infrastructure funding?

**Mrs Kerr**—My understanding is that there has been a succession of announcements by the government that were partly to do with election promises and partly to do with the priority projects that are contained within the IGA; those projects are at varying rates of being introduced. I believe that the South Australian pipeline around to the Lower Lakes has already commenced. We are really not aware of where the other states are up to with their priority projects, but my understanding is that about \$1 billion only is unallocated out of that pool of money.

**Senator McGAURAN**—Is there anything towards irrigators?

**Mrs Kerr**—I believe there are portions that the states have said that, under their priority projects, they are allocating to irrigators. For example, in New South Wales, \$600 million has been allocated to on-farm projects. It is our view that the infrastructure program should be accelerated. As Ben said earlier, we need to look through system and on farm. If you look at the drought, currently many irrigation farms are not being utilised. Now is an ideal opportunity for those works to be undertaken, as there could also be some beneficial flow-on impacts to communities where currently contractors who used to do sowing, harvesting or whatever for farmers perhaps could be used to implement these on-farm works. So, with the drought, we think there would be some beneficial impacts to communities if those works were rolled out here and now.

**Senator McGAURAN**—So it has all just been allocated; nothing has been rolled out.

**Mrs Kerr**—No.

**Senator McGAURAN**—Also, in an interrelated matter, could you please make public for the purposes of the *Hansard* the NFF's view regarding the purchase of the Toorale Station?

**Mr Fargher**—We do not have a specific policy on the purchase of a particular station. As people would be well aware, there is a lot of concern about the issue in our community. Our position on these things is that we have supported the water reform agenda; we have supported the government's reform—we have got some modification of technical detail; we have supported the operation of the market; and, if acquisition is to occur, it will be from willing sellers only. We also want that linked as a strategic package with investment on farm to help farmers do more with less on farm and through system.

It is not as though we have a policy on the specific purchase or otherwise of that particular property. Our concern is focused only on buyback if it is not integrated in a package with on-farm and through-system investment. If it is in such an integrated package and governance reform and other issues—such as metering and monitoring and the acceleration of the National Water Initiative—are happening, farmers and irrigators are happy to engage in the water reform process in this country. If it is being done non-sequentially, then obviously we have a concern.

With our lobbying activities we are saying, 'Let's keep it together. Acquisition will be from willing sellers only. Farmers and irrigators need a healthy river too. But, with food shortages and all the challenges that we face in regional Australia, let's back farmers to do more with less on farm and through system as well.' We have a record of delivering more with less; we can do more so in the future, but we need the tools to be able to do it. If we can keep those two aspects together, then we will be centrally engaged in the debate. As for the particular issue of Toorale, concern aside, we do not have a particular position on that property.

**Senator McGAURAN**—Is it your understanding that the authority will be 'the authority' to integrate all of that? Alternatively, are those two aspects that I have just raised, the buybacks and the infrastructure funding, separate to the authority in that they have no say and it is over here with the government and the minister?

**Mrs Kerr**—That is our understanding.

**Senator McGAURAN**—Well, you have problems—or, sorry, not you but the irrigators have problems.

**CHAIR**—Senator Fisher, instead of putting your questions on notice, would you like five minutes in which to ask them?

**Senator McGAURAN**—I am sorry; I have one more question. It is a bit silly for me just to leave it hanging there. My point is: if there are two separate matters, you do not have problems but the irrigators do. Do you believe that the authority ought to come in as the integrating authority for those two projects?

**Mr Fargher**—As I have said in response to Senator Nash, we do not have a specific issue around legislating a program. We need to get the governance right, we need to get the market working and we need to

get efficiency on farm and through system so that farmers can do more with less. Some of that is legislation, some is governance and some is programs. We want to work on all of those issues. We are not trying to or thinking that we can take all of those programs and those sequencing issues under one piece of legislation. That is not our current position.

**Mrs Kerr**—Can I add a comment here? I think the authority is going to have a significant workload in the next few weeks. They are not only developing a new basin plan and all the things that are required with that—for example, identifying environmental assets in all of the systems and working out what is best needed to protect those assets—but also picking up the current work of the commission. So I think that sufficient resourcing would be required with putting that workload into the authority.

**Senator McGAURAN**—They should have something to say, though, and be able to intervene.

**Senator NASH**—Just to follow on from that question: does the NFF, when it actually reads the bill, think the authority as set up is going to have the human and associated resources that it needs to be able to do the job properly?

**Mrs Kerr**—I think it is a challenge. To get a basin plan within the short period of time in which it is required, with all of the things that are required to be part of it, will be a challenge. Looking at some of the water-sharing plan processes within the states, you will see that they have taken three, four or five years with significant community discussion and significant community trade-off about what they might deliver—and that is just for one catchment. To do it for a whole basin within the time frame is going to be a significant challenge.

**Senator NASH**—With really only a handful of people and associated resources, I guess.

**Mrs Kerr**—We would hope that the government would resource the authority sufficiently to do that.

**CHAIR**—Senator Fisher, you wish to ask some questions, but you do not expect them to be answered now; they will be on notice.

**Senator FISHER**—I do not expect these questions to be answered today; I am happy for them to be taken on notice. At the risk of sounding like a human cracked record, I am afraid that my questions do centre around the human critical needs provisions. In respect of what would be section 86A(1)(a), what are NFF's views as to the meaning of 'highest priority' and, in 86A(1)(b), 'first priority'? What are NFF's views as to the meaning of 'communities who are dependent on basin water resources' in 86A(1)(a)?

Moving now to 86A(2), what are NFF's views as to the meaning of 'that can only reasonably be provided from basin water resources'? Further, with respect to section 86A(2)(a), what are NFF's views as to the meaning of 'core human consumption requirements in urban and rural areas' and, secondly, in what would be subsection (2)(b), those 'nonhuman consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs'? For example, in respect of section 86A(2)(a), I include 'core human consumption requirements'. Would Melbourne's needs come under such a description; and, if so, of what sort? Ms Kerr, you have referred to drinking water. What about laundry water or water for washing my car? Should Adelaide come under such a definition?

Finally, the bill contemplates that amounts of water would be specified for critical human needs. But, in NFF's view, who will make the final decisions about how water is allocated for critical human needs and who will and should have input into those decisions? Thank you.

**Senator WILLIAMS**—I have just one question. Mr Fargher, does the NFF hold a position on the establishment of carbon sinks and MISs in the basin?

**Mr Fargher**—We have done some work on carbon sinks and MISs; we have put in a submission. For some time there has been and still is a debate amongst our membership about MISs; it is quite a controversial issue for us.

**Senator WILLIAMS**—It is, yes.

**CHAIR**—Although at the moment we are not exploring it.

**Mr Fargher**—I am happy to talk with you about it at any time. We have got someone who has actually done some work on it and I am happy to make those resources available at any time. I am happy also to explain at any time the debate that our membership is having about it, including the sensitivity of that debate.

**CHAIR**—Would you be happy to just tell Senator Williams whether it is a problem in the Murray-Darling? I am sorry; it is just that you know we have been down this path—

**Mr Fargher**—Yes. The MISs that are in the Murray-Darling—

**Senator WILLIAMS**—Does the NFF have an opinion about their establishment and the establishment of further MISs and carbon sinks in the Murray-Darling Basin?

**Mr Fargher**—Yes. We have put in a submission. We have a concern about MIS where it is distortionary.

**Senator WILLIAMS**—Could you expand on your concern?

**Mr Fargher**—It is just if it causes distortions for local communities and local landholders.

**CHAIR**—But we are talking about the Murray-Darling Basin.

**Mr Fargher**—I guess it is, if it were an irrigation property. We are not opposing investment in agriculture at all. We just have a problem if the vehicle being used is distortionary. But, as I say, it is—

**CHAIR**—We are not going to open up a previous inquiry; thank you. Senator Williams, does that answer your question?

**Senator HEFFERNAN**—Can I ask a question?

**CHAIR**—If it is on carbon sinks, I am going to advise you, Senator Heffernan—

**Senator WILLIAMS**—No, we are talking about the Murray-Darling Basin, Chair.

**Senator SIEWERT**—The water that is being used for trees planted under MIS is different from the carbon sinks inquiry.

**CHAIR**—Excuse me. Before we go any further, I have no problem in connection with the Murray-Darling, like Senator Williams, but I know that I have one problem coming from my left; I have this feeling that it will be far reaching. I appreciate your assistance, Senator Siewert, on that. Senator Williams, are you happy with that answer?

**Senator WILLIAMS**—I am fine.

**CHAIR**—Senator Heffernan.

**Senator HEFFERNAN**—There are 23,000-odd gigalitres of run-off and in the future, given the science prediction, we are going to lose somewhere between 3,500 and 11,000 gigalitres. Against that, if it is true—we had 12,000 gigalitres of available run-off last year—with the likes of the 75 gigalitres to Melbourne, which is high-priority water, have you blokes thought through the landscape in the Murray-Darling Basin with the science that has been predicted for the future? Have you thought about that in connection with the decline in run-off and the impact that that high-security water—which Senator Mary Jo Fisher keeps talking about—would have on the disproportionate return of water that has to go to the system for the freight component of the river? What is going to happen eventually if we keep sneaking bits out of the river and not accounting for the forest interception, which we have not accounted for and do not have to account for by way of a return with a licence? By the way, that interception is in the government's buyback documents and perhaps we should be putting an imposition on the forest planning for a licence; let us account for taking water out of the system by way of a licence. Have you blokes given consideration to all of that?

What I am faced with in my own mind, having filled it with all these figures over the years, is that at the end of the day we still might end up with a custard-pie arrangement in the Murray-Darling Basin if we do not bring to account some of these things. The science says that the pattern of run-off over the last three years—

**CHAIR**—I will ask you to come to a question, Senator Heffernan.

**Senator HEFFERNAN**—could be the way it is going to be in the future. In the Murray, last year we had 1,200 gigalitres and this year we had 1,700 gigalitres. If that is the case, this 75-gigalitre slug to Melbourne will be critical. We just cannot say, 'Well, we're going to'—

**CHAIR**—Senator Heffernan, is there a question?

**Senator HEFFERNAN**—Have you blokes figured all that?

**CHAIR**—We could have cut two minutes out of that.

**Mrs Kerr**—Do you have half an hour, Senator Heffernan? We have not done any detailed work on that.

**Senator HEFFERNAN**—That is the answer.

**CHAIR**—I think Senator Heffernan is happy with the answer; that is fine. Senator Nash.

**Senator NASH**—You may have covered this already too. I think the carryovers in New South Wales and in Victoria are both capped at 100 per cent and South Australia is not. I am sorry, but did you cover that when I was out of the room?

**Mrs Kerr**—In the states, carryover is not capped at 100 per cent. For carryover, there are contingency planning arrangements that are different from the normal arrangements. As part of drought and risk management for drought for irrigation farmers, the states have allowed some leeway for irrigators to carry over more than what their normal policy position is. I will talk about what is normal. Normally, South Australia and Victoria do not have carryover, nor does New South Wales with high-security entitlements. The reason is that most of those entitlements are high-security entitlements and in 98 per cent of years they will get 100 per cent delivered. The entitlements that do have carryover are the New South Wales general security entitlements. The New South Wales Murray is normally capped at 50 per cent, so you can only carry up to 50 per cent of your entitlement over into the following year. Normally, in the Murrumbidgee Valley, it is 15 per cent; during drought, they have relaxed those arrangements to 35 per cent.

**Senator NASH**—What are the arrangements in South Australia?

**Mrs Kerr**—There are none. That is because they have a high-security entitlement.

**Senator NASH**—Has the NFF done any work on the effect that the decreasing run-off that Senator Heffernan was talking about before and changed farming practices to minimum till and zero till are having on run-off?

**Mrs Kerr**—No, we have not done any work in that area, although the top 20 to 25 per cent of farmers—it is mainly a dry land situation that uses those forms of farming—have been done that for 20 or 30 years anyway. The bottom 20 or 25 per cent may not be doing it and the middle group might be doing a mixture of it or some other arrangement. We have not done any investigation of whether there is an effect on run-off there.

**CHAIR**—Thank you very much.

[5.00 pm]

**HARRISON, Mr Chris, Plug the Pipe**

**PATTISON, Mr Ken, Plug the Pipe**

**CHAIR**—Welcome. Do you have any comments to make on the capacity in which you appear?

**Mr Pattison**—I am the irrigation spokesperson for Plug the Pipe, and we come here in that capacity.

**CHAIR**—Thank you. Mr Pattison or Mr Harrison, do you wish to make a brief opening statement before we go to questions?

**Mr Pattison**—I would, Chair. Thank you very much for your indulgence in allowing us to come and present some further evidence here. I also thank the committee for its comments in the findings it made in its previous inquiry into the Coorong. Clearly, through all the reports and your questioning of the witnesses here today, you are well aware of and are attempting to tease out this issue of 75 gegalitres leaving the Murray-Darling Basin.

We are not encumbered by any job security or job future other than going home to our farms and hoping we have a future there with irrigated agriculture. We have exhaustively examined the issue of where the savings are coming from and have provided you with a copy of our PowerPoint presentation. I will ask Chris Harrison to run through those graphs briefly. We say that they are substantiation documentation of what we presented to your committee a month and a half ago. They clearly demonstrate that the ability to save this water is not there. I will ask Chris Harrison to explain those graphs and the amount of resource that is promised out of all this food bowl procedure.

**Mr Harrison**—Firstly, as the print-outs are very difficult to read, I might just speak about them briefly. In Victoria itself, there are currently 520 gegalitres of water-savings projects for funding. Some of those have been directed towards the Living Murray, the Snowy Rivers and, just recently, the food bowl modernisation projects.

To cut things fairly short, in 2006, 545 gegalitres of water were lost from the whole irrigation system. Clearly, the target savings do not match up in that year. You would have to say that basically 100 per cent of it was lost. In 2007, the situation worsened even further; only 380 gegalitres of water was lost in total from the irrigation systems of the food bowl—and again I remind you that the total targets for irrigation savings are 520

gigalitres. This year we expect the total water loss from the Goulburn Murray Irrigation Systems to be down at below 300 gigalitres.

It has been interesting to hear people here, today, talk about averages that may not be applicable over the longer period or from one area to the next. But, in essence, the basis from which the Victorian government has derived its target water savings is fundamentally flawed, because it has used targets that no longer exist.

I will wind up very quickly. One of the things that have occurred over the last 20 years out of these districts is water trade. In effect, we have lost from GMW 1½ irrigation districts. Water well over 200 gigalitres has left our system and been sold to other districts, which has further reduced the ability to actually save this water. In essence, with a decline having occurred in the resource because of drought and the sale of water entitlements, it is just ludicrous to think that the water savings plans are able to meet targets that were based previously on 115-year computer-generated averages.

**CHAIR**—Thank you. We will go to questions.

**Senator XENOPHON**—Can I ask either or both of you about the process of your comments as to the rigour or otherwise of the Victorian government's process in determining that there would be water savings with this pipeline? Firstly, could you comment on that briefly? Secondly, if you are not happy with that process, what processes would you like to see to determine the extent or otherwise of any savings?

**Mr Pattison**—We regard the rigour attached to the so-called qualifications of the savings as being highly suspect. We are well aware of the figures being doctored and manipulated. Even in the annual report released last week, they are claiming savings from part of the use of the return flows to the Goulburn River. As far as concerns the environment and irrigators, clearly food and fibre production is being targeted so that this water can go to Melbourne. It is difficult to find independent people, because all the names that you can think of are engaged in these various projects.

**Senator XENOPHON**—Surely there must be an independent process though to determine—

**Mr Pattison**—In fact, Professor Young referred to the possible independence of the Murray-Darling Basin Authority, as it currently exists. But the ground rules that you put on the audit of these savings are essential. The rules for the audit are such that you know the answer before you start. If the return flows to the river, the spillovers from one channel to another and all these things that are giving core savings are not correctly identified as being depletion or non-depletion losses to the system, you will have water being taken away for this pipeline.

**Senator NASH**—In your view, what is the impact on communities of taking that water out of the basin, through the pipeline, down to Melbourne?

**Mr Pattison**—A massive social impact is occurring because of the drought. Everyone does not necessarily agree with what a government does; but, given the severity of the drought and the allocations in the Goulburn system of 14 per cent, there is a social implication now. However, the social implication goes much further than that because our graphs show that the trade out of our gravity irrigation districts is at four per cent and Minister Wong strongly suggests that she will not provide moneys to the state unless that is lifted to six per cent. If you shift water from the gravity irrigation districts and trade it out permanently, it is impossible to make a saving on a megalitre of water that is no longer delivered into that district. In fact, as shown by low-allocation years, the efficiency of the district drops. You cannot lift it up to make the savings.

So there are social implications of this massive buyback. Professor Young has said that you really have to sort one thing out from the other. Senator Heffernan has indicated clearly that you are likely to throw away a massive amount of money if you modernise a system and find that the water has been traded away by government buybacks or traded out of the district. The proposal that the Victorian government is putting forward is flawed and needs to be addressed by amendments, and it is not for me to know what the amendments would be. But Professor Young, in carefully putting his answer, said that it was not good enough. Your committee, in its findings, has virtually indicated that it is not good enough, and that is the challenge that I know a lot of people are working on.

Minister Garrett, in the four paragraphs of his reasons, says that Minister Wong questions the validity of the savings. The majority report questions the validity of taking the water out of the Murray-Darling Basin at this time. The Auditor-General absolutely bucketed the diligence of the savings. We can provide masses of information, if you want it—although we cannot do it here and now—that says what is going on is a charade.

So we would like to see you make recommendations that, before the bill is passed, you get these provisions right so that the Murray-Darling Basin, under the Commonwealth Water Act, moves forward in the way that is so desperately needed; we do not dispute that. But we do dispute that this project is flawed and there are other options that they should pursue. We would like to see Minister Garrett call the food bowl project in—in his reasons, he says that it is a separate part—and that the pipeline works be stopped while this is done.

**Senator NASH**—Would you say that, even if there were water savings to be found, it would be more appropriate to keep those within the basin rather than to pump them out to Melbourne, given the nature of all the work—indeed, this entire bill is predicated on it—that has been done in trying to make the basin sustainable?

**Mr Pattison**—Clearly, the river needs 700 gigalitres of water just to get the first megalitre across the border into South Australia. It will be required to be taken either from environmental ‘run of the river’ flows or off irrigators. Of course, there will be some savings. If you throw enough money at something, you can get something out at the other end. Any savings that are made, we would say, would be far better left in the Murray-Darling Basin for the health of that basin. Haven’t we gone far enough down the track in the development of this country to draw a line in the sand—which is what you are trying to do with this Commonwealth act—to say, ‘There are better ways for Melbourne to get its water; we really have to address the issues of the Murray-Darling Basin and the future of the communities and the environment of that basin.’

**Senator McGAURAN**—Can you explain what is on your second slide? Is that state government money towards water savings?

**Mr Harrison**—Yes. ‘Central Goulburn 1234’ refers to a channel, which is in one of the businesses of Goulburn Murray Water, in the central Goulburn area. That program, known as total channel control, was created I think about four years ago.

**Mr Pattison**—Yes.

**Mr Harrison**—The water savings for that are to be taken by the Living Murray.

**Mr Pattison**—The Living Murray and the Snowy Initiative. Funding commitments have been given already from the Commonwealth and from New South Wales. They are to be kept in the Eildon Reservoir to run the pipe in the first year. They cannot even make sufficient savings to meet the pipe.

**Senator McGAURAN**—So these are previous government savings that have been completed.

**Mr Pattison**—That is right. Another 25 gigalitres of reconfiguration, a \$50 million project, has been committed already to the Living Murray initiative.

**Senator McGAURAN**—Completed or committed?

**Mr Harrison**—No, it has not been completed yet.

**Mr Pattison**—Not completed, no.

**Mr Harrison**—Shepparton Modernisation for about \$200 million is generating 52 gigalitres. That is also an environmental program funded by the Living Murray and the Snowy. GMW Reconfiguration, a program that is about four years old, is generating 25 gigalitres also for the Living Murray savings. Essentially, on that chart, about 270 gigalitres out of the 519 gigalitres are directed towards environmental flows. The key issue that we have is that, if these targets cannot be achieved, a decision will have to be made as to who get the water savings that exist; that is one of our essential arguments. On our calculations, we believe there will be a net loss to the environment and to irrigators as a result of Melbourne’s involvement.

**Senator XENOPHON**—You have made reference to your calculations and the work that you have done on this. Would it be possible for you to provide those to the committee as a matter of some urgency?

**Mr Harrison**—Yes.

**Senator XENOPHON**—Obviously, I do not want hundreds of pages but just relevant calculations and the basis on which you have made those calculations.

**Mr Pattison**—We can substantiate those graphs. We have tried to put the graphs in a—

**Senator XENOPHON**—But perhaps you could provide it in the form of a written document with any of material—

**Mr Pattison**—Yes.

**Mr Harrison**—Yes.

**Senator McGAURAN**—You are a very high-profile group in Victoria and you have had some high-profile clashes with the state government. Has the state government, if you like, come back into your area with some sort of salesmanship or propaganda to try to sell the project?

**Mr Pattison**—The state government has actually spent millions of dollars in attempting to promote the benefits of this win-win-win outcome, where 75 gigalitres will be available out of the Victorian Food Bowl Modernisation Project. They have gone to ordinary lengths to try to sell this. Tragically, the seasons and so on have just continued to deteriorate and more and more people, even Melbourne people, are beginning to realise there is a crisis in the Murray-Darling Basin. It has become a news item and anyone who is thinking about it is saying, ‘Well, really this is not a good idea.’ So the government have come back at us, and we do not want to fight with the government. I have asked to see Senator Wong and Mr Garrett. We are prepared to work with the government of the day. That is what people elect—

**Senator McGAURAN**—Will they see you?

**Mr Pattison**—I do not know. We drove up last night, we are here now and we will be going home Friday. So, if anyone can help us there, we would appreciate it.

**Senator BIRMINGHAM**—Have you met with either of them before?

**Mr Pattison**—No.

**Senator WILLIAMS**—Would you request to meet with the—

**CHAIR**—Senators! Mr Pattison, we hear what you are saying and I am sure there will be voices out there listening. We do not have to go into a political—

**Mr Pattison**—No.

**CHAIR**—Not you. I do not think we need to waste the committee’s time on senators having a political kick-fest. Senator McGauran, you were half way through your question.

**Senator FISHER**—Yes, get back to your question.

**CHAIR**—Senator Fisher, I do not need smart comments like that, while we have a nice lid on it and everyone is happy and we will get through on time.

**Senator McGAURAN**—I raised that issue of the propaganda war against you, because it is quite obvious from the language used by the Premier down there that he greatly dislikes you and is attempting to intimidate your group. Would you say that is correct?

**Mr Pattison**—I am getting into Professor Young’s area now and I acknowledge the chair’s report. We have had huge things mounted against us. We come up at our own expense and we appreciated the committee’s help last time. We are voluntary people, working because we believe this decision is fundamentally wrong. We have provided evidence to this committee that we believe demonstrates that—

**Senator McGAURAN**—Are you getting support from farming groups, such as the NFF and so on?

**CHAIR**—I am sorry, Mr Pattison and Senator McGauran, but we have to go to a division in the chamber.

#### **Proceedings suspended from 5.20 pm to 5.30 pm**

**CHAIR**—I do apologise, Mr Pattison and Mr Harrison. You were halfway through answering a question, and I am relying on your great memory to remember who you were answering the question to.

**Senator McGAURAN**—I was just painting the background that this is a voluntary group, a David, if you like, against the state, a Goliath; the state has definitely got it in for this particular group. As you have said in a previous answer, the state is waging a propaganda war against you. I guess my question in a nutshell is: are the local councils and farming groups supportive of your group?

**Mr Pattison**—VFF policy is totally opposed to the pipeline going from the Murray-Darling Basin to Melbourne. Seventy per cent of councils in the Local Government Association have not supported the pipeline in the forum in which they meet. Two polls in the largest newspapers, the *Herald Sun* and the *Age*, both recorded a 95 per cent objection to the pipeline proposal taking water out of the Murray-Darling Basin. We have to resort to many, if you like, stunts to get publicity and media attention. We are here today presenting you with what we say are the facts. We would hope that the committee would go away and say, ‘These people have come to us with these graphs and charts that are just going down. They say that the savings cannot be achieved.’ I would like the committee to ask those from whom you can get this information whether we are right or wrong.

We believe 100 per cent that we are right. We have worked on figures that are available in the annual reports of the water authority. We are familiar with the process that they are going through to modernise and attempt to make these savings. Guardedly, Professor Mike Young, in answering a question from you, said that you have to take it off somebody else, because water in the hydrological cycle, unless it is flowing into the sea, is not lost. It is used in one form or another, and we sure know that it is not running into the sea. We think this bill and having a National Water Initiative is a huge step forward. What we are saying is, 'Don't spoil that initiative by not having the resolve to get this issue right, as we said last time we were here, at this 12th hour.' You need to get around this issue.

You are asking these questions continually of all the witnesses—and I know that you are uncomfortable with this. We have to get above politics. This is the Murray-Darling Basin and we have to get a better outcome. Really what we have come here to tell you is: work this through and get the answers. What happens if the bill does not get passed in the last week of the sitting? Unless it rains a torrent, everything else will continue on. There is no water out there today. Unless the Commonwealth government buys water on the temporary trading market and decides to put it down the river into the Coorong, there will be no water. You can buy all the entitlements in the world. There is the Goldfields super pipe. They bought their water entitlement and what do they have? They have 14 per cent, which is exactly the same as me. They had to go into the temporary water market and buy water out of the Murrumbidgee system, which will be supplied from the Goulburn, to meet the needs of Bendigo. We do not wish to inflict suffering and hardship on the people of Bendigo. They are our communities. That is where I do my business and where my kids went to school; so we understand that. But that is an example of just buying entitlements; it does not necessarily get you the water when it is not there. So we are urging the committee to work through the bill and to stop the pipe, because we think it is fundamentally wrong at this stage of the development of this nation.

**CHAIR**—On that, Mr Pattison—and I think in all fairness to my colleagues on this committee—I would not like to let you walk out of this room thinking that we have the ability to stop the pipe. I think it would be very irresponsible of us to sit here nodding our heads while we let you go.

**Senator McGAURAN**—Mr Garrett does have some authority over the matter.

**CHAIR**—Excuse me, Senator McGauran. I would like to use the words of Mr Pattison: let us get above the politics.

**Senator McGAURAN**—We cannot avoid the politics, I am afraid.

**CHAIR**—Let us get above the politics. As chair of this committee, I think it is my duty to inform Mr Pattison that—

**Senator McGAURAN**—Will Mr Garrett see these people?

**CHAIR**—Senator McGauran, if you will let me finish, I will be happy to answer any question you may put to me, whether it is in this room or out in the hallway, for that matter. But, Mr Pattison and Mr Harrison, to let you walk out of here thinking we have that ability would be irresponsible. On that, we are going to try to stay above politics. When this has finished, I will be having a conversation with Mr Pattison and Mr Harrison about something else that has nothing to do with appearing here today.

**Senator HEFFERNAN**—Obviously, there is a gross and a net extraction and yours is a net extraction of 75 gegalitres. In the figuring that you have seen for the planning of the river, do they actually go to the gross figure, where something like 110 gegalitres would be the equivalent of getting the 75 net if you had the normal extraction with 'return to the river' system? Do they put that in the figuring? To get that 75 in the way they are getting it would be the equivalent of you on your farm pumping 110.

**Mr Pattison**—I think Professor Young answered that. When you put it down the pipe, it is just straight—

**Senator HEFFERNAN**—Yes, I understand that. But, in the figuring that you have seen, does the government include that? I mean, I am aware of it.

**Mr Harrison**—The treatment of losses basically is quite simple. With the food bowl, anything that is not used as irrigation is treated as a loss or a potential saving.

**Senator HEFFERNAN**—But I am saying that this 75 gegalitres is probably the equivalent of 110 for food bowl purposes because there is no return to the system.

**Mr Harrison**—Yes, and that has not been figured at all.

**Senator HEFFERNAN**—The answer to that is that the bloody thing is flawed. Don't nod; just say yes.

**Mr Harrison**—Yes.

**Senator WILLIAMS**—If this pipeline to Melbourne were plugged, what would be the situation in Melbourne? Would they survive without the water, as they have done for decade? What sort of predicament would that put Melbourne in?

**Mr Harrison**—Currently, Melbourne would have a 1½-year supply of water. So it would have to not rain a drop for a year and a half before Melbourne was deleted of water. In 1995, our dam was around 80 per cent full.

**Senator WILLIAMS**—Our dam?

**Mr Pattison**—The Eildon Dam.

**Mr Harrison**—The Eildon Dam, which is currently fully committed. We are going to have the lowest allocations for irrigators on record and the lowest environmental flows from its sources on record. Basically, we have nothing left.

**Senator HEFFERNAN**—If there is no rain until autumn and winter, aren't you going to have a river failure?

**Mr Harrison**—Yes. We have failure now. Thirty per cent of the channels in the irrigation districts are set down—

**Senator HEFFERNAN**—Adelaide is going to get its water via emergency purposes around through the Murrumbidgee.

**Mr Harrison**—Yes. We are looking at a potential disaster of unimaginable proportions.

**Senator NASH**—Given the arguments that you have put forward, which certainly seem to be very valid, sound and reasonable, for why the pipeline should be stopped and not go ahead, why do you think you are not being listened to by the decision makers that have the ability to stop this going ahead?

**Mr Pattison**—The plan is part of a state water grid; that is my understanding of what the Victorian government is attempting to set up. There is the Goldfields Superpipe to Ballarat and Bendigo and there is the pipeline to Melbourne. In the future the government will be able to say, 'We've set the infrastructure up; we don't have to build another dam.' If someone in Melbourne wants to buy a megalitre of water, they will go to Melbourne Water, come into the marketplace, buy a megalitre of water and deliver it. Coliban Water this very day is delivering water to Bendigo on behalf of the carwash firms of Bendigo. They have bought water and it is being delivered by the pipeline system to Bendigo to wash cars. That is just a simple example of how a grid will work, in our opinion.

**Senator NASH**—The second part of my question was: why do you think you are not being listened to?

**Mr Pattison**—A group of people in the Goulburn Valley saw this as a way of getting money for infrastructure. What they have not counted on is what we have shown you in the graphs: continuing trade at four per cent going to six per cent means that the resource is evaporating out of the system and our ability to make savings and generate efficiencies is being destroyed.

**Mr Harrison**—I would like to add something to that. I think we are not being listened to because water has become so political that any opposition to a plan is seen as a political rebuff. We are prepared to negotiate with anyone and we are prepared to save. But, in reality, we have no negotiation powers. We are just a group that says, 'Hey, this is fundamentally wrong; you should really look at this. There is great suffering out in the country and this will cause substantial environmental impacts.' Water is highly political and we just cannot get good outcomes.

**Senator BIRMINGHAM**—With the suffering that exists in virtually every irrigation district throughout the basin and also in the environmental resources of the basin, do you think there is any justification for any additional urban centre to be attached to any part of the basin in terms of its water supply?

**Mr Harrison**—I think Melbourne has other options. It recycles little and has stormwater harvesting and many, many other options. This is about taking water out of a highly stressed system like the Murray-Darling Basin when it is facing its worst time almost ever in human history. The effect of that will be environmental, social and agricultural. Seventy-five gegalitres might not sound like a lot of water in terms of the total that is available to irrigators, but this year it will be a massive percentage relative to environmental flows—and that is the whole point. If it was really, really wet, it really would not matter too much; we would not even notice. But

things have changed so fundamentally. In 1994, 190 per cent of water was allocated and that, I think, is over 200 megalitres.

**Mr Pattison**—Two thousand gigalitres.

**Mr Harrison**—Two thousand gigalitres. This year we will be down to hundreds of gigalitres in terms of its delivery. So the availability of the resource has just changed so much. That is really what has given the impetus for this national legislation to occur, because it is a really serious situation. I hope that answers your question.

**Senator HEFFERNAN**—The 100 gigalitres gross that the 75 net represents is 12½ per cent of the inflow last year.

**Mr Harrison**—Yes.

**Mr Pattison**—You have asked a lot of questions today about critical human needs. A previous finding of your committee was that attaching Melbourne to the Murray-Darling Basin will increase the commitment to critical human needs by 21 per cent. That is a staggering amount that you are asking the Murray-Darling Basin system to meet—because such needs are critical. I think Adelaide have demonstrated extremely well their harvesting of stormwater and their ground-water aquifer accessions. The Eastern Treatment Plant in Melbourne would provide 100 gigalitres a year and it could be fast-tracked and put in place into one of those Sylvan reservoirs. Even if it were used for secondary uses, it would free up potable water—and at a fraction of the cost. But it is not our role to tell Melbourne how to do it. We are trying to bring to the attention of the committee something that I believe you are aware of already, and that is how critical the situation of the Murray-Darling Basin is. We want a water act that will take politics out of it so an authority can get on with the work and try to sort out how we manage it better into the future.

**Senator FISHER**—My question follows on from your response to Senator Heffernan. You have scratched the human critical needs issue—I would argue—sore under this bill. Mr Pattison, you gave the example of the diversion of water for car washing. Do you think that is being characterised as critical human needs water?

**Mr Pattison**—It is an outcome.

**Senator FISHER**—It is a serious question.

**Mr Pattison**—It is an outcome of putting a water grid in and having a market facility that we are unable to compete with. We cannot and will not be able to compete with Melbourne. It does not matter what production we have in rural and regional Victoria or in the Lower Murray-Darling Basin; we will not be able to compete with Melbourne when water is short.

**Senator FISHER**—Do you think your needs are critical human needs?

**Mr Pattison**—My family's critical human needs are exactly the same as—

**Senator FISHER**—Exactly. Do you think that your critical human needs, even to that extent and to that fundamental and necessary extent, will rank with those of others under the bill? Do you think bill looks after your family's critical human needs?

**Mr Pattison**—It depends on whether there is an infrastructure system in place that will be there into the future for my family.

**Senator FISHER**—It does depend, doesn't it? You cannot tell—

**Mr Pattison**—We have grave reservations about the infrastructure that our pioneers put there, in fact, being taken away.

**Senator FISHER**—The Goulburn to Melbourne pipeline could be used to continue to wash cars for so-called critical human need instead of looking after, for example, your family's critical human needs. How will the bill stop that?

**Mr Pattison**—I have recognised your questions all day and, clearly, critical human needs are inside the house for basic human life.

**Senator FISHER**—You might think that but, if you can point me to that in the bill, you are doing well.

**Mr Pattison**—I think that is a process on the way through. As Professor Young said, I do think it has to be addressed. The bill is attempting to address that issue and that will be working—

**Senator FISHER**—Water is already being diverted for those purposes.

**Mr Pattison**—Absolutely.

**Senator FISHER**—Once diverted, it cannot be used by anything else.

**Mr Pattison**—The Victorian minister has the ability to call in and qualify rights under the Victorian Water Act. Melbourne could be excluded from any water from the pipeline, if they build it, but he will qualify rights and put the water down there anyway. There needs to be a better way and we will talk about that.

**CHAIR**—Mr Pattison and Mr Harrison, perhaps you could hang around for a little longer, please. We have appreciated your time; thank you very much.

[5.50 pm]

**FREEMAN, Mr Robert, Acting Chair and Chief Executive Officer, Murray-Darling Basin Authority**

**McLEOD, Dr Tony, Executive Manager Water Planning, Basin Plan Division, Murray-Darling Basin Authority**

**CHAIR**—Welcome. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given a reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

Would either of you wish to make a brief opening statement before we go to questions?

**Mr Freeman**—I would like to make a short statement so that people understand the difference between the commission and the authority. Thank you for inviting me. I am here as the acting chair and chief executive under the current Water Act of 2007. The legislation that is proposed under the Water Amendment Bill would mean that I would then be the chief executive and a member of the authority, but today I am here as the acting chair and chief executive, so those roles get split under the bill. The commission still exists in its own right today. However, that will be affected by the bill.

**CHAIR**—Thank you. Dr McLeod, do you wish to make a brief opening statement.

**Dr McLeod**—No, thank you.

**CHAIR**—We will go straight to questions. Senator Heffernan.

**Senator HEFFERNAN**—As you are aware, in the event of a reconfiguration of the state's proportion of water, the longer term science says that there may be increasing run-off in places such as southwest Queensland—the Warrego and those sorts of rivers may get some increasing run-off—and a serious decline in the 38 per cent of water that comes from the two per cent of the landscape in the southeast down here. Under this act how do you overcome the capacity of the states to be able to veto a change in apportionment of the states' eligibility for the water? They have a veto at the back end.

**Mr Freeman**—I will refer the question specifically to Dr McLeod. In broad terms, states are still responsible for state shares and that can only be changed by the unanimous agreement of jurisdictions. However, what the authority will do is set the sustainable diversion limit. It does not change the share that a state has, but essentially the authority, through the basin plan, will determine how much of that share is available for use within that state.

**Senator HEFFERNAN**—You could disproportionately reallocate on a drought basis the share from the state?

**Mr Freeman**—No. What I am saying is that we do not shift state shares. They are set and will be changed only by agreement of ministers. However, the authority determines that proportion of a state share that a state can essentially access for use.

**Senator HEFFERNAN**—If the climate thing all comes to some sort of a percentile of reality and some parts lose their run-off and others gain, where it becomes an interstate thing, how do you stop the states from saying, 'Bugger off'?

**Mr Freeman**—Through setting the sustainable diversion limit, which will be set from a basin-wide perspective. The sustainable diversion limits of various catchments would be determined from a basin-wide perspective. That will determine how much water that state can extract in that catchment.

**Senator HEFFERNAN**—We have resource operating plans on some of our rivers that end at the border. How are you going to overcome that?

**Mr Freeman**—Those water resource plans are more general, but there are also resource operations plans in the northern part of the basin.

**Senator HEFFERNAN**—Yes, the ROPs.

**Mr Freeman**—That is right. Those water resource plans across the basin are currently protected under schedule 4 of the existing Water Act and they will then have to comply with the basin plan as of those expiry dates in schedule 4.

**Senator HEFFERNAN**—Is that in 2015?

**Mr Freeman**—Most of the water resources of the basin will come under the jurisdiction of the basin plan in 2014, with New South Wales, the majority of the South Australian resources and the Queensland resources in 2014. There are some relatively minor resources prior to that date.

**Senator HEFFERNAN**—Are you saying under that the act in 2014 the resource operating plans, for instance, for the Warrego will be cancelled?

**Mr Freeman**—The resource operation plan for the Warrego will need to be consistent with the basin plan by those dates in 2014. That is correct.

**Senator HEFFERNAN**—If, in its wisdom, the Queensland government in the near future—for instance, with the Condamine and Lower Balonne resource operating plan—decides to commit itself to those extraordinary licences that are built in and that are unsustainable, what happens to the licences in 2014? In the meantime they have not been bought back at the valuation put on the Warrego. The Cubbie value had a strange twist to it in that the chairman has a conflict of interest and is legally on the document of Cubbie Station, which is valued at \$175 million. How do you retrieve that?

**Mr Freeman**—A proposed basin plan is to be released in 2010. The basin plan is then planned to come into effect in 2011. However, as you are indicating, that has no effect on those existing resource operation plans until 2014. That basin plan will set the sustainable diversion limit for those catchments that you are talking about, and the 2014 resource operation plans will need to comply with that new sustainable limit.

**Senator HEFFERNAN**—What wisdom would bring a government, including the COAG capacity of the Commonwealth, to agree to a system where, knowing what you have just said, you would issue those licences now when you could just leave things as they are and not have to issue them and reconfigure them in 2014?

**Mr Freeman**—That is not really an issue for the authority.

**Senator HEFFERNAN**—It is an issue for Australia's taxpayers. I realise you have a bureaucratic background so I will ask you to explain this to me. Thank you, Senator Xenophon, for your capacity to invite me to ask this question.

**Senator XENOPHON**—I am not sure about that.

**Senator HEFFERNAN**—Explain this to me. What does this mean? The agreement says, 'Decisions of the Basin Officials Committee'. Who are they?

**Mr Freeman**—The existing Water Act—

**Senator HEFFERNAN**—I will run through the question and then you can come back. It states:

Decisions of the Basin Officials Committee will be exercised consistent with the delegations received from the Ministerial Council. The delegations will relate to objectives and outcomes consistent with those set out by the Ministerial Council, and consistent with the Authority having the autonomy to decide on the matters set out in the corporate plan covering program design, delivery, monitoring and reporting arrangements required to implement the decisions of the Ministerial Council and the Basin Officials Committee.

What does that mean?

**Mr Freeman**—It is complex. The authority, under the amendment bill, will essentially have two different governance arrangements. If it is dealing with the basin plan, then it is under the governance of the authority—that is the seven-person authority—and is only subject to the federal minister, but essentially it is quite an independent authority. However, under the amendment bill, the authority will also take on the role of existing commission, and when it is exercising those responsibilities it is actually under the governance arrangements of ministerial council and a Basin Officials Committee. In old terminology that is the Murray-Darling Basin Ministerial Council, similar to the existing commission. The Basin Officials Committee, in lots of ways, will

have the powers that the commission has currently. That is those commissioners from various states. What that is saying is that when it is exercising those responsibilities it will be subject to the Basin Officials Committee and the ministerial council. However, when it is exercising its responsibilities under the existing Water Act of 2007 it is subject to the authority and only in certain regards can be directed by the federal minister.

**Senator HEFFERNAN**—Thank you for that explanation. Someone out there must understand what that meant; I do not. There is a practical sense to all of this. I have not struck one person who thinks this way, given the science of the future and given the fact that if the science is 50 per cent right we will not have a lot of systems where there will still be zero allocation for general purpose licences in the future, because there are enough high- security licences out there to take up what is there, or will be available. I do not understand how you and all the resources that you represent—the resources that the Commonwealth and the states represent—would knowingly go ahead with the development of those resource operating plans that are not finalised yet in the full knowledge that there has not been a study done that makes them sustainable, and put the taxpayers of Australia at risk of some hundreds of millions of dollars of compensation in a buyback through a system of a committee advisory body chaired by a person who stands to gain personally—under the decisions of the advice given by the chair and that committee to the government—many millions of dollars and not have someone somewhere say, ‘Hang on. This is a serious conflict of interest. We have got to go back and redo this.’ There has been no effective environmental planning done on these resource operating plans, which derive themselves from the water resource plans on these rivers—none at all. It was exactly the same as in New South Wales when they gave the river management catchment plans for the likes of the Murrumbidgee River and where—oops!—we forgot about the forest interception. It was just a complete oversight.

How the hell can we sit here as responsible parliamentarians and cop a system that is seriously flawed? As cool as a cucumber, the government says, despite the fact that the person who is in charge of giving the advice on the future of these rivers to the government is going to get a financial gain, when in fact that person does not qualify under the criteria of the resource operating plan for a licence, and as Mr Scott Spencer says in Queensland, ‘But that’s a private arrangement between neighbours’? That committee had the capacity to advise the Queensland government not only on the allocation of the resource of the overland flow licences based on the capacity of earthworks to divert and store the water but also on what compensation ought to be payable if they buy the licences back. How can we all sit here and cop that? Why isn’t there a judicial inquiry? You are going to be the brains of the outfit.

**CHAIR**—Are you going to ask a question?

**Senator HEFFERNAN**—I am asking a question.

**CHAIR**—It is a statement.

**Senator HEFFERNAN**—What are you going to do about it?

**Mr Freeman**—What I cannot do is comment on the adequacy of those resource operations plans. What I can talk about is the amount of time that is required to develop a basin plan, and clearly there is a gap. We are in an existing situation and we will not have a basin plan for some time. The reason we will not have a basin plan for some time is not because of low priority. As far as I am aware, this is the largest planning exercise of this scale that is trying to optimise economic, social and environmental in the world. No-one has tried to optimise those three things. Historically, it has been a trade-off between replacing the economic and reinstating the environment, or alternatively forgoing the environment for economic gain. We are trying to optimise those. Therefore, this is a first, as far as I am aware. That will take considerable time.

What will happen is that we will describe the basin from an economic, environmental and social perspective. We will then define the assets. What are the economic assets, social assets and environmental assets of the Murray-Darling Basin, and what is the water required to sustain those? Clearly, then there will be some trade-offs. Most people can do those in an asset class. They can talk about what is the most important environmental asset and what is the most important economic asset. When you start trading across classes—and we will have to do this—do you trade off some environmental assets in order to sustain communities and the economy? That is complex and that is why this basin plan is taking the time that it is. In the meantime the resource operation plans are there.

**Senator HEFFERNAN**—Under the bureaucratic thing that I read out a while ago and the delegation of authority through that, you are left out of that, according to what you have just said. I have had a discussion with Scott Spencer in this committee about how you can turn a blind eye to some of this stuff and just say, ‘Oh well, what are we going to do about it?’ I want to know what you are going to do about it, because the mean

flow of the Culgoa system, the Condamine-Balonne, is 1,200 gigalitres. They have allowed 1,500 gigalitres in the lower reaches of on-farm off-river storage. It is not sustainable and yet we are going ahead with a ROP that is seriously flawed and has no environmental planning attached to it. We are supposed to be responsible parliamentarians and you are supposed to be responsible bureaucrats. We are going to a system that we know is not sustainable, and the answer is, 'We won't go back and see what is a sustainable extraction. We'll just issue the licences on the earthworks. We will measure the earthworks, give them a licence, and then if it is too much we will buy them back.' What sort of a flawed proposition is that? You are in charge.

**CHAIR**—I will ask you to shorten the questions down, because other senators have questions to ask. In fact, you might want to take your breath, unless there is a question there.

**Senator HEFFERNAN**—There is a question there. What are we going to do about it?

**Mr Freeman**—Dr McLeod is keen to say something.

**Senator HEFFERNAN**—If you know the answer then you are the first one.

**CHAIR**—Senator Heffernan, you have asked about 15 questions, but they are all the same one. Dr McLeod, would you like to answer Senator Heffernan's question, and then we can change the dulcet tones from the front here.

**Dr McLeod**—Thank you. The paragraph you read out earlier relates to the relationship between the ministerial council and the Basin Officials Committee in relation to things that sit in that part of the governance arrangement for the new authority. In relation to this issue about the water resource plan in the Condamine-Balonne, for example, that issue is one that sits on the authority of the federal minister's side of the governance arrangement. The way the Water Act that is currently in operation works is that the water resource plan for the Condamine-Balonne and instruments made beneath that are actually protected from the influence of the basin plan until the date set out schedule 4, as Mr Freeman said earlier.

**Senator HEFFERNAN**—Is there not a capacity to go through COAG to say, 'Hang on. It would be sensible to just grandfather this arrangement till we come to 2014 and put a proper plan in action, and save everyone a lot of trouble and money'? Have you the capacity to do that?

**Dr McLeod**—The provisions of the act grandfather the existing water resource plan and instruments made beneath it.

**Senator HEFFERNAN**—What I am saying is that the water that is drawn now in the Lower Balonne is unlicensed, unmetered and unregulated—and do not tell me it is not because Scott Spencer and I had this out—and it is actually free, the bulk of it, because it is authorised water but not licensed water. We are proposing to issue a series of licences to put a financial instrument in place, but we do not have to do that. There is absolutely no reason. They can continue to operate with the authorisation until you get the authority to fix the plans in 2014.

**Dr McLeod**—The policy position that the government has set out in the act is to respect the water resource plan through to its expiry in 2014.

**CHAIR**—Senator Heffernan, if there is time we will come back to you. Senator Hurley.

**Senator HURLEY**—We have had this discussion about bits of water here and bits of water there, and Senator Heffernan did mention the aspect of sustainability. There has been a Sustainable Rivers Audit, hasn't there? Can you just talk more about that and the effect on reform in the Murray-Darling Basin?

**Mr Freeman**—Yes, we can talk about it. It really is the work of the existing commission. Dr McLeod can talk in depth about the Sustainable Rivers Audit, but I will say that the Sustainable Rivers Audit is not comprehensive in terms of sustainability. It has not brought in the social, cultural or economic. It is really about environmental sustainability so it is certainly a different sustainable to the sustainable diversion limit, which is balancing economic, social, including cultural, and environmental. Having said that, it is a great piece of work in its limited scope of sustainability, but it is work of the existing commission.

**Dr McLeod**—Further to Mr Freeman's comments, the Sustainable Rivers Audit is an exceptional piece of work across the basin, and an important primary input into the basin plan as it will be developed. The Sustainable Rivers Audit is designed to be repeated over the coming years and that will provide not just a state but a measure of the trend in the state of the systems being monitored. My understanding of the forward program for the Sustainable Rivers Audit, which will come under into authority on the passage of the Water Amendment Bill, is that it will look at other themes and technical aspects, and also consider moving from the river itself into the floodplain areas as well. That elaboration will provide even better information for the

setting of the sustainable diversion limit—again, as Mr Freeman said, looking from the environmental side of the sustainability equation.

**Senator HURLEY**—It is important to talk about some of these overall plans. This afternoon we have been discussing ad-hoc proposals, but the authority is getting scientific input and is looking at the whole basin. You were talking about environmental sustainability. There is a plan across the whole basin to deal with these sorts of things and these will be developed as we go along. It is not possible to have a fully formed plan that answers every single question on the table right now. These sorts of things are informing what is occurring.

**Mr Freeman**—Yes, that is correct. One of the challenges of the existing authority has been to corral all the bits that are existing out there. In that regard I have had many meetings with CSIRO, the Bureau of Meteorology, ABARE, BRS and various government agencies, together with states and with some of the NGOs and industry bodies. In fact, there is knowledge in those organisations that needs to be incorporated into the basin plan as well. There is a lot of it out there, but it is fair to say that the aggregation of all of that does not equal a comprehensive basin plan and there are significant gaps within existing knowledge that need to be filled if we are to do a proper job in this first round in the timeframes.

**Senator HURLEY**—Can you tell me about the current status of the public and private water storages across the basin?

**Mr Freeman**—No.

**Senator HURLEY**—How do we stand there?

**Mr Freeman**—That is a question that should be directed towards Dr Craik, but unfortunately she is not here.

**Senator HURLEY**—I would like you to answer a question relating to the previous witnesses. There was discussion about our critical human needs and water availability in the pipeline to Melbourne. Can you tell me whether the critical human needs provisions of the bill apply to the Murray-Darling system? Would they apply to the water for Melbourne?

**CHAIR**—I am sorry, gentlemen. There is a division happening. I think you have been around long enough to know that we will come back.

**Senator HURLEY**—Could you do a quick answer for me before I go because I may not be back. Is that a yes or no?

**Mr Freeman**—The provisions for critical human needs that exist in the Water Amendment Bill now relate to the River Murray system alone. That includes the main stem of the Murray, the small part of the Mitta River near Albury and the lower Darling. In the case of the previous testimony, that was in relation to the Goulburn River and it does not relate to that system.

**Senator HURLEY**—That is what I thought. Thank you.

#### **Proceedings suspended from 6.14 pm to 6.19 pm**

**Senator NASH**—I have a number of specific questions that relate to the bill so, if you bear with me, we will quickly work through them. Firstly, page 96, under clause 51(5) states:

If at any time the authority considers there is need for special action to protect the catchment of the Hume Reservoir ... to take such special action as may be required by the authority.

What might that special action be?

**Dr McLeod**—I will give you a brief background of this provision in the agreement. This is an existing provision in the Murray-Darling Basin Agreement changed in a minimalist model to move it into this arrangement. Clause 51 of the agreement currently deals with the catchment above Hume Reservoir looking at particular issues to do with water quality resulting from erosion. That is my understanding of the history of that provision. I understand the sorts of things that have been considered in the past are various catchment management activities that may be necessary to reduce erosion, or for bank stabilisation or things of that nature.

**Senator NASH**—What might that be?

**Dr McLeod**—It might be treating a highly erodable part of the bank of a river or a creek in that catchment in order to reduce the erosion from that, for instance, rock stabilisation. I am not familiar with that particular—

**Senator NASH**—No, that is fine. I understand the complexity of the bill. Can I ask you to take that on notice and come to me with specific definitions of what that special action might be? I am happy to place a number of these on notice, if it is a bit onerous at this point in time. Can you give me an explanation on page 122 of clause 99, that the authority must not direct that water be released from Menindee below and before those two figures. Clause 99(2) states that, subject to subclause (1) the committee may, by majority vote, require the authority to direct that water be released from Menindee Lakes storage. Can you explain what that means and under what circumstances by a majority vote the committee would want the authority to do that?

**Dr McLeod**—Again, this is a provision of the existing Murray-Darling Basin Agreement with minimalist change into the new arrangement.

**Senator NASH**—The other one was before my time, so do not assume that I have knowledge of the original stuff.

**Dr McLeod**—That is the short history of it. My understanding of the history of the clause that was in the existing agreement and repeated here is that this is one of the few places in the agreement where a majority vote applies, and in the case of this majority vote it is to stop an individual state vetoing the sensible use of resources from a particular storage. Does that make it clear?

**Senator NASH**—Not really, no. Under what circumstances would a state veto the uses of a storage, in their own state obviously?

**Dr McLeod**—In order to maintain its status beneath, above, below or whatever the given level of that storage. It is designed to make sure that it is done in the interest of governments as a whole.

**Senator NASH**—That is about as clear as mud for me. Is this like a provision to override?

**Dr McLeod**—It is not so much to override. It is a different test about the nature of the decision that is possible in relation to releases from the Menindee Lakes than from other storages. Other storages require unanimous. Subject to 99(1) Menindee Lakes does not require a unanimous decision.

**Senator NASH**—I only have about half a dozen of these so just bear with me. On page 127, clause 113(2) states that the authority may at any time with the consent of either New South Wales or Victoria determine that certain quantities of water in transit in the upper River Murray are surplus to the requirements of that state and reallocate the whole or part of such quantities from that state to the other state. Could you clarify the consent of either state rather than perhaps both states? What does that paragraph mean?

**Dr McLeod**—Again, this is an existing provision moved into the new one. Perhaps we could take that on notice.

**Senator NASH**—Yes, that would be fine. With the questions on notice, we are reporting next week so could we have these by the close of business Friday at the latest?

**Mr Freeman**—Yes.

**Senator NASH**—On page 132—page 123 is where I brought it up, but it is a broader question about the issue of special accounting. Can you explain to the committee how special accounting works and what triggers that period of special accounting?

**Dr McLeod**—Special accounting are the provisions for counting water in the River Murray system in what was previously considered the dry end of the spectrum. What I mean by ‘previously considered’ is that as a result of the existing conditions that we have experienced in the last several years we are now in situations that were not even anticipated by these provisions. Special accounting is a way of sharing water differently. In the vast majority of years the normal accounting arrangements apply. Special accounting kicks in when the reserves, the amount of water available for the following year, drops below the 1,250 GLs that are specified in clause 123(1). That then brings into play a new set of ratios and a new set of sharing that exist as you move into the drier end of the spectrum.

**Senator NASH**—Will the authority have the responsibility to implement that?

**Dr McLeod**—Maintaining the accounts, yes.

**Mr Freeman**—Perhaps an example helps a little. Basically Victoria and New South Wales provide equal shares water to guarantee South Australia its 696 gigalitre. There is a 696 gigalitre provision that you would have seen in here. That assumes that water fell equally in New South Wales and Victoria, and of course rain does not occur like that, so there will be an imbalance in there. Because the majority of rain, for instance, in one year might be in Victoria that will create an imbalance. South Australia gets its 696, but Victoria may owe

New South Wales water. Special accounting can be used for many different arrangements, but it is really about the rules in lots of ways for the Murray system based on equal provision between New South Wales and Victoria, and yet that is not the way weather normally occurs.

**Senator NASH**—On page 196, under part 2, general principles, in clause 4, power to alter entitlements in allocation to which schedule applies, it states that on the recommendation of the authority the ministerial council may, from time to time, alter the entitlements and allocations to which this schedule applies by amending appendix 1. On what basis from time to time would they do that and how would they amend it?

**Dr McLeod**—Again, it is an existing provision of the agreement. Could we take the specific reference to your question on notice?

**Senator NASH**—Thank you. It particularly interested me given obviously the power on the recommendation of the authority that that alteration could happen and then that is really all there is in terms of explanation within the bill. I would appreciate it if you could come back with a detailed answer to that. Can you provide me with an explanation of page 201, clause 11, part 4, under operational principles and administration? It states that the authority may, in accordance with any protocol made under paragraph 6(1)(c), direct that water standing to the credit of a valley account for any valley be used for any purpose to which the authority may have regard under subclause 98(3) or 98(4) of the agreement.

**Dr McLeod**—We can take that on notice.

**Senator NASH**—Yes. Mr Freeman, I am assuming that your role takes into account consultation with communities in terms of working up to the basin plan; is that right?

**Mr Freeman**—Yes. The current act has quite a detailed legislative process for consultation. The proposed basin plan goes out for 16 weeks for public consultation. After that we will not only publish submissions but our responses to those submissions. The Basin Community Committee, which is a statutory committee of the existing water act is a prime vehicle for consulting the broader community. One of the challenges I have been talking to industry, NGOs and states about is that given the compressed timeframes, the authority could get caught in the process here. If we do not watch out we will be having many public meetings, but there is a real challenge here to write the basin plan. We need to balance that, because community input is really important, but at the end of the day we need to develop this incredibly difficult scientific plan.

My early thinking around this topic is that we will consult heavily with all expressions of peak bodies, whether they be irrigator associations, conservation movements and so on, we will consult the broader community through the Basin Community Committee and we will support that strongly, but basically if people want to get involved then probably the best way is to come through the Basin Community Committee, which is a committee of people out of the community, but also engage through a broad expression of peak bodies.

**Senator NASH**—I understand the necessity to get arrangements in place, but do you think it is a reasonable timeframe? You said it was 16 weeks for community consultation. We are talking 2011 for the basin plan. Do you think it really is a reasonable timeframe and have you had any feedback from communities suggesting that they would like it to be longer?

**Mr Freeman**—I have heard shorter. I have not been advised longer by any members of the community. I do not think it will be that the first time people can engage is when they see the proposed plan. My proposal at the moment is to develop a thing called a concept statement and for that to be published early in 2009. In the first quarter of 2009 we will go out with a concept statement that explains what a basin plan is, what are the timeframes for the steps of its development, and how people can engage in that process. Following the concept statement there will be a series of issues papers dealing with some of the components of the basin plan. People will not have to wait until 2010 before they see the proposed basin plan. They will see instalments of that through issues papers. In 2010 we step through the statutory process of the proposed basin plan. There will be a lot of consultation. I have not heard people saying later, I have heard people saying earlier.

**Senator NASH**—You mentioned before that community consultation would come through the basin community. Having just been from one end of the basin to the other, these communities are very keen to have an input. They are feeling like they are being completely left out, from a lot of the conversations that I have had, and they are not being consulted enough on the future of water decision making for the basin. What is the process for, say, an individual community to interact with that basin committee?

**Mr Freeman**—The basin committee has not been struck yet.

**Senator NASH**—What will it be? You must have an idea of what the process will be, given that you just said that you are taking input from communities and it will come through the basin committee.

**Mr Freeman**—The process for the Basin Community Committee engaging the broader community is something that we will need to work through with the Basin Community Committee. Yesterday I had meetings with representatives from the Gwydir Valley. In the meantime, we will be engaging at that so-called peak body level. It is not just people in the basin but people outside the basin who have views that they want to express about the Murray-Darling Basin. How we get that through the Basin Community Committee is an issue to be worked out when that committee is struck.

**Senator NASH**—When will that happen?

**Mr Freeman**—We have advertised for members. That process closes on Monday the 17th. It is then a matter of selecting the 16 members. We will not be in a position to decide until the legislation commences, because although I am the acting chair and chief executive I cannot make decisions because there is not a quorum there.

**Senator NASH**—Obviously this is not part of the process of looking into this bill, but when you do have that process in place for that community consultation to go through that committee, could you advise this committee of what that process would be, for our information?

**Mr Freeman**—Yes.

**CHAIR**—Senator Xenophon.

**Senator XENOPHON**—Ultimately the minister has the final say on the basin plan. There is a process of toing and froing, but ultimately if there is disagreement the minister can finally sign off on the basin plan. In broad terms is that correct?

**Mr Freeman**—In broad terms. There are certain provisions of the basin plan that the minister cannot vary. Section 44 of the act defines the ones where the minister cannot direct a change. You are correct in regard to setting sustainable diversion limits.

**Senator XENOPHON**—In relation to those sustainable diversion limits it is up to the states to monitor and implement the basin plan. Is there is a fair degree of autonomy for the states for the implementation of the basin plan?

**Mr Freeman**—The principle of subsidiarity still exists. One of the underpinnings of our constitution is subsidiarity. Basically, decisions are left to the most appropriate level of government. We will set sustainable diversion limits. States then introduce water resource plans that determine how that is going to be met. Having said that, it is not a hands-off approach. The authority has responsibility for evaluation and monitoring to ensure that the basin plan is being complied with and similarly the National Water Commission, under the existing legislation, has a role in auditing the implementation of the basin plan.

**Senator XENOPHON**—If a state is not implementing the basin plan and the authority is responsible for monitoring that, what powers does the authority have to ensure compliance with the implementation of the basin plan?

**Mr Freeman**—I will answer the first part and then I will defer to Dr McLeod for the second. If the water resource plan is inadequate and therefore is not progressing the basin plan, the authority can in fact strike a water resource plan that achieves the objective of the basin plan, and that water resource plan stays in place until the state brings in a compliant water resource plan. If the plan is deficient the authority has the ability to introduce its own plan and that plan will in fact stay in place until a state brings in place a compliant plan. If the plan was adequate but the operations of that plan were found to be deficient, then that will be a second issue, and that is the one I was deferring to Dr McLeod.

**Dr McLeod**—The existing act has a range of enforcement provisions in part 8 and also in relation to part 10 there are provisions for the authority to exercise its compliance and enforcement arrangements.

**Senator XENOPHON**—I will not take it any further. I am anxious to get a couple more questions in. I will go through those and, if I have any further queries, I can put them on notice. In relation to the north-south pipeline, you may have heard the Plug the Pipe people giving evidence on that before. What is the status of that project? Is that something that is outside the basin plan or specifically excluded from the basin plan in terms of the water being diverted to Melbourne?

**Dr McLeod**—It may be helpful to recap the role of the basin plan, which is in part to set sustainable diversion limits on the take from the basin water resource. In the case of a decision by an individual government to reassign water use within the context of their existing planning framework, that is not something the basin plan can affect.

**Senator XENOPHON**—In the bill's present form does the authority have jurisdiction, for instance, to assess the environmental and social impact of taking that water out of the Goulburn Valley and diverting it to Melbourne?

**Dr McLeod**—The authority has a role in preparing the basin plan to consider the social, economic and environmental issues, and develop a balanced outcome against those criteria, subject to the terms of the act. When the authority makes the basin plan they will have to take into account the current distribution of uses in order to come up with a judgement. Once that is settled that will then kick through to the state water resource planning instruments. During the course of the basin plan, a whole range of things can take place that can transfer water between different types of uses, water trade being an example.

**CHAIR**—We are running short of time.

**Senator XENOPHON**—There have been assertions made both from the Victorian government and those opposed to the project as to what the water savings would be on that plan as it applies to other parts of the basin in terms of water saving measures. In relation to the north-south pipeline water saving assertions by the Victorian government and the contrary assertions made, what power does the authority have to test those assertions to independently audit whether those assertions or claims of water savings are verifiable?

**Mr Freeman**—The authority will have to familiarise itself sufficiently with that project to understand the economic, social and environment impacts of the project. It will have to essentially look at the project and ascertain what are the economic, social and environmental. It will have to understand the hydrology of the project. It is not there in an audit role, because what it will then do is take that into consideration in setting the sustainable diversion limit for that valley. Whether that water is applied to Melbourne or whether it is applied to irrigation is an issue for the Victorian government, but the authority will have to understand the project.

**Senator XENOPHON**—Whilst you do not have an audit role in the bill in its current form it would not have been inconsistent with the basin plan, nor with the IGA generally, if you had that authority to have an audit role to verify particular water savings. I am not asking you to comment from a policy perspective, but you would have the facilities to undertake that audit role or to undertake such an audit if you had the authority to do so, would you not?

**Mr Freeman**—Yes. I never thought subsidiarity would be so popular. In a way, though, it would start to cut across that principle, because our role here is to set the sustainable diversion limit for that valley and then where that water is applied is Victoria's business. What you are suggesting is that we would go further than simply setting the sustainable diversion limit for the valley, and that is not where this legislation currently lies. Water resource planning is a state responsibility that sits within the framework of the basin plan.

**CHAIR**—We really have gone way over.

**Senator NASH**—It is 6.45 pm. We are not over yet.

**CHAIR**—I will stand corrected. In two minutes time we will be over. I am sorry; I put the horse before the cart. The ex-deputy chair has been waiting patiently and has a number of questions to ask and we will go over time. I am going to give Senator Siewert every opportunity she needs to ask the questions, bearing in mind that it will impinge on the time of our next witness.

**Senator BIRMINGHAM**—I am happy for Senator Siewert to ask questions if I could sneak one or two in at the very end.

**CHAIR**—It will impinge on your party's time with the last witness. With Senator Siewert's indulgence, you can ask one very brief question. I know from the officers that the answer will be short, sharp and to the point. Senator Birmingham.

**Senator BIRMINGHAM**—It follows on from Senator Xenophon's. In setting the sustainable diversion extraction limit for the Goulburn Valley the Food Bowl Modernisation Project will still be undertaken at the time that the basin plan is being developed. Is it your expectation that the authority will base its decisions on that extraction limit on simply the advice of how much that modernisation plan will be saving in water or will it be, as in Senator Xenophon's point, be undertaking some independent assessment of that?

**Mr Freeman**—This is a decision for a future authority. We are not there yet. It is fair to say the authority would do more than simply take the advice of the state. What we are doing is assessing the economic, social and environmental—I come back to that issue—to determine the sustainable diversion limit. We are not saying whether that is a good project or an appropriate project. It is simply assessing that the water that we believe is saved has been saved, and that the water that has been directed towards the economy is going to the economy and so on. It will be assessing those three elements, but it will not be a determination on whether that is a good project.

**Senator BIRMINGHAM**—Certainly, but you have to know how much water is there before you can then decide on the diversion.

**Mr Freeman**—We have to understand that project. Having understood the project, our interest is at the higher level about the sustainable diversion limit.

**CHAIR**—Senator Siewert.

**Senator SIEWERT**—Some of the questions I was going to follow up have been asked. I will be as brief as I can. I would like to go back to the issue of critical human need and look at it as it relates to the proposed pipeline. What assurance do we have that water that will be taken by that pipeline will then be used to meet critical human need?

**Dr McLeod**—The critical human need provisions in the water amendment bill relate only to the River Murray system and in particular they relate to conveyance water in the River Murray system. Further to that, the new Murray-Darling Basin Agreement is a schedule to the bill and actually sets out the framework under which decisions will be taken by the ministerial council as far as those decisions affect state shares, that is, sharing between the states on the River Murray. In the case of the pipeline project it is a form of extraction on one of the tributary systems to the River Murray system, and not the River Murray system itself, and thus is not directly affected by these provisions.

**Senator SIEWERT**—I understand that to mean that it does not have to comply with the definition of critical human need because it is being considered outside the system.

**Dr McLeod**—It is a form of water extraction against a licence and it is not one that comes under those provisions as the bill is currently.

**Senator FISHER**—Just to make this absolutely clear, the water coming out of that pipeline potentially to Melbourne can be used for absolutely anything and not just critical human needs.

**Senator SIEWERT**—It is because it is still defined as extraction.

**Senator FISHER**—Is that a correct statement for me to make?

**Dr McLeod**—It is just an extraction; under this bill that is not bound.

**Senator SIEWERT**—In other words, if a state wanted to change an extraction use into the future from irrigation to urban use they will be allowed to get away with it if they are taking water that is already extracted under licence?

**Mr Freeman**—Providing that occurred within the sustainable diversion limits, so it is simply a redirection of irrigation water to a community, that can occur.

**Senator FISHER**—That is terrible. What an indictment.

**Senator SIEWERT**—Do you have any powers to protect environmental flows from theft or diversion?

**Dr McLeod**—One of the components of the basin plan is the environmental watering plan. It has a set of purposes set out in section 28 of the existing act that include the purpose to safeguard existing environmental water, planning and coordinating and other things. One of the foundational purposes of the environmental watering plan component of the basin plan is to safeguard existing environmental water.

**Senator SIEWERT**—What capacity do you have to enforce that safeguard?

**Dr McLeod**—When the basin plan is made it will be binding on all parties so the terms of the basin plan will need to be necessarily complex and specific in order to ensure that occurs.

**Senator SIEWERT**—There is quite a bit of very compelling evidence, and it has been reported anecdotally, that environmental flows are being diverted and stolen. How do you safeguard environmental flows? You might want to think about that while we go and vote. I am looking for the enforcement of it.

**CHAIR**—I am sorry, gentlemen. The bells are ringing once again.

**Proceedings suspended from 6.49 pm to 6.53 pm**

**CHAIR**—Put questions on notice very quickly, because adjournment is 7.15 pm, which is beyond my control.

**Senator FISHER**—I will ask that you answer these questions on notice. It will come as no surprise that they are about critical human needs. Can you provide the authority's interpretation of the meaning of proposed section 86A, in particular your view of the meaning of the terms 'highest priority' and 'first priority' in section 86A(1)(a) and (b)? What would be your view of the meaning of communities who are dependent on basin water resources in 86A(1)(a)? What would be your view of the meaning of the term in 86A(2) that can only 'reasonably be provided from the basin water resources'? What would be your view of the meaning in section 86A(2)(a) of 'core human consumption', and what would be included in 'urban and rural areas'? What would be your view of the meaning in section 86A(2)(b) of 'non-human consumption requirements' and of the term 'prohibitively high social, economic or national security costs'? Finally, the bill contemplates amounts of water being specified for critical human needs, but in your view who will make the decisions on how water is allocated for that purpose, who will have input into the making of those decisions, and what is the process contemplated for that? There are a lot of questions there.

**CHAIR**—We are going to adjourn at 7.15 pm. Senator Siewert is not here, so I would encourage Senator Siewert to put her questions on notice. I thank the officials from the Murray-Darling Basin Authority and I call the National Irrigators Council.

[6.56 pm]

**GREGSON, Mr Andrew, Chief Executive Officer, New South Wales Irrigators Council**

**CHAIR**—Welcome, Mr Gregson. Do you wish to make a brief opening statement?

**Mr Gregson**—Yes. Firstly, I thank the committee for the opportunity to appear and in particular Senator Siewert, who organised this for us. I note that the comments I have to make today are on behalf of New South Wales Irrigators Council but are endorsed by the National Irrigators Council.

Put very simply, this bill is imperfect. There are things within it that could be cleared up. However, this committee has recognised that the review task is enormous and has just heard particularly from the Murray-Darling Basin Authority CEO and current chairman that there is an enormous task before it in putting together the basin plan. The detail that is in that basin plan is what will affect irrigators. It is what will affect their communities and it is what will affect everybody right across the Murray-Darling Basin. It is the basin plan that needs to be focused on, where the detail needs to be right, and it is time to get on with that. In that respect we ask that this legislation now be passed so that we can get on with the process of formulating the basin plan.

We believe the issues that are imperfect within the bill can be covered with a very simple statement that the changes that are within the amendment bill are in fact policy change pursuant to the National Water Initiative and therefore any third-party impacts can be covered by the provisions of compensation in the risk assignment provisions of the National Water Initiative.

We have presented a written statement that covers three particular issues. First of all, the new section 75(1)(a), in terms of the separation of climate change from new knowledge. We are very disappointed to see that section in there and believe that the distinction between climate change and new knowledge should be made in the basin plan and not in legislation that has not been the subject of consultation.

We are very concerned at the definition of critical human needs and maintain our stance that critical human needs should be limited to those that are critical to human need; drinking, sanitation and health. We are also concerned at the alteration to the Murray-Darling Basin Agreement section 91 in terms of carryover provisions for South Australia. In New South Wales and Victoria the extraction of carryover is limited to 100 per cent of an entitlement. This same consideration has not been extended to South Australia. We note that this is a policy change triggering clause 50 of the National Water Initiative's risk assignment provisions, which would cover the issue and would not halt the legislation from being passed.

**CHAIR**—I do have some questions. Before we go any further, the secretariat has not received your submission.

**Senator FISHER**—It was circulated when we commenced the hearing.

**CHAIR**—I apologise. It was there all the time. You appreciate that domestic and industrial water use in towns and cities has considerable importance both for human health and welfare and in terms of the economic contribution they make. You will also appreciate the water restrictions invariably apply to water use and that it is very difficult to conceive a situation where urban water users in industry and commerce, for example, could have tradeable water entitlements as they do in irrigated agriculture. Do you accept for those reasons that water for towns and cities needs to be given priority via the critical human needs provision of the intergovernmental agreement?

**Mr Gregson**—We accept that water for critical human needs should be given priority. There is absolutely no question about that. It is a question of how that system works to deliver critical human needs. As I said briefly in our submission, we believe that critical human needs are drinking, sanitation and health. With respect, I disagree with you. We can see a process by which industry can enter the water market to purchase their water rights in the same way that irrigators have to. Under the provisions of it being a high economic cost to an industry of not having water, I am sure you would appreciate the cost of an irrigation entity not having water is also extremely high.

**CHAIR**—Can you explain to the committee a scenario where South Australia will seek access to carry over for its water at a time when water storages in the Murray system are close to full?

**Mr Gregson**—I would understand that pursuant to the agreement the accounting for South Australia water storage would mean that any carryover water, as it would be in New South Wales and Victoria, is the first to spill. Hence in a situation where the dams are full, that would be the case. However, that is not explicit in the bill and that is why we ask that it be overtly stated to be a policy change that triggers the NWI risk assignment provisions.

**CHAIR**—Senator Siewert, do you have questions for Mr Gregson?

**Senator SIEWERT**—Yes.

**CHAIR**—I can have a chat to you and then come back to you.

**Senator SIEWERT**—Yes. Senator Nash and Senator Fisher, bearing in mind we are adjourning, I would ask that you have one question each.

**Senator NASH**—Can you expand a bit more on the section 91 and the carryover? I did ask a question of the NFF earlier today about this and their response was that basically South Australia was high security so the carryover did not apply. Perhaps you could go back when *Hansard* comes out and have a look at their response, just in case what was put forward is in any way different to what you put forward. Can you explain that for us in simple layman's language?

**Mr Gregson**—Carryover provisions allow a private irrigator to not use all of their allocation in one year and carry it over to be used in subsequent years. For example, in a year where they would receive, say, 90 per cent but they only need to use 60 per cent, they could carry 30 per cent over to a subsequent year. That has not previously been available in South Australia and under the provisions of the IGA and this bill it will be. Irrigators across Australia support the provision of carryover for South Australian irrigators. In New South Wales and Victoria there is a caveat on that carryover provision that you cannot, as an irrigator, at any stage hold more than 100 per cent of your entitlement and therefore cannot extract more than 100 per cent of your entitlement in any one year. Potentially under the provisions of the bill an irrigator in South Australia could carry water over to the extent that they extract in excess of 100 per cent of their entitlement, which means in that year South Australia would breach cap, and there is the potential then for liability impacts to irrigators upstream, particularly in New South Wales and Victoria. We understand that South Australia will be under an obligation not to breach the cap and, as a result, is likely to enter into negotiations to have that 100 per cent limit. However, we would prefer that the bill had said explicitly that there would be a limit on 100 per cent of extraction. That said, we do not want to delay the passage of the bill and, again, if the clause 50 risk assignment provisions of the NWI are allowed into place by mention of this being a policy change, that will be covered.

**Senator NASH**—That was the clearest explanation we have had of anything all day.

**Senator XENOPHON**—Can I ask a question supplementary to that?

**CHAIR**—We are starting to stretch the friendship, because Senator Siewert was cut short the last time. I am going to go to Senator Siewert. If there is any time left you will have the opportunity, but we are adjourning at 7.15 pm. Senator Siewert.

**Senator SIEWERT**—I wanted to continue clarifying this point about the carryover. I must admit I got slightly diverted in just having a brief conversation with the chair. I understand that you would prefer that it is explicitly written into the bill that it is limited to 100 per cent?

**Mr Gregson**—Yes, we would to ensure that the cap is not breached rather than rely on subsequent actions between the state and the Commonwealth to ensure that regulation is in place. On the same hand, we would not like to see the bill delayed on that basis.

**Senator SIEWERT**—Is that part of the bill? The referral is in a couple of parts?

**Mr Gregson**—Yes, I believe so.

**Senator SIEWERT**—I will check that.

**Mr Gregson**—It would be, because it required the agreement of the other states.

**Senator SIEWERT**—As to the definition of ‘critical human need’—and this would require amendments—you want the definition to be very clear around what it is and what it is not?

**Mr Gregson**—We concede that it is unlikely that definition is going to be changed. We do want to continue to make the point, as we have right through this IGA and bill process, that the definition that is about to be enshrined in this legislation is inappropriate. Critical human needs should be critical human needs and should not be opened up to other uses. The provision for critical human needs allows a change in the rules as to how water is managed and that should only be in times of critical human need.

**Senator SIEWERT**—Thank you.

**CHAIR**—Senator Xenophon has a question. Senator Fisher, we do know what your question will be, so if worse comes to worse you can put it in writing.

**Senator FISHER**—I am prepared to abbreviate it, and it follows on.

**CHAIR**—Senator Xenophon.

**Senator XENOPHON**—As to the issue of the cap and carryover for South Australia, do you understand there is a historical reason and a context in terms of why South Australia got that particular arrangement?

**Mr Gregson**—The capacity to access upstream storage? We do not oppose that at all. Yes, we do recognise that there is a reason it needs to be there.

**Senator XENOPHON**—And South Australia has complied with the caps in previous years and the same could not be said for other jurisdictions?

**Mr Gregson**—Yes.

**CHAIR**—Senator Fisher.

**Senator FISHER**—I would like to follow on from Senator Siewert’s questions about human critical need. I do not accept that the bill will not be amended as part of the job of this committee. I note your submission. Can you please provide the committee, on notice, with some examples of how the definition in the bill of ‘human critical need’ will effectively be rendered meaningless? Can you provide some practical examples? You have given a flavour—abattoirs, feedlots and mines, which all have very important water needs—but can you provide some practical examples of water use that, in your view, would be treated as critical human needs and falling within the definition of that under the bill? Can you also advise why your organisation would consider that to be inappropriate? You can also consider the questions I have placed on notice of other witnesses going through proposed section 86(A)(1) and (2) as to their views of what would be the meaning of the various parts—you will see that on the transcript—and if the council would care to answer those questions as if they were addressed to you I would very much welcome that. You could perhaps also simply take the questions that I asked of the previous witnesses and the authority.

**Mr Gregson**—We will do our best to comply in the time limit that is available to you.

**Senator FISHER**—Thank you.

**CHAIR**—Thank you. Senator Siewert, would you like to use the remaining time?

**Senator SIEWERT**—Yes. I have another question. I do not know whether you were here when Professor Young was making his points about amendments.

**Mr Gregson**—No, I was not.

**Senator SIEWERT**—I appreciate this is a tall order in terms of the timeframes that we have got, but Professor Young suggested a range of amendments around amending the bill to require the authority to pursue the objects of the act. There are a number of other amendments that he is suggesting. I am wondering what your opinion is of those amendments. If we gave you a copy of the amendments, would it be too much to ask that you could perhaps give us a short response to each of those? He has justification for all of the amendments, so I would be interested in your opinion on those amendments.

**Mr Gregson**—I have had a brief glance at Professor Young's submission, but I would like some time to quickly consider that and get back to you. I would like to make a general comment in relation to amendments. Those amendments that are to be made under what is an existing Commonwealth power obviously can be done by the House in a reasonably short space of time. Amendments that have come from the referral of powers and through the intergovernmental agreement would need to go back through each of the state jurisdictions, and that sort of time, in our opinion, would be seriously limiting on the capacity of the Murray-Darling Basin Authority to draw the basin plan.

**Senator SIEWERT**—I appreciate that and there are different schedules, some of which reflects the referral of powers in the IGA. Even if you frame your answers in light of that, in terms such that you actually think this might be okay but given the time limits it is not at the moment. Of course, nothing is set in stone and there is potential to amend the act into the future, with the agreement of the states. I would be interested in your opinion regardless, and maybe flag which one you think could be done now and which one you would rather wait on.

**Mr Gregson**—Yes. We will have a look through the suggested amendments and come back to you as quickly as we can.

**Senator SIEWERT**—That would be very much appreciated. There is also the issue that the NFF raised as well, which was similar to your first comment on climate change versus new knowledge. It is the same concept they were using for critical human need, in terms of looking at the NWI and clause 50. They were basically raising the same issues as you are as to when it triggers clauses in the NWI. I am also interested in your comments around that and whether you think critical human need comes into the same category as the NWI kicking in in terms of their risk assessment.

**Mr Gregson**—It is our understanding that critical human needs is effectively a management tool in the instance that inflows are so low that the water that is available is required to sustain human life. As a result, once those sorts of levels of inflows are achieved it is unlikely that the compensation provisions within the NWI would apply in any event.

**Senator SIEWERT**—Thank you. I will relook at their submission in light of what you have just said.

**Mr Gregson**—Both the NFF and the National Irrigators Council have discussed the issue of the distinction between what is climate change and what is new knowledge. That is the heart of the NWI risk assignment provisions.

**Senator SIEWERT**—And what you have put in your submission?

**Mr Gregson**—Yes.

**Senator SIEWERT**—Thank you.

**CHAIR**—Senator Xenophon did you have any further questions?

**Senator XENOPHON**—No.

**CHAIR**—Mr Gregson, thank you very much for your time. I apologise for the delay with all the divisions today. That concludes today's hearing. The committee now stands adjourned.

**Committee adjourned at 7.13 pm**