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AND TRANSPORT

Reference: Water Amendment Bill 2008

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

Thursday, 13 November 2008

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

Substitute members: Senator Farrell to replace Senator O'Brien from 15 September to 12 December 2008; Water Amendment Bill 2008 [Provisions]—Senator Siewert to replace Senator Milne

Participating members: Senators Abetz, Adams, Arbib, Barnett, Bernardi, Birmingham, Bilyk, 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, Macdonald, Marshall, Mason, McEwen, McLucas, 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, Hutchins, Nash, Siewert, Sterle, 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 3.33 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 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.

On behalf of the committee I would like to thank all those who have made submissions and sent representatives here today for their cooperation in this inquiry.

[3.34 pm]

MATTILA, Ms Jenni, Coordinator, Bondi Group

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

Ms Mattila—The Bondi Group is related to the National Irrigation Corporations Water Entitlement Register.

CHAIR—Thank you. I invite you to make a brief opening statement.

Ms Mattila—Thank you for inviting me here today. I want to say firstly that a number of the things I will say are the policy of the Bondi Group and others are actually my own personal views, so I will be clear as to whether something is Bondi Group policy or my personal view.

The Bondi Group represents the locally owned irrigation corporations right around Australia. The Bondi Group, like many others, has over the last eight months or so been making numerous submissions to the ACCC that relate to the Water Act that is before us at the present time. A number of those submissions that we have been making have been in writing; most recently, a number of them have also been made in public forums.

In August this year I actually asked the ACCC whether at any stage they had looked at the impact of water trading in other countries. The answer was no, they had not. I said: 'But surely you have looked at the famous situations in the United States as to what happened on the West Coast? It was the basis of a very famous Oscar-winning movie, with Jack Nicholson. Surely you at least looked at the movie, even if you did not read the material.' But the answer was basically no, they had not looked overseas at all. They had not looked at the impact of water trading and the outcomes for communities and for environmental purposes.

In brief, unrestricted water trading on the West Coast of the United States, predominantly in the 1920s and 1930s, turned farmland into an environmental wasteland. The economic, environmental and social impact was severe. Please, Senators, if you get five minutes, Google either Owens Valley or Cadillac Desert. It will bring up photos of what happened to those areas as a result of the water being stripped from the land. I have given you a handout which is an economic assessment of what happened in the Owens Valley. It basically said at the end of it that the transfer of the water from the farmland to Los Angeles had a significantly detrimental impact on the farmers who sold their water. It also went through how the government—you have to remember this was a government purchase or government-sponsored purchase in the United States—went about ensuring that the government got the water for the best possible price. It makes for very interesting reading. And, in the context of what we are going through at the moment, it is all terribly familiar. I will move back to talking about the Water Act, but I think it is incredibly important that we not repeat the mistakes of history when that information is so readily available. I have been involved in this industry for almost 20 years and I must admit I was shocked that anyone who had spent any time in this industry was not familiar with the situation in the US.

To go back to the Water Act, the questions that you have raised today initially related to governance arrangements between the states. One of the very early submissions I put to the ACCC, which they thought was quite strange, was to suggest to them that the states actually compete amongst themselves in relation to the water sector. If you as a state can encourage water to be purchased in another state rather than your own home state, you will actually protect the economic benefits of your state from that water, so you get a lot of competition between the states in relation to: 'If we can push the purchases for environmental purposes into someone else's state then we can protect our own patch.' The ACCC six months or so ago thought that this was a strange thing to say. I think that in more recent times it is fairly obvious that that is what is happening. So we are not actually playing as a team at the moment; the states are competing with one another. That is unfortunate because it is not going to give us the best outcome. We need as a country to act with a common purpose.

Another one of the points you have raised is water theft. Water theft is a serious problem, however the far more serious problem is the state of some of the irrigation schemes that are government owned. Some of those government owned irrigation schemes have been allowed to run down over 20 to 30 years. It is quite important that we make a decision as a country as to whether we want irrigated agriculture, and where we want that irrigated agriculture. The cost of irrigation infrastructure is quite high—it is not cheap—however, the benefit to the country is significant. We need to do an assessment of what is going on in those irrigation schemes to find out whether or not they are sufficiently sustainable. We also need to look at how we ensure that each irrigation scheme is at full-cost recovery.

One of the difficulties that we have had is that there is no incentive within government schemes to ensure that the infrastructure is maintained. In fact, the incentive is that the infrastructure not be maintained, because the state governments take the view that there are better things upon which they can spend their money. So government schemes over a period of time have been allowed to run down. In the mid-nineties, as part of the 1994 COAG agreement, the view was taken that irrigation schemes should be transferred to local ownership where possible. As a result, New South Wales and Western Australia, predominantly, took the view that they would convert irrigation schemes to local ownership. Those schemes that were converted, particularly Harvey Water and Coleambally Irrigation, are now considered to be world leaders in irrigation infrastructure. They have been reviewed by the University of Birmingham in the UK and more recently by the University of Missouri, and it has been determined that the structure and the work that they have done has made them world leaders. I can provide those papers if you are interested.

The next point that I need to raise is the issue of internal transformation. To a certain extent that is covered in that paper by Libecap, who is a US academic. Internal transformation is of particular concern to irrigator-owned schemes. We have made a number of submissions to the ACCC on the point. Internal transformation is a very serious problem and, on our initial reading of the Water Act, transformation was only to relate to transformation away from a particular scheme, not internally for entitlements within a scheme.

In terms of internal transformation within irrigation schemes, the difficulty that it causes is that you may have a state government which is running their area; they would need to have one of their water men come into the locally owned irrigation scheme to read meters. The irrigation schemes that are owned by the farmers generally have computer monitored meter readers. The state government, in general, does it manually. So you would have one person who would have to drive 30 or 40 kilometres to read a meter within the irrigation scheme, and it would have to be replaced with a manual meter.

The other problem that we have, particularly in New South Wales, is that the irrigation schemes run the land and water management plans and are responsible for the environmental management in their local area.

CHAIR—I did invite you to make a brief opening statement. It is very important but I am sure there will be questions from senators around the table. If you can make it briefer it would be appreciated so that everyone can have a chance to ask a question.

Ms Mattila—That is fine. Transformation is a major issue. It has probably been raised with you before. I turn now to water markets and water trading under the Water Act. It does appear to me as a lawyer that there is no justification for separating out locally owned irrigation schemes from state government schemes. State government schemes, in general, are actually corporations; they are not the Crown. They seem to have been excluded on the assumption that they are the Crown, but if you have a close look at them and you are a lawyer it seems to me that they would be covered by the Trade Practices Act and should not be exempt from the Water Act. Everyone needs to be on a level playing field, both government owned schemes and locally owned schemes, and it is very important that water market rules and water trading rules applied consistently to government schemes and privately owned schemes.

At the present time—I just spoke to the Murray-Darling Basin Commission a few minutes ago—we understand that there are 13,400 gigalitres of surface water entitlement in the Murray-Darling Basin itself. However, that does cover flood harvesting, which is opportunistic. More specifically, and this is actually ABARE information, there are 4,500 gigalitres in the southern Murray-Darling Basin. The significance of that is that the government proposes to buy back 1,500 gigalitres; if we are talking about that buyback being mainly in the southern Murray region, potentially roughly a third of the water entitlements currently on issue could be subject to buyback, and we have to consider the environmental impact, the social impact on the economic impact. Thank you.

CHAIR—Thanks, Ms Mattila. I am going to break with tradition; I might ask a couple of questions first before I go to other senators. Now, I understand that your view is that the current water entitlement system operating in New South Wales and South Australia provides adequate security to water users and to finance providers.

Ms Mattila—Yes.

CHAIR—So I have two questions for you. Firstly, can you tell the committee if the Australian Bankers Association shares your views on this?

Ms Mattila—I think I should be quite specific that the banks share our view; Stephen Carroll of the Australian Bankers Association has a different view. However, in relation to the National Irrigation

Corporations Water Entitlement Register, the banks actually have a higher proportion of encumbrances on that register than they do on the equivalent state register. So it does seem to me that the banks are satisfied with the stability and the security of those water entitlements within locally owned irrigation schemes. The actual figures in relation to encumbrances on water entitlements are 17 per cent on National Irrigation Corporations Water Entitlement Registers, which are basically in New South Wales—so 17 per cent of those water entitlements are encumbered—compared to roughly 10 per cent on the state register. I have spoken to a number of the banks directly, and they are satisfied with the process. Mr Carroll's view is different, but he is entitled to his own opinion.

CHAIR—Okay. Secondly, can you describe to the committee what would happen to irrigators' individual water entitlements in the event that a water corporation were to become insolvent?

Ms Mattila—In terms of the entitlements?

CHAIR—Yes.

Ms Mattila—Nothing.

CHAIR—Okay. Very good; I am happy.

Ms Mattila—Have we got any lawyers in the room, and I will explain—

CHAIR—No; fortunately we are not lawyers!

Ms Mattila—I can hopefully explain it to you in a—

CHAIR—Sorry—you are a lawyer. Sorry about that!

Ms Mattila—I will explain it to you if you like.

CHAIR—You know it is a cold day in Canberra because they have got their hands in their own pockets! Sorry.

Ms Mattila—I will explain it to you. It is quite simple. Basically, the way it works—and I actually set up a number of these schemes, so I hope I know how it works—is that the irrigation corporations hold what is called a bare legal title. It is a bit similar to a trust, but the beneficial interest is held by the irrigators themselves in terms of the individual entitlements within the irrigation scheme. The individual irrigators can actually trade that entitlement outside that irrigation corporation, as you know, and what we would call 'perfect' their title—that is just a legal term; it does not mean that it is better or worse than anything else. So the reality is that the irrigation corporation itself cannot encumber that water entitlement because it only has a bare legal title, and if anything happened to the irrigation corporation the irrigators' rights would be protected.

CHAIR—Thank you, Ms Mattila. I owe an apology to Senator Xenophon, who I believe was at one stage a lawyer.

Senator XENOPHON—Don't hold it against me!

CHAIR—But he did not own up to it very quickly.

Senator XENOPHON—And Senator Farrell.

CHAIR—So was Senator Farrell. Whoops-a-daisy! I will cop it on the way out! Senator Siewert.

Senator SIEWERT—I apologise for not being here at the start of your evidence, Ms Mattila. I was unavoidably detained in the chamber. Do you think there is anything in the bill that needs amendment? And I apologise if you covered this before I came in.

Ms Mattila—My main concern relates to the transformation issue. My understanding was at the time that transformation issue was only meant to relate to transfers of water entitlements from an irrigation scheme to an external third party—what is called in the business an 'external permanent transfer'. However, the ACCC has chosen to interpret it to allow an irrigator who is currently within an irrigation scheme to convert that entitlement to the state register. The significance of that in terms of trying to run one of these businesses is actually profound because it would result potentially in the break-up of that irrigation scheme. The ACCC has said to us that this is only voluntary; however, what we are concerned about is Mr Carroll and the ABA. As I said, we have never had a problem with a bank, and we find it very difficult to understand why the ABA has taken this line when in general the banks are quite happy, are being supportive and have been involved with the irrigation corporation since the mid-nineties. So they are familiar with it. That would be my main concern at the moment and the concern of the Bondi—that issue of internal transformation. It will make it very difficult to maintain their environmental obligations, it will result in problems with drainage in some areas because if

you excise, within that corporation area, certain areas of land, the drainage is actually owned by the corporation, so they would not have a direct right to access the drainage. The problem with drainage is that, if you are going to have environmental difficulties, that is where it will come. So the environmental obligations are imposed through the corporation on the member and it is managed through the relationship between the corporation and the member. If there is a prosecution in relation to an environmental breach, it is actually the corporation that is prosecuted, not the individual irrigator. Then the corporation itself deals with the irrigator. If there is no direct relationship between the two, it is a very serious problem. They were not designed when they were put together to withstand this type of pressure.

Senator NASH—So that is the issue; what do you see as the solution to that problem?

Ms Mattila—Well, we do not believe it is appropriate that people who are within a corporation, if you want to transfer your water out to someone—say if you are in New South Wales and you are in, for argument's sake, the western Murray, there is no problem with transferring your water entitlement from western Murray to someone in South Australia. Our understanding was that that was covered in the act. That happens now. When we are talking about around Australia, it is totally different, but we will talk about the Murray-Darling Basin for the moment. Internally, those irrigators are accessing infrastructure that belongs to a group of people. The arrangements were that that group of people would manage that area. It is very difficult for one person in the middle of it, for example, to say, 'I don't want to be involved in this. I don't want to comply with your rules. I want the state government to actually come in and manage my water entitlement,' because that is what this actually means. The state government, my understanding is, and I have spoken to as many people as I could in New South Wales, do not support this approach because they do not want the responsibility of looking after people individually within irrigation schemes. One of the reasons that they excised it from government ownership was to actually get away from this particular problem. The other issue that they are obviously concerned about is that they do not want any of these irrigation schemes to get into financial difficulties, and that is a likely outcome of that policy. It needs to be looked at in a broader perspective. It needs to be understood a lot more carefully in terms of what will happen if you do this, and I do not think that it has been thought through properly.

Senator SIEWERT—I just wanted to drill down a little bit. Senator Xenophon may be about to ask the same question, and that is, what amendments do you think need to be made? Have you gone that far, and which part of the bill do you think needs to be fixed?

Ms Mattila—I think that is section 96. I should say that that I can put back proposals as to the amendments that I think need to be made—

Senator SIEWERT—That would be very much appreciated.

Ms Mattila—because I was actually a policy officer and I used to do legislation for a long time. So I will put that back to you.

Senator SIEWERT—Okay. Have you raised this with government?

Ms Mattila—We have. I could not count the number of papers that I have written to the ACCC on this. I have spoken to Senator Wong's office on this. I have spoken to many people, and so have all the members of the Bondi Group—they have made numerous submissions on this.

Senator SIEWERT—What has been the response?

Ms Mattila—Initially we were told that they were not aware that there was a problem. The ACCC suggested that we speak to Senator Wong's office, which we did. However, what we are after is clarification that this will not happen, because we have to act in the best interests of everyone, and sometimes people need to act as a community. I will use Pioneer Valley in Queensland as an example for a moment. The Pioneer Valley irrigators, in Mackay in Queensland, have voted unanimously that they would like to own their irrigation scheme. They have paid for the irrigation scheme and for all their infrastructure. It is currently in Queensland government ownership because there was no option for them to own it. We have been trying to convert it to local ownership for about four years. Those people made the choice that they did not want to be on the state register. They have actually leased their water back to the entity that they would like to own the irrigation scheme, but if this particular approach comes through then it forces them back. People have already made this decision. The act and the ACCC's approach do not allow people to say: 'I'm on the state register or on Murray Irrigation's register, and I think I'd like to be on the Goulburn-Murray Water register. Let's be on somebody else's register.' If you are going to be fair, it has to cut both ways. So it seems to me that this is very much being driven down a one-way street, that the locally owned schemes are disadvantaged significantly in

relation to this particular proposal and that no-one has thought through the consequences. If you want to have it so that you can go on the state register, you should also allow the people on the state register to come into the irrigation schemes if they choose, and that is the Pioneer Valley example. But it needs to be thought through, and it has not been.

Senator NASH—I will ask another question on this before we move off. Just so I understand this clearly, say you have an irrigation district that somebody, as you mentioned in that example at the beginning, wants to sell out to the state register. Wouldn't there then have to be a requirement that the infrastructure provider would have to allow access to that state body to be able to provide the infrastructure to that person within that community group?

Ms Mattila—They do. If the state government wanted to come in and provide that service to that person, that would be what would actually have to happen.

Senator NASH—That would have to happen, wouldn't it?

Ms Mattila—But if you ask the New South Wales government, 'Is this what you want to do?' my understanding is that they have advised that they do not want to do this. The cost to the state government would be prohibitive. It is not sensible.

Senator NASH—No, it is not.

CHAIR—On that, Senator Nash—

Senator NASH—Sorry. It was quite important; otherwise it would have never gone in.

CHAIR—You are probably one of the better behaved ones on this committee, apart from Senator Siewert and me.

Ms Mattila—The state government thinks that this is an odd thing to do as well—I am speaking for New South Wales. We do need to clarify it with them—you really should ask them—but that is my understanding of their position, and I have actually asked.

Senator XENOPHON—To follow through on those things, firstly, you referred to correspondence between your organisation on one hand and the ACCC and the minister's office on the other. Could you provide to the committee some representative correspondence—not necessarily everything—to give us an idea of the flavour and substance of that correspondence.

Ms Mattila—Yes.

Senator XENOPHON—Secondly, you referred to the fact that, in situations where there is a breach, the corporation gets prosecuted, not the responsible party, in a sense, and then it is between the corporation and the person or irrigator responsible. What happens in those situations? Is the corporation's only comeback under the terms of the contract?

Ms Mattila—It is not a contract; it is a membership arrangement.

Senator XENOPHON—Sorry. So it is a civil remedy.

Ms Mattila—Yes, that is right.

Senator XENOPHON—Is that what happens? That is it?

Ms Mattila—There are a number of other things that can be involved. If you have someone who is creating environmental damage, it may be that the decision is made that access to the water is terminated. I have not actually seen that happen—the only time I have ever seen that happen in a corporation is where there was water theft—but that option is generally there. People tend to be very well behaved because they know that is an option.

Senator XENOPHON—But it is the ultimate sanction?

Ms Mattila—It is the ultimate sanction. The state government cannot do that because they are within the locally owned organisation. All the state government could do if the state government took action against a particular irrigator is that they can issue them with a fine. Generally fines are not terribly effective, not just with irrigators but for all sorts of reasons. The more effective remedy is basically you are in a community which takes a very dim view of people who do not comply with environmental obligations and a very dim view of people who create problems for the corporation. So the community pressure is actually far more effective than fines that would never be imposed. In 1993 I did a paper for the New South Wales government on the blue-green algae scare. It is one of the earliest things I did. What came out of that was land and water

management plans. It was a recommendation that I made at the time. The reason that those land and water management plans are in like a business plan is because the state governments were not prosecuting people for environmental breaches and it was far better to get a group of disparate people around the table and make them sit and negotiate through these sorts of issues. That way everyone could see everyone else's point of view and it actually builds community responsibility for the environment and for the local economy.

CHAIR—Senator Siewert, have you concluded your questions? I will go to Senator Nash.

Senator SIEWERT—I have got a question on a different issue, so of Senator Nash is pursuing this issue—

Senator NASH—No, it is on a separate issue.

Senator SIEWERT—Okay. I want to change tack a little bit. There has been a lot in the media recently around the impact of mining in the Murray-Darling Basin, particularly where there is groundwater involved. Have you got a position on that in terms of the impact of mining, and do you think we should be looking at moving to protect the Murray-Darling Basin from the impacts of mining?

Ms Mattila—I will draw a slightly different example. Some years ago one of the coalmines in Newcastle broke into the groundwater that fed the Hunter River. I do not know whether you remember that. These sorts of things can have very serious impacts in terms of groundwater, and I think groundwater is actually one of the areas that has been almost totally ignored and neglected. There needs to be a lot more work put into it. We have significant areas of groundwater around Australia where there has been no proper modelling or mapping. In Queensland in particular and also in the Northern Territory and parts of Western Australia, areas like the Yarragadee, the Nangarra mound in WA, the Burdekin in Queensland, there has been virtually no work done on groundwater and maintaining the integrity of groundwater systems. Apart from the Murray-Darling Basin, there needs to be a lot more time, work and effort put into protecting those groundwater systems, making sure that as far as possible we do not have problems of contamination. We also need to look at the issue of groundwater areas that impact on the Great Barrier Reef, which is a slightly different issue to the mining issue.

Senator NASH—Something you mentioned in your opening remarks I would like you to expand on a bit. It was the question about how we make the decision as a country as to whether we want irrigated agriculture. I think that links to a broader question of whether we want sustainable rural and regional communities. How do you see that decision being made? I think it is a very important point that a lot of these decisions being made about a number of areas with regional Australia at the moment are coming back to whether or not we want a sustainable regional and regional rural Australia—

Ms Mattila—And where is it.

Senator NASH—And where is it. That is a long way of saying, how do you see us getting to some kind of process to make that decision, if you like?

Ms Mattila—I must admit that at this stage this is my personal opinion because there are different people with different views. The Bondi Group has very set policies that are set out in its constitution and we do actually pass policies. But, stepping back to my own personal views on this, I think we need to be very careful about what we are doing. I do not think that there has been enough assessment done in relation to where the water is being bought—

Senator NASH—Yes.

Ms Mattila—and how it is being bought. As I said, one of the reasons that I handed around the Libcap article is that there is a little bit in there on the social and economic impact on the United States of that particular buyback, but if you also go through the literature, there are articles by the Smithsonian—and I did mean to bring those with me but it was a bit hard to print them out. We need to actually look at this and ask, 'What impact is this going to have on towns? What environmental impact does it have if you take all of that water away from a particular area?' Because it may not give you the best environmental impact.

I drove between Mildura and Griffith about two years ago. Mildura is an area of high-security water and permanent plantings. I crossed the border around Dareton, as you do, and drove to Griffith. Between Dareton and Griffith there was not a blade of grass or a live animal—there was not even road kill. When I got into the area around Coleambally, the native animals had congregated around the irrigation areas because there was water there and the local farmers were actually looking after emus, of all things, and kangaroos, because there was no food for the native animals further out. We have also got to remember that the Murray-Darling Basin area, when Europeans turned up, was saltbush and salt pans. It was not a productive area. When you look at those areas around Carnarvon in Western Australia—which is now one of the most productive areas in

Australia—you see that irrigated agriculture manages the land. It makes it productive. If you let it revert to its natural state, it may not give you the environmental impact that people think it will.

Senator NASH—That is a good point.

Ms Mattila—We need to think this through. As I said, the US have had the experience of doing pretty much what we are doing now. The only difference is that we are buying it for the environment; they bought it for their cities. But the impact, in my view, is similar. We need to think this through. What we are doing is going to have a major impact on the Australian economy. It is going to have a major impact, probably not so much on Queensland but on New South Wales, Victoria and South Australia. If the figures are right and there are around 4,500 gigalitres of permanent entitlement in the southern Murray-Darling Basin—and that figure, as I said, is from trying to drill down as well as I could—if we pull out 1,500 for the environment, that is a third.

Senator HEFFERNAN—How much?

Ms Mattila—There are 4,500 gigalitres in the Southern Murray basin.

Senator HEFFERNAN—Not the Murray?

Ms Mattila—Just the Murray.

Senator HEFFERNAN—There is 5,700 there, isn't there?

Ms Mattila—I have been trying to get to the figure myself.

Senator HEFFERNAN—I think it is 5,700.

Ms Mattila—Well, if you pull out 1,500, it is a lot of water.

Senator HEFFERNAN—No; if we buy back—sorry to intervene but, under what is proposed, if we spend the money on both the savings and the buybacks and the science is at the 60 per cent percentile of the equation, there will be a zero allocation for low-security licences when we have done it all.

Ms Mattila—Yes, and it will all be in high-security, which we do not really have much of anyway.

CHAIR—Senator Nash, do you have any more questions? We are running close to time.

Senator NASH—How about I very kindly cede to my colleagues who have more questions?

CHAIR—Senator Siewert?

Senator SIEWERT—No, I asked my extra question.

CHAIR—Senator Heffernan, do you have a question—not a lecture, a question?

Senator HEFFERNAN—No.

CHAIR—You may ask your question, Senator Nash. Do you have a question?

Senator NASH—I did, but now I have completely lost my train of thought, Chair!

Ms Mattila—If you wanted to send us some questions that would be fine. We will make our best effort to answer them.

CHAIR—Senator Siewert.

Senator SIEWERT—Ms Mattila, There were questions on notice, which you said you would look at, on where and how you thought we should be amending the bill to address those issues around transference and how to fix up the problems that you have raised. If you could give us answers to those questions it would be very much appreciated.

Senator NASH—I just want to clarify, Ms Mattila—now that I have got my train of thought back—your comments about not enough assessment being made. Do you think there is a real risk, then, that the government is making decisions on buyback of water at the moment that may not be actually going to deliver the outcomes they want, in terms of the environment, and that the government should not be doing it until the where, what, why and how have been more thoroughly assessed? Would that be a fair comment?

Ms Mattila—I think that that is probably the fairest thing to say—that we do need to think through the issues a little bit more than we have. As we know from last time, there has not been a socioeconomic impact statement done on the buyback. It is meant to be done in May next year. I think that we need to be clear that it is quite clear that the basin is actually overallocated. However, one of the things that we need to sort through is what we are going to focus on. Are we going to focus on high security water? Are we going to focus on

permanent plantings—because you must have water to do that? Are we going to focus on general security water? Are we going to focus on crops that you can either plant or not plant depending on the environmental conditions? From what I can see, those sorts of issues have not been thought through in enough detail.

The ACCC's brief does not go that far; it is only about the water market and trading rules. The thing that I would come back to, which I think is straightforward in the act but which seems to have got confused, is that the government owned corporations, in my view, should be caught by the Water Act, but for some reason the ACCC has taken the view that they are the Crown. However, as a lawyer I say that they are not the Crown; they are statutory corporations. Statutory corporations, as a matter of law, are generally not the Crown unless they are so closely linked to government that they have virtually no separate, independent existence. So it seems that that area under the act needs to be looked at more carefully because it seems to me that entities such as State Water, Goulburn-Murray Water and Lower Murray Water are not the Crown; they should be covered by the Water Act.

Heaven help us—we all remember Work Choices. At that time, those entities were of the view that they were caught by the Work Choices legislation. If they are caught by Work Choices, it seems to me that they would also be caught by the Water Act; there is no distinction between the two. So I think that that is something where, perhaps, the Senate should go back and ask the question: are these state government irrigation corporations exempt simply because there is a view that they are the Crown, and are they the Crown? My view as a lawyer is that they are not. They are different from departments of the Crown and ministers of the Crown. In general, state government corporations would under normal circumstances be caught by the Trade Practices Act and by this Water Act. But it is, perhaps, something that the Attorney-General could answer.

Senator NASH—Thanks very much.

CHAIR—On that, Ms Mattila, I thank you for your time today.

[4.13 pm]

BUCHAN, Dr Arlene, Australian Conservation Foundation

CHAIR—I welcome Dr Buchan from the Australian Conservation Foundation. Do you have anything to say about the capacity in which you appear today?

Dr Buchan—I am a healthy rivers campaigner with the Australian Conservation Foundation.

CHAIR—Thank you very much. Do you wish to make a brief opening statement before we go to questions?

Dr Buchan—Yes, thank you. Thank you very much, once again, for the invitation and opportunity to be here. First off, I would like to say that we very much welcome the Water Amendment Bill. We are looking forward to seeing the Murray-Darling Basin Authority fully brought into being and, of course, their responsibility in developing the Basin Plan. Importantly, as part of that there are the sustainable diversion limits, of course, and the environmental watering plan. Of course, we have various concerns about the Water Act and the Water Amendment Bill, as I have articulated in the paper; you will ask questions as you want. I really think, spurred on by Ms Mattila, that the most important thing that I can say today is that the sooner the amendment bill is passed and these reforms come into being the better.

Largely, the reason why the basin is in the state that it is in, and the environment is in the state that it is in, and the communities around there are in the state that they are in, is that we have spent decades delaying and failing to put into effect the kinds of reforms that we need, to put our irrigation industries onto a sustainable footing so that they can continue to be productive into the future, and, of course, to make sure that our natural environment—in particular, its capacity to support our natural resource systems, which underpin our irrigated agriculture and other forms of agriculture as well—remains viable into the future.

As well as that, I think that, importantly, in order to achieve that, to expedite the implementation of the act and the Water for the Future program we should be accelerating the rollout of the Commonwealth programs—all of the buyback, the infrastructure investment and the structural adjustment programs; these are all important parts of the reform process. There is no justification for delaying the rollout of any of them. I think that there are great opportunities to not maintain those as individual, separate, siloed projects anymore but to integrate the investment of those different funding streams. And there are great opportunities to be looking from an irrigation district upwards—giving communities some of the information and the tools they need so that they can start planning their irrigation districts and work out what they want them to look like in the future. So, kind of moving away from the ad hoc implementation of those programs, to looking at an irrigation district and asking: what do they want this area to be like over a 50-year, 70-year, or 100-year time frame, taking into consideration the impacts that climate change and so on will have, and giving them some of the information and tools they need to be involved in the decision-making and the planning process.

I think our main concerns are articulated in the paper, which I know you have, so I might leave it at that and just go to questions.

CHAIR—Thank you, Dr Buchan. I know that Senator Farrell has got somewhere else to go at 4.30 pm, so we will go straight to Senator Farrell.

Senator FARRELL—Thank you for coming along, Dr Buchan. I just wonder whether you have any view about the tactics of the Liberal and National parties in Victoria, who have been trying to block the intergovernmental agreement between the federal government and the state government in the state parliament.

Dr Buchan—My understanding is that they have blocked the legislation. I would not want to comment on the politics of that. But I did say, in my opening statement, that, warts and all—and there are plenty of warts in the amendment bill and the act and the Water for the Future plan, in my view, but, nevertheless, the most important outcome this year would be to press ahead with implementing those changes. So the sooner the amendment bill is passed and the referral of powers takes place and we can start to give effect to Australia's commitment under international obligations like the Ramsar convention and so on the better, because the more quickly we can start to roll out the reform agenda the better it will be for the natural environment, and for the irrigation communities and other communities that rely on a healthy Murray-Darling Basin.

Senator FARRELL—So does it follow from that answer that you would be opposed to any further amendments to the legislation that would require another meeting to review what—

Dr Buchan—There are plenty of changes which I think would benefit the implementation of the Water for the Future program and result in better outcomes. But, really, I think that anything which resulted in considerable delays in the Murray-Darling Basin Authority being properly formulated, in the basin plan being pulled together, in the environmental watering plan and sustainable diversion limits being developed, would be all bad news for the basin, both for the natural environment and for irrigators and other communities that rely on the basin.

Senator FARRELL—Yes, but if it does require renegotiation—and therefore, presumably, reasonably significant delays—are you not in favour of us attempting to seek to amend the legislation?

Dr Buchan—There are a number of points which I have made in my paper. Take the definition of ‘critical human needs’, which I think is very confusing, very ambiguous and incredibly broad. In the discussion of, ‘What are critical human needs?’, it is right and proper that critical human needs should be seen as a priority. But whatever was wrong with health, drinking water and sanitation? They are critical human needs. The way I read the amendment bill, ‘critical human needs’ could cover anything—and, in fact, they have covered things from abattoirs to golf courses. So things like that ought to be amended to make sure that ‘critical human needs’ are critical human needs, or criteria put around that so that we do not end up with golf courses—which may well be a significant contributor to the socio-economic fabric of an area—falling under the definition of ‘critical human needs’. That is not what a critical human need is.

Senator FARRELL—I suppose the point I am making, though, is that if you want to get this legislation up and running quickly without having to go back and renegotiate the whole box and dice, which of course is the potential, do you favour us proceeding?

Dr Buchan—The situation we are in now with the act, the amendment bill and the Water for the Future program is so much better than the situation we were in a couple of years ago. Really, whilst nothing will ever be perfect and there is plenty of room for improvement—and we would like to see that and we have been consistent in many of the suggestions that we have made since January 2006, when the previous Prime Minister put forward the first iteration of this plan—the worst thing we can do is delay, delay and delay, more and more and more, because that is why we are in the situation that we are in. There is no reason to delay any further in rolling out the reform program.

Senator FARRELL—Thank you.

CHAIR—Your words are very sobering. We had a submission and witnesses from Plug the Pipe yesterday and I think one of the key phrases there was, ‘We really have to keep petty politics out of this and get above the politics.’ I do honestly say that it is a sobering comment that was in your opening statement.

Senator XENOPHON—You have said that these are steps forward in terms of the bill and the basin plan. Do you have a comment about the need for the minister to have the power to implement an interim basin plan so that on an interim basis, pending the finalisation of the plan in 2011, if there are any urgent measures that need to be taken the minister can do so? That is the first thing—perhaps if I bundle them all together.

The other thing is that there are some issues that are not part of the intergovernmental agreement. So, if there were an amendment to the Water Act and it did not impinge on the intergovernmental agreement, it would not have to go back to the states. One of those issues is the north-south pipeline. Do you have a view about, for instance, either measures that prohibit that water going to Melbourne or, alternatively, a measure whereby the authority would be required to undertake an urgent audit of the environmental impact in terms of whether the water is there to go to Melbourne on a sustainable basis?

Dr Buchan—Firstly, on the question on whether there is a good reason to have an interim plan, I think the reason—I am reiterating this—is that this is a desperate situation across the basin and we cannot proceed too quickly in implementing the type of reforms that we need. In the previous Senate inquiry, which I also presented at, the Wentworth group put forward their proposals for an interim plan. Their view on that is that the story is not complete but we know enough already to understand in broad parameters the extent of change which is needed and the direction we need to go in. So I do not agree with Ms Mattila’s comments that we should stop the buyback program, delay this and delay that until we have proper socioeconomic understandings of what things like the buyback program will need.

The fact that we have delayed reform for so long is why communities like those around the Lower Lakes and the Coorong are in an absolutely desperate socioeconomic circumstance. They are victims of an unhealthy environment. They are victims of overextraction and overuse upstream. So yes, I think that, given that it will take quite some time to get the basin plan right, to get the environmental water plans right and to get the

sustainable diversion limits right, there is a good call in the meantime to have an interim basin plan, because we do have a reasonable understanding of what we need to do and where we need to go.

The second point was in relation to the north-south pipeline. Again, I am not across the situation in the US in particular around the Imperial Irrigation District and the Salton Sea which resulted from that. But I do understand that Los Angeles bought a whole lot of water out of the Imperial Irrigation District and moved it is part of an interbasin transfer to Los Angeles with bad outcomes for that irrigation district. That did not sound too dissimilar from what we are talking about in relation to the north-south pipeline. You have the Murray-Darling Basin, which is on its knees, and there is a suggestion that they will move 75 gigs of water annually from the Goulburn district to Melbourne when Melbourne pumps about 400 gigs of water out to sea every year as wastewater. It is ridiculous. The basin is on its knees. Why would anyone propose moving water from a basin which is on its knees, away from communities and the environment which are stuffed, and send it to Melbourne, which can look after itself?

Senator NASH—Well said.

Senator XENOPHON—The final question was—

CHAIR—We do not often see you lost for words, Senator Xenophon, but that interjection achieved it. So carry on please, Dr Buchan.

Dr Buchan—I have just remembered the end part of your question. I think the transfer of 75 gigs of water from a basin which is really struggling to Melbourne, which should be well capable of looking after itself, is fundamentally flawed and wrong at a conceptual level. What is even worse is that I do not think that any of the numbers or the modelling or so on which has been used to underpin public investment in that sort of infrastructure has been done. I believe that the Plug the Pipeline gentlemen sitting behind me know a lot more about that than me. I am sure they would be very happy to show you what they understand to be some of the fundamental flaws in the modelling behind that.

Senator XENOPHON—Further to that, do you see a role for the Murray-Darling Basin Authority to undertake scrutiny of those figures—an audit of the project, if you like—to see if it is sustainable, as has been asserted by the Victorian government?

Dr Buchan—It may well fall to the authority or to the Commonwealth government or to an independent auditing body. Perhaps it is something that the National Water Commission might become involved in. I do not have a strong view. I have not thought about who might be the most appropriate body to undertake an audit, but I understand that the Victorian Auditor-General expressed some very grave concerns about some of the modelling data and information underpinning that project. I am sure that any independent and credible auditing body could be made responsible for doing that.

Senator XENOPHON—Thank you.

Senator NASH—I will just follow on from that. Regarding the premise that the water will come to Melbourne from savings made in the basin, given the dire straits of the basin and all of the work that is being done to make sure the basin is sustainable, isn't it completely stupid that, even if there are savings made within the basin, they do not stay in the basin?

Dr Buchan—I have no further comment on that. That is absolutely right, though. Savings clearly ought to be made, and they should stay within the basin and be distributed, one way or another, between the environment and the communities which live there. In a system which is grossly overallocated, the main aim at the moment is to distribute savings, if they have come from public money, to the environment to address that situation of overallocation. Of course, that is a secondary argument to the one which you just made. Any savings made in the basin should stay within the basin.

Senator NASH—Thank you. I have other questions but I will come back to them because they are not on this topic.

Senator HEFFERNAN—One of the flaws of this lazy plan that is the pipe is that the catchment that they are taking water out of is in the same rain shadow as Melbourne. If it is going to be wet in the catchment, it is going to be wet in Melbourne. If it is dry in Melbourne, it is going to be dry in the catchment. They are not taking it from a different rain shadow. Isn't that stupid?

Dr Buchan—Yes, I think it is. I have heard that argument before, once again it is interesting, and it adds to the ludicrousness of the whole arrangement. As Senator Nash says, if savings are made in a basin which is

really struggling to maintain its values whether those values are of the natural environment, irrigation or the towns and so on that rely on water, savings in the basin should stay in the basin.

Senator SIEWERT—I want to follow up on some of the comments that you have made in your submission as they relate to your comments about wanting to go ahead with getting the legislation through and I can appreciate that. You have made a number of comments about the independence of the authority. It came up yesterday when Professor Young responded to a question from Senator Heffernan around independence and the right of veto of the states. That is one of the issues you have raised and there are the critical human needs which Senator Xenophon touched on. You actually say in your submission:

This entire section requires further discussion and thought before the *Amendment Bill 2008* is passed.

I am trying to drill down further into when you are saying you think the bill needs to go through. Do you think that these amendments do need to be dealt with as long as they are dealt with in an expedient manner?

Dr Buchan—If they could be dealt with in an expedient manner. In my discussions with the irrigator groups that I am familiar with or individuals within those that I rub shoulders with on a day-to-day basis no-one else thinks that the critical human needs section is okay. They are likewise concerned that the current definitions in there could cover anything and, in fact, do cover everything from abattoirs to golf courses and so on. I think there is reasonable agreement within major stakeholders about areas where consensus could be reached quickly and that could be amended quickly.

I do have some quite grave concerns about the ability of the newly constituted governance arrangements of the ministerial council, the Basin Officials Committee and so on to be able to really improve outcomes in terms of decision making. I think that the reforms should have gone much further. To try and resolve that to the satisfaction of the likes of Professor Young and the Australian Conservation Foundation would cause delay and therefore we would rather see the bill go through warts and all.

Senator SIEWERT—Do you mean with respect to the independence area?

Dr Buchan—I think that the situation we have is greatly improved from the previous situation. There is a Murray-Darling Basin Authority which is skills based and while it is not free from ministerial influence or direction it is substantially more free from that than the existing governance arrangements. Will the new arrangements be better than they currently are? I think there is no question about that. Could they be made even better? Yes, but not if it means delaying for another two years. The point that I make in the paper is that there is the experience of John Scanlon who was a lawyer and remains a lawyer—nothing wrong with that.

Senator XENOPHON—You do need the odd one when you are in trouble, I have to agree to that!

Dr Buchan—He of course has the benefit of two different terms on the Murray-Darling Basin Commission as a commissioner. Once was in his role as the head of the South Australian Department of Water, Land and Biodiversity Conservation and his second term was as an independent commissioner. Across those two terms he watched what he thought was poor decision making, parochial interest, state based interest and so on and saw how that resulted in lowest common denominator decision making, and how processes which required unanimous voting at the ministerial council level and the commission level resulted in poor decisions and poor progress which was therefore largely responsible for a failure to make good progress across the basin. So he put a lot of time and effort into thinking about the ideal governance arrangements that we should be putting in place for the likes of the Murray-Darling Basin as it stands. They seem to have been largely ignored by the drafters and the developers of the Water Act and the amendment bill. I think that is a great pity. Nevertheless, the situation that we will inherit with the passage of the amendment bill is still considerably better than we have had for the last 15 years.

Senator SIEWERT—I think you have just been given a copy of the amendments from Professor Young.

Dr Buchan—Yes.

Senator SIEWERT—One of the amendments he was suggesting is that we make the authority responsible for implementing the objects of the act.

Dr Buchan—Yes. I think I made that point in mine as well, that it is not really clear in the objects of the act that, for example, the authority has a responsibility to make sure that we restore rivers to health and look after our wetlands and that kind of thing. Given that the referral of powers is predicated on Australia better meeting its commitments to international obligations—specifically, the Ramsar convention and the Convention on Biological Diversity, and related things such as the Japanese and Chinese migratory bird agreements—to not

have the objects of the act really clearly state, 'This is to look after the feeding and breeding ground of migratory birds,' is a bit of an omission. And I agree with all of Professor Young's comments.

Senator SIEWERT—His was basically giving a similar message to yours: 'We need to get on with this; we have had enough delay'—

Dr Buchan—Yes.

Senator SIEWERT—but there were four key amendments. Rather than taking up the committee's time now, could you provide some feedback on each one of those?

Dr Buchan—I agree with all of them. I have read it; he sent it to me yesterday.

Senator SIEWERT—Okay. So you think they are amendments we should be prioritising?

Dr Buchan—If those amendments could be made and the bill gets passed quickly without any further delay then, yes, I agree with all of the amendments he suggests.

Senator SIEWERT—Thank you. We were exploring the issue around the north-south pipeline, the Sugarloaf pipeline—whatever we happen to be calling it at the moment.

Senator NASH—It could be just 'the pipeline'.

Senator SIEWERT—I think I am on record as saying 'the stupid pipeline'.

Dr Buchan—You are not the only one.

Senator NASH—I think we all would be.

Senator SIEWERT—The issue of critical human need came up yesterday when we were talking to the authority, and I have put a number of questions on notice to them because we had so many divisions in the Senate we kept getting interrupted. It is our understanding now that because the water for the pipeline is coming off the Goulburn, which is a tributary, and the conveyancing rules only apply to the Murray, the critical human needs factor does not kick in for the water there would be taken out for the pipeline. Is that your understanding of the bill?

Dr Buchan—That is my understanding, but I do not think there is any great need to understand that beyond Senator Nash's comment that it is just a crazy idea to move that water from an area which is struggling in itself to Melbourne.

Senator SIEWERT—Yes. And therefore, as we understand it, they would be relying on the allocation that is made in general to the scheme that they are buying the water from. To my mind that means that when we are at very low water levels there will be no water to put in the pipeline.

Dr Buchan—That is correct; that is my understanding.

Senator SIEWERT—So Victoria is building a very expensive pipeline that likely could have no water in it for significant periods of time.

Dr Buchan—Yes. That is one of the reasons I suggested some of the modelling and the figures and the numbers which have been used to underpin the viability of that pipeline and moving water may well not stand up to a rigorous audit or analysis.

Senator SIEWERT—Yes. My final question relates to a question that I also put to the Murray-Darling Basin Authority yesterday—and I will put to the department today—about enforcement of protection of environmental flows. They are responsible for managing environmental flows and protection of those environmental flows from theft and version. I am wondering what your opinion is of the enforcement powers they have currently to ensure that environmental flows are not stolen and not diverted, which there is pretty ample evidence is occurring at the moment.

Dr Buchan—I think there is great room for improvement across the whole basin. I think there has been a significant improvement in that, not least because there used to be an understanding by many irrigators and diverters that if they just took water they were taking it off the government. In fact, they are not taking it off the government; they are taking it off other irrigators and off the environment and so on. If you want me to come back to you with more specific comments on the enforcement provisions I would be happy to do that.

But there are other issues as well, which came out in the previous inquiry, that do not necessarily relate to theft or inappropriate diversion but do in fact relate to allowable diversion under the water-sharing plans and could themselves be a great risk to the environmental flow which may be acquired by a government in upstream regions. For example, if the Commonwealth acquires water in Queensland we need to make sure

that, whilst it passes through New South Wales, it does not under the water-sharing plans become available for extraction by irrigators. There are a number of areas that need to be tidied up there to make sure that we look after the integrity of environmental water and keep it going to the sea as it passes through the system, independent of any risk of theft or inappropriate diversion.

Senator SIEWERT—So are those amendments tightening Queensland, New South Wales and Commonwealth laws?

Dr Buchan—I am not even sure if there needs to be changes to the law as such. They are part of the water-sharing plans which need discussion. My understanding is that there is a considerable amount of goodwill involved at the moment in discussions between Queensland and New South Wales and the Commonwealth to make sure that in situations like that I have just said, for example, resulting from the purchase of Toorale, you do not end up with perverse outcomes—for example, water bought in Queensland or northern New South Wales being removed further downstream and, therefore, being a waste of taxpayers' money. My understanding is that all the agencies involved in that understand what the problem is and there are good faith negotiations going on to try to resolve that.

Senator HEFFERNAN—We may as well stay on the Queensland border. Given the vagaries of the science of the future and the predictions that there may be increased flow in the northern part of the Murray-Darling Basin and a serious reduction in the critical southern part, do you have a view on the likes of the Lower Balonne? There is a proposition under the resource operations plan to proceed with the issuing of licences right now against the background of uncertainty and the obvious overallocation of the system, the destruction of the flood plain and all the rest of it. Does the Australian Conservation Foundation have a view on that? The biggest licence in the Lower Balonne proposed under the draft ROP is 469,000 megalitres, and curiously the chairman of the process is on the legal document for the benefit of many millions of dollars. Everyone just wants to turn a blind eye to that. But that is just a side issue.

Shouldn't they wait and just grandfather the present arrangements in the Lower Balonne? For a start presently the minister in Queensland does have the emergency power to prevent overland capture, there is that power to let the water go down the river. Shouldn't they just leave things as they are, which will not affect the operations on those farms if they get an event in the Culgoa or the Condamine-Balonne, until they do the work to determine what is sustainable extraction both from the river and possibly from the overland flow, given that they have completely destroyed the largest flood plain in Australia and squeezed the Ramsar site in the Narran Lake? What does the Australian Conservation Foundation advise this committee and the government to do about that, given that the valuation for that one particular licence, which is proposed under the advice of the ROP to issue it and then possibly buy it back, is \$175 million?

Dr Buchan—I think the situation there is absolutely fraught. One of the reasons I would like to see the current amendment bill go through as soon as possible is so we can proceed to put the authority into place and that they can develop the Basin Plan with a proper understanding of environmental water requirements and sustainable diversion limits across all the different reaches of all the different basins and sub-basins.

Once that takes effect we will understand the need to which change is required in the lower Balonne as well as all other areas. There are two choices that we have in that area. One is to not institute the ROP, which I understand is your favoured position, and there are good grounds for doing that but that may well result in a delay in any further change taking place there, or to institute the ROP and then buy back the water at a huge cost to the taxpayer, which is arguably unjustified on the grounds that why should the taxpayer buy something which did not sell or give away in the first place. But instituting the ROP will level the playing field and will create a property right which can then be repurchased. Is that where you are going?

Senator HEFFERNAN—I understand that. But under what is proposed, and if they do institute the ROP to commence the process, nothing happens until 2014 anyhow.

Dr Buchan—Change can happen before 2014 because where there are property rights in water which can be purchased then that will commence the process of reallocating water from irrigators to the environment in advance of being able to work within the context of the water-sharing plans.

Senator HEFFERNAN—But the water we are talking about at the present time is unlicensed, unregulated, unmetered and is virtually free. This is the overland flow. Bear in mind there is no differentiation or quarantining of what is an extraction pump to what is an overland capture in the storages—it is all mumbo-jumbo. They sent 250,000 meg slugs down to try and fix it up over the border which disappeared and were unaccounted for. If they just left it as it is until they sorted out what is a sustainable extraction from the system

then they would be in the same position under their legal rights as issuing the licences, which we would then have to buy back. Why would we issue the licences when we know they are unsustainable? Why not just leave things as they are until we sort it out?

Dr Buchan—That is certainly one way to do it. My understanding about one of the reasons why the irrigators in that area want to push through the ROP is because, otherwise, the banks will foreclose on all of those businesses. There may be a legal basis to wait, as you suggest, but my understanding is that—

Senator HEFFERNAN—With respect, if we do nothing in the present time and do not issue the licences—and I understand what you just said—they would still have access to the water. The reason they are at grave risk with the banks is not because they have not got the licences; it is because they have not had the water. It is nothing to do with the licence.

Dr Buchan—I understood it was both. If it is not, I will come back to you with a considered thought on the detail of that.

Senator HEFFERNAN—Peter Beattie wanted to go through that sort of a motion a few years ago. I just find it extraordinary that there is this huge conflict of interest in advice to the government by people who have everything to gain and plenty to lose against the advice they are providing. I do not know of anywhere else in Australia where someone who is the chairman of a process giving advice both on the issuing of a licence and the compensation to follow for the buyback, who has no eligibility under the formula for the overland flow licences, can be included in the biggest licence ever issued in Australia and everyone looks the other way and says, ‘Oh, no, we’ll avoid thinking about that.’ I reckon it is fraud.

Dr Buchan—I think a lot of what has happened in that part of the country is a mystery to everyone, whether or not they live in that part of the country. What I understand is that change is needed and that whatever rights and wrongs have happened there they have been decisions of governments and of public officers. Therefore, if the public has to pay to fix the problem and the most expeditious way of doing that is to implement the ROP and then buy back the licences, whilst that may be very expensive, if it is the most expeditious way to go and the fault is with public officers then it is public money that has to fix it.

Senator HEFFERNAN—I hear what you are saying, but at Bourke, for instance, that mob have gone belly up because they put in an enterprise that was high-priority irrigation with a low-priority licence arrangement. The excuse that is used by the people who are trying to travail this problem with the financial benefit is: ‘We were allowed to do the works,’ which they were—no-one broke the law. Then, oops, the government said, ‘Shit, we’d better authorise these works,’ which they did, so that the water is authorised and not licensed. But isn’t it ‘buyer beware’—

Dr Buchan—Yes, in that case I agree with you.

Senator HEFFERNAN—Can I tell you that exactly the same thing is happening on the Douglas Daly now, with the peanut company that has transferred its operation up there. They have been issued authorisations to extract water, but not licences because they have not done the work. If that goes belly up too and they have to get only half the licence that is sustainable from the catchment or the aquifer up there, why should the taxpayers put up with this crap here? Why wouldn’t you just do a fair dinkum study? They have this pretend CSIRO study of the catchment based on guesstimation of future flows, not on the impact on the environment or the ruination of the flood plain and all the rest of it, just some guesswork, and they have not even done any science on the Warrego.

CHAIR—Senator Heffernan, I am not taking away anything from the years you chaired this committee, quite honourably most times, but can I suggest that, rather than lecture Dr Buchan, you put a series questions, one at a time, and give Dr Buchan a chance to answer. All the colourful conversation we have all heard before—but, God bless you, you are passionate.

Senator HEFFERNAN—Why isn’t someone listening?

CHAIR—Give Dr Buchan a chance.

Dr Buchan—I think one of the messages from that is that there is a lack of clarity around the property right involved in water. In the National Water Initiative, which is our blueprint for water reform, one of the key objectives was to establish property rights which are well understood by everyone: the owner of the right, a purchaser of the right, the bank when they want to put a mortgage against it, all those kinds of things. My understanding is that many of those problems could be resolved by tightening up the property right around water entitlements which is certainly one contribution to those difficult issues.

Senator HEFFERNAN—But in this particular instance the work they did was ‘buyer beware’—and that is fair enough—with an authorisation. Why shouldn’t we do a fair dinkum study of the sustainable level at which to issue the licences and then issue the licences—which they did not pay for; they were a gift—at a sustainable level. Then we will not have to buy the damn things back.

Dr Buchan—You are the politician, Senator Heffernan.

CHAIR—He was for 12 years in the previous government, too.

Senator HEFFERNAN—I argued this case and I have been arguing it for ages. In some of the early Queensland work on this area there was corruption. But everyone else, all the politicians involved with this, from that day to this, are gutless.

Dr Buchan—Where there are significant natural areas and wetlands around there, it is important that change takes place in order to protect those and also the downstream users of the water. It is a big basin with lots of different problems in different areas and there is not a one-size-fits-all solution.

Senator HEFFERNAN—Turn a blind eye! Thanks.

CHAIR—Doctor Heffernan. I am so sorry—Dr Buchan. I need to be taken out and pistol whipped.

Dr Buchan—Does that make me Senator Buchan?

CHAIR—I am so sorry; he has been called a lot of things on this committee!

Senator HEFFERNAN—You would make a bloody good senator.

Dr Buchan—Do you want to swap?

CHAIR—Actually, Dr Buchan, you would not, because your answers are very short and sharp and to the point, so you would make a lousy senator. You have to work on dribbling for the first 10 minutes and then get it out! On that, with the greatest respect to my colleagues around the table, Senator Nash has some questions.

Senator NASH—Can I just take you back to something you said in your opening remarks. I think you said the buyback program should be accelerated. I recently spent a week driving from one end of the basin to the other through all the communities, and there was no doubt that one of the clearest messages was that they were very concerned that there had not been enough work done on potential impacts on those communities in taking the water out. As you quite rightly said, there is going to be a report on that socioeconomic impact stuff, but that is not until the middle of next year. I guess my concern is that, with the buyback program as it is, if you accelerate it you might be exacerbating a situation that might already be difficult, in that we do not really know the impacts of the buyback scheme. It may well be that the buyback is appropriate, but we have absolutely no idea of what the impacts are going to be in a whole range of areas. I just have some concern that, if you accelerate it, you exacerbate that problem. Can you give me a sense of how you see any impacts being measured if it is accelerated—and if, indeed, that might make the situation potentially worse?

Dr Buchan—I have been having discussions with irrigation corporations, water services committees and irrigation districts, and one of their concerns is that an ad hoc approach to water purchase across the basin could have that Swiss cheese effect—leaving stranded infrastructure and so on.

Senator NASH—It is ad hoc at the moment because there is no real science behind where the buyback is coming from.

Dr Buchan—One of our concerns is that the investment in infrastructure improvement could end up creating gold plated infrastructure where—

Senator NASH—There is no water.

Dr Buchan—we will end up with gold plated stranded assets in the future.

Senator NASH—Absolutely.

Dr Buchan—So they are both genuine and realistic concerns. But those communities across the basin have had enough time now to really start thinking about what is the best option for them in a 50- to 100-year time frame looking at the impacts that climate change is likely to have on them. The resounding message is that the best outcomes will come not from keeping the buyback separate from infrastructure improvement and structural adjustment but from integrating those different funding streams into a single program and looking at the process of change from the irrigation district level upwards. An example of that would be the Torrumbarry irrigation district, which has got its community together, looked at the long-term impact of climate change and other risks to its area, taken a realistic view of what really good areas will remain viable for irrigated

agriculture into the future and what areas will not be viable for irrigated agriculture into the future and asked what the best use for that land is. Is it conversion to dryland cropping? Is it conversion to grazing? Is it for some other purpose, for example carbon credits or some sort of ecosystem services investment. That district has really tried to work out from that understanding what the types of land and water reforms are which are necessary to put them on a sustainable trajectory.

One of the biggest improvements could be made to the basin not by the Commonwealth government maintaining the silos over its different funding programs but by bringing them together and starting to ask those irrigation communities to have a good hard look at what they think their futures ought to be. That is not only because it is a 50- to 100-year time frame that we are looking at but also because those communities are ready for change. We are not where we were two years ago, when communities were saying: 'There is nothing wrong with us; we will be fine. The environment doesn't need any more water, and we want it all for irrigation.' There has been a quantum shift in the attitude of most of those communities, who know that change is required and want to be involved in the process.

Senator SIEWERT—How do you think the government can best support the communities now in moving on?

Dr Buchan—Without wanting to be involved in the politics of any of this, I know that tomorrow there is a ministerial council meeting and that a number of those different communities and us and other advisory groups to the ministerial council meeting will be looking to the ministerial council to end that meeting by inviting irrigation districts and communities to make tenders to them with a program of reforms at a district level.

Senator NASH—Sensible.

Dr Buchan—So putting out the tender not just for groups of irrigators to sell their collective water entitlements, and that is what the Commonwealth is currently offering—

Senator SIEWERT—Did you say 'not just doing that'?

Dr Buchan—Yes. There is currently a program where the Commonwealth government has asked groups of irrigators to come together with their collective entitlements to sell the lot. We can go much further or take a different approach, which involves land and water and looks at the kind of change which is needed across a district, not just selling water entitlements but really asking the question 'What is the future for this area and how best can we get there?' and therefore not just integrating the buyback of water entitlements but targeting areas that will be viable into the future, to improve their infrastructure so that irrigation areas are as good as they can be. Where they will not be viable for irrigated agriculture in the future, they should be specifically targeted for the buyback of water and for structural adjustment to go through the decommissioning process or the adjustment to a land use form which is appropriate for the future.

Senator SIEWERT—Did you say the government has invited that broader package or the communities are going to be saying to them, 'That's what we want'?

Dr Buchan—There are a number of communities out there which are looking for the Commonwealth to invite tenders from them for a broad range of land and water reforms which would involve the buyback of water entitlements but would also involve investment in infrastructure, structural adjustment, decommissioning and land and water reform more generally.

Senator SIEWERT—So what they are saying is, 'This is how you should help us'?

Dr Buchan—Yes.

CHAIR—We have gone over time. Senator Nash had the call. Senator Nash, do you want to wrap up, because Senator Fisher has told me that she has questions on notice that will take no longer than 30 seconds to ask?

Senator NASH—I am happy to yield to my colleague. I thank Dr Buchan.

CHAIR—In that case, because we are on a tight timetable today, Senator Fisher, you have 30 seconds to put a few questions on notice.

Senator FISHER—Thank you. I did not commit to 30 seconds, but I will do my best.

CHAIR—I will remind you when 30 seconds are up!

Senator FISHER—Dr Buchan, I have been listening to your evidence. I heard you talk about critical human needs. That is what I would like to ask you about on notice. In your answer, please indicate if the following are wrong. You welcome the definition; however, you think it is lacking clarity and certainty

because, of the major stakeholders with whom you have met—for example, irrigators—none of them are able to say the definition is good. You support amendments being made to the bill, provided that they can be made expediently. Disagree subsequently on notice, if you do, with any of those statements. Given that the ‘critical human needs’ definition is supposed to inform the authority in developing the plan, do you think the current definition provides the authority with sufficient clarity and certainty for it to interpret ‘critical human needs’ for the purposes of the plan in an expedient fashion?

Dr Buchan—My understanding of the way it currently reads is that it is very broad, very ambiguous and lacks clarity.

CHAIR—Those questions are to be taken on notice. If you want to answer with a yes or no, feel free; otherwise, we will need you to take them on notice.

Dr Buchan—It depends on the amendments which are made, but currently that definition would include things like abattoirs and golf courses. ‘Critical human needs’ to me means drinking water, health and sanitation. That is what critical human needs are and that is what the definition should come back to.

CHAIR—You did make that very clear in your opening statement and earlier in the piece.

Senator FISHER—My final question on notice—

CHAIR—You are stretching our friendship here, Senator Fisher!

Senator FISHER—I thought it was stretched! This is my final question: Dr Buchan, can you also supply on notice your interpretation of the meaning of the terms ‘highest priority’ and ‘first priority’, as used in the bill?

Dr Buchan—Yes, I can.

CHAIR—Thank you very much.

[5.04 pm]

GOODAY, Mr Peter, Manager, Productivity, Water and Fisheries Branch, Australian Bureau of Agricultural and Resource Economics

GRANT, Mr Allen, Executive Manager, Agricultural Productivity, Department of Agriculture, Fisheries and Forestry

RYAN, Mr Michael, Manager, Irrigated Agriculture, Department of Agriculture, Fisheries and Forestry

CHAIR—I welcome officers from the Department of Agriculture, Fisheries and Forestry. 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 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. Does anyone wish to make a brief opening statement before we go to questions?

Mr Grant—Not really, but I would just like to remind the committee that, under the Australian government administrative arrangements, program policy responsibility for all water related issues rests with the Department of Environment, Water, Heritage and the Arts.

CHAIR—Thank you for that clarification.

Senator NASH—Perhaps you could remind us what you are responsible for so we make sure we ask questions in the right area.

CHAIR—That is a very good point, Senator Nash.

Mr Grant—Well, in general terms, we are responsible for looking after the interests of the Australian agriculture sector and promoting the profitability and growth of the Australian Agriculture sector. Jointly with the environment department we work on natural resource management issues, through the joint team, but we do not have specific policy responsibility for any of the water policy issues.

CHAIR—That is very helpful, because the Department of Environment, Water, Heritage and the Arts will follow, so I am sure that if a question comes up that is not under your banner you will be able to steer us very quickly so that we can give it to the next department. I know that Senator Nash is busting to ask some questions.

Senator NASH—Not necessarily, but I am happy to proceed. I have some questions around agricultural production. Is it the responsibility of your department—or have you done any work on it—to model potential productivity losses in terms of reduction in water capacity for communities, whether or not there is any reduction, potentially, in those communities? Have you done modelling on the different scenarios?

Mr Gooday—ABARE has done some modelling, presented at last year's Outlook conference, looking at the impacts of a reduction in water availability to the irrigation sector. That was based around a hypothetical scenario of a 10 per cent reduction in long-term rainfall and, following that, a 20 per cent reduction in inflows. The results of that analysis were that across the basin we estimated a 5½ per cent reduction in irrigation incomes. Underneath that reduction was quite a substantial shift in land use out of some of the lower-value activities, with water moving from those lower-value activities.

Senator NASH—Did you do any concurrent work on water efficiency? If there were to be, say, water efficiency gains alongside that reduction in water use, did you do any work on whether or not the productivity levels would increase from what you have just outlined?

Mr Gooday—No, we have not done any of that sort of analysis. The irrigation survey report that came out earlier this week has some information in it regarding water use by different crop types and by areas, but we have not looked at what the implications would be of a change in technology or people adopting different technologies in regions.

Senator NASH—It might be useful if you could provide a copy of that to the committee, if that would be okay.

Mr Gooday—Yes, we can do that.

Senator NASH—Did you just do broad general numbers or did you drill down commodity by commodity?

Mr Gooday—They are broad numbers in the sense that we split out horticulture, dairy and broad-acre irrigated agriculture. And they are broad in the sense that we looked at—I cannot remember exactly—around seven or eight regions in the model. So it is not going down to the micro subcatchment level and we did not look at different types of horticulture and different types of dairy operations.

Senator NASH—With those broad commodity areas, did you look at them in terms of domestic production compared to what we may have exported across those commodities?

Mr Gooday—No, the analysis so far has basically assumed that prices remain constant—

Senator NASH—Oh! Sorry, I am a farmer and I find that very amusing.

Mr Gooday—We have not looked at what the implications of a change in the relative price of commodities produced using water might mean. And, yes, there may be some change in relative price but we have not looked at that yet.

Senator NASH—All right. Did you do any work additional to that on the community impact from those broad reductions you were looking at?

Mr Gooday—The paper includes analysis at the regional economy level. We used a general equilibrium model of the Australian economy and within that we have been able to split out the parts of each state that are in the Murray-Darling Basin and looked at what the flow-on impacts to those broad regional economies are. The results of that were that for most of the areas there was a relatively small impact; I suppose we are talking about a 5.5 per cent reduction anyway. But it was really only in those areas that are highly specialised in terms of agriculture production that it had a substantial impact or something above the one or two per cent level at the regional economy level.

Senator NASH—The ABARE socioeconomic impact study report is due mid next year isn't it?

Mr Gooday—Yes.

Senator NASH—With that, what process or recommendations will be in place given that the buy back program has already started? If indeed that report does show that there have been negative impacts on the communities, what will the department do in terms of some kind of framework to address that? I guess I am asking what the next step is. If we go with this buy back program—which is really putting the cart before the horse because the report is not coming out until the middle of next year—and then the report actually shows that it has had some negative impacts on our communities, what happens then?

Mr Gooday—That is very hypothetical. We would have to look—

Senator NASH—But I think it is a very important question because the whole point of doing the report is to figure out whether there are going to be negative impacts or not on our rural communities. So it might be hypothetical, but I would have thought that that was something that had been considered, otherwise, what is the point of doing the report.

Mr Gooday—I guess you would have to try to disaggregate the report by whether there are specific subregional issues or specific commodity based issues—some commodity groups may fare differently to other commodity groups, or there might be some regional or subregional impacts or there might be other demographic impacts that come out of that. So it is really hard to predict that there will be a general conclusion that says that it is all bad or it is all good; potentially there will be mixed reporting there. Until that comes out we will have to have a look at that in conjunction with the environment and water department and make a judgement then about what the impacts really are.

Senator NASH—Sorry, that was not my question. We will be able to see from then what the impacts are. My question is actually what will the next step be? You may be quite right, there may well be mixed reporting, so if indeed at that point it can be shown from the reporting that there has been a negative impact—even if it is on a particular community area or particular commodity type aspect—what is the next step?

Mr Gooday—I guess the government will have to look at the outcomes of the report and decide on what sort of changes to policy, if any, are needed.

Senator NASH—Has there been any discussion at all pre-empting perhaps any negative impact on communities?

Mr Gooday—I think you should ask that question of the environment portfolio because they are actually commissioning ABARE to do this work.

Senator NASH—Okay, that is fair enough. I will happily ask them and I will leave you alone not having to answer that question.

Senator SIEWERT—I have some questions but I think they may be better directed at the department of the environment. I will flag that. Is it your department that I should ask about audits and inventories around the issue of the interaction between groundwater and surface water? I think our first witness, Ms Mattila, said there needs to be better work done around groundwater.

Mr Grant—No, it is the Department of Environment, Water, Heritage and the Arts.

Senator SIEWERT—Yes, that is what I thought. I think that most of my questions are for the environment group. Because Senator Heffernan is not here I will wear the mantle for this issue—oh, he has just come in—about plantations that are impacting on water use and are not being properly factored into water sharing plans. I am also thinking of the report put out by CSIRO a couple of years ago that looked at those six threats to water use, one of which was plantations. Then there was a subsequent report that said, ‘Well, it’s not quite as bad as we thought it was, but it is still an issue.’ What further work are you doing around that?

Mr Grant—I think most of the work on that is being done through the COAG process. They are trying to put together some consistent guidelines that they can offer to the local catchment management authorities whose job is to construct those local water management plans. They want to provide some better science around the uptake of water from plantations and its broader impact. Hopefully, through that process there will be a more consistent treatment of trees in plantations and water allocations across the community. I am pretty sure that is where most of that work is being done.

Senator SIEWERT—Where catchment water sharing plans have been developed in the absence of those guidelines and that work, what potential is there outside the 2014 expiry date in New South Wales? Is there capacity to go back and alter those in light of new information or do we have to wait until 2014?

Mr Ryan—I believe that would really be a matter for the states, under whose jurisdictions the plans are developed.

Senator SIEWERT—Okay, I appreciate that. Thanks.

Senator FISHER—It will surprise no-one that I would like to ask this department about its views on the meaning of proposed section 82A in the bill. I will provide those questions to you in writing for you to answer them on notice.

Mr Grant—Could I just reiterate, Senator Fisher, that we do not have responsibility for the bill or the policy—

Senator FISHER—I understand that.

Mr Grant—so it is unlikely that we will give a personal view about the definitions in the bill.

Senator FISHER—I would urge you to consider doing so because you will, nonetheless, be part of the advisory arm, in a policy sense, to government. I would have thought that you would want to ensure that government is implementing policy that is able to be understood clearly, and implemented with clarity and certainty.

Mr Grant—I agree, and we do work on a whole-of-government basis with our colleagues in the department of water, but again it is their responsibility to bring the bill forward and to construct the bill as it is.

Senator NASH—Can I just turn to Toorale. Did you give the government any advice on the buy-out of Toorale?

Mr Grant—Not to my knowledge, no.

Senator NASH—Nothing at all, anywhere?

Mr Grant—No.

Mr Ryan—Sorry, could you repeat the follow-up question?

Senator NASH—I asked, ‘Nothing at all, anywhere?’ I was just double checking that there was absolutely no advice from anyone in the department.

Mr Ryan—On the purchase, no.

Senator NASH—No. Did you provide anything at all on Toorale?

Mr Ryan—Subsequent to that we provided information to the minister on issues that arose in discussion about it, but not on the purchase.

Senator NASH—What were those issues?

Mr Ryan—They were land management-type issues and community concerns.

Senator NASH—What sort of advice did you give the government on those issues?

Mr Ryan—A description of the process that was gone through for the sale and the planning for post sale management of the land.

Senator NASH—What is the planning for post sale management of the land?

Mr Ryan—There is a committee being established to oversee the management after the handover.

Senator NASH—Who is actually going to do the management?

Mr Ryan—As I understand it, New South Wales will own the land and undertake the management. There is a process for management of the water, which will give the Commonwealth control over the water until the planning to separate the title of the water from the land goes through.

Senator NASH—Who will make up the committee? Has it already been formed?

Mr Ryan—You would have to direct that to environment department.

CHAIR—Senator Nash, we are inquiring into the water act. I know that there are a lot of questions to be asked about the whole Murray-Darling Basin but we have gone down that path extensively in estimates.

Senator NASH—We have plenty of time, Chair. I think my question generally relates, but I will accept your admonishment and cease my line of questioning forthwith.

CHAIR—No, it is already on the record.

Senator NASH—No, you are quite correct.

Senator XENOPHON—If my question has been covered before, please tell me. Further to the questions asked by Senator Nash in terms of productivity, I know that the CSIRO is undertaking its sustainable yields project. One of the propositions put to me by constituents, by irrigators in the Riverland region of South Australia—and I believe them on the basis of the evidence that they have put to me—is that they are more efficient in terms of there infrastructure investment and the like. Is there any way of assessing which regions are more efficient? In other words, for producing a kilo of citrus or grapes in different irrigation regions, to what extent can that be ascertained in terms of determining public policy and determining the basin plan and other ancillary measures?

Mr Grant—Efficient in terms of water use in particular?

Senator XENOPHON—Yes, and in terms of tying that in with productivity.

Mr Gooday—I suppose the survey report that came out earlier this week gives some information in that regard.

Senator XENOPHON—Earlier this week?

Mr Gooday—Yes. On Monday, I think.

Senator XENOPHON—Is that your department's report?

Mr Gooday—That is an ABAR survey of the Murray-Darling Basin.

Senator XENOPHON—Right.

Mr Gooday—That report produces farm financial information at a catchment level by different farm types and there is some information in there regarding water use efficiency by different crop types by area.

Senator XENOPHON—Sorry—by crop type or also by region?

Mr Gooday—Both.

Senator XENOPHON—Does that shed any light on the differences in efficiency for different regions, or not?

Mr Gooday—It is a difficult thing. Water is one input into producing grapes or citrus or anything else. There are a range of other inputs including—

Senator XENOPHON—You are sounding like Professor Garnaut!

Mr Gooday—the price of the land as well as the productivity of the land. Just looking at the volume of water used to produce a kilo of output for a particular crop type by area is not the end of the story. I suppose the other—

Senator XENOPHON—I suppose you would have to factor in the cost of the land?

Mr Gooday—Yes. It is basically the profitability of the operation and how much they can afford to pay for the water. One indication of which areas are more productive is the direction of the water trade.

Senator XENOPHON—Because the market, in a sense, is voting with its feet?

Mr Gooday—Yes. Irrigators are deciding for themselves whether they want to purchase water and produce or whether they are better off selling the water to someone else and for them to produce.

Senator XENOPHON—But that indication of productivity is distorted by the four per cent cap, isn't it?

Mr Gooday—Yes. The four per cent cap is, at the moment, restricting water trade—that is, permanent water trades; there are plenty of temporary trades taking place.

Senator XENOPHON—To what extent does that skew or distort the true picture though? Has any modelling been carried out to determine any changes in water trading as a consequence of the lifting of the cap?

Mr Gooday—We have not done any modelling looking at the impact of removing the four per cent cap to date.

Senator XENOPHON—Or any variations?

Mr Gooday—There has been modelling looking at what things would look like if you had perfectly free water trade over the longer term. Obviously, water moves to its most efficient uses. I am not sure that there is a great change from the current set of uses. It depends on what the water availability scenario is. But ABARE have not done any modelling recently looking at that issue. We have focused on looking at what will happen if there is less water available in the future than there is now.

Senator XENOPHON—Has any modelling being done on what will happen if things are still grim—a combination of drought and climate change? Has any modelling been done on variables of even less water in the system to look at how that would change production and where water would go and for what types of crops?

Mr Gooday—There is the ABARE work that was presented at the last Regional Outlook conference, which looks at a 10 per cent reduction in inflows.

Senator XENOPHON—That of course translates to much greater loss in terms of water in the system, doesn't it?

Mr Gooday—Sorry, a 10 per cent reduction in rainfall results in a 20 per cent reduction in inflows. That translates into reductions in income and changes in land use. Similar work was done for the Garnaut review by the University of Queensland, looking at a much longer time period and different water availability scenarios.

Senator NASH—You said the four per cent cap was trade restrictive. How do you measure how much trade would actually occur if the cap was not there?

Mr Gooday—This is one of those counterfactual things. You can do it with a model. There would be estimates.

Senator NASH—It is an interesting issue, isn't it, because there comes this very clear and distinct statement from a number of quarters saying that the four per cent cap restricts trade, but then how do you actually measure how many other trades there would be without the cap there?

Mr Gooday—You can see that it restricts trade just by seeing that the cap is reached. It is reached quite early in the irrigation season in some areas. You can see that people would like to trade more water out of those areas.

Senator NASH—But that is an assumption, isn't it?

Mr Gooday—No. There is a waiting list.

Senator NASH—That covers it off for you, then.

Mr Ryan—There are a number of catchments in Victoria, as Mr Gooday was saying, where the cap is reached early in the season and trades are rejected because the cap is reached.

Senator NASH—What percentage?

Mr Ryan—I do not know. I heard an estimate of \$19 million worth of trades rejected.

Senator NASH—Do you do that state by state?

Mr Ryan—No.

Senator NASH—I would be very happy for you to take this on notice, if you would not mind. I am interested in, across the board, the percentage that is sitting there that would trade if the cap were not there.

Mr Ryan—We could take that on notice.

Senator NASH—That would be good. Thanks.

CHAIR—That ends the easy part. Gentlemen, for the questions you have taken on notice, our reporting date is the 19th, so you have not got a lot of time to get that information.

Senator NASH—Tomorrow afternoon would be good, thanks!

CHAIR—So there were questions on notice from Senator Fisher and from Senator Nash. We know how efficient DAFF is. There is no query there. Thank you very much, gentlemen, for making the time to come today.

Proceedings suspended from 5.29 pm to 5.40 pm

BRIESE, Ms Robyn, Australian Government Solicitor, acting as counsel to the Water Policy Branch, Department of the Environment, Water, Heritage and the Arts

ORR, Mr Robert, Deputy General Counsel, Australian Government Solicitor

HORNE, Dr James, Deputy Secretary, Department of the Environment, Water, Heritage and the Arts

JAMES, Mr Russell, Water Policy Branch, Department of the Environment, Water, Heritage and the Arts

CHAIR—I welcome officers from the Department of the Environment, Water, Heritage and the Arts. I thank you for getting here a little bit earlier. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or 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 them 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 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.

I see we have two lawyers with us this time—they are catching up with us a little bit, Sorry, that is a bit of a personal joke from earlier on! Mr Horne, would you like to make a brief opening statement?

Dr Horne—Yes, I would like to. The following statement responds to a number of comments that have been made thus far in the inquiry. I will just go through them by issue area. The first relates to critical human needs. The definition of critical human needs has been raised in prior testimony. Through the Basin Plan, the Murray-Darling Basin Authority will be required to specify the amount of water required to meet critical human needs of communities dependent on the River Murray system. The Water Amendment Bill recognises that each state is responsible for meeting its own critical human needs and that each state has autonomy over decisions on how water from its state's waterfare is used. If a state considers that critical human needs should be limited to drinking water and water required for sanitation and health, they could seek to have their critical human needs requirement as specified in the Basin Plan reflect this.

The scope of this definition was subject to very extensive negotiations with the states during the negotiation of the intergovernmental agreement on Murray-Darling Basin reform. The current definition was considered to reflect the interests of all communities in the basin. We note that the provisions relating to critical human needs included those to be referred to the Commonwealth parliament by the parliaments of the basin states. Any amendments to such provisions would require state parliaments to remake or amend legislation. In relation to critical human needs and risk assignment, I would note that the interaction between critical human need provisions and risk assignment provisions has been raised in prior testimony. We consider that the bill adequately protects the interests of states and water users in this regard.

The no disadvantage test has also been raised. The revised agreement in the bill sets out a no disadvantage test that limits South Australia's new storage rights in relation to water for critical human needs. The agreement ensures that South Australian storage of water for critical human needs must not affect water availability for New South Wales and Victoria. The agreement also ensures that carryover for private purposes in South Australia must not affect either water availability or access in New South Wales or Victoria.

Under the Water Amendment Bill, accounting rules to govern the no disadvantage test will be developed as soon as practicable and become a schedule to the Murray-Darling Basin Agreement. This schedule must be agreed by the ministerial council, and any concerns about the practical operation of the no disadvantage test will be addressed at that time. In relation to limits on carryover in respect of South Australia's new storage rights, we note that no direct or explicit limit on carryover is provided for any basin state under the revised Murray-Darling Basin Agreement. Rather, such limits are determined by each state. South Australia's storage right, including any impact on carryover arrangements, must, however, have no impact on upstream states and does not lessen their requirement to comply with relevant sustainable diversion limits.

Let me turn to the north-south pipeline. There are several existing pieces of infrastructure that divert water from within the basin to elsewhere. There are, I think, seven such pieces of infrastructure in Victoria, five in South Australia and two in New South Wales, and these pieces of infrastructure have implications for Adelaide, Whyalla, Lithgow, Ararat and Bacchus Marsh, just to name a few areas. The basin plan will set a limit on the amount of water that can be diverted from basin water resources, and this limit will be set at a level of individual resource plan areas identified in the basin plan. The act does not constrain how the water is

subsequently used, whether inside or outside the basin. What is relevant to the protection of the environment of the Murray-Darling Basin is the amount of water that stays in the system. It remains a matter for the states to allocate water for consumptive use. The act also sets out a basis of a single water market across the basin, with the aim of allocating water to its highest value use.

Construction of the Sugarloaf Pipeline has been approved under the Environment Protection and Biodiversity Conservation Act 1999, subject to a number of conditions, including that the water it transports is demonstrably acquired through water savings achieved through the Food Bowl Modernisation Project. An independent audit is required under the conditions of EPBC Act approval to demonstrate this. These approval conditions are enforceable under the act.

An issue has been raised that, if water held under a water access entitlement is transferred out of the basin, this may result in higher water use than the same entitlement used inside the basin because there are no return flows to the basin from such water. This issue has been recognised, noting that the level of return flows will decrease in any case in the future as water efficiency is increased. The basin plan will be able to address this issue through conditions imposed on the water resource plans, which will be able to require management arrangements and trading rules that take this into account and ensure that the water taken from a water resource plan area, wherever it is used, remains within the long-term average sustainable diversion limit. The detailed critical human needs provision in the bill will relate only to the River Murray system, and the River Murray system does not include the Goulburn River.

Let me make a few comments in relation to the Condamine-Balonne. The conversion of existing water entitlements in the Condamine-Balonne into tradeable water licences will be an important step in Queensland's water management framework and has already occurred in all of the adjoining catchments in the state. The reform is consistent with Queensland's commitment under the National Water Initiative to move to share based and transferable entitlements. The Commonwealth has committed in the July intergovernmental agreement to respect existing state water resource plans, to provide certainty over the transition arrangements for the basin plan. The Water Resource (Condamine-Balonne) Plan 2004 is listed in schedule 4 of the Water Act as a transitional resource plan. In Queensland, water resource plans determine the amount of water that can be extracted from these rivers. Resource operation plans, which are a subsidiary instrument to the water resource plans, provide tradeable entitlements to water that is able to be extracted in accordance with the water resource plans.

Let me now make a few comments on Ramsar sites.

CHAIR—Just on that, Dr Horne, we have only got till 6.40, and I am sure there will be a lot of questions.

Dr Horne—I have about two minutes more, Chair, if I may.

CHAIR—Okay.

Senator FISHER—Before Dr Horne finishes, can we perhaps ask for a copy of the written statement?

CHAIR—Yes, of course we can.

Senator FISHER—It would assist us and make it quicker perhaps.

CHAIR—Could you table that once you have finished, Dr Horne.

Dr Horne—Yes. The Water Act already provides significant protection for Ramsar listed wetlands within the basin. The basin plan is required to be prepared to give effect to the relevant international agreements. The Ramsar convention is one such agreement, which requires, amongst other things, that contracting parties formulate and implement their planning to promote conservation of listed wetlands. The basin plan is required to promote the conservation of declared Ramsar wetland areas in the Murray-Darling Basin. The act requires the long-term average sustainable diversion limit of the basin to reflect an environmentally sustainable level of take, a level that would not compromise these key environmental assets, the key ecosystem functions or key environmental outcomes.

The environmental watering plan, which is a mandatory part of the basin plan, is required, amongst other things, to coordinate the management of environmental water, to protect and restore the wetland and other environmental assets of the basin and to protect biodiversity dependent on the basin's water resources. The environmental watering plan is required to set overall environmental objectives for the water-dependent ecosystems of the basin and targets, such as flow targets, by which to measure the progress in achieving these objectives. Finally, the Water Amendment Bill proposes an amendment to the Water Act so that the basin plan

is specifically required to take into account the ecological character descriptions of all Ramsar wetlands in the basin.

We do not consider that there is a need to include a specific annual watering target for particular Ramsar sites within the basin such as the Coorong and Lower Lakes. The new MDBA is charged with developing the basin plan. The act and the bill set out a robust framework in which they can do that, and we would not wish to fetter their ability to come up with a plan that is optimal for the environment of the basin as a whole. Thank you. I am happy to answer questions.

CHAIR—Thank you, Dr Horne.

Senator SIEWERT—Thank you for that. I want to go to the issue of the north-south pipeline to begin with. You were saying that you think that the conditions that would be put on the water resource plans would accommodate any of the issues around reducing of returns back to the river system.

Dr Horne—Yes.

Senator SIEWERT—You mean the state water resource plans that will be developed after—

Dr Horne—Yes.

Senator SIEWERT—we have done the basin plan?

Dr Horne—You do the basin plan, and the basin plan will then set out how the various water-sharing plans should be prepared.

Senator SIEWERT—Okay. We are not getting the Basin Plan for another couple of years and then it will take a little while to do the water resource plan and in Victoria, in particular, the resource plans do not have to change until 2019.

Dr Horne—Yes.

Senator SIEWERT—It is a significant period of time. There are 11 years potentially before we see the change in the water resource plans reflected in this legislation—it is 11 years away.

Dr Horne—Yes.

Senator SIEWERT—So it seems to me that the pipeline is going to have been in operation for a significant period of time before we actually see anything dealing with the fact that you have potentially got reduced returns through groundwater flow, for a start.

Dr Horne—All the water in the north-south pipeline is auditable water from savings from savings measures. From the pipeline, as it has been described by Victorians, from their modernisation projects there will be water saved by improving the efficiency of those irrigation districts. Some of that water, it is proposed, would go into the north-south pipeline; other parts of the water would go directly back to savings to the environment. That is the proposition. Under the EPBC Act any water that goes into the pipeline has to be audited as water savings from an improvement in efficiency. But some of the water that is saved through the irrigation improvement program is returned to the environment.

Senator XENOPHON—Further to that, Dr Horne, you have said that there will be an independent audit as required, in terms of the north-south pipeline. That has been one of the areas of contention given the Victorian Auditor-General's criticism of the project. Without going into that, what can you tell us about the audit process with respect to the north-south pipeline to determine whether the water savings for the food bowl modernisation project have been robustly examined, and will it be the role of the MDBA to do that?

Dr Horne—At this point in time the audit process, as far as I am aware, has not been determined but clearly under the EPBC Act you would expect it to be a very robust process.

Senator XENOPHON—But they are building the pipeline right now, as we speak.

Senator SIEWERT—When does the audit take place? As far as I am aware the modernisation process has not started yet. In fact, I would be very surprised if the money has been approved for it because there was supposed to be due diligence done. I have not seen any of that work.

Dr Horne—That is a project that is entirely a Victorian government project. There is no Commonwealth funding going into the—

Senator SIEWERT—Into the food bowl project? Yes, there is. There's a billion dollars.

Dr Horne—In food bowl stage 2 there is; not in food bowl stage 1. Food bowl stage 1 is being used for the north-south pipeline. There is no Commonwealth funding for—

Senator XENOPHON—But, Dr Horne, with respect, food bowl stage 2 is not going to happen until food bowl stage 1.

Dr Horne—That is right.

Senator XENOPHON—So there will be significant Commonwealth funds involved in this, ultimately.

Dr Horne—Ultimately—if we get to the stage where business plans are put to the Commonwealth and those business plans are approved by the Commonwealth.

Senator XENOPHON—What I do not understand is that in terms of the audit process to determine whether the savings that have been asserted by the Victorian government are real, what role does the Commonwealth have in ensuring that, given the billion dollars in stage 2, due diligence, as Senator Siewert has alluded to, will be undertaken? What process is the Commonwealth involved in to ensure that there is some robust independent analysis of the savings?

Dr Horne—As far as I am aware no decision has been made yet but the Commonwealth would be involved in making the decision on what constitutes an audit that is satisfactory and that can test whether something has been achieved under the EPBC Act.

Senator BIRMINGHAM—To be very clear, you only expect that will audit stage 2 of the modernisation project?

Dr Horne—No, not at all. That is for stage 1, before water can go into the north-south pipeline. That is a condition of stage 1. All that has been agreed at the moment relates to stage 1. That is a condition of the EPBC Act.

Mr Orr—That is a regulatory condition; it is not a condition of funding.

Dr Horne—Yes.

Mr Orr—You were saying there is no Commonwealth funding but the Commonwealth as regulator under the Environment Protection and Biodiversity Conservation Act has imposed a condition for the stage 1 project to proceed.

Senator NASH—Just so we are absolutely clear. The pipeline being built that can take 75,000 megalitres of water out of the basin through savings has absolutely no audit process yet in place to determine whether those savings are there—regardless of the fact that there are many who say the savings should stay in the basin. Am I absolutely clear there? There is no audit process yet in place to determine if those savings are there?

Dr Horne—In a sense there is a process which will be developed to determine when works have been done—so there will have to be a benchmark against which savings are measured—and then there will need to be a process to ensure that the savings from these changes that take place, the investments that are made, yield a level of savings of water.

Senator SIEWERT—What if they do not? The pipeline is being built as we speak.

Mr Orr—It is an important point. If they do not they will be in breach of the Commonwealth legislation with the remedies that will flow from that.

Senator SIEWERT—I realise that you may not be the appropriate branch to answer this question but I will try it anyway: when the approval was given and this condition was put in place, were you looking at the Auditor-General's report that said that the savings that the Victorian government claim are there in fact are not there. I am paraphrasing, I am sorry; I do not have it in front of me. The point is that, as I understand it, the Victorian Auditor-General has said that the savings that were claimed for the food bowl cannot actually be justified. Was any work done on that prior to the condition being set in the EPBC Act?

Dr Horne—I think that is why the condition was set to suggest that if they are not there then the waters cannot be taken. It is a straightforward—

Senator SIEWERT—What is the point of building the pipeline?

Dr Horne—That is not an issue for the Australian government; it is an issue for the Victorian government in pursuing the north-south pipeline.

Senator SIEWERT—With all due respect, the Victorian government has applied significant pressure to the Commonwealth—I am trying to think of a word more delicate than 'blackmail'. A \$1 billion; refusal to lift the four per cent cap. Once the pipeline is in place, is the Commonwealth really asking us to accept that they will say, 'No, you cannot have any water'?

Mr Orr—Yes.

Dr Horne—It is a condition—

Senator BIRMINGHAM—What savings does the EPBC Act require to be achieved before there is any water abstracted?

Ms Briese—We do not have a copy here of the actual conditions of the approval but they are on the public record and you can find them on the departmental website.

Senator BIRMINGHAM—I am asking you to clarify because, from what I can read of it in front of me, it seems to suggest that as long as the 75 gegalitres is saved then that is all that seems to be required. I cannot find another figure in this approval that suggests that they need to be saving 300 gigs to be able to take the 75, that is, so we are guaranteed that there is some water going back to the environment, going back to irrigators, meeting the fact that in fact you need to save more than 75 to pipe 75, anyway. It is fairly fundamental that they save more than 75 if they are taking 75 out. It looks very much like you need to take that on notice.

Dr Horne—We would need to take that on notice as it is a project that is, as I said, not an Australian government project.

Senator BIRMINGHAM—Certainly, approval under the EPBC Act requires that independent audited reports of water savings achieved and the amount of water allocated for extraction be provided by August each year. I want to know how much those savings have to be before the extraction is in accordance with this approval—and it is a Commonwealth approval and a Commonwealth condition.

Dr Horne—We will take that on notice.

Senator FISHER—I will put on notice a range of questions about the department's interpretation of the term 'critical human needs' in proposed section 89A(2) in the bill. I think I have the correct section. I want to ask you a couple of questions about what you said in your opening statement about critical human needs. You indicated that the scope of the definition—which, on notice, you will tell me what the department thinks it means—was the subject of extensive negotiations with the states. For what period of time were the states provided with a proposed definition of 'critical human needs'? When were they given a proposed definition?

Dr Horne—I do not know whether we are talking about a date in March—I do not know what the date was. There were, I guess, a series of meetings which put together the intergovernmental agreement. A fairly substantial proportion of those meetings was directed at issues around critical human needs. It was probably the lengthiest discussion on any of the sections. There were many discussions and the words were worked backwards and forwards between jurisdictions until a paragraph was arrived at which everybody was comfortable with.

Senator FISHER—You are suggesting that the definition was the subject of extensive negotiations, so you must have some evidence upon which you are basing that assertion of extensive.

Dr Horne—Yes, I do.

Senator FISHER—Could you, on notice, provide the committee with details of what those extensive negotiations were about and the dates?

Dr Horne—Certainly.

Senator FISHER—Part of the reason I am asking for that is that in one of our previous hearings in respect of the first term of reference of another inquiry, namely, into the Coorong and the Lower Lakes, none of the witnesses, of whom I asked: 'Have you been provided with a written definition of the term "critical human needs"? were able to furnish me with a copy of a written definition. Depending upon your on notice answer as to dates, times et cetera, can you offer an opinion as to on what basis stakeholders seemed unable to provide a written definition during the previous hearing, which was in the last four weeks.

Dr Horne—I cannot talk for stakeholders; I can talk about discussions between the Commonwealth and the parties to the negotiations, which were the state governments, the territories, including the ACT. They were the parties involved in the negotiations.

Senator FISHER—The provision of a definition was limited to those parties, was it?

Dr Horne—I would not be able to comment on what the states did with those documents which were being discussed.

Senator FISHER—Indeed, if they circulated copies of those drafts to stakeholders and any of those stakeholders appeared before the committee then none of those stakeholders were able to provide a written definition at that time. One of my points is that all parties are keen to get on with the job and do this. You are suggesting that this term has been the subject of extensive consultation. It has also been the subject of extensive evidence, showing that every person has a different interpretation of what the term means. If it has taken that long to get this far, is it the department's view that the authority, with this definition, will be equipped to apply the term 'critical human needs' with clarity and certainty, the day after the bill is implemented, if it is? Yes or no?

Dr Horne—The bill provides a process for determining arrangements in relation to critical human needs, depending on whether there is considerable water in the system or very little water in the system. It provides each state with the ability to determine how that water is used.

Senator FISHER—Is that an answer to my question? Does that provide the authority with sufficient clarity to implement a plan as to critical human needs the day after the passage of this bill, if it becomes law?

Dr Horne—No. The authority—

Senator FISHER—Was that a no?

Dr Horne—I need to answer your question. That is not the intention of the section—the paragraphs in the amending bill itself. It is to provide a process so those discussions and the outcome of those discussions—

Senator FISHER—What discussions?

Dr Horne—On critical human needs.

Senator FISHER—It is to provide a process so that discussions—what discussions—the ones that preceded the provision of the introduction of this bill into parliament?

Dr Horne—Yes, those discussions. Currently, there are discussions about critical human needs. There have been ongoing discussions over the past two years about providing water to ensure that critical human needs are provided through the Murray-Darling Basin. There has been concern that there has not been enough water within the system to provide those critical human needs. As a result of that, there have been monthly discussions, or near monthly discussions, between all the jurisdictions to ensure that the first water that is available within the system will be set aside for critical human needs. These paragraphs—this part of the bill; section 86A—seek to put that process into legislation and into the framework where these issues can be taken forward by the Murray-Darling Basin Authority.

Senator FISHER—My reading of section 86A is that it requires the basin plan to be prepared by the authority, having regard to the definitions and terms set out in section 86A. If it is to require the authority to develop a plan, having regard to conversations and discussions that preceded the bill, can you let me know where it states that?

Mr James—I point out that the definition of 'critical human needs' is in the act. It is contained in the intergovernmental Agreement on Murray-Darling Basin Reform that was signed at COAG in July. It has been on the public record since then.

Senator FISHER—Verbatim?

Mr James—I think so.

CHAIR—Senator Fisher, your colleagues do have a few questions.

Senator FISHER—I am happy to allow others questions. I will provide the rest on notice. I have had a fair swag of time. Let's just have this question answered. Verbatim? Identical?

Dr Horne—There may be some minor drafting changes, but essentially they are the same.

Senator FISHER—Then, on notice, to the extent that there is a discrepancy can the department advise what the discrepancy means?

Senator NASH—How much funding for infrastructure for water savings has been allocated?

Dr Horne—At this point in time, we would have to take that on notice.

Senator NASH—How much funding has actually been spent?

Dr Horne—I would have to take that on notice as well.

Senator NASH—This is going to be very quick, Chair, I can tell.

CHAIR—That is great; we won't be arguing. I think that is much better than—

Senator NASH—I was hopeful that, with something that important, the department would have that figure for us. Dr Horne, you have made some public comments recently about irrigation districts may close as groups are looking to sell on a collective basis. I think you indicated that the government wanted to spend \$150 million on water purchases from willing sellers this financial year and—apologies if this is not correct, but this is what has been attributed to you—'may spend more if some of the projects for closure of irrigation districts come to pass'. What socioeconomic impact studies have been done on communities to underpin not only the buybacks that have happened so far but obviously, according to what you are saying, potentially the spending of nearly three times that amount of money?

Dr Horne—At this point in time there have been no buybacks through the communities—

Senator NASH—Sorry?

Dr Horne—The buybacks that have taken place have been the single water buyback—

Senator NASH—Stop. I will just rephrase my question: what are the impacts on communities of buyback, regardless of whether they are the individual sellers or potentially the community as a whole?

Dr Horne—There was a review of that first purchase arrangement undertaken. The first major review of—

Senator NASH—But that was a review more of the appropriateness of that.

Dr Horne—Yes, it was.

Senator NASH—What I am asking about is very specifically the socioeconomic impact studies that have been done as a result of the decisions being made around water buyback, the impacts on communities as result of those buybacks.

Dr Horne—The amount of water that has been purchased thus far is so small that there has not been any particular study done—

Senator NASH—I understand. I will rephrase that again. Potentially there is a significant amount of water under the entitlements that have been purchased so far—

Dr Horne—There is not, because they have not been purchased so far.

Senator NASH—Nine thousand megalitres of entitlement has been purchased.

Dr Horne—In fact—

Senator NASH—Nine thousand megalitres has gone onto the register from the first \$50 million buyback.

Dr Horne—Yes. There have been small parcels of water bought in different parts of the basin; that is correct.

Senator NASH—Nine thousand megalitres as an entitlement is quite a significant amount. Potentially the reason for buying that is that water eventually will be returned to the system.

Dr Horne—That is right.

Senator NASH—So my question is: around those buybacks, what socioeconomic impact studies have been done for communities of potentially removing that water?

Dr Horne—On those particular purchases there has been no specific study done at this point in time.

Senator NASH—Have there been any studies done for communities as a whole who would like to give up their water collectively, if indeed that is the case?

Dr Horne—Sorry?

Senator NASH—Have there been any studies done—

Dr Horne—No.

Senator NASH—You said no to that so, taking the next step, has any work been done on the impact on the communities that may be talking about collectively giving up their entitlement, even hypothetically, of removing entire entitlements from them?

Dr Horne—At this point in time there has not been.

Senator NASH—Right.

Dr Horne—Would you like me to expand on that?

Senator NASH—Absolutely.

Dr Horne—Because those discussions have just commenced and we would be looking at those, depending on the nature of those proposals that are put to the government. We have, as you are probably aware, commissioned ABARE to assess—

Senator NASH—That is okay. I have asked some questions—

Dr Horne—I think we discussed that when we were here in estimates.

Senator NASH—We did indeed. That is fine. I know the answer to that one, thank you. You also commented that where buybacks hurt rural areas ‘the need for structural adjustment will be considered’. What do you mean by that?

Dr Horne—What do I mean by?

Senator NASH—What do you mean by ‘the need for structural adjustment will be considered’ where buybacks hurt rural areas?

Dr Horne—The government’s whole Water for the Future program is really a structural adjustment program. The first element of it is trying to rebalance the system to ensure there is adequate water for the environment. The second part of the government’s program is really to ensure that irrigation districts and the communities within those irrigation districts are better prepared for the irrigation futures in a drying climate, if you like. There is \$5.8 billion that has been set aside to do that.

Senator NASH—Has that \$5.8 billion been allocated to any particular structural adjustment area yet?

Dr Horne—Improving the efficiency of an irrigation district means that an irrigation district may have a future, which means in a sense that it is helping that community into the future.

Senator NASH—It might assist the committee if, on notice, you could give some descriptions to the committee of what form that structural adjustment might take. Rather than going into it now, that might be a bit easier. How much money has actually been spent on structural adjustment to date?

Dr Horne—I guess it depends on how you define what spending on structural adjustment is.

Senator NASH—Perhaps you might roll that into what you are taking on notice. Once you define what the structural adjustment might be, then perhaps you could allocate to that any of the funding that has been spent in those areas. I have got some specific questions on the bill itself, which, on page 196, part II—general principles, states:

4. Power to alter entitlements and allocations to which Schedule applies

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.

Could you give me an explanation of what that actually means?

Mr Orr—This is actually in the agreement, so whilst this is part of the bill, the bill will attach the Murray-Darling Basin Agreement, so that clause which you have read out is part of the Murray-Darling Basin Agreement.

Senator NASH—Mr Orr, maybe you misunderstood me. I understand that. I am trying to get an explanation of what it means.

Ms Briese—I can attempt one. This schedule that clause 4 is in deals with trading of water allocations and entitlements. At the time the Murray-Darling Basin Agreement was reached, that trading was limited to certain types of water access entitlements and allocations and it was expected that trade would be expanding. So this provision simply allows the authority—previously it said the commission, so we should say that when we are reading this—to advise the ministerial council on allowing additional water access entitlements to be traded. So essentially it was a way of evolving the trading system, because this schedule was first set up when trading was becoming more prevalent in the basin. This schedule will largely probably be replaced by the trading rules when the Basin Plan comes into effect, so it is likely to be significantly modified or even perhaps revoked at that time.

Senator NASH—Great. Thank you. Also, on that same page, 5(1)(a) states:

the use or management of water comprised in entitlements or allocations transferred under this Schedule have increased or accelerated environmental degradation;

What measures the increase or the acceleration and how is that defined?

Mr Orr—We could take it on notice and give you some detail about that. I suppose the important, overarching issue is that this replicates what is in the Murray-Darling Basin Agreement now. It is set out here in the Commonwealth act, or will be, but it is really just using the same words that the parties to that agreement—the Commonwealth and the basin states—had used.

Dr Horne—The current agreement.

Senator SIEWERT—The current agreement, yes.

Mr Orr—These words are the same in the current agreement, and they therefore simply transfer into the new agreement. Essentially, the only significant change is to delete ‘commission’ and put in ‘authority’. But if you would like us to we could do a bit of work on explaining it.

Senator NASH—Yes, that would be really useful. Trying to understand all this would be well assisted by having some more information. I have two other quick questions. On page 201 of the bill is the following:

The Authority may:

- (a) 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 sub-clause 98(3) or 98(4) of the Agreement;

Could you explain what that means?

Mr Orr—Again, we should take that on notice. But, again, these are words in the current agreement which essentially are—

Senator NASH—Don’t assume that I have an understanding of everything in the current agreement. Just an explanation would be fine.

Mr Orr—They are essentially about trading, under the current agreement. We could certainly explain that on notice, but the context is that the arrangements under the current Murray-Darling Basin Agreement provide for transferring water entitlements—in other words, trading water entitlements—and this schedule is about the mechanism for doing that. As Robyn said, that will change into the future.

Senator NASH—My other question is about the definition of climate change—and I am sorry if I have got this around the wrong way: is it now not being defined as new knowledge? And how does it affect the risk assignment if climate change is not going to be defined as new knowledge?

Dr Horne—Climate change has never been part of new knowledge. Under the National Water Initiative in 2004 there were three areas of risk assignment. One related to climate change, the second was to new knowledge and the third was to policy. That structure, which was incorporated and is incorporated in the National Water Initiative, remains unchanged.

Senator SIEWERT—I want to go back to the question on the timing of the start of the pipeline, the audit and the achievement of the efficiency gains that are supposed to be going into the pipeline. You did not answer it before because you were interrupted.

Dr Horne—We will take that on notice, if we may.

Mr James—Would you mind repeating that question?

Senator SIEWERT—Have savings already been identified from Food Bowl stage 1? When will the audit—that condition set by the Commonwealth on its approvals under the EPBC Act—be done? When are you expecting the efficiency savings from Food Bowl stage 1, and was any preliminary work done on the claims that were made from Food Bowl stage 1 in the first place when the assessment was being done?

Dr Horne—We will take that on notice.

Senator SIEWERT—My other question is about water recovery and efficiency measures. How are you taking into account the water that will no longer return to the system through the water efficiency measures?

Dr Horne—We will not be accounting for it as such, but the Murray-Darling Basin Authority—

Senator SIEWERT—Sorry, I meant in general.

Dr Horne—There is some work which will need to be undertaken to account for it. There are some contracts that have already been issued, such as under what is known as a hot spots methodology, which is trying to measure different arrangements about how much water leaks from a system before and after some refurbishment has been done. So there will be lots of those different examples, and they will need to develop some methodologies which can be applied broadly so we get a good handle on that issue.

Senator SIEWERT—Because the concern there is immediate—that is, depending on the timing for the audit that is being done, it would seem to me that you need to account for that water by looking at how much water is really being lost to the system when you are pumping water, the 75 gigs, down the pipeline.

Dr Horne—Yes, certainly. The underlying hot spots methodology has been—correct me if I am wrong, Russell—largely bedded down now and is being used, so there is a framework which can be used to determine those sorts of numbers. I agree with you that it is very important. A lot of work has already gone into helping us to establish just how much water is saved and not saved and how much water will not be returning to the system. They are very important questions, and they need to be—

Senator HEFFERNAN—And no-one knows the answer.

CHAIR—Just carry on, Dr Horne.

Dr Horne—Nobody knows the answer, Senator Heffernan?

Senator HEFFERNAN—Probably no-one knows the answer.

Senator SIEWERT—At the moment, the investment in the efficiency measures, as I understand it, is still at the point where 50 per cent goes back to the farmer and 50 per cent to the environment. Is that a correct understanding?

Dr Horne—No, there will be different projects—

Senator SIEWERT—Sorry, I am talking about the \$5.8 billion.

Dr Horne—The \$5.8 billion, yes. There are a whole range of projects that will be funded in the \$5.8 billion. There will be different arrangements, project by project. For example, some of the state priority projects may not save water but may improve flexibility within the system as a whole. For example, the purpose of the potable pipeline around the edge of Lake Alexandrina into Lake Albert is to take people off the lake itself, which means that the quality of the water can be maintained down at the bottom end. There are not any savings from that, but it means that you can ensure that the people, the communities, around there have access to water of a particular standard.

Senator HEFFERNAN—So, to make that work, what has to be the run-off of the river? What has to be the annual run-off for that to work, in your modelling? What is the minimum run-off?

Dr Horne—I am not sure that I understand your question.

Senator HEFFERNAN—It is all very well to take it off the lake and put it into the pipe out of the system, but what is the minimum flow for that to work? We had 1,200 the year before last.

CHAIR—Senator Heffernan, we are short of time. You have asked the question. Can you answer it, Dr Horne? If not, we will go back to Senator Siewert.

Dr Horne—In that case—

Senator HEFFERNAN—I will put it to you a different way. At what stage of the game, in your planning, does the system break down in terms of run-off? At what point in the run-off does it become unviable? Is it 1,200 gigs, 1,500 gigs, 1,000 gigs?

CHAIR—You can take that on notice, Dr Horne.

Dr Horne—I will take it on notice.

Senator SIEWERT—Perhaps I inadvertently opened it up for Senator Heffernan to then run away with the question. I should have refined it. For those projects that are about water efficiency gains in irrigation, is it still the proposal that you do fifty-fifty?

Dr Horne—There will certainly be some projects which are fifty-fifty, but it really depends on the sources of funding for the project and the type of project that it is.

Senator SIEWERT—Perhaps you could take this on notice. What are the criteria that you are using—because they seem to have changed again, and I am not saying necessarily saying that is a bad thing—that you are putting on projects, and what will be the returns to the river or to the system? How does that account for what you will lose from the return from groundwater?

Dr Horne—They are all issues—

CHAIR—It is on notice. Senator Siewert did ask you to take that on notice. Senator Xenophon, you have a very quick question, as does Senator Birmingham.

Senator XENOPHON—I think I am just going to have to sit down with you guys during a briefing. That might be the best thing, because I have a number of technical questions. That might be the best.

Dr Horne—I am happy to do that.

CHAIR—Senator Birmingham, you had some questions earlier, but you have one more, I am told.

Senator BIRMINGHAM—I have one very quick one. Is there anything in the IGA or agreements leading to this bill or within this bill that actually requires the north-south pipeline to be built?

Dr Horne—Not at all.

Senator BIRMINGHAM—Or the Commonwealth to support or facilitate the building of the north-south pipeline?

Dr Horne—No, not at all—nothing at all.

CHAIR—Senator Heffernan, there are five minutes to go.

Senator HEFFERNAN—For the 75 gigs that are going to go down this alleged pipeline, I presume you have modelled that?

Dr Horne—We have not modelled the pipeline. The pipeline is—

Senator HEFFERNAN—How can it be approved if someone has not—

Dr Horne—We have not approved anything at this point in time.

Senator HEFFERNAN—But they are building it, so it is a bit like Cubbie, I presume—they just do it and you say, ‘Shit, that’s Victoria,’ and, ‘Shit, that’s Queensland,’ and, ‘There’s nothing we can do about it.’ I will ask you in a different manner. The 75 gigs that they all talk about that is going to go down this line would be about 110 gross to get the 75 net if you were pumping it out of the river. If it is a wet year and they do not need it, does that go as a credit into the book for a dry year?

Dr Horne—I do not know what arrangements the Victorians are considering.

Senator HEFFERNAN—Can I tell you: this is a bloody scary proposition, because, if you do not know, this is bloody stupid.

CHAIR—You may want to write to the Victorian government—

Senator HEFFERNAN—No, it is a reasonable question.

CHAIR—Dr Horne has clearly said he does not know, so do you have other questions?

Senator HEFFERNAN—Yes, I do.

CHAIR—I urge you to put them to the officers. We have three minutes left.

Senator HEFFERNAN—The thing that concerns me about all of this and the buyback and the entitlement is that we may well, under the model we are using for buybacks—which is a bit higgledy-piggledy, I have to say—put a lot of money into an area which eventually becomes a write-off. How are we going to avoid that?

Dr Horne—We are going to avoid that by looking carefully at—a number of studies have already been commissioned. You have the CSIRO study, which basically provides some insights into water availability in the different catchments. That is a—

Senator HEFFERNAN—Anyhow, on science prediction?

Dr Horne—Science prediction, yes.

Senator HEFFERNAN—I have run out of time. With this bill, and at the end of the section, the bit that is vulnerable in my book is: if there is a redefinition of the states’ entitlements amongst themselves—because the science is saying, as you know, Dr Horne, that there may be increasing run-off in certain areas and decreasing run-off—or if we want to redesign the system and the states still have the final veto on altering the plan, how are we going to alter the plan?

Mr Orr—We need to draw a distinction between the plan and the Murray-Darling Basin Agreement. The states do not have a veto on the plan.

Senator HEFFERNAN—No, but they have a veto on the alteration to their allocation—

Mr Orr—of the stash, yes.

Senator HEFFERNAN—So how do you change that?

Mr Orr—The basic issue is that they can share amongst themselves, but those sharing will be subject to the basin plan, the long-term average sustainable development—

Senator HEFFERNAN—But, just for instance, say that in Queensland the rainfall doubles into the catchments of some of those inputs into the Warrego et cetera—and there is a bit of a vague plan that says it might—how do we get some of that water down the system if we lose 40 per cent of the run-off in the south? How do we get Queensland to agree to give it up? They have the final veto. Think about it.

Mr Orr—We might need to take that issue on notice, because it is a complicated issue, but Queensland are—

Senator HEFFERNAN—It is not very complicated in my mind, I can assure you.

Mr Orr—It is—

Senator HEFFERNAN—Perhaps you and I and others ought to sit down for an hour or two and flog a bit of this out.

CHAIR—Perhaps that is a good idea. Senator Birmingham, you wanted to put one question on notice before we wrap it up.

Senator BIRMINGHAM—It may even be a yes or no answer. Is it the case that the only real work for the authority to do once this is passed is to get on with developing the basin plan and that, as Mr Freeman advised us yesterday, nothing from the basin plan can actually take effect anywhere until 2014?

Dr Horne—No, that is not quite right. Certainly when this is through a key part of the authority's work will be the Basin Plan but the authority, with the passage of the bill, also will take over all the work of the MDBC.

Senator BIRMINGHAM—Which is ongoing at present anyway.

Dr Horne—Yes, that is right.

Senator BIRMINGHAM—And the Basin Plan itself comes into place by 2011, but in terms of it actually taking effect anywhere in a regional jurisdiction your understanding is that will be in 2014?

Dr Horne—Yes, that is right. It comes into effect in jurisdictions with the new water-sharing plans but the Basin Plan itself will provide a lot of information for the Commonwealth to further refine its purchasing and application of environmental water out into the basin. It will provide a lot of additional material to really get the system back onto a sustainable footing.

Senator HEFFERNAN—There is a reasonable chance if we have the recent year's rainfall pattern and a dry autumn next year that we will spend all this money and all that work you are doing and still end up with zero allocation for general licences in some catchments. What do we do then? Would you like to take that on notice?

Dr Horne—I will take that on notice.

Senator HEFFERNAN—I tell you what, your minister would like to know.

CHAIR—I thank the officers of the department, the secretariat, broadcasting and Hansard.

Committee adjourned at 6.42 pm