

Chapter 1

Introduction and background

1.1 On 16 August 2017, the following matter was referred to the Rural and Regional Affairs and Transport References Committee (committee) for inquiry and report by 5 December 2017:

The integrity of the water market in the Murray-Darling Basin, with particular reference to:

- (a) the allegations of theft and corruption in the management of water resources in the Murray-Darling Basin;
- (b) the investigation and public disclosure by authorities, including the New South Wales Government and the Murray-Darling Basin Authority, of reported breaches within the Murray-Darling Basin, including the Barwon-Darling Water Sharing Plan;
- (c) the actions of member states in responding to allegations of corruption and the potential undermining of the Murray-Darling Basin Plan;
- (d) the use of Commonwealth-owned environmental water for irrigation purposes, and the impact on Basin communities and the environment;
- (e) the operation, expenditure and oversight of the Water for the Environment Special Account, and
- (f) any other related matters.¹

1.2 On 5 December 2017, the committee tabled an interim report. On the same day, the Senate approved an extension of time for the tabling of a final report, to 28 March 2018.²

1.3 On 22 March 2018, the committee tabled a second interim report, which recommended that the Senate extend the time for the presentation of the final report to 29 November 2018. The Senate agreed to this extension.³

Conduct of the inquiry

1.4 The inquiry was publicly advertised online, including on the committee's website. The committee also directly invited submissions from a number of organisations and individuals with interest in the management of the Murray-Darling Basin (MDB).

1 *Journals of the Senate* No. 54, 16 August 2017, p. 1733.

2 *Journals of the Senate* No. 77, 5 December 2017, p. 2462.

3 *Journals of the Senate* No. 91, 22 March 2018, p. 2897.

1.5 The committee received 55 public submissions. A list of individuals and organisations that made public submissions to the inquiry, together with other information authorised for publication, is at Appendix 1.

1.6 The committee held a site visit around the Broken Hill and Menindee Lakes areas of New South Wales on 31 October 2017. It also held the following public hearings:

- Broken Hill on 1 November 2017;
- Adelaide on 2 November 2017; and
- Sydney on 28 August 2018.

1.7 Details of the hearings referred to above can be found in Appendix 2. All public submissions and the Hansard transcripts of evidence from the hearings can be accessed through the committee's webpage.⁴

Acknowledgements

1.8 The committee thanks all those individuals and organisations who contributed to this inquiry by making submissions, as well as appearing before the committee to give evidence. The committee thanks all those who came forward to detail their difficult personal experiences with water management in the Basin, many of which revealed the great personal toll that such experiences have caused.

1.9 The committee particularly thanks those witnesses and individuals who assisted the committee with its inquiry during site visits in the Broken Hill area, including the McBride family of Tolarno Station. The committee appreciates the time and effort of all those who contributed to the visit, and for the information they provided to the committee.

Context of the inquiry

1.10 The committee is aware that the management of the MDB, and the allocation and monitoring of its water resources, is a matter of detailed, long-running, passionate and ongoing debate and discussion. The committee acknowledges the many and varied views on how the Basin should be administered, from a diversity of stakeholders.

1.11 Further, there is considerable breadth to the matters before the Commonwealth and the Basin states with regard to the management of the water resources of the MDB, many of which are beyond the scope of the committee's current inquiry.

4 See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport

1.12 While the committee is aware of the numerous issues confronting Basin stakeholders at the present time, it is required to concentrate specifically on the terms of reference as referred to it by the Senate. The committee has focused on the allegations of water theft in the MDB and has considered the findings and recommendations of the various reviews and investigations that resulted from these allegations. The water monitoring and compliance mechanisms in place across the system, or lack thereof, discrepancies in approaches to water metering and monitoring between Basin states, and the role of the Murray-Darling Basin Authority (MDBA) in water compliance have been of particular interest throughout the inquiry.

1.13 Further, the committee acknowledges that some time has lapsed since the commencement of this inquiry. Accordingly, a number of matters raised by submitters and witnesses have progressed or reached a resolution (for example, the Northern Basin Review and adjustments to water recovery targets, the installation of the Broken Hill pipeline, and the ongoing South Australian royal commission into the MDB). Some of the developments that have taken place since the inquiry was first initiated are considered throughout this report.

Report Structure

1.14 This chapter provides a summary of the allegations made concerning water theft across the MDB. It also examines the principles of effective water compliance and enforcement.

1.15 Chapter 2 provides information on the governance arrangements and legislative framework for the MDB and implementation of the Basin Plan. It also details the water metering and monitoring regulatory framework for the Basin, with a focus on a number of Basin state jurisdictions.

1.16 Chapter 3 summarises the key findings and recommendations of the various investigations and reviews into water management across the Basin, particularly in NSW via the Ken Matthews review.

1.17 The fourth chapter looks specifically at the compliance review undertaken by the MDBA and the findings of that review.

1.18 Chapter 5 examines the Water for the Environment Special Account, including its expenditure, oversight and annual reporting. The chapter also provides discussion and case studies on water buybacks by the Commonwealth, and the role of the Commonwealth Environmental Water Holder.

1.19 Progress on water compliance matters since the commencement of this inquiry is considered in Chapter 6. This chapter also presents the committee's views and recommendations.

Background

1.20 On 24 July 2017, the ABC Four Corners program aired an episode titled 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?'. The program made allegations regarding water theft and corruption in the MDB by certain cotton irrigators in northern NSW. The significance of the program was made clear, as it became a catalyst for greater scrutiny of the administration of the MDB.

1.21 The episode put forward a series of allegations about the manner in which the Murray-Darling Basin Plan (Basin Plan) was working, and included 'accusations of illegal water use, pumping water from fragile rivers and tampering with [water] metres'.⁵ It also brought to light concerns about compliance and the willingness of Basin states to enforce water rules, which led to a number of reviews and investigations into the matter.

1.22 In presenting these allegations, the committee notes that some of the claims made by Four Corners have been disputed by some stakeholders, who have argued that the allegations presented a lack of understanding about the water management regulatory framework.

Allegations aired by Four Corners

1.23 As detailed by the committee's first interim report, the allegations raised by Four Corners included those of water theft⁶ against a prominent cotton farmer from the Bourke and Brewarrina areas of northern NSW. In addition to allegations of water rule breaches by other large property owners and irrigators, the Four Corners program also alleged that:

- large volumes of water were being extracted beyond licensed limits;
- pumping of large volumes of water was occurring at times when pumping was not allowed;
- appropriate records and log books were not maintained in instances where water meters were not working, as required under NSW water legislation;
- water channels and other structures were being constructed by large property owners, on Crown land, without approval;
- water pumping was occurring during embargo periods;

5 Sarah Ferguson, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 2].

All references to the Four Corners program 'Pumped' are based on a PDF of the transcript of the program, as published on the Four Corners website, at <http://www.abc.net.au/4corners/pumped/8727826> (accessed 15 January 2018).

6 The committee acknowledges the legal concerns put forward about water rights, land rights and personal property, and the difficulties these may present in determining what constitutes 'water theft'; see for example, Law Council of Australia, *Submission 10*, and Dr Adam Loch, Dr Erin O'Donnell, Dr David Adamson and Dr Avril Horne, *Submission 12*.

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- water meters appeared to have been tampered with and had parts removed;
 - the relevant NSW Government agencies had no appetite for water compliance activities;
 - a senior officer in the NSW Department of Primary Industries (DPI) shared confidential departmental documents with irrigator lobbyists; and
 - irrigation companies were making money by selling water at a profit.⁷

1.24 Additionally, the program aired claims that top NSW Government officials from the DPI deliberately assisted wealthy irrigators along the Barwon and Darling Rivers, around Bourke and Brewarrina, to undermine the Basin Plan. The program also suggested that NSW Government officials had discussed withdrawing NSW from the Basin Plan.⁸

1.25 Particular details on the allegations made by Four Corners are provided below.

Property owners

1.26 Four Corners alleged that certain large property owners and irrigators in NSW had taken more water than they were entitled to under approved water licensing arrangements. A number of the allegations concerned Mr Peter Harris and his family. Mr Harris is a proprietor of the businesses operating as P&J Harris & Sons, and Clyde Cotton. Mr Harris owns a number of properties, including *Rumleigh* and *Miralwyn*, and other properties around Bourke, Brewarrina, Carinda and Hay.

1.27 With regard to the Harris family, the Four Corners program alleged that:

- the Environmental Defender's Office (EDO) had obtained data via Freedom of Information processes that 'appears to show huge volumes of water have been taken beyond what Peter Harris' properties are allowed';⁹
- at the Harris's property *Rumleigh* in 2016, the Mayor of Brewarrina Shire Council, Councillor Phillip O'Connor, saw 'pipes pulling huge volumes of water out of the river when pumping wasn't allowed';¹⁰
- there was evidence of water meters that didn't work, with cables unplugged, batteries removed and impellers missing, on Harris property;¹¹

7 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 24 July 2017.

8 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 24 July 2017.

9 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 9].

10 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 8].

- for the Harris's property *Miralwyn*, Jack Harris, son of Peter Harris, conceded they had not been keeping a detailed log book, as required under the NSW *Water Management Act 2000* when a meter is not working;¹² and
- investigators had found a water channel dug on a Harris property through Crown land, resulting in the road requiring rerouting. The program alleges that this was built without approval.¹³

1.28 Mr Harris has refuted all allegations made by Four Corners against him and the operation of his families' properties. Mr Harris stated that:

We look forward to an opportunity to vigorously defend these baseless allegations in a legitimately constituted forum where the rule of law applies.

We maintain we have at all times fully complied with our obligations under our Water Access Licences and have nothing to hide.¹⁴

1.29 The program made additional allegations against the proprietors of the *Burren Downs* property, located near Mungindi, and owned by the Barlow family. Four Corners contended that:

- *Burren Downs* had been pumping during a water extraction ban set up to ensure water travelled downstream to Broken Hill for its drinking supply;¹⁵
- a member of the NSW Strategic Investigations Unit (SIU) in DPI-Water alleged that, in relation to a particular pump on *Burren Downs*, his team discovered a broken meter, attached to a pump extracting millions of litres of water into a private dam; it also appeared that the meter had been tampered with;¹⁶ and

11 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 9].

12 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [pp. 7-8].

13 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 9].

The Ken Matthews review, discussed further in Chapter 3, found records indicating that the structure was built without approval but that NSW DPI, in conjunction with NSW Lands & Forestry, decided not to pursue enforcement action (due to difficulties associated with this) but rather sought retrospective authorisation of the structure.

14 Andrew Clennell, 'Irrigator Peter Harris summonsed for 'illegal' water use', *The Australian*, 14 November 2017, <https://www.theaustralian.com.au/national-affairs/state-politics/irrigator-peter-harris-summonsed-for-illegal-water-use/news-story/25b0d3cd0e19dd6a304fc6d1c023b130> (accessed 14 November 2017 and 12 November 2018).

15 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 7.]

16 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 7].

- Mr Anthony Barlow alleged at a community meeting that former NSW Minister for Water, Mr Kevin Humphries, had 'given a room full of irrigators permission to pump' and advised those present that the ban then imposed on water extraction was being lifted.¹⁷

1.30 The program also asserted that cotton company Webster Limited owned 'more water than anyone else in the country outside the federal government', thus providing the company with an opportunity to make more money selling water during times of drought, than by growing cotton. The program alleged that Webster owned water storages containing a combined 30 billion litres of water drawn from the Barwon-Darling, some of which may have been obtained by using large pumps in periods of low flows.¹⁸

1.31 Webster Limited issued a rebuttal of the claims made by Four Corners, claiming that the program contained factual errors, poorly researched allegations, and fabrications. Webster argued that it owns less than one per cent of all water entitlements along the MDB, with the company only extracting water in accordance with licensing and strict flow conditions, regardless of pump size. It reiterated its position that 'Webster has not extracted water in breach of its extraction limits'.¹⁹

NSW Department of Primary Industries

1.32 Mr Jamie Morgan, previously the head of the SIU unit within DPI-Water, advised Four Corners that he sought authority to conduct a major investigation along the Barwon-Darling, due to the alleged instances in that region of breaches of water licences. However, Mr Morgan stated that a major investigation was never approved by senior management within DPI-Water, with no reasons provided as to why.²⁰

1.33 In the Four Corners program, Mr Morgan stated that 'it was clear that there was no appetite for compliance anymore' within NSW Government, despite the 'significant problems' his team located in the northwest of NSW.²¹

17 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 7].

The Ken Matthews review was unable to independently verify the accuracy of the statements attributed to Mr Kevin Humphries.

18 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 4].

19 Webster Limited, *Investor Information – Response to ABC Fabrications*, <http://www.websterltd.com.au/> (accessed 17 January 2018).

20 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 10].

21 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 10].

1.34 The Four Corners program alleged that in 2016, Mr Gavin Hanlon, Deputy Director General of Water in the DPI, set up a secretive group with irrigator lobbyists and offered to share sensitive, official 'de-badged' departmental documents, to help irrigators progress their interests. The program broadcast an alleged audio recording of Mr Hanlon participating in a teleconference with the group.²²

Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012

1.35 The Four Corners program alleged that changes to rules within the Barwon-Darling system in 2012 (presumed to be the 2012 Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources), had 'been a boon' for companies such as Webster Limited. In the program, University of NSW scientist Richard Kingsford alleged that government water buybacks intended to provide environmental water could be pumped for other purposes, such as irrigation for cotton farms.²³

1.36 The program alleged that the new rules were introduced after extensive lobbying by irrigators. It was alleged that the changes allowed irrigators to access more water than prior to the implementation of the Basin Plan in 2012. It was further alleged that the changed rules allowed larger pumps to extract water during periods of low flows.²⁴

Further allegations of water theft

1.37 A number of media reports subsequent to the airing of the Four Corners program described other instances of alleged water theft in NSW, and possible instances of inadequate compliance and enforcement by the relevant authorities.

1.38 On 5 August 2017, it was reported that water licence rule changes had given a small number of irrigators in northwest NSW the ability to extract large volumes of water. The report claimed that the NSW EDO had documents establishing that licences for Barwon-Darling river water extraction were sub-divided, 'apparently in breach of the NSW *Water Management Act 2000*', which does not allow additional water to be extracted after subdivision. Other documents were said to reveal excess water extraction. It was reported in the press that:

As part of the sub-division, the licence holder was permitted to install 11 pumps with diameters of 600-660 millimetres – as much as eight times the

22 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 10].

23 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 4].

24 Linton Besser, 'Pumped: Who is benefitting from the billions spent on the Murray-Darling?', *ABC Four Corners*, 25 July 2017, [p. 4].

previous size of the nine 80-150 mm pumps used – capable of extracting significantly more water.²⁵

1.39 The same report indicated that another irrigator on the Barwon-Darling had been found to have pumped five times more A Class water in 2014-15 than was allowed by the water licence, and had extracted a very significant amount of water—3.147 billion litres—during 2015-16, some of which was possibly in breach of permitted extraction limits.²⁶

1.40 The enforcement of water licences in NSW has also come under scrutiny. Data indicated that in NSW in 2016-17, only 14 penalty notices were issued to water licence holders, compared with 70 in 2015-16, and 98 in 2014-15. Similarly, in 2016-17 there were no prosecutions, and only three stop work orders issued (to prevent the construction of illegal water infrastructure). It was argued that these figures supported claims made by Four Corners that there was little appetite for dealing with water theft within some sections of the NSW Government.²⁷

Murray-Darling Basin Authority

1.41 The actions of the MDBA have also been examined, with reports that the MDBA knew of the allegations of substantial water theft as early as July 2016, yet took no action, instead passing on information about alleged water theft to state enforcement agencies. Further, it was suggested that the public final report on the MDBA's investigations of water extractions in the Barwon River had all references to possible unlawful water extraction removed.²⁸

1.42 In media reports of September 2017, it was suggested that the MDBA had used a satellite monitoring program called Data Cube in order to track water flows down the Barwon River. Data Cube was 'initially intended not as a compliance-monitoring program but a scientific one, tracking the effects of environmental flows on the river and wetlands.' It was alleged that use of the Data Cube program showed that:

25 Peter Hannam, 'More claims of excess water extraction by NSW irrigators surface', *Sydney Morning Herald*, 5 August 2017, <http://www.smh.com.au/environment/more-claims-of-excess-water-extraction-by-nsw-irrigators-surface-20170805-gxq2jh.html> (accessed 23 August 2017).

26 Peter Hannam, 'More claims of excess water extraction by NSW irrigators surface', *Sydney Morning Herald*, 5 August 2017.

27 Anne Davies, 'Policing of NSW water licences slowed to trickle over 12 months', *The Guardian*, 28 September 2017, <https://www.theguardian.com/australia-news/2017/sep/27/policing-of-nsw-water-licences-slowed-to-trickle-over-12-months> (accessed 22 January 2018).

28 The report referred to is *Identifying locations and timing of water extractions in the Barwon-Darling using remote sensing data – Australian Geoscience Data Cube pilot project*, April 2017, <https://www.mdba.gov.au/sites/default/files/pubs/Data-cube-report.pdf> (accessed 9 November 2018).

billions of litres of water bought by taxpayers to improve the environment were being taken from the river in one small part of the Barwon river in New South Wales. Much of it appeared to be taken unlawfully when the river was too low, or during times when pumping was banned to protect the drinking water for Broken Hill.

...But when experts from the MDBA and Geosciences Australia examined satellite imagery (showing where water was in the landscape) and flow gauges in the river, the data suggested water bought for the environment upstream was disappearing before it reached the downstream gauge.²⁹

1.43 The MDBA contended that early drafts of the report contained allegations of possible illegal water take, but these claims were not adequately supported by the information available to the MDBA at the time. Following an internal review, the MDBA determined to remove the allegations from the final report.³⁰ Further, the MDBA was of the view that compliance matters were being managed by the states and actioned appropriately.³¹

1.44 The MDBA did, however, express some optimism about the application of Data Cube in the future. The MDBA submitted that:

The project demonstrated that the Data Cube can provide useful information to assist with the tracking of water in remote parts of the Basin, but it does have some limitations at present. For example it can determine geographic spread but not depth of water at a particular location and time. In the MDBA's view, the technology could already be applied to help target compliance activities, and in future could have more direct application.³²

1.45 In its submission to the inquiry, the MDBA indicated that it had formally referred concerns about alleged instances of illegal water take in the Barwon-Darling to WaterNSW and the NSW DPI in August 2016.³³

Prosecutions relating to water theft

1.46 On 14 November 2017, it was reported that Mr Harris had been served with a summons by the NSW EDO for the return of more than five billion litres of water, allegedly extracted illegally from the Barwon-Darling River. It was also claimed that:

29 Michael Slezak, 'Murray-Darling Basin Authority knew of allegations of water theft a year before ABC report', *The Guardian*, 27 September 2017, <https://www.theguardian.com/australia-news/2017/sep/27/murray-darling-basin-authority-knew-of-allegations-of-water-theft-a-year-before-abc-report> (accessed 27 September 2017).

30 Murray-Darling Basin Authority, *Submission 26*, p. 5.

31 Michael Slezak, 'Murray-Darling Basin Authority knew of allegations of water theft a year before ABC report', *The Guardian*, 27 September 2017.

32 Murray-Darling Basin Authority, *Submission 26*, p. 5.

33 Murray-Darling Basin Authority, *Submission 26*, p. 3.

NSW Primary Industries Minister Niall Blair benefited Mr Harris, a cotton farmer, and other irrigators by changing the laws to pardon Mr Harris retrospectively for illegal flood works [on his property] and that Mr Blair lobbied Environment Minister Gabrielle Upton to change the law to justify a decision to give Mr Harris more water trading rights.³⁴

1.47 In March 2018, it was further reported that the NSW Government would prosecute the Harris family, who were accused of taking water when the flow conditions did not permit it, and of breaching licence and approval conditions for water use. The Barlow family were also to be prosecuted—accused of pumping during an embargo and pumping while metering equipment was not working.³⁵

1.48 Both the Harris and Barlow families have entered not guilty pleas, with the trials for both families—being heard in the NSW Land and Environment Court—set down for November 2018.³⁶

1.49 On 28 August 2018 it was reported that two members of the Norman Farming cotton farm enterprise had been arrested for fraud, with allegations that the director of the company had submitted fraudulent claims, including falsified invoices, to the Queensland Department of Natural Resources, Mines and Energy. The invoices related to six water-efficiency projects on a property near Goondiwindi. The projects formed part of the Healthy Headwaters Water Use Efficiency program, and the alleged fraud totalled a financial gain of over \$20 million.³⁷

Investigations and inquiries

1.50 Following the publication of the various allegations of water theft, and particularly the claims made by Four Corners, a number of investigations and inquiries into these matters have been completed or remain in progress. While many

34 Andrew Clennell, 'Irrigator summonsed for 'illegal' water use', *The Australian*, 14 November 2017, <http://www.theaustralian.com.au/national-affairs/state-politics/irrigator-peter-harris-summonsed-for-illegal-water-use/news-story/25b0d3cd0e19dd6a304fc6d1c023b130> (accessed 14 November 2017).

35 Lucy McNally, 'Alleged Barwon-Darling water thieves to be prosecuted after ABC investigation', *ABC News*, 8 March 2018, <http://www.abc.net.au/news/2018-03-08/nsw-water-theft-barwon-darling-government-prosecuting/9527364> (accessed 31 July 2018).

36 Alex Druce, 'Harris and Barlow families plead not guilty to alleged Barwon-Darling water thefts in Land and Environment Court', *The Northern Daily Leader*, 29 June 2018, <http://www.abc.net.au/news/2018-03-08/nsw-water-theft-barwon-darling-government-prosecuting/9527364> (accessed 31 July 2018).

37 Queensland Police News, 'Two men charged for \$20m fraud offences', 28 August 2018, <https://mypolice.qld.gov.au/blog/2018/08/28/two-men-charged-for-20m-fraud-offences/> (accessed 14 September 2018); Lexy Hamilton-Smith, 'Cotton farm execs accused of \$20m fraud over Murray-Darling water funding', *ABC News*, 28 August 2018, <http://www.abc.net.au/news/2018-08-28/cotton-executives-20-million-fraud-allegation-norman-farming/10172736> (accessed 14 September 2018).

of these focus their attentions on NSW, some also consider the role of the MDBA, and the broader national context of the Basin Plan.

1.51 At the time of the committee's first interim report in early December 2017, a number of these reviews were close to completion, and have since been published. The committee was thus able to draw on their findings as it progressed with its own inquiries.

1.52 To date, the inquiries and investigations have been extensive and thorough. They include:

- a Murray-Darling Water Compliance Review (WCR) by the MDBA, which provided an independent review of Basin-state water compliance frameworks, and compliance with legislation and policy governing water use across the MDB. An independent panel further assessed the compliance and enforcement arrangements within the MDBA. The WCR was published on 25 November 2017;³⁸
- an Australian National Audit Office (ANAO) limited assurance review into NSW's Protection and use of Environmental Water under the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin (NPA). The report was released on 28 November 2017;³⁹
- an independent investigation into NSW water management and compliance by Mr Ken Matthews AO. Mr Matthews examined the allegations raised by Four Corners that involved the responsibilities of DPI-Water and its employees. An interim report was presented on 8 September 2017, and a final report was released on 30 November 2017;⁴⁰
- a NSW Ombudsman (NSWO) investigation into water compliance and enforcement. An interim report was tabled in NSW Parliament on 15 November 2017, which indicated that three previous investigations of a

38 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, MDBA reports, 25 November 2017, <https://www.mdba.gov.au/publications/mdba-reports/murray-darling-basin-water-compliance-review> (accessed 16 January 2018).

39 Australian National Audit Office, *Department of Agriculture and Water Resources' Assessment of New South Wales' Protection and use of Environmental Water under the National Partnership Agreement in Implementing Water Reform in the Murray-Darling Basin*, ANAO Report No. 17 of 2017-18, <https://www.anao.gov.au/work/assurance-review/dept-agriculture-water-resources-assessment-nsw-protection-use-environmental-water-mdb> (accessed 16 January 2018).

40 NSW Department of Industry, *Independent review of water management and compliance*, <https://www.industry.nsw.gov.au/about/our-business/independent-review-water-management-and-compliance> (accessed 16 January 2018).

similar nature had been undertaken in 2009, 2012 and 2013. A final report was released on 17 August 2018;⁴¹

- a NSW Independent Commission Against Corruption (ICAC) investigation into the allegations raised by Four Corners about the actions of senior officers of the NSW Government;⁴²
- a South Australian state royal commission into the allegations of water theft in the MDB. The commission was established on 23 January 2018 and is examining the operations and effectiveness of the MDB system. It is required to report to the South Australian Governor by 1 February 2019 (with the capacity to release interim reports);⁴³ and
- a draft report released by the Productivity Commission on 30 August 2018, providing a five-year assessment of the Basin Plan. The report considers the progress made in implementation of the Basin Plan, while highlighting a number of major risks and challenges ahead for full and on-time implementation of the Plan.⁴⁴

1.53 The committee further notes that at a Ministerial Council Meeting on 19 December 2017, Basin state water ministers agreed to appoint an independent person to examine all the various inquiries and reviews into the water theft allegations. It was envisaged that this independent examiner would consider whether the reviews and inquiries 'address the serious allegations made about water theft and determine if further compliance and enforcement measures are required'.⁴⁵

1.54 By June 2018 this work was completed, with the Ministerial Council acknowledging work that had brought together 'all the findings of the various Basin

41 NSW Ombudsman, *Investigation into water compliance and enforcement 2007-17*, <https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/state-and-local-government/investigation-into-water-compliance-and-enforcement-2007-17> (accessed 16 January 2018), and *Water: compliance and enforcement – a special report to parliament*, <https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/state-and-local-government/water-compliance-and-enforcement> (accessed 13 September 2018).

42 Mr Ken Matthews AO, *Independent investigation into NSW water management and compliance – interim report*, 8 September 2017, pp. 14-15, https://www.industry.nsw.gov.au/_data/assets/pdf_file/0016/120193/Matthews-interim-report-nsw-water.pdf (accessed 16 January 2018).

43 The Hon Jay Weatherill MP, Premier of South Australia, 'Bret Walker SC recommended to lead Murray-Darling Basin Royal Commission', *Media release*, 16 December 2017, <https://www.premier.sa.gov.au/index.php/jay-weatherill-news-releases/8455-bret-walker-sc-recommended-to-lead-murray-darling-basin-royal-commission> (accessed 16 January 2018); and Murray-Darling Basin Royal Commission, <https://mdbrcsa.govcms.gov.au/> (accessed 13 September 2018)

44 Productivity Commission, *Murray-Darling Basin Plan: Five-year assessment*, <https://www.pc.gov.au/inquiries/current/basin-plan/draft> (accessed 13 September 2018).

45 The Hon Lisa Neville MP, Victorian Minister for Water, 'Standing up for the Basin Plan and Victorian Communities', *Media Release*, 19 December 2017, <https://www.premier.vic.gov.au/standing-up-for-the-basin-plan-and-victorian-communities/> (accessed 11 January 2018).

water use compliance reviews and audits', using this to guide the development of the new Basin Compliance Compact (discussed further in Chapter 4).⁴⁶

1.55 While focusing on individual jurisdictional issues in some instances, these reviews and reports have provided extensive information on the operation of the Basin Plan as a whole, the actions—or lack thereof—of Basin states in relation to water administration, and have highlighted significant shortfalls in the implementation of effective water management and oversight.

1.56 While the committee is unable to involve itself in individual cases of water theft, or in matters for individual states, it welcomes the findings of these reviews in assessing the management of the MDB from a Commonwealth perspective. These reviews will greatly assist the MDBA in implementing more effective oversight of the Basin Plan.

1.57 The committee discusses the findings and recommendations of these investigations in greater detail in Chapters 3 and 4.

Water compliance and enforcement

1.58 The strength and success of the Basin Plan, and ensuring the appropriate allocation of water between agriculture and the environment, hinges on Basin states implementing and enacting effective water compliance and enforcement regimes.

1.59 There are significant risks to the communities and river users along the MDB whenever there is insufficient water supply. These risks may threaten the viability of river communities, agricultural and other farming industries, and individual livelihoods and businesses. As noted by the committee's interim report, the allegations of water theft have highlighted the need for considerable improvements to the monitoring, compliance and enforcement of water use across the Basin.

1.60 Water compliance and enforcement were well-defined by the NSWOW, which stated in its November 2017 report that:

Compliance and enforcement is understood to be the sharp end of regulation, namely, the investigation of alleged breaches of water legislation and enforcement action to compel legislative compliance. This spans proactive monitoring, investigative, evidence gathering and enforcement processes, and can include a wide spectrum of activities ranging through advisory letters, warning letters, stop work orders,

46 Murray-Darling Basin Authority, *Communique: Murray-Darling Basin Ministers meet in Canberra*, 8 June 2018, <https://www.mdba.gov.au/media/mr/communique-murray-darling-basin-ministers-meet-canberra> (accessed 8 November 2018).

remediation directions, license suspensions, license cancellations, penalty notices and prosecutions.⁴⁷

1.61 Additionally, the issues of transparent water management, which is an aspiration shared by diverse stakeholders, was highlighted in the interim report of September 2017 by Mr Ken Matthews, who stated that:

Despite the frequent discord about many water management issues, there is one thing that all parties agree on—non-compliant or illegal extraction of water should not be tolerated and should be dealt with firmly. Environmental groups want assurance that the environment is not being short-changed. State governments want to be confident that other states are observing the rules. Irrigators want assurance that their peers are behaving honestly. In submissions to this Investigation many irrigators have made clear their disappointment about the damage now done to the good name of the sector by the alleged behaviour of a few.⁴⁸

1.62 The MDBA has clearly expressed its view on the vital role that compliance plays in ensuring the ongoing health and sustainability of the MDB system. The MDBA noted that effective compliance 'underpins the integrity of water resource plans, environmental watering, water property rights and the water market'. The MDBA went on to argue that:

Being effective means that entitlement holders understand their rights and obligations, offences are promptly detected and investigated, and enforcement action pursued. The perception that wrong doers are not punished is corrosive to other entitlement holders, whose commitment to compliance is undermined, and to the broader community, which may doubt the appropriateness of the social licence under which water is taken.

The social authority of a compliance system depends critically on it being fair and seen to be fair. Fairness means that breaches are dealt with and that those who abide by the rules do not suffer any consequences from wrongdoers, whose actions go undetected or are not dealt with. This requires that the compliance system is effective. Fairness also means the same kinds of offences are dealt with in the same way, no matter who or where the offender is. This requires consistency of compliance arrangements and practices across the Basin.⁴⁹

47 NSW Ombudsman, *Investigation into water compliance and enforcement 2007-17*, November 2017, p. 12, https://www.ombo.nsw.gov.au/data/assets/pdf_file/0012/50133/Investigation-into-water-compliance-and-enforcement-2007-17.pdf (accessed 9 January 2018).

The Ombudsman's report is discussed in further detail in Chapter 3.

48 Mr Ken Matthews AO, *Independent investigation into NSW water management and compliance*, interim report, 8 September 2017, p. 5.

The Matthews review is discussed in further detail in Chapter 3.

49 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 11, <https://www.mdba.gov.au/sites/default/files/pubs/MDB-Compliance-Review-Final-Report.pdf> (accessed 11 January 2018).

1.63 The ramifications of an inadequate compliance regime were put to the committee by Dr Adam Loch and colleagues, who argued that:

if we allow unlawful extraction to go unchallenged, and even more importantly, unpunished it signals a weakness in our markets that goes to its heart: unenforced water access property rights. If we do not act to address this issue, with a corresponding strong message to those who rely on the water market, we threaten a waste of taxpayer's money to date as well as significant future public spending to reclaim public and private confidence in the water market.⁵⁰

1.64 In conducting this inquiry, the committee sought to establish whether there was appropriate transparency within water administration. The committee was particularly interested in whether the compliance and enforcement structures in place across Basin states allowed for appropriate scrutiny of water use and extraction, and provided states with the sufficient authority to enforce water use rules and licence conditions. The role of technology in proper water metering and monitoring, and the support such technology could offer to compliance efforts, was also of interest to the committee.

Differences between the southern and northern Basin

1.65 The committee notes the general observations made by various submitters and stakeholders that the southern and northern Basins of the MDB are considerably different, and appear to have different regulatory oversight frameworks.

1.66 The northern and southern Basins vary considerably in terms of land and water use, rainfall volumes and patterns, river systems, topography and climate. The northern Basin is drier, having considerably less rainfall which occurs in the summer months, as opposed to the southern Basin where rainfall occurs in winter. Further, the northern Basin has less regulation and development, and uses less water than the southern Basin. These differences in the Basins have resulted in different management frameworks and regulatory approaches.⁵¹

1.67 In addition to these differences, the extent of water metering across the Basin varies greatly between jurisdictions. As part of its compliance review, the MDBA identified that:

Over the four years from 2012-13 to 2015-16, between 64% and 73% of Basin surface water was metered. Among the states, South Australia has the highest metering rate with 96% of take being metered. In the northern Basin between 25% and 51% is metered. Groundwater metering varies

50 Dr Adam Loch, Dr Erin O'Donnell, Dr David Adamson and Dr Avril Horne, *Submission 12*, p. 4.

51 Senate Select Committee on the Murray-Darling Basin Plan, *Refreshing the Plan*, March 2016, pp. 17-18, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Murray_Darling_Basin_Plan/murraydarling/Report (accessed 1 November 2018).

considerably. In Victoria, 91% is metered, with South Australia and NSW metering 88% and 83% respectively, and Queensland 28% (due in part to the high volume of overland flow harvesting).⁵²

1.68 With no more than 51 per cent of northern Basin surface water metered, it appears to the committee as no surprise that such large scale water theft is alleged to have occurred in that area. The lack of proper metering and monitoring makes it difficult for authorities to determine if breaches of the water rules have occurred, and if so, to what extent. This in turn makes prosecution, or other enforcement activity, hard to instigate.

1.69 The different approaches to compliance and monitoring regimes between the northern and southern Basin were consistently highlighted to the committee.⁵³ Concerns were also put forward that there appeared to be different approaches taken within a single jurisdiction—NSW—to compliance and monitoring regimes, depending on the geographical area.

1.70 For example, Mr Ben Bruce, from the South Australian Department of Environment, Water and Natural Resources (DEWNR), acknowledged that there were compliance risks and challenges in the unregulated areas of the NSW northern Basin, due to its remoteness and the nature of water courses in that area.⁵⁴

1.71 Mr Leon Zanker of the Australian Floodplain Association (AFA) identified a number of perceived differences between the management of the northern Basin and the southern Basin. Mr Zanker said that it was his understanding that:

in the southern basin, because they have tamper-proof metres, real-time monitoring and reporting, virtually every drop of water taken is accounted for...But I don't fully understand the way the licence system works on the unregulated rivers in the northern basin. I imagine the bulk of laypeople out here are the same and don't fully understand the complexities surrounding A, B and C class licences, the associated pump sizes or how many pumps you can have.

I doubt whether they understand—and I don't fully understand—the complexities around commence-to-pump and cease-to-pump thresholds that are taken at various gauging stations for all different classes of licences, how those extractions are metered or who is responsible for ensuring compliance with those licence conditions.⁵⁵

52 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 17.

53 The differences in water metering between the northern and southern Basins are discussed in further detail in Chapter 2.

54 Mr Ben Bruce, Department of Environment, Water and Natural Resources, *Committee Hansard*, 2 November 2017, p. 2.

55 Mr Leon Zanker, Australian Floodplain Association, *Committee Hansard*, 1 November 2017, p. 23.

1.72 Mayor Darriea Turley, of the Broken Hill City Council, voiced her concern that water was not flowing down the Darling, and questioned why water-sharing plans were managed in the southern part of the Basin in NSW, but not in the northern Basin. The Deputy Mayor of Broken Hill, Councillor Marion Browne, expanded on this view, stating that:

Something that's been brought up a number of times is the absence of proper metering of water in the upper Darling. That's certainly one of those issues that led to the accusations of meter tampering and so on. It's my understanding – and I stand to be corrected – that an opportunity was given some years ago to a number of these larger irrigators to install proper electronic metering...but they declined that.⁵⁶

1.73 As an example of the differences between the management of the northern and southern Basins, Mayor Turley advised the committee that:

One of the irrigators who spoke to me in the lower sector said that he had received a letter for overextraction, and it was within a week of the overextraction. So it's immediate; it's monitored. There was a warning. He won't be overextracting again, but he said he can't understand what's happening with the management in the lower sector as opposed to the northern Basin.⁵⁷

The impact of over-extraction

1.74 Given the breadth of issues and concerns with the management of the MDB, there was considerable volume and variety to the submissions received by the committee. The committee received evidence from a number of submitters expressing serious concerns about the over-extraction of water from the Basin. Several submitters contented that water extraction may have been taking place illegally, or beyond what was allowed by a particular licence, on repeated occasions. Other submitters were of the view that compliance with the Basin Plan and other regulatory frameworks was not being properly enforced by either Basin state governments, or the MDBA.

1.75 Conversely, many irrigators and irrigator representatives expressed their dismay at the claims made by Four Corners, and urged caution in accepting all claims made by the program as correct, or proven.

Social and environmental impacts

1.76 The impacts on river communities of alleged water theft, or low or non-existent water flows through the Basin, were put forward consistently in evidence, with some examples below.

56 Councillor Darriea Turley and Councillor Marion Browne, Broken Hill City Council, *Committee Hansard*, 1 November 2017, pp. 16-17.

57 Councillor Darriea Turley, Broken Hill City Council, *Committee Hansard*, 1 November 2017, p. 17.

1.77 Mr Rene Woods of the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) advised the committee of the devastating impacts on Indigenous communities of a lack of water flow across the Basin. Mr Woods stated that:

It's a proven fact in the northern basin that when there was no water in the river up there, the crime rate in town rose quite significantly. The health of people in those basin communities also put pressure on the Medicare system in those towns. The doctors were under pressure because of the amount of people who were in the day surgeries and seeing doctors. When there's water in the river, our people are out there fishing; they're enjoying their knowledge transfer to the younger generation; they're happy to see water in the river. When Mother Earth is healthy, we're healthy.⁵⁸

1.78 Councillor Phillip O'Connor, of Brewarrina Shire Council, NSW, advised the committee that there were many people along the Darling River who were 'too afraid to speak out' about water theft, and felt that the authorities did nothing to address concerns when they were raised. The Councillor provided the committee with evidence from the Brewarrina area of numerous instances of alleged water theft, arguing that if no-one knows of these allegations, and nothing is done about them, 'the river is not going to survive'.⁵⁹

1.79 Some witnesses expressed their concern over the diminished flows into the southern parts of the Basin and the impacts on river communities. Miss Kate McBride, of Tolarno Station, NSW, advised the committee that:

Before 2002, there was only one cease-to-flow event in history, but since then there have been 15 along the lower Darling that have had significant impacts on the economic, social, physiological and physical health of the communities that live along it. The most recent, in 2015-16, was the longest seen in white man's history and was not due to drought.⁶⁰

1.80 Mr Rob McBride, also of Tolarno Station, also drew attention to the dry river event in 2015-16, which he viewed as a direct result of excessive diversions upstream in the northern Basin, including the use of environmental water for irrigation purposes. Mr McBride highlighted the impacts of the 2015-16 dry river period on the area:

During this period, there were significant and long-lasting social and economic impacts to the community. On my property alone, I experienced significant loss of land, stock and production totalling approximately \$3.6 million during this period alone. Over 200,000 acres of land was lost to production due to loss of property borders (the river is a natural boundary between properties) and no potable water for stock or domestic use. The

58 Mr Rene Woods, Murray Lower Darling Rivers Indigenous Nations, *Committee Hansard*, 2 November 2017, p. 10.

59 Councillor Phillip O'Connor, *Committee Hansard*, 1 November 2017, p. 9.

60 Miss Kate McBride, *Committee Hansard*, 1 November 2017, p. 1.

water quality in the remaining water hole was so poor, the water became toxic and was unsafe for use.⁶¹

1.81 Mr Bill Johnson, formerly of the MDBA, described the angst amongst the various water users within Basin communities. Mr Johnson argued that if the current rules were properly adhered to, the management of the Basin would be 'much further down the track'. He noted that:

At the moment there is no trust between extractive users and even amongst extractive users. There is even less trust between extractive users and other members of the community, and there's almost no trust in some of the water bureaucracies. Without that, the very difficult negotiations and the very difficult sharing just can't happen, as people put their energies into fighting with each other and taking sides.⁶²

1.82 Concerns were consistently raised in evidence about the impact on the environment of water theft and over-extraction from the MDB of water intended for the environment. Other concerns were raised that the Basin Plan does not properly consider the impact of climate change on the regulation of water use. The Nature Conservation Council of NSW summarised the concerns for the environment resulting from the over-extraction of water in the Basin as follows:

Preventing the over-extraction of water is critical to protecting the health of the rivers, floodplains and wetlands in the Murray-Darling Basin. This includes 16 wetlands listed as wetlands of international importance under the Ramsar Convention. Water for the environment is also significant for preventing the extinction of dozens of threatened animal species including fish, amphibians and birds.⁶³

Low or diminished flows

1.83 Some witnesses expressed their concern over the diminished flows into the southern parts of the Basin, resulting from alleged excessive over-extraction from the northern Basin. For example, Environment Victoria expressed its concerns over the issue as follows:

Increased pumping and the extraction of Commonwealth-owned environmental water by irrigators upstream of Bourke means that less water is getting through to Menindee Lakes and the Lower Darling, and hence to the Murray, Victoria and South Australia. This is having serious consequences for the lower Darling environment, water users and Aboriginal people. Their concerns have been extensively reported in the media, Northern Basin Review submissions and elsewhere.⁶⁴

61 Mr Robert McBride, *Submission 14*, [p. 2].

62 Mr Bill Johnson, Private capacity, *Committee Hansard*, 1 November 2017, p. 43.

63 Nature Conservation Council of NSW, *Submission 16*, [p. 1]. See also Australian Conservation Foundation, *Submission 37*, [p. 1].

64 Environment Victoria, *Submission 55*, [p. 5].

1.84 Mr Mark Zanker noted the considerable contribution that irrigated agriculture had made to Australian prosperity, but made clear that there must be 'some reasonable limits on what activities are regarded as within the legitimate scope of permissible irrigation'. Mr Zanker was of the view that these limits were exceeded when downstream users had insufficient water for stock and domestic purposes.⁶⁵

1.85 Mr Justin McClure, of the AFA, advocated for the protection of low flows throughout the MDB and thus the maintenance of connectivity between the top and the bottom of the system. He argued that doing so would address many of the health issues of the river while meeting community expectations.⁶⁶

1.86 Dr Anne Jensen supported this view, arguing that urgent action was needed to restrict the conditions for taking irrigation water in low flows, and to shepherd environmental water to its intended targets. Dr Jensen stated that 'environmental water should be re-used along the full length' of the system, and not revert to irrigation water after a single environmental use.⁶⁷

Floodplain harvesting and overland flows

1.87 The lack of proper metering and monitoring with regard to overland flows, and concerns with floodplain harvesting, were raised throughout the inquiry. Submitters noted that inaccurate or absent monitoring of this water, and a lack of regulation and enforcement of irrigation earthworks, would result in modelling and frameworks developed under the Basin Plan that were inaccurate and did not properly account for water volume or take. Further, some floodplain harvesting activities could deprive other water users of access to floodwaters.

1.88 The Pastoralists' Association of West Darling (PAWD) raised its concerns with unmetered floodplain harvesting in NSW and Queensland, and called for its review. Mr Lachlan Gall of PAWD argued that:

For Australia's longest rivers, it is the floods upstream the permit volumes of water to penetrate across the dry interior. Capturing floodwaters or adducing flood peak volumes and/or frequency ensures that downstream water users get less than they should. Water harvested from flood plains should be accounted for as part of an irrigation entitlement.⁶⁸

1.89 Mr Gall noted the importance of occasional floods that spread over a floodplain. However, Mr Gall argued that 'it's a cumulative impact of unregulated

65 Mr Mark Zanker, *Submission 5*, [p. 1].

66 Mr Justin McClure, Australian Floodplain Association, *Committee Hansard*, 1 November 2017, pp. 21-22.

67 Dr Anne E Jensen, *Submission 23*, [p. 2].

68 Mr Lachlan Gall, Pastoralists' Association of West Darling, *Committee Hansard*, 1 November 2017, p. 32.

upstream floodplain harvesting that has a very large detrimental effect on the amount of water that makes it through to the bottom of the system'.⁶⁹

1.90 Professor Richard Kingsford drew attention to the issues with inadequate legislative frameworks for floodplain ecosystems, noting that floodplains have remained largely unregulated and outside the legislative framework for water. Professor Kingsford argued that:

Floodplain structures are very well developed in the Northern (Darling) Basin. Many cause considerable problems to environments, changing flow regimes, and also affecting agriculture downstream. These problems have been exacerbated in irrigation areas as a result of levee banks allegedly changing access to water resources for irrigation enterprises.⁷⁰

1.91 Similar concerns were raised by the South Australian Murray Irrigators (SAMI), which told the committee that it had previously raised concerns with the MDBA about floodplain harvesting. Ms Caren Martin of SAMI advised that:

an area we had a lot of concerns about, the flood-plain harvesting accumulation of water methods, was not seen as a surface-water flow and was not regulated and, therefore, was not a take. I thought the Murray-Darling Basin Authority were empowered or put in place to be independent and to look at all water takes. I think they were made aware time and time again that flood-plain harvesting was having a detrimental effect on everyone downstream of it and it wasn't addressed, I believe, in the basin plan. That's why we're sitting here today having this trouble, because, from what I understand of it, what they did was legal. And that in itself is a problem.⁷¹

1.92 With regard to overland flows, Mr Bill Johnson noted that while the Basin Plan considers overland flows as part of the amount of water diverted, the amounts were estimates as it was very difficult to determine the volume of this water. It was also difficult to distinguish between floodplain harvesting and overland flows.

1.93 Mr Johnson suggested that anecdotal evidence indicated that some people were including floodplain harvesting in their overland flow category, and thus not including that volume in the amount of water taken. Mr Johnson also noted that it was 'very difficult' to control the construction of illegal structures used to capture overland flows, particularly for smaller, regional councils where it was difficult to challenge large-scale operators.⁷²

69 Mr Lachlan Gall, Pastoralists' Association of West Darling, *Committee Hansard*, 1 November 2017, p. 33.

70 Professor Richard Kingsford, *Submission 27*, p. 7.

71 Ms Caren Martin, South Australian Murray Irrigators, *Committee Hansard*, 2 November 2017, p. 24.

72 Mr Bill Johnson, Private capacity, *Committee Hansard*, 1 November 2017, p. 41.

Transparency and consultation

1.94 A number of submitters and witnesses expressed frustration over a perceived lack of consultation on behalf of the MDBA, with regard to the administration of and amendments to the Basin Plan. Further concerns were voiced over a lack of transparency around the actions of the MDBA and of Basin States, particularly with regard to compliance activity.

Consultation

1.95 Mr Stuart LeLievre of the AFA expressed his frustration that a number of river users felt excluded from decision-making processes concerning the operation of the river. He argued that the 'big end of town' had direct access to government officials and ministers, but local community members and non-irrigator bodies did not have similar access. He was also of the view that many decisions were taken by water authorities and officials prior to any consultation occurring.⁷³

1.96 Likewise, the Macquarie Marshes Environmental Landholders Association expressed its frustration that it had experienced constant difficulty over many years in dealing with various water departments. The Association felt that the 'irrigation industry has consistently been favoured by departmental managers in water management development and decision making'.⁷⁴

1.97 The Inland Rivers Network (IRN) likewise suggested that environmental and indigenous groups, floodplain graziers and downstream communities had not been afforded similar access to information or consultation with the MDBA as had irrigator representatives, which it saw as having greater political influence.⁷⁵

1.98 SAMI encouraged the MDBA to seek input from industry stakeholders when considering its allocation of resources, with Ms Martin of SAMI arguing that the MDBA was 'very policy heavy' and that better allocation of funding could occur towards compliance and monitoring.⁷⁶

1.99 Conversely, MLDRIN advised the committee that the South Australian government engaged very well with Indigenous nation groups with regard to water management and planning, as did Victoria. However, there was room for

73 Mr Stuart LeLievre, Australian Floodplain Association, *Committee Hansard*, 1 November 2017, pp. 27-28.

74 Macquarie Marshes Environmental Landholders Association, *Submission 20*, [p. 1].

75 Inland Rivers Network, *Submission 54*, pp. 2, 4.

76 Ms Caren Martin, South Australia Murray Irrigators, *Committee Hansard*, 2 November 2017, pp. 29-30.

improvement in NSW, and MLDRIN encouraged NSW to commence re-engagement, particularly in the west of the state.⁷⁷

Transparency

1.100 Professor Richard Kingsford called for multiple lines of evidence to be used in determining levels of water use, observing that adequate measurement and reporting with transparency was essential. Professor Kingsford suggested that satellite imagery, water meter data—with proper compliance—and the monitoring of developments on floodplains would allow for 'transparent and rigorous reporting on water use, particularly in relation to floodplain flows'.⁷⁸

1.101 Similar views were expressed by the Wentworth Group of Concerned Scientists (Wentworth Group), which argued that:

Standard auditing practices should be in place to validate data on water use, by applying financial reporting, auditing and insurance standards to a water context, and using multiple lines of evidence, such as hydrographs, metering records, aerial imagery and production data. Risk assessments can help focus auditing efforts on valleys where risks of non-compliance are high, such as valleys which are poorly metered or remote.⁷⁹

Irrigator responses to Four Corners allegations

1.102 There were strong sentiments expressed by a number of MDB water users about the Four Corners allegations and the negative assertions these allegations made against entire water-use industries. Irrigators in particular urged caution in taking the Four Corners claims as factually correct, and argued that the majority of water users were fully compliant and had no tolerance for water theft.

1.103 For example, the Gwydir Valley Irrigators Association (GVIA) argued that irrigators and their communities had, for many years, undertaken significant reform to ensure water was managed sustainably. As a result, 'many communities are fatigued by the consistent requirement to defend the foundation of their economies and social fabric'.⁸⁰

1.104 The GVIA argued that the water management framework clearly identified that users were able to legally access water, when the conditions of their access were met. The GVIA concluded that 'operating outside these specific access arrangements

77 Mr Grant Rigney, Murray Lower Darling Rivers Indigenous Nations, *Committee Hansard*, 2 November 2017, pp. 8-9.

78 Professor Richard Kingsford, *Submission 27*, pp. 4, 7.

79 Wentworth Group of Concerned Scientists, *Submission 33*, p. 4.

80 Gwydir Valley Irrigators Association, *Submission 46*, p. 11.

is illegal water take but operating within them is not, regardless of the source of the water being accessed'.⁸¹ This view was put forward by several other submitters.

1.105 Barwon-Darling Water (BDW) responded to the claims by Four Corners, noting that several members of its organisation had been implicated by its allegations and that Barwon-Darling irrigators had 'excellent systems that measure water diversion and use'. BDW stated its belief that a 'good metering and monitoring program is 90% of any compliance program'. BDW put forward a strong statement in response to the allegations:

There were statements made in the original Four Corners program that were blatantly untrue, and commentary that exhibited an ignorance of the industry, water markets and recent water reform issues. These comments ignore the enormous amount of work irrigators have done over the last twenty years during a massive water reform process; and they fail to appreciate the contribution irrigated agriculture makes in local and regional communities.⁸²

1.106 Cotton Australia put forward its expectation that any allegations of non-compliant water management be investigated in an appropriate and transparent manner, reiterating that it had zero tolerance for water theft. Cotton Australia expressed the view that:

the vast majority of all irrigation entitlement holders, in all jurisdictions and catchments, do the right thing. However, as with any cross-section of society there will be small minority who do not, and they need to be dealt with appropriately.

Like any viewer, Cotton Australia found the allegations in "Pumped" disturbing, and it is appropriate that compliance activities be reviewed.

However, Cotton Australia also strongly cautions against anyone taking those allegations at "face value", and making rash decisions as a result.⁸³

1.107 The sentiments expressed by Cotton Australia were echoed by the National Irrigators' Council (NIC), which stated its 'zero tolerance' for water theft, and its support for enforced compliance activity and 'best possible metering'. The NIC reiterated its willingness to work with all stakeholders to ensure the Basin Plan was implemented, provided there were 'no further negative impacts on communities'. The NIC agreed that the existing sanctions should be applied where a water offence has been proven. However, the NIC observed that:

the vast majority of irrigators in the Basin do the right thing. They get angry if people steal water and right now they are also angry at having their

81 Gwydir Valley Irrigators Association, *Submission 46*, p. 18.

82 Barwon-Darling Water, *Submission 50*, pp. 3-4, 9.

83 Cotton Australia, *Submission 17*, pp. 10, 12.

reputation, hard work and even their product tarnished by unfair generalisations.⁸⁴

1.108 Lachlan Valley Water suggested that there was some public confusion as to water management in the Basin, stating that Four Corners failed to differentiate between the total water in the system, and 'the much smaller proportion that is available to licence holders'. Lachlan Valley Water agreed that any shortcomings in compliance systems should be addressed, with licence holders supportive of reliable and workable water measurement and regulatory systems.⁸⁵

1.109 The Queensland Farmers' Federation (QFF) put forward its support for the metering of all irrigation areas across the Basin states, in order to 'accurately measure water take and effectively manage compliance'. The QFF continued that:

Irrigators depend on robust and transparent regulation to help them manage their use of water, so compliance arrangements must have high standards of transparency and be well managed to ensure the system has confidence of irrigators and wider community.⁸⁶

1.110 The Mungindi Water Users' and Cotton Growers Association Inc. argued that irrigators complied with strict guidelines and water pumping procedures, and understood that 'acting outside these parameters is illegal'. The Association continued that irrigators endorse a transparent reporting system on water usage, to uphold the industry's integrity and demonstrate its compliance with the water rules and regulations. The Association concluded that:

It is critical that the Murray-Darling Basin Plan continues through its complexities with all states uniting to provide accurate reporting of flows and deliver the key objectives of the Plan.⁸⁷

84 National Irrigators' Council, *Submission 31*, pp. 6-8.

85 Lachlan Valley Water, *Submission 39*, p. 3.

86 Queensland Farmers' Federation, *Submission 7*, p. 2.

87 Mungindi Water Users' and Cotton Growers Association Inc., *Submission 53*, pp. 5-6.