

**Reponses to Questions on Notice  
Supplementary Hearing  
For Water, Property and Housing Portfolio  
Minister Melinda Pavey**

**Question 01 (pages 3-4)**

**The Hon. JOHN GRAHAM:** Before we turn to that I am asking when was the water released?

**Mrs MELINDA PAVEY:** During September and October.

**The Hon. JOHN GRAHAM:** Can you be more precise?

**Mrs MELINDA PAVEY:** No, I can take that on notice

**ANSWER:**

The dates were between 16 September and 11 October.

**Question 02 (page 4)**

**The Hon. JOHN GRAHAM:** You have given us the date of the release. When was the order for the release?

**Dr BENTLEY:** We will have to take that on notice.

**The Hon. JOHN GRAHAM:** When were agencies within the cluster—you named a couple of the people at the table—consulted about this release?

**Dr BENTLEY:** If I do not know when the release was requested, by definition I do not know when my people were consulted on that. We will have to come back to you.

**ANSWER:**

This order was received from the Department of Planning, Industry and Environment – Environment, Energy and Science (DPIE–EES), on 13 Sept 2019. Consultations with DPIE Water began on 7 August 2019 when DPIE Water attended the Lachlan Environmental Water Advisory Group meeting.

### Question 03 (page 5)

**The Hon. JOHN GRAHAM:** Was there any objection from New South Wales—clearly not from you, Minister, you were unaware of it—agencies when they were advised about this flow?

**Mrs MELINDA PAVEY:** WaterNSW is the agency and the corporation that deals directly with the Commonwealth Environmental Water Holder and you have not called for them today. There may have been conversations, I am not sure of that. We will take that on notice in relation to those conversations.

**The Hon. JOHN GRAHAM:** But you cannot tell us today whether they happened?

**Mrs MELINDA PAVEY:** No, I cannot because they are not here.

**The Hon. JOHN GRAHAM:** You have not asked?

**The Hon. TREVOR KHAN:** The Minister is entitled to take it on notice.

**The Hon. JOHN GRAHAM:** The Minister clearly objects to this flow. I am asking the Minister has she asked her agency, "Did you object to this flow?"

**The Hon. TREVOR KHAN:** And the Minister has taken it on notice.

**The Hon. JOHN GRAHAM:** I am now asking about the actions of the Minister. Did the Minister ask her agency did they object?

**Mrs MELINDA PAVEY:** I have asked for advice from WaterNSW but I am yet to receive that. WaterNSW is the agency that would have been dealing directly with the Commonwealth Environmental Water Holder.

#### ANSWER:

WaterNSW, under its operating licence, is required to deliver valid orders from customers. This was a valid order.

### Question 04 (page 6)

**Mrs MELINDA PAVEY:** By one of my advisers; he had found out.

**The Hon. JOHN GRAHAM:** By a ministerial adviser?

**Mrs MELINDA PAVEY:** By one of my ministerial advisers.

**The Hon. JOHN GRAHAM:** Were they advised by the agency?

**Mrs MELINDA PAVEY:** I am not sure of that. We will take that on notice

#### ANSWER:

No

### **Question 05 (page 7)**

**The Hon. JOHN GRAHAM:** Can you rule out that New South Wales was not releasing water as part of this flow?

**Mrs MELINDA PAVEY:** I believe that is the case but I will confirm that.

#### **ANSWER:**

Whether any NSW held environmental water, formed part of the order is a matter for the Minister for Energy and Environment.

### **Question 06 (page 10)**

**The Hon. EMMA HURST:** In the initial budget estimates inquiry, Minister, you confirmed that 10 licence holders control about 86 per cent of the total share component of the Barwon-Darling and four of those control 75 per cent of the total share. I understand the details could not be made public for privacy reasons, but can you inform the Committee whether you or your office have actually met with any of the 10 licence holders in the past year and, if so, what was discussed?

**Mrs MELINDA PAVEY:** I will take that on notice.

**The Hon. TREVOR KHAN:** The ministerial diaries are available.

**The Hon. EMMA HURST:** For privacy reasons, this was not public. Could you also take on notice if they requested any specific changes to rules and if you discussed the Natural Resources Commission [NRC] review into the Barwon-Darling Water Sharing Plan?

**Mrs MELINDA PAVEY:** I will take that on notice.

#### **ANSWER:**

Ministerial diaries are publicly available at

<https://www.dpc.nsw.gov.au/publications/ministers-diary-disclosures/>

As for my ministerial staff, I can confirm that they have not met with any of the licences holders in the past year.

### **Question 07 (pages 11-12)**

**The Hon. JOHN GRAHAM:** Minister, is it not just too late to be putting this objection now? You are the water Minister for New South Wales. Wasn't the time to make this submission before the water was sent down the river, not afterwards? There is clearly planning going on. There are clearly discussions. There is clearly advice.

Why did you not object before the water went down the river, if this is your view?

**Mrs MELINDA PAVEY:** That is because I do not have the capacity or the power to object. I am not even informed.

**The Hon. JOHN GRAHAM:** You have objected today, strongly.

**Mrs MELINDA PAVEY:** That is right.

**The Hon. JOHN GRAHAM:** But it is too late.

**Mrs MELINDA PAVEY:** On behalf of anybody who has a touch of common sense, the objection is worthy.

**The Hon. JOHN GRAHAM:** That is too late.

**Mrs MELINDA PAVEY:** If we need to change the system to ensure that our communities are put first as we go further into this drought with the Bureau of Meteorology predicting things not to improve for the next 12 months—

**The Hon. JOHN GRAHAM:** What sort of changes are you proposing?

**Mrs MELINDA PAVEY:** I will take that on notice and provide you with advice. After conversations within our agencies and with the Commonwealth, we will come back to you.

#### **ANSWER:**

In consultation with local councils and water users, measures are being considered to extend the town water supply in the Lachlan valley through to September 2020. These include operational and water delivery savings.

### **Question 08 (page 14)**

**The Hon. JOHN GRAHAM:** We have talked a bit about when the consultation finished. When did this consultation—

**Mrs MELINDA PAVEY:** What do you mean "finished", Mr Graham?

**The Hon. JOHN GRAHAM:** When did your agencies finally become aware of the order? When did your agencies start consultations with the Commonwealth over this? How long?

**Mrs MELINDA PAVEY:** As I have said that earlier, to the details of that I will take that on notice but Dr Bentley—

**Dr BENTLEY:** I think I answered that earlier that I do not know the date that started or finished.

**The Hon. JOHN GRAHAM:** We are certainly happy to have it on notice.

#### **ANSWER:**

The Lachlan Environmental Water Advisory Group convened on 7 August 2019, where discussions concerning the planned release began.

**Question 09 (pages 14)**

**The Hon. MICK VEITCH:** Minister, does New South Wales hold any environmental water in Wyangala at the moment?

**Mrs MELINDA PAVEY:** That question is best placed with Mr Betts as Secretary of all the agencies.

I am sure it does, and I think I said this earlier, and will take it on notice.

**ANSWER:**

Any environmental water access licences held by the NSW Government for the Lachlan regulated river are a matter for the Minister for Energy and Environment and should be directed to the Hon Matt Kean MP.

**Question 10 (page 17)**

**The CHAIR:** It was, yes. The premise of the question was that the Barwon-Darling sharing plan has not had a cap accreditation since 2014, so therefore it has been an illegal sharing plan since 2014. To put it more simply: Is the Barwon-Darling sharing plan illegal because it does not comply with the Commonwealth Water Act for accreditation?

**Mrs MELINDA PAVEY:** I do not believe so.

**The CHAIR:** Can you tell us why not, if it has not had the accreditation since 2014 and that is required under the Commonwealth Water Act? If you are not complying with a piece of legislation, is that not the very essence or definition of illegal?

**Mrs MELINDA PAVEY:** It depends on the interpretation of the Act and how it is assessed. I will take your question on notice and respond accordingly.

**ANSWER:**

I do not subscribe to the view that the Barwon Darling water-sharing plan is illegal.

## Question 11 (page 22)

**The Hon. MICK VEITCH:** Minister, you might have to take this on notice because it is a bit more detail than I would expect to be available to you now. I do not want the details of the companies or individuals but is it possible to provide a list of the prosecutions and fines that have been undertaken by NRAR since it commenced?

**Mrs MELINDA PAVEY:** I am sure it is. We will take that on notice.

### ANSWER:

Since its establishment, up to 15 November 2019, NRAR had commenced ten prosecutions, three in the Land and Environment Court and seven in the Local Court (see Background for details). Three of these cases relate to the allegations aired in the Four Corners program "Pumped". NRAR has also dealt with one legacy appeal matter.

Land and Environment Court case

**BARWON-DARLING:** Individuals from Mallowa and Walgett

- o Commenced on Friday 3 August 2018
- o Where: Walgett
- o Allegation: Three charges for each individual for contraventions of section 91I(2) of the *Water Management Act 2000* for taking water while metering equipment was not working in August 2015.
- o These cases will be listed for hearing in late 2019.

**BARWON-DARLING:** Company from Moree and individual from Carinda

- o Commenced on Friday 27 July 2018
- o Where: Walgett/Brewarrina area
- o Allegations:
  - One charge against section 91I(2) of the *Water Management Act 2000* and taking water while metering equipment was not working in August 2015.
  - Two charges against section 91B or in alternative s91L of the *Water Management Act 2000* and constructed and used a channel to convey water without approval in early August 2015.
- o These cases will be listed for hearing in late 2019

Individual from Euston

- o Commenced on 14 December 2018
- o Where: Euston
- o Allegation: Eight charges of taking water from water source otherwise than in accordance with the water allocation for the access licence in contravention of s60C of *Water Management Act 2000* between April 2016 and March 2019 (zero share allocation and no orders made before take)
- o The landowner has pleaded guilty to all charges. The case was listed for hearing on sentence on 19 and 20 November 2019 but has recently been adjourned on the basis of an appeal from an interlocutory motion and will be heard in 2020.

## Local court cases

COMPLETED: Albury Local Court (two matters) - Individual landowner and contractor

- o Commenced- 24 July 2018
- o Where: Corowa, NSW
- o Allegations (respectively):
  - Three offences against 91E of the *Water Management Act 2000*, and
  - Two offences against 91E of the *Water Management Act 2000* for controlled activities on waterfront land on Murray River without a controlled activity approval between 1 May 2015 and 31 August 2016.
  
- o On 11 December 2018, the Albury Local Court found the landowner guilty of three offences and fined him \$15,000, and the contractor \$7,500 for one offence. Both were also ordered to pay \$5,000 court costs and publish notices in the Border mail detailing their offences and penalty.

**BARWON-DARLING:** COMPLETED: Walgett Local Court - Individual

- o Commenced: 27 July 2018
- o Where: Carinda, NSW
- o Allegation: an offence against s340A of the *Water Management Act 2000* - furnished information in purported compliance with a requirement under *Water Management Act 2000*, knowing it was false and misleading in a material respect on 19 August 2015 (that logbook existed when it did not).
  
- o On 15 October 2018, Carinda man was convicted and fined \$1000 and ordered to pay \$5,500 court costs. He was also ordered to publish a notice about the court outcome in the Moree Champion which was published in late October 2018.

COMPLETED: Raymond Terrace Local Court - company

Commenced 18 October 2018

- o Where: Company operating at Bundabah near Tea Gardens
- o Allegation: an offence against s91E of the *Water Management Act 2000* for unlawful activities on waterfront land for removing vegetation and depositing rock and turf at three sites in Nanabah Creek without approval.
  
- o On 22 August 2019, the company was convicted of 4 offences under s91E and fined \$22,000 for each offence, totalling \$88,000 and \$20 professional/legal costs, and publish notices in Newcastle Herald and Great Lakes Advocate.

Bathurst Local Court

- o Commenced: 10 April 2019
- o Where: Two individuals in relation to property Ilford in Central West.
- o Allegation: Alleged breaches of 91E of *Water Management Act 2000* by carrying out controlled activities without approval by removal of material namely stockpiled soil, vegetation and other material from Rocky Waterhole Creek between February 2017 and deposition of material namely soil vegetation and other material at Rocky

Waterhouse Creek between February 2017 and June 2017.

- o The matter is listed for hearing before the Bathurst Local Court on 4 December 2019.

#### Moree Local Court

- o Commenced: 10 April 2019
- o Where: Moree
- o Allegation: The offences are as follows:
  - constructing a flood work without a flood work approval in May 2017 allegedly in breach of s91D of *Water Management Act 2000* ;
  - constructing and using a flood work without approval a flood work approval between May 2018 and October 2018 allegedly in breach of s91D of *Water Management Act 2000*;
  - failure to comply with a direction issued under part 7 of the *Water Management Act 2000* allegedly in breach of 336C(1) in May 2017
  - failure to comply with a direction issued under part 7 of the *Water Management Act 2000* allegedly in breach of 336C(1) in July 2018.
- o The landowner has pleaded guilty to two charges (on the basis the above charges are consolidated to one offence against both s.91D and s336C). The matter was heard before the Moree Local Court on 23 September 2019. The Court found offender guilty without proceeding to a conviction (pursuant to s10(1)(b) of Crimes (Sentencing Procedure) Act 1999 (CSP) of following offences constructing a flood work without approval and failure to comply with a direction issued under part 7 of WM Act. The offender sentenced to conditional release order pursuant to s9(1)(b) of CSP Act for a period of 2 years commencing on 23/9/19 subject to standard conditions that offender must not commit any offence while subject to conditional release order and must appear before court if called upon to do so. Also subject to additional condition that must do all such things and take all such action to remove the levee/wall so as prevent reoccurrence of offence. The offender is ordered to pay \$10,000 professional costs to the prosecutor. An order pursuant to s353B(1)(c) of WM Act that within 60 days, the offender is to do all such things and take all such actions to remove the levee/wall so as prevent recurrence of the offence.

#### Dubbo Local Court

- o Commenced: 17 April 2019
- o Where: Dubbo
- o Allegation: An alleged unlawful dam including the following two charges:
  - constructing a dam between 1 November 2015 and 28 February 2016 (water supply work) without a water supply work approval in breach of s91B of *Water Management Act 2000*
  - taking water between 1 November 2015 and 21 September 2016 through the dam without a water access licence in breach of section 60A of the *Water Management Act 2000*
  - taking water between 14 December 2017 to 14 June 2018 from 12 mile creek without water access licence in breach of section 60A of the *Water Management Act 2000*.



- failure to comply with notice under section 338A issued in April 2019 in breach of section 340A of *Water Management Act 2000*.
- failure to comply with direction issued in April 2019 under section 329(2) in breach of section 336C of *Water Management Act 2000*.

o The landowner has pleaded not guilty to the charges. The case has been adjourned until 13 and 14 February 2020 at Dubbo Local Court.

#### Bateman's Bay Local Court

- o Commenced: 27 August 2019
- o Where: Benandarah
- o Allegation: Four charges of alleged offences under 91E of *Water Management Act 2000* by carrying out controlled activities without approval between 22 June 2016 and 21 February 2018 by
  - Constructing an access path and boat ramp;
  - removal of material, consisting of soil, sand, gravel and dredged materials, in connection with the construction of an access path and concrete boat ramp
  - removal of vegetation, in connection with the construction of an access path and concrete boat ramp
  - Deposition of material consisting of soil, sand, gravel, dredged materials, slump concrete, concrete blocks, turf and topsoil in connection with the construction of an access path and concrete boat ramp.
- o The case is returnable on 2 December at Bateman's Bay Local Court.

#### LEGACY APPEAL against penalty

- o On 30 October 2018, on appeal to the Land and Environment Court, Justice Moore reduced the penalty for a conviction from \$40,000 to \$24,000
- o The original case was heard in local court in March 2018 (the case was lodged in 2015 by DPI Water) and related to market garden in Greendale. As it was not commenced by NRAR is it not treated as NRAR case, although on appeal NRAR was named as the Prosecutor as DPI Water no longer held those functions
- o The convictions related to the following offences:
  - Use of water otherwise than as authorised by water use approval being a breach of s91A(2) of WM Act;
  - Use of water supply work without holding a water supply work approval being an offence against s91B(1) of WM Act
  - Meter tampering being an offence against 91K(2) of WM Act;
  - Failure to comply with a direction issued under s327 of WM Act, constituting a breach of s336C(1).

### **Question 12 (page 25-26)**

**The Hon. JOHN GRAHAM:** I might ask a property question. In response to questions on notice that were provided, you agreed to supply a list of property disposals—and you did provide that, as have your predecessors, and we thank you for it. The information, though, seemed only to contain the information for the Hunter. Can you provide the information you have provided, but more broadly across the State?

**Mrs MELINDA PAVEY:** The information I had, had all of it.

**The Hon. JOHN GRAHAM:** Yes, I cannot guarantee that it was not a problem at my end.

**Mrs MELINDA PAVEY:** I bet it was.

**The Hon. JOHN GRAHAM:** We will return to that issue later.

**The Hon. TREVOR KHAN:** With an apology.

**The Hon. JOHN GRAHAM:** Possibly, but if you could check, I would appreciate it. Returning to water—

#### **ANSWER:**

Please refer to my response to supplementary question no. 15.

### **Question 13 (page 27)**

**The Hon. MICK VEITCH: Just the numbers, where are they at?**

**Dr BENTLEY:** Sydney Water was about 9 per cent the last time I saw the numbers. These are not numbers that are without error bands and they are not numbers that are independent—approximately 9 per cent, very close to now where Hunter Water got to. They have turned that round and it is a pretty good performance.

**Mrs MELINDA PAVEY:** What was it?

**Dr BENTLEY:** I do not know the exact percentage. It was a little higher.

**The Hon. MICK VEITCH:** You can taken on notice to make sure we do not get it wrong.

#### **ANSWER:**

Sydney Water's percentage of daily leakage was 9% in both 2018-2019 and 2017-2018.

#### **Question 14 (pages 28-29)**

**The Hon. MICK VEITCH:** On page 26 of the budget estimates supplementary questions, in response to question 35, the response makes reference to the following:  
In valleys where flood plain harvesting has grown above the relevant limits ... reports will be developed on a valley by valley basis  
... and will be published by September 2020.

What are the "relevant limits" that we are talking about in that response?

**Mrs MELINDA PAVEY:** I will take that on notice, unless Dr Bentley wants to answer.

**The Hon. MICK VEITCH:** Which valleys are we talking about?

**Mrs MELINDA PAVEY:** I presume the valleys of the northern basins.

**The Hon. MICK VEITCH:** Maybe the northern valleys? Could you take on notice which valleys?

**Mrs MELINDA PAVEY:** Okay.

#### **ANSWER:**

The Floodplain Harvesting Action Plan relates exclusively to the implementation of the NSW Floodplain Harvesting Policy in five Northern Basin valleys i.e. Border Rivers, Gwydir, Namoi, Macquarie and Barwon-Darling. The 'relevant limits' being referred to are those limits set by NSW Water Sharing Plans and the Basin Plan.

#### **Question 15 (page 29)**

**The Hon. JOHN GRAHAM:** I want to ask a couple of questions about the Broken Hill pipeline. In the supplementary questions to the last hearing, it was revealed as having an asset value of \$392 million. Presumably, that will obviously be required to be depreciated. What is the period over which the pipeline is being depreciated?

**Mrs MELINDA PAVEY:** I presume it is around ninety years but I will take that on notice. Have you tasted it yet?

#### **ANSWER:**

The period in which WaterNSW is expected to generate a return from the pipeline (the economic life) is approximately 80 years.

#### **Question 16 (page 30)**

**The Hon. JOHN GRAHAM:** Correct. And how long is the subsidy from Restart NSW extending for?

What is the period of time?

**Mrs MELINDA PAVEY:** We will take that on notice. It is in the realm of five years.

**The Hon. JOHN GRAHAM:** I am entirely happy if that is the case.

**Dr BENTLEY:** If we can get an answer before we finish we will give it to you.

#### **ANSWER:**

Four years