



FLOODPLAIN HARVESTING REGULATION 2020

QUESTIONS ON NOTICE

QUESTION 1

The Hon. ROBERT BORSAK: My question was about the legal professional opinion from the Crown Solicitor and the answer I got, which I heard at this end, was that you could not answer because of legal professional privilege. Now, I am not asking you what is in the document—that may well be privileged. I am asking whether you have such a document.

Ms SOLOMON: [inaudible]

The CHAIR: Sorry, Ms Solomon, we did not get any of that.

Ms SOLOMON: We will take the question on notice.

ANSWER

I am advised:

No there is no such legal advice from the Crown Solicitor's Office.

QUESTION 2

The Hon. ROBERT BORSAK: Minister, how much money has the New South Wales Government received from the Commonwealth for monitoring, licensing and compliance in the northern basin?

Ms MELINDA PAVEY: We can take that on notice. I do not think anyone would have that answer. We have received significant funds from the Murray-Darling Basin Authority. The Murray-Darling Basin Authority will be expending significant funds and not helped to give water literacy to our community. A lot of the fear campaign that has been run by some is based off the fact you cannot easily get information. The Murray-Darling Basin Authority has expended at least \$53 million to date and yet has not got a dashboard; has not got a clear set of information so a farmer can go onto a website to find out what water is available for the environment, conveyancing water or irrigation allocations, general security, high security, Commonwealth environmental holder water which should all be available.

If people could see that in a more simpler way across South Australia, Victoria, Queensland and New South Wales a lot of these gaps in knowledge and information would be filled and we could have better conversations and support each other.

ANSWER

I am advised:

The Commonwealth Government funded the Government to implement the National Framework for Water Compliance & Enforcement, which covered the whole state. Funding was over five calendar years (over 6 financial years) from 2011 to 2015 and totalled \$16.736m. In addition, the Commonwealth Government is providing \$56.91m to deliver the Healthy Floodplains Project by 30 June 2021, part of which includes funding for monitoring, measuring and compliance in the Northern Basin. Other Commonwealth funding programs have included elements of monitoring and measurement.

QUESTION 3

The Hon. SAM FARRAWAY: Just finally, I have one more question then I am finished. I want to touch on, Minister Pavey, your opening remarks. I posed a question to Tim from Aqua Law earlier today about research I had been doing and there was quite a lot of commentary in The Guardian around unmeasured floodplain harvesting by irrigators. You mentioned that you had a document, which I have not been privy to, but you said you had a document that had been edited in terms of their commentary in the media on floodplain harvesting. Is that correct?

Mrs MELINDA PAVEY: I am happy to table the document. It came to my attention. It was forwarded to my team and circulated around people within the irrigation industry and it was clear that the lawyers were proof or fact checking the story that was being prepared by The Guardian. So, a very interesting alliance and there was work that was being done by that law firm to—

The Hon. SAM FARRAWAY: I might put that as a question on notice for Minister Pavey to table it if she could because I think it answers my question from earlier.

The CHAIR: That is good. We will do that.

ANSWER

I am advised:

Please see attached.

QUESTION 4

Ms CATE FAEHRMANN: You keep talking about uncertainty, Minister does not uncertainty just mean that there is floodplain harvesting that falls through the cracks, if you like, of approvals, exemptions and licensing and therefore it is illegal? And if it is not, two questions; first, that it is illegal and if it is not will you please table the advice for the Committee that you are relying upon, the legal advice which could perhaps end all this conflict between the northern and southern irrigators for starters? If you are so certain about this please table the advice, which would be extremely helpful for the Committee. First, does uncertainty mean basically illegal works?

Mrs MELINDA PAVEY: I am happy to provide information to the Committee and the advice that is prolific through the agency talking to the issue that floodplain harvesting has been a recognised global activity [inaudible]. Happy to do that. I will let you finish your questions, Ms Faehrmann, I just wanted to say something.

The CHAIR: Before you do, Ms Faehrmann, to be clear, Minister, Ms Faehrmann was asking for the legal advice to be tabled just for the Committee members. You are saying that is what you will do?

Mrs MELINDA PAVEY: She asked for advice and I am happy to provide advice showing that it is an activity—you did ask for advice—

Ms CATE FAEHRMANN: Legal advice.

Mrs MELINDA PAVEY: And I am happy to provide advice that I have that talks to the issue of floodplain harvesting.

The CHAIR: I think it was legal advice, but I could be wrong. Ms Faehrmann, your turn.

Ms CATE FAEHRMANN: I think the question, Minister, very clearly is have you seen legal advice that suggests that all floodplain harvesting is legal, like you said in the Chamber I think a few months ago?

Mrs MELINDA PAVEY: Happy to take that on notice in relation to, and I think Ms Solomon answered a question in relation to legal privilege, but I am happy to provide advice that I have received over time from my agency that says that floodplain harvesting is a legal activity since the 1912 Act. I am happy to provide that advice. In terms of legal advice, I will take that on notice.

The CHAIR: Okay, thank you.

Ms CATE FAEHRMANN: If the Minister does take it on notice, to see whether she has that legal advice, would she table it if she has it?

Mrs MELINDA PAVEY: I will take that on notice, in relation to legal advice, but I am happy to provide other advice to the Committee showing that is a process that is appropriate.

ANSWER

I am advised:

Please see attached.

QUESTION 5

Mr JUSTIN FIELD: If you do not conclude your policy by the middle of 2021 for the five northern basins what happens to this regulation? Does it just continue and essentially provide an ongoing exemption for floodplain harvesting in those valleys?

Mr CONNOR: I can answer that, Mr Field. What we have got set up [inaudible], what we have got set up under our water sharing plans is that floodplain harvesting is part of the extraction limit that we have set up, it is part of the legal limits of—what we are trying to do is to give effect to licensing to make sure that floodplain harvesting does not grow and exceed those limits, make sure that everyone

[inaudible] their share, I guess. [inaudible] licence and activity and it being exempt is that it continues to grow, then that growth under our legal limits needs to be offset by a reduction in something else. It is a bit like me speeding down the highway and you getting a fine. It is a pretty inequitable solution. That is the way our legislation is set up at the moment. They are the requirements under the basin plan as well.

The basin plan does not say you need to licence everything, but it does make sure that if things are not licensed and they grow, that you have a mechanism to be able to offset that growth to make sure that the outcome overall for the valley is the same level of consumptive take. I wanted to assure you that we have got every intention of being able to deliver this project by 30 June 2021. But there are arrangements, and I am happy to talk to that as well, there are arrangements set up in our plan that means that downstream users and communities are not short-changed as a result of us unable to deliver this.

Mr JUSTIN FIELD: They already do not believe the volumes. I am not sure that is going to happen. That does not answer the question at all. Does the regulation just continue if the policy does not get finalised?

The CHAIR: Mr Field, we are now out of time. There was a suggestion at the end of the answer that the remainder of that would be tabled. If we could make sure that happens as a question on notice, that would be good. I had a series of questions but because I made a mistake with the timing I will put all my questions on notice, Minister, that relate to NRAR and the communication process. Essentially that draws us to a close today.

ANSWER

I am advised:

The regulation will continue until licences are created or it is repealed. If floodplain harvesting licences are not in place by 1 July 2021 then all growth in floodplain harvesting will be offset by reducing allocations to supplementary water access licences - in accordance with the requirements of Water Sharing Plans and Water Resource Plans. This will ensure that growth in floodplain harvesting does not continue to adversely impact the environment or the water reliability of downstream towns and industries.



The Hon Melinda Pavey MP
Minister for Water, Property and Housing

