

**REPORT ON PROCEEDINGS BEFORE**

**SELECT COMMITTEE ON FLOODPLAIN HARVESTING**

**CORRECTED**

**Virtual hearing via video conference on Wednesday, 22 September 2021**

**The Committee met at 9:05 am**

**PRESENT**

Ms Cate Faehrmann (Chair)

The Hon. Mark Banasiak (Deputy Chair)

The Hon. Lou Amato  
The Hon. Sam Faraway  
The Hon. Ben Franklin  
The Hon. Rose Jackson  
The Hon. Adam Searle  
The Hon. Penny Sharpe  
The Hon. Mick Veitch



**The CHAIR:** Welcome to this virtual hearing for the inquiry into floodplain harvesting. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of the land on which Parliament sits. I would also like to pay respects to the Elders past, present and emerging of the Eora nation and extend that respect to all Aboriginal people watching this hearing today. Today's hearing is this Committee's second and is being conducted virtually by electronic means. This enables the work of the Committee to continue during the COVID-19 pandemic without compromising the health and safety of members, witnesses and staff. As we break new ground with technology, I ask for everyone's patience through any technical difficulties we may encounter today. If participants lose their internet connection and are disconnected from the virtual hearing, they are asked to rejoin the hearing by using the same link as provided by the Committee secretariat. Today, we will hear from a number of stakeholders, including water, environmental and policy experts; organisations representing landowners; farmers and other water users; and Indigenous representative bodies.

Before we commence, I would like to make some brief comments about procedures for today's hearing. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the virtual hearing. Therefore, I urge witnesses to be careful about comments you may make to the media or to others after you complete your evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could answer only if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days of receipt of the transcript. Today's proceedings are being streamed live and a transcript will be placed on the Committee's website once it becomes available.

Finally, I will make a few notes on virtual hearing etiquette to minimise disruptions and assist our Hansard reporters. I ask Committee members to clearly state who questions are directed to and could I ask everyone to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking. Please remember to turn your microphones back on just a few seconds before you are getting ready to speak. If you start speaking while muted, please start your question or answer again so it can be recorded in the transcript. Members and witnesses, please avoid speaking over each other so we can all be heard clearly. If you speak over each other, basically what you hear cannot be heard by Hansard. I remind members and witnesses to speak directly into the microphone and avoid making comments when your head is turned away from the microphone. I now welcome our first witnesses.

**RICHARD KINGSFORD**, Director, Centre for Ecosystem Science, School of Biological, Earth and Environmental Sciences, University of New South Wales, affirmed and examined

**KATE McBRIDE**, Anne Kantor Fellow, The Australia Institute, sworn and examined

**RODERICK CAMPBELL**, Research Director, The Australia Institute, affirmed and examined

**The CHAIR:** I will move to opening statements. You have an opportunity to make a short opening statement. Professor Kingsford, do you have one for the Committee?

**Professor KINGSFORD:** I do. I acknowledge the Bidjigal people that are the traditional custodians of the land that I am on and also all original custodians of the land where the rivers are that are the focus of this inquiry. I pay my respects to all those Elders, past, present and emerging, and extend my respect to other First Nations peoples today. Flood plains are not just administrative or legal entities; they are simply places where rivers flow over their banks. They make up most of a river's area. I have heard evidence, even in this inquiry, that such floodwaters are lost or wasted and that we need more efficiency. Floodplain waters connect an incredibly complex network of ecosystems. They infiltrate into soils and groundwater and supply tens of thousands of flood-dependent plant, animal and other species.

Healthy floodplains are essential to healthy rivers and healthy people because they deliver water in ecosystem services on the river and downstream to First Nations people, fishers and other users. Thousands of kilometres of structures crisscross the floodplains of the Murray-Darling Basin, changing the natural flooding to aquatic ecosystems, including Ramsar-listed wetlands. It is not just about the storages or their volume but also the levee banks and channels which change the natural patterns of floods. I am one of the few scientists who have investigated the effects of structures on floodplains and model river flows. There are solutions for management of the issue but also significant pitfalls. Importantly, we do not need to just rely on models but could establish flow targets where the amount of real water in the river is measured. Thank you.

**The CHAIR:** Thank you very much, Professor. Now, for The Australia Institute, would one of you like to give an opening statement?

**Ms McBRIDE:** Yes, thank you. Thank you for the opportunity to appear before the Committee today. The Australia Institute is an independent research organisation based in Canberra. The institute has an extensive back catalogue of research on Murray-Darling Basin and other water issues in Australia. The environmental, social, legal and cultural arguments for a major reduction in floodplain harvesting volumes have been well made in other submissions to this inquiry. Our submission addresses the potential economic impacts of such a reduction. Our research found that significantly reducing floodplain harvesting, such as to a level consistent with cap, would be likely to have minimal economic impact.

The reason economic impacts would be limited is due to the export-orientated and capital-intensive nature of cotton production, which is what the vast majority of floodplain harvesting water is used for. Even in major cotton-producing regions, such as Narrabri, cotton accounts for less than 5 per cent of jobs. Furthermore, despite a reputation for high profits, major cotton producers rarely pay a significant amount of tax, according to the Australian Taxation Office data. Our research also compares the types of jobs between the agriculture-heavy northern basin to the manufacturing-heavy southern basin.

Reducing floodplain harvesting in the north could increase water use in the south where its use is likely to be more jobs-intensive due to the greater level of value-adding that occurs there. As a result, reducing floodplain harvesting could actually increase overall employment across the basin. We support the licensing and floodplain harvesting, provided that the level of take is brought under cap and sustainable diversion is not expanded to cover historical take. The licensing of floodplain harvesting must address illegal floodplain works. We also acknowledge that the current modelling is not fit for purpose. To ensure river connectivity and end-of-system flows, flow targets must be introduced downstream that are based on environmental, cultural and basin landholder needs. Thank you.

**The CHAIR:** Thank you, Ms McBride. We will go now straight to questions from the Opposition. The Hon. Rose Jackson?

**The Hon. ROSE JACKSON:** Yes. Thank you, Chair, and thank you, witnesses, for coming along today and for the written submissions you have provided, and the opening statements you have complemented them with. I want to start with your views on some of the contested evidence that we have heard in this inquiry and has been the subject of written submissions as well. First to you, Professor Kingsford—although others are welcome to comment—I wonder if you could talk a little bit about your research on the impact of extraction in the northern basin on ecosystems in the southern basin? I know that you have done a particularly significant body of research around the Menindee Lakes, for example. I suppose it is in the context of evidence we have heard that it is really

just climatic changes and climate change in particular that is causing negative environmental impacts on the southern basin and I am sure that is a contributory factor, but have you done any research on what impact actual extraction in the northern basin—and, I suppose, particularly floodplain harvesting—has on environmental outcomes in the southern basin?

**Professor KINGSFORD:** Thank you, Ms Jackson. It is important to understand what is going on in terms of floodplain harvesting and the ecology of the northern basin. Essentially, each of those major rivers—the Macquarie, the Gwydir, the Namoi, the border rivers Condamine, Balonne, Warrego, right across—have vast flood plains. So, the water comes down those rivers and spreads out across that area. It and then will come back into the main stem of the river into the Darling River and make its way down to the Menindee Lakes, where it is stored.

In natural flows it used to make its way all the way down to the River Murray and into the southern section. It is true to say that most of the water in the northern basin is retained—would have been retained—naturally in the northern basin. It would have gone to a whole range of different ecosystems, including Ramsar wetlands like the Macquarie Marshes, and supported red gums and native fish species on those floodplains and also the Darling River floodplains. Then the remaining water would have gone down and flooded the Menindee Lakes, which flooded much more often than people realise.

The 1901 royal commission has some evidence from a landholder about how often those Menindee Lakes flooded but they would have varied and then the water would have gone down the two anabranches—the anabranch of the Darling River and the main stem of the Darling River down to the River Murray—and would have contributed to flows in the Riverland around Chowilla, and some of it would have gone down to the lower lakes. I should just add to that: We know that about nearly 90 per cent of the rivers in the Murray-Darling Basin are made up of floodplain, so it is a significant area, and most of that is privately owned.

**The Hon. ROSE JACKSON:** Part of the conclusion that we can draw from that is that the waters on those floodplains are important, not just in terms of the flows and the connectivity down to the southern basin, but actually on environmental outcomes on the northern basin—on those wetlands and other environmental assets that are in the northern basin. When we are talking about flow targets or triggers, they would be perhaps not only just in relation to conductivity through the river and down to the south but also environmental outcomes within the northern basin. Is that correct?

**Professor KINGSFORD:** That is fundamentally true. When we talk about the dimensions of this issue, it is essentially—one is a longitudinal dimension down the river, a flow target at the end of the system at the end of, say, the Macquarie or the Namoi or the Gwydir, but then ideally you would also lateral dimensions because we are talking about floodplains that go out to the side. Some of that water might come back into the river but a lot of it goes into groundwater; it infiltrates the soils; it supplies water to a whole range of flood-dependent organisms like river red gums, coolibah and black box. So, yes, it is fundamentally important in those dimensions. Flow targets need to be devised for each of the river systems and at different places on those river systems.

**The Hon. ROSE JACKSON:** I have one more question and then I will hand to my colleagues; I think the Hon. Mick Veitch and the Hon. Penny Sharpe have questions too. In your submission, I think it is, there is a statement that there is a direct correlation between on-farm storage development and decreased inflows and catchment water yield. That is something that has been a little bit contested. Evidence from others has suggested that there is not really a correlation between on-farm storage development and water flow. Could you perhaps elaborate a little bit on some of the research that has contributed to that conclusion in your submission?

**Professor KINGSFORD:** Sure. I think it is important to think about a global water balance. When you are talking about water from a river it includes the amount of water that is regulated upstream, how much is pumped out, with unregulated flows or supplementary flows, and then also floodplain harvesting. As this inquiry has heard, those floodplain harvesting aspects kick in when you have essentially the river over banks. So, at any point when the river starts to flow or in fact when you have what are called distributaries—those are creek systems that come in downstream of the major dams—they can also be intercepted. So all of those processes can contribute to the take in floodplain harvesting.

It is true to say—and this is the practice—that obviously in large floods you get much more floodplain harvesting because essentially that water is going across the floodplains, but it is also those large floods that are essential for these ecosystems. It is at those times when that water spreads out that there is a vast amount of habitat for native fish species, for waterbirds, for frogs and for vegetation. Even though they are rare, they are critical to the river systems. You cannot just rely on a river system having what goes down the main stem of the river. So, to your key question, yes, they do have an impact and they impact particularly on those large floods and they impact both at the scale of actually on the flood plain where they are situated in stopping. And it is not just the storage volume; remember there are crisscrossings of levee banks and channels that are changing flood patterns.

But they will affect the amount of water that is going laterally but also down the river system and affect ecosystems both on the flood plain and those systems downstream that rely on it.

**The CHAIR:** Mr Veitch?

**The Hon. MICK VEITCH:** Thank you, Professor Kingsford. I have just one question before I go to my colleague the Hon. Penny Sharpe. In relation to your submission, you make the very clear statement that water harvesting licences should not be tradeable. Can you please elaborate on that for the Committee and provide your reasons as to why you make that statement?

**Professor KINGSFORD:** Thank you, Mr Veitch. I think they are quite different to other licence systems. We have got to remember that they are at a particular place on the river, so they are capturing what comes down that river and the natural flooding system of that river system. They are also highly dependent on what infrastructure is there: What is a channel system, and levee system and storage system that is there? If you can imagine a particular quantum volume of licence that was there and then was bought by somebody, say, upstream and traded in a simple accounting measure, then you could imagine that if someone had that much water to take, particularly if it is averaged over a number of years, their take might be much higher if they then established infrastructure upstream where there are more floods, say, in a system or intercept at a particular tributary.

So there are all those complex idiosyncrasies of a river system which make the trading of floodplain licences a major issue, I believe, both in terms of what it does to the river and the volumes diverted but also what it would actually do in terms of disrupting those connectivities—building more channels and levees without doing the restoration that you might have to do where those were originally taken. There are lots of, I guess, externalities that also occur in terms of trading floodplain harvesting licences

**The Hon. PENNY SHARPE:** I might just jump in. I think I am running out of time. Hello, Professor Kingsford. I want to ask you about the temporary licences. Given what you have just said about tradeability, that would also make temporary licences, I suppose, more workable if they were not tradeable. Why do you think that there need to be temporary licences?

**Professor KINGSFORD:** Thank you, Ms Sharpe. I do believe that there is a lot that we have not quite nailed down in terms of the policy and regulation of floodplain harvesting and, you know, the Government has admitted that. So, there is a whole range of very important initiatives that the Government has listed that it will get onto in terms of managing this issue. I think we need to do that before we provide that permanent licence access to water. One of the major issues which all governments have had to deal with in terms of river management is the long-term cost of handing out too much water in the first instance.

So, when the rivers were essentially assessed for their yield there was an incredible overestimation of the amount of water that was in the river. As a result, there was an over-allocation. So, many irrigators never got the full complement of water that they were promised by governments. As a result, there was always an expectation that there was a problem and need for more water. The fact is there was never that amount of water in the river and I am not convinced we have enough evidence to say how much water there is in the floodplain harvesting bucket to be able to provide permanent licences.

**The Hon. PENNY SHARPE:** I suspect that is my time, is it? [Disorder].

**The CHAIR:** Ms Sharpe, because we started a few minutes late, if you have another one, go, and, with the Committee's indulgence, I might go a few minutes into the next break for this. So, go for another question, if you like.

**The Hon. PENNY SHARPE:** Yeah. I have one more question, which really goes to flow targets. We have heard evidence about the lack of gauges in the river. We have heard that there has been a lot of work done sort of on first flush, but I am wondering if you could just explain to us—and you touched on it earlier—just really how other flow targets would work under this scheme, how you see them work. Well, what needs to happen to make them work?

**Professor KINGSFORD:** I think the real challenge here—and we have heard quite a lot of evidence about all parties being worried about the modelling—is essentially the governments are relying almost totally on the modelling to manage the rivers and I think we need some real metrics around how we do that. In terms of flow targets, you could imagine setting the amount of water at different points on a river system. So, for example, in the Macquarie, you might say Marebone Weir. You might say, "We need a flood of this amount before we open up the river for floodplain harvesting." You might have a similar mid-flow target for, say, the Gwydir or the border rivers and then maybe an end-of-system flow target; and you could also have flow targets on the Darling that it has to meet a certain amount of water.

That would ensure that some of those first flush waters get down to places like Wilcannia and Menindee, particularly to avoid some of those sort of catastrophic times where we have seen those incredible fish kills and we have seen First Nations people running out of water. I think it is really important that we think about the long-term sustainability of this system and provide for some policy measures, the management measures, that rely on actual flows going down the river system that reflect the amount of flooding that is happening in that river and allow for that river to regenerate, as well as the downstream ecosystems.

**Ms McBRIDE:** If I may, I think it is very important to consider where these flow targets actually are. We saw in the last flood that flow targets were in place at Wilcannia but the river does not end at Wilcannia, and so making sure that these flow targets are actually ensuring river connectivity, not just the river hitting a certain point in the Darling Baaka, is really important as well.

**The CHAIR:** Excellent. Thank you. We will move to questions from the crossbench now. I will kick off. I just want to explore some of The Australia Institute's submission, so whichever of you wish can take these questions. Particularly given the fact that the water taken by means of floodplain harvesting is essentially free water, your submission argues that the cotton industry is capital-intensive and employs few people. Do you want to expand a little bit more about the fact that, yes, there is that this enormous amount of water that a few people up north seem to have been able to take for free, and what that means across the entire basin? Mr Campbell, I might go to you first.

**Mr CAMPBELL:** Yeah. Thanks, Chair. Apologies for some erratic behaviour there. Melbourne just had quite a large earthquake and we took a bit of a bump there. So, yes, I will just calm down a little.

**The CHAIR:** Not the protesters? Not the tradies?

**Mr CAMPBELL:** No. I think it was just an earthquake. It was definitely the biggest I have ever felt here. So, thanks for the question. I mean, I think this comes to the fundamental nature of what floodplain harvesting water is used for and, you know, what part of the agricultural industry is using that and how that is linked to other parts of the economy, or not linked, as the case may be. I mean, as you have said, the water has been obtained for free. To this point there has been no royalty payment or other form of payment. In our submission we talk about, based on available data, there is very little tax paid by some of the major floodplain harvesting operations for which we have data. There is very little going back to the public or the environment from this practice. Perhaps it is necessary to say almost the vast majority of floodplain harvesting water is used for cotton production and cotton tends to be exported with very little value-adding and tends to be very capital intensive. It is based on large machinery, large amounts of water and large amounts of land.

Very few people are employed in the cotton industry. I think in our submission we go into the numbers in detail but it is less 1 per cent of agricultural employment in the Murray-Darling Basin. Even in areas known for their cotton production, cotton accounts for less than 5 per cent of employment. So it is a capital-intensive industry. It is a water-intensive industry—water that has not been paid for. So, this practice really is not contributing very much to local economies and, in our view, bringing floodplain harvesting allocations back in line with cap could be achieved with very little impact on local economies—certainly a lot of impact on businesses that have structured themselves around the practice, but very little impact on parties outside those businesses.

**The CHAIR:** Can I just explore that further? If floodplain harvesting was licensed genuinely within the existing cap now without taking water from the environment, how much do you think that would impact the scale of the cotton industry, Mr Campbell?

**Mr CAMPBELL:** I guess it depends on what your measure is there. In terms of output I would not want to guess a number, but I think in terms of output it would be quite substantial—in the tens of per cent, I would imagine. So, in terms of cotton output, I would imagine, yeah, quite a substantial impact. I guess what our submission is trying to say is that changing the cotton output of the northern basin would not have very much effect on employment, Government revenue, other aspects or other indicators that have a more direct impact on the welfare of communities in the Murray-Darling Basin and beyond.

**The CHAIR:** I do not have much time left, probably for just one more question. Back to you, Professor Kingsford. I want to get your views on what impact the take of rainfall run-off has on the smaller flows into rivers and flood plains on the basin.

**Professor KINGSFORD:** Thank you, Ms Faehrmann. It is a really difficult issue which I do not think has been looked at in great detail. When we talk about run-off, we also should talk about run-off up in the upper parts of the catchment. A lot of what we talk about is in the lower parts of the catchment. There are issues in upper parts with small farm dams and in Victoria they went to volumetric assessment of farm dams because of the impact on downstream flows. In the lower parts of the northern basin, the issues revolve around what I referred to earlier as the distributary system. These are creek systems that come into the main river stem. The larger ones are like

the Horton in the Gwydir and the Talbragar in the Macquarie, but there are many of those small creek systems. And then there are also those creek systems that go away from the main part of the river. The capture of those in terms of rainfall run-off is not a very sophisticated approach in terms of measurement of what is going on. So there is another quantum of water that is coming in from rainfall. It is generally not as large or as important as it is what is coming down the main part of the river, but it is potentially significant and not very well measured or understood.

**The CHAIR:** Thank you very much. We will now move to questions from the Hon. Mark Banasiak.

**The Hon. MARK BANASIAK:** Thank you. I will start with you, Mr Campbell. The Committee secretariat would have emailed you a document and I do not expect you would have had time to read it. It has only just recently been made public. But I would ask, perhaps on notice, that you go away and have a look at that because some of the key figures say that cropping in the north is only less than one-third of irrigation. You could come back on notice with some comments about whether that changes your economic analysis at all.

**Mr CAMPBELL:** I have had a quick look through it. I mean, there is nothing surprising or even really contradictory with our submission in this report. It is talking about agriculture quite broadly and certainly irrigation quite broadly and its role in the northern basin economy. If you have got some questions, I am happy [disorder].

**The Hon. MARK BANASIAK:** No. I was happy for you to take it on notice if you want to give us a more detailed view of what you think of it. I will go to a question more around some data from the Murray-Darling Basin Authority [MDBA] and whether you have taken it into consideration with your analysis. The MDBA says that the southern basin extracts 37 per cent of their water and the northern basin extracts only 21 per cent of their total water, and that the southern basin has significantly higher inflows. I am just wondering whether you factored those figures into your analysis when you were looking at the economic impact, or economic footprint, of each of those valleys. I think context obviously is important as is seeing who is getting the best bang for their buck in terms of water use. Were those figures factored into your analysis?

**Mr CAMPBELL:** Just unpicking the question a little bit there, I think what you are referring to is overall inflows whereas we have really been trying to focus on floodplain harvesting and what that water is used for, and what the implications of bringing that back under cap would be. So, as we have gone into—and perhaps based on some of what you are talking about—the southern basin has industries set up that add a lot more value to products that are produced there. There is a large wine industry; there is a very well-known rice-processing industry so [disorder].

**The Hon. MARK BANASIAK:** Okay. Sorry, I do not want to cut you off but my time is limited. But you have not specifically looked at, I guess, a breakdown of that economic value or economic footprint based on the level of the total take?

**Mr CAMPBELL:** No, not on the level of total take.

**The Hon. MARK BANASIAK:** Okay. I might just move to Professor Richard Kingsford because I have a couple of questions for him as well. The Environmental Defenders Office [EDO] was quite dismissive of my questioning around Macquarie Marshes and the impact that graziers are having at the end, potentially using environmental water for commercial purposes. I know you have mentioned the Macquarie Marshes quite heavily in your submission and even today. I just want to get your take on potential environmental and economic things that are happening there with the graziers potentially using environmental water for commercial purposes at the end of the Macquarie Marshes.

**Professor KINGSFORD:** Thank you very much, Mr Banasiak. It is important to understand that the Macquarie Marshes is mostly owned privately—

**The Hon. MARK BANASIAK:** Yes.

**Professor KINGSFORD:** —and predominantly by floodplain graziers. So, the floods that do come down their support them and have done for many generations. The issue here is that there is a dual effect here. They have not destroyed the floodplain plants. In fact, many of the colonies of waterbirds are on floodplain graziers' areas. So, yes, they are getting an income from those environmental flows but there are also significant environmental benefits as well. So, when that flooding does occur, there is still widespread use by frogs, plants, waterbirds, native fish species and turtles of those areas.

Significantly, the research from places like, say, Cooper Creek, which has widespread grazing as well on a natural flow system, indicates that those plants regenerate very quickly after you get another flood. Yes, there is, and always has been—and I mentioned earlier that most of the floodplains in the Murray-Darling are actually privately owned and most of the people have an income from them which they would have got with natural flows. But, with river information and development upstream, those natural flows have been taken away from those



people. They no longer get that income that they previously had and they now rely on big floods or sometimes—as in the Macquarie Marshes—some of those environmental flows.

**The CHAIR:** Thank you very much. We will now go to questions from the Government. Mr Farraway?

**The Hon. SAM FARRAWAY:** Thank you, Madam Chair. Firstly I would like to direct some questions to Professor Kingsford. Are you aware of the flooding occurring—and correct me if I had do not pronounce this properly—in the Gayini Nimmie Cairra wetlands in the south-west of New South Wales?

**Professor KINGSFORD:** Thank you, Mr Farraway. Yes, I definitely am because we are involved with the Nari Nari Tribal Council in restoring that 80,000 hectares of wetland down there.

**The Hon. SAM FARRAWAY:** Do you think that the management of those wetlands would be a good example of where cultural management can work?

**Professor KINGSFORD:** Absolutely. I think there is a great opportunity for government, community and traditional owners to work to restore a magnificent wetland, one of the best in the Murray-Darling.

**The Hon. SAM FARRAWAY:** Okay. Professor. I refer to an article in *The Guardian*—which I do not normally do, to be honest. It is dated 19 September 2021 and its title is "It's on at Menindee". You were quoted in *The Guardian* about the booming life that is now happening out at Menindee and that there is an explosion in wildlife at Menindee Lakes. Would you be able to expand on what is actually happening out there for the Committee?

**Professor KINGSFORD:** Yes. I have not actually been out there but we have been surveying out there and we will be surveying out there in a couple of weeks. But, certainly I have talked to people out there. What happens when those floods come down into the Menindee Lakes is that you start to get that water triggering a whole range of things that are happening, like invertebrates, waterbirds and native fish species, and they are capitalising on that large area of habitat that is occurring in Menindee Lakes.

**The Hon. SAM FARRAWAY:** Just staying with that theme, are you aware of any current monitoring or metering of what is occurring out there right now and, if so, what they are finding from the metering and monitoring of it?

**Professor KINGSFORD:** I am only aware of what we have been doing. Every October we survey up to 2,000 wetlands across eastern Australia, including the Menindee Lakes, and have been surveying Menindee Lakes since 1983. So we have a significant amount of data on the types of waterbirds and numbers that are there, but I also understand that the Government is monitoring fish populations, although I am not across the details.

**The Hon. SAM FARRAWAY:** So, just to continue, and I am happy to also have The Australia Institute to answer this one as well. What do you believe the native title rights over water are? Following the flooding in the north Menindee Lakes—and they are on track to hit over two million megalitres of capacity, is it not, around October next month—what do you think having all that water in the lakes has meant for the local community?

**Professor KINGSFORD:** I will not comment on native title. I do not have expertise in there but I will say that that is equivalent to the natural floods that used to occur frequently, even around the Federation drought, in Menindee Lakes and creates a massive area for the environment and all the aquatic plants and animals of which we know that First Nations people used a lot. Menindee is well known as a very important place on the Baaka for the people there. So, it is a fundamentally important part of that ecosystem and important for First Nations people.

**The Hon. SAM FARRAWAY:** Do Ms McBride or Mr Campbell have anything to say about that question?

**Ms McBRIDE:** I think it is pretty clear that the Menindee Lakes are very important for the communities out there but I think it is important to highlight what Professor Kingsford said before, which is that the Menindee Lakes did fill more often in the past. We know for a fact that floodplain harvesting has impacts downstream because it reduces the size and the frequency of these floods. It is important to remember that, despite the lakes being full right now, only two years ago we saw mass fish kills and multiple reports saying that floodplain harvesting acted as a contributing factor to the lack of water and resulting fish kills as well. So, I think that is really important to remember—these downstream impacts that massive take upstream does have.

**The Hon. SAM FARRAWAY:** Just following on that question—I will stay with you, Ms McBride, if that is fine—are you aware of any environmental metering and monitoring that is being undertaken within the Menindee Lakes system and the Lower Darling? If so, do you know what they are finding?

**Ms McBRIDE:** I am aware that NSW Fisheries is conducting some investigations out there, but I am not aware of the content or what they are finding.

**The Hon. SAM FARRAWAY:** Do any of the other witnesses have anything they wish to contribute in response to that question?

**Professor KINGSFORD:** Look, Mr Farraway, I would just refer that the Government does collect flow data, so that is one of the most important datasets that we have for managing rivers. There is flow data at Menindee; there is flow data further down the Darling; there is also satellite data that is also collected. In terms of environmental data, the real problem we have in Australia and including in the rivers is we are not collecting enough of it. There is very little investment in long-term monitoring of rivers and their health and that is causing us challenges in terms of looking at both increases in environmental improvement as well as degradation.

**The Hon. SAM FARRAWAY:** Professor, do you agree with the Central Darling council, the south-west Water Users Association, Graeme McCrabbe and the other locals within the Menindee area when they state that the policy around the 640:480 gigalitre rule has not delivered good outcomes for the Lower Darling communities through its management through the Murray-Darling Basin Authority? Would you agree with that—with what locals are saying out there with that rule?

**Professor KINGSFORD:** Look, I think it is complicated. I mean, one of the problems and challenges is that the Menindee Lakes is managed with Dartmouth Dam for the whole of the River Murray for the southern part of the Murray-Darling Basin. As a result, it means that decisions about the local environment at Menindee play second fiddle, generally, to the lower lakes and the lower Murray, so it is really important for the Menindee to take more control of that local management so that we can actually also look after the environment at Menindee and not just look after environments elsewhere. A very important part of this debate is how do you look after your own environment as well as the whole of the Murray-Darling Basin.

**The Hon. SAM FARRAWAY:** Thank you, Professor. To Ms McBride, just following on from our question and discussion earlier, two million megalitres of water in terms of capacity in Menindee Lakes by next month is a significant amount of water. Clearly from the article we have been talking to the Professor about, obviously things are not dying, things are not, you know, in disarray out at Menindee Lakes at the moment. The question that I put—and I am happy for others to follow with their answers—is what should be done with the water? What do we do next with such a significant capacity and water there, also taking consultation in what the Central Darling council is saying and what the Menindee locals are saying? Where to next?

**Ms McBRIDE:** I am here in my capacity as The Australia Institute. I know there are some Lower Darling Baaka people joining will be in the call later today and this question might be appropriate to their submissions, so I might leave it to them to actually discuss it. But I think the most important thing is that we are seeing impacts downstream because of the amount of water that has not come down. The important thing I think we need to get back to is the fact that when the Basin Plan was set, there was a certain amount of water that they set for floodplain harvesting and that was 46 gigalitres in New South Wales. Now, we know that it is extensively bigger. A great deal more is taken in that, so just because there is water at the end of the river does not mean that a massive amount of take occurring further up is all right. I think what is important is that we need to bring it back and make sure that floodplain harvesting, when it is licensed, is licensed to a level that is consistent with cap and that the sustainable diversion limits [SDL] is not expanded to take this historical take.

**Professor KINGSFORD:** Can I add to that, Mr Farraway? It is true to say that there is a lot happening in terms of the environment at Menindee and it always happens when there are floods, but those floods have been getting less and there is less water in there. Our data over 39 years on waterbirds indicates a long-term decline in waterbird numbers and diversity at Menindee Lakes. Having said that, I will go straight to your point: I do believe there is an opportunity for a win-win at Menindee where we could reinstate better flooding and drying patterns there. Remembering that 28 per cent of Kinchega National Park is in Menindee Lakes and its surrounding areas, we could start to dry out some places a little bit better. That does not mean cutting off Lake Cawndilla, which is one of the Government options. It actually means going back to the drawing board and thinking about a restoration plan.

**The Hon. SAM FARRAWAY:** So, essentially, Professor—because I have only got limited time—obviously, the theme is it has been drained too quickly. How do we make sure that it will not be drained that quickly again?

**Professor KINGSFORD:** I think we need a body of work involving experts from government—all parts of government: water, environment and also the Murray-Darling Basin Authority—to think about the whole of that system and say, "What's the best way of managing this?" and then, "What are the policy management levers that we have to do that?" instead of treating it like it has been, a re-regulating storage for shunting water down to the lower lakes and the River Murray and South Australia, which is how it is predominantly used—to save water for the upper parts of the River Murray.

**The Hon. SAM FARRAWAY:** Just quickly, because I think I have very little time left: Maybe this is a question to Mr Campbell. In The Australia Institute's submission you describe floodplain harvesting as an illegal practice. How have you arrived at that conclusion considering this Committee has seen independent legal advice from Bret Walker, SC, that says that it is not?

**Mr CAMPBELL:** Look, my expertise is not in law so I am going off media and secondary reports that there are questions around the lawfulness of this. They have been pretty widely discussed [disorder].

**The Hon. SAM FARRAWAY:** So you have not ever received your own legal counsel—

**The CHAIR:** Order! Time has expired for Government questions. Sorry about that.

**The Hon. SAM FARRAWAY:** [Disorder].

**The CHAIR:** I thank the witnesses for appearing today. If you have agreed to take questions on notice, the secretariat will be in touch with you regarding that. Thank you very much for appearing and for the work you do.

**(The witnesses withdrew.)**

**(Short adjournment)**

**MARTIN MALLEN-COOPER**, Adjunct Research Professor, Institute for Land, Water and Society, Charles Sturt University, affirmed and examined

**STUART ROWLAND**, Retired Principal Research Scientist, NSW Fisheries, affirmed and examined

**STAN KONSTANTARAS**, President, Recreational Fishing Alliance of NSW, sworn and examined

**The CHAIR:** Is there anything you wish to add about the capacity in which you appear?

**Dr ROWLAND:** I worked with NSW Fisheries for over 33 years.

**The CHAIR:** We now have time for short opening statements. Dr Mallen-Cooper?

**Dr MALLEN-COOPER:** Thank you, Madam Chair. I would like to table a diagram I wish to speak to and I will make a brief statement.

**The CHAIR:** Fair enough. You have emailed that to the Committee, I understand.

**Dr MALLEN-COOPER:** Yes, and it looks like that. So, my brief statement is this: I have got most of it in that submission but in the Murray-Darling Basin, floodplain diversions for agriculture have been happening for over a hundred years. But the key milestone in all water diversions is the cap in 1995 effectively saying, "No new diversions." So any new developments in floodplain harvesting that occurred after that date were not compliant with the cap. So, those irrigators who developed their floodplain harvesting after that time were fully aware of that. So, that was a line in the sand put down by the Howard Government, which sought to have a vision of sustainable agriculture balanced with a range of community needs.

So, no matter what your view is on floodplain harvesting, this inquiry is another line in the sand. You will remember the outcomes of this inquiry in 20 years time because it is pivotal. The Murray-Darling River system has suffered fish kills and blue-green algae but it is recoverable. This is an important point. The science is rock-solid and also presents a clear choice. So, New South Wales can keep the river in a suppressed fragile state or we can be leaders in river management. This is an achievable vision: sustainable agriculture, sustainable rural communities and healthy rivers. I will leave it there.

**The CHAIR:** Thank you very much. Dr Rowland, do you have a short opening statement as well?

**Dr ROWLAND:** Chair, I think I have covered most of it in my submission. I would just like to make—is that clear to people, or—it is reverberating a bit for me.

**The CHAIR:** I actually might move to Mr Konstantaras, if I can.

**Dr ROWLAND:** Okay.

**The CHAIR:** You seem to have dialled in from multiple devices—

**Dr ROWLAND:** Oh, okay.

**The CHAIR:** —which is creating an echo. We can see your computer screen. We can also see two different—well, it is like you have dialled in from three places.

**Dr ROWLAND:** Righto.

**The CHAIR:** So, I might go to Mr Konstantaras for his opening statement first and see if the—no. Okay. They have been muted now, I have just been informed—

**Dr ROWLAND:** Okay.

**The CHAIR:** —by the secretariat. Sorry.

**Dr ROWLAND:** It is all right.

**The CHAIR:** If you will continue, Dr Rowland, if you have a statement?

**Dr ROWLAND:** Okay. I would just like to make a point in relation to my submission. I have had a long association with inland fish and rivers. It goes way back to the 1950s as a kid fishing rivers with family such as the Peel, the Namoi, the Murrumbidgee. I first visited the Darling River in 1970 and have been visiting it regularly since and, as a research scientist, since 1978. I did my PhD on Murray cod and have been involved with its research and management as well as other native species since that time. Although I have been retired for 10 years, I still maintain connections with scientists such as Dr Mallen-Cooper, Fisheries scientists, fishermen, Aborigines, river people and so on. Thank you.

**The CHAIR:** Thank you very much. We will go to you now, Mr Konstantaras, if you have an opening statement as well.

**Mr KONSTANTARAS:** Yes. Good morning all. This inquiry is of significant interest to all recreational fishers and to the Recreational Fishing Alliance of New South Wales. Fishers living in or visiting the Murray-Darling Basin have told us that they have observed a significant decline in the health of each and every waterway. They have seen impacts to wetlands and to the abundance of our native fish species, animals and birds over the decades that go beyond the boom and bust cycles of the past. Fishers are gravely concerned that management policies and practices, past and present, have been made at the expense of the overall health of the Murray-Darling Basin. Accordingly, we hope this inquiry considers all issues and impacts from floodplain harvesting against the bigger picture of the New South Wales Government's overall water management policies and practices.

The alliance feels that we must try to limit the over-harvesting of any natural water flows like the flooding of water across any catchment that has the potential to deliver significant benefits to the natural freshwater aquatic ecosystems, in particular aquatic plants, sensitive habitats, wetlands and the fish and food webs that support so much life. Many of us do not have university degrees but what we do have is the drive and passion to advocate for the fish, what they live in and where they live. We all know the catchphrase: No water equals no fish. It is a no-brainer for us. I hope the submission we have provided is of value to the Committee. A lot of fishers with a multitude of skill sets have contributed to its composition—from painters like me here in Sydney to farmers down in Albury, all with a passion for the fish, fishing and the environment. Thank you.

**The CHAIR:** Thank you very much. We will go straight to questions from the Opposition.

**The Hon. MICK VEITCH:** My first question is to Dr Rowland. Dr Rowland, I am interested in your submission where you talk about the difference in the river in 1970 to where it is now in 2020. I say that because as a young fella I used to go fishing out there with my father and uncles for what we used to call a "big fish". Around that 1970 period was when I was out on the Darling. I was told then that the Darling would run dry about three years in 10. I am not sure whether that was right—that was anecdotal evidence from an old-timer on the river. Clearly the Darling runs dry a lot more than three times in every 10 years now. Can you explain to the Committee the difference between the 1970s scenario you present in your submission and the 2020 scenario?

**Dr ROWLAND:** Yes. I am still reverberating a little bit here. Is it clear to people?

**The CHAIR:** I just wanted to check, Dr Rowland, you may need to check that you do not have the live stream on in another tab?

**Dr ROWLAND:** No. I did log in and then log out to do something. It may be that you have got me there a couple of times.

**The CHAIR:** Okay. We will just continue. You are speaking slowly enough. I think we will manage.

**Dr ROWLAND:** Okay. I selected the 1970 time frame to 2020 deliberately to provide a clear example of the dramatic change, degradation of the aquatic ecosystem in the Darling. Just very briefly, there has been long-term degradation. It started back in the 1800s with the development of the sheep industry, the paddle-steamers and so on. And there was small-scale irrigation way back in the early 1900s as well. Despite the changes that we saw associated with that industry, the native fish remained very, very strong. I suspect that it was because there was continued flows, natural flows, flooding regimes. I have described it in the submission. The characteristics for the river was it was a flowing river 92 per cent of the time—even in droughts, 85 per cent of the time. There is some great work of Dr Mallen-Cooper in quantifying that sort of characteristics in the history of the river. It was dominated by native fish, native aquatic plants such as ribbonweed and so on.

The river was characteristically clear, as were all our inland rivers. There is a misconception that the inland rivers are naturally turbid. If we look at the history—Aboriginal history, explorers, early white settlers—the reports all indicate that outside of wet periods, freshes and floods, our river flowed clear. In the Darling at times in the 1970s and before, visibility was one to two metres. This is the characteristic of the ecosystem, the species composition, the structure and function of the ecosystem. If we compare it to post-1990, say, 2020, as I have written there, it is vastly different: long periods of no and low flow, virtually no aquatic plants—that is the root plants, ribbonweed, pondweed and so on. The flora is completely dominated by algae, at times huge blue-green algae blooms. Introduced carp makes up around about 90 per cent of the fish biomass. It is a dramatically big different ecosystem. Species have been lost—trout cod, Macquarie perch, snails; massive declines in some species—silver perch, catfish, mussels, snails. It is a totally different ecosystem.

Commencing in late 2018, fish started to die. There had been fish kills quite regularly in the system from about the 1990s but in late 2018 there were large fish kills, and by early 2019, we are all familiar with the massive

fish kills that continued over a period of months near Menindee—millions of Murray cod, bony bream. Bony bream is actually the totem of the Barkindji people. Silver perch, catfish and so on died in their millions. Those of us that visited the river, and I am sure many of you did, you could nearly walk from Bourke to Wentworth. There was only water at homesteads at the deep holes, behind the weirs and in a couple of the Menindee Lakes. And of course Lake Menindee was completely dry. So to me the ecosystem has gone extinct. It had changed since 1990 in terms of species and structure and function. To me in 2020 that ecosystem was completely different and gone. I have made the claim that it became an extinct ecosystem.

There were warnings of this—I am not sure whether you want me to talk about it now. From about 1990 many of us saw these dramatic changes, as I have mentioned: low flows, algal blooms, fish kills and so on. In 2003 the New South Wales Fisheries Scientific Committee declared the Darling River and its catchment an endangered ecological community. It outlined the key threatening processes that had changed the system and it warned that, unless action was taken, the system would go extinct. That was 2003. In my opinion the system has gone extinct. There is water gone down the Darling recently and water in the Menindee Lakes but the whole species composition and structure and function are so different, it has gone extinct. There will be some recovery of species of fish and crustaceans and molluscs, but in my opinion I cannot see it getting back to the original ecosystem that even white man knew through the 1800s and early 1900s. I better leave it there.

**The Hon. MICK VEITCH:** Thank you, Dr Rowland. My next question is to Mr Konstantaras from the recreational fishers. Do you think sufficient weight has been given to the impact on our fish stock when decisions like floodplain harvesting are being made?

**Mr KONSTANTARAS:** No, absolutely not. I do not think so. I think we are just running around in circles. I think the departments do not speak to each other. For the last sort of six months the alliance has been trying to determine who is responsible for the millions of fish that die each year. We are concerned that it has been allowed to happen considering the multiple legislations that apparently protect fish and habitat. We look at this as unregulated killing of fish and aquatic animals. It has some huge impacts for us as recreational anglers—we pay a fee to fish—and it needs to be addressed immediately. We have been reviewing the Water Management Act, the Fisheries Management Act and other legislation. We have spent a lot of time writing to Ministers. Our experience in dealing with the various agencies who administer these Acts is that not one agency seems to be taking it seriously.

We have correspondence that fails to answer simple questions, from agencies. We are still waiting for advice. We are happy to share all of this with the Committee as well. It is of great concern that agencies continue to work in isolation. Our recent experience has us worried that these issues are being handled in a disjointed and piecemeal manner when it comes to the fish. We cannot get an answer to that question. It is a really hard one. It has driven us mad. We have spent hundreds of hours reading Acts. Again, we are really passionate fishermen. We do not have a background in interpreting legislation. All we can do is read, try to interpret, communicate with each other, email, fire off a letter and just keep prodding and probing until we can get the answer to the question you asked there, Mick. It is of great concern to us. The disjointed manner in which every agency seems to operate is of great concern to us, yes.

**The Hon. MICK VEITCH:** You indicated you had some documents there. It would be really good if you could table those with the committee secretariat. I think Rose has a quick question.

**The Hon. ROSE JACKSON:** Thanks, Mr Veitch. Dr Mallen-Cooper, in your submission you talked about the potential use of screening technologies to protect native fish in the licensing of floodplain harvesting. I wonder if you could elaborate on what options there are to use some of those technologies to ensure that any licensing does not have an impact on native fish or has a minimal or minimised impact.

**Dr MALLEN-COOPER:** Can I use that tabled diagram?

**The Hon. ROSE JACKSON:** I have seen it, so that is all good.

**Dr MALLEN-COOPER:** You have seen it? Okay. If you have got that in front of you, it explains probably a major impact here. There is one aspect of fish biology and one aspect of the mechanics of floodplain harvesting that is important for the inquiry to understand. One thing is that native fish spawn and have larvae that drift downstream. As they drift downstream—this often happens in floods—they will end up in flood runners or in gravity diversion channels. Under normal circumstances they would end up on flood plains and then continue down the flood runner back into the river. Under normal circumstances that produces a lot of fish. On the right-hand side of the diagram I will show you what happens with floodplain harvesting. Those larvae drift down, they end up in these channels, which can be flood runners that have been blocked or purpose-built channels, and the larvae are then trapped in that channel, or they are pumped into off-stream storage.

If you have a pump in the river, you can screen that pump and protect those fish—that is larvae and other fish. In this case you cannot protect the larvae. In this case the larvae end up in that channel and they either end up dry in the channel or in the on-farm storage. I think if there is a future here for floodplain harvesting they actually have to pump from the river like other irrigators. This is actually a trap for larvae. It happens every time there is a flood and it happens to coincide with the peak of breeding as well. Fish often spawn in spring. That is the start of irrigation season and the flood comes, so these two things coincide. If we are serious about a vision where there is floodplain harvesting—and really, prior to the cap in '94 for those floodplain harvesting, that is legitimate floodplain harvesting—we should look towards those irrigators pumping from the river and screening at the river, and you can do that quite effectively.

**The CHAIR:** Thank you. We will move to questions from the crossbench. I will kick off with a few. Dr Martin Mallen-Cooper, firstly, thank you for your submission and the diagrams. It was all incredibly helpful and useful, a very good submission. Could you please explain to the Committee how the environmental sustainable level of take informs the sustainable diversion limit?

**Dr MALLEN-COOPER:** Yes. This is a pretty important point, because there is a lot of discussion around—I will get up my own diagram up. That is figure 3 in that submission. Yes, I see a lot of narrative around of, "Oh, we have unaccounted water. We underestimated a floodplain diversion, so therefore we have more water available." That is not the agreed process that the States and the Federal Government and the Murray-Darling Basin Authority [MDBA] have set up. The first step here is to determine what the environmentally sustainable level of take is. You also calculate the total volume. I have seen some diagrams that say, "Well, let's look at the outflows." No, actually, they are very smart modellers, and there has been a lot of information about this.

So you work out the total volume and then what level you can take in terms of being environmentally sustainable. There may be lots of arguments around that, and that leads to 2,750 gig in the basin plan—that may be too much, it may be too little. My view is it is too little. But that number is the number. That becomes the sustainable diversion limit. That is then compared against the baseline diversion limit. If it does not meet that then you have water recovery to bring the baseline diversion limit back to the sustainable diversion limit. There is so much information around this, but that logic is very, very consistent. The numbers and the modelling can vary. But there is a sort of narrative that we underestimated floodplain diversions in '94. That is absolutely correct. That has nothing to do with the environmentally sustainable level of take or the sustainable diversion limit. So that is what is agreed upon. That process is locked in. So this inquiry should reaffirm this. So that, you cannot—

**The CHAIR:** Can I jump in there? In other words, what you just said, so if, for example, there is an argument that the baseline diversion limit or the take has been underestimated as a result of floodplain harvesting and, therefore, we need to increase the baseline diversion limit in various valleys, that should not mean that there is an increase, therefore, in the sustainable diversion limit, doesn't it?

**Dr MALLEN-COOPER:** Yes, absolutely. The sustainable diversion limit is an independent process and then it gets compared against the baseline diversion limit [BDL]. So all the scientists and all the modellers get together and say, "This is a sustainable diversion limit. This is our environmentally sustainable level of take." Then you compare it against the baseline diversion limit [SDL]. Yes, that narrative is incorrect.

**The CHAIR:** Dr Mallen-Cooper, just pushing that a little bit more then, what are ramifications for just randomly increasing the SDL because of this supposed increase in BDLs that are happening? What is the ramification if that happened?

**Dr MALLEN-COOPER:** I think it is absolutely huge. I think right now my view is the allocation in the basin plan of 2,750 gigalitres is insufficient. I know there are other views around that it is obviously too much. I am going to table a document, a paper I wrote—I have just emailed that—to confirm what Stuart Rowland was talking about the character of the Barwon-Darling. What has happened in past droughts, I have looked at discharge from 1886 to 1950 to compare that with the present droughts. What has happened now is the Barwon-Darling is on a knife edge. We have seen, yes, catastrophic loss of fish, mussels, snails; blue-green algae. Now there is a lot of narrative around that to say, "That is due to climate change. It is due to the drought." Actually, that drought is similar to past droughts prior to any regulation. The inflows are similar. It is documented in that paper. No-one disagreed with that paper. That is just the data and really accessible for anyone.

But what has happened now is, through water extraction and droughts, we have pushed that river to the absolute edge. If we push it further, I think it will be absolutely catastrophic. The flip side is some of it is recoverable. Stuart is right: It will not be the same system. But some of it is recoverable. But it needs base flows, it needs flow pulses. Even in those worst droughts—and this is where floodplain harvesting comes in—in the worst droughts in the past you had these big pulses of flow. Every 14 months you had these big pulses of flow—in the worst droughts on records. No-one disputes that. Those pulses have gone and the reason they have gone is, well, three reasons: more water extraction, so dams upstream, other diversions, but also floodplain harvesting.

Floodplain harvesting is one form of flow diversion but in this case it is very, very significant and it gets those pulses that just go overbank.

**The CHAIR:** Thank you, Dr Mallen-Cooper. Unfortunately my time has expired. We will go to questions from Mr Mark Banasiak now.

**The Hon. MARK BANASIAK:** I might just start with you, Mr Konstantaras, just picking up on the question from Mr Veitch. I wonder whether you could elaborate more on where you see the deficiencies are between where these Acts intersect—or should intersect—like the Water Management Act and the Fisheries Management Act, and obviously the agencies that are charged with enforcing them.

**Mr KONSTANTARAS:** Thanks, Mark. Water management, under the Water Management Act, cannot occur in isolation of other legislation. The agencies that administer those Acts and also exercise jurisdiction over the waterways must consider the following legislation. The one we look at as recreational fishers is the Fisheries Management Act 1994. It is the one that, again, dictates our bag and size limits, what we can and cannot do, commercial fishing. Pretty much everything to do with fishing in New South Wales sits under the Fisheries Management Act 1994. But the objects of this Act also include to conserve fish stocks in key fish habits; to conserve threatened species, populations and ecological communities of fish and marine vegetation; and promote ecologically sustainable development including the conservation of biological diversity. Again, for us that should be the overarching Act that the Water Management Act sits under.

The Water Management Act should also look at things like the objects of the Protection of the Environment Operations Act 1997, the Environmental Planning and Assessment Act 1979, the Biodiversity Conservation Act 2016. So arguably regulations and other legislative instruments made under the Act ought to be prioritising protection of the waterways, including its water quality, its dependent ecosystems; including the fish in the waterways. And it should consider these things over economic consideration when it comes to water use. Again I am quite happy to table all the letters that we have sent in. It would give you a sense of the frustration that we feel and the circles—we get run ragged trying to get answers from departments, which, again, is really concerning. It really worries us.

So potentially we might need to review the Fisheries Management Act, strengthen it a little bit more and prioritise the Act and see exactly where the Water Management Act sits in terms of relevance with all these other Acts. The impression that we are getting and our opinion is that the Water Management Act is operating in complete isolation. We cannot find any agency or department, or under which Act, that can claim responsibility for the millions of fish that die each year. It is a really big issue. It has taken a lot of our time. I guess when we share and table the correspondence that we have it will give the Committee an idea of where we are looking and where we think the deficiencies are.

**The Hon. MARK BANASIAK:** Thanks. Dr Mallen-Cooper, I tabled a document on Monday and I think the committee secretariat has emailed it to you. It was advice from the State Government talking about allocation of water for downstream near the Barmah-Millewa area and that there was 358,000 megalitres borrowed against the environmental water allowance which was then having to be garnished from general security allowance from the users down there. Can you contextualise that for us in terms of the impact of essentially extracting that amount of water against an environmental licence compared to the impact of floodplain harvesting?

**Dr MALLEN-COOPER:** [Inaudible].

**The CHAIR:** Dr Mallen-Cooper, I think you are on mute still.

**Dr MALLEN-COOPER:** Thanks for the question, Mr Banasiak. I have just had that document emailed to me. What I would like to do—especially when I see a document with numbers in it, I like to check the numbers myself on the gauges, so may I take that on notice?

**The Hon. MARK BANASIAK:** Absolutely, if you can take that on notice, that would be good. Can I just move to another point? What is your understanding of floodplain harvesting in the south? It often gets suggested that there is floodplain harvesting in the south. When I have asked questions of the department they basically say they have not done any work in 20 years or 21 years to understand this. Have you done any work in terms of floodplain harvesting in the south and what its impact is?

**Dr MALLEN-COOPER:** I think it is an incredibly good question. No, I have not done any work in the south. I am aware of sites in Queensland, in Condamine, and I do a lot of work around New South Wales. So, no, I am not aware. I think it is a really good question. I think that data should be available with the Government. I am not sure but I cannot really address that one.



**The Hon. MARK BANASIAK:** No probs at all. Just picking up on the question about fish screens, is that something you would like to see built into the regulations on floodplain harvesting if we go down that track, that it becomes a mandatory component?

**Dr MALLEN-COOPER:** I think so. I think in terms of all water diversions this needs to be something the industry is taking up. Whether it is a carrot and stick approach, I am not sure. There is a lot of positive response from the industry—so this is not just floodplain harvesting, this is all diversions. Absolutely, and a lot of fish get diverted. Any water that is diverted, fish are going with it. So I would absolutely like to see this but it needs to be—I would not want to see it suddenly mandated and suddenly everyone apply within 12 months to apply screens. I think we have to work with the industry to do that. I think the industry is on board. There is some legislation around it but I would rather see the industry take that initiative and have a 10-year vision.

**The Hon. MARK BANASIAK:** Thank you, gentlemen. My time has expired.

**The CHAIR:** Thank you very much. I will throw to the Government, Mr Ben Franklin.

**The Hon. BEN FRANKLIN:** [Inaudible].

**Dr MALLEN-COOPER:** You are muted.

**The Hon. BEN FRANKLIN:** There we are—sorry. Thanks very much, Chair, and thank you all for being here today. I will start with a contextual question, and this is to everybody. I believe the Commonwealth Environmental Water Holder has over 2.6 million megalitres of entitlements and in State and other reforms such as Living Murray they have recovered another 1.4 million megalitres. My question is: Do you think they are doing a good job with the water that they control? Do you talk to them regularly? Do you know what is planned for the environmental releases out of the Menindee Lakes, particularly since it is now forecast to hold two million megalitres by mid-October? Maybe I will start with you, Mr Konstantaras, and then move to Dr Rowland and Dr Mallen-Cooper.

**Mr KONSTANTARAS:** I am not aware of anything—way beyond my pay grade here.

**The Hon. BEN FRANKLIN:** That is no problem if you are not.

**Mr KONSTANTARAS:** I am happy to listen to Martin and Stuart on that one, thank you.

**The Hon. BEN FRANKLIN:** Sure. Dr Rowland?

**Dr ROWLAND:** I am going to flip to Martin as well. I talk about fish directly and the rivers. If I want to know something about flows and rivers, I go to Martin.

**The Hon. BEN FRANKLIN:** No problem at all. Dr Mallen-Cooper, it is lovely to see you again. I remember you from the dams inquiry. So do you have any comments on that?

**Dr MALLEN-COOPER:** Thank you, Mr Franklin. I think it is a good question. Personally I am certainly involved on the fringe of some of those flow decisions, so I am not actually in the middle of it but I see the outcomes. I think it is a learning curve for all parties involved. I think there are some outstanding outcomes in some cases and others where we are learning from them. I think that process is excellent. I think there is monitoring of those flows, which I think is also excellent. I think there probably should be more monitoring of the flows. In terms of the basin plan, I think a major risk is we are not monitoring enough. We are not seeing what are the positives and what are the negatives. The basin plan is not a single answer. It is an adaptive management framework really. It has reviews. I see some excellent wins in it, I see some excellent learnings in it and it is still a bumpy road to go.

**The Hon. BEN FRANKLIN:** Thank you. Let's stick with monitoring but I will move onto fish numbers and stick with you, Dr Mallen-Cooper. What monitoring and metering of fish numbers has been done in the Darling and the Menindee Lakes since the fish kills in 2019?

**Dr MALLEN-COOPER:** Actually that is also a good question. I am going to have to take that on notice, Mr Franklin.

**The Hon. BEN FRANKLIN:** No problem.

**Dr MALLEN-COOPER:** I certainly have colleagues who are doing that so I will take that one on notice. It is a good question.

**The Hon. BEN FRANKLIN:** Thank you. Do you know if we have seen any improvement in the fish numbers in the Menindee Lakes with the recent floods?

**Dr MALLEN-COOPER:** I do not know. Again I think I could ask around for you, so I could also take that on notice, yes?

**The Hon. BEN FRANKLIN:** That would be wonderful. I was thinking about the structures. There has obviously been a lot of discussion about the in-river structures, which clearly are causing a problem during low-flow events. But now they are drowned out or they are overflowing, so I am wondering whether fish have been able to move along the Barwon-Darling because of them being able to get over those structures now.

**Dr MALLEN-COOPER:** That is another good question. Those weirs do go underwater, and at that point—for example, Bourke weir goes under at 10,000 megalitres a day. Yes, in those big flows that is how fish get over. What I found in my research is that often there were small flows that the weirs were a barrier and the fish could not get passed but there are lots of fishways going in. I am involved in some of those projects. So that problem is heading towards a solution, again, over probably another decade.

**The Hon. BEN FRANKLIN:** How do they currently get out of Lake Cawndilla and Lake Menindee, particularly given that the weirs do not have fishways? How does that happen at the moment?

**Dr MALLEN-COOPER:** At the moment in Cawndilla, as Cawndilla is drained they are released into the anabranch. In Menindee, again, there is an outflow, so some fish would go out through that outflow. And then, under natural conditions, in fact, Menindee Lakes would drain naturally back to the river and there would be a remaining pool of water. Usually for the Menindee it is probably about 5 per cent to 10 per cent in that volume—under natural conditions. And of course that would support those bird populations.

**The Hon. BEN FRANKLIN:** Just sticking with the fish for a moment, can they normally swim back out of the Menindee Lakes and back up into the Darling towards Wilcannia?

**Dr MALLEN-COOPER:** No. I think that that needs to be addressed and I think there are discussions around addressing that.

**The Hon. BEN FRANKLIN:** Okay. Can I move on to environmental water and ask what your thoughts are about environmental water being released down the Darling Anabranch?

**Dr MALLEN-COOPER:** That is a good question, because the Darling Anabranch, very much an ephemeral system with water holes, in fact was a thriving system. It has been impacted highly by reduced flows. I have actually some documents around that so, Mr Franklin, may I also take that on notice?

**The Hon. BEN FRANKLIN:** Yes, please. That would be wonderful. I am looking forward to the bevy of information that we are going to be receiving. Sticking with that sort of issue, obviously there has been a lot of discussion around Menindee. Do you think we should be dropping water out of the Menindee to keep Lake Victoria full?

**Dr MALLEN-COOPER:** You are asking very good questions. Because that is all about these multiple objectives: multiple environmental objectives, water storage for Adelaide water supply and for irrigation. That is a complex question.

**The Hon. BEN FRANKLIN:** Happy for you to take it on notice, Dr Mallen-Cooper.

**Dr MALLEN-COOPER:** I have to also take that on notice.

**The Hon. BEN FRANKLIN:** No problem. I guess bringing the issue back a bit, obviously Menindee Lakes is now 100 per cent full without limits on floodplain harvesting. So while it is in Commonwealth control, how do you think the MDBA should be operating the lakes, broadly?

**Dr MALLEN-COOPER:** You are asking excellent questions. I have a few ideas around this and they are pretty well compatible with other scientists. There are two views on Menindee. One is that it could be operated as a semi-terminal system. So you have talked about the fish in the upper Menindee. Well, then you add fish passage, so the fish go back out of Menindee, back up through Lake Wetherell and up the Darling so it becomes a connected system. It is one way to operate it. Then you also operate the lower Darling as a separate system. But there is also another view which is you can operate the Darling as a connected system and then fish flow out of Menindee Lake as well and flow out of Cawndilla. So there are different options. Whenever I have been involved in those flow decisions, you realise there are so many competing objectives. So it is hard to have one model. I talk about a vision for the Darling. Menindee Lakes is absolutely part of that vision. I think it was such an extraordinary—and still is very productive in terms of native fish. As you said, how do those fish get out? I think that is absolutely a key to how the system must work, so that fish can get back out and up the Darling.

**The Hon. BEN FRANKLIN:** Thank you so much, Dr Mallen-Cooper. I am looking forward to reading further those responses. I move to Mr Konstantaras and ask one question to you in your capacity. Do you think

that the penalties for illegal fishing offences are high enough? I was thinking about that when you were talking to Mr Banasiak and that question just occurred to me.

**Mr KONSTANTARAS:** I guess that the penalties should fit the offence, so I guess maybe we need to give the courts a little bit of latitude and really treat serial offenders completely different to first-time offenders, and depending on the nature of the offence as well. Recreational fishers are not averse to seeing those who do the wrong thing, and it is a very small minority that do the wrong thing, get the punishment they deserve. Again it reflects badly on us that we see maybe 10 stories on social media put up by the department every year and they reflect badly on recreational fishers. Again even seeing some of the comments from fishers out there it is just a slap on the wrist and these guys will go out and do it again. These guys aren't recreational fishers as well. We do not class them as very similar to us.

I mean, if you are out there intentionally breaking the rules, we feel that the fines and the punishment should fit the offence. So absolutely, again, there should be some distinction between an innocent mistake and a lack of understanding, but again some of these offences that we see are really targeted and they have very specific outcomes and that is primarily for black marketing and taking excessive numbers of fish. Yes, recreational fishers are quite happy to see those reviewed. We are also quite happy to see the fine revenue go back into our recreational fishing [inaudible]—

**The Hon. BEN FRANKLIN:** Yes, indeed.

**Mr KONSTANTARAS:** —as well. So that is a priority for us as well. We do not want to see the fines go into consolidated revenue. Recreational fishers invest \$15 million or \$16 million a year and 550,000 of us pay a recreational fishing fee. Any money we can put back into that fund goes back into better recreational fishing in New South Wales. So, yes, some big fines would probably send the message home, we think.

**The Hon. BEN FRANKLIN:** Thanks very much, Mr Konstantaras. And just a final question, if I may, to Dr Rowland, and you may prefer to take this question on notice. Firstly, what sort of data was collected on fish movements in the Murray-Darling Basin during your long and distinguished career with the Government? What sort of monitoring should be improved, do you think, to understand what we need to do to improve the whole-of-life fish cycle? I am happy for you to have a crack at it now or to take it on notice, whichever you prefer.

**Dr ROWLAND:** I will make a few general comments. In the early days of my career we looked more at what species were where. We were not looking so much at fish movement. That had been somewhat done in South Australia but it was more quantifying fish, looking at their distribution, describing new species, actually, as I did in the late seventies and early eighties. But there has been some good monitoring. There was a large research approach started in the early 1990s when there were concerns about the inland rivers. It was supervised by Dr John Harris and Peter Gehrke from NSW Fisheries. There was a big report written in 1997 that basically said the rivers were in severe distress.

There has been some monitoring since associated with the Murray-Darling Basin Authority. So there is fairly good background data on fish, where they move, where they are abundant, where they are rare. I am told there is really good work again now with various new tagging techniques and monitoring of fish. I think we have a fairly good understanding of the biology of many of our native fish and their movement. I cannot make comment because I was not involved in movement and association with environmental flows, because that is a fairly sort of new field of research. Young scientists, a lot younger than me, have taken that up and are working hard at it now. That is perhaps a quick summary for that question, Ben.

**The Hon. BEN FRANKLIN:** Thanks so much, Dr Rowland. If you have any further thoughts and want to put them on notice, that would be lovely.

**Dr ROWLAND:** If I can find some recent papers from colleagues, I will certainly send them on to the inquiry.

**The Hon. BEN FRANKLIN:** That would be terrific.

**The CHAIR:** Thank you so much, Dr Rowland, and thank you to all of our witnesses. That is the end of this session. The committee secretariat will be in touch with you in relation to questions taken on notice. I believe we have a few of interest and I am looking forward to reading some of those documents.

(The witnesses withdrew.)

(Short adjournment)

**CHRIS BROOKS**, Chair, Southern Riverina Irrigators, sworn and examined

**TIMOTHY HORNE**, Principal, Horne Legal, Southern Riverina Irrigators, sworn and examined

**RACHEL STRACHAN**, Vice Chair, South Western Water Users Association, affirmed and examined

**The CHAIR:** We will go to opening statements. Please keep them brief. Who is doing the opening statement for Southern Riverina Irrigators [SRI]?

**Mr BROOKS:** I am. Thanks, Madam Chair. Thanks for the opportunity to present our case to the inquiry. I really commend the politicians who are responsible for this inquiry. I have enjoyed working with you and providing relevant information in an attempt to try to hold people to account and comply with the laws in this water space. Seeking the right answer, I find, is always difficult but in this case it gets terribly distorted by those with a conflict, and it depends on the questions asked. The big one that has been going for years is the legality of this issue, which is point one in your terms of reference.

I suppose it is one of the many things that you have to resolve: the legality. I think the simple analogy I have used to my people is: When a policeman asks the guy who roars into town in a fancy car, "Is he allowed to drive that?" yes, he is, because it is his car. But he has to have a licence, otherwise it is illegal, and if he is drunk it is a crime. This is where the diversions and distortions of so many of these water plans and gazettes and proclamations made to the Water Act have made it a very, very complicated issue. The one thing that I would really ask and direct the Committee is to focus on is the who and the how and the why that all these changes were made.

We have given previous advice to the New South Wales Government and the New South Wales Government, in an attempt to show what we thought of floodplain harvesting being illegal, we know and we have shown and gone to great lengths and expense to show the impacts of the lack of flows coming down the Darling, the impact it has on our region and on the environment all the way along it. When there is no water in the Darling, there are no fishes, there are no birds at Menindee—which is in the picture behind me—and it has a massive impact on our economy. I do not think it is fair or right that you expect the people in the south to comply with rules, regulations and meters and take a massive hit of nearly 50 per cent of their water allocation and right that they have paid for when there is no control on what has been taken up north.

We have had to kick in personally—it is a non-profit organisation, SRI, but we kick in a few bucks to do this work and we are up against the New South Wales Government with a budget, I hear, of \$17 million just on this particular subject. That makes it very difficult from our position to prove this point. But I think we have been able to prove the legality, we have been able to prove the volume of the storage is at triple, and we have been able to prove the massive impact it has had on the food bowl of Australia. You have got 373 floodplain harvesters versus about 12,000 growers in the south that have produced \$25 billion worth of food in a pandemic so they can grow a bit of cotton—it is just something that wants looking at.

I would ask on question: Is all of this process in line with the objects of the Water Management Act—the objectives (a) to (h) and principles from 1 to 8 for environmental benefits, environmental flows and the degradation all the way down the Darling? It is the one chunk of water that falls up there. If there is nothing coming down the Darling because it is taken out of system without regulation it does impact everyone downstream. There is no other way it gets around the great divide or other underground water. And if you think that it is okay to spend—the Federal Government spent \$13 billion to buy back about 83 per cent of that water came from the south, which is nearly 2 million megalitres, to gift it to the guys in the north. It just does not make any sense at all.

We are hoping and praying that we can get some fair and reasonable outcomes of these rules and clarify them and just get a fair and reasonable outcome for all water users, environment and economy. The one closing statement that I do have is: Two rules for one State is not acceptable. If these people are allowed to take whatever volumes of water like from the system then why can't we out of the Murray, which is going to have a drastic impact, and we know it, on downstream users? We are backed into a corner. We are fighting for our lives financially. We believe that there is a hell of a good opportunity for us, and we have litigation funders running the ruler over the damage that it has inflicted on the 12,000 downstream users. It is in the order of a back-of-the-envelope calculation of approximately \$7 billion to date and here we are trying to determine whether we are going to make it permanent or not.

**The CHAIR:** Thanks, Mr Brooks. I assume, Mr Horne, that you do not have an opening statement as well.

**Mr HORNE:** That is correct, Madam Chair.

**The CHAIR:** Okay, great. We will move to Ms Strachan please.

**Ms STRACHAN:** The New South Wales South Western Water Users Association represents New South Wales licensed water users in the Murray River downstream of the junction with the Murrumbidgee River to the South Australian border, and the Murray and licensed water users on the lower Darling River downstream of the Menindee Lakes Water Storage Scheme. Our members use water for domestic and stock purposes as well as irrigation of high value permanent plantings, horticulture and viticulture, and annual crops using both New South Wales high security and general security entitlements. Located at the far south-west of New South Wales, our water needs are reliant on the supply of water from the Murray River and the Darling River and influenced by water harvesting and on-farm storage, surface water extractions and water management practices upstream.

Priorities need to ensure that the water needed to maintain the health and productivity of the river and the communities that depend on this need to be a priority for water managers. Floodplain harvesting issues for South Western Water Users include the impact of floodplain harvesting on downstream users, which is typically no different from over-extraction of surface water. The primary impact on downstream stakeholders is following especially extended dry periods. At these times the immediate needs of the river, floodplain environments and critical and human and cultural needs should take precedence over floodplain harvesting. Legality: Floodplain harvesting in northern New South Wales has been occurring for decades but increasing more so recently. At no stage has there been any real professional assessment process to determine what is or is not appropriate. As a consequence, there will be some floodplain harvesting works which are justifiable and others which are not. Equally, there will be sometimes when floodplain harvesting should not occur and other times when it is valid.

South Western Water Users Association are strongly of the view that the assessment of the above issues is not yet of a standard which would justify the formal granting of floodplain harvesting entitlements. As a general principle, policy for floodplain harvesting needs to be articulate enough to maintain the integrity of intent and not to be manipulated in years to come. The South Western Water Users Association believe that all water use, including surface water extraction and floodplain harvesting, should be included in the total sustainable diversion limit for a water source. This should be driven by the 1993-94 cap numbers and when an increase in floodplain harvesting occurs there should be a reduction of other extraction in that water source.

**The CHAIR:** Thank you very much, Ms Strachan. We will now go to questions. We will go to the Opposition and the Hon. Adam Searle.

**The Hon. ADAM SEARLE:** Thank you for your opening statements. I might direct my questions to Mr Horne but if anybody else wishes to answer they should feel free to join in. Mr Horne, a lot of focus is being paid to the legality of floodplain harvesting practices.

**Ms STRACHAN:** [Inaudible].

**The Hon. ADAM SEARLE:** Can everyone hear me?

**The CHAIR:** I think what might have happened is Ms Strachan may have been interrupted. Ms Strachan, I think your connection may have gone, but with your opening statement—sorry, that has finished now—maybe send it to the secretariat if you did not get to finish it and we will be sure to ask you some questions. We will continue on, Mr Searle.

**The Hon. ADAM SEARLE:** Mr Horne, as a lawyer there is essentially two types of unlawfulness, isn't there? There is activity which might expose someone to a criminal offence or some kind of offence under an Act, and there are actions which may simply be said to be unlawful in that they are not expressly authorised or permitted by a piece of legislation. At a broad conceptual level that is correct, isn't it?

**Mr HORNE:** That is correct, Mr Searle.

**The Hon. ADAM SEARLE:** So this Committee sought advice from Mr Walker, SC, about whether floodplain harvesting activities would constitute an offence under various water legislation in New South Wales and essentially his answer was no. But that is a different question, isn't it, to whether or not floodplain harvesting is expressly legally permitted under State legislation?

**Mr HORNE:** That is correct, Mr Searle. There is a major difference between the practice of it being legal and the current volumes that New South Wales claims to have been legal and permitted in 1994 and again in 2009.

**The Hon. ADAM SEARLE:** And if floodplain harvesting was not expressly authorised by statute, even though it may not constitute an offence under legislation, nevertheless there may be other legal consequences that flow from it, of the kind that Mr Brooks has touched on this morning.

**Mr HORNE:** That is correct. I can step you through—

**The Hon. ADAM SEARLE:** I will just ask some questions, Mr Horne. If I have missed anything, you can come back to that.

**Mr HORNE:** Yes.

**The Hon. ADAM SEARLE:** Section 393 of the Water Management Act 2000, in New South Wales, essentially abolishes all common law rights to water and vests them in the State. That is correct, isn't it?

**Mr HORNE:** That is correct, Mr Searle.

**The Hon. ADAM SEARLE:** So unless there is an express authorisation by the State, you are not permitted to take water, for example, in the way that floodplain harvesting is occurring. That is correct, isn't it?

**Mr HORNE:** That is correct. And all water vests in the State under section 392 (2) of the Water Management Act.

**The Hon. ADAM SEARLE:** So if it is not authorised or permitted or licensed, it may not be an offence under section 60A but, nevertheless, it is not lawful in your view?

**Mr HORNE:** That is correct.

**The Hon. ADAM SEARLE:** Under the Water Act 1912 it was possible to be licensed to engage in floodplain harvesting. Is that correct?

**Mr HORNE:** That is correct. The licensing provision—

**The Hon. ADAM SEARLE:** Yes, but no licences were ever issued to your knowledge. Is that correct?

**Mr HORNE:** With respect to floodplain harvesting, no.

**The Hon. ADAM SEARLE:** And under that Act it was simply an offence to engage in floodplain harvesting without a licence, wasn't it?

**Mr HORNE:** That is correct. It was an offence. It was not an offence to receive water but if you used a work to impound water for use later for something such as irrigation, that was an offence under section 21B (1) (a) of the Water Act.

**The Hon. ADAM SEARLE:** But that Act is no longer in place, is it?

**Mr HORNE:** That Act still continues in part two of that Act.

**The Hon. ADAM SEARLE:** It does. Okay. But as at 30 June 2009, which is the time at which the cap under the Murray-Darling Basin Plan kicks in, to your knowledge there was no licence or authorisation or legal permission to expressly allow floodplain harvesting in New South Wales?

**Mr HORNE:** That is correct, Mr Searle.

**The Hon. ADAM SEARLE:** So that means that the volumes of water that are authorised under the Murray-Darling Basin Plan cannot include floodplain harvesting amounts?

**Mr HORNE:** Not in its current form, no, unless there is an equal offsetting of volume or reduction in another form of take such as general security or high security.

**The Hon. ADAM SEARLE:** But absent that, floodplain harvesting simply cannot be counted within the cap in the Murray-Darling Basin Plan.

**Mr HORNE:** That is correct.

**The Hon. ADAM SEARLE:** And any action by the New South Wales Government to legislate to authorise that in some way would be contrary to the Murray-Darling Basin Plan and the Federal Water Act.

**Mr HORNE:** That is correct.

**The Hon. ADAM SEARLE:** And therefore, in that sense, would be unlawful.

**Mr HORNE:** That is correct, Mr Searle, yes.

**The Hon. ADAM SEARLE:** Thank you. There was a letter to the editor from Ms Baldwin, the executive officer of the Southern Riverina Irrigators. Are you aware of that letter to the editor?

**Mr HORNE:** I am aware of that letter, Mr Searle.

**The Hon. ADAM SEARLE:** I am sure Mr Faraway will be taking you to it, but in that letter it asserts that Mr Walker provided advice that floodplain harvesting had never been legal and did not sit within the legal

limits of the Water Act or the basin plan, and any attempts to increase water take through water sharing plans would be a contravention of Federal legislation. Did you see that?

**Mr HORNE:** I did see that.

**The Hon. ADAM SEARLE:** So is this the way we reconcile what is said to be the difference in Mr Walker's advice to the Committee versus what appears to be his advice to your client—that is, the Committee essentially asked Mr Walker about whether offences had been or might have been committed but that is not the same as Mr Walker agreeing that floodplain harvesting is otherwise lawful, authorised or permitted?

**Mr HORNE:** That is correct. There is a nuance to what he has given to the Committee in his opinion. Floodplain harvesting per se is a legal act. However, if you combine that with a work or if you do not have a right to take that basic landholder right, or some other right or exemption, then it is an unlawful activity, that is correct.

**The Hon. ADAM SEARLE:** So is that the way we should understand Mr Walker's advice to this Committee: that he was asked a series of important but very narrow questions about whether certain activities would lead to the commission of certain offences?

**Mr HORNE:** That is correct. There are two ways to—I guess his advice is quite narrow. It is correct. However, it does not tell the complete story because he was not asked to elaborate upon that.

**The Hon. ADAM SEARLE:** And, importantly, the offence under 60A of the Water Management Act is a lot more—well, it is different to the offence of water take without a licence in terms of floodplain harvesting under the Water Act 1912. It is not the same offence.

**Mr HORNE:** That is correct.

**The Hon. ADAM SEARLE:** There are a few more things that have to be done to come within 60A.

**Mr HORNE:** That is correct.

**The Hon. ADAM SEARLE:** Essentially the Federal legislation authorises the Murray-Darling Basin Plan. It sets limits on—or a process by which limits of water take can be determined. And that legislation is binding on Federal agencies but it is also binding in New South Wales on DPIE and the water Minister here in New South Wales.

**Mr HORNE:** That is also correct. Yes, it is binding on the agencies of the basin States.

**The Hon. ADAM SEARLE:** So if New South Wales then sought to include floodplain harvesting takes for the purposes of baseline diversion limits or sustainable diversion limits, that would not be consistent with the Murray-Darling Basin Plan and would not be consistent with the Commonwealth Water Act and, in that sense, would be unlawful?

**Mr HORNE:** That is correct, Mr Searle.

**The Hon. ADAM SEARLE:** Have I missed anything?

**Mr HORNE:** I am happy to—with respect to the Water Act 1912, in 1999 New South Wales, in recognising that a licence was required under part 2 of that Act, brought in the Water Legislation Amendment Act, which effectively allowed the Ministerial Corporation to make harvestable rights orders to exempt landholders from complying with that part when conducting rainfall run-off harvesting, which we know is a form of floodplain harvesting. So this was recognised by New South Wales back in the nineties. In the previous inquiry in 2020 that we had into the floodplain harvesting exemption that New South Wales tried to introduce, Border Rivers Food & Fibre actually stated to the committee:

It is important that the Committee understands that many applications for these Part 2—  
which is the licences—

and Part 8 authorisations remained un-processed by the NSW department until 2018 when the Natural Resources Access Regulator [NRAR] took over the responsibility for them and finalised them. Some of these applications dated back to the 1980's so were sitting in a Department filing cabinet for more than 30 years, such was the low level of priority put on them.

We understand that there were most likely applications for these licences. For whatever reason, they were never granted. The cap refers to 30 June 1994 and what was permissible under State water management law as at that point in time. So if floodplain harvesting was being legally conducted somehow with some other licence or without a work involved, then potentially that could come under the cap. But the current volumes that are being proposed by New South Wales, we understand, involve the use of levees, structures—floodplain harvesting on an industrial scale—and we think that this relates to perhaps a misinterpretation by some people that only a part 8 works approval was required in order to conduct unlimited floodplain harvesting. So what Walker says in his advice is

correct. You could floodplain harvest but you needed a right, an authorisation, a licence to use a work if you were going to impound that water and use it later on for irrigation. That is something I think listening to some of the inquiries or some of the questions from some other Committee members, perhaps there is a nuance that they have not quite taken on board and they just think that this is some kind of blanket right to floodplain harvest as much as you want back in 1994 and in 2009, I expect.

**The Hon. ADAM SEARLE:** So failure to commit an offence does not equal authorisation or approval?

**Mr HORNE:** That is correct, yes.

**The Hon. ADAM SEARLE:** Those are my questions, Madam Chair. I will hand over to Mr Veitch.

**The Hon. MICK VEITCH:** My question is to Ms Strachan. It relates to your submission, where you make a very clear statement—your organisation—that floodplain harvesting licences "should not be tradable or transferable". I would really like you to explore that with the Committee. Could you advise the Committee why you make that statement?

**Ms STRACHAN:** We feel that floodplain harvesting is truly connected to the land that it is associated with and that it should not be able to be moved to another area of the river where it would either flood out the upstream communities or neighbours, or also drought out the communities or neighbours below. So floodplain harvesting, being the particular form of take that it is, is definitely linked to the land. It is also a way of controlling it, that you are not putting onus on areas that cannot meet the demand of additional transferable right. So we are very much against it being tradable or transferable.

**The Hon. MICK VEITCH:** In your submission you also talk about the flow triggers in the northern tributaries—the Barwon-Darling, the lower Darling et cetera. We heard on Monday in testimony I think from the Border Rivers group, that there is an issue about the transparency around the data that is available and the number of gauges in river gauges. Is that an issue in your part of this important waterway?

**Ms STRACHAN:** I totally agree with that. We need adequate measurement for the whole length of the river systems to know exactly what is going on and where the water is. At the moment we have the biggest problem where the northern Basin and the southern Basin are basically broken in two where they have separated the Darling River at Wilcannia, where we have minimal flow targets at Wilcannia of 10 days, 400 megalitres, which does not actually make it to Menindee at all. We feel that the storage targets at Menindee and flow targets the length of the Barwon-Darling and the northern tributaries should provide critical needs right through to the Murray-Darling junction, not just to Wilcannia, which is not where the Darling River finishes.

**The Hon. MICK VEITCH:** My last question to you, Ms Strachan, is essentially if the floodplain harvesting regime were to work, it would need substantial investment in metering and gauging.

**Ms STRACHAN:** I think that is a given anyway. It should be a priority to government to be as transparent and clear on all measurement, not only of metering on properties but also within the river system. I know most farmers—you could ask them exactly how much diesel, fertiliser, fuel, water they are putting on per hectare. I do not understand why government, with the resources at its hands, cannot be as accurate in all of their measurement of take or transporting water through the river.

**The Hon. MICK VEITCH:** Thank you. That was my last question so over to you, Rose.

**The Hon. ROSE JACKSON:** I do not think there is a lot of time left but I will chuck my question in anyway. I think the issue of whether the current regime of floodplain harvesting that we know is occurring is impacting on the southern Basin or not is a contested point. We have had evidence from other witnesses and from DPIE essentially suggesting that the current floodplain harvesting that is occurring in the north has minimal impact on the southern Basin. I suppose then to you, Mr Brooks, is that your view? How would you describe the influence of extraction in the northern Basin on the southern Basin?

**Mr BROOKS:** It is pretty simple. They have actually produced a lot of facts and figures of previous days. When there was the design of the Murray-Darling Basin Plan, the hydrologists took all these numbers and measured the flows. The long-term average annual flow of water from the Darling River into the Murray River was 720,000 megalitres, which made up to 39 per cent of the contribution to South Australia's fixed volume of 1,850, and whilst that volume was coming down there, the balance was made up from the Murray River 50-50 between Victoria and New South Wales. Because there is now nothing coming out the end of the Darling and they are making no promises to make any contribution, and even their own twisted reports say that there will be 1 per cent difference—there was nothing coming out the end of the river before this extremely wet year.

Whilst that is not coming out there, the increase in floodplain harvesting is effectively taking our water out of our storages, which is why we are seeing the flooded Murray River going down to make up for the shortfall.



That is the argument we have. If you take 720,000 megalitres out of this area—our entire 100 per cent allocation is only 850,000 megalitres, so it has affected our water allocation and subsequently cut our production by 40 per cent. Drought years has cut it by 100 per cent because we have had a zero allocation. That is mega dollars out of the food bowl and all of the environment suffers in between.

**The CHAIR:** We will go to questions from the crossbench. I will kick off with a few. Firstly to Mr Horne, if I can. On Monday the Committee heard that if the 500 per cent carryover did not exist, New South Wales would license 3.2 times, I think, the current proposed floodplain harvesting volume annually. What are your thoughts on that?

**Mr HORNE:** So 3.2 times 346 gigalitres is 1,107 gigalitres—more than two times what was the storage as at 30 June 1994. The statement that this is what was being floodplain harvested back in 1994, there was no actual way—they had less than half the storage capacity to even capture that much water back in 1994, let alone all the other licence entitlement that they had from their storages. Going back to what Border Rivers Food & Fibre have said in their submission to this current inquiry, they said that there was no requirement to account for floodplain harvesting under the 1912 Act because it was considered by the Government as unnecessary, as it was so infrequent and such a small proportion of flow. New South Wales has now submitted to this inquiry that this volume of water is going to amount to 25 per cent of all the irrigation water in northern New South Wales. We have this situation where there is a proposal to license what was once a minimal amount of water. Somehow the models have produced and justify something that, in a practical sense, was not even possible to have been captured and stored back in 1994. I guess that just shows how far out of whack everything has become.

**The CHAIR:** If the licensing of floodplain harvesting volumes was over the existing limits, what would that mean for environmental water or planned environmental water?

**Mr HORNE:** All water which is in excess to the long-term extraction limits—so in excess of what the water sharing plans have provided for—is considered by the Water Act as planned environmental water and therefore is protected and cannot be allocated for any other purpose. So 21 (5) of the Water Act would also prohibit that water being given out for another purpose. It would offend that Federal legislation.

**The CHAIR:** I did want to get your views on the emergency works exemption regulation, which has not been covered by this Committee to date but I did note that you mentioned it in your submission. Will the emergency works exemption allow for the diversion of overland flow without a licence? What are your views on that?

**Mr HORNE:** The emergency works exemption allows someone to self-determine whether or not there is an emergency and then to build some works and to hold that water. They are able to hold that water for as long as they like and then if they want to use it for irrigation purposes, perhaps in the next season, then they can do so by converting it across to a supplementary licence, a groundwater licence—any other form of licence. Our view is that if there are no restrictions around this—it is said that it was to do with urban situations—then a 10-megalitre capacity, or limit, could be put on it. It just provides—if someone has utilised all their licences and a flood is going through, then it gives an incentive for someone just to stop as much water as they possibly can and determine in the following years whether or not they convert it across to a licence entitlement or not. And there is no skin off their nose if that happens.

If, at a subsequent date, NRAR arrive and determine that there was an emergency or something, then it is a \$1,500 fine for not notifying them of that. So, yes, we think that without any limits and restrictions placed on that exemption then it is open for abuse. Previous to that there was state emergency services and so forth, which do have the authority to determine an emergency and can act accordingly to deal with those issues, and we think that is the most appropriate way to deal with emergencies.

**The CHAIR:** I wanted to turn to NRAR, which is appearing at Friday's hearing. I want to get your thoughts, Mr Horne, as well about what NRAR's enforcement is like of floodplain harvesting breaches.

**Mr HORNE:** To date we understand that NRAR has used its discretion to not prosecute any floodplain harvesting breaches. We are not aware of any prosecutions that are ongoing. We have seen the board papers, thanks to a Standing Order 52, where they determined, following the disallowance of the floodplain harvesting exemption last year, to follow that path of least resistance and not enforce these. We have seen statements from NRAR that they will only prosecute serious and wilful misconduct. We do not know what they determine as being that standard, but certainly there has not been much activity from NRAR to date on this illegal activity.

**The CHAIR:** Mr Brooks?

**Mr BROOKS:** My concern with regard to NRAR's performance actually goes one step further. There are copies of communication and boardroom notes from within NRAR where they are taking instructions from

DPIE about what they can and cannot do with regard to enforcing floodplain harvesting, and that was after the disallowance motion to remove an exemption for these people against prosecution. Whilst the argument was fairly clearly spelt out by your own Crown Solicitor's Office, that in their view at the time floodplain harvesting was unlawful and the exemption was defeated, DPIE were still instructing NRAR on what they could and could not do. That did not seem to provide any independence, as per NRAR claims.

**The CHAIR:** I was wondering if you could provide those documents that you say that you do have on notice to the Committee, that would also be useful. I will go to you, Ms Strachan. You say in your submission that floodplain harvesting licences "should not be tradable or transferable". Could you explain to the Committee why you think that should be the case?

**Ms STRACHAN:** [Audio malfunction].

**The CHAIR:** Sorry, you are on mute.

**Ms STRACHAN:** Sorry. As stated before to Mr Veitch, we think they should definitely be linked to land so that it does not put onus on any other areas and it is truly related to a specific piece of land. The documents that they initially released to the public said that it would not be tradable or transferable and we fully support that floodplain harvesting will not be tradable or transferable.

**The CHAIR:** I am sorry, Ms Strachan, your internet connection is not playing nicely today. You may need to keep your video off for future questions.

**Ms STRACHAN:** It is just that we think that it should be linked to land because it is a very specific product that is only going to be traversing over that particular piece of land and it is not going to put the onus on other areas to then make up the shortfall.

**The CHAIR:** Thank you very much. We will go to questions from Mr Mark Banasiak.

**The Hon. MARK BANASIAK:** I might start with you, Mr Brooks. The Committee secretariat would have emailed you a document which was a statement put out by the department around water allocation. Arguably, when we talk water there are a lot of big numbers thrown around, and I just wanted to try to contextualise what some of those numbers are. It talks about 358,000 megalitres having been borrowed from an environmental water allowance, which is close to half of that 750-megalitre figure you just spoke about in terms of what used to flow from the Darling to the Murray. How much of an impact on allocation has that borrowing that you had to now pay back had compared to the impact of floodplain harvesting in your view?

**Mr BROOKS:** The Barmah-Millewa volume of water is an interesting one, and I am glad it is for contextualising because that came about—and this is the difference in the attitude of the people in the south. When the Murray-Darling Basin commission were actually drafting the works and trying to determine baseline flows, and were very reasonable people, they identified that the extraction of water in the Murray Valley was such that it was having a negative impact on the Barmah Forest. The Barmah Forest is a very beautiful part of the world. It is spectacular, with red gum trees and native animals and all the rest of it.

The farmers in this region, not only in New South Wales but the Victorians, made a voluntary contribution of 10 per cent of their allocation to make up what is known as the Barmah-Millewa water. Back then that was general security water. The rules of the basin plan are that they cannot change the category of the water. Somehow that became high security water. It is also water that is above the choke, to be used for the flooding of the choke. Now in drought years when we have zero allocation, somehow this accounting—this modelling process—where the documentation actually continued to extract those fictitious volumes out of our allocation while it was on zero has made it high security water, and then when we finally get an allocation they then turn around and say to us that we owe them 350,000 megalitres that we borrowed during the drought while we were on zero.

Furthermore, initial granting of that water by the local people for the benefit of saving the Barmah Forest is no longer necessary simply because the Murray River has run so high now that the Barmah-Millewa Forest that needed an irrigation, or a drink, once a year or once every 10 years or once every five years is now flooded up to twice a year—at least four out of the last five years—and it is being destroyed by too much water. So do we borrow from the environment? No, we do not think so. We granted water out of our allocation for the benefit of the environment. Now it is being used against us in this fictitious modelling and accounting of water that is eroding our allocation.

**The Hon. MARK BANASIAK:** Thanks for that clarification, Mr Brooks. I think it was in your opening statement, you talked about that you just want fair and equal outcomes for everybody. My question is: What do you want out of this inquiry? What do you want out of the licensing and regulation of floodplain harvesting? What does that fair and equal outcome actually tangibly look like?

**Mr BROOKS:** We want everyone to comply with the rules. We just see a constant distortion of what was the Murray-Darling Basin Plan, the subsequent Water Management Act in New South Wales. There are set limits per valley that are capped. They are in legislation; they are not to be fiddled with. There are end-of-system flows that are supposed to be guaranteed. When I say the objectives and the principles of the Water Management Act, which are similar to the objectives and outcomes of the basin plan—the old triple bottom line and all of that propaganda that we were preached when they were implementing the basin plan. It became Federal law in 2012, the Water Act of 2007. The triple bottom line—firstly for the environmental benefits, secondly for communities to have guaranteed water, and thirdly for productivity. That productivity was capped to a limit. You cannot have, as I keep saying, two sets of rules for the one State. There are caps in the north and there are caps in the south, and if everyone sticks to the rules there is sufficient water to flow to do all of the things that were intended.

The distortion of reports and the stacking of committees and the changing of rules with proclamations in gazettes is all doing one thing—that is, taking water out of the environment and gifting it only to the north. There are no instances of that in the south that I am aware of, and it is having a massive impact. All we are looking for is for people to comply with all of the rules in all of the State for us all to be able to survive, the environment as well.

**The Hon. MARK BANASIAK:** Can I ask about the 1,729-gigalitre figure that you had in your submission around the 500 per cent carryover? Is that predicated on the situation, or fact, that every floodplain harvesting licence that came into existence would do that 500 per cent carryover in the same year so every licence holder would take up that opportunity at once? Is that what that figure is predicated on?

**Mr BROOKS:** That figure is predicated on the maximum proposed volumes that DPIE are putting up to licensed floodplain harvesters by 500 per cent. That is that maximum volume. Our lack of, I suppose, any faith in the existing compliance and measurement and metering of any of this water in the north—we would assume that that is the maximum volume they would take. Whenever that water is available—and, let's face it, it doesn't come every year but whenever it does, every few years—they will take that maximum volume. They have the storage to take it. There is no control or measurement up there that we have any satisfaction in. That number is almost the equivalent volume of what was bought back by the Government and given up by the people in the south. That is just an example of the distortion of what we call the water flows.

**The Hon. MARK BANASIAK:** I have probably only got time for one more question, so I might go to you, Mr Horne. In questions from Mr Searle you were talking about part 8 renewals and how they were put in a filing cabinet and forgotten about. Do you think now that they are sitting in regulatory limbo it was foolish by the department to put them there before having the regulatory machinery in place?

**Mr HORNE:** The issue is that everything has sort of moved on from that. The cap crystallised on 30 June 1994 and the rules for allocating water and for operating water management systems as at that date. So if those licences were issued and it was not legal to use works to floodplain harvest that time, it has now been superseded by the Water Act, which has provided that legal limit. Remember that New South Wales keeps referring to the fact that it wants to return floodplain harvesting to the legal limits. We would now need to have a situation where New South Wales pleads its case to the Commonwealth Government to explain why we need to change the legal limits in the Federal legislation to include something that they had not licensed and left in the bottom of the filing cabinet back in the eighties. That is the unfortunate reality of it, that is the Federal law overrides the State law.

**The CHAIR:** Thank you very much. We will go to questions from Government members now. Mr Farraway?

**The Hon. SAM FARRAWAY:** My question is to Ms Strachan. I take it that you would agree with the Central Darling Shire Council, and obviously a lot of user groups and locals in Menindee, that the policy around the 640/480 gigalitre rule has not delivered good outcomes for the lower Darling communities through its management through the MDBA. Do you agree with that?

**Ms STRACHAN:** Yes. I think the original intent of protecting water for the critical needs of Menindee and the lower Darling have been overlooked, and we have been a detriment to that.

**The Hon. SAM FARRAWAY:** Following on, would you be able to explain to the Committee—with Menindee Lakes, it can hold more than 100 per cent. That is obviously more than the 1,760 gigalitres but can be pushed, or surcharged, to the 2,050 gigalitres. Why is that?

**Ms STRACHAN:** That is currently at the moment. We are sitting on about 109 per cent at the moment, and that is to take pressure off the Murray storages. They will be delivering that, I am sure, under MDBA control operationally through Christmas this year so they do not have to put so much pressure on the Barmah Choke and

a lot of environmental assets throughout the Murray, and they can still have their capacity delivery to meet all their irrigation needs on the Murray.

**The Hon. SAM FARRAWAY:** If we had another three years of very low flows into the Menindee again—how can more floodwaters be stored back into Menindee Lakes if you had another three-year period of low flows?

**Ms STRACHAN:** The critical part about Menindee Lakes is maintaining water in the upper two storages, at Lake Wetherell and Pamamaroo. So I do not think you will be able to expand the storage at Menindee, but our main argument is that we are seeing water drawn out of the lakes very, very quickly but we have also got reduced inflows coming into the lakes from the northern Basin. So you have got less coming in and more going out, and that leaves absolutely nothing left for the local Menindee environment, community or industry. So it is critical that that two to three years' storage is maintained in those upper two lakes. How will they draw down Menindee and Lake Cawndilla? It needs to be used operationally to take pressure off the Murray system and deliver South Australia's commitments.

**The Hon. SAM FARRAWAY:** Back to the question around the 1,760 gigalitres that can be surcharged to 2,050. Would it be correct to say that it is because of cultural flow reasons? Is that why it is done or can be done?

**Ms STRACHAN:** No. It is used as a storage for when it is needed to the south. I cannot speak on behalf of the Barkindji, but culturally I think some of the biggest issues they have are in the dry years when there are not flows and we do not have storage targets or flow targets throughout the river that adequately keep a healthy base river for everyone, which is, I think, absolutely paramount for government to make sure that those protections are there.

**The Hon. SAM FARRAWAY:** Does the surcharge of water above that 100 per cent full supply limit that we have been talking about have to be released quickly down to South Australia to protect the cultural values such as the burial sites around Menindee Lakes?

**Ms STRACHAN:** There are rules that they can surcharge it up until 31 October but then it has to be back to 100 per cent capacity by 1 January. There are varying rules that will actually protect floodplain areas and cultural assets throughout the area.

**The Hon. SAM FARRAWAY:** Do you agree with the relief strategy?

**Ms STRACHAN:** We are in constant discussion of how that would occur.

**The Hon. SAM FARRAWAY:** And how much does it take to run the lower Darling?

**Ms STRACHAN:** Under base flows they run about 300 megalitres a day. So it is very minimal to actually have connectivity through to the Murray River.

**The Hon. SAM FARRAWAY:** Are you aware, Ms Strachan, of any rules that the New South Wales Government has changed in the last three years that would protect or go to protecting low flows to Menindee?

**Ms STRACHAN:** No. The only changes that they have done are to actually create a first flush policy that reaches Wilcannia. There are no protections in place to actually protect Menindee or the lower Darling.

**The Hon. SAM FARRAWAY:** Thank you. Mr Brooks, obviously my parliamentary colleague the Hon. Adam Searle touched on this before, but Sophie Baldwin obviously wrote in the *Deniliquin Pastoral Times* that Southern Riverina Irrigators [SRI] had raised enough money to pay for Bret Walker, SC, to make a report to this Committee. I was just wondering what report that article was referring to.

**Mr BROOKS:** Sorry, Mr Faraway, that was in response to some funds we raised from growers to commission Mr Walker to give us advice with regard to the legality of floodplain harvesting and review some of our claims in the submission so as we were factually and legally correct.

**The CHAIR:** Mr Horne also had his hand up. We will go to Mr Horne as well.

**Mr HORNE:** Just with respect to that, Mr Faraway, I think you have heard probably some of those views, and we will be providing a summary of that at the conclusion of this inquiry. I understand that Mr Walker is going to give evidence on Friday to the inquiry, so, again, you can direct some questions at him as well.

**The Hon. SAM FARRAWAY:** Of course. Thank you, Mr Horne. Obviously it is important because this Committee, as you know—and Mr Brooks, I think, touched on it in the opening remarks—engaged Bret Walker, SC, for independent legal advice on the legality of floodplain harvesting and, yes, we have spoken about

the questions. So you are happy to provide a copy of that report from SRI in terms of what they engaged Mr Walker on as well?

**Mr BROOKS:** Yes, absolutely. We have no objection to that.

**Mr HORNE:** Just with respect to that, it does not actually say "report" in that letter. We can give you a summary of that. That will not be a problem.

**The Hon. SAM FARRAWAY:** And obviously in context maybe to the questions that were asked of that legal advice, because obviously to be read in context is very important to what the answers are.

**Mr HORNE:** We will be submitting something to the inquiry afterwards. At the end of the day the opinion of Bret Walker is something that he will be forthcoming with, and we will provide our summary of that as well.

**The Hon. SAM FARRAWAY:** To probably Mr Brooks to begin with, but if Mr Horne wants to answer as well—in particular with Sophie Baldwin, your CEO, I saw a video recently where she suggested that floodplain harvesting had caused the Darling River to run dry and claimed that if floodplain harvesting is licensed, the Darling River would never flow again. I suppose my point is that if floodplain harvesting does cause the Barwon-Darling River to run dry, how would you explain that the Barwon-Darling has essentially been flowing strongly since February and we are seeing Menindee Lakes forecast to fill by summer, if not earlier, and that is despite floodplain harvesting happening during the flooding events in March?

**Mr BROOKS:** It just goes to show, Mr Faraway, what an extremely wet year it was. There was the capacity to fill all those storages to the brim before water flow passed it, which is always the case, and enough to still fill Menindee is an extremely wet season.

**The Hon. SAM FARRAWAY:** So you would say that even though floodplain harvesting—so you are just saying that it is an extremely wet year, that is the answer?

**Mr BROOKS:** We have commissioned a report with our pennies that we get the farmers to contribute to give a report on the size of the dams built in New South Wales since 1994, which is something the DPIE have not been able to do and have had a budget of \$17 million to do. It has tripled in size since 1994. I fly over that region regularly—as you know, Mr Faraway—and those storages were filled to capacity at the start of the cotton crop. We have grown a massive cotton crop. It has continued to rain. The cotton crop is harvested and your storages in the north are full to capacity—every one of them—and there was still sufficient rainfall fortunately this year to flow downstream to fill Menindee. That is just a sign of a wet year. But in Mrs Baldwin's video she is correct in saying that in a normal rainfall season, rest assured, if the dams up there are filled first, there will not be enough water to flow down the Darling to give connectivity to the Murray.

**The Hon. SAM FARRAWAY:** Mr Brooks, in the submission from SRI it claims that floodplain harvesting licences would be issued above the cap volume. Isn't this despite there being ample evidence in DPIE's technical reports to prove that the water take will be kept within cap? I was interested in what evidence you have to substantiate that claim.

**Mr HORNE:** I might—

**Mr BROOKS:** If I may first, Mr Horne. The evidence that I am working on is the difference between the Federal legislated cap and DPIE's made-up cap scenario. In the legislated MDBA cap I would see that as being 46 gigalitres. The proposal to give up—I don't know, it is 350-odd gigalitres times 500 per cent; it is just short of two million gigalitres. That is the insane part that I just cannot accept. We all have to comply with the same legislated Federal cap, and we do not accept fraudulent reports by DPIE that make up new cap scenarios. That is the issue with this inquiry, and that is what I am directing the inquiry to investigate, the construction of those types of reports by stacked committees—the how and who and why.

**The Hon. SAM FARRAWAY:** I think that in itself, accusing DPIE of fraudulent reports on the cap, would obviously be something that we talk about well after the inquiry, I suspect, as well. SRI has previously stated that floodplain harvesting does not occur in the southern New South Wales basin. I want to ask you how you form that view when there is a fair bit of media coverage and findings on the public record that suggest that it does. Especially we have got Murrumbidgee chief executive Brett Jones with the view that it happens in the south as well as everywhere else. You have got obviously *The Weekly Times* article that talks about members of Parliament and the Murrumbidgee and SRI down in your part of the world there. So I say to you obviously you would have to agree that it does occur in the south.

**Mr BROOKS:** No, I do not have to agree, Mr Faraway. Those couple of very strong National Party supporters are entitled to their opinions.

**The Hon. SAM FARRAWAY:** I do not think the member for Murray is a National Party supporter.

**Mr BROOKS:** No, but you cannot pick the facts. There is no floodplain harvesting down here of any relevance. I think there are bits and pieces that are all sub-one gegalitre. That is a bit different to the millions of megalitres that are extracted from the northern Basin, by comparison.

**The Hon. SAM FARRAWAY:** I think the Chair may have been asking this question earlier, and I wrote a note to follow on. It was around the rainfall run-off exemption. Some were advocating that the rainfall run-off exemption regulation have also insisted that somehow that is a back door to floodplain harvesting. Are you aware that the regulation would cease to have an effect in the northern valleys when floodplain harvesting is occurring? And, obviously to that point while I have got you, Mr Brooks, the rainfall run-off exemption is required by irrigators in both the northern and southern Basins, and that is to comply with their farm works authority conditions. What I do not understand is why would SRI oppose it when their members actually require it?

**Mr BROOKS:** The rainfall run-off exemption is controlled by a percentage, a very small percentage, of the area that you are capturing on your farm, which is allowed and acceptable in both the north and the south. I just want to clarify that you are not confusing the emergency works exemption, which really does muddy the waters and allows people in the north to capture massive volumes, claim emergency works and, at the end of the day, it is just a "get out of jail free" card if they fail to report it. It is a \$1,500 fine for people that are growing many, many millions of dollars of cotton on free water. That is a concern, not the rainfall run-off.

**The Hon. SAM FARRAWAY:** I have only got a little bit of time left, so just quickly maybe Mr Horne can answer this one. I am happy if you would like to, Mr Brooks. Southern Connected Basin Communities in its submission claimed that floodplain harvesting licensing robbed southern basin communities of 720 gegalitres a year. I want to know how this is justified. Are you suggesting, or is it being suggested, that the annual floodplain harvesting take is 720 gegalitres when the current estimated take is actually less than 400 gegalitres, and even the 400 gegalitres would be cut by a third when regulated?

**Mr BROOKS:** I can answer that. I am the chairman of the Southern Connected Basin Communities. The 720 megalitres that will be taken from this area is a simple calculation of the fact that if you allow floodplain harvesting licensing, as per proposed by DPIE and the New South Wales Government at the moment, it will remove 720,000 megalitres of long-term annual average flows out of the Darling into the Murray, which were destined and set up as part of the baseline flows for the South Australian volume. When that does not come down the Darling, as we have seen in the last few years, that volume is taken from our storages here on the Murray in the Hume weir. That is equal to 100 per cent of our allocation, or close to. So that is why the southern people are concerned about restricting the floodplain harvesting take to the regulated Murray-Darling Basin legislated cap volumes, because effectively if you take any more than that 46 gegalitres you are effectively taking water out of our storages.

**The Hon. SAM FARRAWAY:** Madam Chair, I think my time has expired. I want to confirm a point from Mr Horne with regard to the taking notice of the Bret Walker advice that SRI had commissioned, or engaged, themselves. It clearly does say in Ms Baldwin's letter to the editor of the *Deniliquin Pastoral Times* that there was a report that SRI had received. She clearly states that in the letter to the editor, and I noticed you said that there was no report. The CEO of obviously the organisation, SRI, clearly says that there is a report. I want to clarify that if you are taking that on notice.

**Mr HORNE:** Can I—

**The Hon. ADAM SEARLE:** Point of order—

**The CHAIR:** A point of order has been taken.

**The Hon. ADAM SEARLE:** The issue is whether the report was written or verbal, surely, not whether there was or wasn't a report. Mr Farraway should be very clear about this.

**The CHAIR:** Mr Horne, I think you were just about to respond to that.

**Mr HORNE:** Madam Chair, I was just going to note the reference is to Bret Walker's report to the inquiry, it is not in reference to his report to SRI. Again, it is a nuance but it is a difference. His report has been provided to the inquiry. I can confirm that SRI was not aware of actually what was in his report or what was going to be in his report at that point in time, except for the fact that—and I will not put words into the mouth of Bret Walker—floodplain harvesting is not a lawful activity without a right or a licence. There may have been some paraphrasing going on there, but that is the report.

**The CHAIR:** Thank you. Sorry, I thought that was going to be an extremely quick clarification. We need to finish this session. Thank you so much for appearing to all our witnesses. The secretariat will get in touch with you with any questions you have taken on notice. We will have a very short break. We are back at 12.05 p.m.

**(The witnesses withdrew.)**

**(Short adjournment)**

**TERRY SMITH**, Chair, Menindee Lakes Stakeholder Advisory Group, sworn and examined

**ROBERT McBRIDE**, Station Owner, Tolarno Station, sworn and examined

**ROSS LEDDRA**, President, Darling River Action Group, sworn and examined

**The CHAIR:** Let's kick things off. Is there anything you wish to add about the capacity in which you appear?

**Mr LEDDRA:** I am the former owner-operator of the Broken Hill-Menindee mail and freight contractor.

**The CHAIR:** Would you like to make short opening statements? I will go to you first, Mr Smith.

**Mr SMITH:** Thank you. I grew up in the Darling about 50 kilometres south of Menindee. My parents grew up in the Lower Darling; all my grandparents grew up in the Lower Darling, as did a lot of my ancestors. I have a history there stretching back almost to European settlements of Menindee and Wilcannia and Wentworth, which gives me a great understanding and knowledge of the river. There seems to be a direct correlation between an increase in development and extraction in the north including floodplain harvesting and its associated infrastructure over the past four decades, with reduced flood heights in the Lower Darling south of Bourke through to Wentworth.

If floodplain harvesting is to be licensed, there must be stringent and enforceable laws to protect first flush and low-flow events in dry periods. There must be science-based flow targets all along the river that dictate when and how much water can be extracted under any new licensing regime, and every effort must be made to prevent the environmental disasters we have seen along the Lower Darling and at Menindee, particularly over the last five years. New rules safeguarding these flows need to be in addition to existing water sharing plan measures, which are failing dismally to protect the Lower Darling.

New South Wales Department of Planning, Industry and Environment – Water staff are telling the Menindee Lakes Stakeholder Group that due to climate change there could be up to a 30 per cent reduction of inflows to the northern basin system over the next 50 years. This is cold comfort for industry in Menindee, where there are already 1,000 part-time jobs and 150 full-time jobs lost out of that community alone in the last 10 years, and that has been caused because of unreliable flows, which have been partially caused with the extraction in the north. This environment and the communities are already under immense stress due to diminishing water resources and is now an appropriate time to be getting additional licences for the further extraction.

I would ask that the members of this inquiry panel consider very closely what negative effects licensing floodplain harvesting and extraction in the north might have on those of us who rely on the river in the south. If floodplain harvesting is found to be legal and therefore must be licensed, there must be absolute transparency around take, with a register of licence holders and remote telemetry monitoring and metering. There can be no carryover provision on new licences as this has been detrimental to the river in the past.

There must not be the ability to transfer a floodplain licence from one location to another in the same valley or a different valley; it must be attached to a location with specific harvest infrastructure and used for take in that spot and remain there. Any new licences issued must not be a compensable asset in the future event that New South Wales has over-allocated this asset and needs to recover some quantity of licences used. Floodplain harvesting, if it is licensed, must also be sustainable for the whole of the Darling. I will finish my presentation with one question to the panel: How many of the panel members have actually been to Menindee to see the river itself? Long may the Baaka run. Thank you.

**The CHAIR:** Thank you very much, Mr Smith. We will go to you now, Mr McBride.

**Mr McBRIDE:** Thank you very much, Lady Chair. Stealing water is a heinous crime; it is not short term, it is long term as well. We are destroying the environment as a national sport. The northern basin love this. If you have got bank robbers and said, "Steal as much money from a bank as you want and we will give you a slap over the wrist or a \$5 fine", they would continue to do so. So with the help of the National Party, they have destroyed the integrity of a river system—a great river system: the Darling-Baaka. It is destroying our environment, our communities, our families, your food security, and I am a broken man because of it.

I am one of the largest landholders in New South Wales by area, but what they have done in the last five years is criminal and more destructive than we have ever seen on this planet before in this country. I pay my respects to the Barkindji and I look forward to discussions today. The fact is, floodplain harvesting is not harvesting at all; harvesting is when you sow, you reap. The fact is, floodplain harvesting is the murder of the river system and must be regulated highly and stringently in extremely large rain events, but for most of the time the environment is paying the price and the rivers. Thank you, Lady Chair, for your time.



**The CHAIR:** Thank you, Mr McBride. Finally, to you, Mr Leddra.

**Mr LEDDRA:** Thanks, Cate. River flows and connectivity are the main issues facing the Darling River under the Menindee Lakes scheme, and really the entire southern basin. Since the 1990s the increase in water usage alongside storages has dramatically increased, an enormous stress on a fragile Darling River system that depends entirely on rainfall. Regardless of whether floodplain harvesting is licensed or not, the effects will be felt by communities and the environment, especially the Darling River. Floodplain harvesting licence policy cannot be considered as it is as there are too many grey areas which appear to be based on modelling assumptions and not science—a trait that is common within the New South Wales government water agencies and their consultants. How can a floodplain harvesting policy be considered when New South Wales water sharing plans are not completed? A fine example is the Menindee Lakes scheme. Licences will not bring savings back to capped levels; they will still exceed the 1994 levels.

Compliance is also an issue. Water agencies have failed dismally in the past—the police events. Once again, the New South Wales Government appear to be window-dressing, removing all structures since the cap was introduced, levies, river diversions et cetera and let all benefit [audio malfunction] the environment. The entire Darling River, Menindee Lakes scheme and anabranch have been hardest hit economically, environmentally and culturally, and the flow-on effects reach the Murray River. Fish kills highlighted the New South Wales Government's water policy. Thank you.

**The CHAIR:** Thank you very much. We will go straight to questions from the Opposition. The Hon. Rose Jackson, I believe.

**The Hon. ROSE JACKSON:** Yes, thank you, Chair, and thanks everyone for coming along and for your written submissions and your contributions today. I will kick-off with a question to you, Mr Smith. In response to your question, yes, I have been to Menindee Lakes. It was lovely to meet you there and get a little bit of a tour around that beautiful and unique part of the world. One of the things that I reflected on when I was there and hearing you talk about it was obviously that incredible depth of knowledge, that local knowledge and expertise, that you and others from that part of the world have about that significant and fragile ecosystem. Do you think the current control and management system of the Menindee Lakes gives enough prominence to those local voices and that local expertise? The current rules around who is in charge of making decisions about when water is taken from the lakes, where it is stored, in what lake—does that give enough prominence and centrality to local control and management, do you feel?

**Mr SMITH:** Thank you for the question, Rose. No, I do not believe so. There have been mistakes made in the past with increased outflows from the lakes, which have left Menindee and the Lower Darling stranded and without water and exacerbated our problems there. But that is not necessarily pertinent to Menindee south. Menindee has to fill up from the northern basin and what happens in Menindee is only part of the picture; the bigger problem is getting reliable water sources to Menindee under the current water sharing rules in the north, which are inadequate.

**The Hon. ROSE JACKSON:** Something that has come up a couple of times is the importance of those first flush and first flow events after droughts. Droughts are unavoidable, we know that. We know we will have another drought. Can you talk about how important they are in your long-term experience as someone who is working and active in the Menindee Lakes area? How important are those first flush and first flow events to the ecosystem there?

**Mr SMITH:** They are hugely an important part of how the river works. Under the flows, which have now thankfully filled the lakes up, there was allocation given to extraction in the northern basin for A, B and C class consumptive use, when people in the Lower Darling had not had access to high-security water and the township of Pooncarie was still struggling to get water. The water quality there was abysmal. Those small flushes in those first flow events are crucial for the health of the river as they flush the weir pools—all the pools, not just the weir pools—the stagnant water, and give everything a chance to have a bit of respite and breed and feed. They underpin the entire river system, so they must be protected at all costs from extraction, and I do not believe they are at this stage.

**The Hon. ROSE JACKSON:** I might ask Mr McBride a question. I wondered if you could elaborate a little bit on some of the longer term impacts of the current arrangements on you and some of the work that you are doing in your business. I think sometimes we can get a bit lost in the technical detail, but what are the impacts that the current arrangements are having in your part of the world?

**Mr McBRIDE:** Thank you for the question, Rose. As a young man, a fifth-generation farmer—we have been farming in Australia for about 170 years—I took it upon myself to give it a red-hot go and you are sitting with a broken man now. The greed and corruption, the destruction of the environment—I was one of these dead

fish guys holding up one of millions of dead fish, when you know it has got nothing to do with nature. There is a term called post-traumatic stress syndrome apparently and your fight-or-flight type mentality, and that is what I have become over the last four or five years. It has affected me as an individual, probably destroyed my marriage, and I am a very different person than I was probably five or 10 years ago, and I am not proud of it.

And it is not to do with drought. Droughts are something that farmers have done, sown and put up with for generations; it is an occupational hazard. But what we have faced is bullying. I have still got the card here from the cotton growers communications manager. When I was at a Sydney meeting about a year ago she shoved it in my face and said, "You stop everything you're doing now or we're going to destroy you, your family and your business." I did write a police report—there were two other people present—but the police decided not to proceed with that, which is a bit of a tragedy given this lady is communications manager for Cotton Australia.

All forms of intimidation have destroyed the river system and the integrity of the river system. So, Rose, look, it is personal. We employ five families and I guess indirectly probably 50 or 60 more when you think of all the shearers and all the people that come and spend time on Tolarno. We have had a proud basis of history running back 151 years; we work closely with the Barkindji, and to watch the Barkindji nation collapse and die is what we see as well in our own communities. We have always acted with integrity. We trusted the Government to do the right thing and we believed every Australian would treat the river with the respect it was warranted. Clearly that is not the case. It is a national disgrace what these vermin can do—and they are no better than vermin because they are intentionally killing the integrity of the river.

We have had satellite imagery from the 1950s and 1960s. Why are these not exposing all the illegal floodplain harvesting that is taking place? These are some of the issues. So, look, I am a broken man. I am trying my guts out to become a better man. It is good to see the seasons returning, and, please, a lot of the National people seem to focus very much on the Menindee Lakes are full now—great—let us give up this inquiry. Remember, twice in four years, the Menindee Lakes were drained by the Murray-Darling Basin Authority. One time they let seven years' supply of water down in four months. Those at the top of the Murray-Darling Basin Authority are still there; it has been split up into two groups, but the people who have done the damage are still in place and we are very cognisant of that. Look, Rose, our communities—it is personal and, at the end of the day, whether you are a farmer or whether you are a Barkindji Elder or anybody else, you expect there to be integrity in a river system, and we ask you all and sundry to really look at all these issues.

Modelling, valleys—all these words really are just absolute rubbish. There is a river system called the Darling-Baaka. The Barkindji have been along it for 60,000 years and they deal with trust and integrity and have looked after it. There are a lot of people on the river system using terms like "valleys" and "modelling". There is enough technology out there now so that when rains come throughout the year, telemetry et cetera will tell you what is coming down the river. You need connectivity, you need protection of the river systems, and human needs and the environment must come first before short-term profits on industries and man-made dams that effectively, with evaporation and water loss, might be 10 times worse than the Menindee Lakes.

The fact that our species of fish are dying out and to watch your environment collapse is the worst thing I have ever had to see. It is not short term; it has been going on for years. That does not make it any better, whether you see dead fish or rotting fish or a dry river, Darling-Baaka; it is a catastrophe that no Australian should have had to have seen and it is straight out of the worst-case scenario of greed and corruption because you can get away with anything in Australia and just cop a small fine of \$50,000 or \$100,000 and go for your life and take what you want.

Floodplain harvesting illegally takes up to 27 years, unmetred and undeclared. We have really got to get the ducks lined up through this inquiry. The National Party in the lower House is already saying, well, they will wash their hands and start floodplain harvesting tomorrow. It just shows you how they disregard you and the upper House and people asking honest inquiries. I have rabbited on long enough, but they are some of my thoughts, Rose. It has been soul destroying. Thank you.

**The Hon. ROSE JACKSON:** Thank you, Mr McBride. I wanted to ask Mr Smith just one other question before our time runs out and I might pass over to Mr Veitch if there is time. You mentioned in your opening submission the importance of flow targets, flow triggers all along the length of the river. I wonder if you could elaborate on that because there has been some suggestion that, okay, there may be some kind of downstream targets that limit that maybe to a kind of supply volume in the lakes themselves or something like that. Why do you think those targets and those triggers along the length of the river are so important?

**Mr SMITH:** I think they all go towards the river health, and the specific targets I guess we would need is end-of-system targets, which would be in the Menindee Lakes. It is not secret that the stakeholder group is pushing for at least 18 months' supply to run the Lower Darling. Once that target is met then that is, I guess, the trigger point for extraction or whatever in the northern basin, but there needs to be an end-of-system target all

along the system but specifically at the end of the system so we can work out how much is coming, how much has passed a certain point to allow extraction if that is warranted.

I understand that we cannot wait for the water to get to Menindee because then there would be nothing left in the northern basin, but it is a multifaceted system and we cannot just put one measure at Bourke or one measure at Wilcannia. On that note, the existing measures at Bourke and Wilcannia are ineffective to sustain water through the system to Wentworth. But there needs to be much more, I guess, metering or monitoring of the water and how it works and which rivers contribute what and where the water is going. If we are going to make this work we need a lot more data on how to make it work properly because, as I said before, it is not working for the Lower Darling, Menindee Lakes or pretty much south of Bourke at the moment.

**The Hon. MICK VEITCH:** Just a very quick follow-up question to that response. Do you think there are sufficient gauges and metering stations in the system to deliver that accountability and data you are talking about?

**Mr SMITH:** No.

**The CHAIR:** That was a nice, short question considering the Opposition's time had expired as soon as Mick asked that question. We will go to questions from the crossbench and I will kick off with a couple. I will go to you, Mr Leddra. We had a beer together on your back porch in Sunset Strip and I remember very clearly the story you told me about what Lake Menindee used to be like. You had this story about all of the families along Sunset Strip who had bought those homes for retirement—I think you are one of those people—and Sunset Strip used to be, when the lake was full, this wonderful place with families and grandkids running around. Could you paint a picture for the Committee what it was like and what it has become?

**Mr LEDDRA:** Now it has got water it is returning to what it was, although COVID has put a damper on people attending. But when the strip was built in the sixties, it was holidays but mainly mine workers and it was their retirement. They built a lot of transportable homes. It took them years and years to pay off because a mine worker does not get—or did not in those days—a big superannuation or a retirement fund, so they battled hard to maintain a home in Broken Hill as well as something here for their retirement. It is laidback; you have got Menindee 15, 16 kilometres away; there is recreation, whether it be skiing with the kids or fishing yabby, and everyone intermingled. When the lawns and whatever were kept alive by pumps from the river, it looked like the front of Sunset Strip was one lawn; it was maintained for two or three kilometres—however long the Sunset Strip is. People would group together for evening barbeques with kids running around.

Later on there was a hall built which got a social club up and running. But the retirees, they had paid for it over their working life, they were still with friends, it was safe, relaxed, casual, a typical bush scene. After we purchased our place—prior to that we lived for 10 years on the Central Coast. My wife's ex-boss came over when we moved back for a holiday with the family. They camped on the junction of Lake Wetherell, Lake Pamamaroo and the main weir. They were only going to stay three days because they were going up through the centre of Australia. To get up in the morning and look on the river below them and then be able to walk 400 metres to Lake Wetherell, 500 metres to Lake Pamamaroo, the sunsets—they could not believe it. They then used to come around to our place on the strip for lunch or whatever. Their first look looking around the front from the lawns on the lake side, they were amazed—the lake full of so many birds of all description.

I remember at the time they said—this is nearly 20 years ago—how much would a shack cost? We said, "Well, the best one here would probably set you back \$18,000." They nearly fell over, saying, "You've got this paradise for such a little amount of money", and they commented on how lucky we were. Out of the time most of their trip was supposed to take with their children, they spent three weeks here instead of three days, on the Menindee Lakes-Darling River. So that is what it is about. Now that it is full once again and hopefully COVID will lift, we can get the people back out, because tourism alone is over \$100 million to the local economies.

**The CHAIR:** Going forward then in terms of floodplain harvesting, what will be the impact then if the level of floodplain harvesting is allowed to continue and is licensed? What is the impact going forward on the lakes?

**Mr LEDDRA:** The kind of main reason the lakes get impacted so bad, and that is, as Mr Smith said, we have got to have flows and we have got to have river connectivity. That just keeps everything alive. When you look at now we have got over 100 per cent in all the lakes. To maintain the status quo of a full lake and a flowing river, it is not requiring huge amounts of water; it is just maintaining what you have got. So we have got our river connectivity; we cannot afford any more water being taken out, and the problem I have got with floodplain harvesting is the New South Wales Government and its water agency have failed dismally over the last 20 or 30 years in regard to compliance.

We look at meter tampering, we look at the *Four Corners* report on *Pumped*, we look at illegal take; whether that is not enough inspectors on the ground, but to me it is a lack of will by the Government. We are very reserved. I mean, licensing will not return it back to the 1994 levels; it will take a bit off and the Government will get up and do a handstand and spruik about what they have done, but it is only going to take a wee bit off. It is not going to go back to when everything was rosy at 1994 levels. So when you add that up you had compliance and all the rest of the stuff. Floodplain harvest licensing is window-dressing.

**The CHAIR:** Thank you, Mr Leddra. Unfortunately, my time has expired. There is never enough time in these sessions. We will go to questions from Mr Mark Banasiak.

**The Hon. MARK BANASIAK:** My first question will be to you, Mr Smith. In your submission you state that the licensing of floodplain harvesting in the northern basin can only add to further stress to what is an already over-allocated system. The department's current proposal as it stands is talking about—they are claiming—that it will take one-third of what is currently taken by floodplain harvesters and give it back to the environment. Just picking up on what Mr Leddra was saying just then, that it is just window-dressing. Do you think that one-third is enough?

**Mr SMITH:** Thank you for the question. No, I think that would be probably doubtful and, I guess, that depends on which one-third they want to give back to the environment. If they give the first one-third of water down the system back to the environment that will go a long way to fixing some of the problems, but if it is the last one-third, the top one-third, which this Government has a habit of purchasing water which is not the right water to purchase, then I would suggest it would be a dismal failing once again. So if the one-third is going to come back to the environment then it needs to be the right one-third and it needs to be the bottom one-third, the most essential one-third, that can provide connectivity through the entire system and protect those low to medium flows. But especially the low flows are the ones that need to be looked after.

**The Hon. MARK BANASIAK:** To maybe ask an innocent and silly question, would it be better to take the third over the spread? Not just take the first, not just take the last, but take the third over the spread of the flows. Would that be better than just taking the first?

**Mr SMITH:** I would suggest it would be—and it is one of those things, it is always that every situation with water seems to be different, but generally speaking, coming out of a dry climate or a dry spell, the first one-third would be the one-third that would need to be protected. If for all intents and purposes it was a wetter period then that one-third might be able to be stretched a bit wider. But at the end of the day, one-third back to the environment seems to be a bit of a rip-off. One of my arguments here is that the environment provides all the water in the system, but it is the only part of the system that does not get a commission out of its use, and the rest of us are squabbling over trying to get some water back to the environment.

It actually came from the environment in the first place and then the Government blows its whistle to say, "We're giving this water back to the environment." It has actually stolen it from the environment to start with and has not compensated anyone for that water. So, as I say, if we are going to give a third back, is that just on the floodplain harvesting licences? What about their own admission where inflows are going to drop by one-third in the next 50 years. How are they going to address that with the current and existing licences as opposed to creating more licences? These are questions that in the Government's own information that they are spruiking to us they cannot or will not answer.

**The Hon. MARK BANASIAK:** Just picking up on the Opposition's questions—and this is to all members—about the need for better modelling, better gauges, better telemetry, do you think the department does a good enough job in actually measuring and checking that the environmental flows are actually getting to where they need to in their entirety? And do you think we probably need to do some better work in measuring to make sure that the environmental flows get to where they need to get to and actually achieve the purpose they were set out to achieve? Mr McBride, you had your finger up.

**Mr McBRIDE:** Thanks, Mark. You just look at issues like cap. Going back to 1994, there was a cap set—46 gigs—and now you have got the government departments coming out in New South Wales saying, "Well, we have got a new cap. It is 8.5 times bigger, it is 360 gigs plus 500 per cent carryover." When you have got government departments effectively telling you these make sense, you have got to question them. So realistically you just need tangible, independent technology and science to come up with the answers. I think a lot of the government departments have lost their integrity.

The way in which the Murray-Darling Basin Authority let the Menindee Lakes go dry and have the fish kills, that was not nature; that was a total lack of deliberate planning and allowing the system to collapse. These are the reasons why I personally do not have that much faith in the government departments. I have a lot more faith in the people like Maryanne Slattery and independent scientists—Martin Mallen-Cooper and the gentlemen

you spoke to, the other ladies and gentlemen—they are the ones who act with integrity. I am really concerned. Anyway, they are my thoughts. Thank you for your time, Mark.

**The Hon. MARK BANASIAK:** Mr Leddra, would you have any comments about do we actually measure environmental flows well enough?

**Mr LEDDRA:** No, we do not. I think both the New South Wales Government and especially the Murray-Darling Basin Authority can take the blame on this. Environmental flows, where are they going though? How many years has the Menindee Lakes had dramas—been empty, fish kills? Countless times the triple bottom-line effect has been totally ignored, whereby river communities like Wilcannia, Menindee, Pooncarie have had to bring in through donations bottled water to drink, bulk water to shower and for their animals. When you look at the environment side of it, the environmental water, the Darling River, Menindee Lakes and anabranch are all but dead. The anabranch is an absolute disgrace. Talking to a few of the graziers who live there, sending photos back, the lakes of the anabranch have not had water for 10, 15 years. That was once a habitat for nearly all the cockatoos, corellas and all that in the basin—disappeared.

I get very frustrated when we hear of water for the environment because out this way it certainly is not going to our environment. The New South Wales Government in regard to water management—I would love to see them stand up more to the Murray-Darling Basin Authority who, after many talks with Phillip Glyde and Andrew Reynolds, know very little on the Darling and Menindee Lakes system and care even less. So for them to take the amount of water they do as 14, 15 and again in 17, is really outlandish. They leave the 480 in the systems. The 480, a lot of that is water that is kept in Cawndilla, which cannot be accessed by the local community. So instead of being at 480 we were left with maybe 200 gigs. There is so much environmentally and economically that needs—we would love to see the New South Wales Government modify their policies but also stand up for us when it comes to the Murray-Darling Basin Plan.

**The Hon. MARK BANASIAK:** Thank you. I was trying to say we have gone into the Government's time quite significantly.

**The CHAIR:** Yes, we have. Who has got questions for the Government? Is it Mr Faraway again?

**The Hon. SAM FARRAWAY:** Thank you, Madam Chair. Just following on, gentlemen, from some of the questioning that has been asked, and probably to you first, Mr Laddra, from the previous question around the Darling Anabranch. Do you have any other views on whether the Environmental Water Holder should direct the living Murray water arriving from the north down the Darling Anabranch? You were touching on it a moment ago. That is something that you would see as being constructive?

**Mr LEDDRA:** If our system is maintained, especially the two lower lakes of Lake Menindee and Lake Cawndilla—when you talk to Mallen-Cooper and people like that professor, you talk to the Barkindji people, those two lakes are the lakes that are the heart and soul of the system. You can include the Lower Darling and the anabranch in that. They are the ones that the DPI in their modelling have said are not needed; it is the upper lakes that they were going to concentrate on. That is why the Menindee Lakes project—it is part of the reason it fell apart. The Barkindji people called the lower lakes which the DPI wanted to keep "women's lakes". You can take that as good or bad, but that is what they call them.

The entire ecosystem stems from the two bigger lakes: Menindee and Cawndilla. There is access to the Darling River from Menindee Lake. The water that is in Cawndilla now that Tandou have shut shop can only go down the anabranch. Unless these lakes are maintained, there is no need to call on extra water from the north from the anabranch; it can go out of Cawndilla. Cawndilla holds well in excess of 600 gigalitres; now it is full. Tandou do not need it; they do not use it. They have sold off. Unless they are reverse engineering on what is called the Pimalco channel, which was put in by Tandou years ago to pump water from the Lower Darling through to Tandou for their cotton—that has been all closed up because it never really kicked off—Cawndilla can also supply flows down the Lower Darling.

So you could have flows from Cawndilla going into the Lower Darling as well as the anabranch and in turn getting into the Murray. You do not have to call on water up north because there are 600 gigs that are going to get into Cawndilla. That is not counting when you get into these two lakes, being the major maturing for the golden perch et cetera. Better management by listening to the people that understand, that live in the area, I think would save not only the Murray-Darling Basin Authority but also the New South Wales Government and the northern irrigators a hell of a lot of worries. It will save so much because you have got the storage here—utilise it when floods are about.

**The Hon. SAM FARRAWAY:** Just following that theme, Mr Laddra, and to the other witnesses, obviously sending it down the anabranch is one option that we are exploring, but we have got 2,000 megs sitting in Menindee Lakes, I think, at capacity by next month. I suppose what I am interested to hear from you, and you

are sort of touching on it, is that if we see another record-breaking drought or another three years of low flows and drought, how do we make the water last better? I think I read somewhere, Mr McBride, that you have said that it could or it should last eight years.

**Mr McBRIDE:** As long as it is managed effectively. At the end of the day, the Menindee Lakes evaporate—it is called nature—and those in the northern basin have said, "Look, it evaporates so let's get rid of it. Let's send it down the rivers as quickly as we can." Evaporation is part of the rain cycle, and when the Menindee Lakes are full—a bit like when Lake Eyre is full—traditionally we get a lot more rainfall in our area. So it is just part of nature. It is allowing slow flows coming down. As you say, we do not know in advance what is going to happen.

We know that the continent is getting drier, so I guess that means more controlled flows out of the Menindee Lakes but equally so, more importantly, when small flows are coming down through the system that they are embargoed to make sure they do get through the system, and that is critically important. It is not the focus of how long can the Menindee Lakes last; they have been there 30 million-odd years, they can last forever as long as they get flows from the river system. And it is not just one river. Please remember there are seven tributaries that flow into the Darling-Baaka and all those need to be investigated and monitored and levels of water taken into consideration.

So I guess, Mr Farraway, that is where I would come from, that slow, controlled releases—remember, while it is good the Menindee Lakes are full, equally so we should have floods over our flood plains; that is why they are called flood plains. Literally at Talarno we should have 20,000 acres under about four foot of water at the moment—what would normally be the case with the amount of water that was coming down through the system—Menindee Lakes would be full, the flush would have come through. Species like yabbies dig themselves in dry periods underground to about five feet and then if it stays dry for about six or seven years they go down about another two feet.

They are an amazing creature. I have learnt to listen to Barkindji, but our riverbanks or the floodplains have been dry for 10 years; so we could have watched another billion yabbies die, species die out, and we just do not see it. The floodplains need flooding just as much as the rivers need water. The Barkindji again, I am not taking them out of context, but speaking to Elders over time, the rivers are the veins through your system but the lungs are the floodplains, and unless the floodplains get enough water—they bring food back into the river and allow the environment to survive and thrive, which is critically important. Hopefully that answers the question, Mr Farraway.

**The Hon. SAM FARRAWAY:** I appreciate that. Thank you, Mr McBride. Just moving on because of limited time. Obviously we have heard about the concern about where the gauges should be placed and what sort of data should be collected. I suppose I will ask all three of you, do you have any thoughts around—we touched on it before but I just wanted to see if you have any more thoughts on where those locations should be specifically?

**The CHAIR:** Why do we not go to you first, Mr Leddra, then you, Mr Smith?

**Mr LEDDRA:** You should be at the destinations. You hear there is X amount of water entering Menindee Lakes. There are no gauges at the top of Wetherell, so what we are knowing of what is coming down from Bourke and then on wherever the next one is—I think there are gauges at Wilcannia—but we do not know exactly, because there are no gauges, how much is entering Menindee Lakes. It is so handpicked, random. People out here have kind of looked through it and say none of this is all fair dinkum because even down to the placement of gauges they are not in the right places. They are not expressing the correct argument.

**The CHAIR:** Mr Smith?

**Mr SMITH:** Yes, thank you, Mr Farraway, for the question. Mr Leddra is correct, the last gauge before the water gets to Menindee is at Wilcannia. So all the transmission losses and any water loss from Wilcannia to weir 32 is taken into account as the evaporation figure in Menindee Lakes, which probably skews the result there somewhat. Also, with gauges, down along the anabranch I do not think there are any real gauges along that way and that is why consumptive water for South Australia cannot go down the anabranch—that option is ruled out—it must go down the Darling because there are no gauges along the anabranch system. If the anabranch system had some gauges on it then consumptive water could be sent down, either piggybacked onto the environmental water or environmental water put through first to take up the slack. Things like that I guess are omitted.

I know there are gauges here and there further north along the system, but with more of those gauges picking up flow rates from one valley to the next and from one location to the next, we can work out with a little bit more accuracy what sort of water is going down. Some of these flows that we have got through the system this time—we are getting feedback from NSW Water that in the initial stages there might be 50 or 60 gigalitres coming in. It turned out to be 1,100. That is a good guess, but it is way out of the ballpark. You could probably get some

old bloke sitting out the front of the Tilba pub that could give you a better indication of what is going on more than what their gauges are doing. There seems to be a major lack in actually working out what is in the system and what is usable, and that puts everyone at a disadvantage: It puts the irrigator at a disadvantage and it puts the guys at the end of the system like us at a complete disadvantage because we hear that there is an allocation being given in the north and we are still dry as a bone. We do not know what is going in. There is a lot of heat in the jobs. Anyway, I am going to be quiet there, sorry.

**The Hon. SAM FARRAWAY:** That is okay. I have only got less than two minutes. An important question that I wanted to pose to you three gentlemen that I posed to Professor Kingsford and others in earlier sessions that you may have heard, is that would you agree, as stakeholders involved around the Menindee Lakes area, with the Central Darling council that the south-western Water Users Association, Graeme McCrabbe and other Menindee locals when they state that the policy around the 640:480 gigalitre rule has not delivered good outcomes for the Lower Darling communities through its management by the MDBA? I just wanted to pose that question because I think it is most relevant to the three groups you are representing today.

**The CHAIR:** We might go to Mr McBride first, then Mr Smith and Mr Leddra.

**Mr McBRIDE:** Catastrophic. As I said, the Menindee Lakes have been treated so shabbily, like it is just an overflow or just a holding facility for other river systems. It is really the heart. It is four times bigger than Sydney Harbour; it is an amazing natural structure in the middle of nowhere and the Murray-Darling Basin Authority has absolutely crucified it. I remember about a year ago—a last little point—I was down at Wentworth after the fish kills and I spoke to Phillip Glyde. I said, "Phillip, in the history of the planet you could have killed more fish than any other human being alive. What are you going to tell your grandchild when he and you walk up the Darling-Baaka? What can you say to this?" He just said, "I don't care."

We have not had people who care and I really do think until we get people with integrity at the heart of the Murray-Darling Basin Authority—you have to remember Maryanne Slattery was there, Bill Johnson was there, but they saw what was coming and they dealt with it with integrity and good people got pushed out. It is like science: A lot of good people got pushed out of government because they spoke the truth. It is critically important going forward that we have people who can speak the truth honestly and not get crucified for it. Thanks.

**The CHAIR:** Mr Smith?

**Mr SMITH:** Yes, absolutely the rules have been quite devastating for Menindee, the 640:480. The 480 left at Menindee needs to be active storage water; that part of the operation needs to change to give some surety for the Lower Darling. It needs to be 480 gigs of accessible water. And further to Mr McBride's comments there, I asked Mr Glyde in Menindee, again after the fish kills, what they would do differently next time and his response to me was "Nothing". He is playing within the rules that are set by the MDBA and by the Basin Plan, and those rules have not changed. So stay tuned; there is more to come.

**The CHAIR:** And Mr Leddra, did you have something on this as well just before we break?

**Mr LEDDRA:** Yes, I agree with exactly what Mr Smith and Mr McBride said. As I said earlier, the 480 limit where it goes back to New South Wales control is not all active water; there is so much of it left in Cawndilla that could be accessed. I would like to know where the 640:480 rule came from. I would like to know whose hat it was pulled out of because there is very little science, if you decided to do a bit of research, on the 480 figure—very little science. We think it should be thrown out the door, the whole lot.

As Mr Smith and Mr McBride said, with a bloke like Phillip Glyde running the show—at a meeting we said to him, "You keep on saying that the plan is working. You have just travelled up along the river. What you saw, is it working?" He said, "You'd have to say no." "All right. So what would you do to change things to improve it?" He said, "I don't know." "When do you think we might see efforts made to change it by the Murray-Darling Basin Authority?" He said, "Oh, that might be 10 years away." Then you get the executive director of rivers, Andrew Reynolds, who has been out here on a lot of occasions and we have taken the Barkindji to Morton Boolka to show him the 45,000-year-old sites, I might as well talk to a blank page.

**The CHAIR:** All right. We will leave it there. Thank you, Mr Leddra. We have extended two invitations now for the MDBA to appear before this inquiry and those invitations have been refused. Thank you very much for appearing before this inquiry. I am not sure if you took any questions on notice but if you did the secretariat will get in touch with you in relation to that. Thanks very much for all the work you do. I am very glad there is some water in your part of the world at the moment; it must be a wonderful thing. Hopefully we can all get out there again at some stage to say hi and to see it for ourselves.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**





**GRANT RIGNEY**, Chair and Citizen of the Ngarrindjeri Nation, Murray Lower Darling Rivers Indigenous Nations, affirmed and examined

**VIRGINIA ROBINSON**, Secretary, Dharriwaa Elders Group, affirmed and examined

**WENDY SPENCER**, Project Manager, Dharriwaa Elders Group, affirmed and examined

**The CHAIR:** Is there anything you wish to add about the capacity in which you appear today? We will start with you, Mr Rigney.

**Mr RIGNEY:** I would like to pay my respects to all countries that peoples are sitting on today and to their Elders past, present and emerging.

**The CHAIR:** We will go to Ms Virginia Robinson.

**Ms ROBINSON:** I am a Gamilaraay woman.

**The CHAIR:** Thank you very much. We will start with some short opening statements. Mr Rigney, do you have one for the Committee?

**Mr RIGNEY:** Yes, I do, Cate. I will forward this on to the New South Wales Parliament through Lauren Evans a bit later on. I am here today to amplify the voices and concerns of many thousands of First Nations peoples across the southern part of the Murray-Darling Basin regarding the impacts of floodplain harvesting on our waterways. I am humbled today to represent the membership of the Murray Lower Darling Rivers Indigenous Nations [MLDRIN] but I also speak as a citizen of the Ngarrindjeri nation, whose country includes the Coorong, Lower Lakes and the Murray Mouth of South Australia.

My comments today and the substance of the submission we have provided to this inquiry are not focused on the complexities and technicalities of colonial water law, which is an imposition on our water landscapes. I wish to speak to higher principles of caring for country, of the reciprocal responsibilities of all people living in an interconnected system, of our ethical obligations to our ngaitjis, our totem animals and birds, and of natural justice. According to those principles, which our people hold sacred, large-scale floodplain harvesting, as we see across part of New South Wales, is an appalling and irresponsible practice.

Our organisation has a vision, which is for healthy waters and thriving river countries sustained by empowered and connected First Nations people. We want to see all of our rivers and country connected, from the mountains, across the floodplains and to the sea. Floodplain harvesting is contrary to the First Peoples' principles and practices of caring for country. By manipulating our water landscapes through vast structures and capturing the very life force of floods and rainfall events that nourish our dynamic river systems, floodplain harvesting inflicts harm on all communities downstream. Particularly in times of extreme weather, floodplain harvesting denies our rivers the replenishment that they need. I know that the First Nations who, since time immemorial, have acted as custodians of the Macquarie, the Lachlan, the Murrumbidgee, the Baaka and the Murray River are shocked by the size and impact of floodplain diversions.

There have been no proper assessments of our downstream impacts of current water take under floodplain harvesting. Our cultural heartland, such as the Macquarie Marshes, the Menindee Lakes and the lower Baaka, and indeed the whole interconnected Murray system, is subject to impacts from this inequitable extraction. When I stand on my country I watch dredging machinery work 24/7 to keep the mouth open to the greatest river system of the River Murray to the sea. I have watched our country suffer as a result of the poor management of upstream landscapes. I implore this Committee to heed the voices of First Nations and rule out entrenching unsustainable floodplain harvesting for the benefit of a few but to the detriment of many downstream communities. Thank you.

**The CHAIR:** Thank you very much, Mr Rigney. Ms Robinson or Ms Spencer, would either of you like to make a short opening statement? Just before you begin, because you are in the same room if you could for the duration of this session state your name each time before you speak so Hansard knows who is speaking. Thank you.

**Ms ROBINSON:** Today I have the honour of speaking on behalf of our members, who are Aboriginal people living in Walgett over the age of 60. I remember our founding chairperson, Mr George Rose, OAM, and his views on the destruction of the rivers and groundwaters around us and will try to continue his hard work today—walk in his footsteps, if you like, and those of other Elders who founded this organisation. The Dharriwaa Elders Group is a community-controlled incorporated association in Walgett. After many years of trying to be heard by government we have reached out to the University of New South Wales and the private sector so that we can be resourced in our work, gather the evidence to persuade and influence government of the solutions and

approaches we see are needed in our community. We want to share, when we can, our learnings with other communities too, but we want to share where we can.

Where we do not seek to work regionally, we work deeply and locally, holistically, to achieve outcomes for our community. We will join together in alliances with others and we see that this will give us strength or amplify our voices. After 20 years of operating as an organisation, we have built our confidence and experience. This is my first time speaking at a hearing but I feel a strong duty to do so today. As you know from our submission—which is this one—we oppose floodplain harvesting because it takes water away from the soil, the rivers, groundwaters, warrambuls and therefore from our community and from the biodiversity we live within. We live on the flood plain.

We think it is unjust that the New South Wales Government is trying to legislate and legalise floodplain harvesting, which would be taking away so much water from the system. It will gift a small handful of companies and people with huge million-dollar assets, while our community gets no water and continues to live in poverty. We try not to get confused with all the jargon, as we have found that a lot of it is used by lying bullies to cover up what they are really doing—and that is giving assets to their mates and taking away, again, from us. We will not stand by and watch without a fight. I thank the Committee for providing this opportunity for us to reach out to voters of New South Wales. And when I talk about lying bullies, I say dishonesty and lies breed too much confusion, which opens the floodgates for more confusion and more lies. Thank you.

**The CHAIR:** Thank you very much, Ms Robinson, for that opening statement. We will go straight to questions because of limited time. We go to questions from the Opposition, the Hon. Penny Sharpe.

**The Hon. PENNY SHARPE:** Thank you very much for coming before the Committee today and thank you for your submissions, which are extremely powerful in terms of what caring for country means and the fact that the overlaid water rules that we have put in place across New South Wales are really in direct conflict with trying to do what you want us to do and what you and your families and your peoples have been doing for a very long time. My first question is really just to get a bit of a handle on how much contact and discussion you actually have with the water authorities generally in relation to water. Obviously there is the Murray-Darling Basin Authority but I am obviously particularly interested in anything that you have been doing with WaterNSW in relation to this regulation that has been disallowed by the Parliament.

**Mr RIGNEY:** If I could, from the Murray Lower Darling River Indigenous Nations, we have had a fair bit of dialogue with the Department of Planning, Industry and Environment [DPIE] at the statewide level. We have had a presentation to our executive board on the modelling around the floodplain harvesting. Our board had some major concerns around the modelling itself. One of the key questions that was asked from our board was: Where was the climate adaptation processes incorporated into the modelling? We were told categorically that they had not done that and they were not looking to do that. The modelling around climate adaptation was going to be processed through the regional water strategies, which we found was a bit of a difficult process, considering that they had not incorporated into the floodplain harvesting itself, and how that might equate down the track if they were going to do that process through the regional water strategies themselves—how would that actually feed back into the floodplain harvesting itself? So we found some real discrepancies in that space.

One of the other things that we had very high concerns about was the metering of water coming overbank could be measured. We accepted that that could be measured coming overbank but what goes across the floodplain cannot be measured in any capacity from DPIE, from what they fed to our confederation itself. We do not know the amount of water that goes out across the floodplain but they categorically did say to us that they can measure the amount of water that goes back in system. The question then became: How does that affect the cap of the sustainable diversion limits [SDL]? I understand that there is a cap that was put in place in New South Wales and, correct me if I am wrong, but it was 1994 from what my understanding is. How does that equate from that capping to the cap that has been processed in through the Murray-Darling Basin Plan on their modelling around the estimate sustainable limit of take? There is no really concise answer around that, from my understanding at this moment in time. But we envisage that it would be less water coming downstream.

We see that as a major issue on communities downstream in not having the sufficient amount of water to run through country. Because we have always had the key principle that water is interconnected with the landscape and cannot be compartmentalised. We have a major issue around that space, particularly of the break-up and the disconnection of an interconnected river system running from the top of Queensland right down through to the Murray Mouth. We have had some initial dealings in that space. We have asked for ongoing dialogue with DPIE in that area. But we certainly have had some initial engagements with DPIE around the regional water strategies as a part of the basin plan compliances. I can tell you categorically from MLDRIN's perspective it was not good in any facet whatsoever. I think that is reflected in some of the plans being retracted by the New South Wales

Government through Minister Pavey. There is still an ongoing issue around that space. We have not heard any dialogue or whether all plans will be retracted or not at this present moment in time.

I am absolutely positive that Minister Pavey has been talking to Minister Pitt in the background about what is going to be processed from the water resource plans. It is not just from chapter 10, part 14 of the Indigenous values and uses. There are some areas around the basin planning that New South Wales did not even get to the baseline of the compliances under the Murray-Darling Basin Authority itself. So there are some major, major concerns in that space. I find it very disappointing and am very upset in a lot of ways that the New South Wales Government, particularly in the water resource planning, has had multitudes of years to get this done and to get it correct. They were resourced a significant amount of moneys through the intergovernmental agreements that were put in place back in 2012. My understanding is it was about \$66 million to get those water resource plans processed in order. The New South Wales Government honestly just sat on their hands for three to four years and has done nothing in this area. I should not say "nothing". There are more likely some things being done in the background that was not privy to myself or to our confederation.

But at the end of the day it came push to shove and the compliances to get those water resource plans were very short time frames. What had happened from there is that the New South Wales Government went out and actually put in independent consultants and went out to the First Nation groups. They were not culturally appropriate. They did not ask the right questions. Nothing was spoken about native title to some of our groups about what their Federal Government had handed down where they had rights to water as common law rights. Those types of things were not processed through into that water planning. Right across the whole of the basin itself I have been involved in nearly every one of those assessment criterias within the States—Victoria, South Australia and the Australian Capital Territory [ACT] for that fact. New South Wales did not even get close to a rateable process on any of their water resource plans.

**The Hon. PENNY SHARPE:** Thank you, Mr Rigney. Ms Robinson, did you want to add anything to that in terms of the experience where you are?

**Ms ROBINSON:** What he has just spoken about, we are very satisfied with that. We have spoken to authorities but we are a bit sick of it. They do not listen to us anyway.

**The Hon. PENNY SHARPE:** Thank you. That is not good to hear. I wanted to ask you specifically around the issue of cultural flow and how that has been accounted for. We know, for example, that the Barkindji have it as part of their native title rights but there has never really been any allocation. I am wondering what your experience with this has been.

**Mr RIGNEY:** I was fortunate enough to sit on the national cultural flows research team for a period of five to six years. It was pretty robust research to be done in this space. It was pretty groundbreaking internationally, not just within Australia. We come up with a model we think is an applicable tool, and that is what it really is: It is a tool that can be utilised by nation groups to try to underpin their aspirations and their ideologies of what cultural water is. Cultural water is not environmental water. They are two separate things altogether. They do have synergies, there is no doubt about that, but they are two separate things. One is about ownership of water and having the autonomy to actually control that water at the same time with no caveats attached to it. We have had issues already in particular States where the cultural flows research was supported by the basin States and the ACT at the same time, but nothing really has been underpinned into a policy or any type of bill for legislative reform in those areas around cultural water.

We are still pushing the proverbial uphill at this present moment in time and we are still waiting on Keith Pitt to release the \$40 million that has been promised in bipartisan support from all parties. He is still sitting on it at this present moment. We have been trying very, very hard to get some answers to come out of the Federal Minister's office. But from the New South Wales perspective there is really nothing that has been done in New South Wales around cultural water. There are cultural licences that are available for individuals, up to 10 megalitres of water, but I have no idea of how many individuals have actually tapped into that because there are so many caveats attached to it at the same time. There is no equitable process in that area and there is no equilibrium at all from a First Nations perspective at all in that water ownership.

**The Hon. PENNY SHARPE:** Thank you for that. Ms Robinson?

**Ms ROBINSON:** The floodplains are a complex system of rivers and creeks, lakes, warrambuls, groundwaters and rich black soil. Rivers are not separate from the flood plain; they are one element of it. Water in the land is vital for our daily life, for our food, drinking water and the deep history of the community in stories. No-one should take more than they need. This excludes all external parties, such as water traders and speculators. Dharriwaa Elders Group supports the objects and principles of the New South Wales Water Management Act 2000 and the Commonwealth Water Act 2007 and is horrified to witness daily that they are being ignored. How

can we think otherwise? We see what we see with our own eyes and we taste the salty water from the groundwater we are forced to drink when the rivers are dry. Our nutrition suffers because we have lost our regular fish and river foods, and our wellbeing suffers when we can no longer revive our spirits down on the riverbank.

**The Hon. ROSE JACKSON:** Thank you. I might just ask a quick question before the Opposition time expires. Thank you so much for coming along. I wanted to ask about the impact of the damage that is caused on native wildlife when river flow is interrupted and environmental degradation occurs. There was mention of the importance of native wildlife in terms of cultural significance to Indigenous people. I just wondered if you could elaborate a little bit on how important it is to have flowing rivers that support native wildlife?

**Ms ROBINSON:** Thank you. That is important for us because our native animals, a lot of them, the animals and plants are our totems. We call them meat, our dhingгаа, and it determines who we are, our marriage systems, who we can marry and who we do not, and other aspects of our culture. We see bird habitats, galah habitats destroyed because there is no water. Our totem animals are no longer around. I do not know where they have gone. Are they dead, died from lack of water? The river supplied them with the food. We have no fish any more. We cannot go fishing. Fishing was a very important part of our daily lives. The river was like our heart, if you like—the heart of our country. Our country is our heart, the river more so. So it has certainly impacted our totemic system, which is a vital part of our kinship system. To me it is almost like a third wave of destruction. We are just further and further being colonised in our country.

**Mr RIGNEY:** Absolutely. I totally agree with Aunty there. There are major impacts in the spaces around native wildlife in these areas. The water is becoming scarcer. The river systems are dropping down. Our animals, our fish, birds and reptiles are exactly like us as human beings. We require water to sustain ourselves; they require water to sustain themselves as well. But with the lack of flow that is coming down the system, animals are having to move further away from their natural habitats to find those water sources. They need to go across those western processes of bringing roads into spaces for us to travel to get through parts of country. They have to cross those areas. There are major impacts and kills in those spaces at the same time.

The groundwater tables are dropping in so many areas it is not funny because of the over-extraction of groundwater at the same time. I would dare to say that mining has a major impact in that space also, in those areas of those groundwater tables dropping down to a significant rate itself, right down to the artesian basin, to the aquifers which replenish the surface water. Again, it is all interconnected. We have a dire process at the moment going on with so many species becoming extinct at an exacerbated rate right across the world, but particularly in this country, which is the driest continent in the world. So it does have major impacts. Those food sources have sustained our people since time immemorial, and not being able to practice their traditional cultures because those food sources have been extracted from there because of the lack of water at the end of the day.

There is a real disconnect in that space that we need to certainly address. And it is not just the native wildlife; it is the fish as well. It is the water quality that has been coming down the system that is picking up black water events. We have seen the native fish kills that happened within the Baaka. We are not talking just a million or two, we are talking up to five or six million fish that have passed away in that area itself—another major supplement for First Nations peoples and society in general. So it does have a major, major impact right across the whole of the Murray-Darling Basin.

**The CHAIR:** Thank you. That is questions from the Opposition done. We will go to questions from the crossbench. Mr Rigney, do you know how much water exactly has been allocated for cultural flows as part of the Aboriginal Cultural Water Access Licences in New South Wales?

**Mr RIGNEY:** I could not categorically tell you that, Cate. I would say you would be very, very lucky. There was a very good research paper that was brought out by Sue Jackson and Lana Hartwig, particularly within New South Wales, of water ownership of First Nations people and it was at 0.02 per cent. So I think that might be a sufficed answer to your question.

**The CHAIR:** Yes. I think it is down at that minuscule, almost zero, level. The Environmental Defenders Office confirmed that yesterday as well. This is a question to both of you. The Government, as you know, is wanting to hand out potentially hundreds of millions, if not billions, of dollars' worth of entitlements to irrigators that have never had to pay for that water. Yet, as you have just confirmed, we have heard that 0.2 or 0.02 per cent of all available surface water in New South Wales in the basin has been given to Aboriginal people. What do you want to say to the Government about its priorities in relation to the way it is managing water? I will start with you maybe, Ms Robinson.

**Ms ROBINSON:** Sorry. Can you ask me the question again?

**The CHAIR:** Basically, when you hear that the Government is about to hand out, or this process of floodplain harvesting licensing is going to give hundreds of millions of dollars' worth of entitlements to irrigators,

that is essentially free water to irrigators, and that Aboriginal nations have been given less than 0.2 per cent or 0.02 per cent of cultural flows of water in the basin, how does it make you feel and what would you like to tell the Government about how that makes you feel?

**Ms ROBINSON:** Um.

**Mr RIGNEY:** If I could, Aunty.

**The CHAIR:** We will go to Mr Rigney.

**Mr RIGNEY:** If you would not mind, if I can answer that first and maybe Aunty might want to come on from my lead in this area. I do not think you really want to hear what I have to say. I know I have got parliamentary privileges but I do not think the language coming out of my mouth would be very pleasant. I am really, really angry about it, to tell you the truth. I find it very unfathomable of governments of the day. Where is their human element? Where has the humanity gone in our race and our society in totality? It is not just about gross domestic product. It is not about economics. It is about sustainability of us as a human race of people. We are only here for a nanosecond in time when we look at the longevity of this whole landscape. But what can we do to underpin, to set some foundational platforms where there is going to be equity across the board for all peoples? We have given options from MLDRIN's perspective and suggestions to DPIE—and not just DPIE but this is collectively across the whole of the Murray-Darling Basin States.

When we talk about processes and programs and projects around the sustainable diversion limit adjustment mechanisms, for instance, it is a \$1.8 billion program. There is not one drop of water as an offset from those water savings to First Nations peoples—at all. Everything will go to the 605 downwater that they are trying to actually appease so they do not have to do water buyback from irrigators, farmers—cotton, rice, citrus, almonds, whatever it may be. But there is never, ever offset of water savings dedicated for First Nation groups from a State perspective or from a Federal perspective for that matter.

There are ways to go about it, but it is just finding some equity in that area. It is also caring for your fellow human and your neighbour and your downstream communities at the same time. We say things like, "Oh, it's the Aussie way." What the hell does that mean? What does that really mean? It does not mean anything. It is about people wanting to put what they can in their pockets to make them feel comfortable about their livelihoods and their way of life. It is not the caring for your fellow human; it is about what you can get. Because when things are out of sight and out of mind, it does not directly affect—so how do we make it directly affect? They are the big questions that we have been trying to grapple with.

And I think that we have got some of the answers, whether it is through our confederation at MLDRIN or within the Northern Basin Aboriginal Nations or groups that even sit outside of our confederations. But collectively we have been trying to get in at the door, to get our foot in the door. At the moment our backs are against a wall. Sometimes they are actually inside the wall trying to get out to the back of the wall. We are trying to come up with different objectives and different pathways that governments could undertake. But at this present moment, to tell you the truth, Cate, we have absolutely nothing whatsoever. We have hope and we are at the goodwill of government to do the right thing.

**The CHAIR:** Thank you. Ms Robinson, did you want to contribute something to that question? It is okay if not.

**Ms ROBINSON:** Well, when the river was dry at Walgett for so long in 2018-2019 we suspected that water was being taken illegally upstream from us. We actually saw storages were being filled and we knew that something was wrong. We saw water on farms all around Walgett, Wee Waa, Narrabri, Moree and Mungindi. We just feel that New South Wales DPIE Water was putting irrigators before the needs of the river and its river people. We were not surprised to find the New South Wales Independent Commission Against Corruption that the needs of irrigation were being put before the needs of everyone else. They take more than they need. As I said before, we only need to take what is enough for you. Leave some for other people. It is unjust, it is unfair to do this, to take water this way.

**The CHAIR:** Thank you. To clarify before I go to the Hon. Mark Banasiak, at the beginning of that response were you saying that when Walgett was running out of water, that is when you saw those storages full? I did not get that first bit. Is that what you said?

**Ms ROBINSON:** Yes.

**The CHAIR:** Thank you very much. My question time has expired. Mr Mark Banasiak?

**The Hon. MARK BANASIAK:** Thank you, Chair, and thank you, Virginia and Wendy, for joining us. Nice to see you again, albeit over a computer screen. Picking up on that point you made, Virginia, about you saw

storages full while the river at Walgett was running dry. Did you contact DPIE Water or did you contact the Natural Resources Access Regulator [NRAR]? And, if you did, what was their response back to you?

**Ms SPENCER:** Can I answer that?

**Ms ROBINSON:** Yes. I will just get Wendy to check on that for me please.

**Ms SPENCER:** I do remember one occasion at least where the Elders group wrote to the water Minister saying, "The water is dry here at Goangra," I remember. You know, "Can you tell us why?" That was just upstream of Walgett. There have been meetings in Walgett with DPIE. The water Minister has been here. NRAR was here when they first opened up. We have actually made a report to NRAR just in the last couple of days asking them to investigate something. So, yes, the group is reasonably active in seeking out information from agencies.

**The Hon. MARK BANASIAK:** Did you receive a response back from the Minister? I imagine that would have been the Hon. Niall Blair at the time. If so, could you perhaps table that response you received back from the Minister?

**Ms SPENCER:** I will have to follow that up.

**The Hon. MARK BANASIAK:** Sure. Virginia, not to touch on a clear sore point about saying that you are sick and tired of your dealings with the department, but was that frustration from your group a product of being talked at rather than to, and I guess being talked to but not actually doing enough listening?

**Ms ROBINSON:** Yes, I felt that. It was not even really consultation, which I do not agree with. I like negotiation between governments and people rather than consultation. But, no, I did not feel that.

**The Hon. MARK BANASIAK:** Thank you. I might just quickly go over to Mr Rigney while I have got a few minutes left. In your submission you talk about having downstream flow targets underpinned by First Nations-led research and assessment and cultural knowledge. Have you presented any of that First Nations-led research to government or have they sought it out from you?

**Mr RIGNEY:** Yes. The very first of the cultural flows research program and the methodology of that cultural flows research itself was actually undertaken by the Tati Tati group that sit within the New South Wales-Victorian border. They have only just finalised their report. That has actually just gone out live only in the last fortnight or so. Our deputy vice chair of the federation, Brendan Kennedy, and his daughter, Melissa Kennedy, worked very, very cohesively with their nation group in getting that process up and running. It has some really very good, strong recommendations that came out of that research itself.

Just a bit more on that question though also, Mark, is that we have been trying for many, many decades now to underpin our cultural knowledges into the sciences platform. Cultural knowledge is a science in its own right. We have sustained this landscape thousands and thousands of years before colonisation came into this space. We know what our landscapes are actually saying to us. We know when our animals, our birds, our fish, our insects, if they are not in certain areas at certain times, there is impact on country. Western science actually can prove that today too. We have been trying to underpin these processes into water management planning as a part of the processes around, whether it is a wetland management plan or whether it is a cultural heritage management plan pertaining to water, or the water resource plans themselves that have been undertaken in the last nearly nine years now right across the whole basin itself.

We have been trying to get these things underpinned in these spaces for a very long time. We are slowly getting some change but it is a couple of steps forward then maybe five steps back, then a couple of steps forward again. We are getting there slowly but surely. Some States are actually really undertaking a lot of this and running with it very cohesively. I would implore the New South Wales Government to have a look at some of the initiatives that have been undertaken by Victoria at this present moment in time. Because Lisa Neville through her office and her government, they are really kicking arse, to tell you the truth. They are streets ahead of the rest of the country when it comes to engagement with First Nations peoples.

**The Hon. MARK BANASIAK:** Perhaps on notice, would you be able to provide a copy of that report to the Committee so that we could have a look at and include it in our findings?

**Mr RIGNEY:** Yes, absolutely.

**The Hon. MARK BANASIAK:** And just one final question—you may need to take this on notice and some of this may be included in the report. Your submission talks about dispossessed water rights. If you had to set the Government a list of tasks or tangible outcomes to address this dispossession, what would they be and how would we keep the Government honest in terms of them actually achieving them?

**Mr RIGNEY:** Oh, God. That is the \$64,000 question, really, isn't it?

**The Hon. MARK BANASIAK:** That is why I gave the option of going away and taking it on notice, perhaps. You might need some time to think about that.

**Ms ROBINSON:** I think, Mr Rigney, we have to be mindful that there has never been any historical Aboriginal water rights.

**Mr RIGNEY:** Absolutely.

**Ms ROBINSON:** I do not know how we could have been dispossessed when there never was any entitlements to water.

**Mr RIGNEY:** Yes. I think it is more so alluding to dispossession since colonisation, really, of those water rights in this space. We were the overseers and the custodians of our landscapes that we lived in and it was about sharing. It was making sure that people had, and no-one went without.

**Ms ROBINSON:** That is right. That is why I said it is another wave of colonisation, another bow to the destruction of Aboriginal culture in this country.

**Mr RIGNEY:** Absolutely, Aunty. And one of the damning things I think that has come out just of late is around the Closing the Gap target for inland waterways. It is an absolute disgrace that the Federal Government, and even States to this proponent, want to come up with a percentage or an amount of water within a one- or two-year-period framework. To give something to Scott Morrison to stand up at the Federal Government saying that we are on track for this target is an absolute crock. We need to have robust research in this area. I know that the peak bodies groups have been talking around a 3 per cent water allocation across the Federal Government level at the national scale. But you would not find 3 per cent of water in the Murray-Darling Basin in any aspect whatsoever, unless there was water buyback.

Now, we know that categorically the Federal Government said that they will not do water buyback anymore. They are more so about appeasing the constituency in that space. If you equate 3 per cent from the Murray-Darling Basin and you reflect that across to something like the Fitzroy catchment in Western Australia, where they have 60 per cent exclusive rights of native title and rights to water, they could be looking at 60 per cent water, not 3 per cent. It is unfathomable that you could actually come up with a target until we have the research that we require of human resources but also monetary resources to do something in that space that would be an equitable outcome.

**The CHAIR:** Thank you very much, Mr Rigney. We will now move to questions from the Government, the Hon. Ben Franklin.

**The Hon. BEN FRANKLIN:** Thank you very much, Chair. I start by thanking all of you for being here today, for your submissions, for your deeply held positions on this really, really important part of the debate. I wanted to thank you for the genuineness and passion you have brought to this session today. I guess what I would like to do is to start, and this is a question to all of you, by picking up on a bit of the questioning from Mr Banasiak, which is about the historical rights. Can I pull back to a high level and ask what you think native title rights over water are. What do you believe that they are and that they should be for us to consider? What is the framework we should consider regarding native title rights over water? I will start with you, Mr Rigney, if that is okay.

**Mr RIGNEY:** Sure. Thanks, Ben. I think native title was the worst piece of legislation in this country. It is an absolute farce that me, as a sovereign person of my landscapes and a citizen of my nation, need to prove to a colonial system of my connection to country. You prove to me who the hell you are and why you have the right to embed your laws over my people, which have been here for hundreds of thousands of years. It is an absolute farce. If we are talking about equity in this area, we need to be talking treaty. Treaty is the pathway. You look around the world and, particularly within the United States and in Canada and even within New Zealand, treaty is the pathway that has given some equity, sustainability, economically and health wise for those peoples to sustain themselves. Why is Australia the only First World nation that will not talk about treaty? What is this country afraid of? I do not think that native title gives you water allocation because there is no landmark case in this country where native title has given water rights. It says that you have rights under common law. Whose common law? It is not my common law. I have had the right to that water forever. So I think we need to get things in a bit of perspective around that.

**The Hon. BEN FRANKLIN:** Thanks, Mr Rigney. I really appreciate that response. Ms Robinson, Ms Spencer, would either of you like to add anything to that issue? You do not have to. Mr Rigney has made a pretty passionate statement. If you would prefer not to, that is fine.

**Ms ROBINSON:** As Mr Rigney said, water has been with us from time immemorial since Aboriginal people populated this country, this land. It goes against our understanding that the rivers and our lives, that water can be taken this way. Our communities, our ancestors are part of these ecosystems, as Mr Rigney says. So we

find it hard to believe that this water can be taken from so many people and given to benefit just a few people—that is, irrigators. We do not understand this continuing colonisation of our country—of country, as we say.

**The Hon. BEN FRANKLIN:** Thank you.

**Ms ROBINSON:** I do not agree with native title. We have the Uluru Statement from the Heart. We want a voice in Parliament, not native title. There has never been water entitlements or water rights under native title as it was passed.

**The Hon. BEN FRANKLIN:** Understood. Thank you very much. I was not in any way trying to be disrespectful. I, I think like all members of this Committee, am trying—

**Ms ROBINSON:** I understand.

**The Hon. BEN FRANKLIN:** —to find a way through for proper and genuine engagement with Indigenous communities. On that, I believe that Lake Victoria has a cultural watering plan. I wonder if either of you again would believe that perhaps we should be adopting a similar sort of plan for Menindee Lakes to perhaps better protect those sacred sites from inundation? Again, we might start with Mr Rigney.

**Mr RIGNEY:** That certainly could be a pathway. I do not know the intricacies of those particular water plans or those cultural water allocations if there is any such thing there, or is it just an oversight of that particular landscape? I really could not elaborate on that. I think what certainly needs to be looked at is the heritage impacts of what is happening across the landscape and particularly with floodplain harvesting. Even if we do have a private landowner, the whole of landscape is a heritage site. It is not just sticks and bones, as a lot of anthropologists and archaeologists like to talk about. There are sites that are watering sites; there are women's sites; there are men's areas; there are sites that hold songlines; there are sites that hold ceremony.

They are not known sites because a lot of our people do not like to share this information, because it has been plagiarised forever since colonisation in these areas for other people's capitalistic gains and measures. So we are very careful about those particular types of things. But at the end of the day there are compliances under heritage but I assume within New South Wales that comes under parks in New South Wales. How do they work cohesively with DPIE in these areas, particularly around floodplain harvesting as this inquiry is about? What are the impacts on those areas and have they actually done a stocktake of what are the heritage sites that are registered on the register within those spaces for the floodplain harvesting? What works and measures have been put in order to actually mitigate those impacts on those sites?

**The Hon. BEN FRANKLIN:** Thank you. That is a very good point.

**Ms ROBINSON:** That is right, Mr Rigney. Because, as I said, and I will say it until I am blue in the face, we live on the flood plain. All our Aboriginal cultural heritage is on the flood plain. So when that water is taken away illegally, it takes away our culture. All the aspects of our culture, our stories and our songlines particularly, run along with water.

**The Hon. BEN FRANKLIN:** Thank you very much. Mr Rigney, can I go to you and your organisation? I apologise, I did not know much about MLDRIN until I got your submission and so on. Does MLDRIN represent all the nations in New South Wales on the Murray and in the lower Darling? Are you that umbrella organisation?

**Mr RIGNEY:** No, we do not represent all nations in that particular part of country. MLDRIN is a confederation of nation groups who are looking to have one unified voice in that particular area around water reform as it is today. That is not just compartmentalised to water. It is also about landscape, it is about our animals, it is about our plants and it is about the fish and so forth. At the moment we have 24 confederated nation groups from Dubbo in New South Wales right down to the Murray Mouth. Some groups have chosen not to come on to the confederation and that is absolutely fine. They are autonomous in their own right and they are sovereign in their own rights as well. But we just try to actually process things as a unified voice into these areas for groups that want to come together to do that particular type of constructive input into the western structure.

**The Hon. BEN FRANKLIN:** Understood. Of those 24 nations, how are their representatives appointed? Do they get elected or do they self-nominate? How are they appointed?

**Mr RIGNEY:** They are elected by their nations. We prefer, and we have put that out to our member nations, at the moment, to have a gender balance in that area as well, because we do have a lot of women's sites on country as well. But they are duly elected by their nations. There is a formal process under our constitution that they must abide to to be member delegates of the nation itself or nation delegates. That gets put onto the register within our nation group itself.

**The Hon. BEN FRANKLIN:** Okey-dokey. So I guess going to the nub of my questioning, I am told that MLDRIN was involved with the process to some extent for the water resource plans in New South Wales, in



terms of the consultation and co-designing and so on. I guess my question is: Do you have any concerns about how that consultation occurred and are there any issues that you wanted to raise with this Committee in terms of the consultation with the water resource plans in New South Wales?

**Mr RIGNEY:** Yes, certainly. We certainly did not co-design. That is a fact.

**The Hon. BEN FRANKLIN:** Okay.

**Mr RIGNEY:** We certainly did not co-design the processes of that. What we did, our confederation have an agreement with the Murray-Darling Basin Authority, who are the ones who do the assessment criteria on all the water resource plans in New South Wales and collectively across the whole of the basin itself. Under chapter 10, part 14 of the Murray-Darling Basin Plan, which are the Indigenous values and uses, we certainly did push back into the Murray-Darling Basin Authority that they did not have the cultural right or the appropriateness to assess that particular chapter of the basin plan.

So we have a contract agreement with the Murray-Darling Basin Authority that we as a confederation, in conjunction with nation groups that are impacted on those catchments of where those water resource plans are being undertaken, that we do the assessment criteria on chapter 10, part 14 of New South Wales water resource plans. That is the same for the Northern Basin Aboriginal Nations, the NBAN group, which Michael Anderson is the current chair of, where they assess the plans up in the Namoi and so forth. So I can tell you, and I alluded to this earlier, New South Wales water resource plans had major gaps in them everywhere, right across the board.

**The Hon. BEN FRANKLIN:** I understand.

**Mr RIGNEY:** Not just chapter 10, part 14. We have certainly put up documentation back to the Murray-Darling Basin Authority and also, as an act of good faith and goodwill, to DPIE as well on water resource plans of what needs to be re-looked at, what needs to be rewritten and what was missed, what was around the target and what was not. The documentation is there and it is sitting there in DPIE's office. Melinda Pavey has got it. Vanessa O'Keefe, these types of individual people within DPIE, they have all this information.

**The Hon. BEN FRANKLIN:** Thanks, Mr Rigney, that is very helpful. Do you work on those issues with the New South Wales Aboriginal Water Advisory Coalition?

**Mr RIGNEY:** No. We have chosen not to go down that pathway. We were directed by our nation groups in New South Wales that they did not want us to undertake that, because a lot of the programs are part, really, of the sustainable diversion limit adjustment mechanism, and those offsets are there for the other stakeholders, if you want to put it that way. So we have categorically said no, we are not going to be a part of those mechanisms and we will sit down and have dialogue with New South Wales DPIE, in particular, about a new pathway of partnership, engagement. And we are sick of that really. We want a marriage. We want something that is going to be a bit more secure in these areas and have some guarantees.

**The Hon. BEN FRANKLIN:** Don't we all.

**The CHAIR:** Thank you. Ms Robinson, you go now.

**Ms ROBINSON:** I just wanted to clarify a very small point with Mr Rigney. I note on the agenda that the next session will include Ghillar Michael Eckford. Is this the same Michael Anderson or this is a different person?

**Mr RIGNEY:** I am not too sure, Aunt, to tell you the truth. Is he representing Northern Basin Aboriginal Nations?

**Ms ROBINSON:** President, Euahlayi Peoples Republic.

**Mr RIGNEY:** That would be him.

**Ms ROBINSON:** So, he is going by two names. That is hardly fair, and I do not agree with that. Thank you.

**The Hon. BEN FRANKLIN:** Do I have any more time, Chair?

**The CHAIR:** No, I am sorry, your time is up. We did have that last clarification.

**The Hon. BEN FRANKLIN:** Can I just let Ms Spencer and Ms Robinson know that I did have some questions. I will pop those questions on notice and ask you both, if you would not mind, to send those answers back. I do apologise about not being able to get to you.

**The CHAIR:** Thank you all very much for appearing. I am sorry that we have not had more time to ask you questions. I am sure we could have continued for some time. The secretariat will get in touch with you in relation to any questions on notice that you may have taken. We will now take a very short break.

**(The witnesses withdrew.)**

**(Short adjournment)**

**GHILLAR, MICHAEL ANDERSON ECKFORD**, President, Euahlayi Peoples Republic, affirmed and examined

**LEON WINTERS**, Spokesperson, Mirri-yhar-burrah clan, Euahlayi Peoples Republic, affirmed and examined

**TANYA KIRKEGAARD**, Executive Officer, Northern Basin Aboriginal Nations, affirmed and examined

**JASON FORD**, Operations Manager, Northern Basin Aboriginal Nations, affirmed and examined

**The CHAIR:** How would you like us to refer to you today? Mr Anderson is it?

**Mr ECKFORD:** My name is Michael Anderson. Ghillar is my Aboriginal name. I am also known as Eckford. Just call me Ghillar.

**The CHAIR:** Okay. Thank you. All right, we will keep on with the technology. I will just see if Mr Priestley can hear us now. No, I do not think that they can hear us at this stage. We might have to get them to dial in as well. No, Mr Priestley cannot hear me. What we might do is proceed with short opening statements. We always don't have enough time in the sessions. So, can I check firstly for the Euahlayi Peoples Republic who is giving a short opening statement? Is it Mr Winter or Ghillar or both of you?

**Mr WINTERS:** I have a statement.

**Mr ECKFORD:** We both have.

**The CHAIR:** Okay. We will go with you first, Ghillar.

**Mr ECKFORD:** All I am doing is just supporting what we put in writing, but I want to make some oral submissions in relation to our ecosystems that have been ignored by Western society. We are now confronted with this floodplain harvesting, which will significantly impact on our ecosystems and our plant and totem species. It will have significant impact on our people culturally, spiritually and emotionally.

**The CHAIR:** Thank you very much. Mr Winters?

**Mr WINTERS:** I have just written down a bit of a statement. My name is Leon Winters. I am a member of the Euahlayi nation. I am also a member of the blood group of the Euahlayi called the Mirri-yhar-burrah, which belongs to the lignum and floodplains ecosystem of the Euahlayi. The flood plains have always been sustained by the natural flooding that impacts our native fauna and flora—spreading seeds, delivering minerals, nutrients and giving moisture to the ground. The plants, seeds and medicines are still used by our people today and they can be used in the greater community in the future, but they are getting harder to source because of the impacts such as the dwindling supply of water and the cease of natural flooding due to changes like capping of bores, damming and creating diversions such as bunding levels. Many of them were constructed illegally and should be removed as there are far too many channelling the overland waters away from the rivers and away from the wetland areas on the downward side of the flooding areas, levees.

Our totemic and spiritual fauna and flora have been severely reduced due to the impact of blocking of natural water flows. My spirit and thoughts have been saddened and hurt at the sight and the state of our country as we are connected as one. The disappearance of natural reed, bulrushes and grasses from the rivers and waterways has impacted filtration of our water. I remember my brother was saved years ago because they could see him lying on the bottom of the riverbed—the water was clear. To see it stagnated and looking polluted makes us all sad and sick. The rain and other waters have always belonged to the First Nations people and our lands. Thanks.

**The CHAIR:** Thank you very much. I understand that the Northern Basin Aboriginal Nations [NBAN] representatives can now hear us. We have Mr Alfred Priestley, is that correct?

**Mr FORD:** No.

**The CHAIR:** Sorry, I was looking at the wrong schedule. Could you both state your names and position titles, please?

**Mr FORD:** My name is Jason Ford. I am the operations manager with Northern Basin Aboriginal Nations and I have been there for the last 12 months.

**Ms KIRKEGAARD:** My name is Tanya Kirkegaard. I am the current acting executive officer for the Northern Basin Aboriginal Nations. I have been acting in the role for the past 12 months.

**The CHAIR:** Thank you. Do you have a short opening statement to make as well?

**Ms KIRKEGAARD:** Nothing that I have actually prepared, but I would like to state that we have been contracted and involved with the New South Wales DPIE around delivering floodplain harvesting workshops with First Nations in the five valleys in the northern Basin. Three of those valleys have been completed. That work will be continuing under a deed of variation to our contract, when time permits with COVID and whatnot.

**The CHAIR:** Thank you. We will go to questions from the Opposition.

**The Hon. MICK VEITCH:** My question is to each of the groups. Essentially I want to get an understanding of whether or not you feel the rights and interests of First Nations people have been adequately considered in the development of the floodplain harvesting proposal from the Government. Maybe we can start with Mr Winters.

**Mr WINTERS:** I would rather throw that question to Michael, if he is around.

**The CHAIR:** Ghillar, are you there? Can you hear us? I think we might have just lost him actually.

**The Hon. MICK VEITCH:** Oh, well.

**The CHAIR:** That is not a good start.

**Mr WINTERS:** The tree energy is gone.

**The Hon. MICK VEITCH:** Can someone else lead-off then with the answer while we get Ghillar back?

**Mr FORD:** Could I just respond to that just from my perspective as the operations manager. But, first, I would like to just pay my respects to Elders past and present and the emerging leaders, and pay my respects to the people of the lands that I am meeting on, which are shared country to a number of different tribes up in Queensland—I am in Toowoomba. Look, just in response to rights and interests, that is really around native title from my understanding. Rights and interests go back to the native title groups. I think in fairness to New South Wales with the floodplain harvesting stuff, they have met with some of the native title groups through their agency and they deal with different agencies. There are not many prescribed body corporate [PBC] groups within New South Wales at this stage. The rights and interests—I am actually, you know, it is outside my profession working with NBAN. I am also a delegate for the Ngiyampaa Ngemba Wayilwan Wangai native title applicant group. I have been part of that for the last seven years. The rights and interests have been—that is a tricky question for us guys because we have put it back to the State.

We are dealing with guys that don't really know the individual nation's rights and interests. Within the different nation groups there are different rights and interests—there are similarities, but there are definitely a diverse range of rights and interests. So to answer the question around rights and interests, that is a bit of a grey area for us. I think we have touched on it and I think in good faith New South Wales and NBAN, through their consultation process, have done really cutting edge co-design work to engage culturally appropriately with the nations to address some of our core business—which was to gather information from the department and take that out to the relevant people that speak for country, and for those areas, and for the other different interest groups, around the draft rules for floodplain harvesting licences. Also, to report and deliver that information into a cultural considerations report once the people had an opportunity to give their concerns around the floodplain harvesting reforms. Rights and interests, that's a tricky question for us.

**The Hon. MICK VEITCH:** I think we have got Ghillar back. I am not sure whether he heard the question.

**Mr ECKFORD:** Can you repeat it, please?

**The Hon. MICK VEITCH:** It was just around whether or not you consider First Nations' rights and interests have been adequately considered as a part of this floodplain harvesting process by government.

**Mr ECKFORD:** Well part of our problem is that we don't have sufficient length of dialogue in relation to floodplain harvesting. Part of our problem is that we are restricted in our participation because we just don't have the physical resources to be able to represent our people properly. It is a bit of an issue in trying to communicate in short one-hour or half-hour meetings with bureaucrats around this. They are all endeavouring to do the right thing but, unfortunately, we are a little bit stifled by lack of resources and lack of being able to get at the table. I think that could be improved if we are in a position to be able to meet face-to-face or Zoom regularly. I know that we are trying desperately—everybody is trying desperately, to make sure that voices are heard but things are just not happening as they would.

We have had some funding from the New South Wales Government. In honesty, we had an arrangement to write-up stuff on floodplain harvesting but we are in a position now where we have to follow-up. I think we are in a position where we are trying to negotiate with the State Government DPIE to try to maintain an arrangement.

I think NBAN has just made an arrangement to extend and receive some funding to do some follow-up on floodplain harvesting and do some reporting back with the staff. So, there is a whole number of things. But at a nation level with our people, we just do not have the resources. Our people can't meet. We are unable to be able to get on country and meet with bureaucrats around the planning. Simply, we are relying on NBAN to do all the work and NBAN doesn't have the resources to be able to truly get out there and consult with the nations. That is a bit of a downer for us.

**The Hon. MICK VEITCH:** Thank you for that. I just want to ask you a couple of questions around cultural water and just how that works in the floodplain harvesting arrangements that have been proposed. Again, I am not sure whether Ghillar wants to go first and then maybe NBAN. I just want to try to get my head around a better understanding of how it works, or if it doesn't work.

**Mr ECKFORD:** It is Ghillar here. Let me just talk to you about that. My grandmother in 1902 was born on a floodplain water area where the old people used to go and camp all the time because of the birds' breeding cycles. That was in an area in northern New South Wales at a place called Pinegobla Mungallala. These are natural wetlands and they normally get flooded when we have the big floods, the generational floods, the 15- to 18-year flood cycles, which are very big floods, and they go overland and come down through the Moonie River. In our case, from the Moonie it flows into the Big Warrambool and the Narran River flows into that same Big Warrambool from Angledool. Across that country there, that is where we have a lot of watercourses and big wetlands and I think New South Wales have a small area there now registered as a—what do they call them—a reserve area, a nature reserve. My grandmother was born on that plain.

My dad's mother was born on a floodplain area that ran off the Bundabarina ridge south of Collarenebri. That area is called Dunumbral, where the late Mr Ralph Hunt was a member and he owned that property called Dunumbral. So my grandmother and her family and my dad's mother come from that area and those wetlands. Now these wetlands are very, very important to us. Unfortunately what we are seeing is massive destruction of these areas because under that New South Wales water conservation and biodiversity law they give them the right to clear these flood plains. I think Leon Winters made reference to the fact that he is of the Mirri-yhar people, and Mirri-yhar is the floodplain lignum. So his people come from those areas. To watch those areas be cleared—because these are the areas that farmers target to clear because that is where the water lays and where water pools when we have big rainfalls, and we do not necessarily need floods. Floodplain harvesting will also take that rainfall and, unfortunately, we are going to have massive destruction within those wetlands and those watercourses.

**The Hon. MICK VEITCH:** Mr Winters, do you want to respond?

**Mr WINTERS:** I would just say that the destruction of those wetlands has major impacts on the rest of the country as it is all connected together in one way or another. If something happens to a particular thing on country it is not the only place that is being affected. The other thing that I would like to say is, the reasoning why I throw to Michael for more of the floodplain harvesting political talk is because we are grassroots people and, as he has stated, we do not get the resources and we do not hear enough about what is going on at levels, at the grassroots levels, about what is going on in regards to our country and water. That is one of the major problems.

**The Hon. MICK VEITCH:** Sure. And the good folk from NBAN, what are your views around this question on cultural water?

**Ms KIRKEGAARD:** Cultural water, I guess, can be a bit of a contentious subject because it seems that the departments always want to compartmentalise what cultural water is—because there is also cultural flows. But for First Nations peoples all water is cultural. I guess the practise of floodplain harvesting greatly impacts the results of what that cultural water would naturally do. There have been so many developments and infrastructure and a whole range of things within the water system itself that has been affected, one, the way water flows and, two, the amount of water that actually flows across the flood plains and actually recharges aquifers and recharges billabongs and wetlands and provides a whole range of things with regard to flora and fauna and totems, like Ghillar had said earlier. I guess the subject of cultural water can be a little bit deceptive because it always seems to be, I guess, placed in a little box. Cultural water is not just about achieving any targets or aspirations for First Nations, in a sense. First Nations look at a water holistically and it is all cultural, and it has spiritual connotations as well. I think this is where the disconnect between water management and the involvement or inclusion of First Nations' rights and interests becomes a contentious subject.

**The Hon. MICK VEITCH:** Thank you. Ghillar, in your submission I note that you talk about a cultural flows nation planning document that advocates for an extensive range of programs. Can you explain to the Committee just what that is and how that works?

**Mr ECKFORD:** Yes. We talk about the need to have rangers monitoring the rivers. You see my area, our country, the Euahlayi country, and many of the other First Nations people who are associated with NBAN,

who have membership to NBAN, our problem is that we have all these dams and weirs along river systems and these dams and weirs are diverted from the mainstream systems. We need to look at how do we develop a range of programs where our people have the ability to be able to monitor what is going on and monitor our wetlands. We were talking about cultural water just in the last question and part of our issue is that we must maintain the base flow within those rivers. By adding rangers within the system, they will be able to monitor those key water sites and wetland areas. This is what we need to have to be able to facilitate our requirements in being able to look after our country and be able to, I suppose, work with government agencies around the need for water.

I know that NBAN has been working with the Commonwealth Environmental Water Office [CEWO] to try and get CEWO to understand our cultural requirements that they are looking at. And we are saying, well, when we talk about cultural water this is part of that management and only those rangers within each of the nations will have the capacity to do that. I notice that there has been a plan put out just recently for ranger monitor programs and training programs—or at least New South Wales is considering that. The sooner we can get that program up and running the better because that will serve to deal with all of those things that we have talked about in our nation plans.

**The CHAIR:** Thank you. The Opposition's question time has expired. We will move to questions from the crossbench. I will kick-off with a couple. This is a general question to each of you. I am just wanting to know if you could describe the impact on your country of the massive increase in floodplain harvesting storages that have occurred over the past couple of decades? We have heard, obviously, a lot from different witnesses over the last two days of hearing. I just was wondering what you could tell the Committee about what impact that has had on your people and your country? We will start with the first person I can see on my screen here, Mr Winters.

**Mr WINTERS:** After doing some research along the river systems of the Narran River and so forth, we found that there is so much stagnant water that is out there, it is blackened, brackish water. When we were testing, the chemical amounts they were far over what they should be within the river system. The natural flow and the heights of the river are not at acceptable levels to look after things like our shrimp and crayfish that breed at a certain level in the river system. The trees—

**The CHAIR:** Mr Winters—sorry to interrupt—can you be a bit specific in terms of the location for us as well. Where you are talking about?

**Mr WINTERS:** Okay, that was along the Narran River that we done the research. The amount of birds that we would usually see nesting weren't around—going away from the river and out on to the plains where those natural floodwaters would flow and would actually pick up seedlings, would spread nutrients. Our native fruits and foods, even the plants that are still existing, are very, very—they have lost all the bushels off them. Lots of our medicines that we still use, our trees are not producing the medicines that we used to get out there because they are not getting the water flow to make that happen.

They are all a community and they work off each other and because that water flow isn't there they can't work together; they can't survive. They are not surviving. Even if you look at the gum trees alone, the amount of foliage that has disappeared. You would drive along and years ago you used to be able to see it. Things like, one of the insects that used to be on our country were the hairy caterpillars that get along. We used to know when the floods were coming because they would get in a big line and they would go across the country. They are no longer there. The sounds and the feelings that were there a long time ago are just gone. We have lost what we can do with our connection because we can't get to those things because they are not there no more.

**The CHAIR:** It is killing your country, Mr Winters, it sounds like.

**Mr WINTERS:** It surely is. It really is. It is having a major impact on it and if we do not work on it soon, get funds to work on it soon to bring that type of country back and have discussions about how we can get these major flows onto country—you know it is not just to the detriment of us; it is to the detriment of all humans, not just us. Because, you know, in some way we are all connected to this. We all come from the same thing in the beginning of evolution and what is going on is destroying it. This is about humanity. Nature will come one day—you know, even if this earth blows up it comes back, as science tells you. But, you know, we are talking about our humanity. How do we all survive and how do we make it equal for us all?

**The CHAIR:** Thank you, Mr Winters. I will go to Ghillar and then NBAN. Ghillar, would you like to comment on that?

**Mr ECKFORD:** Yes, just going on from what Mr Winters has spoken about. The fact is that we must have access, we must be able to monitor, we must be able to register what is going on. The fact that floodplain harvesting—we are focusing on discussion about overland flows from the rivers, but one of the things that is being ignored and not being discussed sufficiently enough is the rainfall across country. If that rainfall is across country, I already know farmers who have already made illegal bunding levees and channels to capture that flood plain—

even on some small flat country out here in the west these fellas are actually making these illegal, creating these illegal bundings, and that water is then being directed into their own water catchment now illegally. They do not have a license for this already. You know, we have satellites up there. I go to the satellites every now and then and I can see all these illegal infrastructure programs that are designed to stop that rainfall.

The problem with that is a lot of that rainfall that we know—as I grew up as a child on the riverbanks we would see that big rainfall maybe up around St George somewhere, or Dirranbandi, and this rainfall would then go back into the river and that would send a small fresh—what we call a fresh—down the river system. Then all the fish would move and our old people would say, "There is a fresh there coming now. Go and catch some fish." Because the fish are starting to move because of that fresh. If we start interfering with that natural process on capturing that rainfall that falls onto that country then we are not going to have that fresh, we are not going to be able to see that. This is our big concern because the impacts are very significant. Unfortunately, we have had people living in our country all this time and they still do not understand the country. They still do not understand how it works. We are trying to work hard with government through consultation processes to be able to inform them of what we know but not enough people are listening, and we need to start planning this. We have got to look at being able to balance our interests and our cultural and spiritual interests against the need for economic development. I do not think one should give way to the other.

**The CHAIR:** Thank you, Ghillar. With the Committee's indulgence, can I get Mr Ford or Ms Kirkegaard's response to that even though my time has expired.

**Mr FORD:** The question was impacts since floodplain works or floodplain harvesting has taken place. Floodplain harvesting has been going on for years and years and years and years, well before these reforms or rules were being suggested or proposed to whoever the powers are to be. My thing is that we never had the illegal stuff that is going on, you know, not the majority of the people within the industry. But there are people within the industry that are abusing—that there are no rules and the regulations can't prosecute them. So that is a problem for us guys as First Nations people. My response to that is that the impacts for us, as First Nations people, are what Ghillar and also Mr Winters have said: We are experiencing the side-effects of not being able to regulate this in any form. We can't ring anyone. We can't do anything with anyone.

This is why NBAN and the nations, when we are going out we are looking for a solution. There has got to be some reforms around this and some rules around it. The people that are in the industry are getting away with doing what they want because there is no legal avenue for anyone to prosecute anyone. Just to keep it short, this is why I believe NBAN, as a peak body for the First Nations people, has engaged with and are very interested in working with, and are committed to working with, New South Wales to see what the people think about the reforms—to make sure. Then we can get their feedback to go back into a cultural consideration report that can support trying to have a sustainable system in place.

The current status quo is totally unsustainable. There is no way that we can regulate it. For us guys, you know, we want to be part of something that is contributing to the system holistically as First Nations people. That is what the feedback is that we are getting. I know in the feedback that we are getting they are saying that we do not want any floodplain harvesting whatsoever. That is the truth of it, and that is what a lot of our people say. But if they are going to continue to not have any rules, I will tell you it is open slather. For the guys to continue doing what they are doing, we are going to have experiences like we had in Brewarrina at our famous fish traps and further down the line like out in Wilcannia. That is my response to the impacts for us guys.

**The CHAIR:** Thank you. We will go to questions from Mr Mark Banasiak now.

**The Hon. MARK BANASIAK:** I might start with Ghillar and Leon. Outside of this inquiry how would you describe the engagement you have had with the State Government and the department regarding these floodplain harvesting proposals? I note in your submission you were fairly scathing about a non-adherence to the Commonwealth Water Act in including First Nations.

**Mr ECKFORD:** Just around that, one of my criticisms, I guess, of the Commonwealth Water Act is the fact that they are subject to—what do they call it—the convention on desertification. They also have obligations under various international treaties, like the Japan-Australia Migratory Bird Agreement [JAMBA] and China-Australia Migratory Bird Agreement [CAMBA] treaties on migratory birds. Unfortunately, they are not properly dealing with those matters in all this water planning. They seem to be a by-product right now and they are not really focusing much attention on it. The one that we are particularly concerned about at the Euahlayi is—I live on the Bokhara River and the Ballandool River. These are what they call intersecting streams coming out of the Lower Balonne area of Queensland. We know that this is a major area for harvesting water for cotton. Now our problem is that from 2012 to 2019 we had the driest time ever. Part of our problem was the country almost turned into a desert, and it is still like that. It is still trying to recover.

Unfortunately, because of the wind and the enormous dust storms that we experienced in that time, that flew from far of west and South Australia, one of the things that is happening is that we are starting to see a lot of growth of—what do they call them—weeds and pests that are not natural to our environment. This has become a major concern for us. The desertification convention is not being complied with and it is not being part of the discussions either with the State or Commonwealth in terms of water resource planning. I am just disappointed that they do not live up to the Ramsar commitments that they have on the Narran Lakes and feeding the Narran River. Because the preference, of course, is Cubbie Station and all the big cotton stations—Clyde—interests that are on the Narran, all the way up the Lower Balonne to St George. So, we have a got major problem.

The data that we have as a nation is that 24 per cent of the total water mass in one year gets across the border of New South Wales/Queensland, and that is not good enough. We need to be very mindful of this desertification. If you travel in our country out here now between Walgett, Lightning Ridge, Collarenebri, right to the border, the number of trees that you will see out there on the flood plains that have died—and on the ridges—because of a lack of rain, it is quite frightening. It is a big concern to us. So climate change and adaptability and adaptation is totally necessary for us to really get into. I think the State Government and the Commonwealth would do very well to work with us on this as First Nations people and also with the farming community and irrigating community because we will all benefit if we plan this properly.

**The Hon. MARK BANASIAK:** Can I also touch on another matter. In your submission you talk about, I guess, a notion of solastalgia, which is being exacerbated by not being able to access key waterholes, springs and river reaches for fishing. Is that solastalgia also further exacerbated by the fact that we had this fisheries management amendment pass in 2010, which tried to enshrine cultural fishing in law, and this Government still hasn't to this day enacted the legislation? It is 11 years and we still don't have a proper recognition in law around cultural fishing in this State.

**Mr ECKFORD:** Just responding to that. Right along the river system, our old people when the colonials first came out here when they were droving, all the droving periods, they showed them where all those big water holes were. Quite frankly, the Government back then made it so they were accessible for stock watering points. It was these points, at these big water holes and river reaches, that our old people used to always have free access to. Then the New South Wales Government leased these lands to the nearest farmer or irrigation farmer and they have actually fenced these areas off and we don't have access to it. Mate, seeing a locked gate is a real shock to our people. The mental harm that is done to our people is quite significant because they complain and they always talk about these white fellas always locking gates on us that at one time we used to have free access down there. What's wrong? What happened? How come the Government never told us they were going to stop all that?

This is the sort of solastalgia that happens and that in itself goes into the mental health side of it. Unfortunately, this mental health turns to other things, like we have no place to take our children. The old people have got nowhere to feel comfortable and being able to connect to their country and being able to connect to their culture. So they do not pass on the knowledge to the kids. I asked the question one time in St George, Queensland, "How come you are not talking to the kids about story in the backyard at a barbecue?" And always the same thing, "No, that's not the same. Because it's better for us to sit on the river and tell it because then it's real." This is cutting out our cultural knowledge and it is having a significant impact on us. We need to look at and revisit those old watering stock points to make sure that we do have access to them. You have easements for a lot of other things and I think we need easements for this purpose as well. That would contribute significantly to our people. That way then we as a nation are able to talk about the health of the river, because we are watching that water all the time, we are monitoring it. So the people become the rangers themselves just by being there.

**The Hon. MARK BANASIAK:** Thank you. Unfortunately my time has elapsed. I will have to pass to the Government.

**The CHAIR:** Mr Franklin.

**The Hon. BEN FRANKLIN:** Again, thank you all for being here today. We are really, really grateful for your insight and for your perspective in this critical area. I just wanted to ask a question that followed up on Mr Veitch's question about rights and interests, and a question that I raised in the last session too. What do you believe and what do you think native title rights over water are? If you could talk about that issue a little in terms of your perspectives, that would be great. Perhaps we might start with NBAN, with Ms Kirkegaard and Mr Ford.

**Ms KIRKEGAARD:** In my experience with native title there is not actually a lot around rights and interests in water, other than access. We are beginning to understand, I guess, that during the time of a native title application and the process before consent determination is the time to actually negotiate any rights to water. Other than that there is not a lot in the Native Title Act that gives us any real rights and interests in water other than access and being able to fish and hunt and all those kinds of things. It is really minimal and quite tokenistic, to be quite honest.



**The Hon. BEN FRANKLIN:** Thank you. Mr Winters or Ghillar, did you want to add anything to that?

**Mr ECKFORD:** Yes, I do. I sat on a committee that went for 3½ years looking at cultural flows. We did that with Melbourne University and the National Native Title Tribunal auspiced everything for us. One of the things we came up with and we looked at was the question of rights versus ownership, rights versus—what do they call it—entitlements. We argued—and the law faculty of Melbourne also agreed with us from the human rights perspective, and the international UNDRIP: that is, the United Nations Declaration on the Rights of Indigenous Peoples, along with all the other international laws that have now been imported into Australian law through the Native Title Act, the ATSIC Act—and one of the things that I have access to is a brief from Mr Richard Orr, QC, which talks about Aboriginal native title rights being common law rights.

Unfortunately, native title does in fact interfere with our rights to ownership as the ancient owners under our law and custom. So, there are legal questions that are yet to be answered in this country in relation to the ownership of water and land in relation to Aboriginal people. The native title service doesn't do anything for us. Simply because if you look at when native title rights and interests are recognised and they say you have exclusive possession to land there is no tenure that goes with that land, it merely goes to what they call unused State land. That is the title native title land has. This is totally racially discriminatory.

**The Hon. BEN FRANKLIN:** Thank you, Ghillar. They are very helpful perspectives. Could I move to just some questions to NBAN. It is a similar question I guess to the one that I asked Murray Lower Darling Rivers Indigenous Nations [MLDRIN]. Do you represent all Indigenous nations in the northern Basin? Is that your role, your gamut?

**Ms KIRKEGAARD:** No, we more advocate for the nations. I think there is currently 19 or 20 member nations of NBAN in the northern part of the Basin. So, there is a couple of groups that do their own thing and there are some groups that we do not currently have delegates for. But normally we do advocate on behalf of and work with those nations for their rights and interests in water.

**The Hon. BEN FRANKLIN:** Are the delegates elected by their own mobs or are they appointed?

**Ms KIRKEGAARD:** Yes, they are appointed to NBAN's membership through their own nation's governance structures, whatever they may be. But it is not something that—NBAN does not appoint people.

**The Hon. BEN FRANKLIN:** No problem at all. Can I ask about the water resource plans for Queensland, which I think that NBAN were involved with or might have signed off on. Basically my question is what was your take on those? With regard particularly to floodplain harvesting, do you think they got it right? Do you have any comments that you want to make about the Queensland experience? It has just come up a few times with witnesses already.

**Ms KIRKEGAARD:** I was involved in the assessment of those water resource plans in Queensland. I was the Bigambul delegate on NBAN at that point in time. It was a number of years ago now, so it is kind of a little bit in the background. I think the process in Queensland was quite a bit different to the process in New South Wales. I actually do not remember floodplain harvesting being talked a great deal about in the water resource plans, from memory.

**The Hon. BEN FRANKLIN:** Do you want to add anything to that, Mr Ford? Sorry, I thought you were enthusiastically leaning forward.

**Mr FORD:** I would just like to add to that just to give people a bit of background. I have got my own company as well—this is for the New South Wales border resource plans stuff—and I developed a culturally appropriate methodology that was implemented by New South Wales DPIE. In good faith they wanted to create a proper—or try to get it right to speak to the right people on country about how we do business and develop these water resource plans. Floodplain harvesting was never on the radar at the time. It was around objectives, our objectives and outcomes and also around our values and uses. It was an exercise—I suppose in New South Wales and I am pretty sure it was pretty similar in Queensland—by the States to be consistent with the Murray-Darling Basin Authority, chapter 10, part 14, and trying to make sure that they were, I suppose, complying with the regulations, with what they had to comply with from the feds.

Floodplain harvesting was never really—this is only an emerging thing for us. I have been in the water space for a while now and floodplain harvesting I have never heard much about it until we had some of the problems that took place within the system and the reforms were I suppose in the pipeline for that as well. Our people have only just started to experience that stuff, learn about that stuff as well. So to be totally honest, I can say from the New South Wales development of the water resource plans it was absent, but as far as Queensland I would say it would be pretty consistent as well.

**The Hon. BEN FRANKLIN:** Thank you. In our previous session we heard from MLDRIN and they just mentioned in answer to one of my questions that they were not involved or they had withdrawn from the New South Wales Aboriginal Water Advisory Coalition [AWAC]. That to me, on the face of it, seemed concerning. I was just wondering if you have any views or if you have any concerns about that or if you can clarify any thoughts you have about that?

**Ms KIRKEGAARD:** The process of actually doing or being a part of the Aboriginal water coalition was a task that was undertaken by a previous chair.

**The Hon. BEN FRANKLIN:** Right.

**Ms KIRKEGAARD:** When it was brought to the board about being involved in that and what that meant, there was a lot of misunderstanding about what that should be or what that role actually entailed as being part of that water coalition. I guess we had similar concerns to MLDRIN around that. Some of the board members expressed their concern about the AWAC making decisions on behalf of nations and then losing that grassroots voice and the delegates that NBAN represent—the same as with MLDRIN—would actually be left out of things and, rather than it being an integrated way of decision-making, that it would be more a top-down rather than a bottom-up or any kind of mix of whatever that should be. So that is what the concerns were.

**The Hon. BEN FRANKLIN:** Understood.

**Ms KIRKEGAARD:** There were a lot of concerns also around—and it always comes back to right people for right country—decision-making around what happens on country should be done by the traditional owners [TOs] of that country, not representatives from other TO groups that sit on boards or with the land councils, or whatever else. And I guess the other issue, particularly with NTSCORP—I believe has nothing to do specifically around native title and native title groups—that representation on the AWAC by NTSCORP is, the concern for that was more around the fact—

**Mr FORD:** They are a service group.

**Ms KIRKEGAARD:** Yes, they are a service provider and not necessarily First Nations people either to be able to speak on behalf of the nations that they represent. They are a legal representative body. That is where the concerns laid.

**The Hon. BEN FRANKLIN:** Thank you, I really appreciate your responses there. Just a final question from me to the Euahlayi representatives, probably Ghillar, but happy with whoever you like. It was just a question, I guess, about—I am not sure how to pronounce it, I think it is—Mogila Station was returned to your people. I was just wondering, did it come with a water licence? If so, were you able to use it? How were you able to use it? I am just interested in a little bit of background.

**Mr ECKFORD:** I am sitting right here at the homestead of Mogila.

**The Hon. BEN FRANKLIN:** Right. Mogila, my apologies.

**Mr ECKFORD:** Yes, Mogila. We do have a licence—a 30 mg licence—but we rarely use that because you have to have all the infrastructure around it as well. The old man, Dave Richmond, who previously owned the property, used it from time to time just to irrigate a small crop of lucerne. The pumps—because of the floods over the years we have had to replace those pumps, but we haven't really used it. We use it from time to time, but not as you would if you were growing something. The other thing is that we had licences in Queensland as well on Kullilli, which is another property that is on the Ballandool River, that comes off the Lower Balonne. We had two licences there. But when the land was purchased the Queensland Government took back those licences and they revoked those licences and took them back into the State Government.

If I can just add to what Ms Kirkegaard said and your previous question about our relationship to Queensland, I was on that committee as well reviewing the Queensland water licences. One of the issues that I had, the major issue I had was that when we were talking about it I found it very difficult to participate in approving those water licences because of the fact that we were told that all the water in the Condamine and the Balonne and the other rivers, Moonie, and everything else—even though Moonie is not an unregulated river—was that there was no surface water for any of the nations because it has all been exhausted.

There was nothing planned there and they could not plan anything for us. We thought that was quite—it was a bit of a shock. I thought, well why are we approving this here when our people are not going to benefit in any way whatsoever? Despite the fact that Queensland amended their legislation to say that Aboriginal people had the right to take and use water within their system for economic, cultural, social and spiritual purposes, that creates a bit of a misnomer because we know the people do not have infrastructure, we do not know how much land is owned by Aboriginal people, only those nations do. We are about to do an audit of those nations on that.

They told us that we could have access to bore water—the upper level aquifers, the shallow aquifers, the Great Artesian Basin and the deep water. Our problem is, you know, it is a long way down there to dig a well with our hands because we do not have the electronic machinery and the big machinery to be able to drill a borehole, and it will cost about \$400,000 to do it. Then you have to do the piping, and I can tell you it is a long way to carry a bucket of water from those places if we do dig a hole and get wells. There is no way in the world that any of that would be able to assist First Nations peoples because we just do not have the financial resources to do it on the nation so that we can get access to that water—deep water, Great Artesian water and shallow water. We just do not have the infrastructure to do it or the ability to be able to do that.

**The CHAIR:** Unfortunately, we are out of time again. Once again we could have had so many more questions for all of you. I thank you all very much for appearing before this very important inquiry today. We have taken everything that you said very seriously and deeply. We will now finish today's hearing. That is the end of the live stream. If you have taken any questions on notice the secretariat will be in touch.

**(The witnesses withdrew.)**

**The Committee adjourned at 15:30.**