REPORT ON PROCEEDINGS BEFORE

SELECT COMMITTEE ON THE STATUS OF WATER TRADING IN NEW SOUTH WALES

STATUS OF WATER TRADING IN NEW SOUTH WALES

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At Macquarie Room, Parliament House, Sydney on Thursday, 6 October 2022

The Committee met at 10:00 am

PRESENT

The Hon. Robert Borsak (Chair)

Ms Cate Faehrmann (Deputy Chair)
The Hon. Wes Fang
The Hon. Mick Veitch

MEMBERS PRESENT VIA VIDEOCONFERENCE

The Hon. Mark Buttigieg
The Hon. Rose Jackson
The Hon. Peter Poulos

* Please note:

[inaudible] is used when audio words cannot be deciphered.
[audio malfunction] is used when words are lost due to a technical malfunction.
[disorder] is used when members or witnesses speak over one another.

The CHAIR: Welcome to the second hearing of the inquiry into the status of water trading in New South Wales. The inquiry is examining the origins, purpose, regulation and abuse of the water trading market. It will also look into evidence of market practices and their effects, including cornering, playing and fixing the market. The Committee will also examine the effectiveness of water registration and disclosure and the effects of water trading on the economy, communities and the environment. I acknowledge the Gadigal people of the Eora nation, who are the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past, present and emerging, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I acknowledge and pay my respects to any Aboriginal or Torres Strait Islander people joining us today.

Today we will be hearing from academic experts who will be appearing via videoconference. I thank everyone for making the time to give evidence to this important inquiry. Before we commence, I will make some brief comments about procedures. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings.

While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. Therefore, I urge witnesses to be careful about comments they may make to the media or to others after they complete their 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. If witnesses are unable to answer a question today and want more time to respond, they can take the question on notice. Written answers to questions on notice are to be provided within 21 days. If witnesses wish to hand up documents, they should do so through the Committee staff. With regard to the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphones. As we have witnesses appearing via videoconference, it may be helpful to identify who questions are directed to and who is speaking. For those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that use tele-coil receivers. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

Mr SCOTT HAMILTON, Co-author of *Sold Down the River: How Robber Barons and Wall Street Traders Cornered Australia's Water Market*, before the Committee via videoconference, affirmed and examined

Professor STUART KELLS, Co-author of *Sold Down the River: How Robber Barons and Wall Street Traders Cornered Australia's Water Market*, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our first witnesses. Would either or both of you like to make a short opening statement?

STUART KELLS: Yes, Chair. Thank you. I think we will. Scott, I think I'm going to go first, if that's okay, and then hand over to you? It is just a very brief opening statement. As I said, thank you, Chair, the Hon. Robert Borsak. We're grateful for the chance to speak to you today. We're joining you from Wurundjeri land in Melbourne. We commend the members for this important work. The inquiry is an opportunity to clarify what has gone wrong with the water market and to map out some high-priority reforms. As I know you appreciate, this is a difficult issue affecting real people in the Murray-Darling Basin as well as affecting the wider economy and the environment. We also commend the people and organisations who have made submissions to this important inquiry. There is a lot of frustration in the basin—again, as you appreciate—because of the big impacts and because people feel that, in many cases, they are not being heard. So the members' work on this inquiry is very important in that respect as well.

Scott and I consider that the normal policy error correction methods, the normal processes of correcting a flawed and failed policy, are not working in this particular case, and there are a few reasons for that: One is the daunting complexity that you all understand, one is that there are very powerful vested interests at work and another is that the regulators, to some extent, are conflicted and ill-equipped to solve these issues. As the NSW Young Lawyers put in their submission, "The water market is susceptible to mediated corruption, rent-seeking behaviour and regulatory capture." So from our point of view—and we're keen to discuss this with the Committee—to unpick the problem we need to go back to the very first question for public policy: What is the water market for? Fundamentally it is a cap-and-trade mechanism, and within the cap the market is intended to allocate water efficiently to maximise the economic return from irrigation. That was the intention, but it is a long way from what we have today.

We've got, instead, a market that maximises the financial returns from complex arbitrage trading, and some of the submissions bear upon that. Governments originally allowed external traders in the market in order to make the market work better and, in particular, to increase liquidity. But in reality that has not worked. The market is not very liquid and the external traders are reaping very high profits, at the community's expense, for no public value. The problem is complex, but the solution in the near term is straightforward. Greater market integrity is urgently required, and this includes for brokers as well as for general market conduct. We need to centralise information so that there's a single source of truth about bids, asks and transactions, and we need to publish the depth of the market at any particular moment in real time. We need to scrutinise the links between traders and agribusinesses and managed investment schemes. We're keen to go into that to describe what we mean about that. Ultimately we may need to phase out the pure traders by having them sell down their holdings and retreat from this market. I'll pause there and hand over to Scott.

SCOTT HAMILTON: Thank you, Stuart. I'll just make a couple of brief additional comments. Importantly, I'd just like to refer and acknowledge the breadth of people involved in the water market, that we spoke to us as part of our research. It included farmers, irrigators, brokers, traders, bankers, academics, public servants, environmentalists and First Nations people. I think one of our major findings, which is in our submission, is that it is not a level playing field when it comes to the water market. To give just one example—there was an example that we spoke to about a farmer standing on top of a tractor, trying to get a signal to make a water trade. That person taking place in that market is competing with people that have much better IT systems, have much better knowledge about the market and what is going on. They also have the benefit of heft often and the ability to track and monitor up to 30 websites at a time. Farmers don't have the time or the capacity to be able to do that.

The other important point is the Australian Competition and Consumer Commission, now about 20 months ago, finished a comprehensive report and inquiry, which took about 19 months and included about 29 recommendations, many and most of which both Stuart and I agree with. I think the concerning bit is the lack of change and putting in place the implementation of those recommendations. We simply don't have time to continue to wait years to make the changes to this market that are needed. In terms of our summary and our submission that I would draw the Committee members to, our key findings are that Australia's water market designers did not pay enough attention to market governance or to trader conduct or integrity. An example, there are few controls on water exchanges and brokers, as Stuart just mentioned. The water market is overly fragmented. There are multiple trading platforms for every type of water right. There is no single market price at any moment.

Therefore, it's difficult to understand the depth and breadth of the market at any particular time. The cap-and-trade model doesn't cover the whole system.

The other issue, we believe, is that water policy is too important to be left to water regulators. We need a policy that is driven by people that are not the regulators of the water market, and also bodies such as the Australian Securities and Investments Commission, having those powers to be able to follow the market and investigate what is a commodities market in this day and age. Finally, as I mentioned before, there is a huge power imbalance between the farmers and the professional traders. When it comes to First Nations people, the power difference is even greater. I think that, if we really want to talk about closing the gap in this country, we have to think about how we have much better and fairer sharing of water and benefits with all our people and, most importantly, with our First Nations people. Thank you.

The Hon. MICK VEITCH: Mr Hamilton and Professor Kells, thanks for your submission and the book. I guess, from a New South Wales jurisdictional perspective, the first question for me would really be—and it's a big question—what exactly do you think the New South Wales Government can do to address the issues that you raise? If this Committee was to make recommendations, what do you think they would be?

SCOTT HAMILTON: Stuart, do you want to go first?

STUART KELLS: Yes, sure. Thank you, Mr Veitch. I appreciate your question. The short-term solutions I would distinguish from the long-term solutions. The long-term solutions we need to think again about whether we even want a market approach to solve this problem. But, in the near term, we have this market and it isn't working. I think the solutions to that are relatively straightforward. We do need a more centralised market, and that's what the ACCC have found as well. At the moment, it's too fragmented and that is aiding these aggressive arbitrage tactics. We need a single platform or umbrella that brings the different exchanges together or a single source of information about pricing. We need to publish information about market depth at any particular moment because at the moment what's published is pretty minimal. We need better information about who is trading and who owns water. Even more urgent, we need really strong controls on integrity.

Through a series of specific decisions in the past, this market is not subject to the same kinds of controls that cover real estate or the stock market or bond trading or all sorts of other markets for commodities and for securities. Yet, as you know, it has evolved into a very significant and sophisticated financial market. We need to apply those same controls around things like independence of brokers. At the moment, there are all sorts of undisclosed relationships between brokers and multiple parties. Sometimes brokers trade their own book and trade their own assets that they own themselves without transparency and in ways that would be prohibited in other markets. There are all sorts of other conduct around signalling active trading and signalling sometimes misleading prices and all sorts of other kinds of market conduct that goes on that would be prohibited in other markets. Urgently, that issue of integrity needs to be addressed and that issue of market information and centralisation. They are two categories of things.

The third thing is something that Scott and I have really highlighted in our research. Something that the ACCC touched on but did not really go into is relationships between market participants, including the hedge funds and the active arbitrage traders on the one hand and managed investment schemes and agribusinesses on the other. Part of our finding, and what we heard from key people in the market, is that there are these important relationships between some of the more sophisticated traders and managed schemes and agribusinesses. Some of them are quite low-return pension-funded developments further down the river but they provide a lot of important information and clout and scarcity that the traders can then use in their tactics.

I draw your attention as a Committee to the submission from Argyle Group. I certainly don't want to single out Argyle for criticism; I would expect they are probably one of the more ethical trading outfits around, based on their submission and some other things. But what they say in their submission is very telling. They talk about the kinds of arbitrage trades that they are engaged in, which obviously use very sophisticated strategies to make use of wrinkles in the market, et cetera. Those sorts of strategies would be less viable if we had better information and higher integrity and moved towards a more level playing field between farmers and traders. Also, Argyle go to significant lengths in their submission to say that where they are trading on both sides of a transaction—for example, where they are actively trading on one account but also transacting with managed schemes and other agribusiness investments that they have a stake in—they are careful about tying their own hands around the use of information and the kinds of benefits that could flow to them from using that information and being on both sides of a transaction.

I would make two points about that. One point is that—and I don't want to pat ourselves on the back—you would not have heard that from a company like Argyle without the work that Scott and I have done to highlight that problem. That is the first thing. Argyle would not have emphasised those principles without the work that Scott and I have done, but I am also reasonably confident that other participants and other active traders and hedge funds do not apply those same principles and therefore use access to agribusiness information and use these relationships to their benefit, and therefore to the cost of the community and to the cost of farmers. I think a real priority is to scrutinise those kinds of connections and to put some controls around them. Fundamentally, we have a hyper-1990s, under-regulated Wild West market which, if we were building it today, would look very different in terms of who's allowed to participate, how they're allowed to participate and the kinds of integrity and controls—the kinds of principles around third-party relationships, et cetera.

I'll just finish with one quick parable. Scott and I are lucky; we get to move in different circles in politics and in finance and in the regions. We've spoken to a lot of people, as Scott said. I've personally worked in relevant spheres, including with people who advise family offices and so-called high-wealth individuals. These are mentioned in some of the submissions, and I think it's important to unpick this. The kinds of returns that people are getting in the water market as active traders are in the vicinity of 30 per cent per annum, 40 per cent per annum, sometimes 100 per cent per annum. These are world-class hedge fund returns that these aggressive traders and sophisticated traders are earning at the expense of regional communities, for no public benefit.

If I were a family office or a high-wealth individual—and, as I said, we rub shoulders with these people—and I had a hedge fund working for me and it was earning 30 per cent per annum, I'd be very happy and I would continue that conversation. If a water-based trader came to me and said, "Here's an amazing investment I've got: We're doing some greenfields agriculture out past the Barmah Choke, and it's going to earn 3 per cent a year or 4 per cent a year"—which is what those investments are yielding—I would say, "Don't ever darken my door again. Go away".

This is really important, and people have missed this point. There's all sorts of different kinds of investments, all sorts of different kinds of conduct. The financial world is very stratified. In fact, a hedge fund would never be interested in a 5 per cent return unless it supports and buttresses and facilitates a 30 per cent return or a 40 per cent return. The reason why these traders care about those low-return, unsophisticated, unsexy agricultural investments is not because they care about the 5 per cent return; it's because they care about the 50 per cent return and the 100 per cent return.

That nexus, which Scott and I have highlighted in our work, hasn't had enough attention. The ACCC confirmed that that was an issue. They confirmed that the more sophisticated traders used this information and used these relationships to support their trading strategies. As I said, Argyle touch on this in the way of saying they don't do that, which is laudable. But I think if we were collectively, as a society, to scrutinise those sorts of connections, we'd be surprised about what we would find in the same way that Scott and I were surprised. We were also surprised about some of the market conduct that happens that is, as I said, prohibited in other markets. Sorry for the long answer, but it's a really important question.

The CHAIR: Mr Hamilton, will you add to that?

SCOTT HAMILTON: Maybe just a couple of brief comments, if I may. I think that one of the things we have to understand is that this water market, which is now 20-odd years old, started off as quite a small, niche sort of thing that was occurring. It's now a market which has literally hundreds of millions of dollars and billions of dollars involved, so we need to regulate it like we would other financial commodity markets. We deliberately as the governments, including the New South Wales Government, made choices not to regulate it that way and to not have the sorts of transparency and regulation of the participants in the market which is needed.

From a New South Wales Government point of view, there are some fundamental things that I think can be done relatively quickly and need to be done. They include things like improving the transparency of the market, and it's only just recently that the Victorian Government passed some laws to actually identify who the major water holders were, which came out of, as people might recall, the radio chats about Eddie McGuire owning water and no-one could tell whether he could or not. Anyone that's gone and looked at the water markets or else looked at the registries, it is very difficult to find out what is going on and who owns what. The second part of that, of course, is to have transparency around the trades and the real-time information about those trades. The other sort of area which I think is definitely within the New South Wales bailiwick is the regulation of the brokers. These brokers have enormous access to knowledge and information, and are critical market participants, and need to be regulated accordingly—like we would a financial services broker.

The CHAIR: Okay. Thank you. Wes?

The Hon. WES FANG: Thank you. Before I start, I just want to compliment Mr Hamilton on the subtle placement of the book in the background. I always appreciate a little bit of product placement whenever you get the opportunity, so well done. I think that should be acknowledged.

SCOTT HAMILTON: Thank you.

The Hon. WES FANG: I noted during the opening statements that there was a lot of discussion about the historical events around water trading and that there was perhaps a lack of forethought around the governance issues when the system was established to allow this trading to occur. My understanding is that there were, obviously, a number of landholders who had water licences and there was the ability to either have the water that was associated with the landholding associated with that, or whether it could be separated so that the landholder at the time could then perhaps trade or use that water as a separate commodity to the actual block of land that they had the licence for.

That's obviously then grown and become the model that we have now where there is perhaps a lack of transparency around who owns the water, where the profits are going, who people are trading water to. Can you provide to us some view as to the historical events and what you might have changed back then, and what it would take now to have a more equitable water market where those people who are producing food and fibre in our food bowls have access to water that is competitively priced at times that they need it, that is, in year three of a long-running drought?

STUART KELLS: Do you want me to go first?

SCOTT HAMILTON: Sure.

The CHAIR: It's a big question.

STUART KELLS: Thank you. Mr Fang—is that right?

The Hon. WES FANG: Yes, correct.

STUART KELLS: Sorry, I can't see your nameplate.

The Hon. WES FANG: Sorry, yes, I should have introduced myself. Obviously, the fidelity on the screen might not be as good as you might need to understand.

STUART KELLS: Great. Thank you, and thank you for your question. There was a whole series of different decisions over time that were made, which at each particular point were quite defensible, and the idea that you could trade water between farms and locations kind of made sense. It was in the spirit of the times and there was already a little bit of informal trading that had gone on, even before it was formalised. Very early on there were all sorts of limits around the geographical extent to which trading could happen; like, it was generally inside particular regions and valleys and obviously not so much between States, and particularly with South Australia. There were limits on the external participation. So there were quite tight limits on the extent to which banks and hedge funds could be involved. Over time, very much in the spirit of the era, those kinds of controls were removed under the guise of these being anti-competitive. They were stifling the market, and so organisations like the ACCC and the Productivity Commission and constructs like the National Competition Policy led to all of those kinds of limits being gradually removed.

At the time, people like members of the National Party, farmer bodies and others raised significant concerns about the removal of these kinds of controls. It wasn't just that it was done silently. They were quite controversial about whether to allow trading between valleys and between States—including a High Court case about that—and whether to allow external participants. But over time, as I said, all of those controls have been scaled right back. One obvious question is whether to think again about those things like participation and geographical scope. It would be pretty hard to unpin the ability to trade water across different distances, including up and down the Murray and between valleys, but definitely worth thinking about that again and particularly about external participation.

Could I just make one quick comment before I hand over to Scott about the ACCC? We concur, as Scott said, with a lot of what the ACCC found in their inquiry. Through a whole different series of means, they've found similar things to us although they present them in different ways. We feel that they have pulled their punches in their report, and there are a few reasons for that. One is that, in a sense, they're reviewing their own work because they've been involved in this for a long time. So they're somewhat conflicted about how critical they can be about the market, whereas Scott and I are quite disinterested. We don't own water; we don't work in water. We can be quite open about how we feel that it has failed.

The second point is that they are applying a construct around market dominance that really doesn't suit this market. They're applying a construct from a sort of industrial organisation paradigm that's more relevant to things like manufacturing and retailing. It's not relevant to what has become really a financialised market. They talk about things like ownership percentages of water. It's like, "You can't dominate this market because you don't own more than 50 per cent of the water rights", which is just the wrong paradigm. Thirdly, and related to that, the ACCC is not a financial markets regulator. This has become a financial market. The ACCC is not a financial market regulator. They're not equipped to do this. ASIC is, but ASIC is not interested in regulating this I don't think. So collectively we need to think again about how the market is designed and how it operates. We also need to think again about who and what and how it's being regulated. Is that helpful?

The Hon. WES FANG: It's very helpful. Mr Hamilton, did you perhaps want to provide a little more insight on that before I ask a follow-up question, if that's alright, Chair?

SCOTT HAMILTON: Sure. As Stuart mentioned, you wouldn't build it now the way that it has been built. I think that a couple of the key points that I would make, which are also made by the ACCC, is that it's very hard to regulate what you can't see. So you need to be able to see what's going on. And the other thing is about who can play in the market. That's another important question. Most people are quite surprised, and even gobsmacked, when they find that not only someone down their street in Sydney or Melbourne can play in the market but someone in Singapore or in Beijing or in Wall Street can play in this market. Our actual thinking has evolved over our journey, is one of the things I'd say about that. And one of our initial pieces of work was putting forward that you had to have some connection to the water in use to be able to play in the market, which sort of makes sense from our point of view. If you've got skin in the game, that's when you can be a market player in this area.

However, part of the problem, as Stuart touched upon before, is that many of those hedge funds and banks have got wary of this and, in fact, have got wary of the benefits of actually having some very large agribusiness and water heft. So it needs to be more than that. A couple of things that we talk about specifically, as Stuart touched upon, is slowing down the market to make it so that it's not the fastest finger wins or the fastest bot wins, which is really important. The other question is that obviously water is more valuable depending on where it is in the market—which valley and what it's being used for and those things. So we're not going to end up with a single price across the whole system, but we definitely could have a single register, a single ability to track and see what's going on in these markets and these particular trades. One of the things that we would support is having that overarching monitoring of the system and what is going on in terms of the water market so we can make sure that we understand what is going on.

The Hon. WES FANG: I guess that leads me to the next question to come out of your answer. In your opening statement you said that the solutions, in the short term anyway, could be implemented reasonably easily. The question then becomes what do we do in the longer term with the water market? I guess it's a philosophical question that we can ask ourselves. If we were to perhaps turn our mind to what reforms would be ideal in the future, where perhaps water was owned and traded by those who participated in food and fibre production within our food bowl areas and not with overseas funds, banks, et cetera—people looking to make profit off it—how do we go about trending towards that? In that circumstance where we have profit-driven owners, how do we look to unstitch it where I would expect that they would want a compensatory lever around a future loss of earnings by having an asset removed from their holding? Because, in effect, we want to make sure that we don't create a situation where there's a risk that the State is drawing back assets unnecessarily and creating uncertainty in investment decisions in Australia itself. I imagine it's quite tricky view forward. But if that were the goal, do you have an idea as to how we would go about doing it?

STUART KELLS: Yes, I'll have a go. Definitely there are different sorts of solutions over different time lines and different levels of ambition. You're absolutely right about raising the issue of compensation. If you were to move later on into a non-market sort of approach or a quasi-market approach, you have things like farmers who have sold out or farmers who have effectively put their superannuation into long-term water rights. You would have to consider things like compensation for people like that. In the shorter term, the idea of compensating hedge funds and arbitrageurs, I wouldn't raise that at all. I wouldn't be interested in that at all, partly because all they're doing is reaping rents out of this market, out of communities and out of farms. They can always just sell down their holdings to agricultural users of water, which is what the market was supposed to be in the first place. You could phase out the hedge funds and the arbitrageurs without questions of compensation and that would not lead to some kind of price crash.

These people are not the basis for the price level at the moment. In some ways, the problem is that they underpay for water and they overcharge for water. That's why they earn these sorts of returns. That's why they earn 100 per cent returns each year or 50 per cent returns; it is because they're underpaying for water and overcharging for it. So it would actually benefit agriculture and farmers and communities. One of the terms of reference, I think, of your inquiry refers to disinvestment and decline in regional communities. Well, the answer is it is because there is a massive drain of profits every year because of the water market, which has no public value and is costing hundreds of millions of dollars every year. So no compensation for hedge funds. You would definitely have to think about compensation for retired farmers and others, and that's very much a longer-term type proposition where you would have to think about whether there are different ways of allocating water.

We spoke to people who were involved in the very early policy development of this market. One of the things that was a powerful idea among the market designers and the people who were directing them, so the heads of departments and Ministers and things, was that the water rights would flow to where they had the greatest economic benefit—which makes sense, right?—where the soils are better, where there is more infrastructure, where there is deeper community infrastructure. The opposite has happened. The water has flowed away from where it has the highest potential economic benefit to developments essentially on—greenfields developments that aren't very green, on sand. A new model might try to fix that and say, "Well, we collectively, are very much deeply and closely driven by First Nations people, by farmers, by people in the regions, to think again about how, within the environmental cap, we allocate water", because that's fundamentally what this thing is supposed to be about. It's not about enriching smart traders in big cities.

I'll just make one other quick point. You could get the impression from what we are saying that the main problem is really a lack of integrity and this cost of paying these hedge funds for this liquidity that they don't really provide, and it isn't very good. That is not the only problem that these people create. The flaws in the market and the conduct of those kinds of traders is actually affecting the allocation of water rights and, therefore, it's affecting the profile of agriculture. That was never intended. It was never intended that that would be the case. You will see from some of the submissions that the traders are very sophisticated in how they use wrinkles in the market and very, very fine brain differences between States and jurisdictions around things like carryover and delivery rights to move water around to maximise arbitrage profits in ways that the market designers never intended, and in ways that are disconnected from the economic returns to agriculture. I'll give you two quick examples of how that happens.

Apart from exploiting the market wrinkles, the water rights don't properly reflect the environmental damage of removing water up and down rivers, for example. The people who are buying the rights downstream don't bear the costs of associated environmental damage to an appropriate extent, and the rights don't reflect water losses to the system. So they're inherent flaws which, essentially, subsidise perverse movements in water and subsidise the trading strategies of these external traders in ways that actually have a physical effect on the ground around where the water rights are, what kind of agriculture is pursued. That was never intended by the market designers, and it is not of value to the community or to agriculture or to Australia.

So a new model, definitely you would have to think about compensation and how to properly reflect investments that have been made in the past. But in the scheme of things, it's probably something that we as a community could afford. A new model would have to think about where the water should be and on what basis. Absolutely, Scott and I support markets and we support thriving rural communities and, of course, we support agriculture. The problem is that the mechanism we're using to support those things at the moment is pushing in the opposite direction.

The CHAIR: Just quickly—

The Hon. WES FANG: I should probably—

The CHAIR: I'm going to ask a question.

The Hon. WES FANG: I was going to just flag something, if that's alright?

The CHAIR: We have a couple of minutes to go.

The Hon. WES FANG: I was just going to flag that I didn't support giving hedge funds compensation. It was more that I was playing devil's advocate and providing you the opportunity to address some of those sovereign-risk concerns that people who have been opposed have actually put forward.

The CHAIR: We talk about the effects on First Nations people. Do you want to elucidate a bit around that? Because, obviously, water trading is affecting everybody. How specifically—and I don't think you actually deal with it in too much detail in your book—does that affect First Nations people in relation to what you're talking about?

STUART KELLS: Scott?

SCOTT HAMILTON: There are a number of issues that arise. I think one is in terms of water ownership. If we look at the ownership of water by our First Nations, it is a very small amount. There's an ability to then take place and participate in the market—having that market knowledge and that capacity to be able to play in the market. The other thing that came out strongly as part of our research was those perverse and unintended consequences of essentially using our river system as a delivery mechanism, rather than thinking about those social, those environmental and those cultural issues. There are particular examples in areas such as around the Barmah Choke of 100-year-old trees falling into the ground—and these are scar trees—and those sorts of issues.

Also forcing water through those areas at times that nature wouldn't normally have it is having perverse outcomes. There was a really troubling and sad story about having to move burial grounds in that particular area. These are profound impacts on the Indigenous and First Nations people, culture and society. The sort of responses that I think we've seen in the past 10 years even—to say, "Here's $40 million or $60 million of water that we're going to give you"—is just not going to address the imbalance that's there.

That being said, there's one more comment that I'd like to make, which is the connection—and I spend a lot of my time working in energy and climate change. There is a great opportunity that is presenting itself right now, including in New South Wales, with the closure of coal-fired power stations and those very heavy water-intensive industries that are associated with that. That isn't actually going to allow freeing up water and some entitlements and allocations to address these imbalances. So now is a good time to be having this conversation. There's certainly some work that's been done. There was recently an allocation to the Gunaikurnai community in Gippsland of some water rights. I think that's the sort of thing that we should be encouraging.

The CHAIR: Given the nature of our Federation, really what you're saying too is that we're going to require a cooperation between State and Federal legislatures to get this thing done. We haven't seen that work particularly well so far in the Murray-Darling Basin Plan. Do you expect it to work any better, especially in such a major overhaul? We've got really a twentieth-century technology in trading but a nineteenth-century market in regulation. That's what we've got. I would have even gone further and I wouldn't have called it the nineties. I would have called it a 1970s free-for-all, having been around at the time of Poseidon myself and probably you guys too. Do you want to comment on that?

SCOTT HAMILTON: Certainly, and maybe I'll just go first if that's okay, Stuart. That's one of the histories of the Murray-Darling Basin in particular, that it has been an extremely fraught area when it comes to the politics of water. Now that being said, we have seen times when there has been good bipartisanship or multi-partisanship at times, which is I think something to build on. I think that now is the time to have those conversations though when there's actually plenty of water in the system, so tempers are a little bit cooler. There is a space right now I think to have that conversation and there's also some real good signs, in my opinion, of Federal and State collaboration, particularly with what we saw in COVID, which is, some people would say, not enough. But I think actually there are some really good signs of how the Federal and the State system did work together there, and in energy policy we are seeing the energy Ministers come together and forge a way through to how we manage the transition. I think Minister Kean in New South Wales said to the Opposition, which was Labor Minister Bowen, recently that it was the best Energy Ministers' Meeting that he had had in four years. So there are some good opportunities I think, Chair.

The CHAIR: Unless someone else wants to ask another question, I think we've come to the end of our questioning. Thanks very much for coming today. Thank you for attending. We'll call a close to this hearing. Thanks very much.

SCOTT HAMILTON: Thank you very much.

STUART KELLS: Thank you, Chair. Thank you, everyone. That was a pleasure.

(The witnesses withdrew.)

The Committee adjourned at 10:45.