

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON CLYDE RIVER WATER MET IN THE CONFERENCE ROOM, HENTY HOUSE, LAUNCESTON ON THURSDAY 19 AUGUST 2004.

Mr EDWARD STUART ARCHER, CONCERNED IRRIGATORS GROUP, WAS RECALLED AND FURTHER EXAMINED.

CHAIR (Mr Hall) - Good morning, Mr Stuart Archer. I will now ask you to give any additional or new evidence, please.

Mr ARCHER - Mr Chairman, and members, in my supplementary submission to the committee, first of all I have some documents I'd like to table, please. One is the colour copy of Saving the Murray; it's a document that has been photocopied in my submission, but it's more practicable for this committee to have the colour copy, I think. The attachments here are facts from the Water Management Act debate in Parliament in 1999, and there is also a letter here to the honourable member for Nelson, faxed in 1999.

Mr Chairman, this evidence you might find unsatisfactory, but it's a media report of two weeks ago of a court case abandoned by the Victorian Government. The issue was that a committee was recommending a reduction of licences other than the licence entitlement, so this is the story of the abandonment of that court case and the Victorian Government paying all the costs of the plaintiffs.

I also have a copy of the Clyde Water Act 1898. The Clyde Water Trust had no hint of impropriety in the 150-year history is because, in my opinion, this act starts with, 'to be read as one with the Local Government Act'. So all the pecuniary interest protocols, and everything, of the old original Clyde Water Act all came under council regulations.

CHAIR - I think the secretary indicated that we have a copy of that, have we?

Mr ARCHER - I have restated some of the things that I have already submitted. We debriefed ourselves on the two days of hearings, and we thought to restate that the main determination of the committee is probably not so much the Hamilton pump scheme, but key issues of priority, whether the trust minutes count as the record, and whether those records are kept in good faith for the purpose of allocating water, the rights of sleepers, and so forth.

The Hamilton pump scheme is simply an auxiliary issue that can be dealt with by the new trust, and in any event can be dealt with on a commercial consideration. In other words, the people who wanted extra water could fund extra water if they wanted to; the people who had an existing right and in fact a high priority right, shouldn't have to finance the expansion of new entrants. New entrants can build their own dams; they can take all those sorts of private measures or community-based measures to get extra water. So the Hamilton pump scheme, summarised later in the submission, is effectively a cross-subsidy of priority to low priority; in fact it's a cross-subsidy of smaller irrigators to big, but that's just a circumstantial situation.

The history-of-use issue got a fairly good run at the first two days of hearings. I know in the limited time, and so forth, at those hearings we did fail to make the point, I think, that even if the history-of-use figures were - it's in my written submission, but not in a verbal hearing - and I think we've offered enough evidence to show that it's impossible to be credible, even if they were completely credible, 100 per cent meters and 100 per cent verifiable, we still say and assert that the statutory right given is of paramount legal standing over the history-of-use argument. That's the case everywhere else in Australia, and I've got lots of evidence of that that we've entered, and I can find lots more evidence if necessary.

I did hear at the tail end of Mr Anthony Archer's submission a moment ago where he said in New South Wales this and New South Wales that. In New South Wales they are reducing water allocations to meet the Murray-Darling cap, but in a groundwater area in the Namoi Valley, which he may have been referring to - Marsden Jacob also said this - when I researched it I found that the groundwater was over-allocated. The aquifer was overstressed. How they reduced the allocations there was that everyone's licensed entitlement was taken as granted, but when a big cotton-growing entity, which had invested millions of dollars on infrastructure, were told they have to reduce, they entered into a process where the New South Wales Government financed a 10-year plan for those systems to wind back their operation, change their efficiency, reduce the area of cotton that they are growing. They gave them ten years to buy more entitlement or to build their own private storage, all sorts of things. They have a time frame in which to adjust. It was not a cut and dried thing done on a history of use. It was just a moderated thing, but the basis of it was that everyone's licensed entitlement is still upheld.

Regarding the legal advice and the draft Water Management Act 1999, I do want to go through some of these because it is very confusing. In the documents of Mattila's there is the term 'receivers of letters', a couple of questions asked by the committee at the previous hearings. This term 'receivers of letters' is a virus that is in there, and it has multiplied out in several following documents. It's all nonsense, the whole thing. At the time the Water Management Act 1999 was being drafted and we were attempting to change it, we didn't even know about those letters. Those letters were not in the public knowledge. Those letters were held by Henry Edgell and that's it. No-one else knew of those letters. So how it is that the solicitor keeps saying, 'the receivers of letters lobbied the Government and checked it out with the Government', believed to be Alan Harradine, just baffles me because we didn't even know those letters existed. It should have been changed by the trust, should have been changed by Bowden, Edgell, McShane, Dr Harradine. Anyone else who knew that that was nonsense should have changed it.

Page 3 of the document G3 is the first response, as I understand it, that we have from Mattila to the trust, and the first response comes back to Richard Bowden at his own fax number, at his own phone number. The subsequent contact with the trust later is with Stephen Mackey. That is document G2. That shows that the first information sent to Mattila seems to me to have gone from Richard Bowden's place, and there is a document that seems to me to suggest that. The same document, G3 - Mattila's observations, as she called it - on page 3, the second last paragraph of all that document is the one that sums up that she has been given misinformation. She says:

'To date the trust has made decisions from year to year based on the amount of water that is available to it, and after considering the submissions made to them by irrigators. The Trust then in its discretion allocates water. This approach by the Trust is consistent with general availability provisions ...'

That is absolute nonsense. Someone has told her that every year the farmers have got no ongoing right, that they make a submission to the trust every October for how much water they want and then trust divvies out the water every year, whereas in fact there is a pile of minutes all with written approvals in it. That is the biggest deception of the whole thing, that paragraph there. And of course subsequent to that people were asked to correct her observations. She actually says, 'Please correct my observations'. She says, 'I would appreciate if you could review my observations and forward your comments to us'. Well, after that date Bowden, Edgell and McShane, according to her accounts, had contact with her and no one corrected this wrong information. They just let it go, and they used that against us subsequently when pushing this history-of-use stuff. You understand, we wouldn't have any of this documentation. None of this has been volunteered by the trust. I have given evidence that they didn't volunteer any of this information. It has been forced out of them through a circumstance.

Mrs SMITH - Was that a case of before or after some legal action was proposed to be taken?

Mr ARCHER - How we received the documents?

Mrs SMITH - No, the request for documents? Was the request before legal action was threatened to be taken or after?

Mr ARCHER - We have never threatened.

Mrs SMITH - Generally, in your opinion, from anyone in the valley?

Mr ARCHER - No.

Mrs SMITH - I'm trying to ascertain, to help you understand, whether or not the trust members made a decision that that it would probably be inappropriate to pass out any information if there was a threat of legal action pending against the trust or whether it was refused to you at a time when there was no proposal of any legal action.

Mr ARCHER - There was a meeting of irrigators in October 2002. That's when the chairman first said he is not releasing the legal advice that he had agreed to go and get on our behalf. And there was no-one who had taken legal action at that stage. There was only a bit of hot air of some people saying if they don't get what they want they might consider legal action, which is nothing. Some use it as a bluff. But it wasn't coming from our side, if you understand. These documents came into our existence because of the loan from the Derwent Valley Council. That loan from the Derwent Valley Council was causing an embarrassment to all concerned and the mayor of the Derwent Valley Council helped me to obtain some of the documents. But we didn't get all the documents, which is the next thing. When we received them, we found some had been tampered with. And I want to mention this one: O'Farrell's advice that was given to me by Mr Mackey ... the first advice you gave to me started with page two of a 16-page document. The front page and the cover page had been torn off'. But he represented that

it was genuine. I said you would have to have a page one and a cover page, perhaps a recycle of the brief, in which case I didn't get it. Subsequently, after a little bit more pressure, I received page one of the document which seems to be a retyped front page because the front page, which is document G4, doesn't match page two - it's different. And when he gave me that front page it was a Dobson, Mitchell and Allport cover, not Michael O'Farrell's cover. So there is a thing that is irregular there that has never been explained to me why that is the case.

Mr WILKINSON - So you're saying it's a different type of font, are you? Is that what you're saying?

Mr ARCHER - Yes, that's right. And the cover page on that was a Dobson Allport, not O'Farrell's. And the paragraphs on the bottom don't match the second paragraph. They repeated the same paragraph twice. Professional solicitors, in my opinion, don't make mistakes like that when they get paid \$5 000 for advice.

When we changed the legislation, we lobbied Dr Harradine using our knowledge of the trust minutes and the history of the way the water had been rostered for years and years. Also of the evidence sent to Mattila, there is a copy of a Clyde Water Trust minute of 1976; that is a non-genuine one. It is not the genuine minute. This is document G6. G6 is not a genuine minute; it is a derivation. Someone has introduced that into the system as a virus.

Mrs SMITH - Can you give us the date of that one please?

Mr ARCHER - This one is 21 July 1976, it says on the type. That minute there is not the same as the one in the official records. The official record is a two-page document that has been signed by the chairman of the trust. This one has no signature. Another thing we couldn't understand was why that was sent in the first place, because the wording is something similar to the Dennistoun letter but it is not the actual motion that was passed at the meeting. It is not quite as definitive; a little bit more arguable. Other points at the hearing: Henry Edgell claimed he was not on the Clyde Water Trust. Perhaps that is technically true or technically not true. He was seconded to the trust on 30 June 2000, and the trail of documents will show that he was involved in preparing the first draft legislation; employment of Marsden and Jacob - he actually went to Melbourne and visited him and hand-picked him and correspondence by telephone with Mattila. His accounts with O'Farrell shows he has been to see O'Farrell, and of course he was on the Hamilton pump scheme sub-committee, so he was heavily involved all the way through, and yet he says he wasn't on the trust. I just could not believe he gave that evidence.

Mr Mackey and Mr Bowden claimed that they did not release legal advice because they were under that legal action. The legal action did not arise until two and a half years after the first advice from Dobson, Mitchell and Allport was received on 15 October 2000. The trust's role in the adjunctive action - Clyde Water Trust/Anthony Archer - appears to me to be irregular. Anyway, I have already got the answer to that?

'Mr Archer seemed to me to have been promised 14 days' notice by the minister, and yet he still went ahead with the injunction.'

I couldn't understand that, and hopefully you have the answer now. The documents are in my FOI folder that I lodged last week. Mr Bowden's evidence, that he did not know the draft legislation, is difficult to sustain. He had ongoing discussions with DPIWE as chairman of the trust; wouldn't you expect that? On all the issues planning the Water Management Act 1999, the maps of the irrigation district were at a particular point where he had ongoing discussion. There is a record of a meeting on 8 April 1999. Mr Bowden's evidence that he doesn't know the brief sent to Mattila was also hard to sustain. The documents prove he was the first contact and received first reply from Mattila. In any event, did he correct the nonsense? No, he didn't.

Mr Temple-Smith: his presentation didn't cover his and the minister's role in the transparency of allocations process. When the Government was asked before and during the time that we had the motion of dissent and a motion of no confidence from May 2003 to September 2003, we produced this. Temple-Smith said, 'Put up or shut up. Produce all the documents you've got to sustain your allegations and why you are not happy with the process'. We put this dossier together. This is called the Temple-Smith dossier. It is in amongst my submission, most of what is in here, but it is also a document in its own right. We produced all this to say, 'There it is'. It is all indexed for them.

All we want you to do is demand you use your powers under section 208 of the Water Management Act to ensure transparency. That is it. We want transparency in the trust. We want to see the advice that they are placing so much weight on. The Government wouldn't do anything. It just sat on its hands, wouldn't do a thing, and that has been the case right through. We learned that a year before that the Government on one hand was demanding the trust get on and have new elections, and the next thing the minister has changed, from Llewellyn to Bryan Green, and all of a sudden this election business dies a natural death for some reason. There are no more demands for an election. And of course when we went to see Bryan Green I said, 'All you've got to do is ensure transparency and it will be right. Just use your powers to demand it. Just ring them up and demand transparency within 24 hours and there is no more to be done. We're back on track.' He wouldn't do it. Wouldn't pick up the phone to ensure transparency. Why that is I still don't know, what's in it for him, but that is what happened.

Temple-Smith's evidence on the priority systems was vague. I found it hard to hear what he said, but I think he said there wasn't a priority system in Tasmania. Well, they have always had a priority system in Tasmania. They have had prescriptive water rights, commissioned water rights, temporary water rights. In recent years they have called that 'prescriptive', 'surety five', 'surety six', 'temporary'. In Victoria they have water right sales and over-allocation; in New South Wales they have high security, general security and high flows. It is all over the place. The priority system is everywhere in Australia.

CHAIR - Stuart, I am aware of the time. We don't want to prosecute arguments backwards and forwards. Do you have any other new or additional information so that I can give members a chance to ask you questions?

Mr ARCHER - No problem. The documents in the FOI file are self-explanatory when you get a chance to look at them. We reject this idea that Mackey wants to just increase the size of Hamilton pump scheme. It is just illogical. It shows he doesn't know or understand the commercial basis of it. We've got a suggestion here, a possible course of action. There's nothing new about that. We offered this all the way through; we offered

this back in committee B days to compromise just to save a court case or save a problem. It was rejected. We only got stabbed in the back for our effort. We tried a compromise with Bryan Green - not a compromise so much as a way forward where you get the trust to resign, get a caretaker trust, get transparency and so on. But with this stage all we're saying now is if we can get the priority issue in our favour, the legislative protection, or perhaps a definition of agreements in force with the legislation we already have, might suffice.

The methodology of committee B is recorded, so if anyone wants to review their acreage you can just go back to work and say, 'Okay, exactly on the same methodology you get your review, but no new arguments brought in'. Election of a new trust: we don't care if it's four members or one government nominee, or five irrigators. The original structure of the trust was good because it had pecuniary interest provisions covered under the Local Government Act. That's why it works so well. If someone could download the amendments to the Clyde Water Act 1996 I think you'll find that those producers got taken out of the act.

CHAIR - Stewart, are we going back over that five-point proposal at the moment, that you put forward recently?

Mr ARCHER - No, you've already got that. We're suggesting that if we have new elections to the new trust, the new trust is to start with \$140 000 of debt. We are saying that this is without prejudice to your findings, of course. But just to give you an idea of how we're thinking, we could cope with a commercial settlement of it. If we assume the debt of \$140 000, we manage the debt so that all our irrigators pay the interest repayments, depreciation and any insurance of the Hamilton pump scheme. But irrigators wanting more water over the allocation could subscribe at the pumps and they pay all the power, the repair and maintenance costs and the management costs of one pump. In other words, it's a cross-subsidy of capital only but not of the running costs.

If you want to take it to water trading, that speaks for itself. To my mind it has been an exercise of clear thinking, not a problem. The only problem has been when we've had non-transparency issues, that has been the trouble. For allocating the water, there's methodology there; the supply of water is mainly commercial. The only thing that affects the supply of water is the political decision regarding the lake. Any government money that comes into this could come into it linked to the loss of water in the lake. I don't think government money should come into the trust in confidence because we value our independence in that regard.

The water management plan, I will just make a few comments there. Things have been going along parallel to the water management plan but we haven't been involved; we haven't been represented there. The Clyde Water Trust hasn't made one written submission to the water management plan that I know of. I've tried to find out, but the trust people continue to be there, even though we voted for a motion of no confidence in them. That's an issue for another day, I can't take the time in this committee to talk about that today.

Mr FLETCHER - The core of your proposition is that the 1976 policy is valid; it's never been rescinded and therefore that entitles certain irrigators to take a quantity of water

from the water available to the Clyde Water Trust on a permanent basis. Am I correct in that?

Mr ARCHER - That's right.

Mr FLETCHER - Correct me if I'm wrong, but the one thing that the minutes do not make comment about is the price that might be charged for that water.

Mr ARCHER - Right.

Mr FLETCHER - It says that water is available and it's always been presumed that it would be available on a cost recovery basis.

Mr ARCHER - That's right, yes.

Mr FLETCHER - The water of the trust available to the irrigators on a cost recovery basis, but the minutes don't say that; there's nothing spelled out in the way of policy in regard to that matter.

Mr ARCHER - Yes.

Mr FLETCHER - So the trust has, from time to time, adjusted the price of that water to meet the cost they had incurred. It was \$2.50 a megalitre as I understand and currently it is around about \$12.50 a megalitre, so that is the cost of recovering the water.

The water is not really defined in any of the motions of the trust, as far as I can see. So the water could well include water from Meadowbank because there is nothing in the Clyde Water Trust policy that identifies that it has to be water from here or water from there or water from anywhere else.

So if the trust decides to take on more, or an authority decides to take on board more water, to have more water available, and they used the cost recovery method to recover the cost of doing that, they could honour their contracts to you and to other concerned irrigators by simply adjusting the price of the water.

Mr ARCHER - That is right. I take your point. We are saying that in doing that, in spending a heap of money to provide water for Meadowbank into the river delivery, or authority I will call it, it is a cross-subsidy of priority to low priority.

Mr FLETCHER - Yes, we're placing great faith in the motions, and I want to stand by the motions of the Clyde Water Trust. It has never been rescinded but in doing that, if I stand by that, the trust still has the power - not spelt out in any of its motions or any of its policy - which it has exercised to vary the price from time to time to enable it to continue to do its work.

So the proposition I put is it seems to me that if there was a price mechanism introduced into this, which covered the cost of gaining water from the Meadowbank area, then the problem of supply may well be overcome. It would meet demand.

Mr ARCHER - There isn't a problem with supply. I am saying there is not a problem with supply.

Mr FLETCHER - That's not your decision. Well, you are one of the irrigators and you will eventually vote the board in, but that is a decision of the board to make isn't it, or the trust members to make or the authority to make? That's not a decision of the irrigators to make.

Mr ARCHER - I think it is because to go off and tell people we are going to spend \$300 000 of our reserves on supplying you with water, the water coming in is for the benefit of low surety, which was arguable at the time. I take your point that perhaps they have the power to do that, to spend their reserves, but where do you draw a line? As the Clyde Water Trust, they might move motions that the water is going to cost \$200 a megalitre in the future to supply water to far off areas remote from the River.

Mr FLETCHER - Yes.

Mr ARCHER - It is like having someone who lives in Gagebrook a northern suburb of Hobart - five people living in a modest house - do they get asked to provide a tennis court for a man living in Lipscombe Avenue, Sandy Bay? They don't.

Mr FLETCHER - Through payment of taxes probably they do in some way, but I think reasonable action will see reasonable people distribute the water to the areas of urgent need in a reasonable way.

What I am trying to flesh out here is that I want to stay with the motions and the resolutions of the Clyde Water Trust, as you want me to, but I am saying that there is nothing in the motions or the resolutions of the Clyde Water Trust that prevents them from making these decisions and going wider and supplying water. Reasonably they would not do it, but they could do it if it was a decision of the members to so do.

Mr ARCHER - Well, Hamilton pump scheme is the only one capable of providing a new supply of water. The only other measure they have taken is to change the gates at Lake Crescent and make the canal deeper, which was done by volunteer effort in 1982. My father went there as a 60 year old and used his skills to help build it along with others.

The other thing they did was build a weir at Hamilton, at the Mountford farm, a big earthen weir. You may or may not have seen it, but that isn't a new supply of water; that is to help manage the existing water.

This new pump scheme is a completely new thing to spend so much more money to bring in a new supply of water. I wouldn't like to see that get out of hand because if a small irrigator cross-subsidises someone else's expansion it's inappropriate; where are you going to draw the line there?

Mr FLETCHER - That is a matter of the election of members to the trust and to the managers, and the confidence you have in your managers. But I am asking you, is there anything that you know about in the motions or resolutions of the trust that prevent them from doing this or prevent them from adjusting the charge for water from time to time to recover their legitimate costs?

Mr ARCHER - There is nothing wrong with adjusting the charge because you don't know what outside things might come in. As long as they're meeting their own costs that's all they need to do. Any expansion measures should be paid for on a commercial basis by those people who want to expand. Someone who is remote from the river and he wants to build an irrigation scheme, I am one of those. I have one farm that's remote from the river, want to put in an irrigation scheme and that's all my own money. No trust money ever went into it. So I don't believe in the cross-subsidy idea of someone who is an existing irrigator, cross-subsidising someone who is a new entrant. The new entrant can buy his own right or he can build his own dam, put in his own infrastructure, the same as everyone else has done all over the State. Water is not cross-subsidised generally in the farming community.

Mrs SMITH - Mr Archer, would you accept that any trouble and issues within the Clyde Water district and the Clyde Water Trust commenced with the Water Management Act and some requirements under law that they had to undertake from thereon in? Before that, is it fair to say that everything was managed in a fair and reasonable way with people dealing with the water issues as they arose and managing their properties under that process?

Mr ARCHER - The Clyde Water Trust ran pretty harmoniously up until 1996. But from then on there was manoeuvring for position.

Mrs SMITH - Because of perceived changes to water management Australia-wide?

Mr ARCHER - Yes. But one trustee on the Clyde resigned when he wasn't voted back to the council, that's Ken Downey, and he wasn't ever replaced. If I pick a date off the top of my head, that's the first date when some irregularity started. When he resigned the council should have nominated another person to make up the numbers. Instead, the trust, unbeknown to me - and I am fairly politically aware - changed the legislation so that the trust runs one man short, if you like. And then people started to hear that there is new legislation on the horizon. Perhaps the people on the trust had discussed it with the Government and knew that COAG was going to affect us as well and there was manoeuvring of positions from then on.

CHAIR - Thank you for your evidence, Mr Archer.

THE WITNESS WITHDREW.