

ABC AUDIENCE AND CONSUMER AFFAIRS INVESTIGATION REPORT

Background Briefing 3-part series ***Best laid plans: The Murray-Darling Basin in crisis***

29 April, 6 May and 11 May 2018

ABC News Facebook *Return Flows* video post

26 April 2018

Complaints and scope of review

Audience and Consumer Affairs received a total of five editorial complaints regarding *Background Briefing's* three part series about the Murray Darling Basin Plan. The five complaints are from the Murray Darling Basin Authority (MDBA) and the National Irrigators' Council, both of which raise serious concerns regarding specific issues of accuracy and a lack of impartiality.

The complainants claim that *Background Briefing* and the associated Facebook video post unduly favour the views of critics of the Basin Plan, particularly in relation to the effectiveness of infrastructure subsidy schemes for the recovery of environmental water. A number of factual statements in the programs are disputed by the complainants, who also claim that the coverage lacked material context and key viewpoints.

In keeping with the ABC's complaint handling procedures and the ABC Code of Practice, this report investigates the specific and substantive matters raised in the correspondence. While a complainant has provided detailed concerns about parts 1 and 2 of the series which are addressed in this report, their broad concerns about part 3 of the series lack sufficient detail for Audience and Consumer Affairs to investigate.

The ABC has also received two complaints of a general nature from peak bodies in relation to accuracy and impartiality. Separate to Audience and Consumer Affairs, the ABC has undertaken to respond to these organisations to advise them of the findings of this investigation.

This report assesses the compliance of the three part series and accompanying Facebook video post against the relevant editorial standards for accuracy and impartiality.

Accuracy: *Best laid plans: The Murray-Darling Basin in crisis* - parts 1, 2 and 3

Audience and Consumer Affairs have carefully considered the specific issues relating to accuracy raised by complainants across the three part series, sought information from ABC News management, and assessed the content against the relevant ABC editorial standards:

2.1 Make reasonable efforts to ensure that material facts are accurate and presented in context.

2.2 Do not present factual content in a way that will materially mislead the audience. In some cases, this may require appropriate labels or other explanatory information.

The concerns raised by complainants are outlined and addressed below.

Return flows (part 1)

Complainants claimed that the program made no effort to test the validity of research by Quentin Grafton and John Williams; that the description of return flows was inaccurate because it gave the impression that at best there was “zero net recovery of environmental water because of so called ‘return flows’”; that the swimming pool analogy was misleading; and that the program incorrectly stated the government’s \$3.5 billion investment in irrigation efficiency programs has delivered nothing. Complainants also alleged that the program failed to provide the audience with adequate context: no reference was made to the fact that the majority of recovered environmental water was in fact purchased, not accrued by infrastructure efficiency projects; and the program did not explain how return flows can at times cause significant environmental damage.

Both Professor Quentin Grafton of the Australian National University (ANU) and Adjunct Professor John Williams of the ANU and Charles Sturt Universities are eminently qualified academics and their research on return flows, which was the focus of part one of the series, is highly newsworthy. As specialists in hydrology and water economics, it was reasonable for the program to report in some detail on their research paper into the efficacy of the Basin Plan infrastructure subsidy schemes. With regard to “testing the validity” of the research, it is not the role of ABC news journalists to settle complex scientific disputes, rather, it is to report on new and contentious research findings in context and with clear attribution. In reporting on such research it may also be necessary to report other principal relevant viewpoints on the matters to hand; particularly where the focus of that research is critical of another party.

In this case, Audience and Consumer Affairs note that the description of concerns about the Basin Plan infrastructure schemes and return flows was attributed in the program as the research of Quentin Grafton and John Williams. The issue of return flows was first introduced by the reporter as follows: “Critics of the Basin Plan say the Authority’s numbers are wrong. For several reasons, but here’s the first: it’s because of something called return flows ...”. Then later: “You put Quentin and John together and suddenly you have the potential for some serious water accounting of the Basin Plan. That’s what they’ve done, the two of them have written a paper which they’ve given to us exclusively. It’s about the problem with return flows”.

The program has explained that the reporter used the image of a swimming pool as a “conceptual device to aid the listener” in understanding the complex issues around return flows. Audience and Consumer Affairs are satisfied that the description was adequately contextualised and that listeners would understand the swimming pool not as a literal description of the outcomes of the infrastructure subsidies, but as an analogy to explain the concerns raised by Grafton and Williams.

Similarly, Audience and Consumer Affairs are satisfied that Grafton and Williams’ conclusion that tax payers may be getting little or no environmental return on the \$3.5 billion spent on infrastructure subsidies, was adequately attributed to them:

Sarah Dingle: *Not accounting for original return flows – that half a swimming pool – is very bad news for the Basin Plan, says Quentin Grafton. And it’s really bad news for the taxpayer.*

Quentin Grafton: *So just imagine taking the \$3.5 or \$4 billion of taxpayer’s money and just throwing it down the drain. We’ve spent a lot of money, a huge amount of money, and essentially we’ve got nothing for it.*

With regard to a concern that the program did not explain that the majority of water recovered under the Basin Plan is in fact purchased water and was not accrued through infrastructure subsidy schemes, in Audience and Consumer Affairs’ view the program would have benefitted from providing a brief reference to this fact. However, there was no suggestion in the program that all

environmental water recovered to date was through infrastructure subsidies. Rather, it was made sufficiently clear that according to the MDBA, 2,107 GL of environmental water has been recovered, and of that, infrastructure subsidy schemes have delivered 700 GL of environmental water. The newsworthy focus of the program was the current means by which the MDBA recovers environmental water, which is not through water purchase but through the infrastructure subsidy schemes.

Background Briefing did not examine the issue of environmental damage caused by return flows. However, the program has explained that the scope of the *Background Briefing* coverage was limited to the *quantity* of the water being returned to the river, rather than the quality of water. The program sought to examine whether the quantity of environmental water claimed to have been accrued by the MDBA was accurate, in light of the claims made by Grafton, Williams and others. Audience and Consumer Affairs are of the view that some reference to the issue of water quality would have assisted the audience's understanding of the issues around return flows. However, we are satisfied that the omission of this information would not, given the specific newsworthy focus of the program, materially mislead the audience.

Finding: **no breach**

SDL Adjustment Mechanism (parts 1 and 2)

A complainant claimed that this statement made by the reporter at the end of part one of the program was "a clear error of fact": "*Sarah Dingle: ... In a fortnight, the Senate will vote on the future of the Murray-Darling Basin Plan. If the Senate agrees, there will be basically no extra water recovered for the environment, although we're only half way through the plan.*" The complainant explained: "*If the amendment relating to the SDL Adjustment Mechanism is allowed to stand, it will involve the recovery of an additional 450 GL for the environment*".

Included in the Basin Plan, as part of the Sustainable Diversion Limit (SDL) Adjustment Mechanism, there is the potential to recover a further 450 GL through efficiency measures "with no adverse effect on social or economic outcomes" (<https://www.environment.gov.au/water/publications/mdb/factsheet-sustainable-diversion-limit-sdl-adjustment-mechanism>; <https://www.mdba.gov.au/sites/default/files/Analysis-of-Efficiency-Measures-Final-Report-v2.pdf>). During his interview with the program MDBA CEO Phillip Glyde specifically explained this fact, which was not subsequently included in the broadcast. The program has pointed out to Audience and Consumer Affairs that there is considerable dispute about how, when and if this will be achieved. Irrespective of this, in Audience and Consumer Affairs' view, the 450 GL was relevant and material context when considering what further environmental water *may* be recovered under the Basin Plan.

Reference to the potential recovery of the 450 GL was also omitted from part two of the series, and the reporter stated:

"... And very soon the Senate is facing a key vote; at stake is the rest of the water we've yet to recover for the environment."

"... If this vote passes the Senate, and these projects go ahead, this will effectively bring an end to water recovery under the Murray-Darling Basin Plan."

Further, the website summary for part two of the series states:

*“The Federal Senate is due to vote on major changes to the Murray-Darling Basin Plan – if it passes, it will **effectively end further water recovery for the environment in the river system.**”*

These statements were in reference to the SDL Adjustment Mechanism which was the subject of a Senate vote (605 GL of 2750 GL), however, the SDL Adjustment Mechanism also allows for the potential recovery of 450 GL through infrastructure efficiencies. While accepting that the likelihood of the recovery of the 450GL is disputed, Audience and Consumer Affairs have concluded that reference to the 450 GL mechanism was required material context, particularly given the focus of the program, and as highlighted above, the unequivocal statements from the reporter and posted on the website.

Finding: **breach 2.1**

Senate vote (parts 2 and 3)

A complainant claimed that part two of the series was *“a fundamental misrepresentation of the (Senate) vote, Basin Plan and the process”*, and explained: *“The vote was about overriding an amendment accepted by the government based on the independent expertise-based statutory authority’s recommendation”*. It is also claimed that in part 3 the reporter inaccurately described the Senate vote as *“really problematic”* and possibly *“unlawful”*.

The program did not explain that the Senate vote was a disallowance motion brought by the Greens; ABC News have argued that the omission of this information did not *materially* mislead the audience. Audience and Consumer Affairs agree; it is unlikely that the audience would be familiar with the nature of disallowance motions, and the fact that this was the relevant parliamentary mechanism did not detract from the importance of the vote with regard to the future of the Basin Plan. Further, comments from Phillip Glyde were included in the program to demonstrate that the SDL Adjustment Mechanism, subject to the Senate vote, had been agreed by *“six governments, all of the state governments and the Commonwealth government”*, and that if it did not go ahead *“the Basin Plan itself, the political commitment to that from the six governments, bipartisan commitment, would fall apart”*. This provided necessary context, demonstrating that despite the concerns raised in the program, there was broad support for the SDL Adjustment Mechanism.

A complainant also stated that the program misrepresented the Senate vote as being about whether a further 600 GL of water should be put back into the river system. Audience and Consumer Affairs note that the program made sufficiently clear that the vote was in relation to 36 engineering projects which, it is claimed, will provide equivalent environmental outcomes to 600 GL of environmental water.

In part three of the series the reporter described the Senate decision as *“really problematic”*. Audience and Consumer Affairs note that the view that the outcome of the Senate vote may be *“unlawful”* was properly attributed to Richard Beasley, senior counsel assisting the South Australian Royal Commission into the Murray-Darling Basin. We understand that this view was also held by Bret Walker SC, the barrister chairing the Royal Commission, together with a number of environmental groups. Given that a number of parties, including credible legal experts, have stated that the implementation of the Adjustment Mechanism may be unlawful and subject to legal challenge, Audience and Consumer Affairs are satisfied that it was reasonable in the context for the reporter to state that the vote was *“really problematic”*.

Finding: **no breach**

Description of program participant (parts 1 and 2)

A complainant claimed that former MDBA employee Maryanne Slattery was inaccurately described in the program as a “*high-ranking public servant*”, that Ms Slattery was mischaracterised as a “*whistle blower*” and that she made serious allegations which were without any foundation.

Audience and Consumer Affairs note that documents publicly available online confirm that Ms Slattery’s title at the MDBA during the financial year 2010-2011 was ‘Director Special Projects Natural Resource Management’ and that in 2013 she was ‘Director, TLM Environmental Water Policy’. During a lengthy interview with Ms Slattery, she confirmed with the reporter that her role was “*director of environmental water policy*” at MDBA. Audience and Consumer Affairs further note that Ms Slattery has been described as a “*former policy director*” of the MDBA in other media stories, including the ABC’s *Lateline* program. We are satisfied that it was reasonable for *Background Briefing* to describe Ms Slattery as a “*high ranking public servant*”, and that she was well placed to comment on the issues to hand.

With regard to the description of Ms Slattery as a “*whistle blower*” in part 2 of the program, Audience and Consumer Affairs disagree that this was materially misleading; it is the case that Ms Slattery was a senior officer at the MDBA for some years and that she has on a number of occasions publicly criticised the Authority for alleged irregularities and mismanagement.

Ms Slattery claimed in part two of the program: “*I spoke to a senior person from the New South Wales government and they told me that MDBA had done a deal with New South Wales back in 2014 for MDBA to go as soft as possible on New South Wales in terms of implementing the Basin Plan to make sure that NSW government didn’t walk away from the Basin Plan.*”

This allegation was put directly to the MDBA and a spokeswoman for the NSW Water Minister Niall Blair, and the responses were included in the program. Audience and Consumer Affairs are satisfied that the allegation was highly newsworthy and that Ms Slattery was sufficiently well placed to make such a claim. Crucially, the allegation was put into context with responses from the MDBA and the Minister.

Finding: **no breach**

“Just printing more notes” (part 2)

A complainant claimed that during a discussion between the reporter and Maryanne Slattery about environmental water savings it was erroneously stated that handing a water licence to the Commonwealth Environmental Water Holder (CEWH) in return for infrastructure efficiency subsidies was akin to “*artificially inflating a currency by just printing more notes*”. The complainant explained: “*This is wrong. Water recovery involves the CEWH acquiring existing water entitlements (i.e. from the existing limited consumptive pool), so that that water can no longer be used by irrigators but is instead used for the environment*”. Another complainant explained that the broadcast was incorrect because where irrigators are part of a Sustainable Diversion Limit (SDL) for an area, this ensured that it is “*real water*”.

This is the most relevant segment of the broadcast:

Sarah Dingle: *Yes, you're talking about the transfer of water on paper, I'm talking about actual water. Who is monitoring that actual water goes back into the system as a result of these projects?*

Phillip Glyde: *The monitoring is simply through the...is the entitlement itself that's held by...now instead of being held by the irrigator is held by the Commonwealth Environmental Water Holder.*

Sarah Dingle: *The Commonwealth Environmental Water Holder is like an account for all Basin water bought for the environment. In that exchange, I'm pretty sure Phillip Glyde and I are talking about different things. So I put Phillip Glyde's responses to Maryanne Slattery.*

When I asked the head of the Murray-Darling Authority Phillip Glyde about this, he kept saying that the check was the transfer of the entitlement itself.

Maryanne Slattery: *Well, that doesn't make any sense. And that's actually part of the problem because creating a statutory water licence and handing that statutory water licence over to the Commonwealth Environmental Water Holder is not a control check, that's creating a licence. It's creating a licence but in that creation of that licence, nowhere is there a validation that that water exists.*

Sarah Dingle: *Is it a bit like currency, when you create water licences, are you artificially inflating a currency by just printing more notes?*

Maryanne Slattery: *Yes, that's right, that's exactly right. A whole lot of statutory water licences have been created and if they are not underpinned by real water, then that is exactly what is happening; you're printing money.*

Sarah Dingle: *Why are we printing money? Why doesn't the Authority or the Department of Agriculture and Water Resources want to have an accurate picture of what we're doing with water?*

Maryanne Slattery: *I think there's a lot of pressure on the bureaucrats to deliver the Plan in full and on time.*

As explained in part one, under the irrigation efficiency program, irrigators receive subsidies to upgrade their infrastructure. In exchange for this payment, a proportion of the irrigator's water entitlement is transferred to the CEWH, as Phillip Glyde explains above.

If the irrigator does not observe their revised entitlement, a compliance issue arises.

On review of the full interviews with the program participants, it appears that the reporter did not sufficiently clarify the matters of contention. Audience and Consumer Affairs have concluded it was misleading to suggest within the context provided in the broadcast that, as a direct result of the infrastructure subsidies additional water licences are being created and are equivalent to "printing notes". A portion of an existing entitlement, permitting the irrigator to use actual water, is transferred to the Commonwealth Environmental Water Holder. No new entitlement is created.

Finding: **breach 2.2**

Senator Rex Patrick documents (part 2)

A complainant claimed that part two of the series gave the erroneous impression that the MDBA had failed to release all pertinent documents requested by Senator Rex Patrick in a Senate Order.

On review of the broadcast, Audience and Consumer Affairs are satisfied that it was made sufficiently clear in the program by Phillip Glyde that the MDBA had released all relevant documents:

Phillip Glyde: *We've explained to Senator Patrick that what he asked us for was the documents that we had provided and that we had prepared. The bit that is missing is the interaction with ... the final interaction with the states where the projects, in order to be approved, have to be amended, changed, et cetera, as we required in those lead-up to those gates and so that's the part of the information that isn't there. The bottom line is, Sarah, that the projects have been approved. The other information, as I've said, is the responsibility of the state governments. They have that information.*

Sarah Dingle: *So Phillip Glyde is saying it's not the Authority's responsibility to fill in the gaps, it's the states'. At time of recording, South Australia and Victoria had agreed to send Rex Patrick their business cases. New South Wales had offered him a meeting.*

Finding: **no breach**

Cap factors (part 2)

Complainants claimed that the program gave the incorrect impression that cap factors could affect the value of held water entitlements, which may in some circumstances be used by banks and financial advisers as an asset against which to secure mortgages. A complainant said that *"Characterising the updating of cap factors as "the government is messing with the exchange rate" is simply wrong"* and claimed that a response from the MDBA on the issue had been misrepresented.

Audience and Consumer Affairs note that this segment of the program featured a number of relevant perspectives, which were clearly attributed and in context. Former MDBA employee Maryanne Slattery and former Acting Commissioner of the Land and Environment Court, Professor John Sheehan, expressed concerns that changes in cap factors may pose a risk to mortgage holders.

This particular issue was also raised with the MDBA's Phillip Glyde during his interview with the program. Although his response was not used in the final broadcast, Mr Glyde confirmed that uncertainty about cap factors was an issue for mortgages and businesses:

Sarah Dingle: *There are some criticisms that cap factor calculations are not transparent and they can change you keep tinkering with them. Which is a real problem because people have their mortgages based on the value of their water entitlements.*

Phillip Glyde: *Yeah and it's a really it's a really complex part of the model and the modelling and a lot of assumptions go into it. ... So there were cap factors that were used at the very start of the process that were recognised to have been in error that they needed to be corrected and it's up to the state governments to correct those factors. They can be they can be affected by a variety of different things. But the bottom line is it is an area of uncertainty and that people's mortgages their businesses do depend a bit their certainty depends on being clear about and that's one of the things that we. One of the other things about the plan is that we're trying to increase the level of certainty to make sure that businesses can invest confidently into the future and so resolving the cap factor question is pretty important*

...

Audience and Consumer Affairs are satisfied that the statement from the MDBA which was read out in the program was in no way misrepresented, and indeed it clearly provided the Authority's position on the issue of whether a cap factor ascribes a monetary value to a water entitlement.

Audience and Consumer Affairs are satisfied that the issues raised were newsworthy, that Phillip Glyde, Maryanne Slattery and Professor John Sheehan were all well placed to provide comment on the issues to hand and that their views were adequately contextualised.

Finding: **no breach**

Impartiality: Best laid plans: The Murray-Darling Basin in crisis - part 1

Complainants alleged that the Grafton and Williams modelling on infrastructure subsidies was treated as an authoritative source, while the MDBA's position and research was given no standing; that the reporter's narration unduly favoured critics of the MDBA; and that the program did not provide balance in line with the weight of evidence. A further complaint claimed a lack of balance because the views of irrigators were not included in the program.

Audience and Consumer Affairs have considered the specific issues raised by the complainants, sought and reviewed information provided by ABC News, and assessed the content against the relevant ABC standard:

4.5 Do not unduly favour one perspective over another.

The debates surrounding the implementation of the Basin Plan are complex, contested and highly politicised. This series went to air during a South Australia Royal Commission into the Basin Plan and in the run up to the crucial Senate vote on the SDL Adjustment Mechanism, which was strongly supported by the Greens, environmental groups and a number of eminent scientists. A previous attempt to pass an SDL Adjustment Mechanism legislation in February of this year had failed, and there were considerable concerns that the political commitment to the Plan from the six Basin states would, as Phillip Glyde expressed, "*fall apart*" if this disallowance motion was successful. The Basin Plan was and continues to be a newsworthy and divisive subject.

Given the contentious nature of the Basin Plan and the timing of this program, the requirements for *due* impartiality were necessarily high: the issues surrounding the Plan, including the disputed efficacy of the infrastructure subsidy schemes, were at the centre of a current public policy debate. ABC audiences would have high expectations that *Background Briefing* would fairly present a consideration of the key relevant perspectives on the issues of contention.

The research on return flows by Quentin Grafton and John Williams which was prominently featured in the program is newsworthy; they are both highly credentialed and eminent academics and the issue is in the public interest. Audience and Consumer Affairs note that the relative importance of return flows and the difficulties in measuring the impact of irrigation efficiencies are well recognised in the expert literature. It is the size of recoverable return flows, and whether these have been properly accounted for in the Basin Plan water accounting, that was the primary issue of contention in the program.

The estimates put forward in the broadcast by Grafton and Williams of the volume of return flows to the Murray Darling Basin are alarming: they calculate that at best, irrigation efficiencies have had zero net impact on water recovery, and at worst, they have cost the Basin an extra 140 GL in environmental water. Infrastructure subsidies are expensive, and on their calculations, Grafton and Williams claim that the money spent to date – around \$3.5 billion – has been wasted as a result of the Basin Plan, and that "*we've (the taxpayer) got nothing for it*".

In Audience and Consumer Affairs' view it was reasonable for the program to highlight the work of two eminently qualified experts. New research from credible sources which challenges an established or authoritative position is newsworthy, unlikely to be known to the audience, and needs to be explained at some length.

However, given the contentious nature of the matter to hand, in Audience and Consumer Affairs' view the alarming conclusions of Grafton and Williams' latest research, which the program said had been provided to it exclusively, needed to be put clearly and directly to the MDBA by the program and their response included in the broadcast. The failure to permit the MDBA to directly respond to the estimates and the basis on which they had been calculated had the effect of unduly favouring Grafton and Williams' position on the size of return flows in the Murray Darling Basin and the impact on water recovery. This was compounded to some degree by the fact that Grafton and Williams were featured in the program describing the MDBA's response to their research, which they characterised as complacent and disinterested.

With regard to complaints that the program narration unduly favoured the views of critics of the MDBA, Audience and Consumer Affairs note that at times criticisms of the Basin Plan were incorporated into the reporter's narration, either as conclusive statements or as rhetorical questions to frame the unfolding story, without clear attribution. We also note that information provided by the MDBA was qualified by the reporter as "*claims*" whereas such caveats were not always applied to the conclusions of Grafton and Williams. Cumulatively, over the course of the program, this use of language had the effect of unduly favouring the views of critics of the Basin Plan.

A complainant has also specifically claimed that the qualifications of the critics were featured prominently in the program, in contrast to those of Phillip Glyde. ABC News have explained that the intent of the script was to highlight the credentials of those featured and did not have the effect of unduly favouring critics of the MDBA. Audience and Consumer Affairs accept that this was the case. We are satisfied that it was made sufficiently clear that Phillip Glyde, as CEO of the statutory Authority, was well placed to discuss the concerns raised in the program.

Another complaint has alleged a lack of balance because the program did not feature the views of irrigators. The focus of the program was largely about Grafton and Williams' estimates and the efficacy of the Basin Plan; there were no direct or implied criticisms of the irrigation community and we are satisfied that it was not necessary to include their views to achieve impartiality.

Audience and Consumer Affairs have concluded that, given the high contention of the matters to hand; the failure to put Grafton and Williams' research to the MDBA specifically and directly and include their response; and at times the tone and use of language in the narration, this edition of *Background Briefing* unduly favoured the views of critics of the Basin Plan and was not in keeping with the ABC's impartiality standards.

Finding: **breach 4.5**

Impartiality: Best laid plans: The Murray-Darling Basin in crisis - part 2

Complainants also raised concerns about impartiality in part two, particularly in relation to the "*just printing notes*" section which is also the subject of an accuracy breach as explained above. One complainant claimed that: "*This is yet another example of an unqualified opinion being presented with more weight and as more expert than that of the MDBA, the independent agency that is qualified to speak with authority on the matter at hand*".

Audience and Consumer Affairs have considered the specific issues raised by the complainants, sought and reviewed information provided by ABC News, and assessed the content against the relevant ABC standard:

4.5 Do not unduly favour one perspective over another.

As acknowledged in the accuracy review, it was misleading to suggest that as a direct result of the infrastructure subsidies *additional* water licences are being created, which is equivalent to “*printing notes*”. A portion of an existing entitlement, permitting the irrigator to use actual water, is transferred to the CEWH. No new entitlement is created.

The reporter concluded this segment by asking a vocal critic of the MDBA “*Why doesn’t the Authority or the Department of Agriculture and Water Resources want to have an accurate picture of what we’re doing with water?*”. This question appears to accept as fact that the MDBA and DAWR do not want to have an accurate picture of water recovery.

Audience and Consumer Affairs have concluded that the misleading characterisation of how water entitlements relate to the infrastructure subsidy schemes, together with the structure of this section and the conclusion drawn by the reporter: “*Why are we printing money? ...*” *unduly* favoured the views of critics of the Basin Plan.

Finding: **breach 4.5**

Accuracy: ABC News Facebook Return Flows video post

Complainants alleged that the *Return Flows* Facebook video is inaccurate because it claims that there is “*zero net recovery of environmental water because of so called ‘return flows’*” and gives the impression that infrastructure efficiency projects are the “*main*” way water is recovered under the Basin Plan, when most of the environmental water recovered to date is from water purchase.

Audience and Consumer Affairs have carefully considered the specific issues relating to accuracy raised by the complainants, and assessed the content against the relevant ABC standard:

2.1 Make reasonable efforts to ensure that material facts are accurate and presented in context.

The *Return Flows* video was posted on the ABC News, ABC RN, ABC Science and *Landline* Facebook pages under the heading “*Heard of return flows? Here’s how you can spend \$3.5 billion of taxpayers’ money on the environment and get nothing*”. The video was also embedded in a number of news stories about the Murray Darling Basin Plan, in coverage from ABC Rural and ABC News. The video is described in the radio broadcasts as an “*explainer*” about return flows.

It appears to Audience and Consumer Affairs that the video is largely an explanation of the research findings of Quentin Grafton and John Williams, however, rather than clearly attributing to them the description of the outcomes of the infrastructure subsidy schemes, their conclusions are at times presented as fact. The heading accompanying the video “*Heard of return flows? Here’s how you can spend \$3.5 billion of taxpayers’ money on the environment and get nothing*” is a factual statement, where presumably it should have been attributed to Grafton and Williams. This lack of attribution is also apparent in the video itself, for instance:

Now under the Basin Plan, Australia tries to get more water for the Basin river system by giving irrigators subsidies to upgrade their infrastructure ... As a condition of receiving the cash, I say I’ll give half the extra water I’ve saved back to the river and I get to keep the other half. Sounds okay but it’s not.

Now the environment gets much less than it did with the original return flow.

So I've gotten some sweet new gear for farming, and more water. But the environment has lost out. And the taxpayer has spent a lot of cash. Three and a half billion to date.

The staggering thing is, we've spend this without properly measuring return flows. So the Federal Government says the environment benefits. But if we don't know how much water was leaking in the first place, we can't say there's actually any extra water for the environment.

Conclusions that “*Sounds okay but it's not*”, “*Now the environment gets **much less** than it did with the original return flow*”, and “*But the environment has **lost out***” are presented as factual statements, however these are the views of Grafton and Williams, which are highly disputed by key Basin Plan stakeholders.

With regard to the lack of context in the video about the total amount of water recovered under the Basin Plan, including the fact that the majority of water with the CEWH was in fact purchased, this information would certainly have contributed to the audience's understanding. However, in Audience and Consumer Affairs' view, the more significant issue is the lack of clear attribution, and at times the presentation of Grafton and Williams' estimates as factual content.

Finding: **breach of 2.1**

Impartiality: ABC News Facebook Return Flows video post

Complainants claimed that the video failed to canvas any alternative views and presented disputed analysis as fact. Audience and Consumer Affairs have considered the issues raised by the complainants, information provided by ABC News, and assessed the content against the relevant ABC standard:

4.5 Do not unduly favour one perspective over another.

As described above, the heading of the video: “*Heard of return flows? Here's how you can spend \$3.5 billion of taxpayers' money on the environment and get nothing*”, and aspects of the commentary provided by the reporter appear to present the research by Grafton and Williams as fact, rather than clearly attributing their analysis. Conclusions that “*Sounds okay but it's not*”, “*Now the environment gets **much less** than it did with the original return flow*”, “*But the environment has **lost out***” and “*we can't say there's actually **any extra** water for the environment*” are presented as factual statements, rather than expert opinion which is highly disputed by key Basin Plan stakeholders. There is no response to these conclusions from the MDBA or the Department of Agriculture and Water Resources.

The video ends with the statement “*\$3.5 billion for best case scenario, nothing? That's return flows. And that's a problem*”. Although this statement is preceded by a description of Grafton and Williams' conclusions, given the style of presentation which is an “*explainer*” by the journalist direct to camera and again a lack of clear attribution, an audience member could reasonably interpret this conclusion as being a factual statement, rather than an issue which is strongly contested.

The video was intended as a brief “*explainer*” of the newsworthy issues around the infrastructure subsidy schemes aimed at a lay audience, and not as a detailed analysis of the matters raised by Grafton and Williams. However, given the high contention of the Basin Plan, the lack of clear attribution to Grafton and Williams for a number of factual statements, the conclusive language

used by the reporter and the omission of any alternative substantive perspective on the issue of return flows, Audience and Consumer Affairs have concluded that the video unduly favoured the views of critics of the Basin Plan.

Finding: **breach 4.5**

Audience and Consumer Affairs
2 November 2018



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Dear Background briefing team

I am writing to express concerns about the misleading and factually inaccurate part 1 of the story on the Murray Darling Basin airing on Background briefing on 29 April 2018 and the various promotions including the video on social media on Return Flows.

Before looking at the facts as presented and the perceptions apparently encouraged, I make the general point that, to my knowledge no irrigators or representatives of irrigation communities, have been included in this story. Nor have any scientists who have contrary views to those expressed by Professor Grafton and Dr Williams.

The Murray Darling Basin Authority has been included but they are an independent body, they do not represent irrigators or environmentalists.

The program has presented a very negative view of progress on the Basin Plan.

It focuses in particular on 'return flows'. In doing so the program leaves listeners with the false impression that there may be a zero or worse recovery of water for the environment.

This is incorrect.

The comment is based on (disputed) analysis undertaken on on farm efficiency programs. This analysis says that there is no net gain from on farm efficiency because of removal of run-off from the system. This in itself is wrong, but I will come back to that.

2106.4 GL is now held by the Commonwealth Environmental Water Holder (CEWH) for the environment. That is delivered on top of base flows (most of the water in the rivers has always stayed in the river).

Less than 15% of water recovered for the environment comes from on-farm efficiency. 303.4 GL of the 2106.4 GL comes from on-farm efficiency works.

That is the only portion of water that the argument on return flows can be applied to.

In story that amount was quoted as 700GL, it is in fact 303.4. The other amount was for system efficiencies all water saved from these generally went back to the environment (that's because it was things like reducing evaporation, improving metering, automating controls etc).

Unfortunately at several points the presentation allows a perception that the amount of water claimed to have been lost from return flows actually negates all water saved. This is a completely false perception that I would suggest is allowed to stand in the story because no effort is made to clarify it.

85% of water saved (and now held by the CEWH) comes from purchased water, off-farm efficiency and other recoveries or gifts. The argument about loss of return flows does not apply to those forms of recovery.

Lets be clear about that. For 1803GL of recovered water there is no possible argument that there has been a reduction in return flows.

The program then goes on to run the claim by Professor Grafton and Dr Williams that at very best the net gain for the environment is zero from money spent on on-farm efficiency.

For that to be correct then 100% of pre efficiency work excess water had to find its way back into the river (because the figures relate to surface flows).

I would accept that the actual figure is hard to estimate but it is certainly no-where near 100%, perhaps not even 25%. There are several reasons for this:

- Under old less efficient watering systems run-off did not always go back into the rivers. In fact much effort was made to ensure it did not, that is because it carried (particularly a couple of decades ago) high nutrient levels and so on.
- Many large irrigation districts were terminal systems, the run off did not go back into the river. That applies to districts including Murrumbidgee, Coleambally and Western Murray (just to mention three I know of). If the assessment being used as the basis for this story (which I have not seen) does not separately identify and account for the pre-efficiency measure differences in each of the areas then it is fundamentally flawed.
- The analysis (as Background Briefing described it) ignored the fact that much of the efficiency work involved reducing seepage and evaporation. None of that water could be counted in return flows.
- Previously a large portion of the excess water applied to crops went into the ground and added to the water table, in doing so it lifted the water table creating salinity problems (One of the great environmental achievements of the last 30 years has been the virtual elimination of those issues in the basin). Again this water going into the water table was not run-off.
- In a number of areas run off from large schemes was intercepted by other users (graziers etc).

For these reasons the argument that 50% of run-off has been lost now is very unlikely to be valid and the argument is strongly disputed by other experts. The view put forward on the program is, in my view wrong, however its proponents are entitled to argue it – the ABC should ensure that those who disagree have adequate opportunity to explain why.

More generally on the program there is a fundamental lack of balance and appears to have been no effort to talk experts with contrary opinions. For example:

- Why no mention of the Barrages on the lower lakes and the role they play in reducing water movement in the Coorong?
- Why no discussion with farmers on Lake Albert advocating an interconnector to improve water quality in the lower Coorong?
- Why no discussion of the amount of water lost to evaporation from the lower lakes under the current management regime – an amount that is far bigger than the total amounts involved in on farm efficiencies?

In saying this I am certainly not arguing that the Coorong is healthy. It is far from it but it needs thought about whether the strategy of just pushing flows to the Murray Mouth via the barrage at the Northern end is capable of providing the water quality in the Southern end. I am not an expert but I know there are a range of solutions the program did not canvass.

It appears part two of the program is going to make negative comments about the 605GL of SDLAM projects that will be voted on by the Senate in a week or so. I recently put out a media release on this which I have attached.

In brief though it needs to be absolutely clear that the SDLAM was an integral part of the Basin Plan as agreed in 2012. The measures deliver water for the environment in many cases and in others they reduce losses or introduce further system efficiency. It is true some have a lot of planning to do but others are in place (some measures to water wetlands in Victoria are already operating), the key thing to remember is that in 2024 there will be a reconciliation and if the projects don't deliver the anticipated benefits the equivalent water will have to be recovered. Irrigators and Irrigation communities essentially are bearing the risk on this.

It is also very clear that if the SDLAM is voted down we no longer have a Basin Plan. That is not an outcome irrigators or irrigation communities want and I certainly don't see how it can help the environment.

As always NIC would be happy to discuss this and take part in ABC programs referring to the Basin Plan. It is disappointing that for the third program in a row (4Corners, Lateline & Background briefing) the ABC has failed to seek any comment from irrigators.

Yours sincerely



Steve Whan
CEO
28 April 2018

No risk to Basin Plan targets in SDL projects

Irrigators and irrigation communities bear 100% of the risk if the [36 Sustainable Diversion Limit \(SDL\) Adjustment Projects](#) (soon to be voted on by Parliament) are not successfully implemented, that's the message the [National Irrigators Council](#) has given the Productivity Commission's review of the Murray Darling Basin Plan.

NIC CEO, Steve Whan said "these 36 projects are all about delivering water more effectively to the environment – without them the Basin Plan cannot meet its environmental goals.

"They include infrastructure to deliver water to floodplains and wetlands in South Australia, Victoria and NSW; along with projects to remove the natural constraints stopping the delivery of higher flows and others including reconfiguration of Menindee Lakes."

The [NIC submission to the Productivity Commission](#) says, "There is a misconception that SDL adjustment projects represent a risk to the Basin Plan's environmental objectives.

"The projects need to be seen as investments in modernising the way water is stored, conveyed and ultimately delivered within and across river systems. If State governments fail to deliver the agreed projects or the projects fail to generate the envisaged benefits, it will be irrigators and ultimately irrigation communities who will be required to give up more water entitlement.

"In that sense, 100% of the risk is effectively being born by food and fibre producers and irrigation communities".

Steve Whan said, "the critical point is that the 605GL assessment attached to these projects is subject to a full reconciliation in 2024. If the projects fail to deliver their projected outcomes, the gap is met by acquiring water from irrigators.

"It is absolutely true that some of the projects require much more work. They are in their early stages. The planning, consultation and implementation is still to happen.

"NIC would encourage communities, scientists, environmentalists and irrigators to actively engage in the planning process to ensure that these projects do deliver the environmental benefits anticipated.

'It is vital that implementing the SDL adjustment measures projects, State governments are able to adopt an adaptive approach, they must be given the flexibility to modify projects and be encouraged to bring forward new proposals in the light of new knowledge.

"There is no downside to allowing maximum flexibility. Irrespective of the final shape of projects in an equivalent flow sense, there will be a full reconciliation in 2024."

Media Contact: Steve Whan 0429 780 883

Date: 19 April 2018

From: anonymous@your.abc.net.au
To: [Steve Whan](#)
Subject: Contacting the ABC
Date: Thursday, 3 May 2018 10:09:54 AM

Dear Steve Whan

This email provides a copy of your comments recently submitted to the ABC via the online email form located on this webpage :

<http://abc.net.au/contact>.

Yours sincerely,

ABC Audience & Consumer Affairs

****IMPORTANT NOTE:** Please do not reply to this message. You are welcome to submit any further comments you may have using the form available here -

<http://abc.net.au/contact> **

First name: Steve
Surname: Whan
Email: ceo@irrigators.org.au

Location: ACT

Response Required: Yes

Program: Background Briefing

Program Date: 29/04/2018

ABC Service\Network: Radio National

ABC Recipient: Audience & Consumer Affairs

Subject: Background briefing story on Murray Darling Basin Plan

Your Comments: I have put in a detailed email complaining to Background Briefing about the story aired as part 1 on Sunday 29 April. Despite the fact that there is part 2 to this story on this Sunday I have not received a substantive response to my complaint.

The story and also the social media summary video in particular gave a false impression about water recovery under the Basin Plan. In my view it breaches ABC editorial guidelines in two areas, it was factually inaccurate by giving the impression that there was zero net recovery of environmental water because of so called 'return flows'. Return flows apply to a small part of the water recovered through on farm efficiency. The program implied they applied to 100% of those returns. It also stated that efficiency projects are the "main" way water has been recovered. In fact on farm efficiency makes up less than 15% of the total recovery and only a small portion of that could be said to have a return flows question. I can provide more factual detail on this.

The second aspect of this story breaching ABC editorial policy is in its failure to canvass alternative views. The program used extensively two scientists whose views are not shared by scientists and experts in the water field. It interviewed some others who are critical of irrigators but did not interview any irrigator or any representative of irrigators. The program attempts to suggest that it provides balance by talking to the Murray Darling Basin Authority however the authority is independent it does not represent irrigators or irrigation communities.

This story displays a very pronounced bias in its presentation and tone. Use of words like "on paper" for the environmental water holdings for example when it is established fact that the holdings are very real and have in fact been used to supply more than 750 watering events (ie actual water down a river). It allows incorrect statements to be treated as fact and fails to canvass alternative views.

I seek urgent action from the ABC to ensure some factual accuracy and balance in its coverage.

Regards
Steve Whan
CEO, National Irrigators Council

-

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From: [Steve Whan](#)
To: ["background.briefing@abc.net.au"](mailto:background.briefing@abc.net.au)
Subject: Comment on part two of MDB story
Date: Thursday, 3 May 2018 3:51:00 PM

Hello

I have just listened to part two. I did note the attempt to acknowledge that the Grafton argument is disputed however I still think given the tone of presentation and the very real bias demonstrated that this story does not meet an adequate standard for the ABC. I have made comments again on your feedback page which I have copied below. As always very happy to discuss and give our side to any attempt at balanced reporting.

More details of comments:

- I don't think a mention of NIC really constitutes balance! You have still failed to acknowledge that your argument on return flows cannot apply to the amount of water you suggest. 303GL not 700GL for a start and then it fails to differentiate the different types of on farm measures. For example if someone uses Federal funds and puts up shade cloth, how does that saving on evaporation and transpiration cost anything from return flows?
- On the SDL projects you imply that these were not part of the plan, they were an integral part of the plan and you fail to talk to any proponent scientist. Or even to acknowledge the results from the ones that are in operation. A key omission though is that you don't acknowledge that there is a reconciliation in 2024, I sent you a media release outlining this last week.
- "deal with NSW" - not something I know about even though personally I was Shadow Minister for water at the time you allege it to have happened. Point is that there was no evidence to back up the allegation.
- Northern Basin meters - it really is important to read the compliance reports and acknowledge that a lot of action is being taken. Irrigators want strong compliance (i have made a number of public comments on this) - but it is important to understand that in overland flows it is not metering it is measuring. Thus just giving a throw away line that "one third dont even have meters " is misleading and displays some lack of knowledge of the area.
- You are wrong about 'paper water'- when you have an entitlement that is real water and is able to be used. That is how the CEWH has managed to have more than 750 environmental watering events since the Plan came in. All the entitlements sit within the SDL for each area that ensures you are not just printing money.
- Your program is almost there on cap factors but with just a bit of an error. The cap factor applies to the reliability of supply in a catchment. Its adjustment could lead to a change in the amount of water that needs to be recovered for the environment but it wouldn't necessarily affect the value of held entitlements. The cap factors dont just change at odd times, they are a part of the Water Resources Plan process the States are

currently going through so they will be set (if they make the deadlines) by the middle of next year. Water entitlements are already counted by the banks as assets though. NIC is aware that some farmers in drought have had banks push them to sell permanent entitlements to bring down debt, so that problem you highlighted is already very much there. The reason there are no overall stats is that is part of the bank client relationship but you can assume that everyone who owns an entitlement lists it as an asset for the bank if they are borrowing money (and I've yet to come across a farmer who isn't!)

Again happy to discuss at any time. I still note no irrigator spoken to in the making of the story and no alternative to Wentworth Group scientists. Still very unbalanced.

Steve Whan

Chief Executive Officer

Email: ceo@irrigators.org.au

Mobile: 0429780883

Phone: 02 62733637

NFF House

14-16 Brisbane Ave

Barton ACT 2600



Web: www.irrigators.org.au

Twitter: @Nat_Irrigators

From: anonymous@your.abc.net.au
To: [Steve Whan](#)
Subject: Contacting the ABC
Date: Tuesday, 31 July 2018 1:37:36 PM

Dear Steve Whan

This email provides a copy of your comments recently submitted to the ABC via the online email form located on this webpage :

<http://abc.net.au/contact>.

Yours sincerely,

ABC Audience & Consumer Affairs

****IMPORTANT NOTE:** Please do not reply to this message. You are welcome to submit any further comments you may have using the form available here -

<http://abc.net.au/contact> **

First name: Steve
Surname: Whan
Email: ceo@irrigators.org.au

Location: NSW
Response Required: Yes
Program: Background Briefing
Program Date: 29/04/2018
ABC Service\Network: Radio National
ABC Recipient: Audience & Consumer Affairs
Subject: Followup on progress with C18524-18
Your Comments: Hello, some months ago I made a complaint with the above reference number via this web site. I also sent emails direct to the program and industry peak bodies wrote to ABC management.

To date I have received no response to the substantive issues raised. This seems like an unreasonable length of time and I would appreciate an update.

Thank you
Steve Whan

-

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From: [Steve Whan](#)
To: [ABC Corporate Affairs8](#)
Subject: RE: Followup on progress with C18524-18
Date: Monday, 3 September 2018 5:05:00 PM

Hello Denise,

Thank you for the response below to my question about progress on my complaints in April and May. I note the complaint response is still not finalised.

I wanted to point out that last week the Productivity Commission released its draft 5 year review of the Basin Plan. In that review it deals with the claims about return flows made some academics and reported as fact by your Background briefing program. The Productivity Commission points out the flaws in the argument and rejects the claim of no real water being recovered. This independent body strongly supports the position I have put to you and is worth noting in your consideration of the complaint.

I would further note that ABC's web site continues to use the erroneous video explanation of return flows titled "How the Murray-Darling Basin Plan works" in stories. Most recently in this story <http://www.abc.net.au/news/2018-08-30/pc-report-into-murray-darling-basin-plan/10181840> posted four days ago. Firstly the video does not explain the Basin Plan at all, it seeks to explain return flows but in doing so presents a false picture of those flows. I would suggest to you that continuing to use this video so many months after you have had a complaint and with substantial evidence of its errors is ethically unsustainable.

I look forward to the resolution of my (and other complaints) on this issue.

Regards
Steve Whan

From: ABC Corporate_Affairs8 [mailto:Corporate_Affairs8.ABC@abc.net.au]
Sent: Thursday, August 2, 2018 2:22 PM
To: Steve Whan <ceo@irrigators.org.au>
Subject: re: Followup on progress with C18524-18

Dear Mr Whan

Thank you for your email.

Your complaints of 28 April, 1 and 3 May regarding Background Briefing 'Best Laid plans' are currently being investigated by Audience and Consumer Affairs, a unit separate to and independent from ABC program areas. The complaints are being reviewed together and I will respond substantively as soon as this process is complete.

I sincerely apologise for the delay in responding; the matters under review are complex. I would like to assure you that the concerns you raised are being given careful consideration. For your reference, the ABC's Code of Practice is available here:

<http://about.abc.net.au/reports-publications/code-of-practice/>

Yours sincerely

Denise Musto
Investigations Manager
Audience and Consumer Affairs

To: Audience & Consumer Affairs
From: Steve Whan (ceo@irrigators.org.au)
Subject: Followup on progress with C18524-18
Date: 31-Jul-2018 13:38

Below is the result of your feedback form. It was submitted by Steve Whan (ceo@irrigators.org.au)

ABC program: Background Briefing

Response required: Yes

Date of program: 29-Apr-2018

Contact type: Complaint

Location: NSW

Subject: Followup on progress with C18524-18

Comments: Hello, some months ago I made a compliant with the above reference number via this web site. I also sent emails direct to the program and industry peak bodies wrote to ABC management.

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Thank you
Steve Whan

Network - Radio National
RecipientName - Audience & Consumer Affairs
Referrer - Complaint

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