



24 April 2018

Mr Grant Hehir  
Auditor-General  
Australian National Audit Office  
19 National Circuit  
Barton ACT 2600

By email: [grant.hehir@anao.gov.au](mailto:grant.hehir@anao.gov.au)

Dear Auditor-General

**Allegations concerning the Murray-Darling Basin Plan**

We refer to the allegations raised in analysis by The Australia Institute (enclosed) and various media reports relating to the purchases of water for environmental flows in the Murray-Darling Basin.

The analysis and reports allege that the Department of Agriculture and Resources, which manages the purchase of water, significantly overpaid vendors for water in the Warrego catchment, Tandou and the Condamine-Balonne Valley.

If true, this would mean that the Federal Government has not achieved value-for-money for the taxpayer in executing the Murray-Darling Basin Plan.

Accordingly, we ask you to investigate these allegations and any other matter you consider relevant arising out of the analysis conducted by The Australia Institute including, but not limited to, all purchases of water by the Commonwealth to ensure they have met the requirements of the Commonwealth Procurement Rules.

Yours sincerely,

Rex Patrick  
Senator for South Australia

Stirling Griff  
Senator for South Australia

Rebekha Sharkie MP  
Member for Mayo

Sarah Hanson-Young  
Senator for South Australia

The Hon. Tony Burke  
Member for Watson

Cory Bernardi  
Senator for South Australia

# That's not how you haggle....

## Commonwealth water purchasing in the Condamine Balonne

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*The Australian Government bought 29 gigalitres of water for \$80m in the Condamine-Balonne valley.*

*The vendors originally insisted on \$2,200 per megalitre. But after negotiation, the Government paid a higher price - \$2,745 per megalitre. Worse, the water has no legal status outside the farm gate and shouldn't be counted towards the water recovery target.*

Maryanne Slattery

Rod Campbell

March 2018

## ABOUT THE AUSTRALIA INSTITUTE

The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. We barrack for ideas, not political parties or candidates. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues.

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# Summary

The Department of Agriculture and Water Resources (DAWR) is responsible for purchasing water to restore water use in the Murray-Darling Basin to sustainable limits. Achieving that target in the Condamine Balonne Valley in Southern Queensland has been difficult. In July 2017, DAWR purchased nearly 29 gigalitres of water for nearly \$80m. There are a number of issues with the purchase.

The purchase was well above the value recognised by the vendor, Eastern Australia Agriculture Pty Ltd (EAA), who recorded a \$52m profit on the transaction. EAA's entire properties, including the water licences were valued at \$107m in total, just \$27m more than DAWR paid, despite that EAA retained more water than they sold - 31.6 gigalitres. On this basis alone, it appears that DAWR have paid tens of millions of dollars too much.

EAA's original asking price was \$2,200 per megalitre. DAWR displayed Pythonesque haggling skills and paid a final price of \$2,745 per megalitre. DAWR paid 25% more per megalitre than originally requested by EAA, 139% higher than the Commonwealth had previously paid for the same type of licence and 85% higher than the average price for a more reliable type of water licence. The megalitre price was inflated because it included the cost of a storage that the vendor originally offered to transfer to the Commonwealth, but that offer was later withdrawn, without adjusting the price. The storage was used as a justification of the sale, but not as a condition of the sale.

The water purchased was for Over Land Flow (OLF) licences, which cannot be traded between irrigators, because they are attached to land. They have no legal status or any recognition at a location other than where they were originally purchased. That is, there appears to be no legal basis for the Commonwealth to ensure it gets to the places it is intended to be used.

More importantly, OLF licences should not be treated as equivalent to river flows when meeting the water recovery target. Because one gigalitre of water on the floodplain is not equivalent to one gigalitre of water in a river, it is a flaw to count the two as equivalent. That is, it is at best an error to count OLF volumes towards a water recovery target that was determined based on river flows.

The purchase appears to be in breach of the Commonwealth Procurement Rules because it was not made available to all licence holders in the valley.

This report was based on documents made available under an Order for Production of documents requested by Senator Rex Patrick. Those documents were heavily redacted, which is inconsistent with information under an OPD relating to a similar water purchase in the Lower Darling that has been subject critical media attention and scrutiny through Senate Estimates.

The Australia Institute recommends an independent audit of the Commonwealth Environmental Water Holder's portfolio and a review of the governance arrangements for the management of the Murray-Darling Basin. A serious change of culture in Australia's water management agencies is overdue.

# Introduction

*HARRY THE HAGGLER: Wait a minute.*

*BRIAN: What?*

*HARRY THE HAGGLER: Well, we're-- we're supposed to haggle.*

*BRIAN: No, no. I've got to get--*

*HARRY THE HAGGLER: What do you mean, 'no, no, no'?*

*BRIAN: I haven't time. I've got--*

*HARRY THE HAGGLER: Well, give it back, then.*

*BRIAN: No, no, no. I just paid you.*

*HARRY THE HAGGLER: Burt!*

*BURT: Yeah?*

*HARRY THE HAGGLER: This bloke won't haggle.*

*BURT: Won't haggle?!<sup>1</sup>*

Monty Python's Brian didn't have time to haggle for his disguise when fleeing from the Romans. As the implementation of the full Murray Darling Plan approaches, Australia's water agencies are also under time pressure. But their reluctance to haggle for the water they need to buy rivals even poor Brian.

Under the Murray Darling Basin Plan reforms, the Commonwealth has a role to acquire water to achieve sustainable levels of extraction by irrigators and other water users. The Commonwealth then uses that water to achieve environmental outcomes.

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<sup>1</sup> <http://unix.rulez.org/~calver/fun/LifeofBrian.html>

It is well understood and agreed that water in the Murray-Darling Basin has been over-allocated and extracted at rates that are unsustainable. A key part of the Murray-Darling Basin Plan is the setting of Sustainable Diversion Limits (SDL). The SDLs will reset how much water can be legally extracted from each valley by irrigators and how much will be used to maintain the health of the rivers and surrounding ecosystems. To achieve the SDLs, the Commonwealth needs to acquire water from users, with the amount required referred to as 'water recovery targets' in each valley.

The Department of Agriculture and Water Resources (DAWR) is the Commonwealth agency responsible for acquiring water, to meet the water recovery targets and the SDLs. The DAWR acquires the water which is then held and managed by a separate statutory body, the Commonwealth Environmental Water Holder (CEWH). DAWR acquires water either from willing sellers or through projects that improve the efficiency of water use and generate water savings, such as the lining of irrigation channels to reduce seepage.

DAWR has had difficulty in meeting the water recovery target in the Condamine-Balonne Valley, in southern Queensland, because:

- the water recovery target in the Condamine-Balonne is relatively high. Under the original Basin Plan, the Condamine-Balonne's water recovery target was 142 gigalitres, 83% of the total Queensland water recovery target of 176 gigalitres.<sup>2</sup>
- the water in the Lower Balonne contributes most to the water recovery target because it has a higher 'yield' or Cap factor and it is also closest to where the Commonwealth wants to use it.<sup>3</sup> However, the ownership of water in the Lower Balonne is concentrated in a very small number of large holdings and several very small holdings.<sup>4</sup> The large holders have not offered much water for sale to the Commonwealth to date, and the remaining water recovery is equivalent to all of the water licences held by the remaining holders.
- The target has not been achievable through water efficiency programs.<sup>5</sup>

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<sup>2</sup> MDBA, (2016), *Northern Basin Review Report*, <https://www.mdba.gov.au/publications/mdba-reports/northern-basin-review-report>

<sup>3</sup> For an explanation of Cap Factors, see Slattery and Cambell, (2018), *It's not the science, it's how you use it....* <http://www.tai.org.au/content/its-not-science-its-how-you-use-it>

<sup>4</sup> DAWR, (2017), *Unsolicited proposal to sell water: Qld Condamine Balonne*, Documents released under OPD 579 correspondence dated 28 March

<sup>5</sup> DAWR, (2017), *Progress towards bridging the gap*, <http://www.agriculture.gov.au/SiteCollectionDocuments/water/progress-towards-bridging-gap.pdf>

In July 2017 the DAWR bought nearly 29 gigalitres of Over Land Flow (OLF) licences for \$80m in the Lower Balonne, in an attempt to meet the system's water recovery target. The water was purchased from the properties of Kia Ora and Clyde, owned by Eastern Australia Agriculture Pty Ltd (EAA). EAA is a company with one of the largest water holdings in Australia and is backed by large global investors and private equity funds.<sup>6</sup>

An important point to note is that the purchase from EAA by the Commonwealth was for an Over Land Flow (OLF) licence. OLF licences give landholders the right to divert or store water flowing across their land during a flood, for later use. OLF licences are not traded between irrigators, because they are attached to land titles and are therefore only recognised at a fixed location.

By contrast, other trades of water relate to the right to extract water from rivers, either annually (water allocations, or temporary trade) or on a one-off basis (water licences, or permanent trade). As far as we are aware, the Commonwealth is the only ever purchaser of OLF licences without a transfer of land, with one other purchase in the Lower Balonne. It seems that it is a recent, and unannounced, policy change to count OLF licences towards the water recovery target.

This report is based on documents supplied to the Australian Senate under an Order for Production of Documents (OPD) no. 579 moved by Senator Rex Patrick and shown at Appendix A. Significant content of the documents were redacted. Redactions included parts of correspondence relating to the valuation of the water, which would usually be provided.

## WATER PURCHASE

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Eastern Australian Agriculture Pty Ltd (EAA) owns two large properties in the Queensland Lower Balonne in the Condamine-Balonne valley – Kia Ora and Clyde.<sup>7</sup>

Kia Ora is between St George and Cubbie Station and Clyde is immediately adjacent to Cubbie Station to the west.

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<sup>6</sup> Cranston, (2014), *Cotton farms on the block despite tougher outlook*, <http://www.afr.com/business/agriculture/crops/cotton-farms-on-the-block-despite-tougher-outlook-20141109-11jh3y>

<sup>7</sup> CBRE (n.d.) 450 Whyenbah Road ST GEORGE, QLD 487, <https://property.cbre.com.au/properties/450-whyenbah-road-st-george-qld-4487/>



EAA originally offered DAWR the sale of 5, 400 megalitres of OLF licences at \$2,200 per megalitre and a storage (Storage 10 or S10) for \$16,000,000 in February 2016, which was \$27,880,000 in total.<sup>8</sup> The sale of the storage was initially offered as an opportunity for the CEWH to store environmental water for later delivery into Narren Lakes – an important environmental site, listed under the Ramsar Convention.<sup>9</sup> Over the following fifteen months, EAA and DAWR negotiated eight different volumes and prices, until the former Deputy Prime Minister and Minister for Water, Barnaby Joyce, approved the final purchase of 29,159 megalitres of OLF licences at \$2,745 per megalitre, a total of \$80,041,455, in May 2017.<sup>10</sup> After the DAWR undertook their due diligence, the actual purchase was lowered to 28, 740 megalitres at \$2,745 per megalitre and \$78,891,300 in total.<sup>11</sup> Appendix B summarises the amounts and values that were negotiated.

EAA recorded a \$52m gain on the sale in their 2017 Annual Report.<sup>12</sup> The same report cited an independent valuation of both properties, including water licences at \$107.3m at 30 June 2017. The sale of EAA's OLF licences to DAWR represented 74% of the value of both properties. A note to the Financial Statements in that report said:

*Valuations of the two properties as a whole were carried out based on independent assessments by CBRE as at June 2017.*

*The total value of the two properties including water licences determined by the valuers was approximately \$107.3 million.*

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<sup>8</sup> EAA (2016), *Letter to DAWR*, Documents released under OPD 579, correspondence dated 9 February

<sup>9</sup> NSW National Parks and Wildlife Reserve, (2018), *Narren Lakes Nature Reserve*, <http://www.nationalparks.nsw.gov.au/visit-a-park/parks/narran-lake-nature-reserve>

<sup>10</sup> DAWR, (2017), *Minute to Minister: Update on proposal in Queensland Condamine Balonne*, Documents released under OPD 579 correspondence dated 12 May

<sup>11</sup> DAWR, (2017), *Seeking delegate signature on two purchase agreements under a limited tender offer*, Documents released under OPD 579 correspondence dated 20 July

<sup>12</sup> Eastern Australia Agriculture Pty Ltd, *Annual Report for the Year Ended 30 June 2017* (Obtained by the Guardian)

That is, the Commonwealth paid \$80m for water licences that were part of a parcel of properties worth \$107m in total, and which created a \$52m profit for the vendor. The purchase did not include any other assets, property or other licences. EAA retained 31.6 gigalitres of supplementary and unsupplementary water licences,<sup>13</sup> which should be more valuable than the OLF licences sold to the Commonwealth, because of their higher yield. On this basis alone, the Government has paid tens of millions of dollars too much.

## STORAGES

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EAA originally offered the sale of a storage (referred to as Storage 10, or S10) as an inclusion of the water sale, which would:

*otherwise become useless to us on sale of the entitlement”....We will only consider a purchase of both the assets (water licences and S10) combined..... We would consider a fair purchase price for storage 10 and the associated pumping and channel infrastructure to be \$16 million.....<sup>14</sup>*

The storage was discussed again in 22 March 2017 where EAA proposed that the cost of two storages (S10 and S11) be reflected into the megalitre price, with a free option for the use of the storage by the Commonwealth:

*We understand that the Department of Agriculture and Water Resources is not currently able to purchase or directly compensate EAA for the storages associated with the S10 and S11 overland flow entitlements. In our previous offer letter to you dated 9<sup>th</sup> February 2016 we expressed our view on the value of these storages from a monetary point of view, but most importantly in achieving more effective delivery of water to key environmental assets (in particular Narren Lakes). Please understand that the storages are of no value to us without the water licences.....so that not being recompensed for some portion of their capital value is not feasible. We are obviously signalling that the mechanism for doing that is through the price paid for the licences, which includes a free option for utilisation of the storages by DAWR at the time in the future when you can do so.<sup>15</sup>*

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<sup>13</sup> CBRE (n.d.) 450 Whyenbah Road ST GEORGE, QLD 487, <https://property.cbre.com.au/properties/450-whyenbah-road-st-george-qld-4487/>

<sup>14</sup> EAA, (2016), *Letter to DAWR*, Documents released under OPD 579 correspondence dated 9 February

<sup>15</sup> EAA, (2017), *Letter to DAWR*, Documents released under OPD 579 correspondence dated 22 March

Negotiations around S10 were again tabled two weeks later on 7 April 2017, where EAA said:

*The offer includes the option for the Commonwealth to acquire S10 for nil cost.*

The offer of acquiring or using S11 was not included in this offer. There is no correspondence in the documents tabled under the OPD to the Senate, relating to the withdrawal of the S11 storage.

An option to use the storage at no cost was used to justify the Water Minister Barnaby Joyce's final approval of the volume and price on 12 May 2017:<sup>16</sup>

*The company has also included an option to use a water storage on its 'Clyde' property at no cost. The storage may be of benefit to the Commonwealth Environmental Water Office, in its development and subsequent pilot of event-based mechanisms for providing water to the Narren Lakes. An agreement between the two parties on the terms of this arrangement would be established in due course.*

In the near final negotiation, EAA seems to withdraw the option of DAWR owning S10, or having an option over its use and instead proposed that the Commonwealth can use the storage under a separate agreement. DAWR writes to EAA:

*In relation to your proposal that the Commonwealth acquire Storage 10 at no cost, I understand from our discussions that your proposal is for the use of this storage, and not its acquisition. The department would be pleased to facilitate discussions between yourself and the Commonwealth Environmental Water Office to ensure a suitable arrangement for the future use of this storage can be reached.<sup>17</sup>*

An obvious concern is if this suitable arrangement includes any additional cost to the Commonwealth.

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<sup>16</sup> DAWR, (2017), *Minute to Minister: Update on proposal in Queensland Condamine Balonne*, Documents released under OPD 579 correspondence dated 12 May

<sup>17</sup> DAWR, (2017), *Letter to EAA*, Documents released under OPD 579 correspondence dated 7 June

The Commonwealth Environmental Water Office (CEWO) supported the access to the storages, with a caveat based on suitable responses to their outstanding questions (which were omitted or redacted). If these questions were answered, they were also omitted or redacted. CEWO prepared 'CEWO advice regarding a possible package of water recovery and storage access in the Narren River catchment' dated 18 January 2017.<sup>18</sup> It is not clear whether CEWH was made explicitly aware that their advice related to OLF licences, rather than licences to extract water from a river. CEWO advises:

*Based on the information to date, such a package (acquiring water entitlements in the Narren catchment and providing access to a private storage to hold Commonwealth environmental water) is expected to support the achievement of important environmental outcomes in the Narren Lakes.<sup>19</sup>*

The Australia Institute asked the CEWO if there are any agreements in place for the CEWH to use of the storage, however, we have had no reply at the time of writing.

Despite that the storage was paid for through the megalitre price, and its desirability to the CEWH, the final contract included in the papers provided to the Senate, does not include any option or agreement on the Commonwealth use of the storage.

Kia Ora and Clyde are currently for sale and presumably any agreement on the use of the storage would need to be agreed with the new owners, if it has not been included as a caveat over the property through the sale.

## THAT'S NOT HOW YOU HAGGLE

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The then Water Minister, now backbench member for New England, Barnaby Joyce agreed to pay \$2,745 per megalitre for the acquisition of water from EAA.<sup>20</sup>

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<sup>18</sup> CEWO, (2017), *CEWO advice regarding a possible package of water recovery and storage access in the Narren river catchment*, Documents released under OPD 579 correspondence dated 18 January

<sup>19</sup> CEWO, (2017), *CEWO advice regarding a possible package of water recovery and storage access in the Narren river catchment*, Documents released under OPD 579 correspondence dated 18 January

<sup>20</sup> DAWR, (2017), *Minute too Minister: Update on proposal in Queensland Condamine Balonne*, Documents released under OPD 579 correspondence dated 12 May

There are no trades of OLF licences between irrigators, because they are still attached to land and therefore cannot be transferred between water holders without the transfer of the land. The Commonwealth has purchased an unknown volume of OLF licences in the Lower Balonne in April 2013 or March 2014 and paid an average of \$1,150 per megalitre.<sup>21</sup>

Prior to this purchase, the Commonwealth has purchased approximately 50 gigalitres of water in the Condamine Balonne through several open tenders and has paid an average price of between \$1,433 and \$1,795 for unsupplementary licences.<sup>22</sup> Unsupplementary water licences are the right to extract water from a river.

Unsupplementary water licences are fundamentally different to OLF licences, because OLF licences are untradeable. If OLF licences were tradeable, we would expect them to be much cheaper than unsupplementary flow licences, because the latter yield more water.

Notwithstanding, between 2011 and 2017, the median and average price of all sales of unsupplementary water licences in the Lower Balonne was \$1,500.<sup>23</sup> The same period saw a maximum price of \$2,200 and a minimum price of \$313, however most transactions were close to the average price. DAWR price of \$2,745 per megalitre was 80% higher than the average price of unsupplementary water licences. The following graph shows the average price of the sale of unsupplementary licences and the average prices paid by the Commonwealth for unsupplementary water licences over that period.

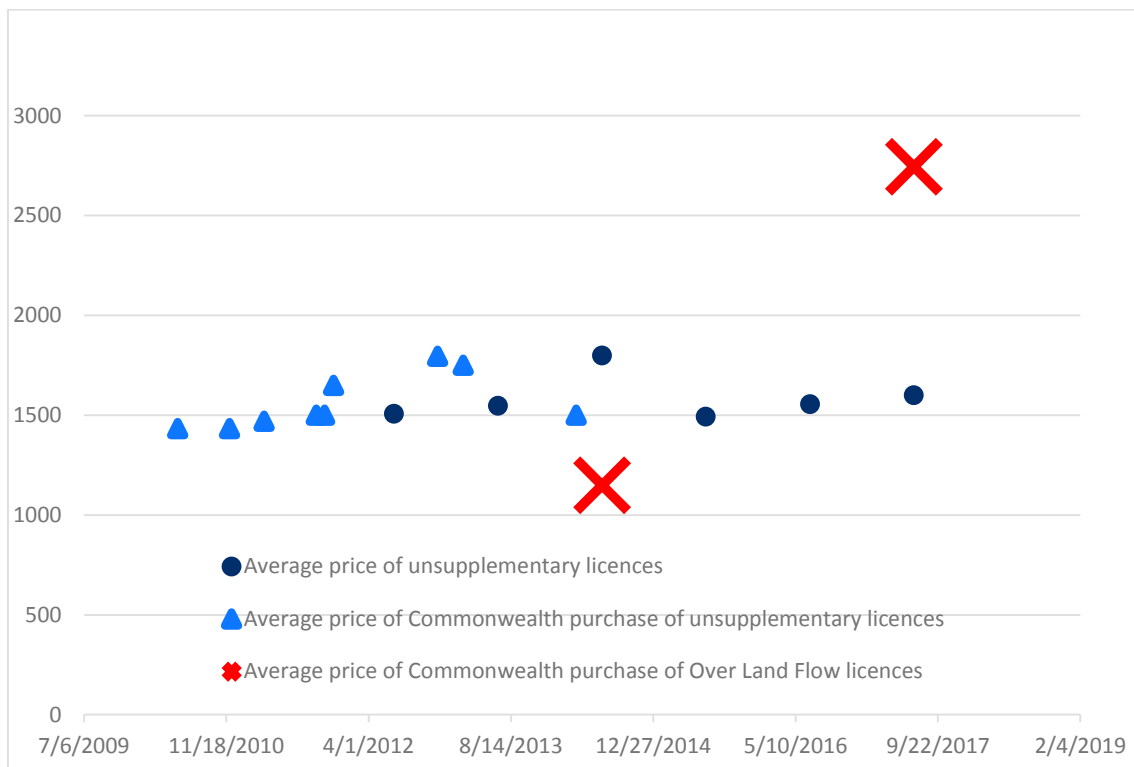
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<sup>21</sup> DAWR, (2017), *Prices of offers accepted in open water purchase tenders*, <http://www.agriculture.gov.au/water/markets/commonwealth-water-mdb/average-prices#northern-basin-tenders-201011>

<sup>22</sup> DAWR, (2017), *Prices of offers accepted in open water purchase tenders*, <http://www.agriculture.gov.au/water/markets/commonwealth-water-mdb/average-prices#northern-basin-tenders-201011>

<sup>23</sup> Queensland Government (2018), *Market Information: Permanent water trading*, <https://www.business.qld.gov.au/industries/mining-energy-water/water/water-markets/market-information#permanent>

**Figure 1: Average prices per megalitre of Unsupplementary and Over Land Flow licenses in the Lower Balonne**



Source: <http://www.agriculture.gov.au/water/markets/commonwealth-water-mdb/average-prices#queensland-lower-balonne-tenders-201214> and <https://www.business.qld.gov.au/industries/mining-energy-water/water/water-markets/market-information#permanent>

It is also important to note that EAA’s starting price was \$2,200 per megalitre – 25% lower than the final price per megalitre.

EAA originally offered to sell the DAWR a storage, which they priced at \$16,000,000.<sup>24</sup> EAA later incorporated the price of the storage into the megalitre price and offered to transfer the storage at nil cost.<sup>25</sup> The final offer was for the Commonwealth to use, (but not own), the storage, subject to a later agreement. However, the megalitre price was never revised downwards to remove the \$16,000,000 overhead for the storage.

<sup>24</sup> EAA, (2016), *Letter to DAWR*, Documents released under OPD 579 correspondence dated 9 February

<sup>25</sup> EAA, (2017), *Letter to DAWR*, Documents released under OPD 579 correspondence dated 22 March

EAA has approached the Commonwealth in the past, with offers to sell their unsupplementary water licences, which the Commonwealth rejected. It is not known what EAA's previous offer price was. It is also not known why the Commonwealth rejected those offers and whether EAA had ever attempted to sell OLF licences to the Commonwealth.

*EAA has to date (September 2009) made two tenders under the Restoring the Balance to the Murray-Darling Basin program, involving unsupplemented water entitlements at both Kia-Ora and Clyde.<sup>26</sup>*

## OVERLAND FLOW LICENCES

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An important part of water reform is the water market, which allows water to be traded between owners. The policy intent of the water market is to move water to its highest value use. It also has allowed the Commonwealth through the DAWR to purchase water from willing sellers to restore the extraction of water to sustainable levels. This water is then transferred to the Commonwealth Environmental water Holder (CEWH) who uses that water to undertake environmental watering.

Before the water market and water trade, water licences were 'attached to land'. That is, a water licence could only be used at a particular physical location, identified in the licence. To facilitate water trade, water licences for river extractions had to be 'detached from land' and became a right in themselves, to be moved to a different owner and used at a different location. That is, water licences for extractions from a river are no longer restricted to be used at a specific location.

However, the purchase from EAA is of an overland flow licence (OLF). OLF licences are a licence to capture water on a floodplain before it flows to another property, or into a river. OLF licences are still attached to land through the reference of a works approval, such as a pump, being a condition of the water licence. This was recognised in the independent valuation undertaken for DAWR:

*Water rights are an asset separate to land, or in the case of an OLF licence, are a right granted and attached to land...<sup>27</sup>*

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<sup>26</sup> EAA, (2009), *EAA Submission to the Australian Government Productivity Commission: Market mechanisms for recovering water in the Murray-Darling Basin*, Documents released under OPD 579

<sup>27</sup> Colliers International, (2017), *Valuation of Overland Flow Water Entitlements Condamine Balonne Water Resource Plan – Lower Balonne*, Documents released under OPD 579 correspondence dated 13 March

It appears that whilst the DAWR has purchased nearly 29 gigalitres of water, the Commonwealth does not retain legal ownership or any recognition of that water if it were to flow outside the farms where it was purchased. This also means that should the CEWH choose to sell those water licences, the only possible buyer is the owner of the farms that originally sold the water. The Australia Institute wrote to both the Murray-Darling Basin Authority (MDBA) and the Commonwealth Environmental Water Office (CEWO) and asked how the water under the CEWH's OLF licences are prevented from being captured under an irrigators OLF licence, or being extracted for irrigation if it returns to a river. We have not received a response at the time of writing.

Even more importantly, OLF cannot be substituted for river flows as counting towards the water recovery target. MDBA's hydrological modelling of various water recovery scenarios were based on river flows and not water on the floodplain. Depending on the location of the OLF, only a portion, if any, of the water on the floodplain will ever reach a river. Because one gigalitre of water on the floodplain is not equivalent to one gigalitre of water in a river, it is a flaw to count the two as equivalent. That is, it is at best an error to count OLF volumes towards a water recovery target that was determined based on river flows.

## PROCUREMENT

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*The Commonwealth Procurement Rules are the keystone of the Government's procurement policy framework. ....The framework reflects officials' responsibilities, including under the PGPA Act (Public Governance, Performance and Accountability Act 2013) and Australia's international obligations, and factors that must be considered in meeting the core rule of achieving value for money.<sup>28</sup>*

The Commonwealth Procurement Rules apply to all Commonwealth expenditure by public officials, including for the purchase of water.

However, the EAA transaction seems to be in breach of the Commonwealth Procurement Rules. An open tender is required for expenditure greater than \$400,000, unless specific conditions outlined in the Commonwealth Procurement Rules are met. In that case, the procurement can be via a Limited Tender, whereby a direct approach can be made to a potential vendor. The DAWR used a limited tender, which it justified by citing Division 2 10.3(c) of the Commonwealth Procurement Rules:

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<sup>28</sup> Department of Finance, (2017), *Commonwealth Procurement Rules*, <https://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/>



*A relevant entity **must** only conduct a procurement at or above the relevant procurement threshold through limited tender in the following circumstances:*

*for procurements made under exceptionally advantageous conditions that arise only in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine procurement from regular suppliers.<sup>29</sup>*

In the documents obtained under the OPD, the DAWR did not provide any reasoning why this deal was considered to be exceptionally advantageous. If this purchase was via an open tender, it would have been made available to all OLF licences in the valley.

The DAWR sought two valuations from Colliers International on the value of Overland Flow Licences in the Condamine Balonne. The first valuation was provided on the 21<sup>st</sup> September 2016. Colliers provided a second valuation on 13 March 2017, six months later. The timing coincided with EAA changing its asking price from \$2,200 to \$2,951 per megalitre, which incorporated EAA's \$16,000,000, asking price of Storage 10. DAWR sought a second valuation from Colliers International around the same time.

All information relating to Colliers recommendation and their method have been redacted, so we cannot make a definitive conclusions that the second valuation was to include the storage price.

Colliers International also acted for EAA in the marketing of Kia Ora and Clyde in September 2015,<sup>30</sup> which would appear to raise the potential for a conflict of interest given that there are several firms that can undertake valuations.

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<sup>29</sup> Division 2 10.3(c) Australian Government Department of Finance, 1 March 2017, *Commonwealth Procurement Rules: Achieving Value for Money*, <https://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/>

<sup>30</sup> Rawlin Briggs, Colliers International Australia (2015), *Eastern Australia Agriculture – For Sale*, <https://www.linkedin.com/pulse/eastern-australia-agriculture-sale-rawdon-briggs?articleId=6045753775308693504>

## MISSING CORRESPONDENCE AND REDACTIONS

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The documents produced under the OPD did not include correspondence between the vendor and DAWR for all of the changed volumes. This would suggest that either the Water Minister's office either did not believe that his information was within the scope of the OPD, or the advice from EAA to DAWR on the revised volumes and megalitre price was made verbally, without file notes or written advice to senior officers. It is a serious matter to intentionally omit documents requested under an OPD because the refusal of a Minister to comply with an order of the Senate may ultimately be dealt with as a contempt of the Senate.<sup>31</sup>

In the documents, there was no correspondence about, or documentation of, the changing volumes and megalitre prices, except in the second last proposal where DAWR said:

*The company has advised that it has increased the proposal in part to simplify the transaction, the decommissioning activity and the management of its remaining water portfolio.*<sup>32</sup>

One possibility why the volume kept increasing is that EAA was still finalising its OLF licences with the Queensland Department of Natural Resources and Mines (DNRM). EAA writes:

*We do not see this (offer of 26,839 megalitres) as out of context with our previous offer letter to you dated 9<sup>th</sup> February, 2016, where we submitted the 5.4 GL overland flow water entitlement of storage 10 (as we understood it then).*<sup>33</sup>

The information relating to Market Overview, Sales Evidence, Valuation Methodology, the Valuation and the Valuation Range have all been redacted from both valuations on the grounds they are Commercial in Confidence.<sup>34</sup> This is despite both the volume and price being publicly available.

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<sup>31</sup> Parliament of Australia, (2018), *Senators' Guide to Procedures*, [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/senguide/c01](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/senguide/c01)

<sup>32</sup> DAWR, (2017), *Limited tender evaluation (Condamine-Balonne – PIN 24666)*, Documents released under OPD 579 correspondence dated 7 June

<sup>33</sup> EAA, (2017), *Letter to DAWR*, Documents released under OPD 579 correspondence dated 22 March

<sup>34</sup> Senator Matthew Canavan, (2018), *Summary Table of Condamine Balonne Purchases*, OPD no. 579

The redactions are inconsistent with information provided in documents under a similar OPD, no 420, which related to a water purchase from a Lower Darling property called Tandou. The documents in that OPD did not redact the valuation details, however, that purchase, including the valuation, was later subject to several critical newspaper articles and questioning through Senate Estimates.<sup>35</sup>

## CONCLUSION

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The Commonwealth bought water in the Lower Balonne at approximately 85% higher than the average price for a more reliable type of water licence, and 139% higher than the Commonwealth had previously paid for the same type of licence. The price was inflated because it included the cost of a storage that the vendor originally offered to transfer to the Commonwealth, but that offer was later withdrawn, without adjusting the price.

If that wasn't bad enough, because the Commonwealth purchased OLF licences, the water purchased has no legal status or recognition outside the property from where it was purchased.

Whilst the water was purchased to meet a water recovery target, it should not be counted towards that target because the targets were based on water in the river, and not water on the floodplain. It is erroneous to treat a gigalitre on the floodplain as being equal to a gigalitre in a river.

The DAWR does not appear to have followed the Commonwealth Procurement Rules in undertaking this transaction. They also engaged an independent valuer that had previously acted as the marketer for the vendor.

Finally, there appears to be either omissions in the documents provided under the OPD, or the negotiation of the volumes associated with \$80m of taxpayers funds were largely verbal, without file notes or written advice to senior officers. The documents are heavily redacted and based on unconvincing reasoning.

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<sup>35</sup> Anne Davies, Guardian, (2018), *Cotton company reaped \$52m windfall in sale of water rights to government*, <https://www.theguardian.com/environment/2018/mar/02/cotton-company-reaped-52m-windfall-in-sale-of-water-rights-to-government>

There are many worrying aspects of this purchase, but they are part of a much wider picture – other highly questionable water purchases in the Lower Darling, Warrego and Murrumbidgee;<sup>36</sup> changing the estimates to South Australia to appease the South Australian Water Minister;<sup>37</sup> and presenting a Basin Plan amendment to parliament that was not available during public submissions and allows the SDLs to be changed by MDBA and States outside the parliamentary process.

This is why The Australia Institute recommends an independent audit of the Commonwealth Environmental Water Holder’s portfolio and a review of the governance arrangements for the management of the Murray-Darling Basin. A serious change of culture in Australia’s water management agencies is overdue.

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<sup>36</sup> The A Senator Matthew Canavan, (2018), *Summary Table of Condamine Balonne Purchases*, OPD no. 579

<sup>37</sup> Slattery and Campbell, (2018), *Northern Disclosure*, <http://www.tai.org.au/content/northern-disclosure-rubbery-figures-murray-darling-basin-plan-review>

# APPENDIX A: ORDER FOR PRODUCTION OF DOCUMENTS, MURRAY-DARLING BASIN PLAN - WATER PURCHASES

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General business notice of motion: 579

Moved by: Senator Patrick

Date agreed to: 16 November 2017

That the Senate

- a) notes that:
  - i. the Murray - Darling river system is a national resource,
  - ii. the aim of the Murray - Darling Basin Plan, agreed to in 2012, is to ensure that water is shared between all users, including the environment, in a sustainable way,
  - iii. it is important that the plan is executed effectively and with financial responsibility,
  - iv. on 26 October 2017, the Guardian revealed that the Government had purchased 22 mega litres of water at a price of \$78M in circumstances where there were independent valuations for the same water of \$24.8 million (an Australian Bureau of Agricultural and Resource Economics and Sciences valuation) and \$38 million (Herron Todd White valuation), and
  - v. the Senate has an obligation to inform itself as to whether taxpayers' money being spent on the Murray - Darling Basin Plan is being spent efficiently and effectively; and
- b) orders that there be laid on the table by the Minister representing the Minister for Agriculture and Water Resources, by the start of business on 28 November 2017:
  - i. all decisions and associated decision reasoning for all purchases of water across the Basin from 1 January 2017, and
  - ii. all valuations/assessments in the Government's possession related to each of these purchases, including independent valuations/assessments

Documents Tabled: 12 February 2018

## APPENDIX B - CHANGING VOLUMES AND PRICE

Date	Volume (megalitres)	Average price / megalitre (\$)	Total price (\$)	Note
09.02.16	5,400	2,200	27,880,000 <sup>38</sup>	Offer made in letter from EAA to DAWR. The sale of water was conditional on the sale of a storage for \$16,000,000
19.12.16	15,000	Redacted	Unknown <sup>39</sup>	Approval by the Water Minister to proceed with the purchase. No correspondence from the vendor and DAWR made available relating to the revised increased volume.
22.03.17	26,839 (12,649 Clyde) (14,190 Kia Ora)	2,951	79,221,600 <sup>40</sup>	Offer made in letter from EAA to DAWR. The price paid per ML <i>'includes a free option for utilisation of the storages by DAWR at the time in the future when you can do so.'</i>
28.03.17	14,202 (Kia Ora)	2,775	39,410,550 <sup>41</sup>	Approval by the Water Minister to proceed with the purchase. No correspondence from the vendor and DAWR made available relating to the revised increased volume.

<sup>38</sup> EAA, (2016) *Letter to DAWR*, Documents released under OPD 579 correspondence dated 9 February

<sup>39</sup> DAWR, (2016), *Minute: Unsolicited proposals to sell water: various northern basin catchments*, Documents released under OPD 579 correspondence dated 19 December

<sup>40</sup> EAA, (2017), *Letter to DAWR*, Documents released under OPD 579 correspondence dated 22 March

<sup>41</sup> DAWR, (2017), *Minute: Unsolicited proposals to sell water: Qld Condamine-Balonne*, Documents released under OPD 579 correspondence dated 28 March

Date	Volume (megalitres)	Average price / megalitre (\$)	Total price (\$)	Note
07.04.17	27,960 (13,770 Clyde) (14,202 Kia Ora)	2,745	76,783,140 <sup>42</sup>	Offer made in letter from EAA to DAWR. <i>EAA undertakes to decommission the storages relevant to these licences to the satisfaction of DNRM at our cost.</i> <i>The offer includes the option for the Commonwealth to acquire S10 (storage) for nil cost.</i>
12 May 2017	29,159 (14,969 Clyde) (14,190 Kia Ora)	2,745	80,041,455 <sup>43</sup>	Approval by the Water Minister to purchase 14,969 ML from Clyde and 14,190 from Kia Ora. No correspondence from vendor made available for the change in volume
7 June 2017	30,527	2,745	83,796,615 <sup>44</sup>	Invitation to Tender from DAWR to EAA. No correspondence from vendor made available for the increase in volume
17 June 2017	28,740	2,745	78,891,300 <sup>45</sup>	Amount reduced after DAWR Due Diligence

<sup>42</sup> EAA, (2017), *Email: Follow up information*, Documents released under OPD 579 correspondence dated 7 April 2017

<sup>43</sup> DAWR, (2017), *Minute too Minister: Update on proposal in Queensland Condamine Balonne*, Documents released under OPD 579 correspondence dated 12 May

<sup>44</sup> DAWR, (2017), *Limited tender evaluation (Condamine-Balonne – PIN 24666)*, Documents released under OPD 579 correspondence dated 7 June

<sup>45</sup> DAWR, (2017), *Seeking delegate signature on two purchase agreements under a limited tender offer*, Documents released under OPD 579 correspondence dated 20 July