Background briefing complaint 2

Further to my complaint about the Background Briefing program of 29 April on the Murray–Darling Basin Plan, I wish to lodge a complaint about the follow-up episodes of Background Briefing broadcast on 6 May 2018 and 11 May.

The latest episode was headlined as an update on a "big, big, big deal" about the Senate voting on "whether to continue putting extra water back into the river system" when we "had more than 600 billion litres of water we were still supposed to recover for the health of the Murray–Darling Basin". This is a fundamental misrepresentation of the vote, the Basin Plan and the process.

The vote was about overriding an amendment accepted by the government based on the independent expertise-based statutory authority's recommendation. The MDBA's role is to fully and properly implement the Basin Plan and this included operating the adjustment mechanism that has been part of the Plan since 2012.

The 11 May broadcast asserted that the Senate decision was "really problematic". Reasons given for this position were that projects "might be" unlawful and that there was a perceived lack of transparency. The program was not factual or accurate and involved editorialising by the two journalists supported by little evidence.

In the 6 May program the journalist argued with the MDBA's Chief Executive about whether the MDBA had released all the documents asked for by Senator Patrick in his Senate Order, saying "No you didn't. The Senator who made the order for call of production of documents is very dissatisfied…".

During the disallowance debate on 9 May, Senator Patrick said: "That order for production was returned to the Senate. It was returned late, but I must admit that it was returned in full." No attempt was made to correct the record in the 11 May program.

The journalist first approached the MDBA with a request to interview Phillip Glyde about the supply measures and also about the Basin Plan given we're "about halfway through—what we've achieved so far since implementation and what next".

The programs did not report on the implementation or achievements of the Basin Plan. Instead they cherry-picked a handful of well-worn criticisms, and stitched them together to present a manufactured and inaccurate picture of the supposed 'failure' of the Basin Plan, in which the environment is being "shafted" (journalist's own word). In doing this, the journalist relied on a small number of detractors, adopted their viewpoints as true when she should have tested them, and consistently gave those views more credibility than warranted by the weight of evidence.

There are numerous examples of the journalist unduly favouring one perspective over another. One is the level of credibility the journalist afforded to the claims of a former MDBA staff member in the 6 May program, despite those claims not being supported by any evidence—while the MDBA's advice is given comparatively little weight.

This former staff member, Maryanne Slattery, is referred to as a "whistleblower". A whistleblower is a person who has brought to light illegal or unethical activity, not merely a disgruntled former employee. It is a moniker that carries considerable weight and credibility—and I do not believe it could be accurately used to describe Ms Slattery.

Ms Slattery was a middle manager, who did not have a role in decision-making. She reported to a General Manager who reported to an Executive Manager who reported to Mr Glyde. Yet Ms Slattery

is described in the program as a former "senior public servant"—the same description the journalist applies to the MDBA's Chief Executive Phillip Glyde.

Ms Slattery alleges that the "MDBA had done a deal with New South Wales back in 2014 for the MDBA to go as soft as possible on New South Wales". This claim was flatly denied by the NSW Water Minister. The MDBA also provided information about the ongoing commitment to delivering the Basin Plan in full and on time. Yet Ms Slattery's allegation, without any corroboration or supporting evidence whatsoever, was deemed credible enough to broadcast.

Ms Slattery had a limited purview in her role at the MDBA. Despite this, the Background Briefing programs used her as an 'expert' equipped to explain a range of issues relating to the Basin Plan, including cap factors—regardless of this being outside the realm of her experience or expertise.

I believe the irresponsible reporting in both the 6 May and 11 May programs caused unnecessary alarm for water entitlement holders because of the inaccurate way cap factors were explained.

A 'cap factor' is the term used to describe the average extent to which water entitlements (issued by state governments) are actually used. Banks and financial advisors should *not* use cap factors in assessing the value of water entitlements as an asset. Like any commodity, water fluctuates in value and is worth more one year than another. Characterising the updating of cap factors as "the government is messing with the exchange rate" is simply wrong.

Cap factors enable water recovery to be measured in a consistent way across the Basin. They're used so we can ensure the right amount of water has been recovered for the environment based on long term average actual use.

The program asserted that mortgages "may now be looking shaky" and that cap factors "directly affect farmers' water licences".

The MDBA was not asked if the basis for the assertion about mortgage risk was sound.

Instead, the journalist asked the MDBA for the following information: "Does the MDBA have an estimate for how many mortgages in the Basin would be affected by the re-calculation of cap factors, and therefore the value of water licences?".

Our response attempted to address the error in the journalist's question, but was presented by the journalist as an attempt to dodge the question, and was read into the program with the following commentary: "I also asked the Basin Authority for their estimate of how many mortgages in the Basin would be affected by the recalculation of cap factors. They didn't give me any estimate but this is the response they gave me. 'Water value is based on entitlement and allocation policy – these are matters for each State. Planning assumptions are used to estimate actual water used within a catchment for the purpose of water planning and do not directly influence the value of an entitlement. The ratio of the expected use to nominal entitlement is sometimes referred to as the 'cap factor'—this is different to allocation reliability, and also does not ascribe a monetary value to an entitlement.'"

Later in the program, after airing a portion of her discussion with Mr Glyde on the issue of water saved through infrastructure improvements, the journalist says "In that exchange, I'm pretty sure Phillip Glyde and I are talking about different things". However, instead of following up to seek clarification from Mr Glyde or the MDBA, the journalist instead continues "so I put Phillip Glyde's responses to Maryanne Slattery".

In the ensuing discussion, Ms Slattery incorrectly explains the recovery of water for the environment under the Basin Plan as involving "*creating* a statutory water licence and handing that statutory water licence over to the Commonwealth Environmental Water Holder" (emphasis mine). The journalist then compares the transfer of water entitlements to the Commonwealth Environmental Water Holder (CEWH) to "artificially inflating a currency by just printing more notes"—a comparison with which Ms Slattery agrees.

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. This is real water which has so far been used in more than 750 environmental watering events.

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.

The entire discussion of cap factors and how water recovery works was riddled with inaccuracies and shows either a deliberate misrepresentation of the Basin Plan and the work of the MDBA, or a real ignorance concerning water accounting.

The journalist finally poses the question "Why doesn't the Authority […] want to have an accurate picture of what we're doing with water?".

The MDBA does indeed want an accurate picture—that is precisely what the review of cap factors will achieve. As we explained to the journalist, updating cap factors is about working out how much water has *actually* been returned to the environment. This is done by looking at the long-term average *actual* water use of each water entitlement class, rather than just the nominal entitlement—in other words, how much water that entitlement would return to the environment if it were acquired by the CEWH.

For all the reasons outlined above these programs are in breach of the ABC's Code of Practice, particularly with regard to accuracy, and impartiality and diversity of perspective.