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Ms Cate Faehrmann  
Chair  
Select Committee into PFAS contamination in waterways and drinking water supplies throughout  
New South Wales  
Parliament House of NSW

By email: [pfas@parliament.nsw.gov.au](mailto:pfas@parliament.nsw.gov.au)

Dear Chair

I refer to the inquiry hearing on 5 February 2025 into PFAS Contamination in Waterways and Drinking Water Supplies Throughout New South Wales.

Please find enclosed my response to the question taken on notice during the hearing.

Thank you also for the opportunity to review the uncorrected transcript. I do not have any corrections or clarifications to the transcript.

Yours sincerely

**TONY CHAPPEL**  
**Chief Executive Officer**

Encl: Answer to transcript question

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NSW Environment Protection Authority  
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State we are committed to a sustainable future.  
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## **Inquiry into PFAS Contamination in Waterways & Drinking Water Supplies Throughout NSW**

### **NSW EPA response to the question on notice (page 58 of the transcript)**

**The Hon. CAMERON MURPHY:** I just had a question for Mr Chappel. Following on from the issue raised by my colleague the Hon. Taylor Martin. I think we have heard a number of times in evidence at these Committee hearings that in New South Wales, the polluter pays and you've got no ability to enforce the State law against the Commonwealth. I really want to tease that out a bit. Have you given any consideration at all to suing the Commonwealth in order to recover the costs of remediation? Have you got advice about that or has the State looked at that?

**TONY CHAPPEL:** Perhaps I might take that on notice because if some of that thinking has occurred, it would precede me. Why don't I take that one on notice?

**The Hon. CAMERON MURPHY:** Okay. But it's just not right, really, to have this position that because they're the Commonwealth, there's nothing we can do. That seems to be the position, doesn't it?

**TONY CHAPPEL:** Certainly the advice to me is that with a few minor exceptions, that's the way the High Court has interpreted this issue. It puts significant challenges in front of us. It's not to say—

**The Hon. CAMERON MURPHY:** I don't think it's quite that clear.

**TONY CHAPPEL:** I'd welcome that discussion.

**The Hon. CAMERON MURPHY:** I'm just wondering if you have got any advice. Have you given any consideration to taking action, even if it is simply something to prompt a more honest negotiation, perhaps, over how these things are dealt with?

**TONY CHAPPEL:** It certainly has been discussed—I understand in some detail—prior to the last few years when I've been more directly involved, but also more recently. But let me take it on notice. As I said, I'd also welcome the discussion.

**The Hon. CAMERON MURPHY:** If you're taking it on notice, can you also look at whether you've had a look at enforcing common law rights or taking an action in tort against the Commonwealth? Also, I understand the grave difficulties in enforcing State law against the Commonwealth. But there is still some scope there where there are openings and the court has allowed it in the past—the High Court. Could you also look at that issue of whether you looked at enforcing State law against the Commonwealth?

**TONY CHAPPEL:** Yes.

### **Answer:**

**Have you given any consideration at all to suing the Commonwealth in order to recover the costs of remediation? Have you got advice about that or has the State looked at that?**

Yes.

**Can you also look at whether you've had a look at enforcing common law rights or taking an action in tort against the Commonwealth?**

This issue is being considered.

**Could you also look at that issue of whether you looked at enforcing State law against the Commonwealth?**

Yes, per question 1.