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**To:** [Water Inquiry](#)  
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**Subject:** ACCC MDB Water Inquiry -Stakeholders feedback PART A  
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**Attachments:** [ACCC MDB Water Inquiry -Stakeholders feedback.docx](#)

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Please Find attached Part A of our submission.

As I explained to Georgia today Part A is for publication and will forward Part B which is private and confidential and not for publication.

Please do not hesitate to ask for any evidence or more information.

Kind Regards

Joy Boucher [REDACTED], Narelle Pratt [REDACTED], Jamie Park [REDACTED]

## ACCC MDB Water Inquiry - Stakeholder feedback

### Submission Part A to ACCC Water Feedback Inquiry,

We appreciate that at last something may be getting done to rectify / improve conduct of IIOs, to make them accountable, to bring them into line with what they are actually there for and prevent them from riding roughshod over their family irrigation members. There are so many differing issues that need to be addressed

The findings of this inquiry should at the very least, find in favour of an independent regulator or government body that IIOs are required to answer to.

An extensive investigation, a Senate Inquiry or a Royal Commission should be called into the conduct of all IIOs and the members should be returned to the same position so all members are on a level playing field and those who suffered adverse financially, unfair trading, inequity, denied fair competition and discriminated against over the years of IIOs lack of accountability, of ignoring any relevant industry codes and not having to answer to anyone, and just making up the rules as they go along regardless of being contrary to their Constitution, Water Contracts, the rules of the *Water Management Act 2000*, *Water Act 2007*, the *Competition and Consumer Act 2010* (previously the *Trade Practices Act 1974*), *NWI* or the *Murray Darling Basin Agreement*, of which IIOs are required to abide.

For too many years there has been ineffective legislation, regulation, no accountability, enforcement or compliance activity of IIOs.

#### Brief History

**March 1995** NSW Government privatised the Murray Irrigation area transferred **ownership** of Murray Irrigation, to its **irrigator shareholders, separated water from land**, creating a separate business asset. Murray Irrigation Limited (MIL) and other irrigation companies were formed.

MIL were granted a bulk supply licence, and were obligated to operate according to terms and conditions of the operating licence under the *Water Management Act 2000*.

MIL established governance arrangements which allow the Company to '**effectively regulate water use on farm, access to landholder's properties and collect outstanding debts owed to the company.**' **Not to force some members to surrender something they own, their Water Entitlements(WEs).**

We were allocated shares in MIL and irrigators were issued with water entitlements based on the water allocation already owned by the irrigators and were told WEs were our valuable asset. [our asset not MIL].

The NSW Government made us the owners of the Water Entitlements( WEs) with a similar legal standing as to a title of land .[ Shares, Water Entitlements and Delivery Entitlements are in the contract of sale or purchase of a property.]

Licensing and trading under the *Water Management ACT 2000* -provide a clearly defined right to access water, -separate from land ownership, - issued a certificate of title ,- advised to ensure that you keep

your Certificate in a safe place. -To remember it has similar legal standing to title for land. - Seek legal advice regarding the inclusion of your entitlement in important documents, such as a will. -that they can be independently traded, mortgaged and leased,- are granted in perpetuity. - are issued separately from the approvals to construct water supply works and the approvals to use the water - are tied to the rules in a water sharing plan.[ including *Murray Darling Basin Agreement*] and separately from the approvals to construct water supply works and approval to use water( **isn't this what the DE's are ?**)

Further to being informed by the NSW Government that WEs were our valuable asset, MIL in both our *Constitution* December 2007 and our *Water Entitlements Contract* (WEC) informed us that we were the absolute owners unless ordered by a Court of competent jurisdiction of the water entitlements and the delivery entitlements :- WEC cl 2.2.6 & cl 3A 2.2 and in *Constitution* cl 2.9 and then putting restrictions on something we own. When a farm was purchased or sold the contract included amount of MIL Shares, WEs and DEs.

**May 4<sup>th</sup> 2007** MIL on advice of ACCC and guidelines of the Murray Darling Basin Agreement (MDBA) gave us Delivery Entitlements (DEs) **attached to land** in proportion to our WEs, and according to our Constitution, made us the absolute owners of the DEs unless ordered by a court jurisdiction.

The maximum number of DE's allowed on the landholding was the Total Farm Water Balance (TFWB) These DEs were similar to our council rates, which pays for upkeep and maintenance of infrastructure. The DEs were annual charges also for the maintenance of the company's infrastructure for delivery of water and not connected to WEs.

If we owned 1000 acres and sold 100 acres, the council could not force us to pay for more than 15 years of rates. This is what MIL and another seven IIOs did as they were not accountable to anyone.

**From 8/4/08 -30/6/09** Policy made by MIL [without notice to most members] that forced surrender of DE's and payment of a termination fee when selling your WEs, saying that you could not have more DEs than WEs as without water you would be unable to meet your annual DE payments, yet one director had 1000 DEs without WEs and other directors and members had placed WEs into the non-member non landholding account prior to the 8/4/08 and these WE s were protected from compulsory surrender of DEs and paying the termination fee. Termination fee was payment of more than 15 years.

**Then 15 May 2008, six weeks later** MIL changed the rules allowing more DE's than the Total Farm Water Balance (TFWB)[ contrary to the policy that you could not have more DEs than WEs] then gave out DE's to those who requested them. MIL allowed one member to accumulate 6500 delivery entitlements on a 1100 property with only one wheel. There is no way that MIL could supply that kind of water to his farm.

It should be noted the importance of these historical policies, because it is still having a continued adverse and devastating effect, unfair trading and competition today on the members that were discriminated against and forced to terminate their DEs as evidenced by the figures tabled at end of this this submission page 10 and 11.

**1 July 2009** MIL brings in early the new ACCC rules prior to September 2009.

**September 2009** ACCC becomes the regulator of trading and market rules. [Although MIL brought in the new rules 1 July 2009]

In 2009 MIL introduced efficiency water on DEs the basis for this annual efficiency is because of the 'financial contribution' of DEs yet the members who had to terminate have contributed for upwards of 15 years but were not entitled to the efficiency water.[only difference is one member pays annually and the members forced to terminate, paid for 15 years in advance]

Our reply to the issues ACCC identified by this inquiry.

## Conduct of market participants

The ACCC is correct when it considers there is insufficient regulatory oversight, and enforcement and compliance activity, in relation to some practices of some market participants'

We totally agree with the ACCC's preliminary view ' that market integrity regulation needs to be improved and that regulation should be introduced specifically in the case of IIOs, and agree that an independent government regulator should be established and the three option ACCC has identified.

There has been a number of inquiries into the Murray Darling Basin but nothing has covered the somewhat questionable conduct of the Irrigation companies.

**Main points we consider should be introduced.**

One set of regulations governed by a totally independent regulator.

Take trade completely away from IIOs.

IIOs should not be water brokers

Alternative do away with IIOs altogether.

Findings should be back dated and all DEs and financial restitution made.

IIOs Board should consist of 50% of members and 50% of independent non-members.

Water should be returned to the land .

The government needs to buy the water from investors

An independent complaints body.

### **Feedback on options to improve market regulation**

One set of regulations governed by an independent regulator, so no IIOs can make up the rules on the run and without notice or regard to all the members. This would eliminate multiple sets of IIOs rules and policies, which are often not aligned with legislation, acts and regulations.

There needs to be a totally independent governing body, that the IIOs have to answer to and regulates their conduct, or that you can complain so to ensure that they abide by licences , legislation

and regulations [ Since 2008 numerous letters to government agencies all come back with 'not our control, not our department ' Similarly all the inquiries are the same response ' not about Ilos].

Due to IIOs conduct, take trade totally away from IIOs this would remove any market manipulation, conflict of interest, impropriety, insider trading, oppressive behavior, discrimination, and lack of transparency.

IIO should not be water brokers or allowed to trade water, or have water, their governance is to deliver the water and they should deal with improving delivery of water. Any water IIOs have should be returned to the members. There is no accountability or transparency as to what water Ilos have and what they do with them.

Alternative do away with IIOs altogether, due to their conduct and lack of accountability over the years , inadequate communication to the irrigators, discrimination and not benefitting and treating all their members the same. Anything but the present system as it is not working, not transparent and not fair to all members.

All IIOs Boards should consist of 50% members and 50% non-members, this would assist to eliminate conflict of interest, impropriety , insider trading and directors voting on policies that are in their interest.

Water should be returned to the land . separating the water from the land has caused investors to run up the price of the water, as their aim is the higher the price the higher their profit, thus putting the price out of the reach of the farmer. In hindsight separating water from land was a mistake but this can be rectified.

The government needs to buy the water from investors, which have caused distortion in the market escalating the price out of the reach of some irrigators that water is essential for their lively hood and return to the land where it belongs and this would help eliminate a lot of the impropriety, inequity, greed, lack of transparency, market manipulation and insider trading. [Some may say how can the water be brought back but shares in Ricegrowers and Murray Goulburn and both brought back the shares whether you wanted to sell or not].

Some IIOs do not even have a disputes panel where a member can complain to.

## Improving trade processes and market transparency

**The ACCC considers practical changes to trade processing are needed to improve the quality and timeliness of core market data**

## Feedback on options to improve quality and timeliness of core market data

Improvement in the trade process and market transparency should be made as soon as practically possible, for far too long there has been no accountability, no transparency and no harmonisation across the Basin.

Current legislation and regulation is and has been ineffective as they are not always abided by.

There needs to be transparency, a statutory regulator would provide that.

Take all trading away from the IIOs so as to eliminate any impropriety, to improve transparency, prevent insider trading and market manipulation.

An independent regulator would prevent IIOs from introducing policies that benefit some members and not others.

IIOs do not own our Water Entitlements (WEs) yet policies they have brought in, they act as if they do. IIOs have a monopoly over trading and members have had no option to follow the policies otherwise IIOs prevent them from selling their WEs and would not transfer their sales.

Introduction of a public register for complete market transparency [the recent NSW Bill failed, MIL, MIA and Coleambly, all wrote to Melinda Pavey against such a register and it appears that none of the IIOs even consulted or had meetings with their members]

One ground that it failed was that the privacy of the small family farmer had to be protected, but IIO Share Registers which have Names and Address can be freely available to the public.[one company already has WES on its Share register, it was one of the company's to write to Melinda Pavey so why was it against the Bill for a public water register.]

If there has been no impropriety then why would there be objections to this register? What do these objectors want to hide.

**The ACCC considers practical changes need to be underpinned by clear and comprehensive mandates to provide efficient trade services and high quality information to market participants**

The ACCC has also identified a suite of further changes required to achieve a consistent and comprehensive trade processing and market reporting framework:

## Feedback on options to provide efficient trade services and data collection

We agree with all points a) – h) but would like to further add to-

b) IIOs should be required to establish and maintain registers for temporary and permanent trades, within, out and into their networks. There should also for complete transparency be a Delivery Entitlements (DEs) register, as trading occurs on DEs and they are a valuable asset what with the water efficiency allocation.

**The ACCC considers digital technologies offer the opportunity to streamline trade services, at the same time as improving information quality and availability**

We agree with the options the ACCC has identified for using technological change to make more substantial improvements to improve the integrity of Basin water markets. The ACCC's preliminary view is that while governance remains distributed between Basin States and other actors, options which deliver *harmonisation* and *co-ordination* are more suitable than options which deliver *centralisation*.

### **Feedback on digital technology options**

One umbrella, one set of regulations for all participants in trading, to suit all. Each IIO has own trading rules, these can be changed without notice to some members.

A single common digital register with both water entitlements and delivery entitlements would provide water market information in a speedy manner and would provide complete transparency.

If introducing digital technology, consideration should be given to the fact not every irrigator is techno savvy, so it should be simple and easy to navigate so all members can benefit.

## **Improving market architecture**

**The ACCC considers the design of the southern connected Basin market architecture has not kept pace with increasing trade activity, and the ACCC is seeking to identify options for reform**

The ACCC considers market architecture that better integrates trade, operational requirements and the physical characteristics of the system will improve the operation of water markets. This will help achieve a range of benefits, including properly pricing the costs of trade and protecting other water users and the environment.

The ACCC is identifying appropriate market architecture reform options, which might include:

- a) Improvements to policy transparency and consultation processes
- b) Alternative approaches for allocation and carryover policies
- c) Creating formal markets for storage and delivery capacity
- d) Applying transmission loss factors to water deliveries in the southern connected Basin
- e) Removing the exemption for grandfathered tags or removing entitlement tagging altogether
- f) Alternative and more dynamic mechanisms to manage inter-valley trades
- g) Changing all allocation trade to tagged allocation trade
- h) Improving consistency across Basin States' accounting and metering requirements.

### **Feedback on options to improve market architecture**

The main issues with the reform options from a) – h) we think questions need to be addressed and answered re:-

b) carry over policies- why can't all water be carried over to the next season why is it cut by 50%. Who gets this water?

- Members who are in the know and with the financial ability, can 'park' their carry over till the next season, for a fee and then return to their landholding at the start of the season and have lost nothing. These members have a jump start on those that have lost 50% of their carryover. This creates unfair competition and inequity. Benefitting some members over others.

d) Transmission loss -MIL members have already been forced to contribute to transmission loss.

On the 1 July 2009 MIL took 17% of WEs for transmission loss.

On the 30 June 2009 an irrigator could have 1000 WEs mortgaged to the bank ( as is his legal right to mortgage his WEs ), then after MIL took 17% on the 1 July 2009, would only have 830 WEs mortgaged to the bank. How can this possibly be legal. Taking 17% caused devaluing of his assets with the bank over night without any option.

Not only devaluing assets, but a huge financial loss of not being able to use this water on his property for stock or crops, unable to trade, sell, lease or mortgage these WEs.

On the 1 July 2009 MIL also confiscated 17% of our DEs [ in the same quantity as WEs] which they issued in June 2007 for nothing. This has also had detrimental and ongoing financial loss when MIL took these DEs as they could be traded and the 17% loss in the efficiency program.

In 2008/09 1,486,451 water entitlements in MIL region

2009/10 1,111,957 after taking 17% from members 1/7/09 this total of 374494 WEs confiscated by MIL [It should be noted that 17% of 1,486,451 is actually 252,696 so unsure what the explanation of the difference, in MIL's favour of 121798



Figures on efficiency water just for

**May 2019** -10% efficiency water on 374494 is 37,449.40 at \$635.00 =**\$23,780,369.00**

**December 2019** - 2% efficiency water on 374494 is 7,489.88 at \$817.00 = **\$6,119,231.90**

less annual access fee of \$6.57 on 374494 = \$2,460,425.50 total loss of **\$27,439.175.00**

That's **\$27,439,175.00** that farmers have been denied for just last year alone, not only farmers but their communities have been denied as these funds would have been spent in the irrigators community.

No compensation was paid for this 17% compulsory acquisition of the WEs.

The questions that need to be investigated :-

We do not understand when we are the owners MIL could just take this 17%?

- whether MIL had any legal right to take 17% of our WEs and DEs on the 1 July 2009.

- what happened to the 17% WEs, the 17% was allegedly for conveyancing but was the conveyancing loss as high as 17%, if not what has happened to the rest of the WEs.

- what happened to the 17% DEs and who ended up with them as they are valuable for trading and for getting efficiency water. As indicated in the Annual Reports most directors have more DEs than WEs. MIL taking 17% of all members Water Entitlements (WEs) and Delivery Entitlements(DEs) on the 1 July 2009, whether they legally had the right and the ongoing effects of this conduct.

## Changes to market governance

The ACCC considers there is a need to reconsider governance frameworks to enable independent and clear decisions on the development of market settings

The ACCC considers improved governance will help resolve many of the issues identified throughout the inquiry and strengthen the system so fewer problems emerge in the future.

### Feedback on options to improve market governance

We not only agree with the options a)- e) that ACCC is considering to improve market governance but believe it is a must that something constructive is done about the current market governance of unregulated IIOs, government agencies not fulfilling their roles or functions, lack of accountability, monopoly, manipulation of market prices, inconsistency of rules, inadequate communication, confusion, inequities of regulations and rules, government agencies not fulfilling their roles or functions and not enforcing legislations.

All the present system has done has created confusion, escalating delivery costs, escalating water prices, causing costs out of the reach of a lot of irrigators. The costs of delivering of water at times outweighs profit. Causing not only financial loss to the irrigators but also to their communities.

Very little has been said and there are no reports that have addressed the very real issue, the emotional stress, the suicides and the marriage breakdowns, family breakdowns caused by this current system and these should all be taken into consideration in your findings.

#### Other comments

Please provide any other feedback you consider relevant to the ACCC's inquiry.

#### Feedback

The system needs restructuring. One umbrella for all regulations to suit all participants, each IIO has own trading rules, these can be changed without notice to some members as was the case of MIL 8 April 2008 which discriminated against some members and over others who benefitted by prior knowledge.

In this submission our main focus is on the conduct of IIO,s, specifically of Murray irrigation Limited, although other IIOs have also similar complaints about them.

We would like to outline the ongoing effects today of MIL's conduct in the policy change brought in 8 April 2008 and the detrimental and ongoing financial effect it has caused to the members that were forced to compulsory surrender their DEs for 15 month period. [08/04/08 – 30/06009] During this 15 month of forced termination by MIL there were –90 transaction of sale of WEs without DEs a total of 49764 which should total \$ 16,549.018 .00 but only 28007 WEs had to terminate and paid \$9,314,000.00 .[2007/08 \$796,000.00 - 2008/09 \$8,518,000.00]

IT SHOULD BE NOTED THAT FOR THIS 15 MONTH PERIOD THESE IRRIGATORS HAD NO OPTION TO KEEP THEIR DELIVERY ENTITLEMENTS AND WE WANTED TO KEEP OURS

That meant that 21757 WEs did not pay and these members benefited over and above us and other members by a whopping \$7,235,018.00 as they kept that money that they could utilize, that some were denied by having to pay the termination fee. Denying competition of use of that money and allowing them to keep their DEs which they could trade annually and also gained them the benefit from the efficiency water based on the number of DEs they had.

We do not know why these 21757 WEs did not have to terminate equivalent DEs as the policy stated, and we some were discriminated against. This question needs to be answered. There was no transparency or accountability as to this.

As the policy was brought in on 8 April 2008 [ only three months of the financial year ], to get an accurate picture, we have worked the figures of 'ongoing effects' on 2008/2009 figures of compulsory termination of DEs and forced payment of the termination fee.

During that period 38698 WEs were transferred without DEs \$13,201,569.00,

yet only 25614 WEs paid the termination fee \$ 8,518,000.00

this meant 13084 WEs did not pay \$ 4,351,084.20, these members were allowed the ongoing benefit of using this money and gained the ongoing benefit from the efficiency program, denied to those that were forced to terminate. [We do not know why some members did not have to terminate.]

The first point of ongoing is the \$8,518,000.00, we were all forced to pay, has the ongoing effect as we were denied this money for our use and benefits over the years and if invested the interest we would have benefitted by would have paid the annual access fee.

The most important point of the 'ongoing effects' MIL's conduct involves wider implications for competition. Every year since 2009 some members have benefited by the efficiency water program and denied to the members who were forced to terminate and pay the fee do not, this is denying them fair competition and sharing in this water.

The 25614 DEs [ based on the 2008/09 figures] forced to be terminated denied the ability to use this efficiency water to use on crops or for stock but also denied the option to sell the water and utilize the money on their farms or to reduce debt.

Specific examples of some members being discriminated against, restraint of competition and of the ongoing effect re the efficiency allocation and water sharing

<u>Year</u>	<u>allocation</u>	<u>no.</u>	<u>price</u>	<u>ongoing costs denied</u>
<u>2009 December</u>	<u>4% of 25614 DEs</u>	<u>1024.56</u>	<u>\$192.00 =</u>	<u>\$ 196,606.00</u>
<u>2010 May</u>	<u>7% of 25614 DEs</u>	<u>1792.98</u>	<u>\$ 90.00 =</u>	<u>\$ 161,280.00</u>
<u>2010 December</u>	<u>6% of 25614 DEs</u>	<u>1536.84</u>	<u>\$ 30.50 =</u>	<u>\$ 46,873.62</u>
<u>2011 May</u>	<u>16% of 25614 DEs</u>	<u>4098.24</u>	<u>\$ 1.50 =</u>	<u>\$ 6,147.36</u>
<u>2011 December</u>	<u>18% of 25614 DEs</u>	<u>4610.52</u>	<u>\$ 20.00 =</u>	<u>\$ 92,210.40</u>
<u>2012 May</u>	<u>19% of 25614 DEs</u>	<u>256.14</u>	<u>\$ 5.00 =</u>	<u>\$ 4,866.66</u>
<u>2012 December</u>	<u>7% of 25614 DEs</u>	<u>1792.98</u>	<u>\$ 40.00 =</u>	<u>\$ 71,719.20</u>
<u>2013 May</u>	<u>7% of 25614 DEs</u>	<u>1792.98</u>	<u>\$ 56.00 =</u>	<u>\$ 100,406.88</u>
<u>2013 December</u>	<u>6% of 25614 DEs</u>	<u>1536.84</u>	<u>\$ 82.50 =</u>	<u>\$ 126,789.30</u>
<u>2014 May</u>	<u>12% of 25614 DEs</u>	<u>3073.68</u>	<u>\$ 45.50 =</u>	<u>\$ 139,852.44</u>
<u>2014 December</u>	<u>0%</u>			
<u>2015 May</u>	<u>2% of 25614 DEs</u>	<u>512.28</u>	<u>\$162.59 =</u>	<u>\$ 83,245.50</u>
<u>2015 December</u>	<u>3% of 25614 DEs</u>	<u>768.42</u>	<u>\$265.00 =</u>	<u>\$ 207,473.40</u>

2016 May unable to obtain these figures

<u>2016 December</u>	<u>3% of 25614 DEs</u>	<u>768.42</u>	<u>\$162.00 =</u>	<u>\$ 124,484.04</u>
<u>2017 May</u>	<u>3% of 25614 DEs</u>	<u>768.42</u>	<u>\$ 11.50 =</u>	<u>\$ 8,836.83</u>
<u>2017 December</u>	<u>3% of 25614 DEs</u>	<u>768.42</u>	<u>\$ 104.50 =</u>	<u>\$ 68,773.59</u>
<u>2018 May</u>	<u>8% of 25614 DEs</u>	<u>2049.12</u>	<u>\$ 160.00 =</u>	<u>\$ 393,431.04</u>
<u>2018 December</u>	<u>5% of 25614 DEs</u>	<u>1280.70</u>	<u>\$ 459.00 =</u>	<u>\$ 576,315.00</u>
<u>2019 May</u>	<u>10% of 25614 DEs</u>	<u>2561.40</u>	<u>\$635.00 =</u>	<u>\$1,626,489.00</u>
<u>2019 December</u>	<u>2% of 25614 DEs</u>	<u>512.28</u>	<u>\$817.00 =</u>	<u>\$ 418,532.76</u>

Total for 2019 \$ 2,045,021.76

Access annual fees for 2019 on these 25614 DEs @ \$6.57 would have been \$168,283.98 Therefore \$2,045,021.76 minus access fee \$168,283.98 leaving a balance of **\$1,876,737.80** of 'ongoing effects' denied because of MIL's conduct and affecting competition and denying these members the right to share in this water or financially benefit.

Almost \$ 1.9 million dollars for one year, is a lot effecting fair and equitable competition.

Then looking at the other side of the coin the 21757 WEs total that were also sold during the forced termination 15 month period, [should have terminated and paid ], and did not terminate DEs or pay the termination fee [figures as explained above ] then for 2019 they would benefit by the 10% & 2% efficiency water calculated by 21757 WEs which is 2610.84 @ \$635.00 = \$ 1,657,883.40 less the delivery entitlement access fee 21757 @ \$6.57 = \$142,943.49 therefore these WEs owners benefitted by the amount of **\$1,514,940.10 over and above the \$1,876,737.80** that the owners of the WEs forced to terminate missed out on.

Over \$1.5 million dollars for one year, is another example of how unfair and inequitable the competition is because of this policy change and this needs to be rectified.

Another point of contention on the forced termination of DEs and payment of termination fee was that if irrigators paid MIL's invoices by the due date then a 10% discount was applied. Those forced to terminate were denied this 10% discount this amounts to **\$931,400.00**. Once again this was discrimination against some members.

Thank you for bringing this to light as over the years Ilos have not had to answer to any one, and have been accountable to no-one, and with time this has escalated to depremental and adverse effects on some of the members, who the IIOs seem to have forgotten that they are there to govern for all their members.

This is Part A of our submission and Part B will follow.

Joy Boucher, Narelle Pratt and Jamie Park

Any queries, or request for further evidence phone [REDACTED]

