



Barnes NSW Country Mayors Association quarterly meeting – November 2021

Those of us here in person meet today on the lands of Gadigal people of the Eora Nation. The Traditional Owners of Sydney and beyond have a physical and spiritual connection that extends well past 65,000 years. I pay my respects to their Elders past, present and emerging, and extend that respect to all Aboriginal and Torres Strait Islander peoples.

Thank you, Cr Ken Keith and Alan for the invitation to join you today.

I've been asked by Alan to speak broadly about:

- our role as NSW's independent regulator of water
- what we have been working on and the results of our activities
- how councils and NRAR could work together

Turning to the first point, what is our role?

More than four years have elapsed since Ken Matthews delivered his two reports on water management to the NSW Government.

Many of his findings aligned with the four reviews conducted by the NSW Ombudsman in the 10 years to 2018. The Australian Government also drew attention to systemic issues in their own review of compliance and enforcement.

Last year the Independent Commission Against Corruption (ICAC) added their weight to the consensus that there were many things fundamentally wrong with how water laws were being complied with and being enforced.

Collectively, these inquiries determined that the attention to compliance and enforcement of water laws in NSW was ineffectual and needed urgent improvement, that the public had lost confidence, and that the activity was significantly under-resourced.

Two of the most significant reforms that came about because of the NSW Government's acceptance of these inquiry's recommendations was the far-reaching commitment to implement water metering, and to significantly improve the transparency and public accessibility of information about NSW water extractions.

NRAR was established with a clear, legislated mandate to; ensure the efficient, effective, transparent, and accountable delivery of water regulation, and to maintain public confidence in that regime.

As an independent regulator, we have:

- Re-established a visible compliance presence with 'boots on the ground'.
- Re-set what is required to be a professional regulator that is outcome focused, intelligence-led and risk-based.
- Required the highest ethical standards of our people; accountability, integrity and trust.
- Committed to always act in the public interest.



- Continued to fiercely protect our independence.

what we have been working on and the results of our activities

I have twice now described NRAR to you as an independent regulator. As a statutory body we are independent in that our compliance and enforcement operations are not subject to the direction of politicians, bureaucrats, or external entities.

Unlike most other publicly funded organisations in NSW, the agency I lead is accountable to an independent board.

Both the Board's independence and the limitations on Ministerial input, are enshrined in the Natural Resources Access Regulator Act 2017.

The NRAR Act confers significant powers and discretion on myself as Chief Regulatory Officer and on the Board. Given these extensive powers, an accountability framework is in place to ensure these powers are used appropriately and legally.

Further, NRAR is subject to the oversight of the NSW Ombudsman, the Audit Office of NSW, and the Commonwealth Inspector General of Water Compliance.

So, what we have been working on and what are the results of our activities?

In three and a half years of operation:

- we have taken over 18,000 enquiries, logged nearly 4,500 reports of suspicious activity, and finalised over 4,300 investigations.
- We have subsequently taken almost 1,300 compliance actions, including:
 - issuing 500 formal warnings
 - issuing 441 statutory notices, including stop-work, show-cause and remedial directions
 - imposing 384 penalty infringement notices.
- In the last financial year, we began a further 7 prosecutions, bringing the total commenced since our inception to 32.

Of the prosecutions started, to date:

- 14 cases have resulted in convictions and penalties totalling \$625,000
- 2 prosecutions resulted in charges not being proven beyond reasonable doubt.

With boots on the ground and by engaging directly with water users on-farm, we know it to be true that:

1. Most water users are honest operators who appreciate the need for rules and want them applied fairly.

Fact - Seventy percent of the 2,600 properties inspected since October 2020 complied with the conditions of their water access licenses or works approvals.

2. Water users genuinely want to do the right thing but can find it challenging on occasion, particularly given the complexity of water regulation.
Fact - Twenty per cent of the 2,600 properties inspected since October 2020 were in minor non-compliance. Most had failed to keep a record of their water take or lacked tamper-proof seals on their meters.
3. Our efforts in this regard are to provide advice and guidance where the level of noncompliance is minor, harm is low, culpability is negligible and the attitude to compliance is positive. These are the majority of interactions we have with water users.
4. We continue to encounter a small number of users whose actions are wilful, reckless and cause significant harm to communities and the environment. It is the criminal action of these few where we deploy the full force of the law.
5. Our experience of non-compliance is not constrained by location or type of water users. Rather, they are distributed north, south, east and west; in the regulated and the unregulated systems; surface water and groundwater; Murray–Darling Basin and coastal regions. It is widespread and systemic.

The common explanation for most non-compliance is a lack of awareness of the conditions of approval that allow the diversion, storage and use of water in NSW. It is not a credible defence though to claim ignorance of one's obligations.

There is though encouraging evidence of increasing voluntary compliance, particularly as water users' awareness of NRAR's presence increases, and as our methods of detection become more widely known.

Finally, how can councils and NRAR work together?

Firstly, we are fellow regulators. In many instances councils have served as effective eyes and ears, particularly during the drought. Suspected breaches of water law are referred by councils to NRAR for investigation. Working together benefits all regulatory agencies.

Secondly, councils and local water utilities hold water licences and approvals that authorise the taking, storage and use of large volumes of water. I draw attention to three areas of interest:

1. Ensuring adherence to licence conditions specific to the operation of dams or seeking to have conditions amended where no longer fit for purpose.
2. Complying with town water supply constraints imposed on special purpose access licences. TWS provisions often prohibit supply for commercial agriculture.
3. Oversight of water accounts to avoid inadvertent drawing down more than the entitlement.

The non-urban metering framework is also being rolled out across NSW. The next deadline is 1st December 2021. Water users captured must have accurate meters installed, independently certified, and connected to the telemetry system. These obligations may



extend to councils and local water utilities. It's important to check now, act if required and set the right example for private water users.

Lastly, most councils encounter NRAR not in our compliance and enforcement role but as licensor. We are currently responsible for licensing councils, mining companies, irrigation corporations, state entities and aboriginal organisations. Water licensing can be complex, requiring extensive information to support applications and community consultation. The Water Management Act is highly prescriptive, as are the requirements of Water Sharing Plans. I know that on occasion applicants find the process confusing and time consuming. Also true is that sometimes the proposed activity cannot be authorised by law. I understand that can be frustrating. There are opportunities to further improve how we communicate with applicants with timely and helpful advice. We cannot though apply discretion where the act makes no provision for it.

To summarise,

We are here to support first and then enforce when required.

We have clear guidance and thresholds for our responses. We are transparent with water users and the public about our compliance approach, and we are accountable for our actions.

We know that transparency is an essential element to maintaining the public's confidence in NRAR and our operations.

This ensures stakeholders and the regulated community are aware of NRAR's intentions, expectations, and conduct.

Thank you,

Grant Barnes, Chief Regulatory Officer at the Natural Resources Access Regulator.