



## **Barnes NSW Irrigators' Council annual general meeting – March 2021**

We 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, Jim (Cush) and Claire (Miller), for the invitation to join you today.

I've been asked by Claire to speak about the audit of flood works we have committed to in 2021, and to reiterate NRAR's (the Natural Resources Access Regulator's) approach to ensuring water users understand their obligations and comply with the new non-urban metering framework as it rolls out across NSW.

I propose to meet this request by describing our work as NSW's independent regulator of water in three components:

- what we have been working on and the results of our activities
- how these have evolved over the past three years as we have matured and water users' understanding of our role has improved
- how we'll apply what we have learnt to the regulatory challenges of 2021 and beyond.

### **Our efforts over almost three years to turn around compliance and enforcement for water in NSW**

More than three 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.

More recently, the Independent Commission Against Corruption (ICAC) added their weight behind 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 arose was the government's far-reaching commitment to implement water metering, and to significantly improve the transparency and public accessibility of information about NSW water extractions.

'No meter, no pump', as Mr. Matthews paraphrased it, has become the cornerstone of an effective, efficient, transparent, and accountable regulatory system. In NRAR, this principle

is articulated as the accurate recording of water take, the efficient and secure transmission of data and the centralised storage of water use information.

I will address this point when I speak to the regulatory challenges of 2021 and beyond.

Firstly though, I'll start by providing my usual update on our compliance and enforcement activities.

In almost three years of operations:

- we have taken over 15,000 enquiries and logged nearly 4,200 reports of suspicious activity and finalised almost 3,300 investigations.
- We have visited over 5,000 properties
  - Over 1,800 visits were to check water access licences and works approvals
  - We have conducted 1,134 inspections for investigation purposes
  - We have conducted 2,300 audits.
- We have subsequently taken 1,086 compliance actions, including:
  - issuing 421 formal warnings
  - issuing 334 statutory notices, including stop-work, show-cause and remedial directions
  - imposing 306 penalty infringement notices.
- In the last financial year, we began a further 15 prosecutions, bringing the total to 25. Of those prosecutions started:
  - 13 have been before the Land and Environment Court
  - This compares to 5 for the entire 17-year period up to 2018.
  - 12 have been before the local courts
  - 11 cases have resulted in convictions and penalties totalling \$561,000
  - 2 prosecutions resulted in charges not being proven beyond reasonable doubt.
  
- More prosecutions are likely in the short term.

### **What have we learnt as we have matured, and water users' understanding of our role has improved?**

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 per cent of the 1,800 properties inspected since October 2020 comply 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 1,800 properties inspected since October 2020 were in breach. 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.  
*Fact - Five per cent of the 1,800 properties inspected since October 2020 were deemed to be in serious breach. These allegations are now subject to formal investigations by NRAR.*
5. As I have said repeatedly and publicly, our experience of noncompliance 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.

There is positive evidence of voluntary compliance, which is encouraging.

The common explanation for some noncompliance must change. It is not acceptable to be unaware of the conditions that allow the diversion, storage and use of water in NSW.

It is not acceptable to ignore one's obligations with the expectation that others will turn a blind eye to offending. It is not a legally credible argument to blame others for

noncompliance. The onus is on water users to understand their obligations and to comply with the law.

This is particularly so, as water users' awareness of NRAR's presence continues to increase, and as our methods of detection become more widely known.

This water watchdog is not afraid to bark and as our efforts since 2018 show, is not afraid to bite when the circumstances warrant.

### **How have our efforts evolved over three years?**

When we began operations on 30 April 2018, we inherited 483 open cases from WaterNSW and the former department.

Interest in the new water regulator was high and NSW was heading into a severe and prolonged drought. Reports of suspicious activity from the public came thick and fast, reaching a peak in January 2019, when we received over 200 reports in that month alone. This bought the number of investigations NRAR had carriage of to over 1,000.

As the effects of the drought have subsided, so too have the volume of reports received from the public.

In fact, this year most of the investigations we have underway are as a result of our own internally generated intelligence. This may be from our 'Eyes in the Sky' program, audits of



locations or sectors, or from our interrogation of water accounting systems and other information sources.

As I have said before, water law is complex. It can be difficult to understand, hard to implement, a challenge to monitor and tough to enforce.

It follows, therefore, that it can be hard for the public to distinguish lawful water activities from those that breach the law. Most reports of suspicious activity we receive result in a finding of no breach or minor breach.

Conversely, our proactive, risk-based, and intelligence-led approach allows us to be targeted in our efforts, focused where the likelihood of significant and widespread noncompliance is high.

This goes to our legislative obligation to be an efficient and effective regulator of water for NSW.

### **How will we apply what we have learnt to the regulatory challenges of 2021 and beyond?**

We always talk in NRAR about our obligation to act in the public interest. We must do so in order to meet the public's expectation of rebuilding their confidence in water regulation. We see, therefore, our role to be about 'finding important problems, fixing them, and telling everyone about it.'

Our internal intelligence capability informs our regulatory priorities, guides development of our proactive campaigns and assists with evaluating risks and harms. We have a forward program of campaigns planned for 2021 and beyond, which we will publish soon.

For today, I will talk about our metering and flood works campaigns.

### **Meters**

The first tranche of the metering regulations began on 1 December 2020, after a 12-month delay due to drought.

In this group are 387 entities that hold 531 approvals for 1,138 works.

We have been transparent in how we will approach compliance and have described the requirement to demonstrate best endeavours with documented evidence. We consider the three components to full compliance by water users as:

They,

1. **'Must'** have installed a tamper-proof, pattern-approved meter
2. **'Should'** have had the meter(s) validated by a Duly Qualified Person (DQP)
3. **'Could'** have connected their system to the Data Acquisition System (DAS) via an approved local intelligent device.

We consider this firm-but-fair approach appropriate, as:

1. The National Framework for Non-urban Water Metering was adopted by the government in 2010, became policy for NSW in 2016, was described in mandatory licence conditions for some water sharing plans in 2018 and became a part of the Water Reform Action Plan soon thereafter. There are limited reasons to excuse not having a meter installed now.
2. The second component reflects: 1) the number of DQPs now qualified via Irrigation Australia, 2) our 'best endeavours' position, and 3) that for some users, there may have been genuine physical constraints to validation that have not yet been overcome.
3. The final component acknowledges that the LIDs (local intelligence devices) are new and emerging technology for many; that more products are coming to market and that work to integrate these with existing telecommunication on farms are ongoing. We expect these impediments to resolve themselves in the short-term.

Three months have now past since the 1 December deadline. NRAR will be contacting water users directly this month to make our expectations clear.

In April, we will be following up with an on-the-ground audit of high-risk users. Enforcement action is likely for those who have not met the **must have** obligation or who do not demonstrate best endeavours regarding the **should have**.

Enforcement action may encompass stop work orders to reduce or prevent the use of pumps that do not have validated meters. Prosecutions are possible, as too are significant financial orders. Licence suspensions or revocation are also within NRAR's enforcement powers.

We are stating this in advance so that there can be no misunderstanding of what will come next. We will also be publicising our activities in advance, during and after.

## **Flood works**

NRAR has lodged 1,378 suspicious activity reports since January 2020. One hundred and four (104), or 7% of these, are high-priority reports specific to flood works.

These works are in both the north and south of the state.

Three quarters of these suspicious activity reports have been resolved; the remainder are under investigation. Seventeen breaches of the *Water Management Act 2000* have so far been determined, resulting in 36 enforcement actions being taken.

We have scheduled for 2021 audits of floodplain management areas in the Gwydir and Murrumbidgee. These audits will review flood works that could adversely impact the flow of water. This work will be guided by the relevant floodplain management plan.

## **Gwydir flood works audit**

This will be the first audit undertaken and we are treating it as a pilot in order to test assessment and inspection methodologies. The audit will adopt the following broad process:



- Identify and prioritise works requiring audit from a list of works identified through the Healthy Floodplains Project hotspot program, with priority based on the modelled level of impact.
- Desktop audit to confirm the work's approval status.
- Field-based inspection of confirmed unapproved works to determine compliance with floodplain management plan and regulatory action pathway:
  - exempt from approval requirements – no further action
  - compliant without modification – direction to obtain approval
  - compliant with modification – direction to modify and obtain approval, or
  - noncompliant – direction to modify or remove.

## **Murrumbidgee**

This audit will target unlicensed flood works within the area of the Billabong Creek Floodplain Management Plan.

This area has been identified as having a history of allegations regarding unlicensed flood works with significant impacts to landholders and communities.

### **To summarise,**

We are here to support first and then enforce when required. There should be no surprises when sanctions are applied. These will be progressively more severe.

We have clear guidance and thresholds for our responses. We are being 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.