



Natural Resources Access Regulator

BARNES NSWIC ANNUAL GENERAL MEETING - OCT 20

WELCOME

Firstly, I'd like to acknowledge the Gadigal people of the Eora Nation as the traditional owners of this place where we meet today. The traditional owners have a connection to this land that extends beyond 40,000 years. I pay my respects to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

When we last met in February, I also acknowledged many rural communities who were experiencing hardship as a result of the drought. Their resolve, strength and fortitude were being severely tested. Thankfully the drought has largely broken across NSW and many catchments have had a better 2020 than recent years. The forecast too is looking promising, fingers crossed.

It is therefore apt that today we come to talk about the longstanding practice of flood plain harvesting. An activity that occurs sporadically and only at times of excess rainfall triggering overland flow and small creeks and rivers to spill their banks. What a difference 6 months can make.

ADDRESS

I'd like to firstly thank Jim and Claire for the invitation to join you all today. I appreciate the opportunity. I have prepared some remarks that I'd like to share with you. I also anticipate you'll have questions for me, and I understand there is plenty of time available for you to do so. I've been asked by Claire to speak to the issue of floodplain harvesting from a compliance and enforcement perspective. Before I do so I have a couple of slides to share with you that describes:

- The state of compliance pre-NRAR,
- Our efforts over two and half years to turn this around, and
- NRARs best practice approach to compliance.

The state of compliance pre-NRAR

This was best described in the review undertaken by Ken Matthews in late 2017, which aligned with the four reviews conducted by the NSW Ombudsman in the 10 years to 2018.

The Commonwealth Government drew attention to the many issues in their own review of compliance and enforcement.

I don't propose going over well-worn ground here other than to summarise what all enquirers determined; the attention to compliance and enforcement of water laws in NSW was ineffectual



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and needed urgent improvement, the public had lost confidence, and the activity was significantly under resourced.

A 2017 assessment of compliance effectiveness determined that most elements of best practice were either absent or emerging. The two lowest of 6 possible scores.

The NSW Government's response was prompt; the recommendations made by Ken Matthews were accepted in full by the NSW Government, the Water Reform Action Plan quickly followed, and soon thereafter the Natural Resources Access Regulator was established replete with its own legislation and independent Board.

Our efforts over two and half years to turn this around

We have been up and running for 2 and a half years. NRAR hit the ground running and we haven't taken a breath since.

Since commencing operations, we have more than tripled the number of investigators. We have over 130 frontline staff across the organisation undertaking compliance activities.

The volume of suspicious activity reports received by NRAR increased by 74% year on year. In the 12 months ending June 2020 we had:

- finalised nearly 1400 investigations,
- inspected over 500 properties,
- issued 157 statutory notices, including stop work, show cause and remedial directions,
- issued 153 penalty infringement notices, and
- commenced a further 15 prosecutions, bringing the total to 24.

Ten prosecutions have been resolved, nine resulting in convictions and substantial penalties. One case in the NSW Land & Environment Court resulted in the acquittal of all charges.

A reassessment of compliance effectiveness in 2019 concluded most elements of best practice had improved to emerging or developing. We recently received results for 2020 which confirmed our continuous improvement with most elements now at developing or maturing, putting us firmly in the upper categories of best practice.



Ok, what is NRARs best practice approach to compliance?

The lessons we learnt in our first two years of operation continue into our third.

1. Most water users are honest operators who appreciate the need for rules and want them applied fairly.
2. These users seek to do the right thing but can find it challenging on occasion, particularly given the complexity of water regulation.
3. Our efforts in this regard is to provide advice and guidance where the level of non-compliance is minor, harm is low, culpability negligible and 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 willful, 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. These observations of non-compliance are 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.

NRAR and Floodplain Harvesting

We talk alot in NRAR about “it is not if we enforce the law but how that matters”.

I understand the enforcement part of this statement can create tension amongst landholders, water users and their representatives. It is though the ‘how’ component that is important.

We exercise our discretion by considering the harm being caused, the culpability of the individual or agency, the public interest and the subsequent attitude to compliance.

We then use the full range of tools available to us, from advice and guidance to enforcement and prosecution.

The disallowance of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) has created uncertainty. Floodplain harvesting is a long-established practice across NSW. Many structures have been in the landscape for decades.

Water management laws are complex. Water taken in NSW must be done so in accordance with the conditions of an access licence, works or use approval, exemption, or basic landholder right.

NRAR will continue our hard work to investigate alleged breaches of water law as we have always done: on a case-by-case basis, in accordance with our regulatory principles, policy and priorities, consistent with our enforcement guidelines, and upon assessment of individual circumstances.



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We apply a risk-based approach to decisions, with the aim of delivering the best outcomes for the people of NSW, the environment and water users. Water is a precious, community owned resource and we take our role very seriously.

While the NSW Government is actively undertaking the licensing of floodplain harvesting works, we will remain focused on unlawful water take rather than eligible structures which may be licenced within months. I acknowledge too efforts of colleagues to progress an interim solution through to July 2021.

NRAR has lodged 1036 alleged breaches since January 2020. One hundred and fifty five (155), or 15 % of these are specific to flood works. 95 of these breaches have been classified as high priority and are being investigated.

We have scheduled for 2021 two pilot audits of floodplain management areas in the Gwydir and Barwon. These audits will review flood works that could adversely impact flow distribution. We will also assess unlicensed flood works in areas of high environmental significance. We are also preparing an annual audit plan of flood plain harvesting for implementation from July 2021.



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Finally, we know that transparency is an essential element to maintaining the public's confidence in our agency and our operations. We know too our activities are subject to public scrutiny and we welcome this. We will continue to be as open and transparent as the law allows us to be. This ensures stakeholders and the regulated community are aware of NRAR's intentions, expectations, and conduct.

Thank you.