# Government Regulatory Practice Initiative Conference – November 2022

*E ngā mana*

*E ngā reo*

*E rau rangatira mā o ngā hau e whā*

*Tēnā koutou, tēnā koutou, tēnā tātou katoa*

*Ko Grant Barnes tōku ingoa*

*E mahi ana au hei kaiwhakahaere matua motu tari o Chief Regulatory Officer*

Thank you to Ian for the introduction.

This is the third time I’ve had the privilege to contribute to the G-Reg Conference.

At the inaugural event, Steven May and I spoke of regulatory practice from a local government perspective.

In 2019, I described the work of the Natural Resources Access Regulator in the early days of its formation.

Today, three years later and a little wiser and wearier, I propose to talk to you about how we work in the public’s interest to rebuild confidence in the regulation of water in NSW, Australia.

SLIDE 2

I will describe:

* The public’s trust and our efforts to rebuild confidence in water regulation
* How we measure trust and tailor our interventions
* What’s worked(ing) and the lessons learnt

## SLIDE 3

## **Let me first set the context for who we are and how we came to be.**

SLIDE 4

Five years ago the NSW Government commissioned a review of water regulation following broadcast by the ABC Four Corners alleging widespread theft of water by prominent irrigators and the acquiescence of senior bureaucrats that constituted maladministratuon.

Mr Ken Matthews delivered two reports on water management to the NSW Government within 8 weeks of his appointment.

Many of his findings and recommendations aligned with the four reviews previously conducted by the NSW Ombudsman.

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 in the administration of water regulation, and that the activity was significantly under-resourced.

One of the most significant reform that followed the NSW Government’s acceptance of the inquiry’s recommendations was the creation of an independent regulator of water.

Independent by statute with independent governance and decision making

NRAR was established to ensure the efficient, effective, transparent, and accountable delivery of water regulation, and to maintain the public’s confidence in the administration of water laws.

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.

SLIDE 6

Our work is undertaken across NSW. Territory that is almost as large as Germany and France combined.

SLIDE 6

We monitor, audit, and regulate the use of water across almost 100,000 legal instruments and many tens of thousands of water users and landholders.

SLIDE 7

To achieve the greatest overall benefit for the state from our activities, we prioritise:

* The areas and activities with a demonstrable history of noncompliance, and
* The activities with the highest potential for harm to the environment and other water users

We aim to deliver balanced outcomes that support the greatest impact on compliance and water management.

We do so by carefully considering the timing of water use, the volume abstracted and the location of take, storage and use.

SLIDE 8

As a law enforcement agency, we work with the willing to educate, encourage and enable water users to actively comply with the law.

We also enforce the law to sanction wilful and reckless conduct, to provide deterrence and ensure fairness for the compliant.

SLIDE 9

In four and a half years of operation:

* We have taken over 18,000 enquiries, logged 4,500 reports of suspicious activity, and finalised over 4,300 investigations.
* We have subsequently taken 1,300 compliance actions, including:
  + issuing 500 formal warnings
  + issuing 441 statutory notices, including stop-work, show-cause and remedial directions
  + imposing 400 penalty infringement notices.
* We have commenced 38 prosecutions of which:
  + 16 cases have resulted in convictions and penalties totalling approx. $1,200,000

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.*

1. 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.*

1. 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.
2. 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.
3. 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.

SLIDE 10

## **Now, turning to my first point, the public’s trust and rebuilding confidence in water regulation**

SLIDE 11

Our efforts to restore trust draw on three themes:

* Highlighting our capacity to detect non-compliance
* Establishing clear consequences for rule breakers
* Making it easier to comply

SLIDE 12

*Discuss our efforts in the media (own our voice, editorial control, responsive, pro-active)*

*Emphasis on technology and eyes in the sky – storage, flow, extraction, storage, application, crop yield*

We can remotely monitor the movement, abstraction, storage, and use of water across the flood plain. Our boots on the ground are complimented by novel and sophisticated technology derived from satellite imagery sourced from NASA and the European Space Agency and airborne laser survey data from Geoscience Australia.

This technology has evolved to enable us to assess change rapidly and accurately in storage volume. Direct comparison can then be made with the water accounting system using advanced mathematical algorithms. Any date range can be compared. Data can be aggregated to catchment scale or disaggregated to individual storages.

I’ll talk more about this technology at the G-Reg webinar tomorrow.

SLIDE 13

*Discuss promotion of enforcement efforts for general deterrence.*

SLIDE 14

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.

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.

SLIDE 15

## **How do we measure community perception and tailor our interventions?**

SLIDE 16

*Discuss the biannual community perception survey – regulated community, stake holders and the public*

*Discuss the results of the ‘importance of enforcing water laws’*

SLIDE 17

*Discuss the results of the ‘agreement that it is okay to break the rules under certain circumstances’ drought context, flooding context. Use of discretion and the four factors.*

SLIDE 18

*Discuss the key findings and NRARs response*

SLIDE 19

*Discuss our engagement strategy and the three components*

SLIDE 20

**What’s worked so far, what are we continuing with, what have we learnt?**

SLIDE 21

*Discuss the importance of establishing our tone of voice and applying it consistently with our messaging and stakeholder engagement*

SLIDE 22

*Describe our brand campaigns*

SLIDE 23

*Describe access and ownership of our media channels*

SLIDE 24

*Describe the ABC Landline programme and link it to Country Calendar*

SLIDE 25

*Describe the negative perceptions*

SLIDE 26

**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.

SLIDE 27

QUESTIONS?

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