

## **BARNES NSWIC ANNUAL GENERAL MEETING - MAR 20**

### WELCOME

Firstly, I'd like to acknowledge the Gadigal people of the Eora Nation as the traditional custodians of this place, who have inhabited the Sydney area for at least 40,000 years before European settlement. I pay my respects to their Elders past and present, and extend that respect to all Aboriginal and Torres Strait Islander peoples.

May I also pay my respects in the Kiwi tradition - by way of mihi.

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

### DROUGHT ACKNOWLEDGEMENT

In addition to those greetings, I'd also like to acknowledge rural communities who are experiencing hardship as a result of the drought. It is in these times that the character of rural Australia is demonstrated; its resolve, strength and fortitude.

### ADDRESS

I'd like to firstly thank Jim and Luke 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'll start by reflecting on three things:

- NRAR; our mandate and approach
- Why independence is important to restoring confidence in compliance, and
- How NRAR is delivering and lessons learnt Firstly though, let me talk a bit about the weather.

What a beautiful image. Isn't it glorious? Rain across the Basin, wetting parched soils and awakening dry creek beds. Water in the Namoi, the Paroo, Culgoa, Warrego. Weir pools refreshing, a full connectivity event possible. Fabulous.

But let me not get ahead of myself.

In this lucky country with its abundance of natural resources we are experiencing a severe drought of unprecedented magnitude. The previously recognised Millennial Drought has been surpassed by the last 18 months of:

- lowest rainfall on record
- highest recorded maximum and average temperatures
- soil moisture at extreme lows
- lowest water storage volumes of the last 10 years.

The impact has been severe and remains so. Both to rural productivity and to the resilience and wellbeing of rural communities throughout NSW. For instance;

- many irrigators water users are on zero allocation of water. Low percentage allocations have been the norm for a number of years now.
- some towns in NSW have been at risk of running out of secure supplies of potable water. Cartage of water remains in some towns as infrastructure to bolster water security is constructed.
- The environment remains under considerable pressure. Last summer a mass dieoff of native fish occurred in the lower Darling River with an estimated 1 million deaths observed. Further events are possible with the resumption of flows.
- The cultural connection of indigenous peoples to water is also being impacted.

The outlook a month ago was grim. When the drought breaks the road to recovery will be long.

So it is within this context I describe the role of the Natural Resources Access Regulator in water compliance and enforcement.

A lot has happened since our establishment in May 2018.

The “Four Corners” program ‘Pumped’ that exposed water use practices in the Murray Darling Basin was broadcast over two and half years ago.

The NSW Government’s response was prompt; a prominent public official undertook an independent review of water regulation over the course of three months. His recommendations 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. Just 5 months had elapsed since the program was broadcast.

### **So to my first point, NRAR; its mandate and approach**

NRAR has been established with a clear, legislated mandate to;

- Ensure the efficient, effective, transparent and accountable delivery of the regulatory regime for water, and
- Maintain public trust and confidence.

The Natural Resources Access Regulator Act 2017 has set NRAR up as a body corporate, governed by a fully independent Board chaired by the Hon. Craig Knowles, a former Minister of Water and Planning in

the NSW Government and the inaugural Chair of the Murray Darling Basin Authority.

We have been up and running for almost 2 years.

- Our teams are on the ground engaging with stakeholders, providing assistance when it is sought, investigating alleged breaches of water law, and protecting environmental flows.
- We are working diligently on compliance matters. We have largely resolved the almost 500 legacy cases inherited from former agencies.
- We have embraced transparency and proactively publish on-line the actions of our governors, our policies and procedures, our engagement with stakeholders, and our compliance activities.
- We have taken enforcement action when necessary and have issued penalty infringement notices, stop work orders, show cause notices, remediation directions, and formal warnings.
- Prosecutions have commenced with more likely to follow.

I am privileged to lead NRAR and proud of what our team of skilled regulatory practitioners has achieved since May 2018.

NRAR has hit the ground running.

From start up to scale up we have more compliance boots on the ground across the state than ever before, with teams conducting inspections to ensure the protection of NSW's precious water resources.

Since commencing operations, we have more than tripled the number of investigators. We have over 100 frontline staff across the organisation undertaking compliance activities.

The deployment of staff has yielded some impressive results. As of this month NRAR had:

- inspected 646 properties,
- undertaken 334 compliance audits,
- sent 600 advisory and formal warning letters,
- issued 183 statutory notices, including stop work, show cause and remedial directions
- and issued 137 penalty infringement notices that entail a fine of \$750 for an individual and \$1500 for a corporation.

These figures are within the context of nearly 3,000 reports of alleged breaches of water law being received by NRAR and over 2000 cases being opened. We have closed almost 1700.

We currently have 800 active cases.

Since our establishment we have commenced 17 prosecutions, eight in the Land and Environment Court and nine in the local court. Five of these cases relate to the allegations aired in the Four Corners program.

Six of the ten commenced prosecutions have since been successfully finalised, with their results published on NRAR's public prosecutions register.

We are though a young agency and there is much left to do.

As an independent regulator, we need to make sure we do all the things necessary:

1. to maintain a physical compliance presence with 'boots on the ground'.
2. to re-state what is required to be a professional regulator; outcome focused, intelligence led and pro-active.
3. to require the highest ethical standards of our people; accountability, integrity, service and trust.
4. to resolutely commit to act in the public interest at all times,
5. and to fiercely protect our independence.

**Ok, now to the second reflection; why does NRARs independence matter?**

NRAR is independent in that its investigations and enforcement are not subject to the direction of politicians, bureaucrats, any political party, or the government. Unlike most other publicly funded organisations in NSW, we are accountable to an independent board.

Whilst the board is appointed by the Minister of Water, its independence is enshrined in the Natural Resources Access Regulator Act. This independence is essential for the public to have confidence that NRAR is not biased or subject to the dictates of the government of the day.

The NRAR Act confers significant powers and discretion on myself as Chief Regulatory Officer and the NRAR Board. Given these extensive powers, an accountability framework is in place to ensure powers are not abused and legislative responsibilities are met. These mechanisms include the NRAR Board Charter, staff Code of Conduct, a commitment to transparency and proactively meeting Freedom of Information provisions, and the oversight of the Independent Commission Against Corruption, the NSW Ombudsman and the Audit Office of NSW.

Independence is at the core of our operational DNA.

Since joining NRAR as Chief Regulatory Officer, I have been all over NSW meeting with farmers, irrigators and the residents of rural towns who rely so heavily on stable access to water for their livelihoods and indeed their very existence.

Basin communities know this particularly well. They know that the importance of water is an indelible element of all the Basin's activities. Security of supply goes hand in hand. The ability to access water for productive use is a right that confers both economic value and social obligations.

The privilege to extract water confers a property right as a tradable commodity. Just as a farmer has an expectation of protection from the theft of land, there is an equal right to the protection of water assets. Both are essential to business success and deserve active protection under the law.

Low accountability of water users undermines the integrity of the regulatory system and the confidence therein. NRAR's role here is critical.

**And now to my third and final point; how is NRAR delivering and the lessons learnt along the way**

In our second year we have avoided regulatory capture by steadfastly upholding our role as regulatory practitioners working in the interest of the public, now and for the future.

With NRAR we are rebuilding a compliance regime that affirms the value of water as an asset, protected from those who seek to obtain it unlawfully.

We understand that an effective & efficient regulatory system is best determined by a robust, fair, and ethical compliance agency.

A visible, professional, well resourced and, importantly independent NRAR affirms the social licence of lawful operators by validating their compliance as distinct from unlawful actors whose activities flout the law.

However, as you'd expect we have learnt lessons since commencement, which I share with you here.

1. Throughout regional NSW most water users are honest operators who appreciate the need for rules and want them fairly applied.
2. The vast majority understand their obligations and do their best to comply with the law.
3. When we do encounter non-compliance it is typically a result of naivety or misunderstanding, rather than wilfulness.
4. Some common examples of non-compliance that arises through NRARs monitoring and audit activities are:
  - a. dams that have a capacity that far exceeds the maximum harvestable right. This is not by a small margin, within an assessment error, rather three, four, 10 times the volume permitted by right.
  - b. we encounter water users that do not regularly and accurately account for the volume of water being used.
  - c. also encountered are water users with account balances that are in deficit. These are not one off occurrences but can be a persistent practice involving large volumes of water.
  - d. we also commonly find on-farm flood management infrastructure that is not authorised under contemporary law.
  - e. A final example is the multitude of unauthorised works we find on waterfront land.
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.

6. So how are we managing these issues? I won't speak to individual cases so to avoid prejudicing the investigation process. In a general sense we are:
  - a. advising the department of our findings, assisting policy colleagues on refinement of current policies and development of new. Our interests here I believe are aligned; policies that are easy for the water user to understand and implement, and policies that are easy NRAR to interpret and enforce.
  - b. We share our intelligence transparently, engaging with stakeholders, presenting at forums such as today's event.
7. Importantly, we recognise the circumstances I have described to you are in many instances longstanding and have arisen out of what was perceived to be the acceptable practice at the time. It is evident we are in a policy reset. Times have changed.
8. Of equal importance, the advice and guidance NRAR provides is offered in general terms to assist water users to stay in compliance or to modify actions in anticipation of avoiding non compliance. We cannot give a 'big tick' to users in advance of events or actions. The onus is on water users to understand their obligations and to comply with the law. For instance, NRAR cannot give an authority to pump in advance, as might have been the previous practice. This is not the function of a compliance and enforcement agency and is not a liability that NRAR is permitted to assume.
9. We understand our role is to efficiently and effectively maintain a compliance and enforcement regime that is transparent, accountable and independent. In doing so we adhere to the principles of fairness, equity, respect and integrity.
10. We talk a lot 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. Our actions to date demonstrate our reliance on the former and that decisions to prosecute are not taken lightly.
11. Finally, transparency is an essential element to maintaining the public's confidence in our agency and its operations. We aim to undertake our activities under public scrutiny where practicable. This ensures stakeholders and the regulated community are aware of NRAR's intentions, expectations, and conduct.

Thank you.