

Mr Andrew Nicholls PSM
Chief Executive Officer
NSW Independent Pricing and Regulatory Tribunal

BY EMAIL: [REDACTED]

Our ref: V24/1638#6

14 November 2024

Dear Mr Nicholls

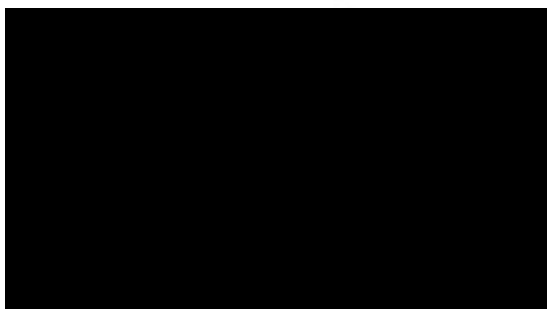
PART WAMC price determination hearings 14 November 2024

Thankyou for the opportunity to present opening remarks on behalf of the Natural Resources Access Regulator (NRAR) and its Board to the WAMC price determination hearings on 14 November 2024. It was an important opportunity for NRAR as an independent regulator to outline issues relevant to the determination process that impact on our operations and governance.

I don't seek to reiterate my remarks here, but for your reference I attach a hardcopy. Should you have questions in relation to the content please contact NRAR Executive Officer Russell Johnston:

[REDACTED]

Yours sincerely



The Hon. Craig Knowles AM
Board Chair

NRAR is the NSW water regulator. We are responsible for enforcing water laws throughout the state with targeted compliance programs that ensure water is used lawfully and shared fairly.

NRAR Board Chair remarks - IPART WAMC determination hearing

Introduction

Thank you for the opportunity to present to you today. My name is Craig Knowles, and I have been the Chair of the NRAR Board since its inception in 2017.

By way of introduction and brief preamble I want to record the following:

Firstly, it is still important to remember that 2017 represented a 'broken time' for water. Confidence in water management and the NSW Government was lost. NRAR was created with a mandate to rebuild and win back the public's confidence and ensure effective compliance and enforcement of our most precious resource, water.

NRAR is now six and a half years old. We have a successful record of confronting the most egregious acts of environmental vandalism and criminality and have won back the confidence of industry and the public. It has been a hard-fought journey.

The independence of NRAR and its board has been paramount to winning back and keeping the public's confidence. This has been enshrined in our legislation and has enabled us to act in a frank and fearless manner, re-establishing the confidence that the public have in our compliance and enforcement activities and of water management in NSW.

Although much progress has been made since the ABC 4Corners episode 'Pumped' aired in July 2017, more needs to be done to ensure this independent regulator endures and that communities, industry, the environment, and the cultural assets which rely on water remain protected.

We have a legislative mandate

NRAR operates under legislation with clear objectives¹ to:

- (a) to ensure effective, efficient, transparent and accountable compliance and enforcement measures for the natural resources management legislation, and
- (b) to maintain public confidence in the enforcement of the natural resources management legislation.

Other than for specific and limited purposes, NRAR is not subject to the control and direction of the Minister for Water.

Our role is to administer the compliance regimes that govern the extraction of water from our rivers and aquifers for whatever purpose and value; be that economic, social, environmental, and cultural. This water has a tradeable value of approximately \$34 billion and contributes \$3-4.5 billion in productive value annually², not to mention its priceless intrinsic value to communities, cultural practices, and the environment.

An effective compliance regime that has the public's confidence serves to both protect this asset while providing social licence to its users. Our stakeholder engagement over the last 6

¹ *Natural Resources Access Regulator Act 2017*

² *Marsden Jacobs Value of Water report 2023*

years has revealed that our enforcement activities are valued, and our education efforts welcomed, with a preference for on-farm visits.

The WAMC determination

NRAR acknowledges that price affordability will be an important consideration by IPART in this price determination.

The NRAR Board acknowledges the proposal to impose a price cap of 2.5% per annum (plus CPI) for small water users and 15% per annum (plus CPI) for larger water users.

The Price Cap is an important concession, noting that continued subsidy, mainly from NSW taxpayers via Treasury and the consolidated fund, will be required to ensure operational viability for NRAR for the ensuing determination period.

It should also be noted that the subsidy results in water users paying a fraction of the cost of water delivery and management services, equating to approximately \$4 per licence per week for most water users. Set against an asset worth of \$34Bn these compliance prices are a small input cost that provides for a consistent framework for investment and risk management, as well as assuring water user's social licence to operate.

At \$33.5M per annum NRAR's forecast costs are less than 20% of the total forecast WAMC costs. We submit that the forecast increase from IPART's 2021 determination reflects NRAR's very low starting base, the need to update inadequate compliance frameworks, and a critical need to scale up to a level that, now, more adequately reflects an efficient and effective regulatory and compliance structure for such a critical and valuable component of the state's agricultural production capacity.

More specifically, the primary drivers of NRAR's cost increases since 2021 are:

- increased compliance activity to service reforms such as metering and floodplain harvesting;
- responding to water user preference for face to face, on-farm advice and guidance;
- Crown Solicitor's Office shifting \$2.5 million per annum litigation costs to NRAR;
- replacement of our decade old case management system and reduction of cyber security risks.

These drivers contribute to our efficiency and effectiveness as an organisation and underpin our ability to meet our legislative objectives. They reflect an appropriately structured compliance agency to meet contemporary needs and community expectations, especially when compared to the wilfully and woefully inadequate mechanisms of the past.

Efforts to benchmark these costs against other state water regulators have been of limited value, noting the vast differences in operational enforcement realities and that NSW manages over 60% of the Murray Darling Basin, covering an area of over 600,00 square kilometres. We would caution against such comparisons in this determination process.

IPART's requirements and expectations

The Board wishes me to raise concerns it has with the "customer centric" aspects of IPART's guidance for the preparation of pricing proposals and our status as a provider of monopoly

water services, especially as they relate to our operations as a compliance and enforcement agency within WAMC.

With regards to the provision of monopoly services, NRAR is a law enforcement agency and does not make water available, own water facilities or supply water. Thus, it may not fit the definitions of such services as outlined in the *Independent Pricing and Regulatory Tribunal (Water Services) Order 2004* (the Order). Whilst not relevant to this determination process, the Board is motivated to assess its inclusion as a provider of monopoly water services under the Order.

IPART's 2023 Water Regulation Handbook places weight on the '3C's' of Customers, Costs and Credibility and the use of a "flexible, proposal-driven approach" where the business (in this case NRAR) is also "expected to understand their customer's preferences in developing their pricing proposals".

Specifically, IPART calls for the delivery of services and expenditures that:

- are customer centric,
- reflect customer engagement feedback, and
- promote better customer outcomes.

While we have participated in extensive stakeholder research and engagement as part of WAMC, NRAR believes that asking our regulated community (holders of Water Access Licences) how much they should pay for an efficient compliance and regulatory regime is counter-intuitive, especially against a background and history of poorly enforced compliance regimes, inadequate systems and, as such, increased opportunities for the regulated community to avoid proper regulatory and compliance scrutiny.

Bluntly, some water users, acclimatised by this history of poor oversight, know that starving NRAR of resources makes avoidance easier and compliance less likely, and their feedback as "customers" adds little to our compliance mandate, and is certainly not in the wider public interest.

The issue of the relationship between regulators and 'customers' received considerable attention in the 2019 *Final Report into Misconduct in the Banking, Superannuation and Financial Services Industry*. Commissioner Hayne made several remarks that are equally relevant to all regulators exercising statutory powers, including NRAR. These remarks sought to dispel the notion that financial services were 'clients' of ASIC to whom they provided 'services'. This, Hayne claimed, propagated the falsehood that compliance was in some way voluntary, and adherence to the law selective based on what was commercially acceptable.

To quote from the NSW Independent Commission Against Corruption:

"It does not make sense to conceptualise regulated parties or complainants as "customers". Regulators are often required to make unwelcome decisions which do not necessarily equate to positive customer feedback. Characterising regulated parties as "customers" misconstrues the relationship they should have with a regulator."

As Chair of NRAR I believe the client of the regulator is the government, and through it, all citizens; regulated entities are not clients and should not be treated as such. While efforts should be made to streamline compliance processes, this should not come at the expense of

robust monitoring. Dissatisfaction from a regulated entity is not necessarily a sign of a flawed process; it may, in fact, show the opposite.³

At NRAR, we neither sell nor buy services. We do not transact commercially, nor do we negotiate on outcomes beyond our legal bounds. It is a reasonable view that the failures in administration and loss of public confidence which led to NRAR's establishment in 2017 were a direct result of regulatory capture and a compliance framework that had become too "customer centric", excessively focused on "customer feedback" and an overwhelming response to "customer preferences and outcomes".

We do not wish to return to that organisational culture.

Conclusion

On behalf of NRAR and the NRAR Board I would like to thank you for the opportunity to present and to wish you well in your deliberations. We will look forward to learning the outcomes and any commentary you may have on our performance.

Thank you.

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³ Claire Noone in The Mandarin, commentary on Hayne