



Four Corners  
ABC TV

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### **FOUR CORNERS - ABC TV**

The Murray Darling Basin (MDB) is Australia's most important agricultural region and produces one-third of the country's food supply. As with other complex river systems around the world, there are a wide variety of competing uses for a variable and limited supply of water. Governance arrangements to resolve these competing uses in the interests of all Australians continue to evolve in response to the complexity of the MDB system.

The NSW Government is committed to ensuring the Murray-Darling Basin Plan is delivered in a way that balances economic, environmental and socio-economic concerns, and puts local communities front and centre.

NSW continues to push for pragmatic, 'real-world' decision making in all aspects of the Basin Plan, from water recovery strategies that achieve the intended outcomes of the plan with minimum socio-economic impact, to how we consult with stakeholders and communities.

The commitment of all states to the Murray Darling Basin Plan was confirmed at a recent meeting of the Council of Australian Governments (COAG), where Ministers welcomed the COAG plan for delivering the Basin Plan package developed by the Murray-Darling Basin Ministerial Council.

In delivering this commitment the NSW Government remains focused on getting the best deal for NSW communities.

In response to your specific questions, please find below responses.

#### **How does the NSW Government defend the 2012 Water Sharing Plan for the Barwon-Darling which, it has been put to us, has effectively granted more reliable access to water to major water-users than existed prior to 2012?**

The goal of water sharing plans is to protect water sources, dependant ecosystems and basic water rights, and within this context to share potentially available water fairly and efficiently between the categories of users. Implementing these goals requires regular review and resetting of sharing rules.

All water sharing plans are subject to a comprehensive consultation and review process to ensure their compliance with relevant State and Commonwealth water policy and legislation.

In the case of the 2012 Barwon-Darling Water Sharing Plan - all licensed water users were informed of the draft plan and invited to comment.

Public comment was invited on the draft plan via newspapers advertisements and detailed information provided on the then NSW Office of Water (NOW) website. Public meetings were also held at Brewarrina, Bourke and Wilcannia on 1, 2 and 3 November 2011 respectively.

A total of 24 submissions were received as a result of the public exhibition. These were reviewed by NOW with the key issues considered by the Interagency Regional Panel (IRP) and appropriate changes to the draft WSP were recommended.

Further consultation with the Barwon-Darling peak water user association and Mungindi-Menindee Advisory Council was held in Bourke on 14 March 2012, to discuss the IRP revised recommendations following public exhibition.

**Do you consult equitably with all sections of the NSW community affected by water policy and particularly the Murray Darling Basin Plan?**

DPI Water consults with a broad range of stakeholders when developing water policy. This covers stakeholders with varied interests, including irrigators, environmental groups, land managers and other states and jurisdictions.

Consultation for major water policy changes, such as the Murray Darling Basin Plan, is often supported by formal, public consultation processes and submissions.

Information is made available on the DPI Water website and consultation is advertised through regional newspapers.

**Have you ever secretly or confidentially supplied or offered to secretly or confidentially supply departmental information to irrigators and/or their representatives outside of official channels such as the *Government Information (Public Access) Act 2009*?**

As part of developing policy, DPI Water can conduct targeted consultation with key irrigator representatives, as well as other representative bodies, to ensure our views are well informed.

Targeted consultation can be undertaken with key representatives selected by irrigator or other representative organisations to represent their views.

These discussions are carefully managed under our protocols so that market sensitive information is not released

**Have you ever sought assurances of secrecy and/or confidentiality from irrigators and their representatives with regard to the consultations you have undertaken with them?**

As is the case with many other complex public policy issues, from time to time, certain discussions are requested to remain confidential which allows for frank conversations to occur.

Sometimes the request for confidentiality comes from the parties with whom we consult. This could include, for example, reports of potential non-compliance by other water users.

These discussions are carefully managed under our protocols so that market sensitive information is not released.

**Have you ever discussed with irrigators and/or their representatives plans for NSW to walk away from the Murray Darling Basin Plan?**

Yes – it is prudent for the NSW Government to consider all possible scenarios for the implementation of the Basin Plan, and to ensure the best possible outcome is achieved for NSW irrigators, the environment and regional communities.

While NSW has considered alternative scenarios, we have also publicly advocated the benefits of the Basin Plan in its current form. In particular, we have explained to stakeholder groups the importance of seeing the plan through.

**With respect to the organisational restructure you oversaw which came into effect in 2016, did the Bulk Water Review recommend shifting DPI Water's investigative function to Water NSW? If so, please provide details. If not, why was this decision taken nonetheless?**

A number of reviews, reports, debates and workshops over many years, shaped the eventual water reforms which saw a number of functions transferred from DPI Water to WaterNSW.

In-line with best practice, investigative functions should rest with the organisation responsible for that specific area of water licencing. This ensures the organisation responsible for regulation has the detailed understanding of what a regulated entity should and should not be doing and therefore is in a much stronger position to determine if compliance is being met.

It also enables the organisation to develop fit-for-purpose and targeted education programs, monitoring regimes and compliance operations.

This is the same model as applies with urban water supply, where the State or local council body that runs the water supply is also responsible for compliance and enforcement of the customer contract.

Following recent water market governance reforms within the NSW Government, DPI Water has retained its investigative functions for the water users we service and regulate - including water utilities, mining companies and state significant developments.

Effectively WaterNSW regulates the majority of private users of water and DPI Water regulates the water utilities, government entities, mining companies and state significant developments. This also enables DPI Water to focus on commitments with interstate obligations. The division of regulatory functions is set out in the Water NSW operating licence available at [www.waternsw.com.au](http://www.waternsw.com.au)

**In the lead up to the transfer of the compliance functions of DPI Water last year to Water NSW, by how many did the number of investigators (by which I mean actual filled full-time positions as opposed to FTEs) in the DPI Water Strategic Investigations Unit fall?**

There were six officers in the Strategic Investigations Unit immediately before the transfer of functions.

On 1 July 2016, four officers were transferred to WaterNSW and two officers remained with DPI Water.

Prior to current FTE numbers, a small number of additional positions were funded by the Commonwealth to undertake a proactive regulatory campaign. That funding and those roles finished in the 2015/2016 financial year.

There is no longer a separate SIU in DPI Water. Compliance and enforcement in DPI Water continue to be performed by Water Regulation Officers.

There are currently 47 Water Regulation Officers in DPI Water.

These staff are all authorised officers under the Act to undertake compliance activities. The Regulation team undertakes a range of activities, including licencing, approvals and field-based compliance.

**Is it the case that this decision to transfer compliance and the fall in the number of SIU investigators occurred during a period in which a number of investigations into allegations of non-compliance in northern NSW were underway?**

This is incorrect. There was no reduction in SIU officers.  
In any given year there are in the order of 500 investigations being carried out.

Any investigations that were underway during the changes were transferred to WaterNSW or continued by DPI Water depending on where responsibility for the issue was located.

**Is it the case that the transfer of compliance and the fall in the number of SIU investigators had a deleterious impact on the progress of those investigations?**

No. As staff resources remained aligned with caseload, there was no impact on resourcing of investigations.

**Is it the case that at any point you were asked to approve, but did not approve, investigative operations in northern NSW associated with those matters?**

DPI Water has established protocols for receiving, prioritising, investigating and deciding on the appropriate regulatory response on each of the large number of matters that come to its attention.

In the response below you can see that thousands of individual matters are filtered for appropriate action, and that hundreds are ultimately the subject of a range of outcomes including warnings, notices, orders and prosecutions.

**Given the records released by Water NSW under the *Government Information (Public Access) Act 2009* which show significant extraction of water by Peter Harris on WALs 35395 and 33692 in excess of his legal entitlement, and given that these events took place about two years ago, please explain why there has been such a significant delay in any enforcement activity against Mr Harris?**

DPI Water does not discuss individual regulatory cases. The regulatory responsibility for the case would now reside with WaterNSW.

**It has been alleged that your department does not adequately monitor and investigate compliance breaches, takes a lax approach to breaches and fails to prosecute when evidence of breaches arises. Do you agree and what is your policy on investigating and prosecuting breaches for non-compliance with the law?**

DPI Water takes the issue of compliance seriously and undertakes enforcement action, including prosecutions, when it considers it appropriate to do so.

DPI Water undertakes risk-based regulation to ensure those issues of highest impact on the water resources are given the appropriate regulator response. Every report of a breach in regulation is considered and carefully reviewed.

Dedicated resources are focused on ensuring compliance with licence conditions and other components of the Act and water sharing plans.

Compliance is a critical component to DPI Water's overall management of water resources and ensuring the equitable and sustainable sharing of water between water users.

DPI Water's compliance action targets deliberate and high-risk unlawful behaviour. Priority is given where the risk of impacts on water users and the environment is greatest.

DPI Water uses a range of tools to respond to non-compliance, such as warning letters, stop work orders and civil penalties. Prosecutions are undertaken where appropriate.

DPI Water also promotes voluntary compliance with legislation through education and engagement.

DPI Water's Compliance Policy is available on our website.

Since 2010, a large number of investigations were undertaken and finalised, resulting in

- 140 advisory letters
- 30 remediation notices
- 377 stop work orders
- 369 penalty notices
- 27 prosecutions

Following recent water market governance reforms, changes have been made to compliance and regulation in NSW. Effectively WaterNSW regulates the majority of private users of water and DPI Water regulates the water utilities, government entities, mining companies and state significant developments. This enables DPI Water to focus on commitments with interstate obligations.

**In the February round of Sustaining the Basin, DPI announced that, for the first time, a functioning water meter was no longer required in order to qualify for funding under the scheme. How do you justify this decision?**

Applicants are required to have a functioning water meter and comply with all individual metering requirements and terms and conditions applicable to their works approval as issued under the Water Management Act 2000.

Amendments to funding requirements for Sustaining the Basin: Irrigated Farm Modernisation project to better reflect current metering policy were agreed to by the Commonwealth Government on 15 February 2017.

These changes do not absolve an applicant from complying with the requirements of the National Framework for non-urban water metering or specific metering requirements as stipulated in the landholders' licence conditions.

**Is it legal for water account holders to pump water while their water accounts are in deficit?**

It is an offence under the Water Management Act 2000 for a person to take water in excess of the water allocation for their access licence.

**It has been put to us that several large account holders have pumped water while their accounts are in deficit. Please explain why no regulatory action has been taken?**

WaterNSW acts on allegations of unauthorised extractions that are brought to its attention, and also investigates irregularities uncovered by its compliance activities.

Without specific details of the cases in question, it is difficult to comment further.

**Is it the case that the Department allowed Peter Harris to trade licences between river sections in violation of Clause 66(1) of the Barwon-Darling Water Sharing Plan?**

We have referred this matter to WaterNSW for their investigation.

Yours sincerely

**Gavin Hanlon**  
**Deputy Director General, DPI Water**