



INTERIM REPORT | KEN MATTHEWS AO

# Independent investigation into NSW water management and compliance



8 September 2017

**INDEPENDENT REVIEWER  
AND LEADER OF THE INVESTIGATION**

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Ken Matthews retired in 2010 as the founding Chair and Chief Executive of the National Water Commission. He was previously the Secretary of two Australian Government departments. Ken grew up on an irrigation farm near Griffith, in regional NSW.

## Letter of transmittal



Mr Simon A Y Smith  
Secretary, Department of Industry  
GPO Box 5477  
SYDNEY NSW 2001

Dear Secretary,

I am pleased to submit to you the interim report of my Independent Investigation into NSW Water Management and Compliance.

The Investigation was commissioned on 2 August 2017 following the broadcast on 24 July of a Four Corners program "Pumped: who is benefiting from the billions spent on the Murray-Darling?".

The program presented allegations of widespread non-compliance with NSW water law, particularly in the Barwon-Darling River system in Northern NSW. It alleged that certain irrigators had pumped water from the river system in periods when pumping was not permitted, or in quantities greatly in excess of their entitlements. It suggested that water purchased by taxpayers for environmental purposes was being accessed by irrigators instead. It alleged that meter tampering was common in the region and that compliance and enforcement efforts were ineffective.

The program carried an alleged audio recording of a teleconference between senior officials of your department and representatives of certain irrigator groups in which an official offered the irrigator groups special access to restricted government information. The program interviewed a former departmental staff member who alleged that the department's compliance and enforcement efforts had not received the necessary support from senior officials and that known individual non-compliance cases had remained unaddressed to the present day.

The Four Corners program prompted significant public concern about the effectiveness of current NSW compliance and enforcement arrangements for water. It raised serious questions about the professionalism of officers of the NSW public service. It prompted doubts about the even-handedness of the department's consultation arrangements with different groups of stakeholders about water management throughout the state.

In the light of my initial investigations, I share these concerns.

In addition to my Inquiry, there are now no less than five separate inquiries or reviews that have been proposed, launched, or widened to address issues raised in the Four Corners program. Each inquiry will have its own focus. The focus of my interim report, as specified in my terms of reference, is to assess whether the department's policies, procedures and actions were appropriate, to recommend whether further actions should be undertaken, and

to identify opportunities to improve the department's future compliance and enforcement performance.

Testing the specific allegations about non-compliant or illegal irrigation activities will be the subject of other investigation processes.

My principal finding is that water-related compliance and enforcement arrangements in NSW have been ineffectual and require significant and urgent improvement. Specifically:

- The overall standard of NSW compliance and enforcement work has been poor.
- Arrangements for metering, monitoring and measurement of water extractions, especially in the Barwon–Darling river system, are not at the standard required for sound water management and expected by the community.
- Certain individual cases of alleged non-compliance have remained unresolved for far too long.
- There is little transparency to members of the public of water regulation arrangements in NSW, including the compliance and enforcement arrangements which should underpin public confidence.

A 'systemic fix' is required. My report therefore recommends (see Part 4) a far-reaching reform package.

I recommend the urgent initiation of a **Water Management Compliance Improvement Package**. This reform package has two broad elements:

1. a package of strategic structural improvements to be considered by ministers
2. a wide range of administrative and operational improvements to be considered by the Secretary of the Department of Industry.

The **ministerial package** involves acting now to consolidate and augment all compliance and enforcement functions now dispersed between WaterNSW and DPI–Water. These would be brought into the Department of Industry and established at arm's-length from DPI–Water. A new NSW Natural Resources Access Regulator would be created by legislation. It would be initially responsible for water, but would progressively take on responsibility for other natural resources as determined by the government. The regulator would be governed by a board appointed by the relevant portfolio ministers but not subsequently subject to ministerial direction. The legislation would empower the board to oversight the delivery of compliance and enforcement activities, make decisions on the handling of serious alleged offences, and report publicly on plans and performance. The locus of compliance responsibility would be clear and leadership and decision-making authority would be unambiguous. That is not the case now.

The recommended ministerial package also envisages a letter from the Premier to the Chair of the Murray–Darling Basin Authority proposing a range of Basin-wide initiatives to ensure all states are engaged alongside NSW in improving compliance and enforcement efforts (details below).

The complementary package of **administrative and operational reforms** is based around three principles. Any future system needs to be:

- more transparent
- more independent
- considerably more effective than the current system.

Full details are in the body of the report but flagship **transparency** initiatives include some historic changes to better reflect the fact that water is a community-owned resource and members of the public have the right to satisfy themselves that it is being used in compliance with the law. Accordingly, changes proposed include enabling the public to readily access

from a single source all details of individuals' water entitlements, licence conditions, meter readings, water account balances, and trading activities. Similarly it is recommended that arrangements be put in place for the public to readily identify any specific pump, off-take or works. Corresponding improvements to the transparency of environmental water flows are proposed. Such full transparency would, of itself, add considerably to a more compliant culture among water users.

In terms of more **independent** system, the ministerial package above would go a long way to achieving the objective. However in addition I include recommendations in my report about clearer decision-making delegations in relation to compliance cases and the need to specify the rare and exceptional circumstances under which senior officers may legitimately intervene in a specific enforcement case. I propose also that consideration be given to reciprocal third-party auditing of the NSW state compliance enforcement system by other states, facilitated by the Murray–Darling Basin Authority (MDBA).

Flagship proposals to develop a more **effective** future compliance and enforcement system include introducing, at last, a universal requirement for metering: 'no metering, no pumping'. Similarly, I recommend all scope for self-reporting, such as logbooks, be removed. I recommend that modern Australian metering standards be enforced and that tolerance be reduced for the argued differences in conditions between northern and southern areas of the Murray–Darling Basin. Divergences in approach should only be allowed where the need for differences can be convincingly demonstrated. I further recommend that the department more assertively adopt and implement new monitoring and compliance techniques and technologies such as remote sensing, meter telemetry and targeted covert operations. These techniques can be made either first-line compliance tools or utilised as crosschecks of more conventionally sourced data. There are many other proposals for performance improvement in the report.

A final element of the Water Management Compliance and Enforcement Improvement Package is a set of proposals for how the MDBA could contribute. Of course, these proposals are subject to independent consideration by other basin states and the authority itself. However, if they were to be picked up, many of the reforms now proposed for NSW would be carried also into other states—with benefits to the basin as a whole.

Some of these reforms may not be welcomed by the current beneficiaries of an inadequate system. However, to rebuild public confidence will require more than incremental change. No change is not an option.

Despite the frequent discord about many water management issues, there is one thing that all parties agree on—non-compliant or illegal extraction of water should not be tolerated and should be dealt with firmly. Environmental groups want assurance that the environment is not being short-changed. State governments want to be confident that other states are observing the rules. Irrigators want assurance that their peers are behaving honestly. In submissions to this Investigation many irrigators have made clear their disappointment about the damage now done to the good name of the sector by the alleged behaviour of a few.

The industry's 'social licence to irrigate' is at stake.

The Four Corners program also raised significant public concerns about the protection of water purchased by taxpayers for the environment. In the time available for this interim report it has not been possible to deal conclusively with this issue. However it is my strong view that action is vital and solutions need to be found as a matter of urgency.

A threshold requirement is to deal with any illegal diversions from environmental entitlements. However, a lasting solution to the problem needs to also deal with water extractions that are within the present rules. The longer term solution needs to be transparent, simple, and understandable by an interested member of the public. As far as possible there should be common arrangements across the Murray–Darling basin. Arrangements need to be readily audited and amenable to compliance and enforcement.

Pending development of the lasting solution, my report suggests (see Part 5) consideration of an interim solution that would assist at least in the Barwon-Darling River system, involving individual daily extraction limits for certain types of water licenses.

The final issue I want to highlight in this covering letter relates to the role of the NSW public service. There are appropriate authorities and processes to investigate certain of the specific reports and allegations in the Four Corners program. Whatever the outcome of those processes the public response to the Four Corners program has highlighted the continuing public expectation that the public service should conduct itself to the highest standards of ethics and professionalism.

My interviews with members of staff involved in water management suggested a culture of tolerance for expedient work practices in the interests of “outcomes”, but at the expense of due and proper process. I saw examples of possible failures to confront unethical behaviour. I heard public servants clearly deficient in their understanding of the Westminster conventions. I observed a group culture diverging from the best traditions of Australian public administration.

Some divisional staff members and many outside the division and department are deeply concerned about the impact of the Four Corners allegations on the reputation of the NSW public service as a whole. I know you, as Secretary, wish to re-build the professionalism, reputation and self-respect of the agency. To provide the necessary focus on ethics and public service professionalism I would encourage you to consider a new program of staff leadership training, mentoring, and, importantly, staff selections that take account of the ethical example officers set to others.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Ken Matthews', written in a cursive style.

Ken Matthews AO

8 September 2017

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# 1 Key concepts in the water market

## i. Regulatory frameworks

**Water Management Act 2000** is the NSW legislation that establishes the principles and framework governing water management in NSW. It includes requirements on water management planning, sharing, allocation and use and the granting of access licences. The Water Management Act also defines what constitutes an offence.

**Murray–Darling Basin Plan** came into effect in November 2012, with most measures scheduled for implementation by July 2019. Measures relating to the sustainable diversion limit adjustment are due to be completed in 2024. The intention is to manage the water in the basin (which crosses Queensland, NSW, the Australian Capital Territory, South Australia and Victoria—the ‘basin states’) as an integrated sustainable system. The principles for the plan are set out in the *Basin Plan 2012* (Commonwealth).

**Intergovernmental agreements (IGA) on implementing the water reform in the Murray–Darling Basin** are undertakings between the Commonwealth and individual basin states to ensure that the Commonwealth-led basin water reforms, including the Basin Plan, are implemented in good faith and a cost-effective manner to support national interests. NSW signed an IGA with the Commonwealth in 2014.

## ii. Key terms

**Water markets** reflect a cap and trade approach. The cap is defined as all water available for use without being returned to the system (consumptive use). Users can trade entitlements, subject to limitations and rules, to respond flexibly to variable water availability. The market mechanism provides overall benefit to the greater community by encouraging reallocation of scarce water resources to high value uses. In the process, it also provides economic benefits to buyers and sellers.

**Regulated rivers** are rivers where the downstream flows are regulated or moderated by major storages or dams to supply irrigation water and contribute to flood control.

**Unregulated rivers** do not have major storages or dams to regulate or moderate downstream flows.

**Water access licences** entitle licence holders to specified shares in available water within a particular water management area or water source, as well as to take or extract water at specific times, rates and circumstances in relation to the relevant area or location. These licences are granted under the NSW *Water Management Act 2000* to holders to access available water under the relevant water sharing plan. A licence holder or co-holder may transfer the water entitlements to another person for a period of time. During the term of the transfer the transferee is taken to be the holder of the licence for certain purposes, including compliance with the terms and conditions of the licence.

**Water entitlements** establish the right to access water from the consumptive pool. Entitlements are identified in water access licences. Most of these rights exist in perpetuity depending on the needs and circumstances of different water users and uses.

**Water allocation** is the volume of water allocated to entitlements during the water year. Allocations depend on total water availability, climate predictions and prior environmental conditions. Water allocations can be traded between users.

**Water shepherding** is where a particular volume of water, which may otherwise be entitled to be taken upstream, is allowed to flow to a downstream location for environmental purposes.

**Water sharing plans** are made under NSW *Water Management Act 2000* and define the rules for the allocation and equitable management of water. The plans are established for defined water systems, for example the *Water Sharing Plan for the Barwon–Darling Unregulated and Alluvial Water Sources*. There are currently 57 water sharing plans covering almost all of the major surface and groundwater resources in NSW. Each plan sets the legislative framework for the extraction of water, which takes into consideration the needs of the community and the environment. This is to protect the fundamental environmental health of the water source and ensure the water source is sustainable in the long-term. Plans have an initial term of 10 years and may be extended for a further 10 years without change.

**Water resource plans** are an integrated water management framework required by the Commonwealth for all of the water resource areas defined in the Murray–Darling Basin Plan. They require a number of sub-plans to be developed, including water sharing plans (see above), water quality and salinity plans, sustainable diversion limits, risk assessments, extreme event management plans, trading mechanisms and plans to address Aboriginal and cultural values. There are currently 22 water resource plans required to be in place in NSW by 1 July 2019, which may reduce to 20 given suggested amendments to merge two existing plans.

The objective is to achieve sustainable environmental, economic and social outcomes from the management of water resources. Water resource plans are created by the states and are evaluated by the Murray–Darling Basin Authority (MDBA). The MDBA makes recommendations to the Commonwealth minister responsible for the Commonwealth *Water Act 2007* as to whether the water resource plans can be accredited based on whether they meet the requirements of the Basin Plan.

## 2 Background

### 2.1 The Four Corners program

The allegations of water theft and maladministration that are the subject of this investigation were raised on the Four Corners program “*Pumped: Who is benefitting from the billions spent on the Murray-Darling?*”.

The program was broadcast by the ABC on Monday 24 July 2017. It remains available on the ABC NEWS channel and iView.

The report can be accessed at the following link

[www.abc.net.au/4corners/stories/2017/07/24/4705065.htm](http://www.abc.net.au/4corners/stories/2017/07/24/4705065.htm)

The Four Corners program reported on the implementation of the *2012 NSW Water Sharing Plan for the Barwon-Darling system*. The Water Sharing Plan sets out the water entitlements for stakeholders (including irrigators, the environment, communities and industry). It forms the basis for individual water licences issued under the NSW *Water Management Act 2000*.

The program focussed on the extraction of large volumes of water for irrigation, highlighting the impacts on downstream water users and communities. It suggested water purchased with taxpayer funds for environmental purposes was being diverted for irrigation. It alleged certain irrigators had pumped water from the river system in periods when pumping was not permitted, or in quantities greatly in excess of their entitlements. It alleged meter tampering was common in the region and compliance and enforcement efforts were ineffective. It carried a report on an irrigation channel allegedly constructed on Crown land without approval.

The program carried an alleged audio recording of a teleconference between senior NSW Government officials and representatives of certain irrigator groups in which an official

offered the irrigator groups special access to restricted government information. It was alleged that this information provided these irrigator groups with inside knowledge not available to other stakeholders, and thus advantaged them in their negotiations and dealings with government and other parties.

The program also interviewed a former departmental staff member who alleged that a proposed region-wide compliance and enforcement campaign had not received the necessary support from senior officials. Known individual compliance cases have remained unaddressed to the present day. It was alleged that structural and staffing changes made within the department had reduced the focus on compliance enforcement. It was argued that this reflected a loss of appetite for compliance on the part of senior officials.

The Four Corners transcript is at Attachment 2.

Immediate public concerns triggered by the program included whether:

- certain irrigators were over-extracting water in the Barwon–Darling system at the expense of the environment and other irrigators
- certain irrigators were using and impacting Crown land property without approval
- certain senior government officials in the Department of Primary Industries were providing privileged access to information to certain irrigator groups, and thereby providing an advantage to them, relative to environmental groups, other irrigators, other water users, and other stakeholders with interests in water sharing arrangements in the Murray–Darling Basin
- the Department of Primary Industries and, more recently, WaterNSW, were ensuring effective compliance monitoring and enforcement as required under the *Water Sharing Plan 2012 for the Barwon-Darling*, and throughout NSW more broadly

Accordingly, this interim report, and the final report to follow later in the year, will seek to address the following public concerns:

- a loss of public confidence in water compliance and enforcement arrangements in the Barwon–Darling region, and NSW more broadly
- a loss of public confidence in the efficacy of water metering arrangements in the Barwon–Darling region, and perhaps more broadly across NSW
- concerns that water purchased at taxpayers' expense for the environment is not being successfully managed for that purpose, and instead, is being accessed by certain irrigators either because of perceived inadequacies in the rules, or outside the rules entirely
- a loss of public trust in officials of the Department of Primary Industries specifically, and the NSW Government more broadly
- concerns that all stakeholders with interests in the Murray–Darling Basin Plan are not enjoying the same access to policy makers
- concerns that arrangements for water management in the Barwon–Darling and the Murray–Darling Basin more broadly, are complex, non-transparent and difficult to access and understand for those not 'on the inside'.

## 2.2 This Investigation

On 26 July 2017, two days after the broadcast, the Minister for Regional Water, Niall Blair, announced an independent investigation into the issues raised by the ABC's Four Corners program.

The Minister released Terms of Reference for the investigation which set out the key goals as follows:

1. Determine the facts and circumstances related to the allegations made in the Four Corners Program.
2. Assess whether the Department of Industry's policies and procedures (including the department's Code of Conduct) were complied with in relation to these allegations.
3. Assess whether Departmental actions in relation to the allegations were appropriate
4. in the circumstances
5. Identify whether further action should be undertaken in relation to the allegations,
6. including further investigation or referral to other authorities.
7. Identify opportunities to improve the Department's water management, compliance and enforcement performance.

The full terms of reference are at Attachment 1.

An interim report (this report) was required to be provided by 31 August 2017.

The Premier, the Minister and the Secretary of the Department have each subsequently indicated their willingness to consider any request to broaden the terms of reference or extend the timeframes to report. On 27 August, an extension to report on 8 September was agreed.

## 2.3 Related inquiries and reviews

Since the Four Corners program a number of other inquiries have been proposed, launched, or widened, to address issues raised in the program. They include the following.

### 2.3.1 The Murray–Darling Basin Authority's Basin-wide Water Compliance Review

The MDBA has been requested to conduct a strategic review of state and territory-based compliance and enforcement regimes in the Murray–Darling Basin. It will be supported in its review by an independent panel of experts.

The MDBA will present its findings to the Council of Australian Governments by mid-December 2017 following a report to the Murray–Darling Basin Ministerial Council in November 2017.

The MDBA is to conduct the review in accordance with its powers under Sections 172 and 173 of the *Water Act 2007* (Cwth). In the limited time available, the review will identify the highest areas of risk of non-compliance and undertake a strategic analysis focused on these areas.

The terms of reference are to cover the:

- appropriateness of and compliance with state laws, statutory instruments (including water resource plans), the terms and conditions of water licences and entitlements and any other relevant powers or approvals
- adequacy of water measurement and monitoring arrangements, including metering and investigating irregular activity
- adequacy of penalty arrangements to suitably deter and punish non-compliant use
- adequacy of governance and institutional arrangements necessary to ensure legally compliant water use
- steps required to improve confidence in water compliance and enforcement arrangements sufficient to underpin the integrity of the Basin Plan-compliance water resource.

### 2.3.2 Australian National Audit Office extended audit into the performance of NSW under the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin relevant to the protection and use of environmental water

Prior to the Four Corners program, the Australian National Audit Office was auditing the effectiveness of monitoring and payment arrangements under National Partnership Agreements. These agreements facilitate the transfer of federal funds to state governments for specific purposes. The agreements cover a range of portfolios, including water.

Following the Four Corners program the scope of this audit was expanded by the Auditor-General to ensure a focus on how the Commonwealth Department of Agriculture and Water Resources is monitoring the performance of NSW under the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin relevant to the protection and use of environmental water.

A report on the NSW arrangements will be tabled in Federal Parliament later in 2017.

### 2.3.3 Commonwealth Senate Rural and Regional Affairs and Transport References Committee inquiry

On 16 August the Rural and Regional Affairs and Transport References Committee announced it would be conducting an examination into the allegations raised in the ABC Four Corners program.

The terms of reference address the integrity of the water market in the Murray-Darling Basin, with particular reference to the:

- allegations of theft and corruption in the management of water resources in the Murray–Darling Basin
- investigation and public disclosure by authorities, including the NSW Government and the MDBA, of reported breaches within the Murray–Darling Basin, including the Barwon–Darling Water Sharing Plan
- actions of member states in responding to allegations of corruption and the potential undermining of the Murray–Darling Basin Plan
- use of Commonwealth-owned environmental water for irrigation purposes, and the impact on basin communities and the environment
- operation, expenditure and oversight of the Water for the Environment Special Account
- any other related matters.

The Commonwealth Government has also agreed to a senate order for the production of documents relating to the Four Corners allegations and the Barwon–Darling system.

### 2.3.4 The NSW Ombudsman investigation into allegations of public maladministration

It is understood that the NSW Ombudsman is currently dealing with other complaints already received about similar issues to those raised in the Four Corners program.

The Ombudsman's Office has advised that whilst it will continue with its investigations into the allegations already to hand, its report is unlikely to be finalised before the interim report of the Matthews investigation becomes available.

### 2.3.5 Independent Commission Against Corruption investigation

The Secretary of the Department of Industry referred the allegations raised in the Four Corners program to the Independent Commission against Corruption (ICAC) on 25 July 2017, the day after the broadcast.

Separately, also shortly after the Four Corners program was broadcast, Mr Gavin Hanlon, then Deputy Director General of the Department of Primary Industries who was mentioned on the program, made a self-referral to ICAC.

On 24 August 2017, ICAC advised Ken Matthews it had decided to initiate an investigation into the allegations raised in the Four Corners program. Both parties agreed that complications inherent in conducting concurrent investigations should be avoided so as not to prejudice the effective gathering and analysis of evidence and factual determinations.

Mr Matthews voluntarily suspended further investigatory work by his investigation team. All relevant materials gathered to date by the investigation team were made available to ICAC, consistent with a formal request under s22 of the *Independent Commission Against Corruption Act, 1988*.

Drafting of the Matthews interim report continued. **However the detail provided in the report on the specific investigations to date has been considerably reduced. There has been a greater focus than would otherwise have been the case on opportunities for systemic improvements to the management, administration, and operations of the water management and compliance system in NSW.**

## 2.4 Approach to the Investigation

This Investigation was established as an independent investigation. Care has been taken to maintain that independence. There has been no influence, nor any attempt to improperly influence the Investigation by the Premier, the Minister, the Secretary, or any official on the conduct or findings of the investigation.

The investigation team supporting Ken Matthews comprised, at full strength, four externally recruited professional investigators with senior backgrounds in policing, compliance and investigation work. An objective from the outset was to conduct the investigation in a fully professional manner that would minimise the chances of jeopardising or complicating other investigations or inquiries that may be launched.

The investigations team was supported by four staff from the Department of Industry, sourced from areas other than DPI–Water. Six members of the full team began operations on the week beginning 1 August 2017, with the remaining three members (one investigator and two departmental staff member) joining in the week beginning 21 August 2017. These additional resources were required when the full extent of the work required became clearer.

In the four weeks of operation, the investigation has received approximately 3,150 documents, including departmental briefings, policies and procedures, licencing documentation, personnel information, and emails and correspondence. Input came from members of the public, former and serving public servants, irrigators, environmental groups, community groups, and other Commonwealth and state government agencies.

In addition, the investigation team has conducted 29 meetings with 39 interested parties, three senior executives from NSW central agencies and 11 Commonwealth officers with responsibilities for water. An email contact address and telephone hotline were established and to date the investigation has received 75 emails and 13 phone calls through those points. Where contact details have been left, each call or email has been responded to by a senior investigator. A five-day field visit to properties and towns in the Barwon–Darling region was undertaken by two senior investigators and they met with 10 people. This visit enabled discussions with key stakeholders who provided critical information in relation to the investigation.

Both the key agencies involved in water management submitted formal responses to the inquiry's terms of reference. Whilst the Department of Industry's response was not received until 21 August 2017, a steady flow of documents and responses to specific requests has been provided throughout the month through the established contact point. WaterNSW provided its response to the terms of reference on 22 August 2017. Access to supporting

documentation, whilst extensive, was not supplied until 24 August 2017 with a further delivery on 29 August 2017.

The Secretary released a statement to all Industry cluster staff, including Department of Primary Industries' staff, on 26 July 2017 directing staff to provide full and ready access to any documents sought for the Investigation and encouraging staff to come forward with any relevant information. The Chief Executive of WaterNSW later provided a similar instruction to WaterNSW staff.

The Secretary, the Chief Executive of WaterNSW and Ken Matthews each separately encouraged public servants to come forward, if necessary utilising whistleblower protection under the *NSW Public Interest Disclosures Act 1994*. These arrangements were utilised by some.

The team has been enabled by the Secretary to have unrestricted access from the outset to any information from staff and systems across the broader Industry cluster including its divisions and statutory authorities. Unrestricted access to emails and database systems has been provided, although the key compliance case management database system, the Compliance Investigation Reporting and Management system (CIRaM) took some time to become available from WaterNSW and use of the system was hindered by technical access issues.

The investigation was never intended to reach final conclusions about breaches of the *NSW Water Management Act 2000*. Any prima facie cases of non-compliance or maladministration were to be referred to the relevant authorities for further investigation or action. Rather, the task of the Investigation is to seek to clarify the circumstances surrounding each allegation from the Four Corners program, as well as provide independent strategic advice on opportunities to improve the current compliance and enforcement arrangements for water in NSW, including in the Barwon–Darling water system.

## 3 The issues

### 3.1 Clarifying circumstances surrounding the allegations concerning illegal pumping or use of water on the property Burren Downs

#### 3.1.1 Background information

Burren Downs is a rural property located approximately 11 km west of Mungindi, NSW. Burren Downs is situated within the Barwon–Darling unregulated river water source, and its irrigation activities are therefore governed by the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources, 2012.

The property has a perpetual lease held by Frederick Martin Barlow and Margaret Eileen Barlow as tenants-in-common, in equal shares. Mr Anthony Barlow, the son of Frederick and Margaret, is the manager of the property.

#### 3.1.2 What the Four Corners program said

The Four Corners program interviewed Jamie Morgan, former head of the Department of Primary Industries Water division (DPI-Water) Strategic Investigations Unit. Jamie Morgan alleged that his investigators, “found the meter attached to this pump wasn’t working even as it drew millions of litres of water through this channel and into a vast private dam”. He stated that their investigation report noted that the meter “has been tampered with”.

The program alleged that Jamie Morgan’s report to the department stated that “1,101 gigalitres (GL) [presumably megalitres (ML) was intended] had been taken ... in contravention of the *NSW Water Management Act*”. Jamie Morgan stated on the program



that his team had inspected the river pump and that “it was clear that water had been taken because the storage dam was filling up and there was no change in the meter reading”.

The program alleged that, “Anthony Barlow had been pumping during a ban set up to ensure water got down the river to give Broken Hill its drinking supply”. It reported that in the DPI-Water investigation interview, Barlow had alleged that former NSW minister Kevin Humphries had “given a room full of irrigators permission to pump” and that the minister had indicated that “he was aware the ban was being lifted”.

Jamie Morgan alleged on the program that, “as far as I was concerned, the ban was still in place. It was still a gazetted or advertised ban and that’s what we were enforcing.”

### 3.1.3 Clarifying the circumstances: What additional information is available to date in relation to the allegations?

This Investigation has assembled a range of additional information in relation to the allegations. Not all of it can be included in this report in the interests of not impeding investigations by other authorities. The information has been made available to those authorities.

In broad summary terms, this Investigation has identified that DPI-Water did conduct enquiries into the allegations, but much remains unresolved.

**Meters:** A DPI-Water officer issued a lawful notice on 21 July 2015 requiring the repair and maintenance of meters on the property. Mr Barlow allegedly indicated to DPI-Water investigation staff that the notice had been partially complied with and an extension was granted for full compliance until 4 September 2015. There does not appear to be any record of any further action in regard to this notice, for example follow up checks.

**Water extractions:** There is also reference in the case management notes to an investigation by DPI-Water’s Strategic Investigations Unit relating to alleged breaches of the *Water Management Act 2000*, section 911—the taking of water when water metering equipment was not working between 29 May 2015 and 2 June 2015 on one meter, and between 18 May 2015 and 1 June 2015 on another.

There were further allegations of a breach under Section 336C—contravention of certain directions, *Water Management Act 2000*, between 16 and 18 May 2015.

As at 24 July 2017, these matters have not been progressed.

**Former Minister Humphries’ alleged statements:** There is disagreement in relation to Former Minister Kevin Humphries’ alleged statements about the embargo on pumping (note that the term “embargo” has been used in much of the public debate to refer to a “temporary water restriction” under s324 of the *Water Management Act 2000*).

Mr Barlow stated during an interview with DPI-Water investigators that “he believed the embargo had been lifted on 15 May 2015 as a result of a conversation with Troy Grant’s staff”, and that “Former Minister Kevin Humphries explained in a meeting that the embargo would be implemented only for that flow event; subsequent flows would result in further embargoes”. The accuracy of these statements by Mr Barlow has not been independently verified.

Case notes record that on 2 June 2015, in a separate interview with DPI-Water, investigators “... stated that the embargo was still in place; Barlow rejected that as Kevin Humphries told him personally that each flow in the river would be announced as an embargoed flow”.

Following the Four Corners broadcast, Mr Humphries issued a media statement dated 1 August 2017 denying that he had told irrigators they could access water during a water embargo: “At no stage did I articulate such a claim, as anyone who attended will confirm”. Mr Humphries has since reiterated his position in a statement to this Investigation that, “I have never said that to anyone either publicly or privately”.

Further work will be necessary to corroborate either version of events from others known to have been present at the 25 March 2015 meeting in question.

For the purposes of this Investigation, a chronology of events derived from departmental records is as follows:

- 27 January 2015—section 324 Order was signed. The Order imposed temporary restrictions on supplementary flows in the NSW border rivers, the regulated Gwydir and Lower Namoi Rivers, including for large water users along the Barwon–Darling River system
- 28 January 2015—media release issued advising above water restrictions in place
- 30 January 2015—section 324 Order published in the Gazette
- 3 February 2015—clarifying section 324 Order signed. The new order included the provision that the temporary water restriction could be "turned on or off" through a media release issued by the Office of Water
- 6 February 2015—clarifying section 324 Order published in the Gazette
- 13 February 2015—media release issued advising temporary restrictions imposed in January eased for regulated rivers in northern inland however flows in Barwon–Darling river system remain restricted for water users with B and C and supplementary class licences
- 6 April 2015—media release issued advising temporary water restrictions reinstated for inland rivers in northern NSW except for the Lower Gwydir River, below Boolooroo Weir. Temporary restrictions to remain in place for the Barwon–Darling River, with no access to flows by entitlement holders with B and C class licences
- 18 May 2015—media release issued lifted temporary water restrictions for areas above Louth, south-west of Bourke
- 23 June—media release issued lifting temporary water restrictions in the areas downstream of Louth.

This chronology shows that between 28 January 2015 and 18 May 2015, no media release was issued turning the temporary water restrictions "off" for the Barwon-Darling river system.

#### 3.1.4 Consideration of the department's handling of the Burren Downs issues

Overall, it is assessed that, in an administrative sense, DPI-Water did not handle this issue well.

The disagreement surrounding the alleged statements by former minister Humphries has remained unresolved since 2015. The investigators' case notes show no record of attempts to settle the matter one way or the other. It was difficult also to identify what investigation or compliance action, if any, was taken against Mr Barlow and/or other persons associated with Burren Downs. There were a number of references to proposed action (in conjunction with the proposed compliance campaign on the Barwon–Darling (see later in this report)), but no record of enforcement action taken for the alleged breaches other than the s326 (1) direction.

Accordingly, the case has drifted. Decisions to proceed or not proceed have not been taken and the locus of responsibility for taking such decisions has not been clear. Investigation activity has been stop-start. Progress has been intermittent.

Entries in the CIRaM case management system have been incomplete. Certain entries have been made well after the event. Advice to this investigation by experienced external professional investigators is that the quality of entries and evidence in the case management system is variable and sometimes, on the face of material made available for review, below

normal admissible evidentiary standards. They advise that after a diligent search, they have been unable to locate any briefs of evidence prepared by DPI-Water investigators in relation to this case (and the cases discussed in sections 3.2, 3.3 and 3.4) nor have they been able to locate legal advice provided as to whether a prima facie case exists. Without considerable further investigative work, it would be difficult for the department or WaterNSW to put together a satisfactory brief of evidence for consideration by decision-makers.

Over the course of the investigation, senior officers of DPI-Water seem not to have had sufficient visibility of the progress of the investigation. For their part, the same senior officers, on the face of material made available for review, may not have fully exercised their responsibility to maintain management oversight.

### 3.1.5 Lessons for a better compliance and enforcement system

There are a number of lessons for future compliance work:

- When breaches of licence conditions are reported or suspected they should be followed up in a timely fashion and the results of follow up recorded in the case management system.
- When Notices are served they should be routinely followed up in a timely fashion to check appropriate action and compliance, and the outcomes routinely recorded in the case management system.
- Decision-making responsibility for launching a high-level compliance action needs to be unambiguous; there was some ambiguity in the present case.
- Case management arrangements should be designed to keep senior managers abreast of progress—or lack of it; senior managers at all points on the chain of command should take responsibility to drive progress.
- Wherever possible, cases should be managed in a way to bring issues to a resolution. Years of delay bring the compliance and enforcement system into disrepute and are unfair to the parties involved or implicated.

**Options for Action:** At least two actions could be considered to finally advance this long-unresolved set of issues.

1. The Secretary of the Department of Industry should initiate an immediate investigation to determine whether persons associated with Burren Downs are currently in compliance with the required legislation. The allegations in relation to ineffective metering are serious, and public concern is high, and it should at least be determined whether any non-compliance is still occurring.
2. In relation to the alleged events of mid-2015, the Secretary of the Department of Industry should request the assembly of a thorough, professional brief of evidence to enable a definitive determination of whether to proceed to prosecution or other enforcement action. Note that there is a three year statute of limitation under the NSW Water Management Act.

However, there should be consultation with ICAC before these investigations are launched.

## 3.2 Clarifying circumstances surrounding the allegations concerning illegal pumping or use of water on the property “Miralwyn”

### 3.2.1 Background information

Miralwyn via Carinda is located at 1503 Miralwyn Road, Carinda NSW 2381. Carinda is located in the Walgett Shire local government area. The property recently combined with the

neighbouring property known as Geera, but the property is known collectively as “Miralwyn”. The property has frontage to the southern bank of the Barwon River and the western bank of the Macquarie River. At the relevant time, the property was used to grow dry/irrigated wheat and both dry area and irrigated cotton. The property had no stock but had four premises which were supplied water for domestic purposes under a Basic Landholder Right. It has a number of large irrigation storages with capacity of 61,050 megalitres.

The property known as Miralwyn is owned by Budvalt Pty Ltd trading as Miralwyn Cotton. According to Australian Securities and Investments Commission (ASIC) records, Budvalt Pty Ltd was registered on 17 May 1990. The current directors of Budvalt Pty Ltd are Peter James Harris (appointed 31 October 2003) and Jane Maree Harris (appointed 22 August 2011). Jack Harris, Peter Harris’s son, is employed by the company to help run the property.

### 3.2.2 What the Four Corners program said

The Four Corners program reported that under NSW law irrigators must keep a detailed log book if a meter does not work. Keeping a log book in these circumstances is a requirement of the NSW Water Management Act. The program alleged that, “Harris’s manager had been lying—there was no logbook”. An alleged interview by DPI-Water investigators with Jack Harris (as referred to above) was shown on the program.

The program alleged that Jack Harris, “conceded they hadn’t been following the rules”.

Jack Harris noted on the program, “we probably should have been running a diary, which, and we probably will start, you know, from today”.

### 3.2.3 Clarifying the circumstances: what additional information is available to date in relation to the allegations?

This Investigation has assembled a range of additional information in relation to the allegations. Not all of it can be included in this report in the interests of not impeding investigations by other authorities. The information has been made available to those authorities.

The initial assessment infers offences may have been committed and certain evidence was collected as a result of the two inspections. Relevant evidence appears to have been obtained during an inspection at Miralwyn on 24 September 2015 when the officer recorded his belief that water extracted through the approved works was not being adequately metered in accordance with the conditions of the respective combined licences. In accordance with s327(2) a Stop Work Order was issued to Mr Harris.

Records indicate that an investigator issued a notice under Section 326 (1) of the *Water Management Act 2000* requiring the installation of approved meters by no later than 20 November 2015. However it appears this direction elicited a legal response indicating the allegedly non-compliant meters were installed prior to 30 June 2010 so they did not have to comply with the direction issued. There was reference to correspondence of 2012 from the department’s Director, Water Systems, referring to “grandfathering” provisions permitting the use of non-standard meters until 2020.

The Matthews investigation team, in the course of the initial assessment, was unable to determine if there was a compliant water extraction program in place at this property. This is not the role of this team.

There is now a potential legal issue relating to the statute of limitations since the original investigation. Any charges would need to be laid by August 2018.

### 3.2.4 Consideration of the department’s handling of the issue

Overall, it is assessed that, in an administrative sense, DPI-Water did not handle this issue well.

The case management files are silent on why this matter did not proceed in a timely manner. The information reviewed indicated there may have been prima facie evidence of substantive breaches of the *Water Management Act 2000*. However, the allegations were not systematically followed up. There is no record of the pump(s) now in use. There is no record of why the alleged absence of a log book had not been detected earlier given the need to report water usage regularly. There are other gaps in the case management record.

It may be relevant that staff responsibility for the case moved from the original case officer on his resignation, to a second officer. The re-structuring process was recorded as the reason the matter was not further investigated at that time. The matter was then transferred to a third officer who subsequently resigned.

### 3.2.5 Lessons for a better compliance and enforcement system

There are a number of lessons for future compliance work. The need:

- to maintain a sound and up-to-date understanding of the detail of current regulations by officers responsible for compliance and enforcement (this does not require organisational co-location, but should certainly involve structured training)
- to maintain momentum in investigations mindful of the statute of limitations
- for closer involvement of meter reading staff with the compliance effort
- to maintain momentum in case management despite internal and external (machinery of government) restructuring processes and staff churn.

**Options for action:** To progress this long-unresolved case the Secretary of the Department of Industry could direct a specific inspection of the property and all relevant meter records to ensure compliance with all relevant condition of their current license(s). This inspection should proceed by no later than 30 November 2017. See also the options for action proposed in Sections 3.3.5 and 3.4.4 elsewhere in this report to resume momentum in the investigations.

However, there should be consultation with ICAC before these processes are launched.

## 3.3 Clarifying circumstances surrounding the allegations concerning illegal pumping or use of water on the property “Rumleigh”

### 3.3.1 Background information

Rumleigh is a rural land property located on the Carinda Road at Brewarrina in northwest NSW with frontage onto the Barwon River. Mr Peter Harris and Mrs Jane Harris own the property. Mr Daniel Poole was the property manager at the relevant time.

Three water licences have been in use on the property. The allegations under consideration relate to two of these licenses. The two licences authorise extraction from the river in line with specific A-class conditions. One of these licences is held by Budvalt Pty Ltd. Mr and Mrs Harris are Directors of this company. The other access licence is held by Mr and Mrs Harris.

### 3.3.2 What the Four Corners program said

The Four Corners program alleged that, “Last year, on one of his trips up here, Phil O’Connor saw these pipes pulling huge volumes of water out of the river when pumping wasn’t allowed”.

The program showed a mobile phone video taken by Phil O’Connor’s son that played footage of, and had commentary on, the visit. Phil O’Connor’s son stated on the video, “It’s Saturday the thirteenth of February at one forty-five. Pump running at Rumleigh Station, Brewarrina”.

The program alleged that, “The problem was, the official river heights published that day showed there wasn’t enough water to be legally pumping”. The program reported that the video had been provided to a NSW Government investigator.

### 3.3.3 Clarifying the circumstances: what additional information is available to date in relation to the allegations?

This Investigation has assembled a range of additional information in relation to the allegations. Not all of it can be included in this report in the interests of not impeding investigations by other authorities. The information has been made available to those authorities.

The entries within DPI-Water’s case management system do not fully support the claims made in the Four Corners program. They do identify two alleged “offences”. A stop work notice under s327(2) was issued to Mr Harris on 23 February 2016 to cease the allegedly “unlawful use of water management works”, but as at 24 July 2017 there is no information within the case management system to indicate what action was taken to monitor or enforce this notice.

There is a request to withdraw this notice on 21 March 2017. There does not appear to be any supporting material in relation to this request. The closing and reopening of the matter on 16 May 2017 further highlights the inadequacies of detail in relation to this matter in the case management system.

Possible offences may have been identified between 6–8 February 2015 under s60B of the *Water Management Act 2000* to do with an alleged contravention of a term of condition of an access licence.

However a comprehensive submission to this Investigation by solicitors acting for Mr Harris provides specific information arguing there was no offence at the relevant time. They point to river flow levels from the relevant gauging stations that would have permitted pumping. There is no record in the case management system of this information now provided by Mr Harris being previously sought or provided to DPI-Water.

One possible contributing factor in cases such as this is that river flow gauge data is sometimes required to be adjusted by officials retrospectively to account for gauging errors or technical problems. Whether this occurred will need to be established.

### 3.3.4 Consideration of the department’s handling of the issue

Again, from an administrative point of view, DPI-Water’s handling of the issue has not been good.

There has been a long delay without progress. No serious case has been assembled to enable an informed decision whether to proceed. There is no evidence that Mr Harris was invited to provide an explanation—as he has now provided to this Investigation. There are gaps in the case management record. There is no evidence that senior management along the chain of command monitored the lack of progress and pressed for action to resume.

### 3.3.5 Lessons for a better compliance and enforcement system

In addition to the lessons from previous cases above, there are a number of suggestions for future compliance work. These are the need:

- to make publicly transparent any necessary adjustments to stream gauging data and to do so as quickly as possible. The methodology for adjustments needs to be clearly communicated for the sake of public confidence and sound legal process
- to ensure compliance staff routinely are made aware of adjusted data and that procedures ensure the use of best available current data in their compliance work
- to systematically follow up to verify action in response to directions and orders

- for management along the chain of command to monitor and maintain momentum in investigations.

**Options for action:** Mr Harris's lawyers, Horton Rhodes, have provided this Investigation with a detailed written response to this and other allegations against Mr Harris, dated 22 August 2017. They assert that Mr Harris "has never knowingly caused water to be pumped for the benefit of any of his properties in contravention or breach of any term of water access licences (WALs) held by him or Budvalt". Accordingly, the Secretary of the Department of Industry could direct a professional collation of Mr Harris's new submission, together with all other relevant evidence available in relation to this and other allegations raised against Mr Harris, conduct any necessary further investigations, and provide Mr Harris with an opportunity to respond. This would resume progress after a long delay and afford Mr Harris due process. An informed decision could then be made whether to proceed with further action.

However there should be consultation with ICAC before these processes are launched.

### 3.4 Clarifying circumstances surrounding the allegations concerning illegal pumping or use of water for the benefit of properties associated with Mr Peter Harris

#### 3.4.1 Background information

Mr Peter Harris is a proprietor of the businesses operating as P & J Harris & Sons and Clyde Cotton. Mr Harris owns a number of properties including the above mentioned Rumleigh and Miralwyn as well as other properties in Bourke, Brewarrina, Carinda and Hay. He has been involved in the irrigation and cotton farming industries for over 30 years.

The Four Corners program reported on Mr Harris's property at Hay which is co-owned by Peter Harris and his brother Ron Harris.

#### 3.4.2 What the Four Corners program said

The program reported that Ron Harris had pleaded guilty to meter-tampering four years ago.

The program reported that Sue Higginson, Chief Executive Officer of the Environmental Defender's Office, had been "investigating" Peter Harris' farms since 2016 under instruction from the Australian Conservation Foundation.

The program reported that Sue Higginson, "used freedom of information laws to obtain data which appears to show huge volumes of water have been taken beyond what Peter Harris' properties are allowed".

Sue Higginson alleged on the program, "it would certainly appear on the face of the information that there has been a significant over extraction of water from the system".

Sue Higginson alleged that the volume of water extracted was, "five times the amount that was legally permissible".

The program alleged, "the figures indicate those farms pumped at least a billion litres of water more than was allowed". The program further alleged, "It was the same year Broken Hill almost ran out of water because not enough water was getting down the Darling River".

Sue Higginson alleged that the alleged breaches were "offences under the water laws".

#### 3.4.3 Clarifying the circumstances: what additional information is available to date in relation to the allegations?

This Investigation has assembled a range of additional information in relation to the allegations. Not all of it can be included in this report in the interests of not impeding

investigations by other authorities. The information has been made available to those authorities.

Some of the material submitted to this Inquiry about these allegations is in considerable detail but in the time available has not yet been tested for accuracy. At the same time, Mr Harris lodged on 22 August 2017 a detailed rebuttal of each allegation made on the Four Corners program.

#### 3.4.4 Consideration of the department's handling of the issue

These allegations have been in existence for a long period now and remain unresolved. That is not in the interests of either the Harrises nor the credibility of the government's compliance and enforcement system.

**Options for action:** As for the previous allegation concerning Mr Harris, the Secretary of the Department of Industry could direct a professional collation of all relevant new and existing evidence available in relation to the allegations raised against Mr Harris, conduct any necessary further investigations, and provide Mr Harris with an opportunity to respond. This would resume progress after a long delay and afford Mr Harris due process.

However there should be consultation with ICAC before these processes are launched.

### 3.5 Clarifying circumstances surrounding the allegations concerning construction of an irrigation channel affecting Crown land adjacent to the Miralwyn property

#### 3.5.1 Background information

The irrigation channel referred to in the Four Corners program is approximately 20 metres wide and approximately 1.5–2 metres deep and crosses the entire 70 metre width of the Crown road on a property near Carinda. Carinda is located in far north NSW in the Walgett Shire local government area. The date of construction of the channel has been identified as 30 July 2015.

There were two NSW agencies, both within the Department of Industry, involved in approval processes for the irrigation channel. DPI-Water is a unit within the Department of Primary Industries, which is itself a division of the Department of Industry. It regulates surface and groundwater management. Lands & Forestry is another division of the Department of Industry, which is responsible for the management of the NSW Crown land estate.

#### 3.5.2 What the Four Corners program said

The Four Corners program reported investigators inspecting Miralwyn found a water channel dug on Harris property through Crown land. It reported the water channel impacted a public road as it required rerouting the road to “get around this giant culvert”.

The program alleged it was built in about 2015 by the Harris family. The program alleged, “the allegation was it was all done [built] without any approval”.

The program showed footage of a Harris employee arriving where filming was taking place. The employee was filmed as saying, “You can't be here... because this is our property”. The program interviewer replied that it was a Crown road, which the employee disputed. The employee then stated, “Where you entered that sign there is private property”.

#### 3.5.3 Clarifying the circumstances: what additional information is available to date in relation to the allegations?

This Investigation has assembled a range of additional information in relation to the allegations. Not all of it can be included in this report in the interests of not impeding



investigations by other authorities. The information has been made available to those authorities.

Information sourced from departmental records indicated the following circumstances.

On 30 September 2015 an advertisement was placed by DPI-Water in the *Walgett Spectator* notifying the public of an application from Budvalt Pty Ltd for the construction of a below ground channel that would cross Crown land. Objections to the application were required by 28 October 2015.

On 9 October 2015, Lands & Forestry was contacted by a neighbour adjacent to the relevant Budvalt property who noted construction had already occurred and she considered she was therefore unable to appeal. The neighbour further noted the channel had been constructed above ground, not below as stated in the advertisement, and it had been constructed two months prior. This advice assisted Lands & Forestry to determine the operative date of construction as being 30 July 2015.

In late October 2015, Walgett Shire Council provided advice to the department that the construction of an irrigation channel was permitted without development consent in accordance with the Walgett Shire Local Environment Plan 2013.

An inspection of the channel conducted by Lands & Forestry on 12 November 2015 found the development on the Crown road was unauthorised with no formal notification or application. Access along the Crown road was noted as being not possible without having to traverse Budvalt Pty Ltd freehold land. Legal public access was noted as "restricted entirely". Lands & Forestry suspended any further investigation, given that DPI-Water was already investigating.

On 11 March 2016, DPI-Water advised Lands & Forestry that following its investigation, it was unlikely that any compliance action would be taken because the works could be authorised under application. DPI-Water then referred the matter to Lands & Forestry for its investigation.

In mid-August 2016 an application for a Roads Act licence was lodged by Budvalt Pty Ltd seeking authorisation for the irrigation channel across the Crown land road.

On 12 September 2016 Lands & Forestry concluded that whilst the structure was illegal and unauthorised, it was "unlikely that enforcement actions would achieve resolution". It recommended tenure for the structure be granted subject to the following conditions: it be recognised that the structure was unauthorised; a survey be conducted; either a development consent was sought or a road closing application made; and the public's right of passage within the road corridor was to be maintained.

On 16 September 2016 internal departmental advice noted that the ability to take prosecution action was statute barred and recommended the practical approach would be to seek authorisation of the structure subject to conditions. This approach was taken and Mr Jack Harris on behalf of Budvalt Pty Ltd was subsequently advised on 19 September 2016.

In November 2016 the ABC Lateline program broadcast a report on illegal land clearing which mentioned the irrigation channel constructed by Budvalt Pty Ltd and featured interviews with the property neighbours.

In February 2017, Mr Jack Harris notified the department that a survey had been completed and submitted a licence application as requested by the department.

In mid-July 2017, Lands & Forestry staff met (in separate meetings) with Mr Jack Harris and the concerned neighbours in relation to the appropriate location for a crossing over the channel to maintain access along the Crown road. Once clarification had been made on the proposed location of the crossing, the neighbours accepted the resolution.

By the end of July 2017, the requested construction works were completed. They resulted in a 12 metre wide vehicular crossing to provide continuing public access along the Crown road. Final approval is now pending and is expected to be granted shortly.

Advice received from the Deputy Director General, Lands & Forestry for this Investigation noted that the unauthorised use or occupation of Crown land, including Crown roads, is “a common occurrence throughout the state”. The advice noted that in 2016–17 approximately 70% of tenures were compliant or requiring minor correction action, with the remaining 30% managed on a risk-based approach aligned to resourcing.

The Deputy Director General also advised that it was not uncommon for authorised structures on Crown roads or land to be identified by neighbours or members of the public and that often land holders are unaware of the land status or requirements. It was noted that when the department becomes aware of any unauthorised use or occupation, action is taken to determine appropriate action, which can include authorisation, removal of structures, remediation works, or penalties. It was further noted that based on current data, it takes on average up to six months to process an application.

The extent of Crown land and its fragmentation was drawn to the attention of the Investigation. Crown land in NSW comprises approximately 580,000 parcels of land and 59,000 tenures comprising licences, leases and permits administered.

### **Legislative framework**

The current legislative framework for Crown land management is the *Crown Lands Act 1989*. Under section 155 on what constitutes an offence, the following sections may apply in relation to this incident: (1) (b) to erect a structure, (h) to interfere with any substance, whether on or in, or forming part of, public land and (i) to deposit or leave matter on public land except in a place or receptacle provided for that purpose. The current penalty notice amount for each of those offences under the Crown Lands Act is \$220 and a fine of up to a maximum of \$2,200 may apply upon conviction.

In this case, the *Roads Act 1993* may also apply. Under s138 it is an offence to undertake works without consent.

Commencing in 2012, the NSW Government conducted a review of NSW Crown land management. The new *Crown Land Management Act 2016* comes into full effect in early 2018. The new legislation reflects the need for a stronger compliance and enforcement regime with greater powers and higher penalties for illegal activities on Crown land. For individuals, the fines increase from \$220 to \$1,100, with a maximum of up to \$11,000 upon conviction. For corporations, fines increase from \$220 to \$2,200, with a maximum of \$22,000 upon conviction. The new act expands the capacity of Lands & Forestry and local councils to conduct compliance activities and increases penalties for individuals and corporations as well as introducing new offence categories. The statute of limitations has also been increased from six months to two years.

#### **3.5.4 Consideration of the department’s handling of the issue**

Overall, it is assessed that the two relevant areas of the department handled an awkward issue satisfactorily.

The key concern remaining is whether the proponent, in constructing the channel unilaterally, and then seeking approval later, may have gained an advantage over other applicants for road construction permits elsewhere in Australia. Most applicants currently face a waiting time of around six months before they can commence work. Budvalt was able to enjoy the benefits of the channel immediately.

Retrospective approval was arranged because Lands & Forestry exhibited a flexible, problem-solving approach to the case. However, the perverse outcome from the point of

view of other applicants on the waiting list seems not to have been considered. It is not assessed that the applicant received such flexible treatment for any improper reason.

### 3.5.5 Lessons for a better compliance and enforcement system

There are a number of lessons for the future:

- There is a need for administrative protocols to guide the interactions between Lands & Forestry and DPI-Water in the areas of approvals, compliance and enforcement. Interactions in this case have been ad hoc and only succeeded because of the efforts of well-intentioned and cooperative officers.
- Lands & Forestry should in future avoid advertising notices of intention to carry out works if the works have already commenced. The actual situation should be made clear to interested parties. Misleading public notices discredit the proper processes.
- Lands & Forestry should consider recommending a fee structure for permits or other disincentives that reduce the benefit to applicants of taking unilateral action.
- Lands & Forestry should take action to eliminate unreasonable administrative waiting times for permits (it is understood that action is in hand to do so).

## 3.6 Clarifying circumstances surrounding the allegations concerning the refusal by senior management of DPI-Water to approve a major investigation into alleged water management breaches in North Western NSW

### 3.6.1 What the Four Corners program said

The program interviewed Jamie Morgan, the former Manager of the DPI-Water Strategic Investigations Unit. Jamie Morgan stated, “We were there to conduct a full investigation”.

Jamie Morgan alleged on the program, “In the north west, the meters I looked at, I didn’t see one that actually worked”. He further alleged that, “cables [were] unplugged, batteries removed, impellers missing”.

The program alleged, “Jamie Morgan was so concerned at what they were uncovering along the Barwon–Darling that he sought approval for a major investigation”.

Jamie Morgan stated on the program, “it was my desire to run a proactive operation out in that area and inspect every single river pump ... identifying where all the extraction points are, confirming that they are complying with their licence”. He further stated that if they were not complying, his unit would be, “taking action to bring them into compliance”. The program asked Jamie Morgan how the operation went. Jamie Morgan alleged, “It was never approved” and that he didn’t know why.

### 3.6.2 Clarifying the circumstances: what additional information is available to date in relation to the allegations?

This Investigation has assembled a range of additional information in relation to the allegations. Not all of it can be included in this report in the interests of not impeding investigations by other authorities. The information has been made available to those authorities.

However, in summary, investigation of this issue has identified a possible scenario, as presented in the Four Corners program, where there was a recommendation for an intensive compliance campaign in the Barwon–Darling region that was “never approved”. This

scenario implies that the recommendation was made to initiate the campaign, but the necessary approval from more senior officials was withheld or declined.

It would not be unreasonable to expect a major operation of this type to have been the subject of a briefing that formally sought approval to proceed, as this is usual departmental practice for seeking and recording decisions on matters of significance.

Mr Morgan has advised this Investigation that he did repeatedly seek approval, at least verbally, from his senior officers, including approval to travel. However, in the time available for this investigation, relevant documents have not been located.

It is possible that approval for the proposed campaign was never strictly necessary—that the Strategic Investigations Unit had the discretion and delegations to proceed on its own motion. Indeed, in documents seen by the investigation team, the Strategic Investigations Unit only ever requested that Mr Hanlon "note" (not "approve") the intended campaign. In these circumstances, it may be that the campaign never actually got underway because other priorities intervened and because, at that time, there was very significant organisational change occurring which distracted staff from their jobs at hand.

### 3.6.2 Consideration of the department's handling of the issue

Overall, handling of this issue by the department was confused:

- It was unclear to senior management if approval for the campaign was being sought or if management was simply being asked to "note" the operation
- It was unclear to the proponents of the campaign if approval by senior management was delayed or declined
- It was unclear whether senior managers above the Strategic Investigations Unit had, and if so had communicated, a view about whether the campaign should proceed
- It was unclear whether serious planning for the event in any detail was ever undertaken or whether it was simply a somewhat empty declaration of intent—never delivered—by operational staff.
- It was unclear how the wider campaign across Barwon-Darling intersected with some of the specific alleged cases of non-compliance within the region.

This Investigation has found no evidence that the campaign was obstructed by any member of senior management. However, nor is there evidence that senior management lent support to the initiative, despite the advice from the Strategic Investigations Unit it believed there was widespread non-compliance in the Barwon–Darling region—a most serious allegation that should normally be expected to prompt swift attention from responsible managers right up the chain of command.

This Investigation noted that the plans for the campaign coincided with a period of considerable organisational change in DPI-Water. Staff were departing, roles and lines of reporting were changing, and structures were changing. In these circumstances in most organisations, externally-facing business operations too often take second place to inward-looking internal processes.

The confused processes that led to the 'non-decision' about the proposed campaign may have been compounded by the confused state of the organisation at that time as a consequence of the structural changes and organisational churn.

Nevertheless, it is this Investigation's assessment that senior managers, once alerted to an allegation of widespread non-compliance, should have taken more decisive moves to either take action, or to satisfy themselves that action was not necessary. There is no record they did either.

### 3.6.3 Lessons for a better compliance and enforcement system

There are a number of lessons for the future. These are the need for:

- clarity about levels of approval and delegation for high-profile compliance cases and activities
- systematic and sufficiently detailed planning of any such major campaign, preferably before proposals are brought forward to the decision maker
- senior managers be alerted to, and to respond decisively and quickly to, advice of alleged widespread non-compliance
- operational planning processes and priority setting processes that provide scope and resources to accommodate unusual or 'one-off' compliance projects
- managers to keep a focus on their external business responsibilities at the same time that machinery of government and other restructuring processes might be consuming much of their attention.

## 3.7 Clarifying the circumstances surrounding the allegations concerning inappropriate conduct by Gavin Hanlon, Deputy Director General, Water, Department of Industry

### 3.7.1 What the Four Corners program said

The program reported that, "the bureaucrat in charge of water in NSW is Gavin Hanlon".

The program alleged that in 2016, "he set up a secretive group with irrigator lobbyists to discuss the Murray–Darling Basin Plan".

The program broadcast an alleged audio recording of Gavin Hanlon from a teleconference with the group. The recording depicted Gavin Hanlon saying, "It worries me when you hear that, hear that beep, because you are never sure who is dialling in".

The program alleged that in the recording obtained of the meeting, "Gavin Hanlon offers to share with the group sensitive government data".

Gavin Hanlon was allegedly recorded as stating, "What we might do as well, is set up some sort of, something like Dropbox or something like that where we can stick documents in that we are sharing as a just safe way to get information around between us".

The program alleged that Gavin Hanlon was aware, "he could be criticised for favouring this group above others". In the alleged recording he says, "I think I can manage that sort of a conversation by being seen to, and occasionally meeting with, everyone and anyone but in terms of having structure and detail and discussion in confidence I can only do it here".

The program alleged that Gavin Hanlon would, "assist the lobbyists in their fight to get the best under the Murray–Darling Basin Plan by providing them with internal documents stripped of the department's logos".

Gavin Hanlon is allegedly recorded as saying, "There's a good discussion to be had with a group like this confidentially about at what point do you roll and start firing those things off". He allegedly further stated, "We can put together a few paragraphs for you to assist."

Gavin Hanlon is allegedly recorded as saying, "Obviously we would have to de-badge it ... We will get some paragraphs or even that paper that we wrote about the holes in the modelling circulated to this group, de-labelled".

Sue Higginson, CEO of the Environmental Defenders Office, comments later in the program that, “De-badging documents is something that is entirely inappropriate, unprofessional and there are freedom of information laws ... providing anybody a sort of material advantage in a position of, in a high level position, I would suggest is very inappropriate”.

The transcript of the alleged teleconference is at Attachment 3.

### 3.7.2 Clarifying the circumstances: what additional information is available to date in relation to the allegations?

This Investigation has assembled a range of additional information in relation to the allegations. Not all of it can be included in this report in the interests of not impeding investigations by other authorities. The information has been made available to those authorities.

However a summary is as follows.

It is not disputed that the liaison group was established. In interviews with investigators, Mr Hanlon referred to it as the “key stakeholder group” or the “reference group”.

Group membership was at the invitation of Mr Hanlon. There were a number of representatives of certain irrigator associations/bodies involved in the meetings. Certain DPI-Water staff members were usually present. The Investigation team is aware of the identities of participants.

The group met by teleconference on at least four occasions. On some occasions, such as the recorded teleconference, several members would be in Sydney together, with others joining by phone. The date of the recorded meeting was thought by Mr Hanlon and one other participant to be 1 November 2016. Another participant thought it to be 12 October 2016. No minutes were prepared, although a DPI-Water staff member advised that any actions agreed would have been carried forward via email instructions following the meeting. No such emails have been found to date.

The investigation team has sighted an email dated 31 October 2016 from Mr Hanlon circulating materials in preparation for the teleconference. The attachments comprise:

- a draft paper apparently prepared to be lodged with the Murray–Darling Basin Officials Committee titled “Menindee Update”. This document is classified in red “For official Use only – Sensitive and Confidential Information”. The covering email stated that it was a “working draft paper”. Mr Hanlon has since advised that it was never lodged with the Murray–Darling Basin Authority
- an undated Powerpoint presentation titled “Update” addressing the NSW negotiating position on various issues associated with the Murray–Darling Basin Plan. This document is unclassified.

Participants in the teleconference have also provided this Investigation with a further document circulated separately for the meeting. It comprises a draft (unsigned) letter from Mr Hanlon to the First Assistant Secretary of the Water Division of the Commonwealth Department of Agriculture and Water Resources on the subject of “NSW approach to Implementation of the Northern Basin Review and Proposed ‘Toolkit’ Measures”. This document is unclassified, although its attachment is classified “Official Use only – Without prejudice”.

In the Matthews Investigation interview, Mr Hanlon also voluntarily produced a copy of the email including its attachments. He accepted the draft letter to the Commonwealth had also been discussed in the teleconference. A further copy of Mr Hanlon’s email was referred directly to the Investigation by the Secretary of the Department of Industry, immediately after it was drawn to his attention, during the period of the investigation. In referring the email the

Secretary noted that he would normally have initiated an internal investigation immediately upon receipt of such a document. However, given the existing investigation, it was agreed that he would defer such action pending the interim report of the current (Matthews) investigation.

There are at least three issues requiring consideration flowing from this element of the Four Corners report. These are the:

- appropriateness of establishing the limited-access reference group with irrigator interests
- appropriateness of the alleged sharing with the group of sensitive, security-classified government information, including the alleged offer of further 'de-badged' document
- possibly unlawful recording of the teleconference.

### 3.7.3 The appropriateness of establishing the limited-access liaison group with irrigator interests

Mr Hanlon and other members of the group describe its purpose as to enable a frank and confidential exchange of views about current water management issues, especially Murray–Darling planning issues. Mr Hanlon argued to investigators that good policy advice requires good input from key stakeholders about practicality, likely stakeholder reactions, and “ground-truthing”. Policy developed in consultation with those most affected is generally more robust than policy developed in a vacuum. The prospects of policy ‘getting up’ are improved if the message can be carried into stakeholder groups by well informed and respected peers, rather than the government alone.

For their part, non-government members argued that the group enabled them to better understand emerging government policy and constraints. It enabled them to offer insights and perspectives before policy was irreversibly locked in.

A counter view put to the Investigation is that the existence of the group was to the exclusion and disadvantage of other irrigator groups and other interest groups more broadly—especially environmental and community groups with strong and legitimate interest in Murray–Darling Basin issues. Broader, more representative, stakeholder consultation forums, both with irrigator groups and with environmental, community, and indigenous groups were available but not given the same access, information and attention.

Mr Hanlon denies that other groups were disadvantaged as he, “held discussions with any group that requested it, and the intention was to continue discussions with all other stakeholder groups to ascertain a final position”.

Mr Hanlon also denies that the group was a “secretive group”; its existence was known within the department up to the level of the Director General, Department of Primary Industries. However, how widely it was known among other stakeholders is less clear.

**Preliminary Assessment:** On balance, the disadvantages of establishing and utilising the Group are assessed as greater than the benefits. There has been a potential loss of confidence in the professionalism and even-handedness of Department of Primary Industries, and therefore the wider NSW public service. Excluded stakeholder groups may perceive a lack of access to important policy development processes. The existence of the group may have detracted from the government’s endeavours to promote transparency. The risk of policy distortions as a result of inequitable access to the views of other groups may have increased.

Mr Hanlon’s judgement in creating and utilising the reference group was poor.

### 3.7.4 The appropriateness of the alleged sharing with the group of sensitive, security-classified government information, including the alleged offer of further ‘de-badged’ documents

Mr Hanlon argued to investigators that based on his review of the NSW Government Information Classification, Labelling and Handling Guidelines, July 2015, he had the authority and delegation to share the documents he circulated for the teleconference. He considered himself to be the information ‘owner’ within the government and as such had the discretion to decide how far internally and externally the documents could be circulated. He pointed out that documents of which he was not the ‘owner’, such as the legal advice, were not shared.

He further argued that the classified documents may have been incorrectly labelled as, in his view, their content did not meet the definitions of confidential or sensitive in the Australian Government Business Impact Levels Guide, to which NSW departmental information policy refers.

On the alleged offer to provide further documents, including ‘de-badged’ documents, and to establish a Dropbox-like facility for them, Mr Hanlon denied that any further documents were provided and denied that any Dropbox-like facility was ever set up.

**Preliminary Assessment:** It is assessed that the distribution of the document labelled “For official Use only – Sensitive and Confidential Information” was likely to be inconsistent with NSW Government Information Classification, Labelling and Handling Guidelines, dated July 2015. Similarly, distribution of the document labelled “Official Use only – Without prejudice” was also likely to be inconsistent with guidelines. Further, making such a document available to a privileged group was poor judgement and likely to detract from the credibility of, and public confidence in, more formal stakeholder consultation arrangements. Further, potentially making such a document available to unknown participants (“...you are never sure who is dialling in...”) was imprudent.

In relation to the unclassified documents, similar observations apply except in relation to the likely breach of the Information Handling Guidelines.

**Recommendation:** Taking account of all these issues, and after considering the material available to date, it is assessed that a sufficient case may exist to warrant the Secretary initiating procedures under the *Government Sector Employment Act 2013* subject to any comment from appropriate authorities after release of this report.

In particular, there should be consultation with ICAC before these investigations are launched.

Finally, DPI-Water officials other than Gavin Hanlon were present for the teleconference. None raised concerns during or after the teleconference. None raised the proprieties of Mr Hanlon’s conduct with him or his senior officers—a subject to which this report returns below.

### 3.7.5 The possibly unlawful recording of the teleconference.

Recording a telephone conversation without the consent of participants may be a breach of the *Surveillance Devices Act 2007*. If such a recording were carried out by a public servant, that may in addition be a breach of the department’s Mobile Communication Device Policy, and in turn, a likely breach of the department’s Code of Conduct 2016.

The preliminary investigation has not yet been able to discover who recorded the teleconference. Several sources have suggested possibilities—with reasons—but none have yet produced satisfactory evidence. It is possible the recording was made by a member of DPI-Water or an external participant in the teleconference. Documents available to the Investigation indicate that other unrelated DPI-Water meetings or teleconferences may in the past have been recorded without the knowledge of participants.



Mr Hanlon and other staff members present for the Four Corners teleconference say they did not know the teleconference was being recorded.

**Recommendation:** Investigations need to continue into the specific question of who recorded the teleconference. At the same time, the Secretary of the (parent) Department of Industry should consider initiating a review of the way the Department of Primary Industries (the subsidiary department) dealt with, or failed to deal with, previous reports of possible breaches by DPI-Water officials of relevant laws. At issue is a possible culture of tolerance of expedient work practices and failing to confront unethical behaviour. At risk is public confidence in the ethics, trustworthiness, and high standards of personal conduct expected of professional public servants.

However, there should be consultation with ICAC before these investigations are launched.

### 3.7.5 Conduct of any other DPI-Water officials who may have been involved in the conduct of the teleconference

Other officers of DPI-Water were present in the teleconference. Commentary about their conduct was originally included in this Investigation report and an opportunity to comment was provided to ensure procedural fairness. Taking account of their solicitors' communications, the Secretary has since decided he will consider a separate process to examine the issues raised.

No conclusions have yet been drawn in relation to these matters in relation to any individuals. However it is important to remind all departmental staff of some well-established general principles of ethical public administration and professional conduct.

First, the proper position for an official in discussions with outside parties about a major and contentious public policy issue is to loyally reflect the position of the government of the day.

Second, should an error of judgement be made by an officer, their senior (supervising) officer should move quickly to correct the misconception left, and later, privately counsel the officer involved on their misjudgement.

Third, subordinates too, have obligations when they see errors of judgement. A responsible, professional public servant finding themselves in this situation should, at a suitable time, ask their senior officer to consider the potential errors, and if not satisfied with their response, raise the issues elsewhere.

Against this background, there is a question about whether there was in DPI-Water a cultural tolerance of less-than-professional behaviour by public service officers. Although departmental staff induction training below executive level introduces basic concepts of ethics, this Investigation has established that none of the senior executive staff of DPI-Water has participated in the NSW Public Service Commission's Executive Essentials training program, which is designed for incoming executives, especially laterally recruited executives who may not have had the same exposure to Westminster-derived professional ethics as their more long-serving peers.

It has been noteworthy during interviews for this Investigation that there is much talk in DPI-Water about the need to achieve "outcomes"—which is commendable—but little talk about the need to ensure correct **process** in doing so—which is a deep-seated community expectation of lawful and reputable conduct by all public servants.

A copy of the Departmental Code of Conduct 2016 is at Attachment 3.

## 3.8 Determining the facts and circumstances surrounding the allegations of a lack of motivation by Department of Primary Industries to pursue compliance matters as evidenced by resource reductions to the compliance effort and the abolition of the Strategic Investigations Unit

### 3.8.1 What the Four Corners program said

The program alleged, “At about the same time that the investigations unit made its request to proceed [with the proposed compliance campaign] Jamie Morgan says the hierarchy went cold on compliance”. The program reported the Strategic Investigations Unit was moved out of the department and staff numbers were reduced.

Jamie Morgan alleged on the program, “it was clear that there was no appetite for compliance anymore”. He further alleged after his team had found significant problems in the north west of the state, it had been “quickly disbanded”.

Jamie Morgan alleged that his unit’s briefings “weren’t being answered” and that the issues his unit uncovered “have still not been addressed”.

### 3.8.2 Clarifying the circumstances: what additional information is available to date in relation to the allegations?

This Investigation has assembled a range of additional information in relation to the allegations. Not all of it can be included in this report in the interests of not impeding investigations by other authorities. The information has been made available to those authorities.

### 3.8.3 Background on the organisational changes affecting the Strategic Investigations Unit

The Strategic Investigations Unit was established in mid-2012. It was set up as a specialist investigation team to implement a strategic approach to higher-risk cases with a view to improving the quality and efficiency of investigations over the longer term.

The unit was set up initially to comprise seven positions (a manager and six compliance officers). It was proposed that this be reviewed after six months and “staff numbers adjusted accordingly”. At its peak in August 2015, Strategic Investigations Unit staff numbers totalled 12.

Staffing was funded by a mix of recurring Treasury-allocated funds for permanent positions and external funds utilised for temporary positions under the Commonwealth Government’s National Framework for Water Compliance project. Positions funded by the Commonwealth funding were established as temporary positions.

In January 2016 Commonwealth funding ceased. A submission to IPART made in 2015–16 did not secure additional recurring funds.

From the outset, the Strategic Investigations Unit sought to recruit staff with experience in investigations, including ex-police officers. In the last year of Commonwealth funding, staff with temporary roles did not have their contracts renewed and were not replaced.

These staffing pressures were around the time (July 2015) that the Deputy Director General of DPI was asked to note the intention of the Strategic Investigations Unit to conduct the compliance campaign in the Barwon–Darling area.

The establishment of the Strategic Investigations Unit preceded a broader structural change being implemented for the management of water in NSW. At a strategic level, the ‘Water Transformation Program’ sought to clarify and reassign responsibilities amongst the relevant NSW agencies. At a more local level, it sought to spell out the respective roles and functions

of DPI-Water and WaterNSW. This required a decision on placement of the compliance and enforcement function, including the Strategic Investigations Unit.

Initial planning envisaged retention of the entire compliance and enforcement function within DPI-Water. The rationale was to separate compliance and enforcement from customer service. However, at a relatively late stage in the process an interagency panel, at the proposal of DPI-Water, recommended that compliance and enforcement remain with the customer service functions to enable “end to end customer management—billing through to prosecution”.

This meant that DPI-Water compliance staff, including the remaining Strategic Investigations Unit staff, were allocated to WaterNSW or retained within DPI-Water in rough proportion to the customer workload now split between the respective agencies.

### 3.8.4 Consideration of the department’s handling of the issue

Since the Four Corners program, former and current departmental staff have provided several different interpretations of events surrounding the disbandment of the Strategic Investigations Unit.

Several former departmental staff members portrayed the end of the unit’s existence as symptomatic of a lack of senior management interest in, and commitment to, compliance and enforcement.

This view was contested by current senior management of DPI-Water who attributed the transfer of the unit to WaterNSW to strategic changes in agency water management responsibilities aimed to give effect to sound principles of customer service. The Departmental submission to this Inquiry stated the reason for the unit’s wind-up was a combination of three factors—an undesirable divergence in approach to compliance by the unit compared with other compliance staff, strategic changes underway (the ‘Transformation’ project), and the end of the Commonwealth funding. It was further argued by the department that compliance and enforcement was in future to be delivered through means other than a dedicated investigations unit.

In addition to these points of view, there are other factors that may have been at play. There was evidence available to this Investigation that some members of the unit were considered by management to be ‘challenging employees’ and this may have contributed to an inclination to solve a staff management challenge by means of an organisational change, i.e. by transferring much of the compliance function, and thus the individuals, from DPI-Water to WaterNSW. For his part, Mr Hanlon strongly denies this possibility, arguing that the decision was based on reviews dating back a decade and a detailed business case.

A second factor possibly at play was the generally commendable ambition of WaterNSW to change the culture of its staff from a traditional government regulatory mindset to a customer-focused service orientation. In the course of this investigation, evidence has been seen of efforts to, for example, identify the top twenty customers of WaterNSW—presumably to enable focused service excellence. However, the possible conflict with compliance and enforcement responsibilities becomes apparent when the list of the top six irrigated agriculture customers includes customers identified in compliance case notes for possible non-compliance with licence conditions or other legislation. Indeed, these identified customers are the subject of allegations addressed in the terms of reference for this review.

In these circumstances, co-location of customer service and compliance and enforcement functions presents a challenge for managers. Decisions to approve, resource, and prioritise compliance—and particularly enforcement action—would be awkward to reconcile with WaterNSW’s ambitions to deliver customer-focused service.

At the same time, the proportion of professionally trained and experienced investigations staff was reducing rapidly as temporary staff departed. On a spectrum of ‘compliance specialist officers’ through to generalist water regulation officers, the profile and influence of

generalist officers was rising at the expense of the previous investigation/enforcement professionals. Especially from the date of the Transformation project, a culture of seeking to resolve non-compliance in cooperation with water users, and a disinclination to pursue blunt enforcement, became more accepted. Education, facilitation and collaborative problem solving to achieve compliance was encouraged at some expense to traditional professional investigations and strict enforcement action.

Finally, there were at that time many other pressures on top management. NSW water management was encountering the most significant strategic changes in decades as a result of the Murray–Darling Basin Plan and top managers were focussing hard on successfully steering the state through them. The amount of top management attention that could be focussed on compliance and enforcement was almost certainly less than had traditionally been the case.

In short, the preliminary conclusion of this Investigation is that there appears to have been a reduced interest in more traditional enforcement work in DPI-Water and later WaterNSW.

This was driven by the circumstances of the time. However, it is now time to remedy that change, and options to lift compliance and particularly, enforcement performance are included the next section of this report.

## 4 Options for improvements to compliance and enforcement arrangements in NSW

### 4.1 The need for change

There is no doubt that the Four Corners program has led to a sudden and sharp loss of public confidence in compliance and enforcement arrangements in the Barwon–Darling region, and NSW more broadly. There is scepticism about the integrity and efficacy of water metering arrangements in the Barwon–Darling region, and perhaps more broadly across NSW. There is doubt in the minds of the community that certain public servants involved are committed to the compliance task and doubt that it is being performed effectively.

It is important that public confidence is restored. A trusted compliance and enforcement system is essential if the new Barwon–Darling Water Resource Plan is to be accepted by all parties, and if the wider Murray–Darling Basin Plan is to succeed.

Despite the frequent discord about many water management issues, there is one thing that all parties agree on—that non-compliant or illegal extraction of water should not be tolerated and should be dealt with firmly. Environmental groups want assurance that the environment is not being short-changed. State governments want to be confident that other states are observing the rules. Irrigators want assurance that their peers are behaving honestly. In submissions to this investigation, many irrigators have made clear their disappointment about the damage now done to the good name of their sector by the alleged behaviour of a few.

All parties therefore agree that they want a demonstrably effective compliance and enforcement scheme.

### 4.2 A history of trying

As long ago as 2004, in the National Water Initiative Intergovernmental Agreement, NSW committed to ensure adequate measurement, monitoring and reporting systems would be in place to support public and investor confidence in the amount of water being traded, extracted for consumptive use, and recovered and managed for environmental and other public benefit outcomes.

More recently on 7 December 2009, NSW signed on to an intergovernmental Framework for Compliance and Enforcement. This framework was intended to ensure a nationally consistent and adequate compliance and enforcement effort. At the same time, NSW committed to the National Framework for Non-Urban Water Metering, which provided more specific guidance about standards for water metering, including in challenging local environments such as exist in the Barwon–Darling river system.

Subsequently, in 2011, NSW accepted Commonwealth funding totalling \$16,736,368 to implement the Compliance and Enforcement Framework in NSW over the five years to 2016.

### 4.3 But problems remain

However, from the point of view of the public, many problems with the NSW system continue to be reported:

- Compliance and enforcement action is inconsistent across the state and from case to case.
- Action can be slow and the outcomes uncertain.
- Roles, responsibilities and accountabilities are unclear at best or at worst, conflicted.
- It is difficult for a member of the public to access and understand the legislation, regulations, plan provisions, licence and permit conditions, and other rules that govern water management.
- Public visibility of enforcement action is limited, including to individuals reporting possible breaches.
- Where compliance action is publicly evident, the response can appear inadequate for the offence or benefit gained.

### 4.4 Principles for a better system

For these reasons, this review has developed three principles for the future re-design of the NSW compliance and enforcement system:

1. Any future system needs to be more **transparent**: Greater public transparency will in itself, contribute to greater compliance.
2. Any future system needs to be more **independent**: Decisions about compliance and enforcement should be, and be seen to be, sufficiently independent of water policy making, water planning, water regulation-making, and water delivery services to customers.
3. Any future system needs to be **effective**: The compliance and enforcement effort should be sufficiently resourced, empowered and professional to support public and investor confidence that the quantities, timing and means of water extractions for consumptive use, or water for environmental and other public benefit outcomes, are consistent with entitlements.

### 4.5 What can be done

Given the very short (one month) timeframe to prepare this interim report, it would be imprudent to precipitately recommend definitive changes to a statewide system with so much at stake. However a 'systemic fix' is clearly required. The following outlines a possible reform package to take an ineffective current compliance and enforcement regime to the standard required.

#### 4.5.1 A 'systemic fix': The Water Management Compliance Improvement Package

The **Water Management Compliance Improvement Package** comprises two elements: a package of strategic structural reforms to be considered by ministers; and a complementary package of administrative and operational improvements to be considered by the Secretary of the Department.

The reform package for ministers includes the following:

1. Reconsolidate and significantly augment all compliance and enforcement functions now dispersed between WaterNSW and DPI-Water, into the Department of Industry. The consolidated function would be at arm's-length from both WaterNSW and DPI. There would be a direct line of administrative responsibility to the Secretary of the Department of Industry, but governance would be led by the board (see below). Functions transferred would not include meter reading or billing, etc., which would remain with WaterNSW, ensuring that customers normally only dealt with WaterNSW. However it would mean that there would be a one-stop-shop for all allegations of non-compliance with water laws.
2. To house the consolidated functions, legislate to establish a NSW Natural Resources Access Regulator. The regulator would initially be made responsible for water but would progressively take on responsibility for other natural resources as determined by the government. This would enable best-practice sharing among compliance staff, and build critical mass and professional expertise among otherwise separate and small natural resource compliance teams.
3. The regulator would comprise a board, appointed by the applicable portfolio minister(s) but not subsequently subject to ministerial direction. The board could comprise (say) three part time members—an experienced lawyer, someone with extensive natural resource conservation experience and someone with extensive natural resource usage experience. It would be desirable to include a person with Indigenous background, especially with knowledge of Indigenous interests in natural resources.
4. Pending advice to IPART from the board on longer-term resourcing requirements, interim resourcing levels for the first two years should be set and announced as part of the package. Initial staffing levels should be struck at the levels previously funded by the Commonwealth until June 2016 plus the existing FTEs in both WaterNSW and DPI-Water. However, given the manifest performance shortfalls of the previous levels of staffing, an augmentation of the order of 25% is suggested for the first two years.
5. Confer at least the following functions on the board:
  - i. require the department to produce and publish, for each category of resource access right, a two-year strategic compliance assurance plan
  - ii. approve an internal operations protocol that documents the processes for commencing, progressing and decision-making on compliance actions
  - iii. oversight the delivery of compliance and enforcement activities, with authority to give directions to the department where improvement or corrective action is required
  - iv. make decisions on whether to commence (or not commence) proceedings for serious offences based on information and proposals prepared by the department
  - v. require regular twice-yearly reporting by the department on activities and results to the board, and thence the minister and the public

- vi. provide an annual stand-alone report to the minister, for public release, attesting to the adequacy of the department's regulatory activities, and information on areas that is has recommended or directed improvement
- vii. to ensure adequate resourcing, empower the board to advise IPART on the minimum necessary funding that should be recovered from access rights holders in order (in its opinion) to provide a high level of confidence that the subject resources are being accessed in accordance with lawful entitlements.

The recommended ministerial package also envisages a letter from the Premier to the Chair of the Murray-Darling Basin Authority proposing a range of Basin-wide initiatives to ensure all States are engaged alongside NSW in improving their compliance and enforcement efforts. Further details are section 4.5.3 below.

#### 4.5.2 A 'systemic fix': further complementary measures

To underpin the ministerial-level strategic structural reform package, the following further proposals for reform and administrative improvement are offered for consideration by the Secretary of the Department of Industry.

**Public consultation on measures:** Importantly, it is suggested that comment on the proposals be invited from interested parties, including industry and community groups and members of the public. In particular, it is recommended that DPI-Water, WaterNSW and the wider Department of Industry prepare and lodge with the Secretary their respective assessments of the proposals.

Reform ideas are offered below to advance each of the principles of transparency, independence and a more effective compliance system, (see Section 4.4 above). Some of these ideas may not be welcomed by the current beneficiaries of an inadequate system. However to re-build effective compliance and public confidence will require more than incremental change. No change is not an option.

##### 4.5.2.1 Options to develop a more transparent future system

###### Access to information

- a) Enable the public to readily access from a single source, all details of entitlements, including: name of holder; licence number; licence conditions; water entitlement; water allocations; meter readings; real time water account balance; and all trading activities. It has been put to this Review that currently there is less transparency in water holdings (a public resource) than in real estate (a private asset). Full transparency as here proposed would also add considerably to overall compliance effectiveness and public confidence in the system because any interested party could satisfy themselves about the compliance of water users. This would be an historic reform.
- b) Enable the public to readily identify any specific pump, off-take, or works. This could be achieved by requiring an identifying number to be posted on, for example, all river pumps, and making the mapping of pump locations more readily available.
- c) Provide particular attention to improving the transparency of environmental water entitlements and flows. In-stream releases should be more clearly identified. The targets, goals, and environmental response should be more readily available. The responsible environmental water manager should be identified. The rules by which flows are being protected should be announced in conjunction with the flow itself.

## Reporting channels

- d) Establish and promote a statewide non-compliance reporting hotline and email reporting channel. This should include facility for anonymous reporting.
- e) Require regular feedback to informants on actions taken in response to complaints, within a designated timeframe.
- f) Develop clear channels within the department to carry forward public reporting and ensure independent scrutiny of actions by water users. These channels should be designed to ensure reports go beyond first line managers; reports need also to be brought to the attention of sufficiently senior levels in the department.
- g) Require the routine publication of the identities of water users found guilty of serious offences.
- h) Implement comprehensive annual public reporting on NSW compliance and enforcement activities, as already required under the National Framework for Compliance and Enforcement Systems, but not yet in place in NSW. Reports should be delivered to a fixed schedule and according to a standard format developed after public consultation.
- i) Require annual public reporting of compliance and enforcement activities for each NSW Water Sharing Plan—and after 2019, each NSW Water Resource Plan under the Basin Plan. Reports should be delivered to a fixed schedule and according to a standard format developed after public consultation.
- j) Require publication and upkeep of an on-line description of the compliance and enforcement arrangements, including contact details and ‘who-is-responsible-for-what’ for each Water Sharing Plan, and for NSW as a whole.

### 4.5.2.2 Options to develop a more independent future system

#### Structural Reforms

- a) Consistent with the ministerial reform package, provide institutional separation of compliance staff from water policy, water planning, water regulation, water delivery, environment and agriculture staff. The concept is to separate approvals of rights and conditions from enforcement of conditions and related legislation. Strong feedback loops among policy, approvals and compliance functions would continue to be necessary to achieve properly responsive regulation and to design new regulations capable of audit.
- b) Seek to draw a stronger distinction/separation between ‘compliance’ and ‘enforcement’ responsibilities so that the need when necessary, to move from educative, collaborative work to bring non-compliant activities into compliance does not result in reluctance by officers to engage in sharper edged ‘enforcement’ work when warranted.

#### Accountabilities

- c) Clarify responsibility, authority, accountability, and delegations within the compliance and enforcement function. Specify the levels at which approvals are given for each level of compliance action. Specify the circumstances under which senior officers are to be kept informed and document the rare and exceptional circumstances under which senior officers may legitimately intervene in specific enforcement actions and cases.



- d) Consider designating a Chief Compliance and Enforcement Officer under the board and provide statutory or other form of independence from ministerial or senior officer intervention on operational matters. Consider appointing the Chief Compliance and Enforcement Officer to the board itself.
- e) Commit to periodic third-party auditing of NSW compliance and enforcement systems by other states. This could be a reciprocal arrangement facilitated by the MDBA and an opportunity for the MDBA to show leadership in compliance matters.
- f) The MDBA should take into account proposed compliance and enforcement arrangements before it approves/accredits each draft Water Resource Plan under the Basin Plan. The Barwon–Darling Water Resource Plan to be brought forward for early assessment in this regard.
- g) The potential powers, roles and functions of the MDBA in compliance and enforcement, both before and after 2019, to be more clearly articulated and made public. This should include a clear statement, in advance, of the circumstances under which the authority's legislative 'reserve' power to intervene would be mobilised if compliance and enforcement by basin states is judged insufficient.

#### **4.5.2.3 Options to develop a more effective future system**

##### **Metering**

- a) Make the requirement for metering universal: 'no metering, no pumping'.
- b) Remove all scope for self-reporting, such as log books in lieu of fully operational water meters.
- c) Enforce modern Australian metering standards and bring forward the date to which certain current non-compliant meters are 'grandfathered' in the Barwon–Darling and other systems.
- d) Reduce tolerance for argued differences in conditions between northern and southern areas of the Murray–Darling Basin. Standards and rules (e.g. metering) should be basin-wide unless the need for exceptional northern arrangements can be convincingly demonstrated to other states and the MDBA.
- e) Reinforce a mandatory requirement for meter readers to report defective, inoperable or apparently tampered-with meters in real time. Require random and more frequent meter reading schedules. Enforce random cross-checks of meter readings. Publish meter readings in real time.
- f) Publicly specify unambiguous responsibilities for metering costs: purchase, installation and maintenance are costs to irrigators; stream gauging, meter reading, etc. are costs to government, albeit largely cost recovered through IPART.

##### **Compliance enforcement**

- g) Require structured and documented processes for commencing, progressing, and decision making on compliance actions. Priorities should be set and pursued to completion on the basis of regular structured risk assessment processes. Clear protocols for the engagement at key points, of senior officers and the board should be developed and observed.
- h) Assertively adopt and implement new monitoring and compliance techniques and technologies such as: remote sensing of crop growth and water holdings; back to base and remote meter reading and telemetry; and targeted covert operations. These techniques can be made first-line tools or utilised as cross-checks of more

conventionally sourced data. To date, there has been limited use only of these techniques—it is time to utilise them assertively.

- i) Implement post-action audits of each major enforcement case to extract learnings and process improvements for the future and critically, build in the improvements into policies, procedures and practice.
- j) Require progress reporting to senior levels for all cases. ‘Traffic light’ or similar reporting techniques should highlight any slippage in individual case management.

### **Resourcing**

- k) Ensure more stable and secure resourcing for compliance and enforcement activities by the dedication of core funding by means of IPART-approved charges.

### **Capacity building**

- l) Build capacity through targeted recruitment of specialist investigators, noting that police experience is not by itself a sufficient guarantee of competence in investigations. Consider contracting specialist investigators for specific or high profile cases.
- m) Require minimum levels of training for compliance and enforcement staff in investigation techniques (Certificate IV in Government Investigations) as well as in domain knowledge such as the NSW Water Management Act, the Water Act, the Basin Plan, and specific conditions of licences.
- n) Make ethics training a pre-requisite for commencement including for senior level lateral recruits to the public service. Induction training should be mandatory for all staff and should be delivered in a timely fashion before operational commencement. Other relevant training, for example in the Evidence Act, will be important. Refresher courses should be scheduled for each officer and become part of their performance development plans.

### **Agency processes**

- o) Specify in operational procedures how DPI-Water and Lands & Forestry should work together on overlapping issues such as irrigation works affecting Crown land.
- p) Specify in operational procedures how DPI-Water should work with other agencies when non-water legislation is involved, e.g. fisheries, forestry, environment, etc.
- q) Encourage wider and more ready use of innovative penalties for breaches of licence conditions other than monetary penalties. This includes suspension of licences or penalty reduction of water allocations. Such penalties could be matched more directly to the benefit otherwise gained by a water user from an illegal extraction of water.
- r) Seek to establish arrangements for best practice sharing among jurisdictions and among other sectors of the natural resource-based industries. Foster a cross-sectoral community of practice among professional compliance and enforcement staff to compensate for the isolation often encountered by small teams of professional staff in single sectors. The structural reform proposals recommended to ministers in the reform package would contribute significantly to this objective.

#### **4.5.3 How the Murray–Darling Basin Authority can contribute**

There is much that NSW can, and should, do to improve water management compliance and enforcement within its own borders. However NSW is not an island within the Murray–Darling Basin. There is much that the basin states collectively, and the MDBA specifically,

can also contribute. Some of these options for action are identified above. However, for ease of reference, those options and a number of additional suggestions are summarised below. These options are, of course, subject to consideration by basin states and the MDBA itself.

- a) The roles and functions, and potential scope for action by the MDBA in compliance and enforcement, both before and after 2019, should be more clearly articulated and made public. This should include a clear statement, in advance, of the circumstances under which the authority's legislative 'reserve power' to intervene would be mobilised if compliance and enforcement by a basin state were judged insufficient.
- b) As a matter of urgency, a revised whole-of-basin compliance and enforcement strategy should be developed. The strategy should include standards and the levels of effort (resourcing) to be achieved by each member state. The objective would be to build confidence that all states were achieving a similar standard of compliance. The strategy should set out a rolling program of review of the highest areas of risk of non-compliance and routinely audit the adequacy of each state's water measurement (especially metering) and monitoring arrangements. The strategy should require an annual report to the Ministerial Council on the performance of all basin states in compliance and enforcement. This report would be made public.
- c) As a complementary measure, require more effective annual assurances from the basin states about the compliance and enforcement arrangements in place in each state. These assurances should attest to the state's achievement of the standards and levels of effort set out in the above whole-of-basin compliance and enforcement strategy. They should provide quantitative and qualitative indicators of performance to a standard and format to be set by the authority. The assurance reports would be made public.
- d) Implement reciprocal periodic third party auditing of each basin state's compliance and enforcement systems by other states.
- e) Sponsor the formation of a national forum for compliance and enforcement agencies from basin states with a view to developing a community of practice to share best practice; tackle trans-border compliance issues and provide advice on opportunities for systemic improvements to the authority and the Ministerial Council.
- f) Announce now that the MDBA will take into account proposed compliance and enforcement arrangements before it approves/accredits any draft Water Resource Plan under the Basin Plan. The Barwon–Darling Water Resource Plan should be brought forward for early assessment in this regard.
- g) Announce now that the new Water Resource Plans will be assessed by the MDBA and Commonwealth against the criterion of the adequacy of the arrangements proposed for protecting environmental flows and entitlements.

## 5 Protection of environmental water

### 5.1 Addressing concerns about possible diversions from environmental flows

A final issue stimulated by the Four Corners program relates to the protection of environmental water.

The program has prompted significant public concern that water purchased at taxpayers' expense for the environment is not being successfully managed for that purpose, and

instead, is being accessed by certain irrigators either because of perceived inadequacies in the rules, or outside the rules entirely.

This issue applies not only in the Barwon–Darling water system but elsewhere in NSW and the wider Murray–Darling Basin. Solving the problem will be critical to the success of the Murray–Darling Basin Plan. It is a pre-condition if the anticipated environmental benefits of the plan are to be delivered.

The issue is not new. Regrettably, it has continued without resolution for years. Considerable work has been initiated in attempting to deal with it. The MDBA and the Commonwealth Environmental Waterholder as well as the major basin states have all committed to work on the problem. But an enduring solution has not yet been found.

Of course, a threshold requirement is to deal with any illegal diversions affecting environmental entitlements. However a lasting solution to the problem needs to deal with any water extractions which are within the present rules.

Certainly, arrangements are needed to be ready and clear by 2019 when the Basin Water Resource Plans are accredited and come into effect. However there is a strong public expectation that arrangements should be in place already, and to the extent that they are not, a remedy is urgent. Responsibility for action is now with NSW and other basin states and there is an opportunity for leadership from the MDBA and the Commonwealth.

It will be critical that the new Water Resource Plans are assessed by the MDBA and the Commonwealth against the criterion of adequacy of their arrangements for protecting environmental flows.

There is a need for transparency, simplicity (and therefore public understandability) of arrangements, and as far as possible, common arrangements across NSW and the Murray–Darling Basin as a whole. It is important also that whatever arrangements are finally struck, they can be readily audited and are amenable to compliance and enforcement.

Pending development of the longer term solution, an interim solution that would assist in at least the Barwon–Darling River system could involve:

- implementation of individual daily extraction limits (which were already foreshadowed by the NSW Government when the Barwon–Darling Water Sharing plan was first introduced)
- greater use of event-based mechanisms such as more flexible commence-to-pump rules during periods of low flow
- manipulation of flow rates from tributaries where hydrological regulation provides the opportunity
- publication of simple explanatory materials to assist public understanding of the way the new interim processes will operate—to build public confidence in the arrangements. This would need to be complemented by (flow) event-by-event public communications about the rules applying.

Protection of environmental flows is a major and complex issue. In the time available to produce this interim report, it is not possible to develop a comprehensive and sound package solution to the problem. Instead, this report draws attention to the issue, observes the significant public concern about it, encourages intensified work by basin state officials on an enduring solution, and suggests the outline of a possible interim solution. For both the interim solution and the more enduring solution to follow, it will be vital to ensure careful attention to public communications and explanation about how arrangements will operate.

Credible compliance and enforcement arrangements to support the interim and longer term solutions, will also need to be put in place and these too, will need to be clearly explained publicly.

## Attachments

1. Terms of Reference
2. Transcript of Four Corners program
3. Transcript of the alleged recording of Mr Hanlon participating in teleconference
4. Department of Industry Code of Conduct 2016

## Attachment 1: Terms of reference review of issues regarding water management and compliance

### Context

The ABC “4 Corners” program 24 July 2017 contained allegations of corruption, misconduct and maladministration in water management and compliance actions within DPI Water. The concerns raised are summarised as:

1. not properly investigating and/or failing to take appropriate action in relation to:
  - water allegedly illegally pumped or used between 1–5 June 2015 for use on the property “Burren Downs”
  - water allegedly illegally pumped or used at the property “Miralwyn” on 20 August 2015
  - water allegedly illegally pumped or used at the “Rumleigh” property on 13 February 2016
  - water allegedly illegally pumped or used for the benefit of properties owned by Peter Harris
  - construction of an irrigation channel on the “Miralwyn” property which allegedly altered the course of a Crown Road potentially in breach of the *Water Management Act 2000* and/or the *Crown Lands Act 1989*.
1. allegations that senior management of DPI-Water refused to approve a major investigation into alleged water management breaches in the north west of NSW (including allegations of meter tampering) as recommended by the (former) manager of the Strategic Investigation Unit
2. allegations that Gavin Hanlon, Deputy Director General Water inappropriately by:
  - disclosing sensitive or confidential government information and documents
  - advising groups external to government on actions to further their interests, including management options affecting the future of the Murray Darling Basin Plan
3. allegations that compliance resourcing decisions, including the abolition of the Strategic Investigation Unit and transfer of some staff and functions to Water NSW was motivated by the department not having an interest in pursuing compliance matters.

### Investigation goals

The Investigation’s goals are to:

1. determine the facts and circumstances related to the above matters
2. assess whether the department’s policies and procedures (including the department’s Code of Conduct) were complied with in relation to the above matters
3. assess whether departmental actions in relation to the above matters were appropriate in the circumstances
4. identify whether further action should be undertaken in relation to the above matters including for example further investigation or referral to other authorities.
5. identify opportunities to improve the department’s water management, compliance and enforcement performance.

## Attachment 2: Transcript of Four Corners report

### **Pumped: Who is benefitting from the billions spent on the Murray-Darling?**

By Linton Besser, Mary Fallon, Lucy Carter

Updated July 25, 2017 12:55:00

SARAH FERGUSON, PRESENTER: Welcome to Four Corners.

More than a hundred years of greed, mismanagement and the plundering of one of Australia's most valuable resources was supposed to end 5 years ago with the introduction of the federal government's Murray-Darling Basin Plan.

Billions of dollars of taxpayers' money was committed in a hard won deal - to save the inland river system from the ravages of heavy agricultural use - particularly the thirsty work of irrigating the vast cotton plantations of northern NSW and southern Queensland.

Tonight, we raise serious allegations about the way the plan is working, with accusations of illegal water use, pumping water from fragile rivers and tampering with metres.

You'll also hear recordings of cosy backroom discussions between bureaucrats and the powerful irrigators the plan was supposed to manage.

This investigation by Linton Besser reveals that far from saving the river, the implementation of the plan has helped create a financial windfall for a select few.

LINTON BESSER, REPORTER: At Phil O'Connor's place family and friends are getting ready for a big weekend of fishing.

Phil puts on a good show.

PHILLIP O'CONNOR, MAYOR OF BREWARRINA: Just grab one of them big ones mate and lug her in.

LINTON BESSER: Here in Brewarrina he's the local mayor and for a long time he also ran the fishing club.

PHILLIP O'CONNOR: I usually wear glasses to do this.

LINTON BESSER: The club's running its annual competition ...

PHILLIP O'CONNOR: Go hard, get 'im in, get 'im in.

LINTON BESSER: Brewarrina's famous carp muster.

PHILLIP O'CONNOR: Did ya catch 'im? Good boy. Bring it up to pop and we can get the \$500 and I can put it on the bar.

LINTON BESSER: And how many carp do you pull out of the river?

PHILLIP O'CONNOR: Well last year there was over 2000.

LINTON BESSER: Where do those 2000 carp go?

PHILLIP O'CONNOR: Well we bury them supposedly but the pigs go alright with them.

LINTON BESSER: Over at the RSL, the weigh-in is already underway.

LUKE HERTSLET: She's all about fun, and trying to get the bloody mongrel carp out of the river of course.

LINTON BESSER: In these small river towns fishing clubs are at the heart of the community.

DAVID HAGARTY, BREWARRINA FISHING CLUB: This year, with a monster 6.752 kg carp is number 327, Matthew Taylor.

LINTON BESSER: Beneath the surface, however, there's a tension between fishermen and irrigators who pump water from the river.

TOM TAYLOR: We were actually fishing there and your lines were flowing back up the river and we could hear the diesels running and it was the cotton and the river was flowing the wrong way.

LINTON BESSER: That's how powerful the pumps are?

TOM TAYLOR: That's how big they are.

LINTON BESSER: This year the Brewarrina Fishing Club has had a rocky time.

It shows a bit of tension in the community, doesn't it?

DAVID HAGARTY: No, no tension in the community. It's just we're not going to talk about it. We don't need to talk about it.

LINTON BESSER: Its members have split over whether to accept a big donation from a local cotton grower.

PHILLIP O'CONNOR: I didn't want Clyde Cotton money.

But anyway, that was my opinion, I thought I'd contact a couple of club members, they agreed with me, I made the decision, which I was president of the club not to accept the money.

Then the club formed the opinion that I'd made the wrong opinion, so they had a meeting and decided to take the money.

And I resigned because I wouldn't accept the money because it was sweetening money and I didn't think it anything more than that.

LINTON BESSER: Phil O'Connor had to resign you know?

LUKE HERTSLET: He did pull out that's sad because he's a good bloody man for the job.

LINTON BESSER: Phil O'Connor's taking us up-river on his well-equipped vessel, decked out with its own barbecue and even a port-a-loo.

A 5-star luxury cruiser.

He heads up here now and then to keep an eye on the local irrigators.

PHILLIP O'CONNOR: People come to me in my position as mayor of this town and they suspect things that are going wrong along the river and I'll try and take it to the authorities the best I can then.

We're not about stopping irrigation, we're not about that.

I'm an irrigator myself, so, it's not about that.

It's about people doing the right thing for the river and that's what it's all about.

LINTON BESSER: Along the way a local fisherman calls out to Phil to stay on the job.

FISHERMAN: Stop all that illegal pumping ... dirty bastards!

LINTON BESSER: Fifteen minutes up-stream and we arrive at the first pumps.

They're not small pumps, are they?

PHILLIP O'CONNOR: Yeah, they're pretty sort of average size for cotton irrigation I suppose.

LINTON BESSER: These pipes pull billions of litres out of the Barwon River.

PHILLIP O'CONNOR: If they've got the right to use them and they're licenced to use them, and they're adhering to that, no one hasn't got any problems, have they?



LINTON BESSER: This is one of Clyde Cotton's properties called Rumleigh on the Barwon River.

It's a crucial waterway in the Murray-Darling Basin where there's been bitter tensions over access to water.

SUE HIGGINSON, CEO ENVIRONMENTAL DEFENDERS OFFICE: It's a really hostile environment.

Water is the single most important natural resource.

There are operators with really deep pockets, with a lot to lose, a lot at stake, and they're willing and able to stand up and fight.

LINTON BESSER: Much of this fight has been about cotton.

We all wear cotton practically every day. And it can be a very lucrative crop.

In a good year, producers make tens of millions of dollars growing this stuff, but there's only one catch - you've got to have enough water to begin with.

In the far reaches of north-western New South Wales the land is dry and unforgiving and water is scarce.

So, for decades, behind huge walls of clay and dirt cotton-growers have been building private dams that are simply staggering.

BILL JOHNSON, FORMER MURRAY-DARLING BASIN AUTHORITY, DIRECTOR, NORTHERN BASIN ENGAGEMENT: Some of these storages are enormous.

They're mind boggling.

They'll take your breath away.

You're driving along, you drive for kilometres and there's just walls of storage.

There are farms across this part of Northern New South Wales, that have dams that can hold a sizable proportion of Sydney Harbour.

LINTON BESSER: These storages are owned by a company called Webster Limited.

On this one farm, they have five of them, holding a combined 30-billion-litres of water drawn from the Barwon-Darling.

There used to be a host of smaller irrigators up and down this river system.

But since the Murray-Darling Basin Plan was signed, there's been huge consolidation.

Now, just two big players own 70 per cent of the water in this river.

One of them - Webster Ltd - now owns more water than anyone else in this country outside the federal government.

It's a portfolio worth about \$300 million.

Webster is chaired by corporate raider Chris Corrigan, famous for busting waterfront unions 20 years ago.

The company - which trades on the securities exchange - plans to grow cotton in a good year and to make even more money in drought by selling its water at a profit to farmers willing to pay.

MARTIN CRABB, CHIEF INVESTMENT OFFICER, SHAW AND PARTNERS: If they didn't plant any cotton, and they had a very high water price, they would make a lot more money selling water than planting cotton.

Which is part of their model.

Their model is if there's a better price in the open market than actually going through the hassle of growing cotton.

So, although it's one of Australia's biggest cotton growers, it could actually make more money by not growing cotton.

MAL PETERS, FORMER MURRAY-DARLING BASIN AUTHORITY ADVISORY COMMITTEE CHAIRMAN: So, when you talk about an irrigation company that has come in, is not there to produce agricultural production but to make profit from selling the water, I don't think that's a good outcome for those communities and it certainly not a good outcome for the Australian economy.

So, I don't support it.

I don't think they are good things to happen.

LINTON BESSER: In the Barwon-Darling, a new set of water pumping rules introduced by the NSW Government have been a boon for the company.

The rules which came in after extensive lobbying by irrigators allowed them more access to water than prior to 2012 when the Murray-Darling Basin Plan was signed.

University of NSW scientist Richard Kingsford says even buybacks - water bought by the government to save the environment - can now be pumped.

PROFESSOR RICHARD KINGSFORD, DIRECTOR, CENTRE FOR ECOSYSTEM SCIENCE, UNSW: What we're seeing is quite clearly that environmental water bought by taxpayers is going through pumps into storages to grow cotton, and to me that is the biggest problem that we've currently got in the way the Barwon-Darling is managed, and it really goes against the whole tenet of the plan.

SUE HIGGINSON: The water was purchased with Australian taxpayer money to go to the environment.

That is a public interest matter, that is a public interest consideration.

LINTON BESSER: How do people feel about that?

BILL JOHNSON: People are, I think they're beyond angry.

I think they're dismayed.

People are very distressed.

There's a small number of large extractors who have benefited and nearly everybody else has paid the price, and that includes all the towns downstream, communities and the river itself.

If you abandon the river, you're basically abandoning the people.

LINTON BESSER: Former Murray-Darling Basin Authority official Bill Johnson, is showing us where Webster pumps its water.

BILL JOHNSON: This is one of the pump sites for one of the big cotton farms in the area.

LINTON BESSER: Oh my god look at that.

BILL JOHNSON: These big pumps were always used to take the medium and the high flows.

The low flows, you were only allowed to use a pump about this big, 150 mls.

The volume that they could take is much less.

The rules were changed in the Barwon-Darling, so that those low flows could be extracted using these pumps.

LINTON BESSER: Now, even when the river runs low, Webster can use these pumps to take millions of litres of water.

BILL JOHNSON: In the Barwon-Darling, that water is pumped out and stored and used to grow irrigated crops.

It is a subversion of the intent of the basin plan, of the water act and the basin plan.

It undermines, that undercuts the whole intent of the basin plan.

MAL PETERS: The rules were that in a huge flow that was the only time these big pumps could be used.

Well, the rule changes meant that in a low-flow, when there wasn't much water running down the river, they could kick those big pumps up.

Keeping in mind that you've got rural communities downstream.

Farmers who need stock and domestic water.

They won't be able to access it.

LINTON BESSER: Mal Peters was the former head of the Farmers' Association in NSW.

And until last year chaired a Murray-Darling Basin Authority committee overseeing the Barwon-Darling River.

He wrote a scathing review of the new river rules.

How did you describe those changes?

MAL PETERS: Oh, bloody disgusting.

I didn't use that language but, it was most unsatisfactory, because it rendered the whole plan, in my mind, completely null and void because the amount of water that could be taken out was huge.

LINTON BESSER: The rules also allowed water rights to be traded up and down the river triggering a buying spree.

Former cotton farmer Ian Cole lobbied for the new rules and also benefited from them.

IAN COLE, FORMER IRRIGATOR AND IRRIGATOR LOBBYIST: Behind us now we've got the first dam that was built on Darling Farms.

LINTON BESSER: After the new rules increased the value of some water licences, Ian Cole put his licence on the market.

In May 2015, you on-sold just the water component.

There are other sales of the land, but you on sold the water at \$4.5 million.

Now that's a significant profit, isn't it?

IAN COLE: It's a good profit, yeah.

Yeah, if you put it like that.

I don't even remember that.

LINTON BESSER: The licence sale was part of a \$30 million-dollar deal with Webster Ltd to offload Ian Cole's family property, Darling Farms at Bourke.

For a decade, no-one had wanted to buy it until after the new water rules came in.

They were rules Ian Cole lobbied for.

The public exhibition for the water plan closed December 2011.

You had a number of meetings and contacts with the government and the ministers involved after that, didn't you?

IAN COLE: Maybe, I can't remember.

I possibly did.

I often go and talk to ministers about things, yeah.

LINTON BESSER: Ian Cole knows the big irrigators are being blamed by farmers and towns downstream for a disappearing river.

They're really upset down there.

They say that they are seeing drastically less water in the river, that it's affecting their daily life.

IAN COLE: People downstream have always got legitimate concerns as far as I'm concerned.

I think for anyone that lives on a river, they know the argument about the people upstream are always the greedy buggers taking all the water, and the people downstream are the people - that you might seek to ignore - who are wasting water.

I don't say that.

STUART LE LIEVRE, GRAZIER 'YATHONGA': The major irrigators have taken it.

There's no Darling extraction limits anymore.

There's no limit on pump sizes.

LINTON BESSER: Can I get you two another one? Any chance of two beers Cath?

Downstream at Louth, there's no sign of them wasting water.

LEAH LE LIEVRE, GRAZIER 'DELTA': I just get a little bit worried about what's going to happen to the rest of us who are trying to just have a shower, brush our teeth and let our sheep and cattle have a drink of water when you're standing on the riverbank and all you can see is a puddle of water, but you know that people upstream have huge amounts of water.

LINTON BESSER: Cousins Stuart and Leah Le Lievre say they have seen the water steadily diminish.

STUART LE LIEVRE: There is nothing right about it, none at all.

They neglected 1400 kilometres of river and the communities living on it.

LINTON BESSER: Cath, what about for you? Are you worried about the future of the Louth pub?

CATH MARETT, PUBLICAN, SHINDY'S INN: I'm worried about the future of small business all the way along the Darling.

It's detrimental for everybody.

It's detrimental for graziers, it's detrimental for farmers.

KATE MCBRIDE: So right here's the point where last year I came with the bikes we rode down into the river bank with the Go-Pros on the top of our head and there was just absolutely nothing.

LINTON BESSER: Kate McBride's family at Tolarno Station have run sheep for generations.

KATE MCBRIDE: We rode along the bottom of the river and it was absolutely bone dry.

There was hardly any puddles you didn't have to worry about getting bogged there was just nothing but dirt.

LINTON BESSER: In late 2015 in the midst of a drought the river disappeared for eight months.

Kate's father and prominent grazier Rob McBride says huge amounts of water were pumped out upstream.

ROB MCBRIDE, GRAZIER, 'TOLARNO' STATION: We put up with droughts for hundreds of years in this western division.

That's just life living here, but that's not what happened.

We're fighting man-made disaster, not a natural disaster and that was the difference.

LINTON BESSER: Rob McBride says water is money and it's moving upriver.

ROB MCBRIDE: It's changed.

You can take water licences from further down the catchment and you drag it up to the top, everything is changing so rapidly.

People are profiteering.

People want to get water in their hands because if you get water in your hands that's big money.

It's the biggest water grab in Australia's history and they're just moving, the goalposts are moving further up the catchment.

MAL PETERS: I mean, that's social engineering.

Transferring wealth from one part of the community to another part, and that's not acceptable at any level.

PHILLIP GLYDE, CHIEF EXECUTIVE, MURRAY-DARLING BASIN AUTHORITY: We certainly heard that concern that people downstream feel as though that there's been too much water taken out both historically but also recently, and that that is in some ways unfair.

LINTON BESSER: Head of the Murray-Darling Basin Authority Phillip Glyde says the entire Basin Plan rests on proper accounting of how much water people are taking.

PHILLIP GLYDE: It's not just the metering, it's the measurement, the recording, the compliance activities, the enforcement activities are all vital, absolutely vital to having faith in the basin plan.

As water becomes more valuable, people will want to know that it is being used fairly.

LINTON BESSER: Jamie Morgan has grave concerns that in fact water is not being used fairly.

Until last year, Jamie Morgan was the state's top investigator charged with enforcing the NSW water laws.

JAMIE MORGAN, FORMER MANAGER, DEPARTMENT OF PRIMARY STRATEGIC INVESTIGATIONS UNIT: It was clear to me and my team that in that area, it was an area that needed significant compliance attention.

It was clear that not just one property was involved, that there was basically an entire river system that was seriously lacking accountability, and compliance with the water legislation of New South Wales.

LINTON BESSER: Four years ago, Jamie Morgan set up the Strategic Investigations Unit inside the NSW Department of Primary Industries.

It was the Department's response to two scathing reports which found it had failed to properly investigate and prosecute illegal water works as far back as 2003.

JAMIE MORGAN: The team was put together basically to address the serious non-compliance and designed to bring a uniform approach with highly trained officers across the state.

LINTON BESSER: For more than a year Jamie's team investigated hundreds of cases all over NSW.

Where they found really alarming problems, though, was in the Barwon-Darling.

JAMIE MORGAN: We checked our case management system, and found a couple of cases that were clearly in need of an inspection.

So, both myself and my senior investigator decided to go out there and spend a week out there conducting investigations in the northwest of the state.

LINTON BESSER: Jamie Morgan's team took a close look at this cotton farm called Burren Downs at Mungindi near the Queensland border.

They found the meter attached to this pump wasn't working even as it drew millions of litres of water through this channel and into a vast private dam.

His report to the department said the meter, '... has been tampered with'.

And that, 'in total it appears that 1.191GL has been taken ... in contravention of the WMA [*Water Management Act*].'

LINTON BESSER: That's more than one billion litres of water.

JAMIE MORGAN: At the property, we inspected the river pump. It was clear that water had been taken, because the storage dam was filling up, and there was no change in the metre reading.

The metre was the same reading that we had previously obtained at the property.

So, it was clear that water had been taken, but not metered correctly.

LINTON BESSER: The irrigator in the spotlight was cotton-farmer Anthony Barlow.

Anthony Barlow had been pumping during a ban set up to ensure water got down the river to give Broken Hill its drinking supply.

In his formal interview with investigators, he claimed the then NSW minister for water, Kevin Humphries, had given a room full of irrigators permission to pump.

JAMIE MORGAN: The information that I had at the time was that he had been to a community-type meeting, somewhere up in the north, and he had made certain assertions [sic] that he was aware the ban was being lifted.

That wasn't the information that I had, and as far as I was concerned, the ban was still in place.

It was still a gazetted or advertised ban, and that's what we were enforcing.

NEALE MAUDE, CAMERAMAN: Yeah, the blokes on his phone looking at us.

LINTON BESSER: Oh g'day Anthony, it's Linton Besser with ABC Four Corners ...

We tried to speak with Anthony Barlow about this.

Anthony Barlow didn't want to talk to Four Corners.

When I put to him that Kevin Humphries had put to a meeting that he attended that he could pump during 2015, that it was a flow-by-flow embargo he said, 'well it sounds like you already have the information.'

He said I can't confirm or deny, but he didn't want to do an interview.

Another target of state investigators was this massive irrigation farm.

It's called Miralwyn about 50 kilometres east of Brewarrina.

It's owned by the same powerful irrigator who owns Clyde Cotton, Peter Harris, whose family's properties and water licences are worth at least \$150 million.

INVESTIGATOR: Okay it's 1.28 pm on the twentieth of the eighth, 2015.

We're at the property Miralwyn.

LINTON BESSER: Investigators toured the property checking its meters.

INVESTIGATOR: You can obviously hear the lift pump working and obviously down near the, in the dam, you can see the water pumping in.

LINTON BESSER: And inspecting water levels in its channels and storages.

INVESTIGATOR: It's come up higher, so it's quite full.

And obviously it's, we haven't copped any rain lately so it's obviously through the pumping system on the property.

LINTON BESSER: The investigators produced a report on what they found.

When they looked inside the water meters, they saw cables were unplugged suggesting, '... possible meter tampering ...'

And, '... possible pumping outside of required river heights ...'

INVESTIGATOR: I require you to answer the following questions.

Warn that if you neglect or fail to answer without lawful excuse you're guilty of an offence against the *Water Management Act 2000*.

LINTON BESSER: Investigators recorded a formal interview with Miralwyn's manager.

INVESTIGATOR: In your diary what, what's, can you describe the diary to me? What it actually is?

LINTON BESSER: Under NSW law when a meter isn't working, irrigators must keep a detailed logbook, which the farm manager insisted he'd done.

MIRALWYN MANAGER: Just write down when I had the pump going and I know it pumps 100 megs a day on a high river.

LINTON BESSER: He promised to retrieve the logbook after the interview.

INVESTIGATOR: So, after the interview we can walk over and grab it and have a look at it?

MIRALWYN MANAGER: Yep.

INVESTIGATOR: Okay, and it will be all filled out to the way you're saying?

MIRALWYN MANAGER: Yep.

LINTON BESSER: But seven minutes later, the tape recorder was turned back on.

INVESTIGATOR: So, can you just tell me what's happened?

MIRALWYN MANAGER: We've left the room and I don't have a record of any, the logbook of the pump.

LINTON BESSER: It turned out Harris's manager had been lying - there was no logbook.

INVESTIGATOR: Are you aware of any other logbooks around here?

MIRALWYN MANAGER: I'm not aware of any, no.

INVESTIGATOR: For any of the works?

MIRALWYN MANAGER: No.

SUE HIGGINSON: The system relies on compliance with having metres that are fully functioning and adhere to a particular standard, or the maintenance of log books.

So, if they're not working, or they're not being complied with, those requirements, then that's an illegal act, and a very significant one at that.

JACK HARRIS: My name is Jack Harris, I'm a third-generation farmer from this area.

LINTON BESSER: Jack Harris is Peter Harris's 24-year-old son who runs Miralwyn.

Online, he makes light of his family's access to water calling it, ' ... just fillin' the bath.'

And a friend urges him to, ' ... pump that river dry', hashtag 'fukthefrogs.'

INVESTIGATOR: Jack could you just for identification purposes just state your full name and date of birth?

JACK HARRIS: Yeah, Jack William Harris.

LINTON BESSER: When investigators returned to interview Jack Harris he conceded they hadn't been following the rules.

JACK HARRIS: I understand we probably should be running a diary, which, and we probably will start, you know, from today.

LINTON BESSER: Jack Harris also runs the Clyde Cotton property Rumleigh upstream of Phil O'Connor's place at Brewarrina.

Last year, on one of his trips up here, Phil O'Connor saw these pipes pulling huge volumes of water out of the river when pumping wasn't allowed.

PHILLIP O'CONNOR: And we come 'round and had a look and there was one of these pumps running, yeah.

And we just recorded the time and the date when it was.

LINTON BESSER: Phil O'Connor's son shot this mobile phone video.

PHIL O'CONNOR'S SON: It's Saturday the 13th of February at 1.45. Pump running at Rumleigh Station Brewarrina.

LINTON BESSER: The problem was, the official river heights published that day showed there wasn't enough water to be legally pumping.

Phil O'Connor passed the video on to a NSW Government investigator.

PHILLIP O'CONNOR: That's what they've got the thresholds in place for, you know.

So, let the low flow get down the system, and if people aren't adhering to the rules, why have any rules, you know? It's just an absolute joke.

LINTON BESSER: Another Harris property that came to the attention of authorities at Hay was owned by Ron Harris with his brother Peter Harris.

Ron Harris pleaded guilty four years ago to meter-tampering, using a sophisticated technique to jam the meter.

SUE HIGGINSON: The evidence or the facts agreed to the land and environment court prosecution was that he had made a device in his shed, he'd oxy-welded a device that fit perfectly into his water metres, and actually stopped the impeller, which then of course stops the count.

LINTON BESSER: NSW investigators inspecting Miralwyn also found this water channel dug on Harris property through Crown land.



This is a public road coming through this country, and it used to travel straight across here, and up to that major intersection there.

But in about 2015, this giant irrigation channel was built and what's had to happen is they have rerouted the road to get around this giant culvert.

It was work done by the Harris family, and the allegation is it was all done without any approval.

LINTON BESSER: As we were filming one of Peter Harris' employees arrived.

So, what's the issue?

HARRIS EMPLOYEE: You can't be here?

LINTON BESSER: Why not?

HARRIS EMPLOYEE: Because this is our property.

LINTON BESSER: No this is a Crown Road.

HARRIS EMPLOYEE: No, it's not.

LINTON BESSER: Yes, it is.

HARRIS EMPLOYEE: Where you entered that sign there is private property.

LINTON BESSER: I didn't enter that sign there.

We've driven up this public road.

When was that channel built?

Not too happy to have a camera here.

SUE HIGGINSON: Two thousand, five hundred and thirty-one megalitres was actually extracted.

LINTON BESSER: CEO of the Environmental Defender's Office, Sue Higginson, has been investigating Peter Harris' farms since last year under instruction from the Australian Conservation Foundation.

SUE HIGGINSON: That's five times...

LINTON BESSER: Last year, she used freedom of information laws to obtain data which appears to show huge volumes of water have been taken beyond what Peter Harris' properties are allowed.

SUE HIGGINSON: From the information that we obtained, it would certainly appear on the face of that information that there has been a significant over extraction of water from the system.

The volume of water over extracted was five times that amount that is, that was legally permissible.

LINTON BESSER: The figures indicate those farms pumped at least a billion litres of water more than was allowed.

It was the same year Broken Hill almost ran out of water because not enough water was getting down the Darling River.

SUE HIGGINSON: Look, it raises quite catastrophic pictures in your mind.

So, really, it's the social inequity that springs up immediately, and passing the burden of drought to your downstream neighbours.

LINTON BESSER: How serious are these breaches, Sue?

SUE HIGGINSON: Look, they're really serious.

They're offences under the water laws.

They're punishable by fines, imprisonment.

LINTON BESSER: What Sue Higginson didn't know was that Jamie Morgan's team was already on the case.

JAMIE MORGAN: We were there to conduct a full investigation, in relation to all our specs of water management on the property.

So, we would look at their dams.

We'd look at where the water was going.

And we'd inspect all their works.

In the northwest, the metres I looked at, I didn't see one that actually worked.

We had cables unplugged, batteries removed, impellers missing.

Basically, they were in a state of disrepair.

LINTON BESSER: Jamie Morgan was so concerned at what they were uncovering along the Barwon-Darling that he sought approval for a major investigation.

JAMIE MORGAN: So, it was my desire to run a proactive operation out in that area and inspect every single river pump at times by boat down the river, identifying where all the extraction points are, confirming that they're complying with their licence, and if they weren't, taking action to bring them into compliance.

LINTON BESSER: How did the operation go?

JAMIE MORGAN: It was never approved.

LINTON BESSER: Why not?

JAMIE MORGAN: I have no idea.

LINTON BESSER: At about the same time that the investigations unit made its request to proceed, Jamie Morgan says the hierarchy went cold on compliance, moving it out of the department and his staff numbers began to fall.

JAMIE MORGAN: I think that it was clear that there was no appetite for compliance anymore.

It was odd timing in my view.

It was only when we went to the northwest of the state, where we found significant problems, that our team was very quickly disbanded after that.

Our briefings weren't being answered.

And to this day, no one has actually addressed those issues in that area.

LINTON BESSER: There has still been no action taken against Peter Harris's operations.

NEALE MAUDE: They're on the phone.

LINTON BESSER: They remain under investigation.

He wasn't keen to talk to us.

So, my phone just beeped.

And Peter Harris has just texted me.

And he's written, just remember, do not enter, exclamation mark, exclamation mark.

Irrigators have a direct line to the people who are making the decisions.

The bureaucrat in charge of water in NSW is Gavin Hanlon.

Last year he set up a secretive group with irrigator lobbyists to discuss the Murray-Darling Basin Plan.

GAVIN HANLON, DEPUTY DIRECTOR GENERAL WATER, DEPARTMENT OF PRIMARY INDUSTRIES, NEW SOUTH WALES: Have we gained someone? It worries me when you hear that, hear the beep, because you're never sure who's dialing in.

LINTON BESSER: In this recording of one teleconference obtained by Four Corners ... Gavin Hanlon offers to share with the group sensitive government data.

GAVIN HANLON: What we might do as well, is set up some sort of, something like drop box, or something like that, where we can stick documents in that we're sharing, as a, as a just safe way to get information around between us.

LINTON BESSER: Gavin Hanlon indicates he is aware he could be criticized for favouring this group above others.

GAVIN HANLON: I think I can manage that sort of a conversation by being seen to and occasionally meeting with everyone and anyone, but in terms of having structure and detail and discussions in confidence I only do it here.

LINTON BESSER: Gavin Hanlon offers to assist the lobbyists in their fight to get the best deal under the Murray-Darling Basin Plan ... by providing them with internal documents stripped of the department's logos.

GAVIN HANLON: There's a whole lot of ammunition we've got at the moment.

There's a good discussion to be had with a group like this confidentially about at what point do you roll, and start firing those things off?

We can put together a few paragraphs for you to assist.

IRRIGATOR LOBBYIST: That would be great.

GAVIN HANLON: Obviously we would have to de-badge it.

IRRIGATOR LOBBYIST: Yeah, that would be fabulous.

GAVIN HANLON: We will get some paragraphs or even that paper that we wrote about the holes in the modelling circulated to this group, de-labelled.

LINTON BESSER: Would it be appropriate to quote "de-badge" that information?

SUE HIGGINSON: De-badging documents is something that is entirely inappropriate, unprofessional, and there are freedom of information laws.

We are really struggling to get access to documents lawfully at the moment, and documents that we think we're really entitled to, members of the community ought to be having access to.

So, providing anybody a sort of material advantage in a position of, in a high-level position, I would suggest, is very inappropriate.

LINTON BESSER: Gavin Hanlon's group has even discussed what they call 'Plan B' ...

IRRIGATOR LOBBYIST: Plan B would also be interesting, if there is one.

GAVIN HANLON: Plan B is scary

GROUP PARTICIPANT: Plan C is scary; Plan B is fun!

LINTON BESSER: 'Plan B' is the state of NSW walking away from the Murray-Darling Basin Plan altogether.

GAVIN HANLON: Just on what we've called Plan B or a Plan or some sort of plan, we have had detailed legal advice on what walking away means, I might get our lawyers to write up a, so I don't breach legal privilege, I might get them to write up a ... one pager that I can share with you guys about what that looks like.

The other part, the in-between plan ...there is a provision for the MDBA to step in if they don't think we're doing things right.

Before we walk away we would dare them to step in over the top of what we're doing if we're acting in good faith, delivering on what we should, and they start carrying on, we would say well we dare you to bloody step in over the top of us.

LINTON BESSER: What would your response be if I told you that Gavin Hanlon was actively discussing with representatives of the irrigation industry a plan to walk away from the Murray-Darling Basin Plan?

SUE HIGGINSON: It just seems highly inappropriate and unprofessional.

When NSW was a participant, a willing participant, we referred our powers, we were a part of a commonwealth and national water initiative, we were part of the Murray-Darling.

To then disrupt that seems terribly unprofessional.

LINTON BESSER: In a statement, Gavin Hanlon said all discussions with irrigators are, '... carefully managed under our protocols so that market sensitive information is not released.'

He said he has talked with irrigators about abandoning the Murray-Darling Basin Plan because, '... it is prudent for the NSW Government to consider all possible scenarios for the implementation of the Basin Plan.'

PHILLIP GLYDE: That's a matter for those states, is you'd understand that there's a lot of tension and a lot of stress in making the sort of reform that is underway here.

LINTON BESSER: Is it appropriate?

PHILLIP GLYDE: It's appropriate for the states to argue their own case.

I don't know what the state governments do but you'd expect them to behave in the best interest of their constituents, to get the best out of the value of the Murray-Darling Basin.

PHILLIP O'CONNOR: The Murray-Darling Basin Authority, I think the name should be changed because they don't seem to have much authority over anything really.

LINTON BESSER: The dying river redgums of the Macquarie Marshes were a wake-up call prompting one of the biggest economic reforms in the country's history - The Murray-Darling Basin plan.

Now after five years and billions of taxpayer dollars there are real questions about whether Australia's fragile inland ecosystem has been saved.

RICHARD KINGSFORD: Look, we all hoped because of the state of the Murray-Darling basin that the basin plan would essentially take this patient, which was essentially in the intensive care unit, out of the intensive care unit and be able to make it walk again but essentially the basin plan is not working the way it was meant to work.

The whole idea of water for the environment was that water would come down these river systems and make its way right down to the end.

You know, it would be there for Aboriginal kids to play in at Wilcannia.

It would be there for the environment down at Menindee lakes.

And we don't know where that water's going? and we don't know what's happening to that water?

It just seems bizarre, and particularly when there are so many major players that are potentially exploiting the system.

LINTON BESSER: The Murray-Darling Basin Plan may not yet have saved the river, but it's made a fortune for the lucky few.

MAL PETERS: There is no question, in my mind, that the majority of Australians supported the expenditure of a huge amount of money, 13 billion dollars, billion dollars, to fix the river.

If the outcome of it is, that we have a very few number of irrigators that have got a huge windfall out of this, I think everybody will be disgusted.

PHILLIP O'CONNOR: Well, it's just whether the people care, Linton, whether they care about the river.

There is a lot of people take it for granted, mate, like flushing the toilet.

There will be people that care, and I just hope that people with the most money aren't the people that are getting all the say and that care about it.

SARAH FERGUSON: Lawyers for cotton famers Peter and Jack Harris wrote to Four Corners on Friday denying any wrongdoing in relation to their use of water.

You can find further responses and details on our website.

Next week the international trade in hi tech on line surveillance tools - that enable governments to spy on their citizens.

See you then.

### Attachment 3: Transcription of teleconference shown on Four Corners program

GH: Have we gained someone? It worries me when you hear that, hear the beep, because you're never sure who's dialling in.

GH: What we might do as well, is set up some sort of, something like drop box, or something like that, where we can stick documents in that we're sharing, as a, as a just safe way to get information around between us.

GH: I think I can manage that sort of a conversation by being seen to and occasionally meeting with everyone

F1: Yep

GH: and anyone, but in terms of having structure and detail and discussions in confidence I only do it here.

GH: There's a whole lot of ammunition we've got at the moment.

There's a good discussion to be had with a group like this confidentially about at what point do you roll, and start firing those things off? We can put together a few paragraphs for you to assist.

M1: That would be great.

GH: Obviously we would have to de-badge it.

M1: Yeah, that would be fabulous.

GH: We will get some paragraphs or even that paper that we wrote about the holes in the modelling circulated to this group, de-labelled.

F1: Plan B would also be interesting, if there is one.

GH: Plan B is scary

F2: Plan C is scary; Plan B is fun!

GH: Just on what we've called Plan B or a Plan or some sort of plan, we have had detailed legal advice on what walking away means, I might get our lawyers to write up a, so I don't breach legal privilege, I might get them to write up a one pager that I can share with you guys about what that looks like.

F2: Yep

GH: The other part, the in-between plan there is a provision for the MDBA to step in if they don't think we're doing things right.

Before we walk away we would dare them to step in over the top of what we're doing if we're acting in good faith, delivering on what we should, and they start carrying on, we would say well we dare you to bloody step in over the top of us.

#### KEY

GH Gavin Hanlon

F1 Unknown female 1 (in the room or on the phone)

M1 Unknown male 1 on the phone to GH

F2 Unknown female

## Attachment 4 Department of Industry Code of Conduct

POLICY NUMBER: IND-P-184	VERSION: 1.5
AUTHORISED BY: Secretary	AUTHORISED DATE: 23/03/2016
ISSUED BY: Corporate Strategy	EFFECTIVE DATE: 23/03/2016
CATEGORY: People, Ethics and Conduct	REVIEW DATE: 01/04/2018

### Purpose

This Code of Conduct (the Code) provides you with an ethical framework for your decisions, actions and behaviour as an employee of the NSW Department of Industry, Skills and Regional Development (NSW Department of Industry or the department). It outlines the principles for appropriate conduct and explains the standard of behaviour expected of you and others employed by the NSW State Government. It is part of your employment contract.

NSW Department of Industry acknowledges that it is not possible to provide detailed guidance in relation to all situations where ethical conflicts might arise. For this reason, if in any doubt, you should discuss decisions, actions and behaviour with your supervisor or manager. Employees in regulatory roles for industries such as liquor and gambling have additional probity and procedural responsibilities owing to the nature and sensitivity of their work and public concern about potential corruption in these industries.

The Code has been based on the *Government Sector Employment Act 2013 (GSE Act 2013)*, the Public Services Commission's *Behaving Ethically: A Guide for NSW government sector employees*, and has been written in consultation with the department's divisions.

### Scope

The Code applies to everyone engaged by NSW Department of Industry and its constituent authorities, whether as an ongoing employee or under an employment contract, term appointment (including secondment), or temporary arrangement. Members of advisory committees/boards and contractors and consultants engaged on a fee-for-service basis must comply with –*NSW Government Boards and Committee Guidelines*. Staff involved in research should also refer to the department's *Guideline for the Conduct of Research*.

In addition, you are subject to all laws applying to employees in public sector agencies, in particular the *GSE Act 2013*, as well as other general laws affecting your employment relationship, including those listed under related legislation.

This Code does not prevent you from having all the normal rights of an employee under common and statute law, and you are not subject to unnecessary restrictions simply because you work for the NSW State Government.

### Policy

#### *Principles*

You are expected to maintain standards of professional behaviour that promote and maintain public confidence and trust in the work of government. The people of NSW expect the business of the State to be conducted with efficiency, economy, fairness, impartiality and integrity. To meet this expectation, you are expected to abide by the following core values and guiding principles:

#### *Integrity*

- Consider people equally without prejudice or favour
- Act professionally with honesty, consistency and impartiality
- Take responsibility for situations, showing leadership and courage
- Place the public interest over personal interest

You must promote confidence in the integrity of public administration by always acting in the public

interest and not in your own private interest.

You are expected to protect the reputation of NSW Department of Industry. You should not engage in activities at work or outside work that would bring the department or the NSW Public Service generally into disrepute. Care should be taken to ensure that any industry or professional relationship you might form does not jeopardise or compromise your integrity and objectivity or infer to a reasonable person such a compromise. This extends to participation in events and functions. Staff with regulatory roles invited to industry related engagements, whether in or out of office hours, shall obtain the prior approval of their Manager.

You may discuss any concerns about this matter with your supervisor or manager.

You must treat members of the public and colleagues with respect. Treat them fairly and consistently, in a non-discriminatory manner, with proper regard for their rights and obligations.

You must ensure that decisions and actions are reasonable, fair and appropriate to the circumstances. Decisions should be based on a consideration of all the relevant facts and supported with adequate documentation.

You must perform duties in a professional and responsible manner to the standards required. You should not act in a manner that is discourteous or could be perceived as bullying or harassing.

#### *Care for children*

If you work with children when you perform your duties, you are responsible for creating a workplace where children and young people under 18 years are safe and protected from sexual, physical and emotional abuse and neglect. Such abuse and neglect is an offence under the *Child Protection (working with children) Act 2012*

If you are a prohibited person as described under *Child Protection (working with children) Act 2012*, you are not permitted to apply for, undertake or remain in child-related employment.

If you work in child-related employment or are supporting a work experience placement, you must declare whether or not you are a prohibited person.

#### *Trust*

- Appreciate difference and welcome learning from others
- Build relationships based on mutual respect
- Uphold the law, institutions of government and democratic principles
- Communicate intentions clearly and invite teamwork and collaboration
- Provide apolitical and non-partisan advice

You are expected to implement the policies and decisions of the government of the day in an impartial manner, complying with any relevant legislative, industrial and administrative requirements. You are expected to provide advice in a timely and impartial manner. Such advice must be honest, frank, accurate and without material omission, and any limitations on the advice must be made clear. Advice should be developed with an understanding of its implications, anticipating issues and recognising the broader policy directions set by the government. You must not withhold relevant information from the government.

#### *Service*

- Provide services fairly with a focus on customer needs
- Be flexible, innovative and reliable in service delivery.
- Engage with the not-for-profit and business sectors to develop and implement service solutions
- Focus on quality while maximising service delivery

You must respond to clients and stakeholders (both internally and externally) by providing all necessary and appropriate services and assistance. Always fulfil service performance standards as set out in performance management documents.



When you are asked to supply information you must, in consultation with your manager, first determine whether it is appropriate to provide the information, and if it is you must then provide it promptly and in a professional manner. You should also provide information that is relevant to your audience, in terms that they can understand and in an appropriate and accessible format. Make sure the information is clear, accurate, current and complete.

Wherever possible documents originating from within NSW Department of Industry should be written in the expectation they may be released publicly in some form at some stage.

When responding to requests, you are required to consider responsibilities and obligations in protecting or otherwise making available and providing access to information held by or on behalf of the department, including responsibilities and obligations in relation to:

- government information as dealt with under the Government Information (Public Access) Act 2009 (GIPA Act). More information on responsibilities and obligations under the GIPA Act can be found on the intranet in the Right to Information Policy.
- personal information as dealt with under the Privacy and Personal Information Protection Act 1998
- commercial in confidence information, as covered by any commercial agreements and the common law as it relates to confidential information.

#### *Accountability*

- Recruit and promote employees on merit
- Take responsibility for decisions and actions
- Provide transparency to enable public scrutiny
- Observe standards for safety
- Be fiscally responsible and focus on efficient, effective and prudent use of resources

You must keep up-to-date with advances and changes in the area(s) of your expertise and look for ways to improve performance and achieve high standards of public administration. You must use the authority and resources of your position for work-related purposes only. You must be efficient in your use of public and departmental resources and choose the most cost-effective options available.

#### **Risk management**

The department is committed to integrating effective risk management into planning, decision-making and operational processes. The department's enterprise risk management framework consists of a policy, procedures, corporate and divisional-level risk registers, and risk management plans.

All NSW Department of Industry staff are responsible for managing risk within their sphere of influence. This includes:

- using a risk management approach in all decision making
- participating in identifying, assessing, reporting and managing risk
- applying the department's risk management framework to their areas of responsibility.

#### **Ethical decision-making**

To help ensure decisions made by you at work are ethical, you should ask the following questions:

- Is the decision or conduct lawful?
- Is the decision consistent with government policy, the objectives of the department, and this code?
- What will the outcomes mean for you, your work colleagues, the department, and others? Do these outcomes raise a conflict of interest or lead to private gain at public expense?
- Can the decision or conduct be justified in terms of the public interest? Would it withstand public scrutiny?
- Am I the right person to be making this decision? Do I have the right delegation or should it be escalated to a higher level?

By asking these questions, in consultation with others such as peers or supervisors, you will help foster a climate of ethical awareness, conduct and decision-making in the department.

### *Conflicts of interest*

Conflicts of interest exist when it is likely that you could be influenced, or could be perceived to be influenced, by a personal interest in carrying out your public duty. Conflicts of interest that lead to partial or biased decision-making may constitute corrupt conduct.

In performing public sector duties you may find yourself confronted with a conflict of interest. Having the conflict of interest is not necessarily a problem; it is how it is managed that is important. The community has a right to expect that staff at all levels of the department perform their duties in a fair and unbiased way and that the decisions they make are not affected by self-interest, private affiliations, or the likelihood of personal gain or loss.

It is not always easy to decide when private and public duty are, or might be, in conflict with each other. Just because you have a personal interest outside work, it does not automatically mean there is going to be a conflict of interest. However, if something arises at work that is associated with those interests, then you may have a conflict of interest. Refer to NSW Department of Industry Conflicts of Interest policy for further guidance.

Activities or interests that are particularly sensitive to the work of the department need to be avoided or managed well to ensure conflicts of interest do not arise. Examples of activities or situations where conflicts of interest may arise include:

- participation in, memberships of or shareholdings in certain incorporated associations, unincorporated associations, Pty Limited companies, company limited by guarantee, industry and manufacturing associations
- membership of organisations or boards whose interests may conflict with those of the department such as entities that seek grants from NSW Department of Industry or normally lobby government on issues managed by the department (e.g. membership of associations such as the Coal Miners Association or board membership of certain incorporated entities)
- participation in certain types of secondary employment that could compromise your integrity or the integrity of the department
- your financial interests in a matter that the department deals with or friends or relatives who you know have a financial interest
- your personal beliefs or attitudes (commercial, religious, social, or political) that may influence the impartiality of the work you do or advice you give
- you have a relationship that goes beyond a professional working relationship with someone the department is dealing with or investigating
- you are to sit on a recruitment selection panel where an applicant is a friend or relative
- your party political activities or political comments you might make could be seen as relating to the department's work.

You may also own and operate a primary producing property or small business but must ensure that you do not claim or make use of any departmental service that is not available to other members of the community.

If you determine there is a conflict of interest or potential conflict, you must make a disclosure to your manager or the manager of the affected activity (such as the convenor of a recruitment panel or chair of a committee).

The disclosure should cover any interests or shares that you have in incorporated associations, unincorporated associations, Pty Limited companies, companies limited by guarantee, industry and manufacturing associations currently active in NSW that could compromise or be perceived to compromise the impartial performance of your duties. It should also cover any interests or shares that your immediate family (i.e. spouse, partner, or dependent children) have that you are aware of that could compromise or be perceived to compromise the impartial performance of your duties.

The manager receiving the declaration must make an appropriate decision with regard to each staff declaration. The options depend on the significance and nature of the conflict, and include:

- taking no further action (where the potential for conflict is minimal or can be eliminated by disclosure or effective supervision).
- notifying the relevant Director, Executive Director, Deputy Secretary, CEO, General Manager, Deputy Director-General, Director-General or Secretary if the conflict of interest is serious;
- restricting the affected staff member's involvement in the matter;
- sourcing independent oversight for the situation;
- advising staff to relinquish their personal interest;
- seeking a staff transfer (at no disadvantage in staff terms and conditions of employment) from the area of work or particular task where the conflict arises.

There are recognised risks associated with regulation of the liquor and gambling industries, and staff with regulatory functions in these areas must:

- disclose to their manager when dealing with spouses/partners, relatives, close friends, and their relevant, former colleagues, and disqualify themselves from dealing with them;
- not deal with clubs of which they are a member or clubs, licensed premises or charities in which they, their relatives or close associates have an interest;
- disclose in writing any pecuniary or other interest they hold in the liquor or gambling industries, regardless of whether or not there is an immediate real or potential conflict of interest.

In many cases you may be the only person aware of a potential or actual conflict. It is therefore your responsibility to avoid any financial or other interest that could compromise the impartial performance of your duties.

If you are uncertain whether a conflict exists, you could discuss the matter with your supervisor or manager and attempt to resolve any conflict of interest that may exist.

Disputes over alleged conflicts of interest may be resolved through the department's Grievance Management procedures.

#### *Gifts and benefits*

A reputation for integrity and professionalism can only be achieved and maintained if the public is confident that staff are not influenced by gifts, benefits or bribes. The acceptance of a gift or benefit can create a sense of obligation that may compromise honesty and impartiality. This may also affect the public perception of the integrity and independence of the department and its staff.

If you make or may make decisions affecting individuals or companies (including staff selections, tender selections and grant approvals) or have access to sensitive information, you should be aware of the potential for undue influence and avoid any improper attempts by others to influence you and you should comply with the department's Gifts and Benefits.

The principles that apply to offer and acceptance of gifts or benefits are outlined in the department's Gifts and Benefits Policy. Key elements include:

- you must not give, seek or accept gifts, benefits or entertainment that will compromise, or appear to compromise, your integrity and objectivity in performing your duties, or cause, or appear to cause a conflict of interest. If you are not sure about the propriety of accepting a gift or benefit, discuss the matter with your supervisor/manager
- you must not accept any gift or benefit if you are employed within regulatory, inspectorial, compliance, enforcement or licensing functions
- you must record details of gifts and benefits (including entertainment) by completing a gifts and benefits declaration form and your manager will decide and record the course of action regarding the acceptance, return, disposal or display of the gift where appropriate
- you should discourage your family and relatives from accepting gifts or benefits which could give the perception of an indirect attempt to influence you
- you may accept a token gift and/or benefit when the gift and/or benefit is given to all attendees at, for example, seminars, conferences, trade and/or agricultural shows and business events as these

items are not personalised and a reasonable person would not perceive token gifts/benefits as items designed to influence or win favours. Some examples of token gifts/benefits include pens, caps, stress balls, stationery, coffee mugs, mouse pads, memory sticks, morning and afternoon tea, and lunch when provided to all attendees by the eventorganiser.

You should advise your supervisor/manager immediately if you believe you have been offered a bribe or if you have been offered or received a favour or benefit. If you are dealing with or have access to sensitive investigations or commercially sensitive information you should be particularly alert to inappropriate attempts to influence you.

#### *Private or secondary employment*

You must have the approval of the Secretary (or delegate) before you engage in any form of paid worker employment outside your official duties.

You must also carefully consider whether undertaking secondary employment may adversely affect the performance of your duties and responsibilities with NSW Department of Industry or give rise to a conflict of interest. This applies whether you are working full-time, part-time or on a temporary basis (for more than twelve weeks).

More details can be found in the department's *Private or secondary employment policy*.

#### *Political and community participation*

You must make sure that any participation in party political activities does not conflict with your primary duty as a public employee to serve the government of the day in a politically neutral manner. This is important because of the need to maintain Ministerial and public confidence in the impartiality of the actions taken and advice given by you as a public employee.

What is considered appropriate in any particular case will depend on the nature of the issue, the position you hold, the extent of your participation, and your public prominence. If you become aware that a potential conflict of interest has arisen or might arise, you should follow the disclosure process outlined in the department's *Conflicts of interest policy*.

You may have to stop the political activity or withdraw from the areas of your work where the conflict is occurring.

Within the context of the requirements of this policy, you are free to fully participate in voluntary community organisations, sporting clubs, charities and professional associations.

#### *Official hospitality and entertainment*

The community expects public employees to use public funds in an open and accountable way. This expectation extends to and includes the use of public funds for the provision of hospitality and the entertainment of clients for business purposes.

The department has adopted the NSW Government standards regarding the provision of official hospitality and entertainment and the expenditure of public funds for this purpose. The department's Hospitality and entertainment policy provides detailed guidance to staff in respect of incurring expenditure in providing entertainment and/or hospitality for business purposes.

The following principles apply:

- attendance at functions should be clearly related to your work and have clearly defined and beneficial outcomes for the department
- appropriate approvals must be received prior to providing the hospitality or attending the entertainment
- attendance at functions should not be abused, in terms of the time taken away from the workplace and in the level of hospitality accepted
- where the department receives tickets to sporting or cultural events as part of sponsorship or partnership arrangements, these tickets are managed using an open and transparent process and

are utilised to further government business

- expenditure should not provide a personal benefit to staff members or their families and friends. For example, Christmas functions, birthday celebrations or work socials that are organised by and for the attendance of staff will not be funded by the department and cannot be counted as work time.

### **Personal and professional behaviour**

#### *Perform your duties to the highest standards*

You must follow the reasonable direction of your manager, attend work during your designated hours except in the case of illness or approved leave, and carry out your duties in a professional manner. Your duties are to be performed to the highest standards as outlined in your position description, performance agreement or other documentation that sets performance expectations. You are also required to participate in the department's performance review and development schemes.

#### *Comply with departmental policies and procedures*

You must remain aware of, and comply with, the obligations set out in departmental policies and procedures. Most policies and procedures can be accessed via the NSW Department of Industry intranet.

Staff exercising regulatory compliance responsibilities must identify themselves using their official identification card (ID) which shall remain clearly visible except in the case of formally sanctioned sensitive operations. No employee shall misuse or permit the misuse of their official position or ID for personal purposes.

#### *Comply with health and safety requirements*

You must, while at work, take care for your health and safety, and the health and safety of other people in your workplace.

You must seek to understand and follow all departmental health and safety policies, guidelines and procedures relevant to your work.

You must follow all reasonable directions of your manager or supervisor related to health and safety and co-operate with your supervisor or manager to resolve any health and safety issues.

#### *Prevent discrimination, bullying and harassment*

You must not bully anyone. Bullying is behaviour that is repeated, unwelcome and unsolicited, considered offensive, intimidating, humiliating or threatening by the recipient or others who are witness to or affected by it.

Bullying behaviour may be directed upwards or downwards or towards co-workers. Some examples of behaviour that could be considered bullying:

- subjecting another person to constant ridicule and putting them down in front of colleagues
- using loud and abusive, threatening or derogatory language
- leaving offensive messages on email or by telephone, including offensive messages through the use of SMS and material posted on the internet
- subjecting others to practical jokes.

If you are a manager, you are accountable for ensuring that the work environment is free from bullying and from all forms of unlawful discrimination and harassment. Further information is available in the department's *Bullying and harassment prevention policy*.

#### *Fairness and equity*

You must work to the best of your ability and provide quality service to clients, stakeholders and colleagues. You must also recognise and respect the skills and talents of other staff.

If you are a manager, you are accountable for:

- taking steps to ensure that all work practices and behaviours in the workplace are fair, and to allocate workloads fairly
- providing staff with information and resources to enable them to carry out their work
- consulting staff when appropriate about decisions that affect them
- providing all staff with equal opportunity to apply for available jobs, higher duties, job rotation schemes and flexible working arrangements
- ensuring selection processes are fair and transparent and the methods used are consistent
- providing all staff with equal access to fair, prompt and confidential processes to deal with complaints and grievances
- giving your staff equal access to relevant training and appropriate development opportunities
- identifying special training and development needs of EEO group members in your team, should you have any, and help them gain access to training and development opportunities
- participating in learning opportunities and seeking feedback to help you manage staff effectively.

### *Close personal relationships*

At times we may have a close personal relationship with a colleague and be required to work closely with that person. In the workplace, this could be seen as compromising our capability for ethical and fair work allocation or impairing our decision-making.

It is important to remember we are committed to fostering a professional work environment, demonstrating fair and impartial treatment for everyone. This includes a commitment to avoiding perceptions of favouritism, claims of lack of objectivity in managing performance, and complaints of sexual harassment, or even the appearance of impropriety. Consequently, we must not favour any other colleague in work allocation, recruitment actions or the like on the basis of any personal friendship or financial or social relationship.

Close personal relationships are not grounds alone for refusing promotional, transfer or other employment opportunities or work allocation. Under anti-discrimination legislation it is unlawful to disadvantage someone because of their marital status or relationships.

### *References*

A reference provides information or makes assertions about another person's skills, conduct, performance, character, and suitability or non-suitability for employment.

Employees must not use Department letterhead when writing a reference for another employee that is considered the employee's personal assessment or opinion, and not those of the Department.

Employees must not supply references to other employees who are the subject of misconduct action or other legal action by the Department.

If asked to provide a referee report in relation to a recruitment action, the employee is responsible for completing the report honestly and should be based on information that can be verified. False or derogatory statements should not be made about an individual.

### *Dress standard*

You have a responsibility to project an appropriate image to the public. The department's corporate wardrobe should be taken as an indicator of this standard. Sporting wear, tracksuits and clothing with excessive third party logos should not be worn.

If you are required to wear a uniform as part of your role within the department you must adhere to this requirement where stipulated. Clothing should be appropriate to the duties of the position, and reflect a professional image wherever possible.

High vision or protective clothing is essential for safety when undertaking outdoor or potentially hazardous work and is compulsory and must be worn if identified by management as necessary to provide protection when carrying out specific tasks in the workplace.

### *Alcohol or substance abuse or misuse*

You must take responsibility for ensuring the health and safety of yourself and of others. In particular, you are responsible for ensuring that you do not, by the consumption of alcohol or other drugs, endanger your own safety or the safety of any other person, including customers or clients, in the workplace.

Alcohol and other drugs includes alcohol based products, tobacco, illegal drugs, and medically prescribed and non-prescribed substances, which adversely affect your work performance or conduct.

Workplace means any place where work is performed and includes government vehicles and off-site areas.

Many staff members have jobs where consuming alcohol or other drugs would endanger their safety, the safety of colleagues and members of the public.

If you are an employee who uses departmental plant and equipment, drives a departmental vehicle, drives your own vehicle for business purposes, or drives a departmental boat you may not operate the equipment or transportation means if you are under the influence of alcohol or other drugs.

You must not attend work or conduct business on behalf of the department if you are under the influence of alcohol or other drugs that are likely to adversely affect your ability to do your job or may pose a risk to yourself, your colleagues or members of the public.

If you or someone in your family is having problems with alcohol or drugs, you may wish to contact the Employee Assistance Program for help.

### *Intellectual Property*

Intellectual property can include rights relating to scientific discoveries, industrial designs, trademarks, service marks, software development, commercial names and designations, inventions and activity in the industrial, scientific, literary or artistic fields.

The department owns any intellectual property which you create in the course of your work. You immediately assign it to the department. You must assist the department to protect that intellectual property during and after your employment. You must tell your manager if you develop any new intellectual property. Please keep full records of your research.

Unauthorised use of the department's, or other organisations', intellectual property is not permitted.

### *Working with lobbyists*

The government has established a Register of Lobbyists and introduced a Lobbyist Code of Conduct. The Lobbyist Code of Conduct states that government representatives (Ministers, Parliamentary Secretaries, Ministerial staff, staff working for a Parliamentary Secretary, and persons working in public sector agencies) must only be lobbied by a professional lobbyist who is listed on the Register of Lobbyists.

You must comply with the NSW Government Lobbyist Code of Conduct, which states that a government representative shall not permit lobbying by a lobbyist or any employee, contractor or person engaged by a lobbyist to carry out lobbying activities who is not on the Register of Lobbyists.

### *Commenting publicly on the work of the department*

#### a) Public comment

Public comment includes appearance before parliamentary committees, public speaking engagements, and comments to radio, television or print reporters. It also includes letters to newspapers, comments in books, journals or notices on internet sites, social media sites, or broadcast by electronic means (for example twitter and email) or any other circumstances where it could be expected that the comments will spread to the community at large.

The official spokespersons for the department are the Premier of NSW and portfolio Ministers. In some circumstances the Secretary, Deputy Secretary or Director General speaks on behalf of the department as a whole. The Secretary may delegate this responsibility in some circumstances.

You may make public comment related to your program, unit, branch or specific area of expertise provided you follow the same principles and standards of conduct outlined elsewhere in this Code of Conduct and comply with relevant communication, media and publication policies.

All interaction with the media must follow the department's *Media policy*. You cannot initiate contact with the media unless authorised by your relevant Corporate Affairs or Media team. You must direct any media enquiries to your relevant Corporate Affairs or Media team. You must not attempt to respond to the enquiry (even if "off the record"), under any circumstances.

Outside your work, you have a right to comment publicly on political and social issues, provided you make it clear you are not making an official comment on behalf of the department or NSW Public Service and that you are only commenting as a private citizen. You should exercise extreme caution in commenting on areas associated with your employment.

Comments made on matters pertaining to union business by members of unions in their capacity as a local delegate within the department or by union office holders employed by the department are permissible under this Code.

#### b) Speaking engagements

You may accept speaking engagements with professional, educational and community groups related to your area of expertise, and/or which fall outside the normal scope of your work, provided you have the approval of your manager.

When a speaking engagement forms part of a commercial undertaking (that is, participants pay to attend) there may be a need to negotiate a fee. This should be discussed with your manager or supervisor. All speaking engagements should have a public sector orientation or relate to the department's corporate objectives.

Any fees received for speaking or public engagements must be paid into the department's fee for service account. For additional information contact the Manager, Financial Control & Reporting. Speaking fees cannot be retained by individual staff members. A non-cash benefit should be managed as required under the department's gifts and benefits policy and recorded in the department's Gifts and Benefits register.

#### *Protecting official information*

Under the *Government Information (Public Access) Act 2009*, departments are encouraged to make government information more accessible to the public. The public has an enforceable right to make access applications for government information; and access should only be restricted when there is an overriding public interest against disclosure.

However, the department must also adhere to the provisions of the *Personal Information and Privacy Protection Act 1998*, and therefore staff must maintain the confidentiality of all official information containing personal details and documents which are not published or normally made available to the public.

Most divisions within the department have procedures in place for the storage, disclosure and distribution of official information, which includes confidential or sensitive personal, commercial or political information. You must follow the procedures relevant to your area of work and take precautions to make sure that such information is not disclosed without clear authority.

Official information must only be used for the work-related purpose intended and not for personal benefit. Unauthorised disclosures may cause harm to individuals or give an individual or an organisation an improper advantage. The integrity and credibility of NSW Department of Industry may also be damaged if the department seems unable to keep its information secure.



You must ensure that information, in any form (printed or electronic), cannot be accessed by unauthorised people and that sensitive information is only discussed with people, either within or outside the department, who are authorised to have access to it.

Misuse of official information or documents includes:

- speculation in shares, commodities, or property on the basis of confidential information about the affairs of a business or of proposed government actions
- seeking to take advantage of another person, for personal reasons, on the basis of information held in official records
- disclosing sensitive information, including information pertaining to individuals, agencies or businesses, to members of the public, clients, political parties, members of Parliament, lobby groups, industry personnel, other public servants or other government organisations without proper authority
- providing or trading confidential information for use by private investigators, banks and credit agencies
- accessing official information for personal benefit or advantage, or for the benefit or advantage of another person – e.g. you must not invest, or advise others to invest, in companies by virtue of your position with the department or knowledge gained from your role.
- providing advice of proposed technological or statutory changes to a company, organisation or person if that advice is not generally available.

#### *Records management*

You need to be aware of and comply with the *State Records Act 1998 (NSW)* and any records management policy and procedures specific to your division or branch.

You have a responsibility to create and maintain full and accurate records of your work activities, decisions and other business transactions, to capture records into official records systems, and not to destroy records without appropriate authority. Managers have a responsibility to ensure that staff reporting to them comply with their records management obligations.

#### *Use of official facilities and equipment*

Reasonable personal use of telephones, facsimiles, email, and the internet is permitted, but you must not allow such use to be excessive or to disrupt official work and it must be in accordance with the department's Mobile Communication Device Policy.

The department's communication devices, including the internet, may not be used to browse or download illegal, inappropriate or offensive material. When you use department internet and email facilities, the use must be appropriate, lawful, efficient, proper and ethical and in accordance with the relevant department policies.

You shall not use credit cards issued by the department for your own personal use. Departmental facilities and equipment should only be used for private purposes when official permission has been given. Under no circumstances should facilities or equipment be used in connection with an employee's secondary or other paid employment or private commercial dealings (i.e. directorships of family or other companies).

When using the department's electronic systems you must be aware of the conditions of use, including not using other people's passwords and maintaining your own password security. You must also be aware that electronic systems are closely monitored and information that is stored on, or passes across, a corporate system is considered department information and may be viewed, stored or deleted as deemed appropriate by the Business & Technology Services (BTS) branch.

#### *Guidelines for conducting research*

Specific guidelines for the conduct of research are in place. If you are involved in research work for the department you must adhere to the Guidelines for the Conduct of Research.

Managers of staff involved in research must make sure that new and existing staff members are aware of the Guidelines, which have been formulated in accordance with the Australian Code for Responsible Conduct of Research issued in 2007 as a revision of the joint NHMRC/AVCC Statement and Guidance on Research Practice.

The broad principles that guide research include the maintenance of high ethical standards, validity and accuracy in the collection and reporting of data and responsibility of the research community to the public and to itself.

#### *Criminal convictions*

If a criminal charge is brought against you for a serious offence, you are immediately required to bring this to the attention of your manager. A serious offence is an offence punishable by imprisonment for twelve months or more. The prison term refers to the period the offence *may carry*, not the *actual* prison term imposed.

If a conviction of a serious offence is recorded, your Director may impose disciplinary action. Consideration will be given as to whether the conviction has a direct or relevant connection to your duties.

If a less serious criminal charge is brought against you, the impact of this on the inherent requirements of your job needs to be considered. As an example, if your work requires you to maintain a current driver's licence, losing your licence may require some reasonable adjustment to your work activities. In this type of situation you should consult with your manager.

#### *Reporting corrupt conduct, maladministration, waste and information contravention*

You must report suspected corrupt conduct, maladministration, serious and substantial waste of public resources and government information contravention.

The *Public Interest Disclosures Act 1994* provides certain protection for employees who voluntarily report such matters (but not vexatious or malicious allegations), either to the principal officer of a public authority, or to an investigative body: the Independent Commission Against Corruption (ICAC) for corrupt conduct, the Ombudsman concerning maladministration, the Auditor-General concerning substantial waste of public money or the Information Commissioner concerning government information contravention.

Public interest disclosures may also be made following the department's Public Interest Disclosures policy and procedures. The Fraud and Corruption and Public Interest Disclosures Coordinator will notify the employee who made the disclosure of the action taken or proposed to be taken in relation to the disclosure and the outcome of such action.

#### *Leaving the department*

You must not misuse your current position with the department and information you are able to access as a consequence of your employment to obtain or seek out opportunities for future employment.

You should not allow yourself or your work for the department to be influenced by plans for, or offers of, employment outside NSW Department of Industry. If you do, there will be a conflict of interest between your current responsibilities to the department and your personal interest and your integrity and the integrity of the department will be at risk.

Should you leave the department, you must not use confidential departmental information or other confidential information that you were exposed to during your employment with the department that may lead to gain or profit until that information has become publicly available.

You must be careful in your dealings with former departmental staff to make sure that you do not give them, or appear to give them, favourable treatment or access to privileged information.

Where applicable, staff must adhere to specific legislative restrictions and prohibitions in their post separation employment.

### *Breaches of the Code*

If you breach this Code, you may be subjected to disciplinary action or performance management measures. This could range from counselling to dismissal. In serious cases the matter may be referred to the Police or other appropriate authorities.

The decision to take such action will involve the consideration of a number of relevant matters, including protecting the integrity of the department, maintaining public confidence and trust and the seriousness of the misconduct.

### **Responsibility**

#### *Secretary*

Responsible for the general conduct and management of the department in accordance with the core values of the Ethical Framework.

#### *Staff*

The *Government Sector Employment Act 2013* establishes a new legal requirement for all people employed in the government sector - to act ethically and in the public interest.

### **Related legislation**

The legislation that applies to NSW Department of Industry staff is the *Government Sector Employment Act 2013*.

The following legislation is also applicable and can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au):

- *Anti-Discrimination Act 1977*
- *Crimes Prevention Act 1916*
- *Government Information (Public Access) Act 2009*
- *Independent Commission Against Corruption Act 1988*
- *Industrial Relations Act 1996*
- *Ombudsman Act 1974*
- *Privacy and Personal Information Protection Act 1998*
- *Public Interest Disclosures Act 1994*
- *Public Finance and Audit Act 1983*
- *State Records Act 1998*
- *Work Health & Safety Act 2011*

### **Related NSW Department of Industry policies**

NSW Department of Industry is combining the duplicate policies and guidelines held by the former agencies into single NSW Department of Industry wide policies and guidelines. In the absence of NSW Department of Industry policies and/or guidelines in place then the policies/guidelines of the former agencies are still current.

### **Other related documents**

- *M2014-13 NSW Lobbyist Code of Conduct*
- M2007-01 Public Disclosure of information arising from NSW Government Tenders and Contracts
- M2007-02 Dignity and Respect: policy and guidelines on preventing and managing workplace bullying – this memo complements M1996-11 Dealing with Employee Work-related Concerns and Grievances, and Harassment free Workplace.
- C2006-46 Provision of information to Members of Parliament
- C1999-09 – Use of Employer Communication Devices
- Guidelines for Research

### **Further resources (ICAC website)**

- ICAC - Code of Conduct May 2015.
- Direct Negotiations – Guidelines for managing direct negotiations, May 2006

### Superseded documents

This policy replaces: NSW Department of Trade & Investment Code of Conduct TI-A-130.

### Definitions

- *Alcohol & other drugs* Includes alcohol based products, tobacco, illegal drugs, and medically prescribed and non-prescribed substances, which adversely affect your work performance or conduct.
- *Lobbyist* A person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a government representative.
- *Workplace* Any place where work is performed and includes government vehicles and off-site areas

### Revision history

Version	Date issued	Notes	By
1.0	23/03/2016	Minor edits to reflect Machinery of Government changes and the Public Service Commission's new <i>Behaving Ethically</i> guide	Manager Corporate Governance
1.1	18/04/2016	Remove references to OLGA staff and add references to DPC Circular 2013-04 and PSC Circular 2013-03 Contesting Elections.	Project Officer Corporate Governance
1.2	20/02/2017	Updated to better clarify intellectual property.	Manager Corporate Governance
1.3	11/05/2017	Minor edit. Reordered Intellectual property paragraphs to improve readability.	Project Officer Corporate Governance
1.4	01/06/2017	Minor edit. Reinstatement of Schedule 1 that was inadvertently omitted when version 1.2 and 1.3 updates were done.	Project Officer Corporate Governance
1.5	14/7/2017	Minor edit. Clarification regarding the provision of references.	Manager Corporate Governance

### Contacts

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