



Australian Government



Inspector-
General of
Water
Compliance

WATER'S EDGE: TRANSCRIPT

S1, Episode 3: How to improve collaboration, compliance and enforcement across the Murray-Darling Basin with Des Pearson

- Speaker: *Water's Edge* podcast acknowledges the traditional owners of country throughout the Murray-Darling Basin and Australia and their continuing connections to lands, waters, and community. We pay our respects to Aboriginal and Torres Strait Islander cultures and to the elders past, present and emerging.
- Annabelle Hudson: Coming up: We hear from the former auditor-general for Victoria and Western Australia, Des Pearson, about his review into compliance and enforcement measures by government agencies in basin states.
- Des Pearson: Three of the jurisdictions, right at the start, they were able to tell me how they were performing: the 99% compliance in volume terms and 97% compliance in licence numbers.
- AH: Why Des Pearson's review was critical.
- Troy Grant: People have marked their own homework for a long time, and we now offer a new independent way to call that out, if it's right or wrong, and to celebrate it if it's right and there's good results, but also hold people to account and say when it isn't right.
- AH: And how states can work together to come up with better water management practices.
- DP: Collaboration and collegiality. The industry, through their groups, will be comparing notes. We, as the regulators, need to be comparing our notes and working out what is the right and just way ahead.
- AH: I'm your host, Annabelle Hudson.
- Speaker: This is *Water's Edge*, and welcome to the conversation.
- AH: Welcome to today's episode of *Water's Edge*. I'm joined again by the Inspector-General of Water Compliance, Troy Grant, and with us by Teams, all the way from Singapore, is Des Pearson, who has recently undergone a review for the Inspector-General about some of the states and their water methods and compliance. But I guess we're going to go into a little bit more detail about what the review is about. Firstly, I'll just get Des do a little bit of an introduction. Des, can you tell us a little bit about yourself?
- DP: Thanks, Annabelle. I'm a semi-retired career public servant. I spent half my career on program delivery and regulatory roles, and the last twenty-odd years as a state auditor-general in Western Australia and Victoria. I've seen a fair bit of public administration and across five or six jurisdictions.

- AH: So, you're very experienced in this kind of thing! Alright, Troy, to get us underway, can you tell us what is the Des Pearson review?
- TG: Thanks, Annabelle, and I really appreciate Des joining us today to help explain what has been a substantive and critical part of work that we've done in our first twelve months of existence. What generated this work? As interim-Inspector General, I spent a lot of time in the Basin communities, talking to stakeholders and communities about the critical issues that were most important to them, to get answers to. They expressed to me that there was a lack of clarity, a lack of transparency, and a lot of confusion, which really impacted the trust and confidence they had in the plan and how states did their jobs, in regard to water management, and how that collectively was good or bad for the Basin plan ultimately. As a result of that, we commissioned three bodies of work. That was really about river operations by the MDBA, how the Commonwealth Environmental Water Holder was doing their jobs, and those reports will be about shortly. But underpinning that was the work we commissioned Des to do for us, an eminent former auditor-general, to help the Inspector-General's office understand where the states were at individually and collectively in doing their job about the water management systems that they had in place, the regulatory practices, the way they interfaced with water users, the relationship they had with licence holders, and the way they were accounting for and holding people to account for water extraction. A major concern across the Basin was that there is not a level playing field, and that we look at it through a lens of 'What's best for the Basin?' But not everyone does that. They look at it through their own lens, of what's best for their state, or what systems work for them in the pressure they're under, to deliver either politically or administratively or what's happening in their part of the Basin. It was really an opportunity exercise as well. It wasn't designed to go out and use our big stick to whack the states for not being up to speed, or not doing things in the most cohesive way possible. It was more about looking for opportunities to do things better on a holistic basis. I think Des's report has certainly painted a clear pathway for us. We've already started on enacting some of those recommendations, which have been really helpful. Now we've a really wonderful baseline to work from, and that's why the work's been so critical.
- AH: We'll look at some of those recommendations a little bit later, but Des, can you tell us, as an overview, what did your review find?
- DP: The review found, understandably, that things were very variable. As Troy has intimated, states approach the task differently and there's a long history. But I approached it from a point of view that, fundamentally, they're all doing the same thing. They're allocating a limited resource, of water, and they have an obligation to provide assurance that that water is being equitably accessed. I came back to the view that fundamentally they're all doing the same task, of rationing that limited resource on an equitable basis, and that the differences came in as reflective of their context. In the southern basin, the jurisdictions had mature, embedded compliance systems in place and were managing them on a zero-tolerance basis of regulated water. Whereas, in the northern basin, there was a lot less regulated water - or a higher proportion of unregulated or un-supplemented water - which brings with it different challenges. And it wasn't as evident how they were managing that and reporting to the community. So, at the end of the day, my exercise was very much a comparative analysis across the respective states about how they did it. My recommendation was around establishing a core set of metrics, so that there was a common basis for comparison and reference, so that by reporting by nature of take -

from regulated take, unregulated take, overland flow, and flood plain harvesting: those sort of things - we were comparing like with like, and there's a basis for reporting on performance to the community.

AH: Des, you've worked a lot across different sectors. Have you seen anything like this before in other areas, or is this very specific to water in terms of the different terminologies and things like that?

DP: Look, it certainly is more pronounced in water. I've worked in a range of policy areas, and this has got to be at one extreme. But I'm hopeful that people will see the benefit of collaboration. I was a bit put back by the number of times privacy and confidentiality were called, and their holding to their particular terminology. I think that's a bit of a socialising challenge we've got - that, as Troy said, at the Inspector-General's leaders forum, we're beginning to address that. I think if we get a few wins where they benefit from the experience of others, and see that that's a smarter way ahead - to work co-operatively with others, and to learn from the experiences of others - I think that's a good outcome.

AH: Part of that review of yours, Des, is that there's been some positives in it. For example, in Victoria, they appeared to have a compliant framework where unauthorised take is extremely low. So, is this compliance framework that you could see adopted across the basin states?

TG: There's a need for it, and we're working towards that already. So, the states essentially - to explain it - each have their state legislation that they have to comply with, and that's designed in water-sharing plans, or water management plans - they all have different names for them, obviously. And then they all have water resource plans, which are tied to the Commonwealth water legislation, as well as the Basin plan, to which they have obligations. Part of those obligations is contained in a thing called the Compliance Compact. Now, currently they measure if they're meeting what they should be doing across a whole lot of metrics, which is including probably the most known thing, which is metering, for example. But what they're reporting on isn't really telling us anything, it's not an outcome-focused reporting, it's just saying, 'We're doing something about that.' Without saying whether it's good, bad, or indifferent, whether it's working or not working. So, the positive outcome from Des's work is that, after just three meetings, we're about to release on an annual basis a metering report card. So, everyone can see coverage, how many meters are out there, in the Basin, state-by-state and holistically. They will also be able to see, on a consistent basis, the telemetry - the important component of the measurement at the meter level, to make sure that there's accuracy in the water take. Then, the final thing is the timeliness: that's about the reading of and reporting into the regulator the take. That's timeliness. So, those are the three things that we've focused on. That metering score card is hopefully going to replace some of the elements of the compact that provide no benefit as well as other consistent reporting frameworks and compliance frameworks, that Des alluded to in the report.

DP: What we're really trying to do is get the right information up, so that they know how well they're doing. They're all conscientious and working hard, but it's got to be frustrating if you're working hard and they're not progressing, so often you need to take a half a step back and work out what's working and what's your higher priority, and focus on that.

- TG: I think that's important. The work that you did, Des, really showed that there's so much work to be done. I think it's a matter for the government, ultimately, as to who responsibility falls with, and I suspect it will fall largely with us - the communication component. It's everyone's responsibility, but it's not actually being done that well. Because there's a lot of good work and good news out there that isn't being articulated or understood or delivered, and people are often just looking at the bad news stories. I'd referred to Des's work that 'there was no smoking gun', and that with the Matthews review or the pump program showed that there wasn't a *catastrophic* smoking gun problem out there. There were issues, and things to do, but there were lots of things to be acknowledged and celebrated as well.
- DP: I think that's important. Even across all the jurisdictions in the regulated supplemented area, three of the jurisdictions right at the start were able to tell me how they were performing - the 99% compliance in volume terms, and 97% compliance in licence number terms - and a couple of other jurisdictions didn't have that information. But, in the course of my review, they were able to provide me and give me reasonable assurance that they were at least 95% compliant in volume terms. Now, that's quite good! We'd like it to be 100%, but the world's not perfect. So, the more they're on the front foot, and reporting how well it is regulated, the less people will beat up the odd exception and make an issue out of it which distracts them from the main task.
- TG: You make a brilliant point there, Des. What has historically happened, and not helped trust and confidence, which is the pillar of what we're about and why we're established, is that people have marked their own homework for a long time. We now offer a new independent way to call that out, if it's right or wrong, and to celebrate it if it's right, and there's good results, but also hold people to account and say when it isn't right. We did that with the WRPs in New South Wales, at the river reflection speech, and told the truth. We can't tell you if NSW is compliant or not, because there's nothing lawful for us to mark their homework with. They were saying, 'We're compliant,' but in the Barwon-Darling we saw it was 39% over, cumulatively. So, that's hopefully going in time to build that confidence and trust to know that there's an independent Inspector-General who can utilise the expert skills of people like Des Pearson to help dive in deep into those issues, and get to the truth.
- AH: You mentioned the term 'there's no smoking gun' - essentially, that there's been found in this report. Some community members might think that this review's a bit pointless if you haven't found anything. Why should the community feel assured that this is going to do something?
- TG: Well, I see this as a positive to help build their trust up. They've got a perception at the moment that the whole thing's broken, and that there's people out there doing the wrong thing off the back of the previously mentioned, really dark period of water management in New South Wales's history. NSW has come in leaps and bounds from that of time to where they are now, as Des witnessed, through what NRAR's doing and then now what NRAR are utilising Water NSW's systems to continually improve it. Now, NRAR's only a young organisation, and they're going to continually improve and mature, but they're operating at a pretty high level out of the gate, and it's far in exceedance of where they were back in the dark days. That's got to be a positive. So, people that draw the conclusion that it is pointless to tell us good news, well, the media don't print a lot of

good news stories because it doesn't generate the excitement! But the evidence is there, it's got to be told, and you've got to tell the good with the bad. That's a responsibility of ours. We're not saying it's perfect, we're not saying it's even great. But there is no smoking gun where there is potential corruption, or favouritism, or maladministration that's out there. There are certainly some areas of concern that we have discovered through other bodies of work that we will be pursuing, and if there's badness out there we will call it out. But we're not there for the sole purpose of doing that. We're there to get the truth, and...

AH: And all the information!

TG: To get all the evidence and put it out there so people can have not a perception of what their level of trust should be, but an evidence base on which to make a proper decision, or a proper understanding of, before they form their view.

DP: I think the more the Inspector-General puts the true story out there, and presents it for what it is - and the story from my observation is that it's up to 95-99% by volume is compliant, and around 97% by licence numbers are compliant. The more that's out there and is reinforced, when you get the odd exception occur, it will be seen to be the exception, not interpreted as being the norm.

TG: And the minister has used this terminology in my company, and I back her when she says this: the Inspector-General's role is to do what we've just articulated. Find the truth, use evidence to call out the status of what's happening in the Basin. We also have some big sticks, and we're not afraid to use them when needed. We don't want to use them. If we can get people to comply and operate under our oversight capacity, in the right spirit and the right purpose, and meet the objectives of the Plan and the Acts that they work under, that's good. That's what we should be doing. But if they're not, we'll bring out the big stick and we'll whack them and hold them to account. That's also our job. And, without fear or favour, we will do that.

AH: Part of your review was fairly critical of NSW and its ability to effectively monitor licence holder's take against their allocation. Your observation is that it's driven by the separation of the customer facing agency, which is Water NSW, and the enforcement agency, which is NRAR. How can NSW overcome that challenge? Can they have a model similar to Queensland, where it's all in one agency?

DP: Well, they could, but they are working on it, and I think it's indirectly if not directly related to the review I did. In the course of the review, they started monitoring take on a real time basis in the regulated area. When I looked at water compliance, there was probably two elements. What I call the direct is monitoring take against entitlement or allocation. That's a given. It's like running a debtor's ledger, or how the bank runs their bank ledger. People have got an allowable balance, and they've got to stay within it, and if you watch that, what NSW and NRAR have developed is a real-time database that interrogates the Water NSW register and alerts them to excess take. Now, they're doing it that way. South Australia and Victoria are doing the same thing, differently, but we're getting the same result. I think that's the real endgame here. We don't want to be in the game of telling them how to do it, because it's their right to how they set up their administrative arrangements within their jurisdiction. But if we give them the criteria or the information needs that they should be fulfilling, we're just interested in what the result is.

- TG: I think there's another great example, and Des correctly points out that, as his review was underway, the jurisdictions could see the writing on the wall, for want of a better term - there's probably a better analogy than that, but they could see where things were heading, or where they needed to head, and so they automatically or organically started to work within to improve things. That happened across the board. So, NSW and Queensland are now joined up and working on remote sensing, which is a really exciting and new piece of compliance satellite-type technology that can come in and measure in addition to, or help metering until it's matured enough to be relied upon. So, there's some better co-operation just by generating this body of work. There are already some improvements happening. Once all the recommendations from Des's report are implemented, and we keep on a journey - this won't be something that sits on a shelf, it will be a document and piece of work that will need to be reviewed in time to update it and look for more opportunities. It's a living document and a living piece of work, and the regulatory leader's forum is the place that's been established, now, as the place where that will all happen.
- AH: You talk about this review being revisited, but in the past there have been a number of reviews, since 2012, when the Basin plan was implemented. You've had Ken Matthews' report on NSW water management and compliance, the independent audit of Queensland's non-urban water measurement and compliance in 2018, and the Murray-Darling Basin water compliance review in 2017. So, how is this going to be any different?
- TG: Simply, it's now independently assessed. There's no agendas, there's greater opportunity for transparency for what we're finding and what we're saying. I think that's the most significant part of it. We're not under anyone's agenda, we can't be influenced, we are an evidence-based organisation: we find the evidence and call it out, good or bad, and then we help co-ordinate the betterment, or whatever the situation is, and get those outcomes. That's where the power of our office really sits: all those other previous reports may well have found things and recommended things, but they weren't done in a completely independent way. Ultimately, there was a way to question whether there was a marking of their own homework, as I've referred to before, or did they really look where they needed to look. I'd love to hear what you think about this comment, Des, but we're saying as the Inspector-General that we want things to look good. We want systems to work well. What does 'good' look like? What does that mean? What does 'well' look like? What's 'best practice'? What does that mean? How does that get measured? That's really where you've steered us.
- DP: That's really where we're going. The more universal metering you've got, the better coverage you've got, and while you're never going to be 100% if we can get it up to 80 or 90% then that's good. The timeliness of the reading of the meters - that's my observation with compliance - that's why I've pushed a lot of the states on their frequency of readings. You know yourself that if you don't pay a bill and nobody follows you up, you don't worry about it. Whereas, if you don't pay a bill and on the day it's due you get a message from the person you owe the money to, you come on-board. So, to me, that was an attribute of the systems in the southern basin. They were very active, and some jurisdictions were even warning users that they were approaching their limit before they get to the limit. That keeps everyone honest. There are other differences that have to be made more consistent across the jurisdictions. In the past, when there were annual or quarterly reads, they used to say that as long as the account was in surplus at balance

day, it was alright. Whereas jurisdictions now are saying, 'No, you don't go into overdraft, you trade before you use.' That is providing more equitable access to water overall.

TG: It's a big cultural change. People have been doing it their way for a long period of time. With any change management comes difficulty. People don't like change, by nature. It's a tough one to do, but change is necessary to get that level playing field. You can't be treated from one part of the basin to another on the same thing, which is water take and the accounting for it.

DP: In the public sector, we're managing scarce resources on behalf of the community. We've got an obligation not only to do the right thing but to be seen to do the right thing. That's where regular reporting and meaningful reporting is critically important. Equally, being open with the community about our challenges. People will accept that the world isn't perfect. And, if we tell them what a particular challenge is, and how we're addressing it, they'll either endorse what we're doing or give us some advice on how better to do it. I think that's a constructive engagement with our stakeholders. It's something I've found in my public sector career. We start off being a bit insular, and we don't want to share those challenges. But I've found that over time you're better off sharing your challenges with your stakeholders. Then they're in it with you. They'll contribute, and they'll keep you honest. But if you try and hide it from them, they'll be very sceptical, and you'll have dropped the ball and they'll really blame you for it. So, I'm all-in for working with your stakeholders and leveraging them. Again - at the risk of harping on this - it's collaboration and collegiality. The industry through their groups will be comparing notes. We, as the regulators, need to be comparing our notes and working out what is the right and just way ahead.

AH: Troy, Des has done a review and you've done a report which is available on the IGWC's website. Where to now? What's the next step?

TG: It's to implement each of the recommendations of the report. I've done an overview report of what Des has found, and his work, but also the reason I have released it in that fashion is that there was a lot of information from before Des came into the place as to why to articulate how it fit within the broader work of what we're trying to do, how it fit within the work plan priorities from last year. But Des's full report will be part of our annual report, that will come out in October/November. So, that'll be fully available for those who love the detail and technical side of it. But mine's more of an overview and indicator of the findings and the key recommendations and, more importantly, what we're doing about it. I know that I share the frustration of many that there's been a million reports done, out there, over time, and particularly in water that many reviews. But when you look at what actually came out of it? Whereas our focus is acting on the recommendations and we've already put a number of those in place. As I said, the regulatory leaders' forum is established and starting to yield results. The metering scorecard is very well-advanced. The compliance framework is already in work, in train, with each of the jurisdictions. So, we haven't sat around waiting. As soon as it was identified, we started to put those into place, because they made sense immediately. So, for now, it's just working hard to get these things done which aren't all easy. There's a lot of give and take, and a lot of working with others to get that collegiality and convincing and coercing and all that sort of stuff. But that's the job and we're saddled up and ready to do it and get stuck in.

AH: Great. Well, thank you very much Troy and Des for your time. Des, we'll let you get back to your holiday, and we will be jumping in, in a few weeks' time, to look at some more reports and reviews that are being released by the Inspector-General. But, for now, thank you very much Des and Troy.

TG: Thanks for your time, Annabelle, and thanks Des for all the work. It's much appreciated, and it'll leave a lasting legacy. Really appreciate it.

DP: It's been my pleasure, Troy. And thanks, Annabelle.

Speaker: *Water's Edge* is produced by the Inspector-General of Water Compliance, Australian government, Canberra. For more information, visit www.igwc.gov.au.