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9 December 2005



Australian Property Institute

The Committee Secretary
Inquiry into Water Policy Initiatives
Senate Rural and Regional Affairs and Transport Committee
Parliament House
Canberra ACT 2600

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Dear Sir,

Re: Inquiry into Water Policy Initiatives by Senate Rural and Regional Affairs and Transport Committee

Further to the above, I have pleasure forwarding the following submission to the *Inquiry into Water Policy Initiatives* which has been referred to the Rural and Regional Affairs and Transport Committee for report to the Senate in March 2006.

The Institute through the NSW and Queensland Divisions has since 2002 been closely involved with attempts to define and value water property rights on a nationally consistent basis. Indeed it is noteworthy that the Steering Committee for the Research Report *An Effective System of Defining Water Property Titles* which was released by the (then) Deputy Prime Minister John Anderson at the ABARE 2004 Conference in Canberra, was chaired by John Sheehan, Past President of the NSW Division of this Institute.

The Senate Committee has within its Terms of Reference a particular reference to "the development of water property titles", and it is this aspect that the Institute's submission focuses on. The previously mentioned Report published by Land and Water Australia and the Department of Agriculture, Fisheries and Forestry (AFFA), noted in the *Forward* (p.5) of the Report that entitlements to water registered in a nationally consistent manner would establish public confidence in the operation of the entire water industry. A Torrens-type system for water has been proposed in the Report, on the basis that security of tenure is critical to public confidence and this titling proposal is the core recommendation in the Report.

It is further noted that in the *Discussion Draft* on National Competition Policy Reforms published by the Productivity Commission in October 2004, the Commission states in respect of water reform that:

There is broad acceptance of the need for further reform.

There is broad acceptance in the community and in policy circles of the urgency of pursuing a comprehensive national water reform agenda. (p.1770)

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It is the Institute's view that whilst broad acceptance in the rural community and amongst policy makers is evident, there is nevertheless reluctance by State Agencies to accept the need for a nationally consistent system of defining water property titles. There appears to be little enthusiasm within these State Agencies for such a system, perhaps reflecting the historic jurisdictional divide between the Commonwealth and the States, especially in the area of land and water management.

However, some natural resources such as water, flora and fauna (biota) now present hitherto unforeseen management issues which confound traditional State territoriality, and even supersede settled Commonwealth/State jurisdictional responsibilities. To date, water is arguably the most ephemeral of all the Australian natural resources to be commodified, whilst land property due to its fixity has never suffered from the imbroglio resulting from the inherent physical idiosyncrasy of water. Accordingly the manner in which water is defined for the purposes of titling must also be idiosyncratic, very different to the definition of land or minerals, which currently have the undoubted confidence of the public. Reform of the water industry is founded upon the need for a verifiable database, which will provide the level of confidence that the public currently enjoys in the fixity of land and minerals through the cadastre.


Central to the creation of property rights in natural resources such as water is the question of territoriality – the placement of an individual property right on the cadastre. The ephemeral nature of water requires that definition and subsequent titling should be appropriate and robust, and will necessitate the convergence of the various professional, technical and scientific skill sets residing in the spatial sciences and in property valuation theory law and practice. Conventional land titling systems are probably incapable of accommodating the changes necessary for emerging water property rights, given that the water-titling database is so very different and more complex.

Before water pricing and secure trading in entitlements to water as proposed in the National Water Initiative (NWI) can occur in an unfettered market, National Competition Policy water reform demands the creation of this level of confidence. The absence of a verifiable database on a nationally consistent basis represents the greatest single impediment to the full implementation of National Competition Policy water reform in Australia, and is fundamental to that reform.

The Institute believes that this impediment has the greatest potential for impact on rural water usage, and that there is an urgent need for the establishment of a verifiable database nationally in order that water property rights can be created as a confident collateral basis for rural property loans.

The Institute would be pleased to expand on this submission at a public hearing before the Senate Committee when it sits in 2006, and in this regard I would be grateful if you could contact Mark Howland, National Director on 62822411 to advise when attendance at the Committee Hearing is required.

Yours faithfully


Barry Drakey
National President