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Re: Review of National Competition Policy Reforms

Further to our meeting on Friday 19 November 2004 with yourself and Robert Dolamore of the Commission, and David Hocking of ASIBA, I have pleasure forwarding the following submission on the *Discussion Draft* dealing with National Competition Policy (NCP) reforms. You will recall at our meeting in Belconnen that David and I left with you a number of copies of the Research Report *An Effective System of Defining Water Property Titles* which was released by the Deputy Prime Minister John Anderson at the ABARE 2004 Conference in Canberra.

As Chair of the Steering Committee for this joint Report published by Land and Water Australia and the Department of Agriculture, Fisheries and Forestry (AFFA), I was pleased to record 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.

In the Discussion Draft, 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)

It is my view that whilst broad acceptance in the 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 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, and land property due to its fixity has never suffered from the imbroglia 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 can occur in an unfettered market, NCP 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 NCP water reform in Australia, and is fundamental to that reform.

Yours faithfully

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Chair, Government Liaison
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