Australian Productivity Commission
Inquiry Into Australia's Urban Water Sector

submission by

Greg Cameron

18 May 2011

In its March 2008 publication ''Towards Urban Water Reform'', the Australian Productivity Commission reported that urban water users do not have property rights to water (p.61).

The Commission's assertion was not correct in relation to water collected from roofs for rainwater tanks.

All water users in New South Wales, Victoria, Queensland and the Northern Territory own property rights to water collected from roofs for rainwater tanks, as confirmed by the respective governments (Attachments 1-16).

Australia's other governments, including the commonwealth, consider that the water that falls on a person's roof is not the property of that person (Attachments 17-28).

A market for trading mains drinking water supply could be established if property owners were permitted to trade the amount of mains water they save in a given year by substituting their own rainwater.

In Australia, sovereign risk is an impediment to rainwater tanks becoming a significant additional source of urban drinking water supply.

Sovereign risk occurs in the form of governments taxing the use of rainwater or imposing entitlement regimes.

For example, the National Water Commission claims that governments can establish entitlement regimes for the use of rainwater (Attachment 17). The commonwealth government makes the same claim (Attachments 18,19).

Confirmation by the governments of NSW, Victoria, Queensland and the Northern Territory that rights to water collected from roofs for rainwater tanks are vested in the property owner, removes sovereign risk in those markets.

However, a threat remains in the other states and the ACT.

Sovereign risk is enshrined in Australia's National Water Initiative Agreement (2004).

Clause 2 says, ''In Australia, water is vested in governments...''.

Clause 2 does not apply to rain that falls on roofs in NSW, Victoria, Queensland and the Northern Territory, representing more than 72% of Australians.

Clause 2 is incorrect and requires amending.

Rainwater tanks are a cost effective source of urban drinking water supply, provided economies of scale in manufacturing, installation, consumer financing, marketing and sales are achieved.

Government subsidies for installation and plumbing of rainwater tanks are not required, and have never been required, and fortunately, most government programs are now terminated.

It is now possible to conduct mass marketing of rainwater supply in NSW, Victoria, Queensland and the Northern Territory, without undue market interference by government.

NSW, Victoria, Queensland and Northern Territory Governments' Policy

In these states and territory, water that falls on a person's roof is the property of that person. See –

NSW – Attachments 1-5
Victoria – Attachments 6-8
Queensland – Attachments 9-15
Northern Territory – Attachment 16

Commonwealth Government Policy

Commonwealth government policy is that all water in Australia, including rainwater, is vested in state and territory governments; the commonwealth considers that state and territory governments have the right to licence, regulate and tax the use of rainwater (Attachments 17-21).

Government policy is based on the assumption that water from a roof falls on land (Attachment 19). This assumption is incorrect: water collected from roofs for rainwater tanks does not fall on land.

South Australian Government Policy

The state government says it has the right to tax the use of water collected from roofs for rainwater tanks, and already imposes a tax on certain non-residential use (Attachment 22).

Before water can be taxed it must be ''taken''.

Water is ''taken'' when it is legally captured from its natural source and taken under a person's control.

Government policy is that ''taken'' water is owned by the person who takes it (Attachment 23).

The policy is contained in the government publication, ''Who Owns Water?'', which says, ''Once water has been legally captured from its natural source and taken under a person's control, that person could then be said to own that particular water'' (Attachment 24).

According to the government, water on a person's roof is surface water.

Surface water is ''non-taken'' water.

However, it is impossible for water on a roof to be ''non-taken'' when water in a rainwater tank is ''taken''.

The legal meaning of surface water is water flowing over land after having fallen as rain.

It is impossible for the meaning of surface water to include water collected from roofs for rainwater tanks.

To clarify the government's position, the government has been asked this question: Is water legally captured from its natural source and taken under a person's control when it falls as rain on that person's roof?

The answer ''no'' will mean that a person does not capture rain and take it under their control by means of their roof.

The answer ''yes'' will mean that the government does not have the legal right to tax the use of water collected from roofs for rainwater tanks.

Tasmanian Government Policy

Government policy is that rain on a building is dispersed surface water because the rain would have fallen on land were the building not there; however, the government is unsure whether a person's roof is a device for taking rain (Attachment 25).

The matter is resolved by reference to state building regulations, which set out the manner by which rain must be captured and taken under a person's control when it falls on that person's roof.

Australian Capital Territory Government Policy

Government policy is that a roof is not a device for taking rain; and that water in a rainwater tank is non-taken water (Attachment 26). Under the Water Resources Act 2007, the meaning of surface water includes water flowing over land after having fallen as rain ''that has been collected in a dam, reservoir or rainwater tank''.

However, it is impossible to collect water from a roof for a rainwater tank unless a roof is a device used for taking rain. Therefore, it is impossible for water collected from roofs for rainwater tanks to be included in the meaning of surface water.

Perversely, the government acknowledges the use of roof tops ''as a means to capture rainwater and store this water in rainwater tanks'' (Attachment 27).

Western Australian Government Policy

Government policy is that under common law, water belongs to the person who lawfully captures it; however, the government is unsure whether a person captures rain with their roof (Attachment 28).

Greg Cameron

ATTACHMENT 1

-----Original Message-----
From: Information [mailto:Information@nswalp.com]
Sent: Tuesday, 20 March 2007 11:11 AM

Subject: RE: Ownership of roofwater in NSW

Dear Mr Cameron

Thank you for taking the time to express your views.

The water that falls on a person's roof is considered the property of that person. That's why we are encouraging people to install rainwater tanks to help conserve town water supplies.

It is only the Federal Liberal government that has been talking about taxing people for the rain they collect.

With best wishes

ALP Information Office

Mr Cameron wrote:

Dear Mr Iemma and Mr Debnam:

Do you know who owns water that falls on a person's roof in NSW?

Your answer will be appreciated.

Yours faithfully,

Greg Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
Benalla VIC 3671
03 576 33339

Copy:

Media

ATTACHMENT 2

-----Original Message-----
From: Greg Cameron
Sent: Tuesday, 20 March 2007 11:43 AM
To: Hon Morris Iemma
Subject: Labor confirms rainwater ownership

Hon Morris Iemma MP
Premier of New South Wales
Leader of the NSW Labor Party

Dear Mr Iemma,

Thank you for advising Labor policy on rainwater ownership in New South Wales to be, "The water that falls on a person's roof is considered the property of that person."

Yours faithfully,

Greg Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
Benalla VIC 3671
03 576 33339

Copy:

MPs
Mayors
Media

ATTACHMENT 3

New South Wales

The Hon Nathan Rees MP
Minister for Emergency Services
Minister for Water Utilities

MO Ref: 00617
SW Ref: MD 002767

Mr Greg Cameron
Urban Rainwater Systems
PO Box 498
BENALLA VIC 3671

Dear Mr Cameron

Thank you for your letter regarding the ownership of rainwater collected from urban roofs.

I am advised by Sydney Water that although it does not assert ownership over rainwater collected from urban roofs in Sydney metropolitan areas, it is aware that legislation exists to assist in determining ownership of water.

Generally, rainwater that falls into a gutter comes within the control of the person who has the right to control the relevant premises (owner or tenant) as the case may be. Prima facie ownership of that water rests in that controller provided he/she asserts such a right over that water, for example, by trapping or collecting it in a rainwater tank.

Halsbury's Laws Of Australia (a legal publication) suggests that, at common law, water itself is "*not capable of being the subject of property or of being granted*" but that "*flowing water is of public right common to all who have access to it*", with the common law right to groundwater being "*based on the absolute right of the overlying landowner to extract resources from the land*".

In most cases, common law rights have been supplanted by statutes such as the *NSW Water Management Act 2000*. Under this Act, Crown rights apply to (1) water in rivers, lakes and aquifers; (2) water conserved by any works under the control or management of the Government; and (3) water occurring naturally on or below the surface of the ground. Particular attention should be drawn to section 392(1) of the Act, which is attached. The balance of the Act can be downloaded at www.legislation.nsw.gov.au.

I trust that this information is of assistance.

Yours sincerely

19 NOV 2007

Nathan Rees MP
Minister for Emergency Services
Minister for Water Utilities

Encl

Level 25, 9 Castlereagh Street, Sydney NSW 2000
Telephone (02) 9228 5050 Facsimile (02) 9228 5099
reception@rees.minister.nsw.gov.au

ATTACHMENT 4

NSW Government
Department of Water & Energy

MSO08/00853
08/966

Mr G Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
BENALLA VIC 3671

11 JUL 2008

Dear Mr Cameron

I refer to your recent emails about rainwater tank systems and associated water access ("property") rights. I note that these are only a few of many that you have written and copied to other Ministers in all jurisdictions. The Minister for Water, the Hon Nathan Rees MP, has asked me to respond on his behalf.

Dealing with a large number and continual stream of letters from one person on this issue creates an unacceptable demand on the limited resources available to the Minister and the Department of Water and Energy. Since the NSW Government position has been clearly stated to you, there seems to be little benefit in continued correspondence on the issue.

Regarding your latest email, the rights to water have indeed been substantially and generally vested in governments in all States and Territories. The fact that roofwater has not been so vested in some States and Territories seems irrelevant to the National Water Initiative or urban water management in NSW, and this is not an error of any consequence.

I note your vision for widespread adoption of rainwater tanks to solve urban water problems, and I admire your enthusiasm. However, there are numerous valid reasons for the limited take-up of rainwater tanks, even with generous rebates such as provided by the NSW Government. Current practices suggest that these factors are recognised by many members of the community, who unfortunately do not share your passion.

I am confident, however, that over time, the installation of tanks will increase significantly.

Yours sincerely

Mark Duffy
Director-General

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ATTACHMENT 5

New South Wales

Minister Phillip Costa MP

Minister for Water
Minister for Regional Development
Minister for Rural Affairs

MSO08/02333
08/2139
- 3 MAR 2009

Ms Pru Goward MP
Member for Goulburn
PO Box 684
BOWRAL NSW 2576

Dear Ms Goward

I refer to your letter of 6 August 2008 to the former Minister for the Environment and Climate Change, the Hon Verity Firth MP, on behalf of Mr Greg Cameron from Urban Rainwater Systems Pty Ltd. As the matter of water recycling comes under my administration, I have been asked to respond to your concerns directly.

Mr Cameron has written over 50 letters to the NSW and Commonwealth Governments on access to rainwater, rainwater tanks and associated issues. Mr Cameron has previously raised his concerns about the rights of people to collect and store rainwater, resulting in six replies from the NSW Government on the one issue.

As indicated to Mr Cameron on each occasion, the rights to water have been substantially and generally vested in governments in all States and Territories. The fact that roofwater has not been so vested in some States and Territories seems irrelevant to the National Water Initiative, or urban water management in NSW, and this is not an error of any consequence.

Dealing with a large number and continual stream of letters from one person on the same issue creates an unacceptable demand on the limited resources available to the Minister and the Department of Water and Energy. Accordingly, Mr Cameron has been advised that the NSW Government will not provide him with multiple replies on the same issue.

If you require further information, I have arranged for Mr Anthony Reed, Chief of Staff in my offices to act as the contact on this matter. You may contact Mr Anthony Reed on (02) 9228 4291.

Yours sincerely

The Hon. Phillip Costa MP
Minister for Water
Minister for Rural Affairs
Minister for Regional Development

Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, Australia, 2000
Telephone: (02) 9228 5055 • Facsimile: (02) 9228 5388 • Email: office@costa.minister.nsw.gov.au

ATTACHMENT 6

-----Original Message-----
From: VIC ALP Information [mailto:info@vic.alp.org.au]
Sent: Tuesday, 14 November 2006 2:21 PM
To: Greg Cameron
Subject: RE: Rainwater Ownership Rights

Dear Mr. Cameron,

Thank you for taking the time to contact the Victorian ALP.

Obviously water is an extremely important issue and your question is an important one.

The answer to your question is: Water that falls on a person's roof in Victoria is the property of that person and Labor supports this position

I hope that clarifies the situation.

Sincerely Yours,

Tim Sonnreich

Information Services Unit
Australian Labor Party - Victorian Branch
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Visit: www.alpvictoria.com

ATTACHMENT 7
-----Original Message-----
From: Tim.Fisher@epa.vic.gov.au [mailto:Tim.Fisher@epa.vic.gov.au]
Sent: Wednesday, 24 January 2007 3:53 PM
To: Greg Cameron
Subject: RE: FW: Response to EPA Review

Dear Greg -

My sincere apologies for the delayed response to your earlier correspondence. I provide you with answers to your queries as follows:

1. Ownership of rainwater: The Government's clear position is that water that falls on a person's roof in Victoria is the property of that person.
This position is recognised and accepted in the course of the current Alternative Urban Water Sources review.

2. 5 Star Building Standard: It is not EPA's understanding that the 5-Star Standard for building in Victoria presumes that rainwater is the property of the State whereby its use can be regulated.

Details of the existing 5 Star standard are set out in the Building Commission's Practice Note 2006-55 (www.buildingcommission.com.au). You may wish to contact the Department of Sustainability and Environment if you require further information on 5 Star.

3. Plumbing connection with mains supply: At present, rainwater tanks can be installed and plumbed directly with mains supply, when done so in compliance with building and planning, and plumbing regulations including backflow prevention devices etc. As discussed in section 9.4.1 of the *Phase 1 Discussion Paper: A Framework for Alternative Water Supplies*, there is a potential health risk associated with cross connection between the rainwater supply and mains drinking water pipework, however this risk can be addressed through the provisions of *AS/NZS 3500:2003 National Plumbing and Drainage Code* and the *Plumbing Regulations 1998*. There is no intention to change this arrangement.

I understand that the issue of the ownership of water falling on a person's roof has been previously addressed by the Department of Sustainability and Environment and the Department of Premier and Cabinet.

The scope of the Alternative Urban Water Source project is clearly limited to developing the assurance and regulatory framework necessary to enable the safe and sustainable use of alternative water sources, such as rainwater. The review is not addressing any issues associated with, for example, the ownership or allocation of any of these sources.

More generally, EPA believes that there is considerable potential to make much more use of rainwater and stormwater, and in the process help to reduce
- the growing pressure on supplies of potable mains water, and
- the transport of stormwater pollutants to receiving waterways and coastal waters.

I trust this information addresses your concerns.

Regards - Tim

Tim Fisher

Manager, Water & Catchment Unit

EPA

GPO Box 4395QQ

MELBOURNE 3001

ATTACHMENT 8

-----Original Message-----
From: Nick.Rintoul@dse.vic.gov.au
Sent: Saturday, 3 February 2007 9:28 PM
To: Greg Cameron
Subject: Re: Rainwater ownership in Victoria
Greg,

As discussed with you, the State of Victoria's (i.e. the Crown's) right to the use, flow and control of water is extends to all water in a waterway and groundwater. The terms "waterway" and "groundwater" are defined in the Water Act.

If water falls on a person's roof, it may, after it has left that roof, become water in a waterway or groundwater. For the period that the water remains on the roof, it is not water in a waterway or groundwater.

The Act specifically states that a person has the right to use rainwater on his or her land.

You have asked whether the statement that "In Australia, water is vested in governments" is correct in relation to Victoria. This statement does not say all water in Australia is vested in governments.

I will pass on your email to our Water Conservation branch.

Regards,

Nick Rintoul

ATTACHMENT 9

Hon Henry Palaszczuk MP
Member for Inala

Queensland Government

Minister for Natural Resources and Mines

Ref C18 3574805

26 OCT 2005

Mr Greg Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
Benalla Vic 3671

Dear Mr Cameron

The Honourable Henry Palaszczuk MP, Minister for Natural Resources and Mines, has asked me to reply to your email of 27 September 2005 concerning rights to rainwater.

Based on the definition of water in the *Water Act 2000*, water collected in rainwater tanks does not fall within the ownership of the State under section 19 of the *Water Act 2000*. Therefore, as advised in previous correspondence dated 25 August 2005, the *Water Act 2000* does not regulate rainwater tanks or the collection of rainwater into these tanks. Matters relating to the regulation of rainwater tanks do not fall within the Minister's portfolio responsibilities.

The Minister thanks you for bringing this matter to his attention. If you require any further information regarding this matter, please do not hesitate to contact

Yours sincerely

Carmen Meshigs
Senior Policy Advisor
Office of the Minister for Natural Resources and Mines

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ATTACHMENT 10

Queensland Government

Hon Henry Palaszczuk MP
Member for Inala

Minister for Natural Resources and Mines

Ref CTS 00017/06

31 JAN 2006

Mr Greg Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
Benalla Vic 3671

Dear Mr Cameron

The Honourable Henry Palaszczuk MP, Minister for Natural Resources and Mines has asked me to reply to your email of 13 December 2005 concerning section 19 of the *Water Act 2000*.

I refer to my previous letter of 26 October 2005 in which I advised that based on the definition of water in the *Water Act 2000*, water collected in rainwater tanks is not vested in the State under section 19 (Chapter 2) of the *Water Act 2000*. I would like to confirm this as the Departmental position on this matter.

The purpose of Chapter 2 of the *Water Act 2000* is to advance sustainable management and efficient use of water and other resources by establishing a system for planning, allocation and use of water. The definition of water for the purpose of Chapter 2 does not include water collected from roofs for rainwater tanks

For completeness I advise that Chapter 3 of the *Water Act 2000* sets out the regulatory framework for providing water and sewerage services in Queensland, which includes specifying the functions, obligations and powers of service providers.

Under Chapter 3, water service providers (which are often local governments) are given the necessary powers to provide an effective water service to their customers. An example of this is the ability to impose water restrictions on customer under section 388.

I would like to advise that since the last correspondence, an amendment to section 388 of the *Water Act 2000* has occurred, which gives water service providers the power to apply water restrictions to water, including non-Act water, taken from a rainwater tank "*connected to the service provider's reticulated supply*".

Rainwater tanks that are connected to the reticulated supply, may use combined rainwater and reticulated supply for domestic purposes, and to water gardens. Although the reticulated water connection is metered, in most cases there is no practical means to measure whether rainwater or reticulated water is actually taken from the tank.

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The practicalities of a local government enforcing water restrictions over the use of water from these *connected* rainwater tanks, is difficult, and it is recognised that average use from a rainwater tank will invariably include reticulated water at some point. The recent amendment to the *Water Act 2000* promotes equity amongst the water service provider's customers by encouraging consistency in the application of restrictions among like customers.

I stress that this new provision covered under section 388 does not apply to rainwater tanks that are not connected to reticulated supply.

The remaining issues you have raised in relation to the legislation are complex. In respect to any further questions relating to the interpretation of sections of the *Water Act 2000*, I would suggest you obtain your own legal advice based on your specific issues.

The Minister thanks you for bringing this matter to his attention. If you require any further information regarding this matter, please do not hesitate to contact Ms Leanne Barbeler, Principal Project Officer, Brisbane of the Department on telephone (07) 3224 7764.

Yours sincerely

Michael Trendy
Senior Policy Advisor
Office of the Minister for Natural Resources and Mines

ATTACHMENT 11

Hon Henry Palaszczuk MP
Member for Inala

Queensland Government

Minister for Natural Resources, Mines and Water

Ref CTS 00848/06

14 MAR 2006

Mr Greg Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
Benalla Vic 3671

Dear Mr Cameron

The Honourable Henry Palaszczuk MP, Minister for Natural Resources, Mines and Water has asked me to reply to your letter of 13 February 2006 regarding rainwater tank legislation.

Please refer to my letter dated 31 January 2006 to you relating to ownership of water and rainwater tanks.

With regard to your queries relating to the Model Rainwater Tank Standard and Local Government requirements regarding control of water in rainwater tanks, these matters are administered by the Department of Environment, Local Government, Planning and Women. I note that your email dated 15 February 2006 was also forwarded to the Honourable Desley Boyle MP.

The Minister thanks you for bringing these matters to his attention. If you require any further information regarding these matters, please do not hesitate to contact Ms Leanne Barbeler, Principal Project Officer of the Department on telephone (07) 3224 7764.

Yours sincerely

Michael Tandy
Senior Policy Advisor
Office of the Minister for Natural Resources, Mines and Water

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ATTACHMENT 12

OFFICE OF THE
LORD MAYOR
Brisbane

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Tel 07 3403 4400
Fax 07 3403 9930
LORDMAYOR@brisbane.qld.gov.au
Postal
GPO Box 2287
Brisbane Qld 4001 Australia

17 May 2006

Mr Greg Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
BENALLA VIC 3671

Dear Mr Cameron

I refer to your email of 22 February 2006 seeking confirmation on a number of matters relating to Brisbane City Council's Rainwater Tank Policy. I apologise for the delay in replying.

In relation to your first three questions, I can confirm that the right to collect water from roofs in rainwater tanks and the right to use that water is vested in the building owner. You are also correct that water collected from roofs is considered to be the property of the building owner.

Additionally, you sought confirmation that the water supply system from a rainwater tank may be plumbed in accordance with clause 14.3.3 of the applied provisions of the Plumbing and Drainage Regulation 2003 (AS3500:1/2003/Amdt). I am advised that this Standard has been adopted under the Queensland State Plumbing and Drainage Act. Council is currently reviewing its rainwater tank policy for compliance with this standard.

In the interim Council strongly urges that rainwater be used in accordance with Queensland Health Policy, *Managing the Use of Rainwater Tanks* and the Australian Standard Plumbing and Drainage Regulation 2003 (AS/NZ 3500).

Queensland Health policy states: "Queensland Health endorses the use of water stored in rainwater tanks to meet water demand. This is providing that the rainwater tank and rainwater collection and distribution system are appropriately designed, installed and maintained and the quality of the water is appropriate for the intended use. All rainwater tanks, regardless of their intended use, shall be designed, installed and maintained to prevent mosquito breeding".

Additionally, Queensland Health "does not recommend the use of water from rainwater tanks for drinking and food preparation if a potable reticulated water supply is available. For other uses involving lower levels of oral exposure, such as bathing or tooth brushing, consideration must be given to the quality of the water and whether it is appropriate for the intended use".

.../2

Further, AS/NZ 3500 defines potable and drinking water as, "water suitable for human consumption, food preparation, utensil washing and oral hygiene" and states that only potable water shall be supplied to plumbing fixtures or outlets for human consumption, bathing, food preparation, utensil washing, and clothes washing.

Brisbane City Council's policy is to support the connection of the rainwater tank to outdoor hoses, toilet flushing and the cold water laundry tap. Where there is a connection between service pipes the key points are as follows:

- The backflow device is the protective measure taken by Council. The device is to be used in conjunction with rainwater and the network water supply.
- In relation to rainwater supply and network operator's supply (town water), the level or type of device requested by the network utility operator becomes the minimum standard of protection required at any other cross connection.
- Where rainwater is interconnected with the town water and supplies water to a water closet, the level of back flow required on the cross connection is the same level as decided by the network utility operator.
- A single check valve is suitable to prevent the town water flowing into a rainwater tank.

I thank you for contacting me with your inquiry and I trust this information is of assistance to you.

Yours sincerely

Campbell Newman
LORD MAYOR

Ref: A06/25894

ATTACHMENT 13

Hon Desley Boyle MP
Member for Cairns

Queensland Government

Minister for Environment

Minister for Local Government and Planning

Minister for Women

MC06.2427
L/06/00931

06 JUN 2006

Ms Rosa Lee Long MP
Member for Tablelands
210 Byrnes Street
MAREEBA QLD 4880

Dear Ms Lee Long

I refer to your letter of 9 March 2006 to the Honourable Peter Beattie MP, Premier, on behalf of Mr Greg Cameron regarding the legislation surrounding rainwater tanks.

As you are aware, the Premier's office forwarded a copy of your correspondence to both the Honourable Henry Palaszczuk MP, Minister for Natural Resources, Mines and Water and myself for consideration and reply. Minister Palaszczuk's office has also forwarded a copy of this correspondence to me for reply. Please find attached a copy of my recent correspondence to you for your convenience.

My office and the Department of Local Government, Planning, Sport and Recreation have corresponded with Mr Cameron on a number of previous occasions, addressing the concerns in his correspondence to you.

Mr Cameron has been advised that reforms have been introduced in Queensland this year to support water conservation and improve water management. These reforms allow councils to mandate the inclusion of rainwater tanks for new homes where it is demonstrated to be in the best interests of the local community. An example would be the conservation of the potable water supply in drought conditions.

In Mr Cameron's correspondence to you he asks what State laws require the collection of water from roofs for rainwater tanks and what laws stipulate the uses of that rainwater. Part 3A of the *Standard Building Regulation 1993* (SBR) allows a local government in a planning instrument to designate all or parts of its region as areas where rainwater tanks must be installed for all new houses. However before a council can take such action, it must determine that rainwater tanks are justified, taking into account the costs and benefits to the community.

The SBR also provides for councils to mandate a minimum use for rainwater tanks. The legislation requires a council to state whether the tank water is connected for external use only, or external uses plus toilet flushing and cold water supply for the washing machine.

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As Mr Cameron has been previously advised, the rainwater collected from roofs for rainwater tanks is not owned by the State. However, State legislation places some restrictions on how rainwater can be plumbed and used. In the same way, the State does not own a person's motor vehicle but State legislation places restrictions on how the vehicle can be used. The regulations are in place to protect public health and safety.

With rainwater, for example, building owners are required to submit applications to council if they wish to connect their rainwater tank supply to internal plumbing fixtures.

I hope this information is of assistance when replying to Mr Cameron.

Yours sincerely

Desley Boyle MP
Minister for Environment
Minister for Local Government and Planning
Minister for Women

Att.

ATTACHMENT 14

Hon Craig Wallace MP
Member for Thuringowa
Ref CTS 11133/06

Queensland Government

Minister for Natural Resources and Water and Minister Assisting the Premier in North Queensland

- 6 DEC 2006

Mr Greg Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
Benalla Vic 3671

Dear Mr Cameron

I refer to your email of 10 October 2006 to the Honourable Peter Beattie MP, Premier concerning the National Water Initiative Agreement and in particular the rights to water under the *Water Act 2000*. The Office of the Premier has referred your letter to the Honourable Craig Wallace MP who has asked me to respond on his behalf.

In your email you raise the issues of rights to water under the *Water Act 2000*, which has previously been addressed in correspondence directed to you from the Department dated 26 October 2005 and 31 January 2006 respectively and also in additional responses the Department has forwarded to a number of electorate offices making representation on your behalf.

In relation to the issue of requiring rainwater tanks to be a building fixture of all buildings in Queensland at point of sale, the Queensland Government recognises rainwater tanks have the potential to supplement our water supply, particularly during water shortages. Consequently, rainwater tanks have been incorporated into the sustainable housing measures by the Queensland Government.

In May 2006, the legislative amendments were also made to require new houses in Queensland to be more sustainable in terms of water and energy efficiency. As part of these changes, local governments now have the power to mandate the installation of rainwater tanks in new homes, and I understand that some local governments have already made changes, or are in the process of doing so.

Currently, rather than mandate the installation of rainwater tanks in existing homes, the Queensland Government is encouraging owners of homes in south east Queensland to install rainwater tanks by providing a rebate of $1000 to subsidise the purchase and installation of rainwater tanks (except when a rainwater tank is required under the sustainable housing measures) through the Home WaterWise Rebate Scheme. For more information on the rebate which is available through the Home WaterWise Rebate Scheme, please call telephone 1800 243 585 or refer to the website of the Department of Natural Resources and Water at www.nrm.qld.gov.au.

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Email NRW@ministerial.qld.gov.au
Website www.nrw.qld.gov.au

Should you have further enquiries on rainwater tanks and the governing legislation, I would suggest you contact the Department of Local Government, Planning, Sport and Recreation who have responsibility for the rainwater tank standards and legislation. For further enquiries regarding water use and supply within south east Queensland you should contact the Queensland Water Commission on telephone 3035 7220 or via their website at www.qwc.qld.gov.au.

The Minister thanks you for bringing this matter to his attention.

Yours sincerely

Michael Tandy
Senior Policy Advisor

ATTACHMENT 15

Office of the Premier

Executive Building
100 George Street Brisbane
PO Box 15185 City East
Queensland 4002 Australia
Telephone +61 7 3224 4500
Facsimile +61 7 3221 3631
Email ThePremier@premiers.qld.gov.au
Website www.thepremier.qld.gov.au

For reply please quote: *JC/ERP – TF/08/6745 – DOC/08/18316*

22 AUG 2008

Mr Greg Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
BENALLA VIC 3671

Dear Mr Cameron

Thank you for your email of 23 July 2008 concerning the Queensland Government's position on access to rainwater in rainwater tanks. I have been requested to reply to you on the Premier's behalf.

On 14 November 2007 the Queensland Parliament passed legislation to make it clear that rainwater collected from a roof for a rainwater tank belongs to the homeowner and that no tax or charge can be levied on this water. A water restriction may apply to water in a rainwater tank but only where the tank is connected to the reticulated supply and is supplemented from the reticulated supply.

I trust that this information has been of assistance to you.

Yours sincerely

Phil Reeves MP
Parliamentary Secretary to the Premier of Queensland

Queensland Government

ATTACHMENT 16

Northern Territory Government

DEPARTMENT OF
NATURAL RESOURCES, ENVIRONMENT, THE ARTS AND SPORT

Business Unit/Division Name
Goyder Centre
25 Chung Wah Terrace, Palmerston
Postal address PO Box 496
PALMERSTON NT 0831
Tel 08 8999 4892
Fax 08 8999 3667
Email ian.lancaster@nt.gov.au

Our ref M10-034NR

Greg Cameron

Dear Mr Cameron

Thank you for your email to Minister Hampton dated 25 March 2010 regarding common law right to take rain water falling on rooves in the Northern Territory. Minister Hampton has asked me to respond to your enquiry on his behalf.

The Northern Territory *Water Act* vests all water in the Territory. The definition of 'water' in this regard however is:

a) the water flowing or contained in a waterway; or
b) groundwater.

I can therefore confirm that there is no specific legislated alteration to the common law right to take rain that falls on a person's roof. There is also no current intentions by the Northern Territory Government to make any changes to that situation.

Yours sincerely

Ian Lancaster
Director Water Resources
Natural Resources Division
NRETAS

14 April 2010

ATTACHMENT 17

-----Original Message-----
From: Matthews, Ken
Sent: Friday, 25 August 2006 6:00 PM
To:
Cc: Aeuckens, Volker; Thompson, Malcolm
Subject: Rain Water Tanks [UNCLASSIFIED / NO CAVEATS]

Dear Mr Cameron
I refer to your email of Friday 2 June on which I was a cc addressee. While I know that Malcolm Turnbull has previously responded you may still be interested in the NWC views on the points you raised. I apologise for the delay in responding.
You asked "who owns water collected from roofs for rainwater tanks in each State and Territory? There is no straightforward answer to this question and I have to say that I am not convinced that ownership or who owns the water in the rainwater tank should be an issue as I will explain below. Legally, all water in Australia is vested in governments. Governments however, allow others to access and use water for a variety of purposes including for irrigation, industrial, mining, urban and rural communities and amenity value. These entitlements to use (not own) water are issued on the basis of legislation in each jurisdiction. Entitlements are generally issued for classes of water that are in demand and deemed to be in need management by legislation. Regulations are also traditionally applied in regard to wastewater and stormwater that needs to be managed in terms of its impacts rather than its use (usually under Health, Building or Planning Acts). From time to time particular uses that may have been largely unregulated may be assessed as a risk or as potentially having an impact on entitlements issued to others (eg. interception from farm dams) and even though the rainwater falls from the sky and is captured on private land, the water stored in the farm dam may then require an entitlement to be issued or purchased on the market (as applies in Victoria). This is not so different from the capture of rainwater on a private roof or stormwater on a large car park or other surface for which there is currently no specific entitlement regime.
Currently the priority of governments is to ensure that water captured in rainwater tanks is safe for consumption. No entitlement to use the water is specifically issued under a water management Act. Entitlement to (not ownership of) the water captured would by default rest with the building owner, provided that it has been captured in accordance with whatever regulation might apply for rainwater tanks in each jurisdiction.
As we understand it, governments have not yet considered the capture of water from roof in rainwater tanks to be of sufficient magnitude to warrant the issuing of specific entitlements to use this class of water. However, if rainwater tanks were to be adopted on a large scale such that their existence impacts significantly on the integrated water cycle, consideration could be given to setting an entitlement regime for this class of water. It is important to think of the capture of water from any source in an integrated way. Taking your reference to Goulburn as an example, if 1000 homes were to install 5 KL tanks with an annual yield of 57KL, this is 57 ML that would not have reached a river or groundwater system or, viewed another way, is taken from either the environment's entitlement or another productive use. So as you can see these things are not that straightforward and rainwater tanks is only one option not the solution. As Malcolm Thompson has pointed out before, the NWC supports the use of rainwater tanks as an option and the NWI provides the mechanism to allow rainwater tanks to be considered as an option.
As you point out, and my comments above confirm, we are moving into a constantly changing field where sources of water once regarded as a nuisance to be disposed of, are now being considered as a realistic supplement to the more traditional water sources. Governments are responding and adapting to this changing environment. The NWC recognises that there is uncertainty about entitlements to "new sources" of water such as stormwater (including capture from roofs), recycled wastewater, desalinated water and intercepted water and is initiating work that will assist governments to decide on how they should most effectively be managed
Thank you for your enquiry.
Ken Matthews

ATTACHMENT 18

Minister for the Environment and Water Resources

Mr Stewart McArthur MP
Government Whip
Member for Corangamite
2/75 High Street
BELMONT VIC 3216

12 JUN 2007

Dear Mr McArthur Stewart

Thank you for your personal representation of 7 May 2007 on behalf of Mr Greg Cameron concerning rainwater rights.

It is difficult to apply the concept of 'property' to naturally occurring water. It is better to look to the various 'legal rights' which arise in relation to that water. All states and territories have passed legislation which provides that the state or territory has primary rights of access to water, though these primary rights vary from state to state. Subject to these state and territory primary rights, and other relevant laws, the owner of the land will have certain rights in relation to water which falls on their land, including roof water. Historically, under the common law, rights to water were incidental to owning land. Over time laws have been enacted by states and territories to vest the water in the Crown and provide for sensible water sharing in an arid continent. State and territory legislation provides for the use of this water, and for the state or territory to grant rights to this water to persons. Clause 2 of the National Water Initiative refers to these concepts.

State and territory governments could establish entitlement regimes in order to regulate the use of water that falls on a person's roof. These entitlements to use the water would be issued pursuant to legislation in each jurisdiction. However, the circumstances under which state or territory governments might issue specific entitlements in relation to the capture of water from roofs and the nature of those entitlements would be a matter for those governments.

I would like to point out that the National Water Commission has not proposed that entitlements be established for water that falls on a person's roof. The Australian Government sees no need for such an entitlement regime and strongly supports the use of rainwater tanks as part of integrated water cycle management for our cities and towns.

In relation to the specific questions posed by Mr Cameron relating to the interpretation of Queensland and New South Wales legislation, I suggest these are best answered by the respective state governments.

Yours sincerely

Malcolm Turnbull

Parliament House, Canberra ACT 2600 Tel 02 6277 7640 Fax 02 6273 6101

ATTACHMENT 19

150 SENATE Thursday, 9 August 2007

(Question No. 2971)

Senator Bartlett asked the Minister representing the Minister for the Environment and Water Resources, upon notice, on 29 January 2007:

With reference to the Government's water policy—

(1) In Australia, is the water that falls on a person's roof, the property of that person or the property of government.

(2) If it is not the property of the individual person, under what legislation in Australia, are rights to water that falls on a person's roof vested in governments, as claimed under clause 2 of the National Water Initiative (NWI) agreement.

(3) Under clause 2 of the NWI agreement, can governments, at their discretion, set entitlement regimes for the use of water that falls on a person's roof in Australia; if so, under what circumstances would state and federal governments issue a specific entitlement to persons who capture water from their roof and what would that entitlement be.

(4) What magnitude of rainwater collected from roofs would be sufficient to warrant the issuing of specific entitlements to use this class of water as has been proposed by the National Water Commission.

(5) Does the Government rule out setting an entitlement regime for persons to use water collected from roofs in rainwater tanks; if so, will the Federal Government ask the state governments to amend the NWI agreement to make clear that no rights to water that falls on a persons roof are vested in governments.

(6) Is it correct that section 7 of the Victorian *Water Act 1989* states, 'The Crown has the right to the use, flow and control of all water in a waterway and all groundwater'; if so, is it the Commonwealth's view that, for the purposes of the NWI, water from a person's roof comes under this definition.

(7) Is it correct that section 392 of the New South Wales *Water Management Act 2000* states, 'the rights to the control, use and flow of…all water occurring naturally on or below the surface of the ground, are **States water rights**'; if so, does water from a person's roof come under this definition.

(8) Is it correct that section 19 of the Queensland *Water Act 2000* states, 'All rights to the use, flow and control of all water in Queensland are vested in the State', where: (a) '*water* means … (a) water in a watercourse, lake or spring; (b) underground water; (c) overland flow water; (d) water that has been collected in a dam'; and (b) '*Overland flow water* does not include … water collected from roofs for rainwater tanks'; if so, does water from a person's roof come under this definition.

(9) Is it correct that section 124 of the *South Australian Natural Resources Management Act 2004* states, 'the occupier of land is entitled to take surface water from the land for any purpose' and does surface water mean 'water flowing over land'.

(10) Is surface water in South Australia: (a) water that is not captured and controlled; and (b) no-one's property.

(11) Can water that falls on a person's roof in South Australia be surface water.

Senator Abetz—The Minister for the Environment and Water Resources has provided the following answer to the honourable senator's question:

(1) It is difficult to apply the concept of 'property' to naturally occurring water. It is better to look to the various 'legal rights' which arise in relation to that water. All states and territories have passed legislation which provides that the state or territory has primary rights of access to water, though these primary rights vary from state to state. Subject to these state and territory primary rights, and other relevant laws, the owner of the land will have certain rights in relation to water which falls on their land, including roof water.

(2) Historically, under the common law, rights to water were incidental to owning land (riparian rights and other related rights). Over time laws have been enacted by states and territories to vest the water in the Crown and provide for sensible water sharing in an arid continent. The reference in clause 2 of the NWI is to these concepts in the state and territory regimes.

(3) State and territory governments could establish entitlement regimes in order to regulate the use of water that falls on a person's roof. These entitlements to use the water would be issued pursuant to legislation in each jurisdiction. The circumstances under which state or territory governments might issue specific entitlements in

relation to the capture of water from roofs, and the nature of that entitlement would be a matter for those governments.
(4) This decision is a matter for each of the states and territories. It has not been proposed by the National Water Commission.
(5) The Government sees no need for such an entitlement regime but as stated in response to part (4) of your question above, this is a matter for each of the states and territories.
(6) (7), (8), (9), (10) and (11) These questions go to the legal interpretation of state legislation. The Commonwealth is not in a position to provide an interpretation of these provisions for the purpose of answering these questions as these are not matters which are currently the subject of Commonwealth responsibility or policy development.

ATTACHMENT 20

Minister for Climate Change and Water

RECEIVED
17 MAR 2009
Senator the Hon. Ian Macdonald
Townsville Office

12 MAR 2009

Senator the Hon Ian Macdonald
Senator for Queensland
PO Box 2185
TOWNSVILLE QLD 4810

Dear Senator Macdonald

Thank you for your personal representations of 4 December 2008 on behalf of Mr Greg Cameron to the Minister of the Environment, Heritage and the Arts, the Hon Peter Garrett AM MP and me, concerning rights to use water collected from roofs in rainwater tanks. I regret the delay in responding.

Irrespective of whether state legislation, such as the Queensland *Water Act 2000*, regulates the use of rainwater that falls on a person's roof, under the Australian Constitution the states and territories have responsibility for land and water management. In previous correspondence with Mr Cameron I have suggested that queries about regulation of use of rainwater are best directed to the state and territory governments who are responsible for rainwater and water resource management issues.

With regard to Commonwealth legislation of the *Water Act 2007* (Water Act) and the *Water Amendment Act 2008*, the right to use rainwater collected from roofs for rainwater tanks in Queensland is not vested in the Commonwealth Government. The Water Act is based on a combination of Commonwealth constitutional powers and a referral of certain powers from the Basin States to the Commonwealth.

The Water Act requires the Murray-Darling Basin Authority to prepare a strategic plan for the integrated and sustainable management of water resources in the Murray-Darling Basin (the Basin). This plan is referred to as the Basin Plan.

The Basin Plan will set limits on the amount of water (both surface and ground water) that can be taken from Basin water resources on a sustainable basis - known as long-term average sustainable diversion limits. These limits will be set for Basin water resources as a whole and for individual water resources. States and territories will be responsible for managing water resources within those limits, including at point of collection.

Parliament House, Canberra ACT 2600 Tel 02 6277 7920 Fax 02 6273 7330

Mr Cameron may be interested to know that on 30 January 2009, I announced that the Australian Government is offering rebates of up to $500 to households for either:

- the purchase and installation of a new rainwater tank which is connected for internal reuse of the water for toilet and/or laundry use; or
- the purchase and installation of a permanent greywater treatment system.

For more information on how to apply, contact the national information line on 1800 808 571 or the website of the Department of the Environment, Water, Heritage and the Arts at: http://www.environment.gov.au/water/index.html or email: nrgi@environment.gov.au.

By providing rebates and grants for households to install rainwater tanks and greywater systems, this program will support Australians who are prepared to take personal responsibility for conserving our water supplies. This is one of a number of Government initiatives aimed at driving investment in diverse water supply options and encouraging industry and the community to save water and use water more efficiently. These initiatives reflect the high priority the Government attaches to improving water security for towns and cities.

Thank you for bringing Mr Cameron's concerns to my attention.

Yours sincerely

Penny Wong

ATTACHMENT 21

Minister for Climate Change and Water

C09/3424

The Hon Greg Hunt MP
Shadow Minister for Climate Change
Environment and Water
Member for Flinders
PO Box 274
HASTINGS VIC 3915

- 7 MAY 2009

Dear Mr Hunt

Thank you for your representation of 29 January 2009 forwarded by your office on behalf of Mr Greg Cameron concerning rights to water that falls on a person's roof. I regret the delay in responding.

Mr Cameron has written to me on numerous occasions regarding the role of Commonwealth and state legislation in the rights to water that falls on a person's roof. A copy of the response provided to Senator Macdonald regarding a recent letter from Mr Cameron on the same subject is attached for your information.

As you would be aware the *Water Act 2007* (the Act) as amended in December last year involves the referral of certain powers by Murray-Darling Basin States to the Commonwealth. The Act is about regulating water at the catchment scale across the Basin to ensure the right balance between environmental needs and consumptive use. States and territories retain responsibility for managing water within those limits.

Thank you for bringing Mr Cameron's concerns to my attention.

Yours sincerely

Penny Wong

Parliament House, Canberra ACT 2600 Tel 02 6277 7920 Fax 02 6273 7330

ATTACHMENT 22

The Hon Paul Caica MP
Member for Colton

Government
of South Australia

Minister for Environment
and Conservation
Minister for the River Murray
Minister for Water
9th Floor, Chesser House
91-97 Grenfell Street
Adelaide SA 5000
GPO Box 1047
Adelaide SA 5001
DX 138
Tel 08 8463 5680
Fax 08 8463 5681
minister.caica@sa.gov.au

Ref: 10 MWA0291

03 March 2011

Mr Greg Cameron

Dear Mr Cameron

Thank you for your recent email to the Premier of South Australia, the Hon Mike Rann MP, concerning rainwater ownership. As this matter falls within my portfolio responsibilities, the Premier has asked that I respond to you on his behalf.

The advice you received from the former Minister for Environment and Conservation, dated 2 June 2009, remains current. In regard to your query as to whether roof runoff is surface water, I can confirm that it is a form of surface water under the *Natural Resources Management Act 2004* (the Act).

The Act reserves to the Crown the right to control activities that 'take', or otherwise affect, the availability of water and sets out rights to access natural water resources, including roof runoff.

The Act provides an appropriate mechanism for legal control over the taking of natural water resources in South Australia, including roof runoff, where this may be deemed necessary, for example, to ensure the sustainability of the resource and for the protection of other water users.

It should be noted however, that currently there are no prescribed surface water resource areas in South Australia where licensing or water levies apply in regard to roof runoff, which is taken for domestic use or to water stock.

Furthermore, where roof runoff is intended for commercial (but not irrigation), industrial, environmental or recreational uses, the taking and storage of this water is allowed under section 128 of the Act in all surface water prescribed areas in South Australia, subject to the conditions of a statewide authorisation. These conditions generally allow roof runoff to be taken for these uses provided that the volume of water collected from connected roof areas does not exceed 500 kilolitres per year, and that the water is stored in a closed holding tank.

Given South Australia's low rainfall, a water licence is unlikely to be required unless the connected roof area is relatively large (for example, where the average annual rainfall is 500 millimetres per year, the connected roof area would generally need to exceed 1,000 square metres before a licence would be required).

In summary, the existing arrangements enable owners of rainwater tanks to divert roof runoff for domestic uses, and also authorise rainwater to be collected and used for a wide range of other purposes, subject to the statewide authorisation. They also allow for the State to regulate the taking of water in an appropriate manner, depending on specific circumstances and need.

I note your previous correspondence of 22 January 2009, 17 November 2009, 27 January 2010, 17 February 2010 and 9 August 2010 in which you raise these issues. Having extensively addressed your concerns, I am not minded to respond to future correspondence from you that seeks to re-examine these matters.

Yours sincerely

PAUL CAICA
MINISTER FOR WATER

ATTACHMENT 23

Hon John Hill MP
Member for Kaurna

Government of South Australia

Minister for Environment and Conservation
Minister for the Southern Suburbs
Minister Assisting the Premier in the Arts
9th Floor
Chesser House
91-97 Grenfell Street
Adelaide SA 5000
GPO Box 1047
Adelaide SA 5001
DX 138
minister.hill@saugov.sa.gov.au
Tel 08 8463 5680
Fax 08 8463 5681

05EC4321

Mr Greg Cameron
Urban Rainwater Systems Pty Ltd
PO BOX 498
BENALLA VIC 3671

Dear Mr Cameron

Thank you for your recent correspondence regarding South Australia's mandatory rainwater tank policy. I note that you have also written to the Premier of South Australia, Hon Mike Rann MP, Hon Karlene Maywald MP, Minister for the River Murray and Hon Michael Wright MP, Minister for Administrative Services. As this matter falls within my portfolio responsibilities, I am responding on the State Government's behalf.

You have now written to me about this matter on several occasions and I have provided responses. It concerns me that some of the information I have provided is misrepresented in subsequent correspondences, particularly in your broadcast email to South Australian Members of Parliament on 3 October 2005.

You have raised concerns about 'the State abolishing the right to collect and own rainwater' as an outcome of the policy on a number of occasions. Unfortunately your comments are not correct and are misleading in regard to what is a very straightforward water conservation action.

Allow me to once again clarify two matters. Firstly, the rights at common law in relation to the taking of naturally occurring water were abolished by the *Water Resources Act 1997* and replaced by a range of statutory rights and responsibilities. Similar provisions were carried over to the *Natural Resources Management Act 2004*. Secondly, the State Government does not own surface water. In fact, no one owns surface water as such. The rights and responsibilities regarding the taking of surface water (including roof runoff) are statutory as set out in section 124 of the *Natural Resources Management Act 2004*.

I would also like to clarify the nature of the State Government's rainwater tank policy. The policy is one of a number of water conservation strategies being implemented under the Government's Water Proofing Adelaide Strategy. The policy requires rainwater tanks to be mandatory for all new homes built in South Australia from 1 July 2006 to encourage use of rainwater in and around the home as a water conservation measure.

Public consultation has helped to shape the minimum requirements that will need to be met. As well as the minimum requirements, people will be able to use their tank for other purposes, such as watering their garden and larger tanks can also be installed.

The policy does not mandate that tank rainwater to be plumbed in for drinking. It remains the right of individuals to use their tank rainwater for drinking, should they wish to. The Department of Health provides advice for those who want to drink tank rainwater.

Under the policy, rainwater tank systems must comply with seamless automatic switching as a minimum requirement. A suitable device must be installed so that supply automatically switches between rainwater and alternative supply (typically mains water) to ensure a reliable supply system.

A Rainwater Tank Policy 'Quick Reference Summary' document has been produced, which answers some basic questions about the mandatory policy. A copy of the document is attached for your information and can also be downloaded from http://www.dwlbc.sa.gov.au/files/QuickReferenceSummary.pdf.

By encouraging South Australians to use rainwater for purposes requiring non-potable water, the rainwater tank policy will assist in reducing mains water consumption. The Government's overall approach to water conservation in South Australia is clearly set out in the Water Proofing Adelaide Strategy. A fact sheet on the Strategy, entitled *A thirst for change*, is attached for your information and a copy of the full strategy can be downloaded from the Water Proofing Adelaide website at http://www.waterproofingadelaide.sa.gov.au/pdf/wpa_Strategy.pdf.

Thank you for your correspondence on this matter.

Yours sincerely

JOHN HILL

Date: 16/11/05

ATTACHMENT 24

Department for Water Resources, Explanatory Documents, Supporting Paper #1 for State Water Plan 2000, ''Who Owns Water'', September 2000, page 2

What Does Ownership Really Mean?

'Ownership' can be a difficult legal concept, in that the rights conferred by 'ownership' of any particular thing can vary significantly in their nature and degree.

The Difference Between Owning Water and Having a Right to Take Water

Perhaps one of the most important points to make about 'ownership' in any discussion on water rights is that there is a difference between ownership of water, and the ownership of a *right to take* water. Water itself, while still forming a part of the natural resource, can not be said to be 'owned' by any body. It is considered a public commodity. However, once water has been legally captured from its natural source and taken under a person's control, that person could then be said to own that particular water.

Rights to Take Naturally Occurring Water

Rights to take water from a natural source in South Australia are now completely governed by the *Water Resources Act 1997*, which has replaced the common law in this respect[2]. In accordance with the above discussion, the Act does not confer ownership of water itself upon any person (including the Crown), but rather sets out the rights to access and take water.

ATTACHMENT 25

Minister for Primary Industries and Water

First Floor Franklin Square Offices
Hobart, TAS 7000 Australia
Ph (03) 6233 6454 Fax (03) 6233 2272

Tasmania

17 FEB 2010

Mr Greg Cameron

Dear Mr Cameron

Thank you for your email of 8 January to the Premier, regarding rights to water in Tasmania. The Premier has asked me to respond to your email as I am the Minister responsible for water.

Your letter seeks clarification on an interesting question concerning rights to the taking of rain and whether a person's roof is a device used for the taking of rain. There is no formal recognition that a person's roof is a device used for the taking of rain, and in effect, a person's roof is considered to be equivalent to the surface of the land with respect to the water that falls upon it.

In Tasmania, all rights existing at common law immediately before the commencement of the *Water Management Act 1999* to the flow of, or for the taking of, naturally occurring water were abolished when the Act came into effect (1 January 2000).

Except as provided by the Act, all rights to the taking of water from the water resources of Tasmania are vested in the Crown, and are to be administered in accordance with the Act. It is important to understand that a water resource is interpreted under the Act as being a watercourse, lake or any dispersed surface water or groundwater, or a tidal area where the Minister has declared that the taking of water in that tidal area is subject to the Act.

As you can see, the Water Management Act deals with the taking of water from a water resource, which broadly encompasses naturally occurring water once it has come into contact with the land surface.

Part 5 of the Act sets out rights in respect of water, and amongst other things, grants the right to a person who is an owner or occupier of land to take dispersed surface water from the land for any purpose. Hence, a person has the right to harvest the rain water that falls on their roof as this is considered to be water that would otherwise have become dispersed surface water.

I trust that this information is helpful.

Yours sincerely

David Llewellyn MP
MINISTER FOR PRIMARY INDUSTRIES AND WATER

ATTACHMENT 26

DEPARTMENT OF
THE ENVIRONMENT,
CLIMATE CHANGE,
ENERGY AND WATER

Mr Greg Cameron

Dear Mr Cameron,

I refer to your correspondence dated 6 January 2010, and Minister for the Environment, Climate Change and Water, Simon Corbell MLA, responses to those letters, dated 16 February 2010.

Mr Corbell advised you in his letter dated 16th February 2010 that the Department would be seeking advice with regard to your queries on taking rain water from a roof area.

The advice I have received on this matter is as follows:

- A roof is not a device for taking water and water is not amenable to private ownership either by common law principles or by statute. The *Water Resources Act 2007* (the WR Act) defines land to include a building or structure on the land. A roof therefore forms part of the land and is not a device for the taking of rain water, but part of the land surface over which water traverses.
- Precipitated water collected from a roof into a tank is surface water until it is taken from the tank by the owner or occupier of the property to be used elsewhere on the property.
- Rainwater stored in a tank is not the property of the owner or occupier, but the owner or occupier acquires a right of access to the water by operation of the WR Act. The Territory is the holder of a statutory right of primary access to the use and control of water in the Territory. Individuals may be granted rights to access water under the WR Act, but a right of access to water does not confer ownership of the water.

I trust this information answers your queries with regard to rain water. Thank you for your correspondence.

Yours sincerely

Robert Neil
Director
Environment Protection Authority

19 May 2010

Macarthur House 12 Wattle Street Lyneham ACT 2602 | GPO Box 158 Canberra City ACT 2601

ATTACHMENT 27

Simon Corbell MLA

ATTORNEY GENERAL
MINISTER FOR THE ENVIRONMENT, CLIMATE CHANGE AND WATER
MINISTER FOR POLICE AND EMERGENCY SERVICES
MINISTER FOR ENERGY

MEMBER FOR MOLONGLO

Mr Greg Cameron

Dear Mr Cameron

Thank you for your letter of 23 November 2009 concerning the taking of rainwater from rooftops.

The ACT Government is committed to the wise use of the region's water. Our strategy for sustainable water resources management, *Think Water Act Water*, provides a range of initiatives to wisely use water, such as the use of rooftops as a means to capture rainwater and store this water in rainwater tanks.

The *Water Resources Act 2007* (the Act) is our principal legislation to ensure that management and use of water resources of the Territory sustain the physical, economic and social well being of the people of the ACT while protecting ecosystems that depend on those resources.

The Act has provisions for persons to take water from rivers, lakes or groundwater bores via a Licence to take water. However, a Licence to take water is not required for the taking of rainwater from a rainwater tank.

In addition, the Act exempts a person from requiring a Licence to take water from hard surfaces of premises if the water is to be used at the premises - for example, rainwater that falls on the surface of a car park at premises could be collected into a small pond and used to irrigate part of the premises.

Thank you for raising this matter with me. I trust that this information is of assistance.

Yours sincerely

Simon Corbell MLA
Minister for the Environment, Climate Change and Water

22.12.09

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0000 Fax (02) 6205 0535 Email corbell@act.gov.au

ATTACHMENT 28

Government of Western Australia

Hon John Kobelke BSc DipEd JP MLA

Minister for Police and Emergency Services; Community Safety; Water Resources; Sport and Recreation
Leader of the House in the Legislative Assembly

Our Ref: 14-16032

Mr Greg Cameron
Urban Rainwater Systems Pty Ltd
PO Box 498
BENALLA VIC 3671

Dear Mr Cameron

RAINWATER TANK REGULATION

Thank you for your emails dated 22, 25, and 29 May 2007 regarding rainwater tank regulation in Western Australia.

In response to your queries on 22 May 2007, I can advise that the proposed new water resource management legislation in Western Australia will establish a "basic right" to water captured from a person's roof for stock and domestic purposes. This basic right will not be regulated or subject to licensing.

In regards to your first query in your email of 22 May 2007, under common law, water belongs to the person who lawfully captures it.

Your second, third and fourth queries raise matters which are not considered in existing legislation.

In response to your queries (1-6) on 25 May 2007, I can advise that current legislation, namely the *Rights in Water and Irrigation Act 1914*, is silent on the right to collect water from roofs in rainwater tanks.

As previously stated, the Government does not intend to regulate the use of water captured from a person's roof for stock and domestic purposes. This decision is based on an assessment that this activity does not have a negative impact on the environment or other property owners, and that such regulation would be administratively burdensome.

I trust this information clarifies the issues you have raised.

Yours sincerely

JOHN KOBELKE MLA
MINISTER FOR WATER RESOURCES

dated 11 June 2007

20th Floor, 197 St Georges Terrace, Perth, Western Australia 6000 Telephone (08) 9222 9211 Facsimile (08) 9321 6003
Email: john-kobelke@dpc.wa.gov.au Internet: www.ministers.wa.gov.au/kobelke