



Minister for Water; Fisheries; Forestry; Innovation and ICT; Science

Our ref: 75-10449
Your ref: A776730



Hon Adele Farina MLC
Chair, Standing Committee on Public Administration
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Ms Farina

STANDING COMMITTEE ON PUBLIC ADMINISTRATION – INQUIRY INTO PRIVATE PROPERTY RIGHTS

Thank you for your letter dated 16 September 2019 regarding the Standing Committee on Public Administration's Inquiry into Private Property Rights.

With regard to the recommendations in the report published in May 2004, I am informed that 11 were applicable to the Water Corporation. Of these, 8 recommendations were already standard business practice or have been implemented since 2004.

The attached table provides further information about the extent to which the Water Corporation has implemented these recommendations, as well as the reasons why the other three recommendations have not been implemented.

The Water Corporation is an important state organisation that provides vital services to the Western Australian public. In delivering these essential services, the Corporation balances a range of interests including the impacts of climate change, the wellbeing of its customers, and the economic development of the state. Successfully balancing these imperatives has, over a long period, delivered strong improvements in the value of private property and public assets throughout the State.

Yours sincerely

Hon Dave Kelly MLA
MINISTER FOR WATER
17 OCT 2019

Attach Table of recommendations applicable to the Water Corporation

Standing Committee on Public Administration – Inquiry Into Private Property Rights: recommendations applicable to the Water Corporation

No.	Recommendation	If implemented, what is the extent of the implementation?	If not implemented, what is the Corporation's view of the merits or problems with the recommendations?
4.	The Committee recommends that where multiple agencies are involved in the compulsory acquisition of land for significant major public works projects, that a lead agency be appointed to carry out all of the acquisitions.		The Corporation acknowledges that in certain circumstances a joint approach to land acquisition would be appropriate but would reserve the right to deal on all land acquisitions / requirements independently as appropriate.
5.	The Committee recommends that all land acquiring State Government departments, agencies and bodies appoint a field officer for each specific land acquisition project and ensure that that field officer remains the primary point of contact for the department, agency or body with each affected landholder for the duration of the project.	The Corporation's current practice is to appoint directly to each land acquisition a suitably experienced property officer to manage the acquisition process.	
6.	The Committee recommends that, wherever practical, State Government departments, agencies and bodies use existing easements and service corridors for their infrastructure projects.	The Corporation installs infrastructure within its existing easements wherever possible or practical, allowing for construction constraints, landowner consent, operational requirements and constraints, and outlined permitted use within the easement conditions.	
14.	The Committee recommends that confidentiality agreements/contract provisions not be entered into between land acquiring State Government departments, agencies or bodies and landholders unless at the express request of the landholder.	<p>The Corporation's standard contract does not contain a confidentiality clause. In some instances a confidentiality clause will be included at the request of the landowner.</p> <p><i>The clause is: The purchaser must not disclose the terms of, or any matters relating to, this contract (other than to its officers, employees and advisers on a confidential basis) unless the seller has consented to the terms of disclosure.</i></p>	
15.	The Committee recommends that all land acquiring government departments, agencies and bodies should accompany their initial offer of compensation to a landholder in a compulsory acquisition of any interest in land with an advance payment of ninety percent of that offer. Such a payment is not to be regarded as prejudicing in any way the affected landholder's right to continue negotiations as to the final compensation figure.	In the event of a compulsory acquisition action being carried out, the Corporation's practice is to pay the landowner an amount equivalent to not less than 90% of the offered amount as compensation pre-payment with negotiations then continuing to establish an agreed final compensation figure.	
17.	The Committee recommends that land acquiring State Government departments, agencies and bodies pay the reasonable costs of landholders obtaining independent land valuation and compensation assessment advice (up to the amount determined by the Land Valuers Licensing Board's Scale of Fees), in relation to both voluntary and compulsory acquisitions of interests in land.	The Corporation does reasonably include an offer of compensation an amount for consequential losses such as professional fees, where relevant. These include reimbursement to the landowner for reasonable costs associated with an independent valuation on the condition that the valuation is used in negotiations when establishing the final compensation figure and that a copy of the valuation is supplied to the Corporation.	
18.	The Committee recommends that land acquiring State Government departments, agencies and bodies pay the reasonable costs of landholders obtaining independent legal advice on their rights and on any offer and associated documentation in relation to both voluntary and compulsory acquisitions of interests in land.	The Corporation does reasonably include an offer of compensation amount for consequential losses such as professional fees, where relevant. These include reimbursement to the landowner for reasonable costs associated with legal fees pertaining to the landowner's contractual dealings.	
19.	The Committee recommends that the State Government establish a standard scale of costs in relation to legal advice provided to landholders with respect to their rights and on any offer and associated documentation in relation to both voluntary and compulsory acquisitions of interests in land, to be		It is the Corporation's position that any reimbursement of costs should be determined on a case by case basis after taking into consideration all of the commercial negotiation outcomes of each dealing.

No.	Recommendation	If implemented, what is the extent of the implementation?	If not implemented, what is the Corporation's view of the merits or problems with the recommendations?
	observed by all land acquiring State Government departments, agencies and bodies when making payments to landholders.		
20.	The Committee recommends the establishment of a single, independent, land acquisition agency, with the sole purpose of acquiring interests in land at a fair price, to undertake all land acquisitions on behalf of State Government departments, agencies and bodies.		The Corporation's position is to be in control of the acquisition process due to it being critical to allow for the Corporation's capital works infrastructure construction requirements to be at the forefront of all landowner negotiations thus facilitating on-time delivery of future assets and infrastructure related to essential state and community services. Implementation of this recommendation would create delays and implement an additional level of red tape.
22.	The Committee recommends that the State Government amend relevant legislation to provide that any voluntary acquisition of an interest in land for public purposes is on the same terms and level of compensation as if it were a compulsory acquisition under Parts 9 and 10 of the <i>Land Administration Act 1997</i> .	The Corporation already takes this approach and all acquisitions (other than those when a property is already on the open market for sale) are evaluated taking into consideration the statutory requirements in relation to compensation entitlements under section 241 of the <i>Land Administration Act 1997</i> .	
26.	The Committee recommends that where private land is required for a public purpose which will alter the existing granted land use (as distinguished from anticipated land use) on that private land, the Crown should either compensate fairly for the downgrading of the permissible land use or acquire the property outright.	Valuations of land take into account changes in permitted land use as defined in the <i>Land Administration Act 1997</i> .	