

TO: Kristina Crichton  
The Committee Clerk  
Standing Committee on Public Administration  
Legislative Council  
Parliament House  
PERTH WA 6000

**Submission to the Inquiry to Private Property Rights on behalf of the Western Australian Water Users Coalition Incorporated ("WAWUC")**

**That the House —**

**(a) recognises the fundamental proprietary right of private property ownership that underpins the social and economic security of the community;**

The Federal Government through COAG and the WA state government have agreed to embark upon a Water Law Reform process to implement the National Water Initiative (NWI). A key element of the NWI is to establish a secure framework to secure water entitlements and a framework for compensation where entitlements are removed.

The framework proposed would be based on a "Torrens" type of registration for water entitlements which would create certainty for the holder of a licence and for a lender such as a bank. All of the major stakeholders in WA and the federal government considered it was fundamentally important to provide a statutory basis to enhance the security and commercial certainty of water access entitlements by clearly specifying the statutory nature of those entitlements. Most favoured Perpetual water licences but the WA government has never supported this concept and wants to implement "indefinite licences" and it clearly does not want to make any commitment to compensation.

In 1998 the WA State Cabinet endorsed the proposals to amend the Rights in Water and Irrigation Act 1914 in response to COAG guidelines laid down for in the Water Law Reform process.

The Western Australian Water Users Coalition was formed to assess the proposed changes and the impact on future water usage of the Water Law Reform. The Western Australian Water Users Coalition was active in submissions to the RIWI Act Amendment Bill 1999. These submissions regarded water classed as springs, water from lakes wholly contained within a property, run off flow and headwater dams as an existing riparian rights which required a property "landowner eligibility requirement". and those riparian rights were not vested in the Crown. The Association members had bought properties not only for the suitability of its land, but also for the sources of water it can provide for their productive enterprises. Treating water rights separately and without a "Perpetual water licences" will therefore have a major impact on the value of a "Torrens" land title.

The amendments to the RIWI Act have been in for some time and water users are now seeing the legacy of that legislation. Despite the assurances of government ministers and employees of the DEWR, water user's worst fears have been realised <sup>1</sup>

<sup>1</sup> *An officer on the behalf of Minister for Primary Industry Monty House MLA in a letter of 23 March 1998 to the Western Australian Water Users Coalition gave a number of undertakings. These included, among others, "there will be no new Commission powers over the control of in-stream farm dams, there will be no change to landowner's riparian rights, there will be no increase in Commission control over springs".*

Clearly, as water users predicted, the RIWI Act amendments allow the Department of Water and Environmental Regulation ( DWER) a wide discretion in its allocation of water and water licences and it would seem from evidence that a lot of farmers are not getting licenses issued, contrary to what was told to water users at the time the legislation went through Parliament.

“For example, on 16 November 2017 in the Warren-Donnelly district in the Shire of Manjimup the DWER imposed limits to self-supply water users to access more water in favour of a government subsidised and corporatized \$80 million Southern Forest Irrigation Scheme which plans to supply 10 gegalitres of water for irrigation. There is 40 gegalitres of water taken by approximately 360 dams with water licences in the district and another 200 spring fed dams, run off flow dams and headwater dams which as advised by the DWER did not require a licence. The DWER Allocation Plan for the Warren-Donnelly district provides no confidence to landowners that all unlicensed water has been included in the Allocation Plan. Landowners repeatedly request the DWER to clarify this critical issue.”<sup>2</sup>

The DWER acknowledge inconsistencies to the advice they have provided regarding existing riparian water. The DWER is causing confusion and their policies do not provide any certainty or security to the landowners who have investments in unlicensed surface water works which are critical to the landowner’s farm business plans.

At a Special Meeting held in Manjimup on 22<sup>nd</sup> March 2018 water users agreed that these limits did not constitute a reasonable use of water due to the adverse effect to West Manjimup water users property rights “Any new water legislation, policy or irrigation scheme needs to ensure that where existing rights held by rural landowners are transferred fair and just compensation must be provided for those existing rights that become eroded” said Western Australian Water Users Coalition Chairman Graeme Waugh.<sup>3</sup>

**(b) recognises the threat to the probity of the Torrens title system, which guarantees disclosure, and re-establishes the necessity for registration of all encumbrances that affect land including environmentally sensitive areas, bushfire-prone areas and implied easements for Western Power that currently sit behind the certificate of title;**

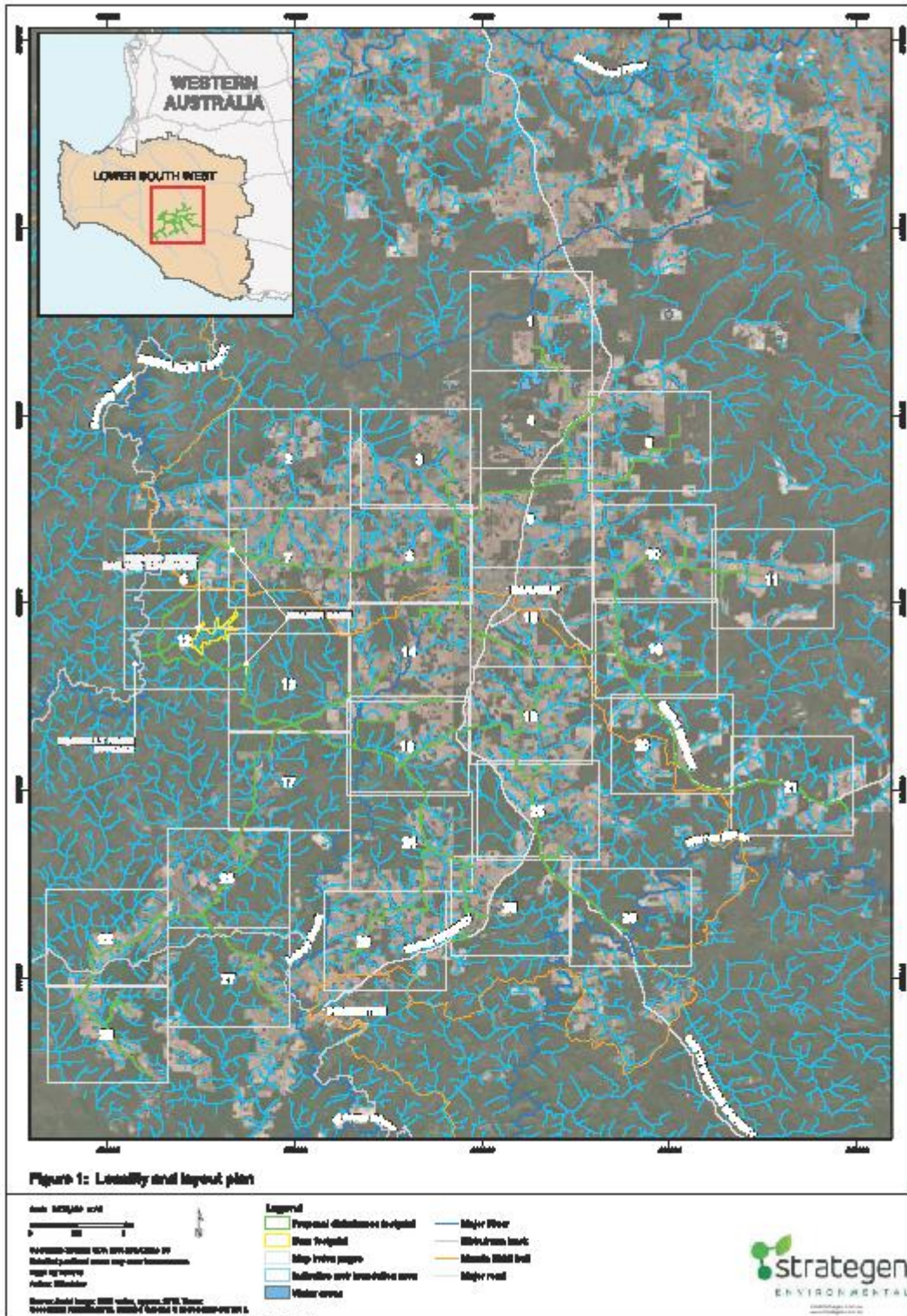
The majority of rural landowners in the Warren-Donnelly district in the Shire of Manjimup will not benefit from the Southern Forest Irrigation Scheme. Many farmers run livestock only and most private funded self-supply irrigators do not require any water from the Southern Forest Irrigation Scheme.

Below is a map the locality of the Southern Forest Irrigation Scheme. Landowners are concerned regarding the threat and implied easements for Southern Forest Irrigation Scheme and the imposition of 250 km of concrete and pipeline works blighting their landscape and personal space.

The Western Australian Water Users Coalition has concerns on many issues including the absence of consultation in regards to the recognition to the probity of the Torrens title system that are emerging with the Southern Forest Irrigation Scheme proposal.

<sup>2</sup> *Information obtained from Manjimup and Pemberton Landowners submissions on water reform*

<sup>3</sup> *Media Release -26/03/2018 -The Western Australian Water Users Coalition*



**(c) recognises the property rights of government-issued licences and authorities including commercial fishing;**

Water users understanding of the current RIWI ACT 1914 Part 111-Control of water resources- stipulates that the control of water resources through proclamation is subject to section 5- “Waters in which this Part does not apply” which includes areas of springs and wetlands that are wholly within the boundaries of the land granted by the Crown which are not subject under proclamation

*In March 2000 the RIWI Act Amendment Bill 1999 was referred to Legislative Councils Standing Committee and the Standing Committee recommended that: The Committee recommends that the Rights in Water and Irrigation Bill 1999 be amended to ensure landowners with a spring or wetland on their property are eligible to apply for a special license, if that spring or wetland is brought within the control of the Rights in Water and Irrigation Bill 1999 <sup>4</sup>*

In 2013 the DWER released a Position Paper on Water Reform Management with proposed changes embodied in the draft Water Resource Management Bill. Included in the proposed changes is the extension to spring fed dams, run off flow dams and headwater dams to be vested to the Crown. In 2018 the McGowan Government approved the drafting of new water legislation.

In March 2019 the DWER notified landowners in the Warren-Donnelly district in the Shire of Manjimup that the DWER has incorrectly issued letters confirming Spring Rights in the past and are being reviewed as they are identified. There is no certainty that the landowner is eligible for a new licence and the DWER has imposed limits to access water.

It is clear that the DWER is engaged in eroding entitlements to existing spring water rights of the land held by landowners in the Warren-Donnelly district. The DWER has caused an artificial water shortage through policies that include setting the Water Allocation limit of 40 gegalitres (5%) for surface water licenses of the 742 gegalitres mean annual flow and the balance is water for the environment flowing into the Southern Ocean.

**(d) asserts that fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit;**

*In March 2000 the RIWI Act Amendment Bill 1999 was referred to Legislative Councils Standing Committee and the Standing Committee recommended that: The majority of the Committee recommends that the payment of compensation be mandatory whenever a legitimate existing use, whether licenced or unlicensed, is reduced or removed, the scope of exceptions from such compensation to be decided by Parliament. <sup>5</sup>*

The majority of rural landowners in the Warren-Donnelly district in the Shire of Manjimup will not benefit from the Southern Forest Irrigation Scheme. They will be seeking fair and reasonable compensation for the any loss of property entitlements or reduction in property value as a result of actions to benefit the Southern Forest Irrigation Scheme.

<sup>4</sup> *Standing Committee on Legislation, Western Australia, Report of the Standing Committee on Legislation in Relation to the Rights in Water and Irrigation Bill 1999*

<sup>5</sup> *ibid*

**(e) directs the Standing Committee on Public Administration to conduct an inquiry into the matters described above — with them as its terms of reference — and to report to the house within nine months of the date of the referral.**

The Western Australian Water Users Coalition request that Committee conduct a hearing as part of the inquiry process. The Western Australian Water Users Coalition wish to arrange for affected landowners to appear before the Committee as a witness to explain and elaborate on the information provided in the submission.

**Key Contributors in The Western Australian Water Users Coalition (WAWUC) for this submission:**

Al Blakers: WAWUC Management Committee Member

Garry Kilrain: WAWUC Management Committee Member

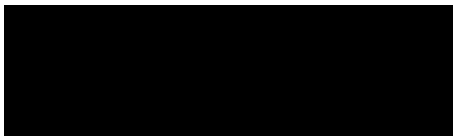
David Wren: WAWUC Management Committee Member

**CONTACT**

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