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Hon Adele Farina MLC  
Chair  
Standing Committee on Public Administration  
Legislative Council  
Parliament House  
PERTH WA 6000

Via email: [lcpac@parliament.wa.gov.au](mailto:lcpac@parliament.wa.gov.au)

26 July 2019

Dear Ms Farina

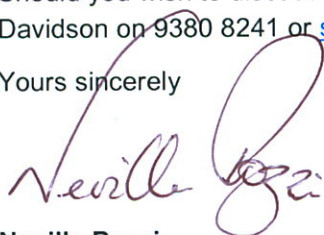
**Your reference A761673 - inquiry into private property rights**

Thank you for your letter of 1 July seeking REIWA's submission on the matters referred to the Standing Committee on Public Administration in relation to private property rights.

We appreciate the opportunity to provide a written submission which I enclose herewith.

Should you wish to discuss the matter further, please contact Advocacy and Policy Manager Sadie Davidson on 9380 8241 or [sadie.davidson@reiwa.com.au](mailto:sadie.davidson@reiwa.com.au)

Yours sincerely



**Neville Pozzi**  
CHIEF EXECUTIVE OFFICER

## Erosion of private property rights in Western Australia

### Executive summary

Private property rights are the cornerstone of Western economies. The definition of property rights maintains that a person or company has the right to own, use, generate income and dispose of private property.

However, due to changes in government policy, West Australians have experienced an ongoing erosion of these property rights. This shift has the potential to impact consumer confidence, leading to a further dampening of the WA property market.

Ongoing erosions in property rights include:

- Changing government policies affecting the value and usefulness of land with the owner not receiving adequate or any compensation;
- Government taking possession of land through subdivision approval process without compensation;
- Heritage requirements imposed after acquisition, with little to no consultation or compensation; and
- Increased Government reliance on property taxes, stifling the markets' productivity.

As a consequence, REIWA is calling on the members of the Standing Committee of Public Administration to ensure:

- All citizens have the right to own, use, generate income from and dispose of private property
- The legal system protects the rights of private property owners
- Any loss of value or usefulness as a result of actions of a third party be adequately compensated
- The property tax system does not create a barrier to property ownership

### Changes in land-use policy/legislation

While REIWA acknowledges the legitimate needs for land use planning, environmental, conservation and heritage regulations, excessive requirements which impose detailed control over the use and development of private land is eroding the rights and choices of property owners.

While some regulation and remedial action is needed, we must ensure that those landowners affected by policy changes are adequately compensated for the loss of land value.

While these policies have the aim to ensure public amenity it should not fall on the individual owner to bear the costs of such changes. Fair compensation must be paid to owners affected by governmental policy changes.

It is grossly unfair to push the cost of land use planning, conservation and heritage on to individual owners who are expected to bear the burden for the good of the greater community. This is clearly inequitable.

Changes in land-use policy should not be passed if they:

- impinge on private property to such a degree that the land is rendered worthless to the owner, while leaving the title with the owner – who has little or no recourse for compensation;



- provide the government with the power to compulsorily acquire land from private property owners without fair compensation;
- allow the government to take land from the private property owner through the subdivision approval process; and
- Increase the cost of obtaining planning and development approvals thereby pushing up the cost of a new house and reducing housing affordability for thousands of Australians.

### **Compulsory acquisition without adequate compensation**

Both the Town Planning and Development Act and relevant regional planning legislation provide for the payment of compensation in circumstances where land is affected by the making of a scheme. On the surface, this appears to be fair. However, it is the way in which these provisions apply, and equally situations in which these provisions do not apply, that gives rise to a feeling, particularly among landowners of reserved land, that they have not been treated fairly. The reason for this is as follows:

1. Owners of land affected by a reservation receive only market value of the land.
2. Owners of land affected by land considered to have particular environmental benefits are not compensated and do not have recourse to compensation.
3. Owners of land affected by policy, such as bush forever, or rural policy restricting subdivision are not compensated as these are just policies, and after all planning is based on policy.
4. As a condition of subdivision the Western Australian Planning Commission will require the ceding of regional reservations even though this is contrary to a number of Supreme Court appeal cases. In particular, foreshore land has been required to be ceded.

### **Excessive property taxation**

One of the most visible areas of attack on property rights are the property taxation increases and new charges imposed in Western Australia in the last 10 years.

Property taxes and charges can be broadly grouped into three categories:

1. Direct property taxes on ownership, eg, land tax and the metropolitan region improvement tax.
2. Transaction property taxes, e.g. stamp duties on property transfers and mortgages, GST, Capital Gains Tax.
3. Indirect property taxes – e.g. insurance taxes levied on premiums charged to property owners, and requirements placed on property developers.

In WA, the main State property taxes and charges are stamp duties, land tax, the metropolitan region improvement tax, the emergency services levy and the Perth Parking Levy. The revenue collected from these taxes and charges from WA property owners has increased dramatically over the last 25 years:

- the metropolitan region improvement tax paid has more than doubled;
- stamp duty paid by WA property purchasers has increased fourfold;
- a new annual charge of \$118 million has been introduced in the Emergency Services Levy
- the Perth Parking Levy, introduced in 1999, has increased by more than 150%; and
- The introduction of the foreign owner duty surcharge has seen overseas buyers all but disappear with the levy raising just \$2million in revenue in its first six months, a far cry from original projections of \$122million over three years.

The WA government is over-reliant on revenue from property taxes and the recent market downturn has seen a significant fall in transactions and consequently a decline in revenues from property.

Had it not been for the boost in GST and higher than predicted iron ore prices, the WA Government would have experienced significant economic challenges as a result of the decline in revenue from property taxation.

### **Consequences of a loss of property rights**

The erosion of property rights has significant consequences, they include:

- an undermining of social confidence in property ownership;
- an unproductive allocation of land uses, affecting Western Australia's productivity and standard of living;
- rising levels of inequality in our community and associated social problems;
- increased levels of reliance on government expenditure;
- a distortion of investment patterns in property;
- less property developments, resulting in fewer places where Western Australians live, work, recreate and socialise; and
- less jobs and more unemployment.

### **Recommendations**

- Ensure the legal system protects the right of property owners and buyers.
- Protect buyers through notices on property titles of any restrictions, while ensuring current owners are adequately compensated for any loss of value due to said notice.
- Compensate property owners based on market value before notices are lodged on titles, land use policy is changed to ensure fair compensation.
- Introduce mandatory 60-day planning approval deadline with assumed acceptance after 60 days.

State policies that encourage property ownership such as:

- A stamp duty concession for seniors;
  - Reintroduce the first home owner grant of \$7,000 for buyers of established property;
  - Phase out stamp duty in favour of a broad-based land tax; and
  - Revoke the foreign owner duty surcharge.
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