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Regulation of Australian Agriculture
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Property Rights Australia (PRA) was formed in 2003 to provide a strong voice for landowners with regard to property rights issues. It aims to promote fair treatment of landowners in their dealings with government, business and the community.

Our philosophy is that if the community or business wants our resource for any other purpose such as environmental protection or resource industries and associated infrastructure then the community or enterprise must pay fair and unsterilised value for it.

We have members in all States but most are in Queensland.

Property Rights Australia submission to:

Productivity Commission - Regulation of Agriculture

Extracts from Terms of Reference

> *While regulation targets valid objectives, such as protecting consumers from unsafe food, protecting the environment or supporting the export of goods, poorly implemented and administered regulation and the cumulative impact of regulation can have adverse effects on farm businesses. It can unnecessarily restrict farm management decisions and reduce investment.*
>
> *Inconsistent and overlapping regulations between jurisdictions can also create adverse effects and raise costs for farm businesses.*
>
> *The inquiry will also review regulation of farm businesses to identify unnecessary restrictions on competition.*
>
> *While focussed on the impact of regulation on farm businesses, the inquiry should also consider the material impact arising from regulation imposed along the supply chain such as regulations introduced to meet the requirements of international markets.*
>
> *whether Australia's farm export competitiveness can be improved by minimising duplication between domestic regulation and importing country requirements*

Overview of previous Inquiry

In 2004 the Productivity Commission did a report into the Impacts of Native Vegetation and

Biodiversity Regulations. The Commission is well aware of the opportunity costs and associated loss of productivity borne by the agricultural community as a result of such regulation and had much evidence, including costs, put before it in 2004. Those regulations had a material effect on the competitiveness and productivity of agriculture then and the effect is ongoing and increasing. Compensation is actively kept off the agenda in spite of recommendations made after the 2004 Inquiry. Comments on vegetation management will be brief, not comprehensive and only changes will be highlighted.

In 2004 the Productivity Commission wrote,

> *Over the past twenty years or so legislation to prevent clearing of native vegetation on private land has been relied upon heavily to achieve biodiversity and other environmental objectives. The current evaluation suggests that this approach has serious design and implementation deficiencies, in many cases leading to inefficient, ineffective and inequitable outcomes.*[1]

Various authorities have from time to time recognised loss of productivity in broadacre farming including ABARES below

> *The decades long restrictions on vegetation clearing has lead to a sustained loss of productivity in broadacre agriculture including raising of livestock.*
> *No amount of research, development or innovation has been able to match productivity increases from land use change.*[2]

Landowners looked forward with anticipation to the release of an offsets program but the offsets program has had mixed results with the cash payouts in particular not at reasonable levels to be useful for farm businesses and many having to put up significant portions of their holdings (in excess of half) for small areas of development.

The situation for agriculture of all types has deteriorated since 2004 with more and more restrictions placed on landowners. Environmental arms of Government, under the influence of environmental groups, and sometimes regardless of political colour, seem to have no care that they are rendering small businesses and families unviable both with the regulations themselves and their illegal enforcement of the regulations. Also not reasonable is their agenda to take control of any areas they can get their hands on regardless of science and, dare I say it, environmental stewardship. This is a common occurrence.

There have also been ill advised and/or malicious prosecutions of landowners which have had no chance of success but left the defendants broke and broken. Compensation for malicious prosecution is resisted vigorously. Property Rights Australia has claimed, and formally complained about fabrication of evidence and perjury by Government officers in the prosecution of cases for illegal clearing.

Property Rights Australia would also like to reiterate our belief that much of the environmental regulation on farm is not based on a balanced reading of the science but is often based on the stridency and influence of environmental organisations who have more access to funding, politicians and the media than the farming community. They employ the selective use of science

1 http://www.pc.gov.au/__data/assets/pdf_file/0005/49235/nativevegetation.pdf
2 http://www.sustainablespace.info/resources/landclearing.pdf

including by sympathetic academics who are prepared to support incomplete[3], rebutted, or junk science. For example, the Great Barrier Reef Report Card seems to be using the numbers of farmers who do specific best management practice courses as a proxy for Barrier Reef water quality with very few empirical measurements.[4] [5] This situation will continue while it is influenced by populist funding streams, poor understanding of the science and access to expert opinions by farm leaders and organisations.

One of the litany of reasons given by environmental groups for clearing restrictions is that, *vegetation protection laws enabled Australia to meet its Kyoto Protocol target for emissions reductions.*

> *Australia already has alarmingly high rates of land clearing. And Queensland is responsible for more land clearing each year than any other state. So, the re-acceleration of land clearing in Queensland puts the state on the world stage – and not in a good way.*[6]

In contrast, renowned woodland scientist Dr. William Burrows points out that

> *Aboveground biomass increased in Queensland over a 20 year observation period (1993-2012), even though this also coincided with different years of either well below or well above average rainfall, along with years of extensive ('panic') clearing – in the highly publicised lead up to the passing of the State's Vegetation Management Act 1999.*[7]
>
> *Independent sensors on Japan's IBUKI and NASA's OCO-2 satellites now both show Queensland is a net annual sink for CO_2. In other words vegetation is currently removing more CO_2 from the air (atmosphere) above this State than is being added to it from the combined impacts of land clearing, plant respiration, fire, fossil fuel use, adjacent ocean outgassing etc.*[8]

We are continually pushed involuntarily towards green organisations who say they want to work with us (and regulate us) on the one hand and who denigrate us and lobby against us with selective science on the other.

3 https://theconversation.com/land-clearing-in-queensland-triples-after-policy-ping-pong-38279 This article was based on raw data on tree clearing. It was strongly argued by the rural community at the time that much of the clearing would be attributed to allowed drought feeding of mulga which regenerates quickly and vigorously. This did prove to be the case but the damage was done.

4 http://www.reefplan.qld.gov.au/measuring-success/report-cards/2014/

5 http://www.queenslandcountrylife.com.au/story/3720919/cane-growers-face-mountains-of-paperwork/?cs=4733

6 Ibid.

7 http://www.propertyrightsaustralia.org/documents/1453457894_vegetation_management_in_queensland_-_some_essential_facts_21_jan_2016_update3.pdf p1

8 Ibid.

Modest changes to the Qld. Vegetation Management Act, some of which introduced some fairness into the system such as removing the provisions which reversed the onus of proof and made some codes self-assessable but highly prescriptive, were met with strident and often ill formed opposition by environmental groups with accusations that the Vegetation Management Act had been scrapped which was a blatant untruth.

One wonders how long Governments believe they can keep ripping billions of dollars out of rural communities and more importantly, individuals in rural communities, without consequence. It is obvious that environmental groups have no sense of social justice and are more concerned about power and control than environmental stewardship.

Acclaimed international jurist Lorraine Finlay, in her address to the Australian Law Reform Commission Freedoms Symposium said in regard to property rights,

> *It is, however, important to note from the outset that property rights are not absolute. It has long been accepted that property rights may be qualified, and a good example of this is the recognized need for environmental protection measures. The question is always one of balance.*
>
> *My argument this evening is that Australia is not presently striking the ideal balance, and that we are insufficiently protecting property rights – primarily through the lack of an appropriate compensation mechanism.*[9]

Restrictions on clearing

The former Qld. LNP Government introduced a category of clearing permit called High Value Agriculture (HVA) which allows clearing for high value crops.
It fits neatly with the Northern Development push with remote Qld properties successfully applying for permits mostly for grain and forage sorghum which will undoubtedly improve productivity and enhance drought proofing measures.

A spreadsheet and map showing names, addresses and GPS points of all HVA permit holders put on a public website by Worldwide fund for Nature (WWF) and billed as Queensland's "Map of Shame" shows almost 65% of the 59 HVA permits granted were for small holdings with many for only 2ha to 10ha. These modest areas will give much improved productivity boosts to fruit, vegetable, nut and sugarcane growers but the granting of permits seems to have been unreservedly opposed by environmental groups.

The response by the present ALP Qld State Government to this lobbying has been to increase the number of consultants required to complete applications by refining the qualifications and narrowing the focus required by those providing supporting documentation for applications and thus associated cost.

The response of the Federal Department of Environment was to send an ambiguous warning letter to all permit holders that they may have to seek referral under the EPBC Act. Most received this

9 https://www.alrc.gov.au/home-no-longer-castle-lorraine-finlay

advice on 17th December with responses due by 23rd December. The short time frames and timing just before Christmas caused much angst, both from a work timetable point of view and from the perspective that professional advice is often not available at that time of year and never at that short a notice.[10]

Some small holdings have given up half or more of their areas in offsets with sometimes onerous conditions attached, in order to gain permits to clear small areas of their farm elsewhere. (See Appendix A)
A cash payout is sometimes given as an option in lieu of offsets but the sums asked for are in the realms of fantasy and could never be paid off by most agricultural businesses.

Departmental Overzealousness

Not only are the regulations themselves a problem, but the fairness with which they are enforced becomes a problem in itself where Departments are populated with personnel who demonstrate aspects of noble cause corruption. This is not a minor problem.

Property Rights Australia's entire history has revolved around defending people from ill-advised and unwinnable prosecutions. Without exception the cost of defending a prosecution is in the hundreds of thousands of dollars and threatens the viability of farming enterprises. Fortunately, for those who can afford to spend the money, the Courts are more cognisant of the law than Departmental officials but that is small compensation for those, usually law abiding citizens, who are bankrupted by the experience or who cannot afford to go there in the first place.

We could come up with many examples including, as well as prosecutions, perjury and fabrication of evidence, unreasonable withholding of permits of various sorts for farm businesses causing bankruptcy, and physical harm inflicted on individuals without consequence.

An ongoing case, where associated costs were not able to be incorporated into a farm business is that of Peter Swift in Western Australia. This case had all of the negative features of most cases that we see. Mr. Swift was able to gain support before his trial even started from, among other prominent figures Federal MP the late Don Randall and former WA MLA Murray Nixon OAM.

Mr. Randall entreated the WA minister to review the evidence as it was flimsy. Nevertheless the trial went ahead where we witnessed another common feature of environmental trials where the Government witnesses, instead of being neutral servants of the Court are vigorous witnesses for the prosecution. This means that defendants need to employ, at great cost, their own expert witnesses. After being found “not guilty” no Government Minister wants to show compassion for a man who just wanted a clean, green, retirement on a small acreage and has lost his income and his health and may yet lose his property.

Governments and Ministers do not seem to internalise that they are responsible for Government officers who over zealously pursue unwinnable cases against vulnerable individuals.

10 http://www.queenslandcountrylife.com.au/story/3692077/barry-blasts-george-street-tree-police-conga-line/?cs=4698

Government witnesses as servants of the Court and Governments as Model Litigants [11] [12] is a notion that has long since passed in environmental law as ministered to rural property owners.
Mr. Swifts case is presented in more detail – (See Appendix B.)

Western Australia, at the 2004 PC Inquiry showed itself to be unconcerned about the fates of individual citizens with many agricultural businesses left with an unviable area to operate on. This is still the case, has expanded and is evident in other states as well.

Peter Swift and his supporters, after his court case, spent a considerable amount of time and effort in trying to learn from the Department what area and what places were declared Environmentally Sensitive Areas (ESA) and therefore could not legally be grazed by livestock. No clear determination was readily available.

Lorraine Finlay addressed this issue in her address to the Australian Law reform Commission Freedoms Symposium.

> *These regulations, however, amount to a restriction on land and not an acquisition. Putting to one side the specific problems with the implementation of this ESA framework (which include the fact that no individual landowner was actually informed of their land being designated as an ESA and that the ESA designation does not appear on a property's Certificate of Title) there is an obvious fairness issue when land can be 'locked away' without compensation being payable.*
> *The case of Peter Swift falls under this legislative framework. Peter Swift was prosecuted for clearing 14ha of native vegetation on his Manjimup property without a permit. Although he was ultimately cleared (after a lengthy and expensive court battle) he was then faced with his grazing land having been effectively reduced from 1200 acres to around 240 acres due to the ESA designation. He has received no compensation for this, but he is expected to individually deal with the continued compliance costs attaching to his property as well as paying his original mortgage that is based on the value of 1200 acres of productive land. This case starkly highlights the moral need for reform in this area.*
>
> *The clear problem with the current framework of environmental protection is that it imposes substantial restrictions on land use, but fails to provide any compensation to land owners who purchased their land before these restrictions were put in place and who can no longer realise the true productive value of their property.*

The WA Government admitted that 98,000 landowners were restricted by ESA's and had never been notified.

Nature Conservation and other legislation amendment Bill 2015

11 http://www.canberratimes.com.au/national/public-service/the-model-litigant-government-as-a-moral-exemplar-in-public-service-employment-disputes-20151125-gl87sh.html
12 http://www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles

Among the objectives of the Bill are:-

- reinstating 'the conservation of nature' as the sole object of the *Nature Conservation Act 1992* (NCA) so that the preservation of the natural condition of national parks will take precedence over other objectives;
- reverting rolling term leases for agriculture, grazing or pastoral purposes within nature conservation areas and specified national parks back to term leases by excluding them from the rolling term lease provisions under the *Land Act 1994* (the Land Act) to allow inconsistent activities to be phased out upon expiry of the lease and allow these lands to be protected for the purpose that they were intended.
- removes redundant provisions that allowed the chief executive to grant stock grazing permits for emergency drought relief on six prescribed national parks up until the end of 2013

Many of the so called "national parks" were previously forestry areas and were converted to national parks in name only and unbeknown to most of the lease holders. The process of not renewing leases over these former forestry areas has already started and involves considerable areas carved out of livestock producer's business.

It threatens their viability or at the very least their economies of scale. This is a significant loss. The report of the parliamentary committee into this Bill tells us that 78 leaseholders as at 1/1/16 will be affected and that it "does have consequences which may impact on the rights and liberties of individuals."[13]

> The lack of consultation with affected rolling term lease holders in relation to amendments in the Bill is discussed further in the report in relation to fundamental legislative principles (section three). The department advised the committee that no specific consultation was undertaken with individual rolling term lease holders who would be affected by the proposed amendments: *As there are no immediate impacts on the lease holder, no specific consultation was undertaken with individual rolling term lease holders about the amendments contained in the Bill.*[14]

This statement is breathtaking in its arrogance as some leaseholders have already failed to have their leases renewed and have had to leave.[15] It is inevitable that the remainder of leaseholders will be affected and need to plan for that eventuality. The 78 as outlined in the explanatory notes are those whose leases will expire in the 12 month period and does not include those which will expire beyond that point.

Some believe that they have no choice but to attempt to sell their remaining holdings as they are likely to be unviable. No right of appeal has be allowed.[16]

Newspaper articles suggest some pastoralists will lose about a third of their herd.[17]

13 Nature Conservation and Other Legislation Amendment Bill, explanatory notes, p8.
14 Nature Conservation and Other Legislation Amendment Bill committee Report, p4
15 http://www.queenslandcountrylife.com.au/story/3717741/kilkivan-cattle-business-being-destroyed-by-palaszczuk-government/?cs=4785
16 http://www.queenslandcountrylife.com.au/story/3718205/cows-and-casinos-hes-miles-from-the-truth/?cs=4707
17 http://www.cqnews.com.au/news/loss-of-lease-stuns/2913736/

Property Rights Australia would also like it noted that no credit or thought is given to the stewardship of these areas and that Governments have been repeatedly warned that a "lock up and leave" attitude will cause a multitude of problems (weeds, feral pests, high and dangerous fuel loads).

In WA
http://www.abc.net.au/news/2015-04-03/elderly-pastoralist-faces-losing-ningaloo-station-wa-government/6369200

Fire Mitigation

Property Rights Australia believes that many of the legislated guidelines for fire breaks and fire mitigation are inadequate to protect life and property.

The recent SW WA fires where much property and some lives were lost have also thrown up more problems. Livestock owners, some of whom lost vast amounts of property, including but not limited to, multiple houses and sheds, and who tried to reduce fuel loads on their properties by grazing livestock have been warned that such grazing constituted illegal clearing on Environmentally Sensitive Area's. It is still unclear whether any prosecutions will occur.

There is a current Court Case running in Qld with the landowner charged with illegal clearing for clearing a firebreak. The case is to be heard in the near future so I can say no more about it.
Another Qld landowner has been warned that his efforts to conform with the self-assessable guidelines for fire breaks on planning to build one on a boundary with a forestry area, have been in vain, and that they are only meant to apply to protecting buildings. (This is not necessarily the case but protection of fencelines is not an important consideration. We have found Departmental advice to have been inaccurate in the past, although widths for firebreaks along boundary fences are more restricted. Published guidelines are obviously unclear.) The landowner has been threatened with prosecution.
Another landowners has been ordered not to back burn into a fire coming from a National Park in spite of the conditions being safe to do so but was being asked to let a significant area of his fruit trees burn.

Everyone who runs an agricultural business adjacent to a National Park or forestry area deserves and needs to have the right to construct a fire break which is adequate to deal with the unfettered fuel loads that accumulate in such places. This is not the case. Scherophyll forests in particular can have fireballs which burn through the tops of tree and throwing cinders for several kilometres in advance of itself.

The Qld. Governments self-assessable guidelines tells us what is acceptable for firebreaks and fire management tracks.

> *Clearing to establish or maintain a necessary firebreak to protect infrastructure (other than fences. Roads and tracks) to a maximum width of 20m or 1.5 times the height of the tallest adjacent tree, whichever is greater.*[18]

18 https://publications.qld.gov.au/storage/f/2014-06-06T03%3A42%3A00.434Z/property-

> *Clearing to establish or maintain a necessary firebreak to protect infrastructure other than fences in a non-coastal area if the maximum width is equivalent to the height of 1.5 times the height of the tallest vegetation adjacent to the infrastructure, or 30m whichever is greater.*[19]

The guidelines allow 10m of clearing to build or maintain a fence line but is silent on width allowed for a firebreak to protect fence lines as they are specifically excluded from guidelines for other infrastructure. It is clear that fence lines are not considered important infrastructure and crops, livestock and pasture are similarly viewed. It is also clear from the publication that the Department does not regard all firebreaks as protecting all property and talks about "adjacent" infrastructure.

The attached newspaper article from WA claims (he would have a lot of support) that firebreaks adjacent to crown land (and I would believe National Parks and forestry land in other States) require 100m breaks.[20]

Livestock Production Assurance and other Audited Systems

On each and every occasion when livestock producers sell livestock they are required to fill out what is called a vendor declaration. It details movements and recent treatments or whether they are free of treatments which are not accepted in all markets. They were designed two decades ago to protect markets from physical and chemical contaminants and to conform with market specifications. Many, if not most, producers are unaware of the contract which sits behind the declaration which guarantees their product and which I have been told by MLA is State based legislation. The producer guide of the system can be found here. Underlying (State) legislation is not so easy to find. The system, Livestock Production Assurance (LPA), is voluntary in name only as it is impossible to sell without being accredited and being subject to audits. Auditors of this system and other system's auditors believe they have the authority to stop producers selling under certain circumstances which can cause substantial losses. It would appear that producers have little recourse and no defence.

It is the opinion of our legal experts that auditors have shut people down for reasons which have no effect on food safety or market access. They have been known to make threats, act outside their authority, and suspended producer's ability to sell based on flimsy evidence or irrelevant evidence and have no credible standard of proof.

Simple human error or equipment malfunction is no defence. Trying to reschedule as a result of a crisis has been used as an excuse to accuse the producer of refusing an audit which draws sanctions.

Producers who have had their accreditation suspended are required to undergo multiple further audits costing at least $6000 direct costs plus associated indirect cost including time and marketing disruptions including of droughted stock and therefore potentially precipitating an animal welfare

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infrastructure-clearing-code.pdf p7

19 Ibid. p7

20 http://www.farmweekly.com.au/news/agriculture/agribusiness/general-news/change-wanted-on-fire-risk-policies/2751446.aspx?storypage=0

incident.
Some producers have also been told that they cannot default to the basic option (LPA) to market stock if they have failed an audit for a market with special market requirements, for example European Union[21] [22], one of the specialist breed markets or organic.
This is clearly a problem of process or legislation/regulation that has not been scrutinised carefully enough by the specialist livestock organisations who are charged with protecting producer interests. At the time of development of the declaration the major problems would have originated from common farming practices, and off label uses and practices was what it was designed to control. With the emergence of regulated co-existence with resources companies livestock can be exposed to a greater range of contaminants and there have been instances of lengthy quarantine periods or destruction of livestock. To this point we believe this expense has been usually borne by the resources company.

However, there will come a time when producers may be unaware of what contaminants there may be for various reasons including that they are carried to their property by water for example, without there being any resources activity on their land.
At least one producer who is negotiating with multiple companies which wish to operate on his property has tried to get Cattle Council of Australia (CCA) and Meat and Livestock Australia (MLA) to release a commissioned study on the subject by a prominent law firm. They have repeatedly refused to release this MLA (producer) funded report.

We surmise that the study shows producer liability for all contaminants, including those that may arise from resources companies. Efforts to get MLA and CCA to resolve this issue on behalf of producers have been unsuccessful with the response being that it was a confidential report (funded by producers) and only to inform policy decisions in the relevant areas.

Legal advice is that the underlying regulation is not fit for purpose and gives producers no proper recourse or defence. So much for informing policy.
The latest paper released for comment on industry language and standards calls for more auditing of Livestock Production Assurance. There is no suggestion in the discussion paper that the underlying legislation should be revisited to indemnify producers against contamination caused by outside influences or to even add appropriate defences.

Even if they have a reasonable defence a producer will be led down an expensive path of litigation and counter litigation with a resources company and their disparate access to financial resources. All of this could occur while his ability to trade has been suspended.

Clearly risk is being transferred from resources companies to producers.

21 One of the other audited schemes is the European Union Cattle Accreditation Scheme (EUCAS). The European imposes quotas on Australian beef as well as a trade barrier in the form of a ban on Hormone Growth Promotants (HGP).The rules and auditing for this scheme are very prescriptive. Penalties for non-conformance are high.

22 http://www.agriculture.gov.au/export/controlled-goods/meat/elmer-3/eucas

Present Conduct and Compensation agreements (CCAs) with resources companies usually contain two things:-

1. A requirement to demonstrate negligence on the part of the resources company before any recompense for damages can be obtained. This would be almost impossible to prove and involves a very expensive legal process.
2. The exclusion of consequential losses or indirect costs or claims that the landowner may suffer as a result of the resources company's activity.

Resources companies restrict their liability. Producer's liability is rendered open ended by agreements over we have no power including insurance risk for non-disclosure of agreements.
It is extraordinary the resource companies have the ability to transfer risk in this way and leaving landowners exposed in a way that they were not before resources entered their areas of work.
The unbalanced legislation which makes it almost impossible for the vast majority of landowners to negotiate these matters with resources companies is a subject on its own which is not covered in this paper.

Various industry sources say that producers should carry out extensive testing if they are concerned. Not only is there considerable expense involved in testing, but the suspected contamination will have been caused by a company which was regulated in, and is uninvited and mostly unwelcome. This is not effective producer representation.

We would like to recommend that a review of beef language and standards, conduct a dedicated review of the legislation underpinning all audited programs, but particularly LPA to ensure that producers are not suspended for any purpose that does not endanger health and safety or export market access. That producers be given some defences and some legal protection from liability that is not as the result of their own negligence and that a standard of proof be required for investigations and further audits.

Suspension of a producers right to trade at the basic level (LPA) should only be suspended as a very last resort. Human errors and equipment failure should be corrected and should not result in suspension.

Conclusion

Farmers and livestock producers are constantly bombarded by challenges from a multiplicity of directions. These include regulation from all levels of Government and there is not a level about which PRA does not receive complaints many of which we do not have the resources to handle. Compulsory interjection by resources companies is another.
Regulatory and auditing burdens, which are often placed upon agricultural producers by their own producer bodies, are often not scrutinised sufficiently by suitably qualified legal personnel to ensure that they are not unfairly disadvantaged by such regulation.
Many producers often suffer symptoms reminiscent of Post-Traumatic Stress Disorder up to and including suicide as the result of regulatory burdens and its sometimes unintended consequences. This can be from a single traumatic incident which takes a long time and/or expense to resolve or can be the result of multiple attacks over a sustained period.
I am absolutely certain that some of the High Value Agriculture permit holders who received letters from the Federal Department of Environment just days before Christmas and had been jumping through hoops for years in an attempt to make their businesses viable felt such pain.
It should not be necessary for primary producers to have experienced legal counsel on speed dial in

order to operate their businesses but we are already in that space.

The Department of Agriculture and ABARES, among others, are berating landowners for a drop in agricultural productivity and are trying to blame farmers themselves.
It is not obvious to them that the risks are just too high to spend money on small percentage increases in productivity which can be regulated away in an instant.
Governments believe that putting pressure on entire classes leads to efficiency.
However, it is obvious from the statistics that we are "post" any great efficiencies and it is now a contest to see who can batten down the hatches tightly and live on the tiniest smell of an oily rag.
All available statistics back this up but that is not how it is being read by disconnected economists.

Other Issues which time prevented us from addressing

- Restrictions and "locking up" without "taking"
- Regulated co-existence with resources companies-inadequacy of "make good" agreements for loss of water-hundreds of hours lost in negotiations-inadequacy of compensation-unbalanced legislation which favours resources companies in negotiations.
- Great Barrier Reef-Some restriction with further proposed restrictions in reef catchments-a looming problem particularly the Great Barrier Reef but will apply to WA as well
- LPA-CCA, MLA policy advice on unknown resources contamination, failure to release commissioned legal advice and their positions on aggressively increased auditing- Ability of auditors to stop cattle sales to works.
- Biosecurity-Ticks, BJD
- LEP's-local environmental plans
- Water policy
- Environmental offsets
- Land clearing of any type for agriculture has restrictions on it
- Declaration of wetlands which in some states means that livestock cannot be grazed-different restrictions in other states
- Restrictions on water use including on stock and domestic water (Burnett catchment Queensland) in contrast to resources companies which will have unfettered use in Qld.
- Water meters on farm dams in SA and a fee required for water saved whether used or not-proposal for similar policy in the Lockyer Valley Qld
- Restriction of grazing in urban water catchment areas (WA)
- Mitigation Payments by resources companies for permanent damage to farmland paid to Government in Qld, not landowners.
- Macropod quotas
- Council rezoning, often, but not exclusively, of rural land to environmental land
- Australian Competition Policy and consolidation of multi-national and national companies-creeping acquisitions

Appendix A

We are farmers of tropical fruits in the Wet Tropics Bioregion who were severely impacted by the Vegetation Management regulations brought in by the Beattie Government in 2004 and extended by the Bligh Government in 2009. Our farming property of 68.64ha has two titles. In 2004, approximately 60% of our land was locked up, and when regrowth was added in March 2009, this

increased to 75%. At the time our regrowth land had been completely cleared earlier in 2009 but the mapping used was two years old. Attempts to get DNRM officers to correct the mapping were ignored. This meant that our larger block of 37.01 ha was completely locked up.

No compensation was provided. My efforts to get governments at all levels, universities and a range of other organizations which purchase land to buy it were unsuccessful. The stored carbon was used by government to offset carbon emissions in cities and mines enabling Australia to meet Kyoto targets. Yet we and other landowners with compulsorily conserved land received not one cent for these carbon credits.

The changes to the VM Regulations passed by the LNP government initially did almost nothing to give us access to more of our land for farming. The 'regrowth' land which was wrongly classified was again available to us. The mapping of our land, like most properties in the Wet Tropics has an overlay of Essential Habitat for endangered species. This is despite the fact that it is rare to see evidence of these species (Southern Cassowary and Mahogany Glider) on the land. Cassowaries which attempt to cross a busy road from Defence and World Heritage Land to our property invariably become road kill.

Because of the Essential Habitat mapping, we were required to provide an offset for any development permit granted. More than one year after the LNP changes to the VM Regulations, the Department of Environment released a workable Land Offset Policy. A Cash Offset Policy had been released in mid-2014 and using the formula we would have been required to pay the State more than $3.6 million to farm a little over 16 ha (less than 24%) of our land we have owned since 1981 – obviously a ludicrous and impossible situation for us. Realizing the extremely high value put on this land, I did attempt to discuss a solution at Ministerial level without success: we would have considered withdrawing or significantly modifying our Development Application if our undeveloped block could be purchased for a fraction of the Cash Offset value placed on it. In March 2015 we were granted a Development Permit for 11.88 ha. There are conditions attached to this such as ensuring regrowth areas return to remnant condition, controlling feral species at our cost and not fencing our boundary along the main road. We still have the dubious privilege of paying rates on all of the land. The Land Offset required is 11.88 ha of cleared and regrowth land as well as 25.57 ha of land mapped as remnant. In short, 37.45 ha or 55% of our land has been conserved so that we can farm 17% of our land. We accepted it as our only viable option and because the land we can now farm is in two large sections rather than several smaller areas and from our knowledge of our land, the best land for our orchards.
The process to obtain this permit was costly in time and money. It was handled in a very professional manner by the Assessment Officers. The officers assessing our application were aware that our pesticide use is minimal and our farming methods are unlikely to have any impact on the health of the Tully River and Great Barrier Reef. They were also able to see that our wetlands are in the same pristine condition they were in when we first started farming

Thus it can be seen that having undergone a strict assessment process, almost as much of our land is conserved as was conserved under the Labor Government's VM Regulations. Without a permit, we would have farmed our regrowth land resulting in a break in the corridor through our property. Assessment officers have ensured that there is a continuous corridor if required by wildlife of approximately 100 metres wide as well as riparian areas of 100 metres near any designated wetland, even though some mapped areas are merely dry gullies down which water

flows only in extremely wet times. Development Applications made after the Beattie VM restrictions were introduced required only 25 – 50 metre zones to be left on either side of any wetland. The wetland mapping has never been ground truthed on our land. As well, damage caused by Cyclone Larry and more severely by Cyclone Yasi five years ago meant that dense weed and vine growth both on the edges and through the understory and many felled trees restricted movement of any wildlife into and through the vegetation.

On 17th December 2015 we received a letter from the Compliance Section of the Federal Department of Environment which we found so disturbing that I felt I could take no more. The information about our Development Permit in this letter is inaccurate. While there were no accusations, there were ambiguities and suggestions implying that we may be in breach of the EPBC Act. This is the first time since August 2004 that any Federal Department has shown any interest in our land situation. What was even more disturbing is that a response was required by 23rd December.

Since the passing of the Qld Vegetation Management Act in 2004, our lives have been extremely stressful. We have been unable to expand our orchards using the best land on the property to improve our viability or to sell and retire because our farm is more like a privately funded national park surrounded by developed farms. Added to that is the devastation we suffered from Cyclones Larry and Yasi. Financially we have not yet recovered. The Development Permit gave us hope that we could, despite our age, progress towards greater viability and make our farm more appealing to potential purchasers.

Appendix B

Peter Swift's Case

Peter Swift bought his property in Western Australia in 2007. Within a short period of time while he was mostly working in remote parts of WA he was charged with illegal clearing.

The late Don Randall MP warned in a speech in Federal Parliament that the WA case was not supportable and that witnesses disputed that Mr. Swift had carried out any clearing.

> *My entreaties to him were that, as the minister responsible, he ask his department to be certain of the evidence that they had against Mr Swift before they began the long, tortuous, demoralising and expensive prosecution of him. In other words, I had outlined in detail that Mr Swift had much support from neighbours and other locals to say that he had not cleared this land as alleged by DEC and his prosecutors. In the most egregious Pontius Pilate manner, the then minister, Bill Marmion, continually washed his hands of this matter and allowed his department to run a vexatious prosecution of this humble mechanic from Waroona.*[23]

The trial cost hundreds of thousands of dollars for Mr. Swift and he was found to be not guilty but seven years later Mr. Swift is broke and broken. Formerly a valuable employee to a heavy machinery business he is now unable to work as a result of his mental state and the medication that he must take.

Payments on his property which were ahead at the time of the trial are now in arrears and faces foreclosure at the whim of his financial institution.

Mr. Swift has always had a great deal of support and since the trial has pressed for compensation. The attitude of the Attorney General is simply that people are routinely put on trial and are often found "not guilty". It happens he says.

Where is the recognition that usually the standard of evidence is much higher than that required to proceed to trial against unsuspecting farmers?
Rather than go through the full history of the case my aim is to show that two activist Departmental officers went after Mr. Swift when it was clear from witnesses before the trial the clearing had not been carried out by Mr. Swift. This should have been enough for caution to be the order of the day but the State, the "model litigator", proceeded with this prosecution for which there was no credible evidence and the "servants of the court" presented "expert" evidence which was easily rebutted by the defence expert.

23 http://www.propertyrightswestaustralia.com/files/104761823.pdf

When it was clear that the evidence would not support the case, one officer tried to postulate that Mr. Swift had illegally cleared a State commissioned drain for salinity protection. The Magistrate was not impressed and described their antics as worthy of Sir Humphrey Appleby.

Ministers and the Attorney General have no sense that trials based on flimsy evidence and moral cause corruption and activism are their responsibility and that unfairly ruined lives are not a desirable outcome of a moral and sophisticated society.

In this case the callousness and lack of responsibility for out of control Government officers is shameful.[24]

Attorney General Michael Mischin says he cannot hand over State government money on the basis of sympathy. He does however hand over State Government money to Departmental zealots for whom he is responsible to happily pursue innocent people.
Mr. Swift may have purchased the property for retirement rather than economic gain (one of the excuses used to deny compensation) but because of the intervention of the State Government those circumstances have changed and he now has a substantial debt, is unable to work as a result of the anti-depressants he is on and he is only allowed to use a small section of his property for the grazing of livestock.

Internationally renowned jurist, Lorraine Finlay, has used this case as an example of unwarranted denial of property rights.

> *The case of Peter Swift falls under this legislative framework. Peter Swift was prosecuted for clearing 14ha of native vegetation on his Manjimup property without a permit. Although he was ultimately cleared (after a lengthy and expensive court battle) he was then faced with his grazing land having been effectively reduced from 1200 acres to around 240 acres due to the ESA designation. He has received no compensation for this, but he is expected to individually deal with the continued compliance costs attaching to his property as well as paying his original mortgage that is based on the value of 1200 acres of productive land. This case starkly highlights the moral need for reform in this area.*
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> *The clear problem with the current framework of environmental protection is that it imposes substantial restrictions on land use, but fails to provide any compensation to land owners who purchased their land before these restrictions were put in place and who can no longer realize the true productive value of their property.*

24 https://mail.google.com/mail/u/1/#inbox/152a89d525fae076