

SUBMISSION TO THE NATIVE VEGETATION INQUIRY ON THE IMPACTS OF NATIVE VEGETATION AND BIODIVERSITY REGULATIONS

From:
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Email

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Dear Sir/Madam,

I am a fourth year BAppSc (Forestry) undergraduate at Southern Cross University on the Far North Coast of NSW. As part of my degree I have been required to study policy and legislation, and have focused particular attention on the NSW *Native Vegetation Conservation Act 1997* (NVC Act) due to its impact on forestry operations in NSW. The two key issues I wish to raise regarding the NVC Act are the unusual definition of clearing included in this act, and the effects that this has on land management in general and Private Native Forest (PNF) management in particular.

Background to the Act

The NVC Act was designed to consolidate the efforts of a diverse range legislation to provide a single point of control to manage the conservation and clearing of native vegetation. The Act specifically attempts to provide social, environmental and economic sustainable conservation, however the current levels of non-compliance suggest that it has not achieved this purpose.

Current figures show that there have been around eight successful prosecutions for breaches under the Act, and that fines have been in the order of \$35 per hectare. This low cost of clearing, coupled with the often high cost of compliance with the Act has led to high levels of non-compliance, high levels of public antagonism towards DIPNR staff, and at least one reported instance of organised community resistance and civil disobedience to the policing of the Act¹

¹ ABC Radio report, September 2003

The Definition of Clearing – A fundamental Flaw

‘Sustainable Grazing’ is only excluded from prosecution for the clearing of Native Vegetation under the Act at the discretion of the Director General. This is due to the highly unusual definition of clearing that includes ‘substantially damaging groundcover’. This attempt to include every single form of (native) vegetation modification under the definition of clearing has, in my opinion, led to very high levels of confusion and frustration with the NVC act, which in turn has significantly contributed to the widespread non-compliance with the Act. It has also severely impacted forestry operations due to the defining of substantially damaging any form of vegetation as being equal to clearing under the Act.

The current outcome of this definition is seen in the published figures for land clearing in Australia in which it is impossible to separate land on which trees have been permanently removed from land on which groundcover has been significantly impacted, or any of the range of options in between.

The Proof of the Pudding...

The proof of the effectiveness of legislation is the degree to which it meets its objectives, and this is intricately tied to the level of compliance it receives. The NVC Act must surely be lacking in effectiveness when those who attempt to comply with the act receive the greatest penalties, and non-compliers are either not identified or not effectively punished.

The two options available to increase compliance levels with the Act consist of increasing forced compliance through effective prosecution or increasing willing compliance through a reduction in disincentives. I wish to propose three options that will achieve this.

1: Redefine Clearing

The workability of the NVC Act can be greatly increased via the removal of articles C and D under section 5.1 of the Act. Article C refers to felling or pruning activities, either not generally detectable due to small scale or best dealt with under timber harvesting legislation. Article D refers to impacts that are only of concern to rare or threatened species, and as such are already covered under the *Threatened Species Conservation Act 1995*. This redefinition does not need to apply to section 5.2 of the Act, but Articles C and D under this section should be redefined as ‘disturbance’ for the sake of clarity and consistency with other acts.

2: Exclude Timber Harvesting in all commercial forms from the Act

The sustainable harvest of timber is not to my knowledge defined as clearing by any other legislative body in the world. The current practice of restricting or

eliminating the economic benefits obtainable from native vegetation sits in stark contrast to the stated desire (Article 3A) to improve the economic benefit to the state. This restriction has also led to perpetuation of poor or perverse management practices and has prevented the effective implementation of Articles 3D and 3E.

This can be remedied by recognising that timber harvesting does not constitute clearing, and excluding from the Act all land that is managed for perpetual commercial timber production. These activities can then be regulated through the *Plantations and Reafforestation Act 1999*, and may be expected to improve biodiversity levels in degraded bushland through a legislated facility to prescribe silvicultural treatments. This will turn commercially valueless land into a productive and biodiverse resource worthy of proactive management, thus achieving all of the objectives stated in section 3 of the Act.

3: Provide Financial Incentives

The number one disincentive to compliance with the Act appears to be the various costs associated with compliance compared to the lack of incentives. This can be offset in the case of regrowth vegetation by the provision of a carbon pooling system specifically designed to market the carbon accumulation and thereby create financial incentives for regrowth management. The provision of an alternative income stream from previously productive land will significantly reduce the financial impact of any lost production, and is likely to significantly reduce the animosity generated when permission for clearing 'woody weeds' is not granted. Such a Carbon Pooling Scheme will require efforts at the Commonwealth level and this needs to include the establishment of further legislation penalising high net Greenhouse Gas emissions and the establishment of a National Trading Framework.

Proposal Outcomes

These three proposals will have the combined effect of reducing the financial impact of the NVC Act on Land Managers whilst significantly increasing the degree to which the objects of the Act are realised. Improvements in compliance levels with the Act may be expected if sections 5.1 and 5.2 are redefined to bring the definition of clearing under the Act closer to the dictionary definition and land managers are permitted to disturb native vegetation within reasonable limits. The inclusion of all forms of commercial timber harvesting into a purpose built act will provide certainty to land managers, and can include specific forestry based initiatives that will see considerable increases in ecological value to actively managed stands. The establishment of a legislated Carbon Pooling system will place Australia at the forefront of the international trade in carbon due to the political and legal stability which Australia can offer, and will provide the financial incentives required to encourage both active and passive revegetation.

will significantly reduce confusion, animosity and compliance costs through the elimination of the most problematic portions of the Act

levels of conservation of native vegetation through increased levels of voluntary acceptance and compliance. The redefinitions of. These redefinitions will also increase the incentives to actively manage native vegetation for commercial production (eg Timber) and thereby lead to an increased appreciation of the value of native vegetation.

Plantations and Reafforestation Act 1999