

Constitutional Property Rights Committee

2nd separate Submission to the Commission of Inquiry into the Impact of Native Vegetation Act on Freehold land.

I put forward that:-

1. The Inquiry is based against the false premise that since 1995 [SEPP461 the Departmental administrative procedures for promulgating the NV&C Act have been within the law. Not so. Hence, **the Inquiry can have no credibility.**
2. Since day one, the Department [formerly Land and Water] has persistently acted in defiance **outside planning law**, planning procedure; in direct conflict with; and against unresolved inconsistency for the parliamentary supremacy of the EP&A Act; in particular **Part 4** of the dominant planning instrument.
3. Freehold landowners have been unlawfully deprived of their parliamentary and legislative property right to a **continuing and existing use** of their developed freehold industry. **DLWC has FAILED to observe and apply the mandatory Schedule 4 within its own Native Vegetation Regulatory Act.**
4. Landowners have been unlawfully deprived of a property right ... *fee simple in absolute unrestricted vacant possession of land* which permits an economic potential and **continuing use** for the established primary business physically attached to the LAND itself..... a business called **agriculture**. The 'use' of land in this context, is called *primary development*, all subsequent 'development' beyond this first physical 'use', is secondary development where the continued use of the land may; or may not require development consent before one can re-use the LAND for another activity.
5. **LAND may be developed in three ways ...s 76 of the EP&A Act ie i] Without Need for Development Consent** (therefore there can be no Regulation or Control over the 'use' of the LAND). **ii] Development with consent** [where Regulation and Control over the 'use' may be subjected to 'conditions attached to the consent and where the 'conditions' on the use of the development are appellable] **and iii] Land where nominated developments are Prohibited.**
6. AGRICULTURE is the physical first use of the land. As a 12rimatY use it does not require the consent of any authority to 'use' the land... therefore the use of the land for Agriculture is without Regulation and Control. Agriculture is defined as a rotational tilling of the soil. Obviously one has to 'clear' before one can 'till otherwise the LAND has no economic potential benefit.
7. Rural Land consequently: is the first alienation of land from the Crown for who ever has *fee simple absolute in unrestricted vacant possession*. This transfer of 'use' is to *heirs and successors for all time*; the 'approval' runs with the LAND for its initial intent which is both 'implicit' and expressly written [in the case of lease conversions] into the registration, [Real Property Act] where all the attributes of the LAND including vegetation is transferred [Conveyancing Act] then Valued according to the provisional Zoning uses set down 'm the Local Government's Local Environmental Plan.

8. The most basic and fundamental principle of 'natural justice' [sometimes called common law] is that "no man can be deprived of his possessions". **Common Law co-exists with environmental law** the High Court has determined Natural justice will prevail.
9. **The Existing and Continuing Use Provision** underpins the EP&A Act and requires that all **Existing Approvals are SAVED** in the interest of Natural justice.
10. This Provision for **SAVING** is found in **SCHEDULE 4 or the NV&C Act** and before it in s10 of SEPP 46. **Both were negligently set aside through the ignorance of, and by the perpetuated, demonstrated inexperience in Planning Law-dissemination, as arrogantly practised by departmental public servants who were unconscionably "authorised" to administer billions of dollars worth of freehold assets and industry; overriding private management directions and rights which are lawfully and inherently without discrimination logically, with the owner.** [discrimination doesn't apply to Urban investments]
11. **DLWC has acted outside Planning Law for 8 years.** There has been the most reprehensible planning blunder made; and in the derogation of the landowners' rights, there has been an unlawful surrender delivered against threats; emotional blackmail; persecution; and in cases, criminal prosecution arising out of the selective interpretation from an arrogance that the department can do what it likes; when it likes; and how it likes. Not so. **Parliament is limited in the extent of its power.**
12. The unAustralian; unChristlan; unprincipled; immoral behaviour of 'authorised' public servants [bureaucratic bullies] in applying unsustainable interferences, and frustrating a legislative 'continuing use right' [with parliamentary supremacy] is second only to a Mugabe domination.
13. **SEPP 46 was delivered against a political decision** determining [without study or scientific substantiality] that *only scarce remnants of native vegetation remain and must be protected.....Native Vegetation is our Heritage it must be saved..... For what and why.*
14. There is only 13% Freehold Land nationally and 83% Crown controlled either by direct management {ref. National Parks Wildfire disasters in 64 days last season} or leased controlled by agreement Western Division 41% of this state of NSW.
15. Previous governments advised and assisted in a pasture improvement programme in order to prevent soil erosion and to combat land degradation against practical considerations that when Australia was first settled, the environment supported only kangaroos, wallabies, emus and other fauna. The colony desperately needed food to survive. Sheep and Beef were imported and wheat seeds were sown. The LAND had to be improved to sustain human survival.
16. There is twice to three times the native vegetation in this nation now than 200 years ago..... In places it is self-destructing through the inability to survive overcrowding.

Conclusion: I would like the opportunity to expand on this brief summary at Canberra on August 4th. Clearly there is much to say. The propaganda is without parallel in this nation and the "perception" is not the reality. The law is with the landowner; and he has been denied this RIGHT for 8 years. This Inquiry should immediately expose the myth and only then 'continue' to determine just what the physical, emotional, social; economic and reprehensible cost has been.

**Don McDonald
18/7/03**