

To the Productivity Commission,

It has been stated by the NSW Scientific Committee that at least 61% of the original native vegetation has been cleared, thinned or significantly disturbed since 1788. This proportion of cleared area varies between regions and in some cases has exceeded 90%¹. Large scale clearing has also impacted on many fauna species, due to reduced habitat and corridors between remnants.

Aims of the Legislation

The introduction to the *Native Vegetation Conservation Act 1997* (NSW) states that the Act aims to provide conservation and management of native vegetation in the social, economic and environmental interests of the State. It is evident to me from speaking with various land managers that the Act is not achieving this outcome, and currently does not take into account the social, economic and environmental concerns that land managers face through complying.

Occurring Problems

Through this submission I wish to raise the issue concerning the problems in prosecuting breaches of the *Native Vegetation Conservation Act 1997*, and of the disincentives for abiding by the legislation.

A time line of policy trends has seen a gradual turnaround from total clearing of native vegetation in an effort to reclaim land for development purposes, to a gradual policy focussing on conserving native vegetation and biodiversity. The practice of land clearing once considered part of standard land management is now condemned and deemed illegal. It is evident that land managers who have not completely cleared their land are now paying a price for not having done so.

Over the past 10 years, laws governing what land managers can and can't do have drastically increased. There's the salinity action plan, water reform, threatened species legislation, catchment management plans, world heritage nominations, native title and tree clearing laws. None of these have had the same impact on land management as the *Native Vegetation Conservation Act 1997*. This Act over any other has stood out in areas of cost effectiveness and workability. An aim for triple bottom line benefits has fallen short at economic conservation; with property values lost when their land is given over for conservation purposes.

Definition of Clearing

According the Act, driving on grass could technically be defined as land clearing due to the inclusion of 'substantially damaging groundcover' in the definition of clearing (Articles 5.1-D and 6.1-D). This unusual definition is single handedly responsible for much of the confusion and anger associated with the Act, and appears to be a significant factor in the decisions of many landowners to breach the Act instead of attempting to comply through fear of unexpected consequences.

¹ http://www.nccnsw.org.au/member/cbn/projects/LifeLines7.3/StatPol_NS.html Date 16/10/2003

Capturing

Policing of illegal land clearing is an evident problem. Due to the current definition of clearing, a society of criminals has been created who can't be effectively prosecuted.

Illegal land clearing in NSW is increasing by up to 20 per cent each year because the department in charge lacks the means to identify it². Insufficient numbers of personal looking for breaches of the Act is not helped by the negative perception that may be encountered through land owners. The perception that allowing site assessment could potentially mean the 'locking up' of valuable land, which inevitably would decrease potential productivity and land values.

Prosecution

Since the *Native Vegetation Conservation Act 1997* came into practice there have been approximately 480 suspected breaches of the Act. Of these, six have gone to the NSW Land and Environmental Court where penalties for infringement have fallen well short of the \$1.1 million maximum penalty.

It has become evident that factoring in the cost of potential prosecution into the cost of development is less costly than compliance with the Act for many developers. The lack of successful prosecution of illegal clearing has seen landowners show disregard and disrespect for the Act.

Compliance incentives

Current incentives to comply with regulation are limited to the preservation of public image by larger companies and businesses that rely on this image to capture business. Landowners tend to believe compliance with the act will have adverse impacts, and they don't seek an environmental friendly public image. Landowners who do follow through with regulation and high conservation value areas are found on their land, may be restricted on future developments. This land will be 'locked up' at the expense of the land managers. In other words, while land managers may own the land, they would really only be able to walk among the trees and look at them. This reduction in the value of potential land uses has had significant impact on the resale value of the land in question, and has been bourn by land managers to the benefit of the nation.

Potential Solutions

To find a solution to these issues there needs to be greater incentives to landowners with less of the disincentives. Land Managers realise the need for native vegetation conservation, but also to need make a living and make ends meet.

Redefining the definition of clearing will remove any misunderstandings. This would include removing Article 5.1-C and 5.1 D from the Act, reducing the un-workability.

² <http://www.smh.com.au/articles/2002/08/20/1029114108600.html> Date 18/10.2003

Compensation is required to offset the loss of value from restricted land use activities associated with compliance with the act. An assessment system should also be implemented that does not require land managers to pay for the privilege of losing the right to develop their land.

Where landowners are restricted from developing further land, Extension and Advisory Officer may be appointed free of charge to assist land managers in developing sustainable practices and alternative land uses. This will help in decreasing further degradation on their land.

Conclusion

It is clear that land managers who fear losing their land to conservation can not be expected to willingly comply with the *Native Vegetation Conservation Act 1997*, and whilst the ability to police the Act remains limited, that unwilling compliance will not be forthcoming and the Act will not achieve its aims of social, economical and environmental sustainability.

Adequate compensation for lost land rights will result in increased willingness to comply. How much compensation may depend on potential revenues that the land would have made, for example 50 head of cattle could have run on this land. Once a culture of compliance is introduced and the effectiveness of the Extension and Advisory Officer has been felt, the issue of compensation can be re-examined.

Changing the current definition of 'clearing' and 'native vegetation' (Articles 5 & 6) to a more accurate definition will remove the confusion of what is counted as land clearing resulting in lost biodiversity.

I believe that the triple bottom line benefits of this approach far outweigh the costs, especially when compared with the costs associated with forcing unwilling compliance.

If the economic sustainability of conservation practices can be improved as suggested, flow on effects will also improve social sustainability, and therefore lead to increased levels of voluntary compliance. Voluntary compliance will then minimise the conservation value of environmental benefits.