SUBMISSION BY THE INSTITUTE OF PUBLIC AFFAIRS

PRODUCTIVITY COMMISSION DRAFT REPORT INTO THE IMPACTS OF NATIVE VEGETATION AND BIODIVERSITY REGULATIONS

Introduction

The Productivity Commission Draft Report is the most comprehensive and balanced study of native vegetation and biodiversity regulations (NVB) so far produced in Australia. It is a welcome reference point in a field bedevilled by misinformation and emotion. It acknowledges the significant level of voluntary, on farm conservation and illustrates the perversity of many of the regulations. The four steps to improve regulations would encourage positive changes to government behaviour. They are unexceptional in themselves.

But, in the end, the Draft Report disappoints. It is a bit like the Hutton Report in the UK. The massive accretion of evidence it contains could have supported a much more robust set of conclusions. We urge the Commission, in its final drafting, to be both more trenchant and courageous so that this significant opportunity to bring order out of the current chaos is not lost.

The Draft Falls Short

The Commission's Inquiry stemmed from an intense campaign by Australian landowners for an independent review of what had become an intolerable burden of regulation. The Inquiry has generated a tidal wave of negativecommentary from landowners and other parties (P 372 of the Draft). We would guess that over 95 per cent of the comments are adverse to the existing regulations and the percentage is even higher among those who will have to live with them.

This represents a quite exceptional degree of dissatisfaction and has led to a profound cynicism and even contempt for the law in the regions where it is most intrusive. It implies a pressing need for dramatic reform.

In light of this, we believe that the Draft falls significantly short in four ways:

1. It has a gaping hole at its centre.
2. It needs to examine the structural shift induced by regulation.
3. It has a misdirected focus on process.
4. It is too polite.

The Gaping Hole

It is hardly possible to evaluate the **net** impact of the regulations without some assessment of their underlying philosophy and objectives. The Commission has

made a deliberate decision to go no further than identifying the problem (Draft Finding 8.1). It lists the stated objectives of the regulation (which are in general terms) and does not comment on them or their validity or consistency.

There is therefore no substantial discussion of what levels or kinds of conservation the regulations are supposed to secure, what sort of landscape and rural economy this will result in or what evidence there is that these unknown outcomes are good public policy.

The Commission opts for a cost effectiveness approach. The Draft exists in a policy vacuum. It assesses how the regulations work without any judgement as to whether or how far they are necessary. There is ample evidence in the report that the regulations are overachieving and locking away far more land than was intended. There is parallel evidence that native vegetation coverage is very extensive in Australia (Table 3.2 in the Draft) and that clearing is at negligible levels (Table 5.1). In fact clearance rates are generally so low as to make this solely an issue in Queensland (and not much of one there). The Northern Territory, ACT and Tasmania and the ACT have no native vegetation crisis. Clearing in NSW, Victoria, WA and South Australia is miniscule.

The weak grounds for policy are compounded by the absence of comprehensive data to back the regulations. This absence is so obvious as to almost seem deliberate. How can we know whether there is sufficient conservation if we do not have satisfactory maps of what exists nor any idea of the continuing trends in regrowth and forest thickening? How can we know whether that unknown quantity is the right one without a calculation of the public benefits it is supposed to confer? And how do we know that the current objectives correlate with any historical state of the environment? It is quite possible that we have reversed the trend to native vegetation loss without knowing it and are thus over providing this public good. We have no way of knowing.

We believe that the Commission should devote a substantial section of its Final Report to a discussion of this immense lacuna in environmental policy. The regulations are based on very flimsy or non-existent evidence and an unstated rationale. No other arm of public policy could escape examination in this way. If we were to appropriate the wealth and reduce the earning capacity of our manufacturing and service industries in such a sweeping way with this level of justification there would be revolution.

The Structural Shift

In the excitement of prescribing for native vegetation, proponents and legislators have largely ignored the massive structural shift it involves.

This shift takes several forms.

First, it significantly erodes age-old property rights. It denies individuals the benefit of their property, without sufficient reason (see above) and generally without compensation. It is effectively an appropriation of huge tracts of property for the public benefit. This is important because it is an attack by the state on individual rights and because it appropriates individual means of sustenance. The stability of these rights is fundamental to any successful economy and society.

Moreover, the dirty deed was done with minimal or ineffective consultation in most States. Unconcern for the rights of those affected has been a major feature of the legislative processes.

The notion propounded by environmental groups that the rural sector should just wear the loss is both patronising and not one that they would accept themselves. We think that the Draft makes too little of this quite fundamental impact of the regulations. If the Commission does not defend individual rights which are the very basis of our prosperity, it is difficult to see what other agency will. There should be a strong finding on this in the Final Report.

Second, this structural shift has created a large and permanent rigidity into the rural economy. This sector has been remarkably successful and flexible in the face of fluctuating international markets and with minimal government protection. The regulations will now limit production switches, diversification and the adoption of technological advances. It is not just the present loss of capacity but the long-term drag on productive effort. It is no comfort to farmers to tell them that this is a permit-based system (P 111 of the Draft) if the licence processes are effectively a block.

There is no comprehensive measurement of the economic and social costs of this policy. This is an area where the Commission could make a major contribution. Indeed, without this, it cannot be said to have measured the full impact of the regulations at all.

Third, the option of sustainable commercial use of quarantined native vegetation should be dismissed as the furphy that it is. No amount of government education and information programs will make a viable commercial use from a native vegetation resource of which there will be so much available and which will attract maximum hostility to any commercial exploitation.

The Commission has a long record of battling structural defects in our economy and this is one that deserves much more critical attention than it receives in the Draft.

The Focus On Process

It is important that the Commission examine the process of formulating and administering these widely condemned regulations. Reform of the regulations wouldbe a real benefit and the steps proposed by the Commission should be

adopted. But this task has come to dominate the Draft in a way that suggests that reform of the process will solve most problems.

We believe the Commission should take a step back and inquire why this appalling mess came into being and persists in the face of all sensible attempts to improve it. This would involve an examination of the political dynamic that sees major shifts in policy close to elections and the creation of administrative arrangements by governments by which they abdicate their responsibility in favour of processes that are biased against flexible use of areas of native vegetation. Landholders are disempowered in this closed process.

By excluding those most affected, the legislative process tends towards sweeping prohibitions favoured by the environmental movement. These prohibitions then catch many activities which would not conflict with environmental objectives. The current alliance of ideological obsession with government duck shoving will continue until it is clearly exposed.

The Commission could also examine the distribution of costs between those proposing and passing the legislation and those who permanently suffer its consequences. There is a general propensity of governments to engage in legislative “busy work” and there is no penalty in this case for doing so.

The recommendations of the Draft could be implemented in full and still fail to make much difference without a major shift in the attitude and behaviour of governments.

The Draft Is Too Polite

We hope that the Final Report of the Commission is more trenchant than the Draft. There are a number of areas where the Commission is tentative where the evidence would support a much more decided view.

Draft Finding 3.2 on assessment of costs and benefits is well founded, makes nonsense of much of native vegetation policy and should say so.

Regional consultation processes may have been effective in involving local communities (Finding 3.4) but that does not mean that they had any effect other than as a listening post.

There have been actual inconsistencies in decision-making processes not just perceptual (Finding 3.6).

Finding 3.10 should conclude that the application process frequently effectively excludes small operators.

Conflicting and multiple objectives *will* hinder attainment of environmental goals (Finding 5.1)

Clearing rates have declined *to negligible levels* following regulation (Finding 5.2).

Future regional impacts may be great with the persistent action of the regulations (Finding 6.6).

Government measures to mitigate negative impacts have been *negligible* (Finding 6.7).

A reduction in the number of legislative instruments *will* improve the quality and effectiveness of the regulation (Finding 7.10).

Governments should *reduce* the costs imposed on land holders (Finding 7.12).

Many current regimes *don't* utilise local knowledge (Finding 7.13).

The law will fall into contempt if landholders regard regulations as unfair (Finding 8.9).

These suggestions illustrate a more general plea that the Commission tighten up its findings and recommendations where the evidence supports stronger conclusions. This is an area of policy where it is too easy for policy makers to take advantage of conditional statements – a sort of bureaucratic precautionary principle.

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