

29 April, 2007

Productivity Commission

Dear Sir,

**Re: My Submission to Review the effects of Legislation and Regulation on Land Holders Title Rights.**

**PUBLIC OWNERSHIP:**

As the Productivity Commission Report clearly identifies on Page 30, that Regulation exerts Public ownership on Land Holdings.

This then I believe enforces another partner into the Land ownership, on which, the Land Holder has to pay rates on their behalf

**VALUATION FRAUD:**

It would appear to me that when the Valuation Department values total land area for rating purposes, the Valuation is in fact, creating a crime of mass proportions or the very least fraud.

Because it is not established how much of the Land holding is under the N.S.W. State Legislation and regulations unidentified and therefore under Public ownership on which, no rates should be paid.

**RURAL LANDS FRAUD:**

I also believe that State Legislation and Regulations also causes unlawful acts in the Rural Land Boards, in their assessment of the total carrying capacity of Farm Land, that properties have to pay Livestock rates, without deducting for the Public Ownership restrictions, that have been enforced (illegally?) over the farmers use of his land

**NATURAL RESOURCES BILL INITIATES FRAUD:**

I believe that former Native Vegetation regulation and the 2003 Natural Resources Legislation brought **in** by the Labor Government of N.S.W. creates a crime in New South Wales of the likes N.S.W. has never been confronted with before.

When the Natural Resources Bill was presented to New South Wales State Parliament, N.S.W. National M.P. describes the Bill as Fraud, as well as many other things.

I believe what is written in Hansard of his speech is correct. I feel that Andrew Stoners speech reported in Hansard, that he must have felt very strongly about the wrong doing caused by the Natural Resources Bill, to speak the way he did.(Copies of Productivity Report and Hansard of Andrew Stoners speech enclosed and my copy of my Valuation objection).

**ACTION REQUIRED:**

I ask the current Federal Government to advise me and others affected, what action it will take to have unlawful Acts investigated and appropriate action taken, not only to correct this matter, but also to take action against any person or persons or Government Body involved in wrongdoing?

Thanking you,

**LEN WHEATLEY**

dated just yesterday states on page 10:

The Committee notes that the right against self-incrimination (or "right to silence") is a fundamental right. This right should only be eroded when overwhelmingly in the public interest.

The Committee refers to Parliament the question whether compelling a person to make self-incriminating statements that (although not themselves admissible in criminal proceedings) may inform criminal investigations or be admitted in civil proceedings, unduly trespasses on personal rights.

That finding refers to clause 32 of the Native Vegetation Bill. The Legislation Review Committee also refers to specifically to clause 40 of the Native Vegetation Bill in the context of trespass upon personal rights and liberties. The report states:

Under cl 40 the burden of proof is effectively reversed. Once it has been established that prohibited native vegetation clearing has occurred, in the absence of a reasonable excuse, the landholder must prove that he/she was not responsible for the clearing to avoid liability.

The report also states in relation to clause 40 of the bill:

The Committee notes that the Bill reverses the onus of proof for owners, occupiers and managers of land in relation to native vegetation offences, once prohibited clearing of native vegetation is substantiated.

**Mr Ian Slack-Smith:** Russia sounds good.

**Mr ANDREW STONER:** As the honourable member for Barwon says, Russia's totalitarian communist state is beginning to sound good. The report also states:

The Bill effectively deems such persons guilty unless they can prove their innocence or provide evidence regarding the matters set out in the Bill.

The Committee refers to Parliament the question of whether this trespass on personal rights is undue, given the object of facilitating the protection of native vegetation.

The report states in relation to clause 41 of the Native Vegetation Bill:

The Committee notes that the Bill reverses the onus of proof for certain persons concerned with the management of a corporation in relation to native vegetation offences alleged to have been committed by the corporation. The Bill deems such persons guilty unless they can prove their innocence or provide evidence regarding the matters set out in the Bill.

The Committee also notes that individuals may be proceeded against and convicted even if the relevant corporation has been proceeded against and convicted under the Bill.

The Committee refers to Parliament the question of whether this trespass on personal rights is undue given the Bill's object of facilitating the protection of native vegetation.

The report also states in relation to clause 36 of the Catchment Management Authorities Bill:

The Committee notes that the broad power of entry contained in clause 36 of the Catchment Management Authority Bill 2003 trespasses on individual rights.

The Committee refers to Parliament the question as to whether this is an undue trespass on rights.

The Committee further notes that there is no limitation on the class of persons to whom these powers can be conferred. In addition, there appears to be no formal instrument or procedure for conferring these powers on persons. Nor is there any requirement on such persons to produce identification.

The Committee has previously noted its concerns regarding legislation which confers powers which significantly affect rights, without setting appropriate limits or guidelines as to

whom those powers can be conferred - or their qualifications ...

The Committee has written to the Minister to seek his advice as to why there are no requirements regarding the qualifications or attributes of persons who may have powers of entry conferred upon them for the purposes of the proposed Catchment Management Authority Act 2003.

In relation to clauses 15 and 28 of the Native Vegetation Bill, the committee notes that the matters to be prescribed by regulation are central to the effective and fair operation of the ensuing Act. The committee has written to the Minister seeking an explanation as to why the matters referred to clauses 15 and 28 are not prescribed in the Native Vegetation Bill 2003. The committee refers to the Parliament the question of whether allowing these significant matters to be prescribed by regulation is an appropriate delegation of legislative power. That is just one example of what the committee says about these deeply flawed bills. The committee comprises members of Parliament from all sides of politics. It is not being political; it is simply saying that these bills are deeply flawed.

I will now go through, bill by bill, the major concerns of The Nationals. I note that these concerns are by no means exhaustive. As mentioned earlier, proposed section 40 removes a farmer's right to the presumption of innocence. That is a gross violation of the human rights of land-holders.

**Mr Ian Slack-Smith:** It is the Mugabe bill.

**Mr Craig Knowles:** You can always vote against it.

**Mr ANDREW STONER:** The honourable member for Barwon has an alternative title. What happened to the principle of innocent until proven guilty? It is no wonder that the Minister is backing away from this legislation and calling it a draft, as if he can have a bill somewhere between an exposure draft and legislation on the table of the Parliament, which until last night was going to be guillotined. I can understand why the Minister is backing away from it. From where has this notion, of removing a farmer's right to the presumption of innocence, come? It was not in the Sinclair report. I want the Minister to give a full and frank explanation of how this came about.

Under the Native Vegetation Bill third-party proceedings can be commenced in the Land and Environment Court regardless of whether a person's right has been or may be infringed because of a contravention. That leaves farmers open to vexatious litigation. A person is not excused from giving information, answering questions or producing documents under this provision on the ground that the information, answers or documents may tend to incriminate the person. Development consent for broadscale clearing is not to be granted unless the Minister is satisfied that the clearing concerned will "improve or maintain environmental outcomes". There is no definition of "improve or maintain environmental outcomes" and productive outcomes have been ignored.

The Nationals have major concerns about the definitions in this bill. I would like to know how the 1983 date for the western division and the 1990 date for other areas of the State were reached in relation to the definition of regrowth, particularly given the rate of growth of vegetation on the coast.

**Mr Andrew Fraser:** And in the Tablelands.

**Mr ANDREW STONER:** The honourable member for Coffs Harbour makes a good point. Native vegetation grows much more quickly on the coast and the Tablelands. A tree planted on the coast in 1990 will have grown substantially by now. It defeats the purpose of having a more recent date for regrowth on the coast as opposed to the western division. Proposed section 8 of the legislation defining broadscale clearing will massively impact on farmers and land-holders. The removal of one tree in remnant native vegetation or protected regrowth for a fence post will see a farmer prosecuted for broadscale clearing. This was all about getting the Premier a cheap headline, but farmers will now have to deal with this draconian definition. Why did the Government not use the definition in recommendation 16.7 of the report that was ticked off by the Sinclair group? Proposed section 6 of the legislation defining native vegetation differs from the Sinclair recommendation in several ways, including defining vegetation as indigenous if it is of a species of vegetation or it comprises a species of vegetation that existed in the State before European settlement.

holds the property right, the potential for compensation is critical in bringing about that solution.

Where the 'market' solution proves infeasible because of high transactions costs (for example, because there are many affected parties as in the case of a public good), as already noted, there is a potential role for government intervention. The approach currently in place in most Australian jurisdictions is regulation of native vegetation clearing by private landholders without in most cases, any automatic right to compensation. Potential *efficiency* consequences of the absence of compensation are that:

As Coase (1960) and Buchanan and Stubblebine (1962) point out, so long as the parties benefiting from the increase in services provided by native vegetation do not have to pay, they are likely to continue to press for further conservation effort until there are no more benefits to be had (where the marginal benefit is zero, or the point  $QNV_x$  in figure 2.1). In other words, without the constraint imposed by having to pay the costs of producing environmental benefits, there may be over-provision of the environmental public good, which imposes a net social loss; and

Regulation of native vegetation on private property essentially asserts public ownership of the native vegetation resource (though not its ongoing management). If there is an expectation that permission to use native vegetation on their properties will not be granted, then the only way private landholders have to avoid what they perceive as a 'taking' and loss, and to retain 'ownership' of the native vegetation, is to clear it illegally (after taking into account the probability of being caught and penalised), to allow it to degrade (for example, by allowing weed and vermin infestation or over-grazing), or to clear it before regulations are imposed.

These possible incentive effects are arguments against regulation without payment of compensation but not necessarily the regulatory instrument itself. The efficiency of governments establishing prescriptive rules requiring retention of native vegetation on private land is considered in subsequent chapters of this report. However, there are also some efficiency arguments against payment of compensation for regulation - principally, that payment of compensation may encourage inefficient investments and actions by landholders (Blume et al. 1984).

As discussed in chapter 8, there are other policy instruments that avoid the need for compensation for compulsory takings because they mimic voluntary private trades. As such, they involve payments being made to landholders for services rendered.