

NSW Office of Environment and Heritage
Conservation Policy and Strategy Section

Re: Proposed Native Vegetation Regulation 2012

I am writing to submit my formal opposition to the proposed Native Vegetation Regulation 2012. The Regulatory Impact Statement does not adequately explain why the underlying Native Vegetation Act 2003 needs to be maintained. All three Options assume that the Act could not be repealed. It clearly can be repealed as this was in fact promised, in pre-election commitments, by the current National Party who is governing NSW in coalition with the Liberal Party.

This RIS only discusses the costs / benefits associated within the narrow options of always retaining the Native Vegetation ACT, if that were repealed as promised then perhaps a real cost/benefits analysis could be done on the WHOLE picture - airy fairy figures provided by this paper discussing the "expected" benefits of regulatory administration of native vegetation without discussing the real (not anticipated) costs imposed on the landholders, including a monetary value for the lost potential earnings and the destruction of property values which occur because of the imposition of the Native Vegetation ACT 2003.

It also makes this extraordinary statement when discussing the economic benefits of native vegetation conservation "Many of these benefits are non-excludable (i.e. nobody can be excluded from consuming the good) and non-rival (i.e. one person's consumption of the good does not reduce the availability of the good to others). These attributes mean that markets do not appropriately price these goods and services. This market failure is the fundamental rationale for government intervention in native vegetation management."

A "market failure" is a very poor default reason to introduce and perpetuate an extremely oppressive and authoritarian Native Vegetation Act. It is not a good enough reason for the Government to be prepared to throw away the individual's right to own property and to manage that property by one's own decisions. Not a good enough reason that Government is prepared to pervert the course of justice by allowing searches without a warrant and judging a person guilty before presuming innocence, or that Government is prepared to "trespass on personal rights and liberties" as noted by the Legislation Review Committee, Legislation Review Digest No6 of 2003, 18 November 2003)

I would like to put forward a list of negative consequences of Native Vegetation Legislation on privately owned agricultural land affected by the Act which needs to be fully costed to justify perpetuating this legislation and please include also the real costs of administering the compliance regulations and all the government funded activities of all 13 of the Catchment Management Authorities, the bureaucratic activities of processing the PVPs, etc; weigh up all these costs against the economic benefits of native vegetation conservation.

If a non-use value can be given for society's pleasure of just looking at native vegetation in the environment, provision of clean air, water and other resources and future use by existing persons or future generations, then a value must be put on the loss of the presumption of innocence, the loss of personal rights and liberties – the freedom to make our own decisions, as is appropriate in a democracy.

Negative consequences of Native Vegetation Legislation on privately owned agricultural land affected by the Act which needs to be fully costed to justify perpetuating this legislation:

1. Discrimination has occurred because not all agricultural land is covered by native vegetation – for instance, it would be fairer if the law stated that ALL land, whether it be public or privately owned, covered in native vegetation or totally cleared, be subject to the same requirements, ie, that a certain percentage of that land should be covered with native vegetation which is suitably biodiverse for the locality with positive environmental outcomes.
2. Productivity of affected agricultural land has diminished through:
 - a perceived loss of ownership results in land owners not wanting to work hard to improve something they don't actually own because if they have to ask a government authority for permission to use the land, do they really possess or own that land?
 - payment of rates and taxes on land no longer available for improvement become a burdensome liability
 - loss of ability to access potentially fertile agriculturally suitable land by land owners' own decisions within a time frame which can take advantage of market opportunities
 - rampant regrowth unable to be economically cleared on an individual plant by plant basis with nil to minimal disturbance to soil
 - loss of alternate income from the sale of timber fence posts, bushrocks, firewood, etc, as needed in times of financial hardship brought on by market variability or seasonal conditions
 - the high input costs of increasing the productivity of reduced available land restricts viability
 - inhibited management of weeds and vermin and soil erosion
 - increasing risk of bushfires resulting in catastrophic firestorms
3. Land values have fallen because of lack of demand for land covered with native vegetation and the regulations incurred from owning such land
4. Loss of farm business viability resulting in farming businesses closing down, people walking off the now uncommercial properties or selling, if they are lucky, to absentee landowners
5. Impacts on small businesses in local towns and villages who are becoming no longer financially viable as the flow-on effect of farming money diminishes.
6. Increasing costs of rural counsellors and health workers working with landowners affected with feelings of helplessness, hopelessness and depression brought on by this onerous legislation as they lose control of their own decisions and lives leading to social breakdowns such as family breakups, divorces and even suicides.
7. Biodiversity outcomes have NOT improved – large areas of trees alone do not necessarily mean large improved biodiversity areas, in fact the opposite has occurred.

8. Water quality is not necessarily improved as greater areas of trees and scrub means less water will run-off into the streams and rivers of the catchment areas
9. Justice has been perverted with the onus of proof for land owners being reversed: the Act effectively deems landowners who clear any protected native vegetation – guilty - unless they can prove their innocence and the problem lies with determining unequivocally what is protected or not protected.
10. The most destructive consequence of the Native Vegetation Act 2003 is the taking of property, the theft by regulation of the use of our assets. In the farming industry the use of the asset is the asset, the use of the soil is the basis of farming and if we can't access the land underneath the native vegetation then it has been stolen from us without any just terms compensation.

Once the true values of all the costs and benefits of retaining native vegetation for conservation purposes on privately owned freehold land are established, a better judgement of whether government intervention or regulation is needed or in fact another more equitable solution may become apparent. The Native Vegetation Act 2003 was rushed into legislation on the back of the worst drought in a century. Now that the drought is over and it is raining again, a more balanced solution can be reached, one that doesn't endanger our agricultural productivity or our rights to own and use private freehold land by our own decisions.

I therefore call for the repeal of not only the Native Vegetation Regulation 2012 but also the repeal of the Native Vegetation Act 2003 itself. Only then can we address the perceived problem of the over clearing of a renewable resource on private freehold land in a fair, just and equitable way as is appropriate in the free democratic society that Australia is meant to be.

Name Withheld

Tuesday, 14 August, 2012