Justin Jefferson
[redacted]
Kybeyan NSW 2631
[redacted]

Submission to the Review on the Native Vegetation Regulation

Contents **Page**

1. **Introduction** **2**
2. **Executive Summary** **3**
3. **Why the RIS got it wrong** **5**
4. **How the RIS got it wrong** **28**
5. **Doing it properly: costs and benefits that need to be considered** **34**

Introduction
This submission shows that the Native Vegetation Regulation should be repealed because it cannot be justified when all the direct and indirect economic and social costs and benefits are taken into account on both sides of the question, as required by the Subordinate Legislation Act 1989.

Moreover it is submitted that it would be unlawful to remake the Regulation or make the proposed Native Vegetation Regulation, because the Regulatory Impact Statement has not complied with the requirements of the Subordinate Legislation Act. Therefore by law the proposed Regulation must not be submitted to the Governor.

The only other course of action available is to do the Regulatory Impact Statement and consultation process again, this time properly.

This submission shows why and how the RIS did not comply with the requirements of the Subordinate Legislation Act.

It:

- assumed what was in issue over and over again, namely that regulation is justified, when that's precisely what it was supposed to be proving
- reversed the onus of proof which should have been on those in favour, not on those against more regulations
- mistook the object of the exercise as being to facilitate more regulation rather than to prevent it unless justified
- assumed what it was required to demonstrate, namely that the benefits of regulation outweigh the costs
- was biased in its approach. It counted categories of costs against repeal but did not count the same categories of costs in the case against further regulation. And it counted categories of benefits in favour of further regulation but did not use the same categories to count the benefits in favour of repeal
- assumed premises which, if true, would justify the total abolition of private property altogether
- used self-contradictory or otherwise illogical methodology
- conjured fake positive market values for native vegetation, and ignored the real negative market value of native vegetation
- failed to identify or understand the main issues. It failed to specifically ask why a voluntary response would not be better. It failed to ask why those who claim that native vegetation is more important than property rights should not sacrifice their own property rights voluntarily, rather than someone else's under compulsion.
- failed to quantify or assess the costs or benefits it was required to quantify or assess
- was otherwise partial and defective

This submission then shows what the RIS should have done, and what the next RIS should do, in order to comply with the requirements of the Subordinate Legislation Act. It suggests categories of costs and benefits that were and are obvious candidates for quantification and assessment.

Executive summary

The reason for the current review of the Native Vegetation Regulation 2005 is because it "is repealed"[1] unless remade by 1 September 2012 [2].

So the question underlying the entire consultation process is whether the Regulation should be repealed or not.

And since repeal of the Regulation would make the Act unenforceable, it also necessarily raises the question whether the Act should be repealed. Only the *legal* distinction between the Act and Regulation is easy to make. But to assess the costs of the Regulation, it is impossible to distinguish the Regulation from the Act. In *practice*, the two form a whole.

The Regulation cannot be re-made or amended without a Regulatory Impact Statement[3] to consider whether the benefits outweigh the costs.[4]

The purpose of the Subordinate Legislation Act is "to remove outdated, *unnecessary*, ineffective and overlapping rules" and "to prevent the proliferation of unnecessary rules". [5]

> The burden that these rules place on the community cannot be underestimated. Extensive government resources are involved in applying and policing statutory rules at considerable cost to government and the taxpayer. Equally the community spends time and resources complying with the rules. The presumption exists that all statutory rules are designed to benefit the community in some essential way. The fact is they frequently impose burdensome costs and obligations on sections of the community without proper justification of the need for the regulation…

---

[1] Section 10 Subordinate Legislation Act 1989

[2] The repeal has been postponed once: see Subordinate Legislation (Postponement of Repeal) Order 2011 . 2011 No 367: http://www.legislation.nsw.gov.au/sessionalview/sessional/sr/2011-367.pdf
It may be postponed up to four more times by executive order with increasingly stringent conditions on later postponements: Section 11
http://www.legislation.nsw.gov.au/sessionalview/sessional/sr/2011-367.pdf

[3] Section 5 Subordinate Legislation Act 1989

[4] Schedule 2, Subordinate Legislation Act
"Costs and benefits include economic and social costs and benefits both direct and indirect. If this is not possible, the anticipated impacts of the proposed action and of each alternative should be stated and presented in a way that permits a comparison of the costs and benefits."

[5] Second reading speech, Legislative Assembly, 2 August 1989, Mr Dowd, Hansard 9146: (my emphasis)

> "The Government is also concerned that in the past subordinate legislation has been used to concentrate power in the hands of executive government, making it less accountable to the Parliament and citizens of the State… **In future, under the provisions contained in this bill, the onus will shift so that those seeking to retain government intervention are required to justify continuation of the regulation in terms of the public interest**. [6]

This means that the onus of proof was on the authors of the RIS to justify the continuation of regulation, not on the opponents of the Regulation to justify repeal.

This submission shows in detail that the RIS substantially failed to do, or to properly and impartially do the assessment that was required in order to justify continuation of the regulation.[7]

Why it failed to do the assessment properly is shown in the next section: *Why the RIS got it wrong*.

How it failed to do the assessment properly is shown in detail in: *How the RIS got it wrong*.

This means that the provisions of the Subordinate Legislation Act have not been complied with. This means that the proposed regulation must not be submitted for making by the Governor[8] unless and until the costs of the existing or proposed Regulation have been quantified wherever possible; and where they can't be quantified, are presented in such a way that the costs of the different options can be compared.

Finally the submission shows the categories of costs and benefits that the RIS would need to quantify or assess, in order to comply with the Subordinate Legislation Act.

[6] Second reading speech at 9146: (my emphasis)
[7] Schedule 2, Subordinate Legislation Act 1989
[8] Section 7, Subordinate Legislation Act 1989

Why the Regulatory Impact Statement got it wrong

Running through the RIS's whole approach is the ***assumption*** that the regulation is justified for no other reason than that it exists. As shown above, that is the opposite of the correct approach intended by the Subordinate Legislation Act.

RIS - Executive Summary

For example, in the Executive Summary **Introduction**, it says:

> To meet the staged repeal requirements of the Subordinate Legislation Act and improve the operation and efficiency of the Regulation it is proposed to remake those provisions of the Existing Regulation that remain relevant to the management of native vegetation, and modify a number of provisions, as the Native Vegetation Regulation 2012.[9]

It is submitted that this is precisely backward. The purpose of the Subordinate Legislation Act is not to remake more new regulations; it is to get rid of old ones. The starting position is that the Regulation "is repealed"[10] and that further regulation is not justified [11] [12].

The purpose of the exercise is not to remake regulations because they are "relevant" to their enabling Act. Using that approach no regulation would ever be repealed!

The purpose is to *justify* regulations *only if their benefits can be rationally demonstrated to outweigh their costs.* That is precisely what the RIS failed to do.

In the Executive Summary **Proposed Changes**, the RIS says:

> When compared to the Existing Regulation, the Proposed Regulation seeks to clarify a number of the provisions and streamline some of the routine elements and assessments.[13]

But the purpose of the exercise is not to "clarify" and "streamline" the existing regulation. It is to *repeal it* unless it can be justified by reference to criteria that the RIS substantially failed to identify, calculate, quantify or assess as required by law.

In the Executive Summary **Options**, the RIS shows that it has misapprehended the task it was to perform:

> Option 1 (Base case) – No regulation would exist - this situation would create procedural and administrative problems with many sections of the Act.

---

[9] Page vi
[10] Section 10, Subordinate Legislation Act 1989
[11] Second reading speech at 9146.
[12] or postponed for the limited number of times permitted pending the proper required justification under the Subordinate Legislation Act 1989. The Native Vegetation Regulation was due to be repealed on 1 September 2011. The government postponed the repeal until 1 September 2012.
[13] RIS at page vi

> Government would be unable to achieve the objectives outlined in the Act.[14]

In other words, the RIS thinks that a regulation can be justified by the fact that repeal would inconvenience the government. But if a regulation is justified by the existence of its enabling Act then obviously no regulation would ever be repealed. The very fact that a regulation is subordinate legislation – i.e. that it exists - would justify the presumption that it should not be repealed – *the exact opposite of the intent and the effect of the Subordinate Legislation Act*.

In the Executive Summary **Assessment**, the RIS says:

> The relative costs and benefits of each option have been assessed against the Base Case of no regulation (Option 1). The costs and benefits of the options depend on their relative ability to achieve the objects of the [Native Vegetation] Act. [15]

This is not correct. Firstly the RIS did not properly assess the costs and benefits of each option, because it was biased in favour of further regulation and otherwise fatally flawed, as will be shown in detail below.

Secondly the costs and benefits do not depend on their relative ability to achieve the objects of the Native Vegetation Act. They depend on their relative ability to achieve the objects of the Subordinate Legislation Act. This distinction is critical. The RIS was required to quantify and assess

> which of the alternative options involves the greatest net benefit or the least net cost to the community.[16]

Therefore the RIS fundamentally mistook the purpose of the exercise, and the task it was required to perform.

In the Executive Summary **Improvements**, the RIS says:

> Compared with the Existing Regulation, the Proposed Regulation (Option 2) is likely to result in a number of environmental and administrative improvements, including:
> - increased flexibility for landholders to manage invasive native plant species and thin native vegetation
> - a reduction in assessment times for certain categories of clearing assessed under
> - the new streamlined assessment process in the EOAM
> - a reduction in administrative costs for EOAM implementation;
> - an increase in the environmental protection of regrowth following Private Native
> - Forestry (PNF); and
> - an improved treatment of threats of clearing in riparian areas.[17]

[14] RIS at page vii
[15] RIS at page vii
[16] Schedule 2, 1 (e) Subordinate Legislation Act
[17] RIS at page vii

This again shows that the RIS misdirected itself. Its task was not to justify new regulations by comparing the benefits of new regulations to old. It was to justify any regulations *compared to the presumption in favour of repealing the regulation.*

So the RIS failed to address itself to the proper question. This invalidates its conclusion in favour of more regulations, which in any event was biased from the outset.

The RIS says:

> "The Proposed Regulation is expected to have a minimal impact on individuals and communities, businesses and government compared with the Existing Regulation."

But the RIS did not assess, or did not properly assess the impact on any individuals, any communities, any businesses, or government. For example it should have considered the case of a farmer who wants to use his land to grow food to feed the hungry. Without the Regulation the Act would be unenforceable. Now given the Regulation what economic and social costs, direct and indirect, must he incur to know his rights and get permission? What is the cost to the community in terms of values sacrificed, food production foregone, businesses ruined, etc. What is the cost of the salaries, superannuation, offices, cars, mobile phones, travel, hotels, etc. etc. etc. of all the State officials who administer the Act? What is the cost to comply?

The RIS was charged to attempt to quantify the costs and benefits but did not do the basic due diligence to assess them from the point of view of those who liberties are being overridden with force and threats.

It did not assess the benefits to individuals of repeal, in terms of resource allocation, administration, and compliance, as it was required to do.

And the same applies to businesses, and communities.

It is submitted that if it did do what it was supposed to do, it would have found massive costs to society of the Regulation, and massive benefits from repeal.

And all its methodologies were false because they considered a small sub-set of *notional* impacts expressed in terms of make-believe dollars on only one side of the question. It did not consider the *full set of actual* costs, expressed in real dollars, ruination of livelihoods, confiscations of farms, depression and suicide, property devaluations, human deaths by starvation, and actual dollars; as shown below.

These defects completely invalidate the RIS's conclusion.

I address the headings in the RIS for ease of reference.

RIS 1 Introduction

1.1 Purpose of this document[18] [i.e. the Regulatory Impact Statement]

[18] RIS at page 1

The RIS correctly states the criteria it is supposed to follow, both from:

1. the Subordinate Legislation Act 1989, and from
2. the Better Regulation Principles.

The problem is, as will be shown, that it doesn't follow them.

Subordinate Legislation Act[19]

> (a) A statement of the objectives sought to be achieved and the reasons for them.
> (b) An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially).
> (c) An assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance.
> (d) An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.
> (e) An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community.
> (f) A statement of the consultation program to be undertaken.

The RIS omits this critical part from Schedule 2:

> (1) Wherever costs and benefits are referred to in this Schedule, economic and social costs and benefits, both direct and indirect, are to be taken into account and given due consideration.
> (2) Costs and benefits should be quantified, wherever possible. If this is not possible, the anticipated impacts of the proposed action and of each alternative should be stated and presented in a way that permits a comparison of the costs and benefits.

which it failed to do. In particular, it used methods to allege benefits of regulation, without using the same method to compare the benefits of repeal. And it used methods for alleging the costs of repeal without using the same method to compare the costs of regulation. In a word, it was biased.

Better Regulation Principles[20]

> Principle 1: The need for government action should be established
> Principle 2: The objective of government action should be clear
> Principle 3: The impact of government action should be properly understood by considering the costs
> and benefits of a range of options, including non-regulatory options
> Principle 4: Government action should be effective and proportional
> Principle 5: Consultation with business and the community should inform regulatory development
> Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered
> Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

---

[19] Schedule 2 - Provisions applying to regulatory impact statements

[20] Guide to Better Regulation, NSW Government Better Regulation Office, November 2009 at page 7 http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf

RIS 2 Native Vegetation in NSW

2.1 The need for government action [21]

The better Regulation Principles require the need for government action to be considered.

The RIS shows its bias throughout this section which invalidates its conclusion.

It starts with some *facts* about the extent and nature of native vegetation in NSW. It says the *extent* of native vegetation has increased following the passing of the Native Vegetation Act. Then it says "Despite these improvements, maintaining or improving native vegetation remains a challenge…"

But hang on. The whole purpose of the exercise is to determine whether government action is justified. So it is completely illegitimate

- to assume that the increase of native vegetation under the Act is necessarily a good thing relative to the values that were sacrificed to achieve it, and
- to assume that the challenge is to achieve more of it,

because that is precisely what is in issue. It needs to be demonstrated by comparing the costs and benefits both ways, not simply assumed from the outset.

The RIS passes off the general issue of the entire review process with this airy assertion that again *assumes* everything that is in issue.

> The high value placed on native vegetation by society and the irreversibility of potential negative externalities resulting from the removal of native vegetation (e.g. impacts on biodiversity and water quality) mean that reliance on non-regulatory approaches poses too high a risk to be the main instrument of native vegetation management.

It is submitted that this is completely inadequate as a basis for asserting the need for government action, because it only begs all the questions:

How do we know what value society places on native vegetation?
Can that value be calculated in economic terms and if so how and what? If it can't be, can it be quantified somehow? These are the questions that the RIS was required to answer but did not.

How is that value to be balanced or reconciled against other competing values such as human life, and non-native plant species?
What common unit of value is available to compare them? If there is not one, how else can the competing values of

1. native vegetation
2. individuals of non-native species, and

[21] RIS at page 2

3. human life and wellbeing

be compared? The Act's supporters have yet to explain the rational basis for their key assertion.

How do we know that society doesn't value food, and fibre, and human life and happiness, and non-native species, and pastoral scenes, above native vegetation? The evidence that it does so value them is very abundant.

We can

1. calculate it in money terms
2. quantify it in non-money terms, and
3. estimate it in non-quantifiable terms.

In money terms, it's the difference between the value of a piece of land with and without the Native Vegetation Act, for the whole of NSW: literally billions of dollars' worth of money value.

It's the value of the increased life, health and happiness that comes from the productive use of these lands, so far as this can be expressed in money terms.

And we can quantify it in non-money terms, for example, by estimating the number of people who must go without food each year because of the Native Vegetation Act. And the number of people:

- whose livelihoods are ruined
- who are dispossessed of their farms because of it
- whose businesses go broke because of it
- affected by divorce and depression and suicide because of or partly because of it
- threatened, punished or imprisoned because of it.

Even where we cannot calculate or quantify the value, we can still *identify* and estimate it:

- the happiness that comes from the use of farmland for productive purposes
- the great pleasure of seeing and raising flocks and herds, pastures and crops
- the pleasure of home life, and families, and communities arising from productive activity on the land
- the happiness and pride from continuing in the customs of our ancestors
- the pleasure that comes from taking produce to market knowing that it goes to satisfy the urgent or important wants of our fellow man
- the pleasure of passing on productive knowledge
- the pleasure and pride that the non-farming community takes in knowing our farming community exists
- the moral superiority of the rule "innocent until proven guilty" rather than the Native Vegetation Act's rule "guilty until proven innocent"

The RIS failed to do the proper comparison.

RIS again gets the onus of proof back-to-front
By baldly assuming that the Native Vegetation Regulation is designed to benefit the community in some essential way, the RIS again has the matter back-to-front. To reiterate the Parliament's statement of the purpose of the Native Vegetation Act:

> The presumption exists that all statutory rules are designed to benefit the community in some essential way. The fact is they frequently impose burdensome costs and obligations on sections of the community without proper justification of the need for the regulation…
>
> "The Government is also concerned that in the past subordinate legislation has been used to concentrate power in the hands of executive government, making it less accountable to the Parliament and citizens of the State… In future, under the provisions contained in this bill, the onus will shift so that those seeking to retain government intervention are required to justify continuation of the regulation in terms of the public interest. [22]

Thus it was the RIS's task to presume that the Regulation does *not* benefit the community in some essential way. It should have been vigilant *against* the Regulation being used to concentrate power in the hands of the executive government, making it less accountable to the Parliament and citizens of the State.

As will be shown, if the RIS had done the quantifying of costs and benefits that it was supposed to do, it would have become shown that there is a conflict of interest beween the State and the rest of society. Virtually the entire benefit of the Regulation and Act accrues to the State and its employees and pet political favourites, and the cost accrues overwhelmingly to society at large.

What or who is the valuing entity called "society" that is referred to?

The author of the RIS is not society
The author of the RIS is not "society"; therefore its good is not his to define.

"Society are people."
Frank Chodorov

The question is, *how* does the author of the RIS come to the conclusion that society automatically values native vegetation above all other values that must be sacrificed for it? What data does he consider? What reasons?

These are the questions he either ignores or only partially answers.

He assumes that by invoking the name of society, he automatically decides all questions in favour of a coercive response. But using force and threats to get what you want is *anti-social.* Society prefers other values to native vegetation and that's the reason why the supporters of the legislation have to resort to coercion to stop them.

[22] Second reading speech at 9146: (my emphasis)

Since the price mechanism involves the decisions of billions of people in actually preferring or not preferring native vegetation versus all the other values that must be sacrificed for it, why should the decisions of a tiny minority controlling one relatively small State in the world be assumed to be more representative of people in general, than the decisions of the people themselves in directly valuing native vegetation higher or lower?

It might be argued that "society" means only the population of NSW. But the Native Vegetation Act itself presumes in its Objects to speak for "the total quality of life now and in the future"[23] – not just all people, but all species! And not just now – but indefinitely into the future! So "what's good for the goose is good for the gander". There can be no double standard by which the proponents of regulation are permitted the privilege of claiming to speak for society in the widest sense, while actively pursuing an anti-human agenda, while those who produce food and clothing to satisfy man's more urgent values, are assumed to be anti-social. Yet that is what the RIS has done.

Market prices for native vegetation represent society and the greater good much better than the Native Vegetation Regulation does.

Market prices are also more representative of society as the following table of comparison shows:

Market decision-making	**State decision-making**
Based on consent and therefore morally better	Based on force and threats and therefore morally worse
Based on input of seven billion people and therefore more representative of society	Based on input of four million people and therefore less representative of society
Each and every decision requires people i.e. society to choose directly between native vegetation values and non-native vegetation values *by ranking them in order of priority*.	State is able to (forcibly) prioritise native vegetation over competing values that society actually ranks higher than native vegetation
Each person has direct input and makes thousands of market decisions every year	Voting only once every three years. Each person has only indirect input through "representatives".
Each decision distinguishes native vegetation versus non-native vegetation values	Native vegetation and non-native-vegetation values are all bundled up together in a policy platform. No way for the voter, in voting, to distinguish what he's voting for.
Misleading and deceptive conduct in market transaction is illegal	Misleading and deceptive conduct and breach of promise in politics are legal, routine, notorious.
Parties liable for damages for breach of promise	The voter has no legal remedy for damages caused by politicians' breach of

[23] (via the definition of "ecologically sustainable development").

	promise
Each consumer has a total veto whether to pay	Each consumer has no choice whether to pay
Transactions must be mutually satisfactory or they won't take place; social value is created.	Transactions can be zero-sum: the stronger take from the weaker and social value is destroyed.
Enables economic calculation using a lowest common denominator for all values of use and non-use of native vegetation now and in the future	No way to calculate the competing economic values for and against regulation of native vegetation using a common unit of valuation. Arbitrary power. Self-defeating measures.
The positive economic values that society puts on present uses are shown by **net profit**.	Intended to displace decisions based on profit. No way of taking competing values into account using one common unit of value. No way of knowing if it is economising or wasting the resources in question when all competing values are considered. No clear way to distinguish present from future values. Valuational incoherence. Arbitrary power.
The negative economic values that society puts on present uses is shown by **losses**.	Ditto
The positive economic values that society puts on present uses is shown by **capital**.	Ditto
The negative economic values that society puts on future uses is shown by **liabilities**.	Ditto
Does not permit the assumption that the values sacrificed by one choice – e.g. food production sacrificed by Native Vegetation Regulation - will be magically made up somewhere else. Faces the reality of scarce resources by rational economising of use and non-use of native vegetation, now and in the future, by input of all people using a lowest common denominator for valuing all resources exchanged against money.	Permits Santa Claus economics, magic pudding economics. Indulges the false pretence that the gains of regulation are not at the cost of corresponding losses of important values to society somewhere else. Ignores the downsides of regulation, and the upsides of consensual transactions.
Private owners aggressively defend their property rights. Externalities give rise to liabilities for infringing property rights. Tendency to internalise externalities generally, and externalise externalities into resources that are owned in common.	No government officials pays any personally cost for failing to defend State property, and may even benefit from it. Externalities can be tragedy of the common, and • the planned chaos of central planning.

Therefore in many ways market prices are far more representative of society and the greater good than one-sided regulation pandering to the interests of well-fed minority parties in marginal seats in one relatively small State in the world.

The RIS does not consider a voluntary solution.
In presuming that regulation is justified, the RIS ignores the main issue. Why shouldn't a voluntary solution be preferred?

Why shouldn't those who claim that native vegetation is more important than property rights, sacrifice their own property rights voluntarily, instead of forcing others to sacrifice them under compulsion? Why is that not a complete solution to all issues? The RIS failed to consider this quintessential question.

Those who want native vegetation can and should form themselves into a voluntary society – or use one that already exists like the Australian Conservation Foundation – for the purpose. Then instead of spending money on cappuccinos, and mobile phones, and new clothes, and televisions – values which *they claim* are far less important than native vegetation – they could and should simply buy the vegetation communities they want, or pay farmers to raise them. Why is that not a complete solution?

If a lot of people agree with them, the monthly subscriptions would be small, and there is no justification for the Native Vegetation Act and Regulation. And if not a lot of people agree with them, there is no justification for the Native Vegetation Act or Regulation either.

But what if they couldn't afford it? Well that would only be for two reasons:

1. they are giving priority to values which they themselves claim are much less important than native vegetation; and
2. because the price of land is too high. However this only proves that society – seven billion people – consider native vegetation to be less valuable than all the other important values that the same land can be used to satisfy.

Any way you look at it, the Native Vegetation Act and Regulation cannot be justified, even in the terms of its own proponents.

"Regulatory" versus "non-regulatory" approaches
The RIS contrast "regulatory" (ie governmental) versus "non-regulatory" (i.e. market) approaches. However market approaches are regulated by market disciplines, as shown above, so that's a false dichotomy.

The real choice is whether social conduct is to be regulated on the one hand by market regulation based freedom, property regulatory, and the need to satisfy the most urgent and important wants of our fellow man. Or by approaches based on

- force
- threats of force
- arbitrary power
- pandering to minority political parties in marginal seat

- double standards (politicians and bureaucrats aren't required to run their offices like they were in 1788)
- legalised grabbing of others' property rights
- the strong exploiting the weak
- bureaucracy
- rules and regulations

The governmental approach generates valuational incoherence and divisiveness. It does not "integrate" market and non-market approaches. It *forcibly obliterates* people's property rights and freedom in favour of the prerogatives of arbitrary power.

It is not even better for the environment because it actively displaces native vegetation with weeds.

> "It is hard to imagine a more stupid or more dangerous way of making decisions than by putting those decisions in the hands of people who pay no price for being wrong."
>
> Thomas Sowell

By contrast the market method does truly *integrate* the valuation of the present versus the future value of scarce resources because *it uses the same unit to value them*.

It recognises the positive value of present uses through the value of net income.
It recognises negative value of present uses through the value of net losses.
It recognises the positive value of future uses through the value of capital.
It recognises the negative value of future uses through the value of liabilities.

The market process balances and harmonises competing present and future values by holding the owner responsible to prioritise the most urgent and important valuations of all the people in the world who use money to ration scarce resources – in other words, everyone – both now and in the future[24]. The governmental process enjoys no superiority of knowledge or valuation whatsoever, but only of raw power.

The RIS was biased in taking account of "irreversible negative externalities" of one side of the argument, but not the other. To be fair, obviously it should also have taken account of irreversible negative externalities caused by the Act and Regulation.

For example, obviously restricting food production on a massive scale is going to result in significantly less food produced. And this at a time when there are already food shortages in the world. The ultimate knock-on effect will be felt by the poorest in the world. How has the RIS taken account of the possible or probable human death and suffering caused by the Native Vegetation Act and Regulation?

[24] *Proft and Loss* Ludwig von Mises: http://mises.org/daily/2321

Or does it just assume that the Native Vegetation Act and Regulation can shut down as much food production as its supporters want and it won't make any difference to the amount of food produced? Or that human life doesn't matter? If so, why? If not, how does it justify its unspoken assumptions?

And if the RIS assumes that the cut in food production here, will be made up by a corresponding rise in food production elsewhere:

- Why? especially considering that an increase in productive activity will face opposition by environmentalists there on a similar ideology?
- What account is taken of the "irreversible negative externalities" there? With the onus of proof on the supporters of more regulation, we must presume that the negative effects for biodiversity and sustainability and indigenous vegetation on a whole-of-planet basis will be no better, and may be worse.
- Or does Australian native vegetation have a higher value than non-Australian native vegetation? If so, what is that value and how was the evaluation made?

What account is taken of the negative externalities of licensing arbitrary executive power to violate the liberties of the subjects of government?
What account is taken of the negative externalities of destroying private property rights?

- of its principle of 'guilty until proven innocent'?
- of intrusive search without warrant?
- of abolishing the privilege against self-incrimination?
- of subverting the Constitutional protection on property rights[25]?

What account is taken of these violations by the Native Vegetation Act having been used as precedents for later similar abuses in other areas of politics and law?

The RIS says **"reliance on non-regulatory approaches poses too high a risk"**[26] **but doesn't say relative *to what*?**
The original problem is that native vegetation and productive farmland are both scarce – there is not enough of them to be used to satisfy all the different competing human wants for them. If there were, there would be no call for the Native Vegetation Act and Regulation.

The question is, how are we to know which wants are more important, and which resources are most valuable? Which should be preferred – which should be ranked higher? And how are the decisions to be made?

[25] Spencer's case, currently before the High Court, shows that the federal government paid the States to enact the Native Vegetation Acts, because the federal government was prevented by the Constitutional prohibition on taking property rights without paying fair compensation. Thus the Native Vegetation Act subverts the Constitution.
[26] RIS – The need for government action – page 2

Is it better to make them on the basis of the freedom of everyone to evaluate things according to their own value scales, with everyone equally subject to a ban against taking what they want by unprovoked aggression? Or is it better to make the decisions on the basis that some people enjoy a double standard to force everyone else to obey, to take other people's property by using force and threats, to redistribute other people's property to pet political favourites?

That is the question.

So with the onus or proof on the proponents of regulation, it is no justification to say that the risks of repeal are "too high" *because that is precisely what is in issue*. It needs to be proved, not just baldly asserted.

The need for government action - conclusion

Therefore in considering the need for government action the RIS

a) has assumed what is in issue
b) has not considered the downsides of government action nor the upsides of the alternative of greater liberty
c) has not established the need for government action, and
d) has not complied with the requirements of the Subordinate Legislation Act.

RIS 2 Native vegetation in NSW

2.2 Economic valuation of native vegetation[27]

This section shows bias. For example the RIS considers the benefits, in the widest sense, of native vegetation conservation.

But it does not consider the benefits of

- conserving native vegetation by voluntary means, or of
- using the land to satisfy competing values.

It just ignores what it was required to quantify, evaluate and assess.

It *names* various kinds of benefits of native vegetation, for example honey production; or *alleges* them: "increased farm productivity".

But

a) the task is to try to *quantify* the benefits *and costs* so as to be able to *compare* them *both ways*. This it fails to do.

[27] RIS at page 3

b) it is not legitimate to allege benefits on the part of private owners, because such benefits will sound in profit and loss, and do not need government regulation to achieve them.

The gist of this section on Economic Valuation of Native Vegetation is that the RIS asserts that government regulation is justified because the market does not value native vegetation appropriately from a whole-of-society standpoint. It tries to come up with dollar values for the "non-use" of native vegetation.

The whole argument stands or falls on this:

> 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.

This argument has four fatal flaws.

Firstly, the RIS is alleging that native vegetation has a value far above its market value. So by this logic, the owners are conferring a benefit on society that they are not getting paid for. So even according to the RIS's reasoning, therefore private owners should be getting big payments from the government taken under compulsion from everyone else to give "positive externalities" their "appropriate price" from a whole-of-society standpoint[28]. This is the opposite of the position the RIS is defending, so the RIS's argument doesn't make sense even in its own terms.

Secondly, by the RIS's own logic, native vegetation is way undervalued in the market. This means the market price offers a complete and total solution. The native vegetation conservationists can achieve all their aims by simply buying it. All they have to do is put their money where their mouth is.

Thirdly, just because other people don't want to buy what you think they should want to buy, doesn't mean it's a "market failure". The fatal flaw underlying the entire argument in favour of regulation is this: just because one thinks something is desirable, does not justify the use of coercion to get it. They have completely failed to take into account the coercive nature of the measures they advocate.

[28] (The RIS makes no attempt to justify its assumption that the State represents society better than society represents itself.)

Fourthly, the RIS's argument proves too much[29]. Reduced to its absurdity, the argument would justify the abolition of property rights altogether because there is no economic good that does not have spillover effects on other people. If I grow pretty flowers that benefit passers-by on my street, according to that argument, the government should tax anyone who might benefit and give me a subsidy so as to achieve the "appropriate" pricing on a "whole-of-society" basis. Or if an ugly person walks down the street, the government should force them to pay the government who should then pay the people to correct for the "negative externality".

The argument is moral and logical nonsense. The RIS's premise cannot be maintained and therefore the entire chain of reasoning in favour of the Native Vegetation Regulation collapses.

The missing piece of intelligence required to make sense of the RIS argument is this. Not every bad thing justifies a coercive response. The reason that taxes on ugly people and forced handouts for flower gardeners are not justified is because, by growing flowers or walking down the street, no-one has aggressed against the *personal or property right* of another. Therefore a coercive response is not justified: neither tax nor confiscation nor subsidy.

If the use of resources infringes the personal or property rights of others, *then and only then* is some kind of coercion-based remedy justified. Therefore the Native Vegetation Act and Regulation cannot be justified on the basis of alleged market failure.

The position of people growing native vegetation is, in principle, no different from the position of people growing flowers. The question is not a *botanical* one: it is the question *of right* whether one party should be forced or threatened to sacrifice their values for another.

Limits of economic calculation

It is true that economic calculation is limited. It does not and cannot be used to put a value on things that are not exchanged for money. This leaves us with the very real issue of how to put a value on goods that are not exchanged for money such as the beauty of a sunset, or the kindness of one's grandmother.

But it is complete nonsense to suggest that these values can be approximated by the surrogate measures suggested by the RIS. For example, one cannot do a "survey" to ask people what dollar value they "would be" "willing to pay" for their grandmother. One cannot estimate grandmother's "non-market value" in dollar terms by asking how much people "would be" willing to pay for the cakes she bakes, especially if they don't have to actually pay. Still less can one then do mathematical or statistical

[29] For a total demolition of the RIS's public goods arguments in detail, see

1. Walter *Block Public Goods and Externalities: The Case of Roads*: https://mises.org/journals/jls/7_1/7_1_1.pdf ; and
2. Hans-Hermann Hoppe *Fallacies of the Public Goods Theory and the Production of Security*: https://mises.org/journals/jls/9_1/9_1_2.pdf

It is submitted that only after the advocates of the Native Vegetation Regulation have overcome the self-contradictions and absurdities in their arguments identified in those articles, are they in a position to start an argument based on alleged market failure.

operations on the resulting notional cake prices! But this is the absurd level of the RIS's attempts to conjure surrogate market valuations of native vegetation.

Subjective evaluations cannot be objectively measured, that's the original problem. But the RIS's methodology, and the Native Vegetation Regulation, provide no advance whatsoever on that original problem.

> "As the economic values placed by the community on native vegetation are not traded in a market these values cannot be easily quantified using observed market prices."[30]

Correction: they cannot be quantified *at all* using observed market prices *because* they are not traded in a market.

But why is it easy to quantify the market price for a sheep or cow, but not for native vegetation? There can only be one answer: because people are *not* willing to pay for native vegetation, otherwise they would "trade it in a market" and there would be "observed market prices". In other words, people – a.k.a. "society" - value all the other values that the land can be used to satisfy, more highly than they value native vegetation. The RIS's attempts to formulate market values for native vegetation that no-one is willing to buy are the mumbo-jumbo and gizzard-lore of high priests preaching that Pharaoh can do no wrong.

2.2.1 The value of native vegetation in NSW

The RIS discusses attempts to put a value on "the non-use" of native vegetation in NSW, but does not define this term. The problem is precisely that the Native Vegetation Regulation forces lands into the actual use of growing native vegetation. The question is, who benefits, who pays, and is force justified? The RIS's analysis completely fails to address this essential question.

By definition market transactions mean transactions in which people voluntarily exchange goods for money. If people are not willing to exchange money for something, then the *market value* and therefore the money value, by definition, is nothing.

The RIS says:

> There have also been studies that attempt to quantify the non-use value of native vegetation in NSW. These are generally willingness to pay (WTP) studies that rely on survey approaches to estimate the value placed on specific environmental assets.

Now if someone *says* they are willing to pay, but is not *actually* willing to pay, the true conclusion is that they are *not willing to pay* in any relevant sense.

If they were willing to pay, there would be no call for the Act, that's the whole point. The entire issue is whether native vegetation should be conserved by voluntary or compulsory means.

[30] RIS, last paragraph on page 3

We are trying to determine the actual valuation. To do this it is completely illegitimate to ask people to *imagine* what they "would be" willing to pay, if they could get the money from a moonbeam. The reason is because we are in the real world. The problem confronting us is the need to make *actual* choices between people starving, and native vegetation.

The RIS's Table 1 of "non-market valuations" [31] expressed in dollars, shows its complete confusion or deviousness. **Non market valuations, by definition, cannot be expressed in money prices, still less in *notional* money prices.**

Furthermore if the RIS's method of using moonbeam-dollars were valid, it needs to be impartially applied to the other side of the equation. We need to ask how much people "would be" willing to pay to prevent the poor going without food, for the enjoyment of pastoral scenes, for the principle of innocent until proven guilty, and all the other values thoughtlessly sacrificed by the Act and Regulation. Thus the RIS alleged values on one side of the argument, but has not used the same methodology to account for values on the other. Its approach was biased.

All that would be needed to disprove the RIS's entire methodology for valuing native vegetation is for a person to say he "would be" willing to pay an imaginary astronomical sum – say $100 billion – for the benefits now being sacrificed by the Native Vegetation Regulation. This figure, fed into the RIS's equations, would skew the average conclusively in favour of the case for repeal.

Then perhaps someone else could declare willing to pay 100 trillion imaginary dollars for the Regulation, and so on. The RIS's methodology is bogus and absurd.

The correct conclusion is the opposite. There is already a comprehensive "survey" which gives accurate "willingness to pay" evaluations of the "non-use" value of native vegetation. It's called the market.

It's easy to calculate the non-use value of native vegetation in NSW, as my family was forced to do:

Value of property free of Native Vegetation Act restrictions[32]		$2,000,000
Value of property under the Native Vegetation Act[33]		$ 700,000
"Value of native vegetation"[34]	**negative**	**$1,400,000**

That was on a 40 acre block. Now do the maths for the whole of NSW – using *actual* dollar figures taken from *reality*.

That is the *actual* value, expressed in dollar terms, of the "non-use" of native vegetation in NSW on a "willingness to pay" basis.

[31] Table 1 Non-Market valuation studies for native vegetation conservation, RIS at page 4
[32] (Calculated on *actual market value* based on *actual offers* for the *lowest-valued* used of the property free of Native Vegetation Act restrictions.)
[33] (Based on *actual market offers* for the land made unusable under the Native Vegetation Act.)
[34] To use the expression of the RIS 2.2.1 The value of native vegetation in NSW at page 4

Value of native vegetation in NSW - conclusion
Non-payment for *non-use* is the clearest indication that society does *not* value native vegetation above the competing values that must be sacrificed or compromised.

The RIS's methodology in valuing native vegetation is biased, back-to-front, and completely bogus.

RIS 3. The Native Vegetation Regulation 2005

The RIS states:

> The Existing Regulation provides a clear direction for landholders to manage their farming operations while meeting requirements of the Act. [35]

This opposite is true.

The only thing that is clear is the starting point:- farming land that has native vegetation on it is or most probably is a criminal offence.

After that, the owner must ask the government for permission to use his own property.

The rules and regulations covering the lawful granting of permission then ramify through hundreds and hundreds of densely worded pages including

- the Act
- the Regulations
- what is excluded under the Environmental Planning and Assessment Act, Regulations and Policy
- the policy and assessment methodologies of the Office of Environment and Heritage
- the policy guidelines of the Environment Protection Authority (EPA) on enforcement and compliance strategy
- regulations on private native forestry
- development consent conditions for compliance with Private Native Forestry Property Vegetation
- policy guidelines and/or development consent in relation to clearing for the purposes of PNF.
- policy guidelines for assessing and approving clearing proposals through a property vegetation plan (PVP) or a development
- the relevance of the legislation on carbon credits
- any relation to Commonwealth law including the *Environment Protection and Biodiversity Conservation Act 1999*
- any Regulations or policy under that Act
- any Act, Regulation, policy or rule to do with review of administrative action or judicial appeal
- etc.

[35] RIS at page 7

All these myriad environmental rules are unknowable except by the affected landholder searching at his own expense. And they are all ultimately arbitrary: the opposite of clear.

Let's take one small example from the Objects of the Native Vegetation Act.

> The objects of this Act are … (e) to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation, in accordance with the principles of ecologically sustainable development.[36]

So what does "ecologically sustainable development" mean? It is not defined in the Act or Regulations. The NSW Parliament has not defined it that I know of.

We may go to the "uniquely Australian" definition[37]:

> using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.

But what does that mean?

And how would you prove that? You would need to take into account the costs and benefits for all individuals of all species, native and non-native, now and indefinitely into the future.

And how do we know that the Regulation doesn't produce worse than better outcomes even in its own terms? What makes one think that the action of a landholder in promoting other species of life and feeding the hungry is *not* increasing the total quality of life now and in the future? No evidence or reason is ever offered but open-ended nostrums.

No reason is given, either in the Act or the Regulations or anywhere else, for its blanket *assumptions* that:

1. clearing native vegetation is automatically worse for the total quality of life now and in the future than restricting native vegetation clearing
2. human life has no value[38]
3. deciding the question by coercive central planning is going to be any better for human beings or the environment than deciding it by liberty and property.

And when is a resource not a community resource? Or doesn't private property exist any more? If not, what assessment has been done to try to quantify the costs and negative externalities of this slide into Stalinism?

---

[36] Section 3

[37] Apparently what is ecologically sustainable is different in different places and times. Parliament of NSW, Research Papers: "Sustainable Development" **Briefing Paper No. 4/2009 by T. Edwards** http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/SustainableDevelopment

[38] Otherwise, how is the value recognised or accounted for in the Regulation or its Environmental Outcomes Assessment Methodology? It isn't. It's just ignored, as if the increase of native vegetation is obtained at *no cost* to any other important countervailing value.

So the RIS is biased and wrong to say that the Regulation provides clear guidelines, and wrong in assuming that the Regulation is beneficial when it ignores the major categories of costs it causes.

> "Ignorance more often begets confidence than does knowledge."
>
> Charles Darwin

But obviously if we ignore the costs, anything will seem beneficial, no matter how dysfunctional or abusive!

Yet that example is only one line out of hundreds of pages of rules.

To take one other example, in order to receive the gracious permission of his overlords to use his own property, the farmer must agree to an offset. But firstly, obviously an agreement under duress is no agreement; without submitting he will be ruined and dispossessed of his livelihood. And secondly how could the determination of the required offset be anything but a matter of arbitrary opinion? We are back to the idea that a person, merely by being government-appointed, knows how to design the ecology and economy for maximum benefit to all species, now and indefinitely into the future. This belief in the God-State has no basis in evidence or reason whatsoever. In its deep structure, it is no different to any other irrational belief system. It is no better than a superstition, backed by force.

The effect is that the farmer's property is entirely held subject to the arbitrary power of others, and his rights are unknowable except in their arbitrary opinion.

The RIS's assertion that the Regulation provides a clear direction for landholders to manage their farming operations is completely untrue, compared to the clarity he would enjoy if it were repealed, which the RIS fails to consider.

RIS 3.4 Outcomes under the existing Regulation[39]

The RIS says:

> A review of the Native Vegetation Act 2003 found that the Act has resulted in significant positive outcomes for native vegetation management in NSW (DECCW 2009).

This statement cannot be justified either way, i.e. whether we define the environment to include or exclude human values.

If we define "the environment" to mean "anything but humans", we can improve environmental outcomes by stopping all productive activity. The result would be a pristine environment and the extinction of human life. That is the fundamental conceptual problem with the Regulation's Environmental Outcomes Assessment

[39] RIS at page 8

Methodology: it is completely illegitimate – indeed anti-human - to define positive environmental outcomes as if all countervailing values don't matter, which is what it does.

And it is not consistent with the Native Vegetation Act to define positive outcomes in terms of mere positive data such as increased native vegetation or decreased salinity. This is because the Objects of the Act refer to human objects, to human values. **So the question is *always* how to balance competing human values *against each other*, not to balance "human values' on one hand, against alleged super-human "environmental values" on the other.** And the super-human values always just happen to be represented by the State, strange coincidence that, isn't it?

For this reason, it is not legitimate to just baldly assume that an increase in native vegetation automatically equates to a "positive outcomes for native vegetation management", as if human and non-native-vegetation life has no value.

Therefore it is not legitimate for the RIS to assert that the Act has resulted in significant positive outcomes for native vegetation management. It's not enough to point to an increase in native vegetation, as if magic pudding is going to make up for the loss of all the other values sacrificed to the priority of native vegetation. The RIS has fundamentally failed to come to terms with the problem of competing values it was charged to quantify and assess.

These are some of the questions that would need to be answered in order to justify a conclusion that the Act or Regulation has resulted in positive outcomes for native vegetation management.

1. What other values were sacrificed now and in the future for humans and other species, and how did we know they were less important?
2. If people were made to go without food or starve for that increase, was it worth it? How was that assessment made? (Obviously it wasn't.) What methodology justifies that conclusion? How did it reconcile the opposed values?
3. How was the value to non-native species:
    a) known,
    b) accounted for, and
    c) reconciled against the competing values of native species?

    Were they evaluated equally? If so, why?
    If not, why not?
    Obviously these questions were not considered, without which the Regulation cannot be justified.
    But even if it did answer these questions, what but mystical metaphysics could possibly have supplied the answers?

4. The assessment must assess the value of the total quality of life now and in the future. But what if future human beings end up being better off than we are today? Does that mean we are entitled to a credit now? If not, why not? How are we to know?

5. If the precautionary principle tells us such action is not justified, why doesn't the precautionary principle also stop the proponents of regulation from using

natural resources to do what they want? How can the double standard be rationally justified?

6. The RIS discounts the future at 7 percent a year. This contradicts the principle of inter-generational equity, the idea that future generations are robbed by the greed of the present. Why should not future generations enjoy *the same* chance of benefitting from the environment as we do?

7. But once we recognise the need to discount the future, then we concede the right of the present generation to sacrifice the benefit of future humans for the benefit of present humans, which in any event they cannot avoid doing. This means the precautionary principle, and the principle of inter-generational equity cannot be defended. Once we grant any amount of use to the present, we have to discard the robbery-of-the-future argument because we have to concede to the present generation the right to evaluate present as against future utility.

8. And why should the discount rate be 7 percent? Why not 8, or 2, or 20, or 6 percent, or negative 7 percent? Why not 5.86439? Why should some people be forced to sacrifice their freedom and livelihood, or even their lives, because of this arbitrary assertion? There is no reason or evidence whatsoever to think that the correct evaluation of time preference can be better attained by a coercion-based one-size-fits-all rate decided by a government-appointed technician pretending to decide for everyone else in the world now and in the future, rather than by a consent-based rate in which each can use his own valuation.

9. As a result of the increase in native vegetation noted by the RIS, what was the value foregone to other species in 100 years, in 100,000 years, and in 1 million years? Which species? What value?

10. Was the "total quality of life" accounted for? If not, why not? If so, how was that calculation made?

Without answering these questions, there is no way to justify the RIS's bald assertion that the Native Vegetation Regulation has resulted in positive outcomes for native vegetation management, even in its own terms.

It is not enough, as the RIS and the OEH do, to point to mere increases in native vegetation as if all other values in the world can be safely disregarded.

Once we include in the equation the value of human life, health, happiness and freedom now and in the future, and once we include the value of non-native species now and in the future, there is no way to justify the *unspoken assumption* that ecologically sustainable development can be better achieved by legislative or bureaucratic means, than by way of liberty and property.

Therefore the RIS has not justified the proposed Regulation in its Section 4.

RIS 4.5 Implications – Costs and Benefits

The RIS's assessment of costs and benefits rests on the assumptions and contains all the same errors that have just been demonstrated.

Therefore its conclusion in favour of further regulation is invalid.

Conclusion:

Either the Native Vegetation Regulation should be repealed, or the Regulatory Impact Statement must be done again, this time taking proper account of the costs of the Regulation and the benefits of repeal.

How the RIS got it wrong
This section sets out the many different ways that the RIS was in error.

The RIS assumes that State decision-making is automatically superior to the alternatives without ever giving any justification but assumptions based on circular reasoning.

It got the onus of proof back-the-front, assuming that regulation is justified for no other reason than that it exists.

It asserts that benefits outweigh costs without any way of knowing what the values are, whether they are true, and how to account for the competing values in any common unit or at all.

It fails to quantify the economic and social costs and benefits it was required to quantify "wherever possible".

It ignores some of the basic and obvious quantifiable costs of regulation, such as human deaths per year as a result of the Act, or the billions of dollars in property rights confiscated, or the number of arrests and fines, or the costs of governmental administration.

It conjures benefits based on invalid methodology making up "non-market values" in dollar terms based on magic-pudding economics in hypothetical scenarios.

Where it did quantify, it used notional and imaginary values instead of actual values taken from reality.

It counts benefits of Regulation without counting the corresponding benefits of repeal. It uses methods partially, to assert benefits of regulation without using the same methods even-handedly to assess the benefits of repeal.

It wrongly identifies the objectives of the RIS as being in the Native Vegetation Act (conserve native vegetation by regulation) instead of the Subordinate Legislation Act (prevent unnecessary regulation; presume against further regulation; require justification of benefits versus costs, quantified wherever possible)[40] [41]

"Costs and benefits should be quantified wherever possible"[42].

The RIS does not quantify the direct economic costs to government of resource allocation
It does not quantify the direct economic costs to government of compliance
It does not quantify the direct economic costs to government of administration
It does not quantify the indirect economic costs to government of resource allocation
It does not quantify the indirect economic costs to government of compliance
It does not quantify the indirect economic costs to government of administration

[40] Schedule 2, Subordinate Legislation Act
[41] Better Regulation Principle 2: "The objective of government action should be clear"
[42] Schedule 2, Subordinate Legislation Act *Provisions applying to regulatory impact statements*

It does not quantify the direct economic costs to individuals of resource allocation
It does not quantify the direct economic costs to individuals of compliance
It does not quantify the direct economic costs to individuals of administration
It does not quantify the indirect economic costs to individuals of resource allocation
It does not quantify the indirect economic costs to individual of compliance
It does not quantify the indirect economic costs to individuals of administration

It does not quantify the direct economic costs to businesses of resource allocation
It does not quantify the direct economic costs to businesses of compliance
It does not quantify the direct economic costs to businesses of administration
It does not quantify the indirect economic costs to businesses of resource allocation
It does not quantify the indirect economic costs to businesses of compliance
It does not quantify the indirect economic costs to businesses of administration

It does not quantify the direct economic costs to communities of resource allocation
It does not quantify the direct economic costs to communities of compliance
It does not quantify the direct economic costs to communites of administration
It does not quantify the indirect economic costs to communities of resource allocation
It does not quantify the indirect economic costs to communities of compliance
It does not quantify the indirect economic costs to communites of administration

It does not quantify the direct social costs to government of resource allocation
It does not quantify the direct social costs to government of compliance
It does not quantify the direct social costs to government of administration
It does not quantify the indirect social costs to government of resource allocation
It does not quantify the indirect social costs to government of compliance
It does not quantify the indirect social costs to government of administration

It does not quantify the direct social costs to individuals of resource allocation
It does not quantify the direct social costs to individuals of compliance
It does not quantify the direct social costs to individuals of administration
It does not quantify the indirect social costs to individuals of resource allocation
It does not quantify the indirect social costs to individual of compliance
It does not quantify the indirect social costs to individuals of administration

It does not quantify the direct social costs to businesses of resource allocation
It does not quantify the direct social costs to businesses of compliance
It does not quantify the direct social costs to businesses of administration
It does not quantify the indirect social costs to businesses of resource allocation
It does not quantify the indirect social costs to businesses of compliance
It does not quantify the indirect social costs to businesses of administration

It does not quantify the direct social costs to communities of resource allocation
It does not quantify the direct social costs to communities of compliance
It does not quantify the direct social costs to communities of administration
It does not quantify the indirect social costs to communities of resource allocation
It does not quantify the indirect social costs to communities of compliance
It does not quantify the indirect social costs to communities of administration

It does not quantify the direct economic benefits to government of resource allocation
It does not quantify the direct economic benefits to government of compliance
It does not quantify the direct economic benefits to government of administration
It does not quantify the indirect economic benefits to government of resource allocation
It does not quantify the indirect economic benefits to government of compliance
It does not quantify the indirect economic benefits to government of administration

It does not quantify the direct economic benefits to individuals of resource allocation
It does not quantify the direct economic benefits to individuals of compliance
It does not quantify the direct economic benefits to individuals of administration
It does not quantify the indirect economic benefits to individuals of resource allocation
It does not quantify the indirect economic benefits to individual of compliance
It does not quantify the indirect economic benefits to individuals of administration

It does not quantify the direct economic benefits to businesses of resource allocation
It does not quantify the direct economic benefits to businesses of compliance
It does not quantify the direct economic benefits to businesses of administration
It does not quantify the indirect economic benefits to businesses of resource allocation
It does not quantify the indirect economic benefits to businesses of compliance
It does not quantify the indirect economic benefits to businesses of administration

It does not quantify the direct economic benefits to communities of resource allocation
It does not quantify the direct economic benefits to communities of compliance
It does not quantify the direct economic benefits to communites of administration
It does not quantify the indirect economic benefits to communities of resource allocation
It does not quantify the indirect economic benefits to communities of compliance
It does not quantify the indirect economic benefits to communites of administration

It does not quantify the direct social benefits to government of resource allocation
It does not quantify the direct social benefits to government of compliance
It does not quantify the direct social benefits to government of administration
It does not quantify the indirect social benefits to government of resource allocation
It does not quantify the indirect social benefits to government of compliance
It does not quantify the indirect social benefits to government of administration

It does not quantify the direct social benefits to individuals of resource allocation
It does not quantify the direct social benefits to individuals of compliance
It does not quantify the direct social benefits to individuals of administration
It does not quantify the indirect social benefits to individuals of resource allocation
It does not quantify the indirect social benefits to individual of compliance
It does not quantify the indirect social benefits to individuals of administration

It does not quantify the direct social benefits to businesses of resource allocation
It does not quantify the direct social benefits to businesses of compliance
It does not quantify the direct social benefits to businesses of administration
It does not quantify the indirect social benefits to businesses of resource allocation

It does not quantify the indirect social benefits to businesses of compliance
It does not quantify the indirect social benefits to businesses of administration

It does not quantify the direct social benefits to communities of resource allocation
It does not quantify the direct social benefits to communities of compliance
It does not quantify the direct social benefits to communities of administration
It does not quantify the indirect social benefits to communities of resource allocation
It does not quantify the indirect social benefits to communities of compliance
It does not quantify the indirect social benefits to communities of administration

It does not take into account and give due consideration to the above costs and benefits.[43]

Where quantification of costs and benefits is not possible, it does not state anticipated impacts of the proposed action and of each alternative[44].

It does not present the anticipated impacts in a way that permits a comparison of the costs and benefits.[45]

It wrongly assumes without giving reason that regulation is necessary and beneficial.

It does not properly understand the alternative in issue. **It did not consider non-regulatory options properly, because it did not specifically consider the question why those who want native vegetation should not pay for it voluntarily, without requiring any coerced response[46]. It did not consider why those who assert that native vegetation is more important than property rights, should not sacrifice *their own* property rights *voluntarily*, rather than *someone else's under coercion*.**

It does not take account of the major positive externalities of freedom and property rights.

It wrongly confuses problems of public ownership in the case for further regulation, instead of against.

It does not take account of the major costs and negative externalities of further regulation.

The RIS failed to quantify many of the most obvious costs and benefits where quantification was possible.

It used its methodology in a biased and partial way. It failed to compare like with like. Each heading and methodology of cost on one side of the questions should have been compared with the same heading and methodology on the other, so far as this was possible. And the same for benefits. The RIS didn't do this, and thus did not present each alternative "in a way that permits a comparison of the costs and benefits".[47]

---

[43] Schedule 2, Subordinate Legislation Act
[44] Schedule 2, Subordinate Legislation Act
[45] id
[46] id
[47] id

The RIS did not establish the need for government action[48].

It did not properly understand the impact of government action[49] because it did not consider the case from the point of view of landholders wrestling with the problems of how to know what they could do with their own land, and what they would need to do to get permission.

It did not consider whether the Government action in the Act is effective and proportional; whether the value of native vegetation should be bought at so high a cost to human, civil and political rights[50], and how that could be justified[51].

The consultation process miscarried because the RIS did not recommend that the public Information Sessions should inform the public that the starting point is that the Regulation "is repealed"; that there is a presumption against further regulation[52].

The consultation process miscarried because the RIS did not recommend that the Department, in conducting the consultation process, should assist any member of the public expressing an objection to the Regulation to put their objection in terms of a proposal to repeal the Regulation; just as the Department, though the CMA officers who chaired the Information Sessions, were assisting members of the public to make suggestions for further regulation.[53]

The consultation process miscarried because the RIS did not recommend that resource allocation should equally benefit the proponents of repeal.

The consultation process miscarried because the RIS did not recommend that, as the onus of proof was on the proponents of further regulation, they should fund their case out of their own money, just as the proponents of repeal have been forced to do!

It did not consult or recommend consulting any specific businesses who were adversely affected by the Regulation or Act.[54]

It did not consult or recommend consulting any community group specifically concerned with human rights, civil or political rights, notwithstanding the report of the Legislative Review Committee referring to Parliament the abusive measures in the Act, which the Regulation enforces[55].

---

[48] *Better Regulation Principle 1*: "The need for government action should be established" Guide to Better Regulation, NSW Government Better Regulation Office, November 2009 at page 7 http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf

[49] *Better Regulation Principle 3*: "The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options."

[50] *Better Regulation Principle 4*: "Government action should be effective and proportional"

[51] See also Profesor Suri Ratnapala "Constitutional Vandalism Under Green Cover": http://www.samuelgriffith.org.au/papers/html/volume17/v17chap2.html

[52] *Better Regulation Principle* 5: "Consultation with business and the community should inform regulatory development"

[53] id

[54] *Better Regulation Principle 5*: Consultation with business and the community should inform regulatory development

[55] Id

It did not properly consider the repeal of the regulation; did not identify the issues correctly; ignored and misunderstood the case for repeal; was biased in its assessment of it; and did not properly quantify or assess the costs of regulation, or the benefits of repeal [56].

[56] *Better Regulation Principle 6*: The simplification, repeal, reform or consolidation of existing regulation should be considered

Doing it properly: costs and benefits that need to be considered

What the RIS should have done, or should do

The RIS should have

1. Quantified economic costs and benefits so far as it was able to do, for the alternatives of repeal, the proposed regulation, and keeping the old regulation.
2. So far as it was not able to quantify money costs, it should have quantified any other relevant quantities on both sides of the equation.
3. If neither money calculation nor quantification were possible, it should have identified the values in issue and done the best estimate it could.
4. Many things cannot be estimated accurately. But it should at least have had a go.
5. It should not have tried to assign a value in money for "non-market values", because that is self-contradictory and meaningless.
6. **It should have used the same headings and methodologies on both sides of the equation**, so far as that was possible.
7. it should have presented its finding in an even-handed way that enabled easy comparison of the same categories of methodologies, costs and benefits for both sides of the equation.

It is submitted that the RIS should have included the following considerations.

It should have looked at the regulation from the point of view of a sample of landowners, say thirty, who want the Regulation to be repealed.

It should then have identified all the different documents, laws, regulations, policies, protocols, methodologies that those landowners would have needed to consult in order to know whether they could use their own property as they had wanted, and in order to get permission to go ahead.

It should have compiled a collection in hard copy of all such documents etc.

It should have counted the pages!

It should have estimated the total amount of time that would be taken in each case. It should have considered what alternative better uses could have been made of that time, and the benefits to the community foregone through sacrifice to the Native Vegetation Regulation.

Quantify all costs that government put into the review process, including all officers of the CMA, the drafting, RIS, presentation of documents

Calculate the economic cost to the community of the unlawful review based on the defective and biased RIF, in terms of:

- The amount *gained* by all officers of the Department and CMAs trying to promote it and any related handouts to green or community groups, including salaries, superannuation, mobile phones, cars, offices, travel, hotels, travel allowances, leave entitlements accrued.

- The amount *lost* by all members of the productive class trying to oppose it in terms of hours spent, income foregone, productive activity sacrificed, and family and community activities sacrificed.

Quantify:
the reduction in food produced as a result of the Native Vegetation Act and Regulation
the number of people in the world going without food every year as a result.

Quantify the number of people:
Whose livelihoods have been ruined by the Act and Regulation
Who have been turned off their farms as a result of the Act and Regulation
Who have committed suicide because or partly because of the Act and Regulation
Whose property has been intruded upon by native vegetation officials
Whose property has been spied on by native vegetation officials
Questioned
Fined
Imprisoned

Acres of land lost to coerced "offsets".
Market value of that land.

Quantify the amount of money spent on prosecutions including:
CMA and EPA salaries, superannuation, mobile phone use, internet use, office, cars, travel, accommodation
Spying and surveillance
Proportion of Court time, salaries, superannuation

Quantify the amount of informing that the Act encourages in the Australian population.

The RIS omits to consider the most significant category of persons in the costs and benefits analysis: those who want native vegetation, who are not willing to pay for it, and want to get it by using the State to confiscate other people's property rights under draconian penalties.

Identify people who actually support the Act.
This is the discussion the community needs to have.
It did not consider why it would not be a complete resolution of all the issues of *ecology* for those who claim that native vegetation is of higher value than property rights, to sacrifice *their own* property rights to achieve the ecological objects of the Act.

Ask them:
Would they support acquiring all that native vegetation if they had to pay for it themselves?
Why not?
What reason do they give for not having to pay?
Why is a voluntary response not a complete solution to all the issues?

If because you couldn't afford it, doesn't that prove that society values other things more highly than native vegetation?
Why do you think obtaining native vegetation by compulsion is more important than the principle of innocent until proven guilty?
Why do you think obtaining native vegetation by compulsion is more important than the principle of protection from unwarranted searches and intrusions?
Why do you think obtaining native vegetation by compulsion is more important than the right to silence and the privilege against self-incrimination?
Why do you think obtaining native vegetation by compulsion is more important than the Constitutional protection against governmental acquisition of property rights except on just terms?

It did not consider the process a landowner would have to go through in order to obtain permission to use his own land.

It did not consider all the documents, rules, policies, Acts, regulations, protocols, methodologies that he would or may need to refer to.

It did not consider what resources of literacy, time, money, computing, online access, etc. that he would need to devote to the process in order to even begin to participate, let alone succeed.

It did not consider what more worthwhile ends might have been achieved with the resources thus diverted from higher valued ends.

It did not extrapolate these costs from a single case to all the affected persons in NSW.

It did not consider whether the persons who claim to value native vegetation higher than property rights, only claim so because they do not have to sacrifice their own property rights to make that claim.

It did not take the most basic step of comparing the market value of a piece of land with and without the Native Vegetation Act applying to it.

It made no attempt to extrapolate this to the whole state to assess the economics costs of the legislation, and thus the economic cost of the *claimed* benefit of native vegetation.

To the extent that the problem is caused by government ownership of rivers or natural resources, why is that not an argument against such ownership rather than in favour of the Act or Regulation?

If they say people are not dying of hunger as a result of the Native Vegetation Act, why do they say that?
Are they saying that food production is no less? (Illogical)
Are they saying that feeding people doesn't matter (anti-human)
Are they saying that ecological degradation elsewhere doesn't matter? (self-defeating).

Compile in one place all the documents produced by all the CMAs, and all the emails, letters, presentations etc. used for promoting the new regulation.

What are the costs of the status quo in terms of:
Resource allocation:
The reduction in land values caused by the Native Vegetation Act and Regulation

Administration:
The total costs of the Department's native vegetation section and pro rata costs
The Minister's travel to do with native vegetation
The CMAs