

Partners

Paula M Furlong Dip. Law (SAB)
Christopher J Roche LL.B.
Accredited Specialist - Family Law
David R Cumming LL.B.
Wayne A Riggien B. Comm. LL.B.
Notary Public

Senior Associate

Bridget Cumming B.A. Dip. Law (SAB)

Associate

Wendy McAuliffe B.A. LL.B.
Accredited Specialist - Criminal Law

Barraba/Tamworth Offices

Phillip J Kruit LL.B.

L B K
LYONS · BARNETT · KENNEDY
SOLICITORS



430 Peel Street
PO Box 400
TAMWORTH NSW 2340
DX 6104 Tamworth

Tel: 02 6766 6688
Fax: 02 6766 8355

90 Queen Street
BARRABA NSW 2347
DX 6104 Tamworth

Tel: 02 6782 1103
Fax: 02 6782 1855

tamworth@lksolicitors.com.au
www.lksolicitors.com.au

ABN 47 881 724 462



Our Ref: PJK:ms:64946

23 August 2012

The Office of Environment & Heritage
P O Box A290
Sydney South NSW 1232

FAXED

To (02) 9995 6791
24/8/2012

Dear Sir/Madam

SUBMISSION TO NSW GOVERNMENT IN RELATION TO THE NATIVE VEGETATION REGULATION REVIEW

We act on behalf of the Company, Precision Helicopters Pty Ltd, which has operated a helicopter service in New South Wales since 1993. The aircraft owned and operated by the Company have routinely been utilised by both Private and Public Landholders to undertake activities such as the aerial application of pesticide, aerial application of fertiliser, baiting and other programs designed to assist with the eradication of noxious animals. In undertaking works on behalf of Landholders Precision Helicopters has developed an understanding of the obligations of Landholders pursuant to the Regulations under review and in addition the provisions of the Native Vegetation Act, 2003.

The experience and observations of both the Company's Directors and Staff in working with Landholders has revealed that the current legislative regime continues to remain unnecessarily onerous and prolix. In addition the penalties imposed by the same Legislation remain too stringent and the Legislation itself confusing particularly when Landholders attempt to comply with their obligations under a myriad of additional legislative obligations and in so doing attempting to determine a priority for those obligations.

Precision Helicopters Pty Ltd (hereinafter referred to as "the Company") wishes to compliment the NSW Government on its attempt in trying to adopt a more practical regime for Landholders. Unfortunately before the Native Vegetation Regime is able to provide a more practical, equitable and streamlined approach the Government will first need to effect substantial amendment to the Native Vegetation Act, 2003.

The Consultation Drafts which were released as part of the Review fail to address the need for change to the abovementioned legislation.

The Company has identified the necessity for amendment to the Native Vegetation Act, 2003 (hereinafter referred to as "the Act"). Some of the amendments which the Company anticipates as being necessary include the following:-

- a) The Definitions for terms such as "Native Vegetation", "Clearing Native Vegetation", "Broad Scale Clearing", "Regrowth", "Protected Regrowth", "Routine Agricultural Management Activities", all comprised within Part 2 of the Act need to be refined to provide clarity to all Landholders to ensure that the Act provides appropriate social, economic and environmental outcomes.
- b) The Definition of "Routine Agricultural Management Activities" needs to be amended to expand the range of activities for which clearing is permitted pursuant to Section 22 of the Act to include practices that have been identified by an appropriately qualified Agronomist or Agricultural Expert engaged by the Local Catchment Management Authority as being appropriate for the purpose of achieving both social, economic and environmental outcomes. This approach would permit without approval the continuing practices in respect of which land has been used for the following purposes:-
 - i. Agriculture;
 - ii. Forestry;
 - iii. Fuel Management.

Furthermore if the suggested amendments were made and an Agricultural Expert were engaged by the Local Catchment Management Authority to identify works which could be described as being within a range of routine agricultural practice then the necessity for Property Vegetation Plans would be obviated.

- c) Abolition of Property Vegetation Plans based upon amendment to the Act as suggested in subparagraph b) above.
- d) Amendment of the legislation to ensure compatibility of the Act with other State Legislations such as the Noxious Weeds Act. This will ensure Landholders have some transparency as to the priority of their obligations under each piece of legislation respectively.
- e) Amendment to Part 5 of the Act to ensure that any contravention of the provisions of the Act is not treated as being a "strict liability offence". Enforcement should only occur in circumstances where the Regulatory Authority is satisfied beyond reasonable doubt that the Landholder intended or was reckless in respect of the practices adopted in respect of clearing. In particular that the Landholders intended environmental damage or had reckless disregard for the likelihood of environmental damage. In addition the enforcement occur only where the environmental damage was other than short term.

Without amendment to Part 5 and the other suggested amendments abovementioned Landholders will remain concerned about the cost of compliance, potential for prosecution and the personal toll should a prosecution follow. Most Landholders are unlikely to be in a position to be able to afford to meet the expense of defending any prosecution.

The abovementioned amendments will ensure that the Regulatory Authority dealing with enforcement of the Act (ie. the EPA) are only likely to be necessarily involved in an investigation where there is long term or significant environmental damage caused to Native Vegetation. Presently the Regulatory Authority is involved reactively primarily upon complaints which are rarely made by other than Third

Parties. Often prosecutions follow irrespective of the fact that there has been no or no long term identifiable environmental damage.

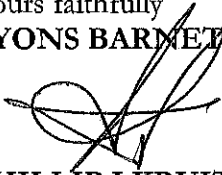
The present regime in respect of which the Regulatory Authority works to ensure enforcement appears to many Landholders to be a bureaucratic in its approach and designed to ensure financial benefits as opposed to environmental outcomes.

The present Act permits clearing in certain identifiable cases but otherwise requires a Property Vegetation Plan which is considered by Landholders to be unnecessarily bureaucratic, costly and time consuming none of which Landholders have the capacity to cope with and still maintain productivity. A system whereby Landholders are permitted to manage their land and native vegetation thereon sustainably without statutory intervention and a more consultative or collaborative approach will give rise to a more expeditious solution which is extremely desirable for all interested parties including Landholders.

We respectfully request that your offices consider the within submissions as part of the Native Vegetation Regulation Review.

Yours faithfully

LYONS BARNETT KENNEDY

A handwritten signature in black ink, appearing to read 'PHILLIP J KRUIT', is written over the typed name below.

PHILLIP J KRUIT