A LANDOWNER'S SUBMISSION TO THE 2012 REVIEW OF THE DRAFT NV REGULATIONS.

1. **In the strongest possible terms,** I vigorously argue to widen the Statement I gave at Cooma during the information session held in June where we walked out in active protest.

   In accord with our proven Common Law Federated system of co-operative and co-existing governance which is one built on three separate legal entities with each having democratically elected independent, Constitutional, administrative-aspects for delivering Commonwealth, State, and Local Government public service-matters [according to the limit of whichever its own jurisdictional Authority] – I argue that it can ***never*** have been legal for the State to contemplate putting forward DRAFT amendments to an obviously flawed 2005 Regulatory Act [a near decade past its use-by-date] and one, curiously and needlessly Regulating its own unsustainable Regulations.

2. **The NV Act** was corruptly made [2003] against an equally flawed and party-politically-expedient subordinate Native Vegetation Act following on from the inevitable repeal of its equally failed and unlawful, ill-advised predecessor – the Native Vegetation & Conservation Act (1997). The legislative freehold inconsistency and contradictory ineptitude in all three instruments is inconceivable. The economic cost is incalculable; the history, without transparent accountability; and the immoral regulations, delivering no beneficial advancement but causing unnecessary heartbreak and emotional distress to those directly affected.

   The inexcusable shame and disbelief in 2012 is – the offensive patronisation shown those of us who know differently and who are widely experienced in both Interpretation and Planning Matters. The State has once again sought to mislead and misrepresent. It announced on September 13: 2011 commencement of the Review of the 2005 Regulations with the contrived pretence implicit to landowners - that the 2003 Act somehow or other remains valid. However the independent evidence is to the contrary and that the constantly changing Departments persist with the propaganda is both questionable and inconceivable.

3. **The current State Government Environmental and Heritage advice** intent on overriding to usurp the legitimate and Constitutional Authority of Local Governments' jurisdictional responsibility for all land-development matters; and which Environment & Heritage Department spuriously advises (2012) that the amendments, are intended to empower the farming community to better protect the environment by cutting red tape, enabling the farmer to manage farms more sustainably; and in improving service-delivery, by clarifying and removing ambiguity through increasing transparency in order to maintain the environmental standards set by the 2003 NV Act is both patronising and offensive. This scurrilous rhetoric ignores the Constitutional common law PLANNING and DEVELOPMENT which underpins all the glaringly obvious .....

4. **The lawfully existing development** "activity" [being Agriculture] is the customary "use" of the LAND. This "activity" has no need [and can NEVER have need] of having to obtain departmental **PLANNING** approval in the first place. Very simply and logically, any "activity" which is not in need of **PLANNING** Approval cannot be legislatively REGULATED (by any Authority) no matter when, where or under whatever circumstances. My submission should end here. Obviously it can't.

5. Because contrary to the now convenient and contrived public justification for the imposition of NV Regulations because "farmers were being deliberately interpreted to be doing as they liked with their own LAND"; "being environmental vandals; and raping and pillaging the landscape" - it is to the legal aspects of the CONVEYANCE of LAND from the CROWN to the DEED holder that owners of LAND Zoned 1A are Constitutionally guaranteed a "continuing use right" **free from public service interference and public management interests.** Common (private) land law and the Constitution allows each farmer to self-determine his own best land management practice.

6. The Crown allows, encourages and purposively agrees in writing that the Real Estate Conveyed can "carry out the activity of "agriculture" as "agriculture is legislatively described and defined" [LG Act] until the end of Time or until the agricultural "use" is voluntarily abandoned. This Agricultural 'activity' in accordance with the freehold Land Law underwriting the principles applicable to tradeable LAND "commodity" transactions ..... whether Rural or Urban Zoned is as old as history itself. So why [and how] would/could something established and proven 800 years be legislatively removed ... without a referendum of *we the sovereign people.* It can't.

7. The Native Vegetation Acts are NOT environmental planning instruments; and as such, where the LAND has been with lawfully continuing "development existence" since post colony settlement [1788] .... and the privately owned LAND not even remotely subject to Statutory PLANNING CONTROLS - it cannot, by any stretch of interpretive "spin" be reasonably argued that the State how the "power" to deviously Nationalize all rural land through corrupt Regulatory imposts.

8. Against the practical rationalisation of manifest unreasonableness in the absurdity-principle and the illogical reasoning that one should be able to carry out Agriculture without removing the renewable natural resource of vegetation ... Lord Diplock (as one *Wednesbury* authority) in [1985] said that the *"decision must be so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided - could ever have reasonably arrived at it". He went on: "The test is stringent .... the decision must amount to an abuse of power..".* The manifest absurdity of a NV Regulation speaks for itself.

9. **The years since 1995** have seen a holier-than-thou party-political abuse and unconscionable misuse and waste of our precious, democratically elected-power. There are enormous parliamentary disciplines, responsibility and disparate privileges within the absolute unquestioned power and position of whomever but today I ask where is the public morality and integrity.

10. However on the evidence, disrespect is creeping [has crept as so many can testify] into the public service psyche to become disturbingly entrenched among so many - with inexperienced, casual, inept disregard for the sanctity of the power and privileged position in servants now "popularly" administering *radical-precedents* as evidenced in the treacherous initiating of these "Global Standards for Farming with Nature" so publicly applauded and proclaimed by the WWF-Australia.

11. The discriminatory Planning and Development scandal which has emerged out of Premier [Carr's] adoption of this radical *new land-management plan* is, on the ground, one the like of which this Nation has not seen since Colony settlement.

> WWF-Australia: Press Release: 15 March 2003: Premier Carr In caretaker mode and 7 days before his election to the 53rd Parliament [March 22 -2003] *I quote: the Premier announced the adoption of the Wentworth Group Model earlier today at a farm near Wellington.*
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> "The Wentworth Group is setting world's best practice for agriculture where everyone in New South Wales city and country people will benefit from this initiative. We are witnessing conservation-history in the making" said WWF- Aust: CEO Dr David Butcher:

12. **The 2003 NV Act** was legislatively *required* to have been Reviewed in 2008; and on the detailed independent evidence provided by the Australian Governments' Productivity Commission in **2004,** it ought lawfully to have been repealed in accordance with the Statutory State Compliance directions of its own s55 (1) mandate at the conclusion of *that* particular 5 year period.

13. **The 2003 NV Act** was assented to on December 11 2003. It commenced operation on December 1st 2005. To have compounded the 1997-2003 repugnancy in the irresponsible making of the 2005 Regulations -- **26 months *after* the Productivity Commission delivered its 2004 Report** is (I believe) one of criminal negligence born out of criminal intent (leading to an advised possible 600 suicides; fines etc and with criminal conviction) for contrived Development *offences* which no law under a Constitutional Monarchy could ever legally proclaim. *Quick & Garran [page 791] Commentaries on the Constitution: advise that a law which is no law is a nullity and does not have to be obeyed where every Court of competent jurisdiction has the right to declare that a law is void by reason of transgressing the Constitution. The Federal and State Parliaments are not sovereign bodies; they are legislatures with limited powers and any law they attempt to pass in excess of that power is no law.*

> **I consequently maintain** after 200 years settlement of the Freehold contractual law Principles that no level of interpretive party-political "spin" can, under our Constitutional Monarchy make *any* NV Act legal, which has been ideologically and party-politically driven by a rogue State government "beyond power" where, in its discriminatory administrative outcomes, the practical implementation is one where the transient party-political governments publicly regulate the investment of each private RURAL sovereign citizen with compliance-force driven by emotional threat and intimidation.
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> (Criminal consequences; $1.1m Penalty Notices with $110 each day the Penalty is not addressed; with no right of appeal against the arbitrary trespass and bullying "opinions" of whichever Public Servant on the day; forcing many farmers into involuntary submission with prohibitive economic costs untenable in Court in order to *justly challenge* these privately held and formed public service "opinions" to where a significant majority "traded" their Penalty Notices either for PVPs or other Native Vegetation offsets).

I argue that the Rule of private, common Land Law must be obeyed in the interests of Best Land Management Practices. The Constitution founded on Common Law, absolutely and unconditionally guarantees it. Democracy and Freedom depend on it.

I specifically object to the public service contempt discriminately meted out to selected Rural Zoned landowners in the treacherous betrayal of an elected Public Service which has not had respect for this LAW of the LAND when the common, private LAND LAW is - that statutory complying procedures MUST be legislatively obeyed.

I contend from my years of Local Government knowledge and experience that no Government has the "power" to remove Existing Land Approval Development Rights where there is, in existence, a binding commercial contractual agreement freely and unreservedly entered into between the Crown and whichever landowner holding the DEEDs to whichever "described and identified parcel" of LAND.

I contend - that each Crown Registered landowner is guaranteed a land use right to "use" his LAND and to "continue to use his Land in accordance with the Terms of the Crown agreement; in accordance with the LAND LAW in place; and until such time as that which is legally in place, is lawfully Revoked and Modified with procedures of Statutory Compliance. [Approvals Register s 113 LG Act 1993].

It is *my* considered "opinion" against the principles of Wednesbury, that no reasonable person could ever accept the manifest absurdity of that illogical Constitutional fettering of a legally binding Real Property Deposited Plan as Conveyed (Conveyancing Act 1916) with its primary *Planning and Development (agricultural) land use Provision* Constitutionally *guaranteed* under sworn CROWN-seal with CROWN-registration as shown [Local Government Act: s113].

14. How can it <u>now</u> be *justly* interpreted for any making of a Regulatory Native Vegetation Act to be legal against the (Cth) *Acts Interpretation Act[1901] ss8 &15A* ... when the State Government unconscionably and inconsistently (s109 Cth Constitution) recklessly and irresponsibly compounds this earlier [1997] legislative repugnance by treacherously perpetuating all unlawful aspects of the known repugnancy in seeking to amend the unacceptable and unsustainable 2005 Regulations legislatively mandated to procedurally sunset in 2008 because the 2003 policy Objectives set down in this 2003 Act are no longer remained valid; and on the very clear evidence, as laid out by the Productivity Commission, the terms of the Act were *never* appropriate for securing ideological and unachievable *Wednesbury* Objectives.

Despite this clear independent and conclusive evidence being publicly available in April 2004 repugnant 2005 Regulations [in turn] were (again) *inconsistently* and *irreconcilobly* - deliberately written with contempt and remain enacted against the failed 2003 Native Vegetation Act without any cognizance for the independent findings by the Australian Government's Productivity Commission.

15. **On April 14th 2003** the Commission was asked to report into Regulatory Regimes (including the Commonwealth's Environment Protection and Biodiversity Act 1999) and to assess both the positive and adverse Impacts of these Native Vegetation & Biodiversity Regulations.

16. **The Commission handed down its adverse findings (8th April 2004)** 20 months *before* the making of these now current Regulations (December 2005) and found that:

> *Over the past 20 years or so legislation to prevent clearing of native vegetation on private land has been heavily relied upon to achieve biodiversity and other environmental objectives. The current evaluation suggests that this approach has serious design and implementation deficiencies, in many cases leading to ineffective, inefficient and inequitable outcomes. A crucial thrust of the Commission's recommendations is that policies which fail to engage the cooperation of landholders will ultimately fail.....*

My conclusions to the foregoing:

5 **Regulations** can only ever be construed and made against an Act which is fulfilling the Aims and Objectives for which the Act was purposively made. If the foundation of an Act is flawed the Act will fail.

6. **Where these statutory Aims and Objectives** are shown by an Independent Authority commissioned by the Commonwealth Government to have conclusively impacted with seriously adverse social and economic consequences across a broad range of "issues" - the relevant Act [delivering these unacceptably adverse human impacts] which *had* been due to sunset after 5 years should have been immediately repealed.

7. **After April 8th 2004** there was no discretion. The 2003 NV Act has demonstrably failed to deliver any landscaped environmental benefit. To the contrary: the overwhelming evidence from the 2004 Report is that the Native Vegetation Regulations have worked with evident detriment against all that is environmentally beneficial to any rural landscape intended for an agricultural use.

8. **The inherent and generational property rights,** descending since the beginning of Time for the practical and reasonable day-to-day, private land-management practices, with Man as the human environmental individual responding to the unforseen and unpredictable seasonal and market force rotational LAND activities, cannot be legislatively removed from the self-determinations made by those Crown-registered owners who best know how to care for the LAND if the LAND is to remain ecologically and environmentally sustainable.

9. **Accordingly:** with the 2003 Native Vegetation Act required to be repealed there is no Act against which to either make or amend REGULATIONS.

10. The Government: facing People Power and voter back-lash (on the evidence of unmitigated regulatory public service land-management failure) has no chance of enacting a new Native Vegetation Act.

11. The Government needs to withdraw gracefully and apologise.

12. Any new land-management regulatory public service Act will fail for the same reasons that the past 17 years have failed.

13. That which is not legally based can never be with morality. That which is not legal, by reasoning, is never moral. In a nutshell, this is why the NV Acts have failed. They were never legal to start with.

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