

Submission to Biodiversity Legislation Review from

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A submission for the repeal of the Native Vegetation Act 2003 and its cognate Acts, and suggested replacement policy for the benefit and sustainability of the environment and rural communities.

I congratulate the current State Liberal/National Party Coalition Government for finally addressing, as promised before the last election, the bad policies and legislation that have been imposed on primary production farming businesses in country NSW. I draw your attention to Hansard, 19 November 2003, Natural Resources Commission Bill, Native Vegetation Bill, Catchment Management Authorities Bill, second reading, where Mr Andrew Stoner said it far better than I can:

"I stand here to speak on legislation that is dishonest, deceptive and severely damaging to country and coastal NSW. It saddens and disgusts me."

"The Minister has deliberately misled and deceived thousands of farming and land-holding families across this State. He has treated us as stupid. No matter what slick excuses the Minister gives us, the simple fact is that he promised country and coastal NSW that this legislation would reflect the Sinclair report's recommendations and intent. The bills in fact do the opposite. Labor has twisted and misconstrued the Sinclair report to the point of giving rapists and murderers more rights before the law than our farmers and land-holders have. The Government is sterilising vast tracts of land and further taking away the right of farmers and land-holders to manage their property".

"This legislation will impact for generations on farmers and the rural communities that depend on the farm economy .."

Unfortunately, after eleven long years, hindsight shows that Mr Stoner was correct and the sooner this Government can bring some common sense and practical policies to the table the better off will be our farming communities and wider economies.

I would like to address, from the Issues Paper August 2014, Theme 2: Conservation action

1. The answer to the question posed: "Is the current system effective in encouraging landowners to generate public benefits from their land and rewarding them as environmental stewards?" is a resounding NO. The majority of private landowners are **required by law** to protect vast tracts of unsustainable native vegetation from feral pests, weeds, bushfires, erosion while all the time they are again required by law to pay rates, taxes and levies on the land that is no longer available to them for productive farming practices - it is unsustainable by the very fact that if the land cannot generate income for the farmer he cannot effectively look after it, and both the Commonwealth and State Governments will not providing funding or stewardships for protecting and enhancing existing native vegetation that is again **required by law**!

The current mechanisms, called regulations, do in fact **require by law** that private landowners provide stewardship services for the public to protect ecosystems and biodiversity at the landowners own cost. The basic test for public interest is that the gainers must gain more than the losers lose. Kaldor stated that the gainers must be able to compensate all the losers and still go along with the change, if the change is in the public interest. Hicks stated that the losers must NOT be able to bribe the gainers from forgoing the change, if the change is good for the public interest. It is observed that the Kaldorian position, if the compensations actually take place, is no different from the Pareto improvement criterion for enhancing social welfare. But if compensations do not actually take place, with gainers merely "potentially compensating the losers," people will not come to a consensus and agree that the change enhances the public interest. (<http://dictionary.sensagent.com/Public%20interest/en-en/>).

I would put it to the panel that the service provided by private landowners for the public interest of protecting and enhancing ecosystems and biodiversity is not being compensated and as such does not enhance the public interest, rather it brings dishonour upon the governments who would impose these draconian laws on their own fellow men without compensation for property rights lost and potential income forfeited.

I would recommend to the panel a policy which I have put forward to both the Commonwealth Government and the NSW State Government which provides incentives for effective, efficient and equitable promotion of biodiversity conservation on private land. This policy also addresses item 3 in the terms of reference, particularly:

- the concept and practice of 'duty of care' in relation to native vegetation management in the context of land, water and biodiversity conservation objectives along with measures to promote cost sharing for biodiversity conservation and native vegetation management
- options for effectively integrating native vegetation management with the protection and maintenance of land and water resources and the conservation of biodiversity
- removing barriers and providing incentives to voluntary private land conservation, and measures to reduce duplication, promote paid stewardship and foster greater collaboration and coordination between government and the community

Policy Overview:

- a) A scheme that is environmentally recognised as healing to the landscape including our waterways.
- b) A scheme that will be acceptable to the land owners and rural communities as it does not affect their properties by losing value or lost production of areas/acreage but provides for additional earning potential on existing available land on the property.
- c) The scheme provides for an inclusive basic drought, disaster protection contribution incorporated in the vegetation plantings payments. With the provision that in the event certain catastrophic (out of the ordinary) disaster conditions/events occur, then the government may have to still provide support – these unusual events would need to be defined.
- d) The scheme, if diligently used, provides for an inclusive retirement superannuation scheme, for the land owner, which is incentive based and will encourage profitable outcomes.
- e) A scheme that the Government can use to increase the current projections for carbon reductions or/and targets can be made higher than current minimal targets if required for the next UNFCCC period – beyond 2020, if other methods of carbon reduction are placing too much pressure on industry.
- f) A replacement scheme to the carbon tax that is permanent long term and seen by all as entirely equitable

In ensuring that ecosystem services are maintained and productive landscapes sustained so that the resulting benefits, essential for all people, are delivered, I draw the attention of the panel to studies being conducted by Professor David Lindenmayer from the Centre of Excellence for Environmental Decisions and ANU who has found that endangered bird populations are much stronger on private farmland than in older conservation areas which have fewer endangered birds and lower and declining variety of species. There is a worrying trend of the native vegetation becoming too thick with woody vegetation which then threatens habitat for endangered birds and wildlife. The "lock it up and leave it" policy that the Native Vegetation Act (2003) implements is in fact proving to be destructive to the conservation of biological diversity and ecological integrity in the environment.

Cornerstones of the Policy:

- i) All cleared rural land can plant vegetation – minimum allowed is 20% the maximum is 30% in new woody vegetation plantings – Kyoto class vegetation post January 1, 1990.
- ii) To be included in the program the property must be an operating property in the broadest terms with at least 70% of income being provided from general farm activities. However plantations, being plantings only, are not included.
- iii) All land with pre 1990 vegetation is to be paid for. The land locked up by the Native Vegetation Act 2003 and being reported to the UNFCCC as “stopping the land clearing” under the Kyoto agreement is to be paid for at an agreed amount for its takings and opportunity lost to the amount it represents in value.
- iv) In addition to iii) landowners will be annually paid to maintain fire trails, reduce weeds and maintain minimum fuel loads as part of their forested land.
- v) Land owners with land locked up pre 1990 can also participate in additional plantings post January 1, 1990, on land not covered by pre 1990 vegetation, up to 30% of the property holdings.
- vi) The payment for post January 1, 1990, plantings will be at a rate that makes those plantings commercially acceptable. That being an average of rural earnings per acre at a nationwide average for the actual vegetation plantings, plus a percentage of the land owner’s income – taxed earnings for that property which reflects the farms average over all earnings and encourages the land owner to target management improvements.
- vii) A percentage of the entire earnings from the funds generated from the property’s vegetation plantings is placed in an interest bearing trust account for the landowners’ use, only to be drawn down in the event of a drought/disaster – hardship year. The trigger to draw down those funds was only if certain events were present and predetermined conditions were met.
- viii) After the farmer reached Preservation Age under the current Superannuation regulations or circumstances as agreed, the funds remaining in that trust can be transferred for use as a retirement benefit under a superannuation scheme with the same tax benefits – in effect it forms a rollover as we understand it. Through this incentive the landowner is encouraged to access the fund in a selective manner retaining the funds for future years.
- ix) The program is designed to encourage best practice and profitable farm management, diligent drought and disaster planning by the land owner regarding use of vegetation plantings – incentive based, so that the percentage of funds available for natural disaster is used minimally, so that the balance later available for draw down by way of superannuation is maximised.
- x) The overall package will encourage the property, through best practice management and real clear financial incentives, to ensure a profitable and comprehensive economically sound business package, which is fulfilling a real environmental community requirement that presents Australia as a responsible global citizen.

How is all this policy paid for?

- A) The current pre 1990 locked up native vegetation implicit in the Kyoto Protocol Greenhouse Gas Emissions accounts (the Australia Clause) is paid for with a tax on those who should have paid it in the first place – the polluters.
- B) They are the coal exporters, the power generators and the aluminium refineries, etc – the polluters. This is not necessarily paid as in one lump sum but by way of a commercial arrangement with banks where by the land owners draw it down and the polluters repay as arrangement requires.
- C) The land owners are assessed by way of acreage affected of a particular type and that is multiplied by the carbon average tonnage for that type of vegetation and varied if there are different types of vegetation. The carbon accounts use the carbon tonnage for the calculations and these figures are available as delays and procrastination are to be avoided. If the delay for settlement is extended penalties must be provided for.

- D) Many of these landowners and their families are in a seriously compromised position. This is more so for the component which represents the next generation. These native vegetation impacted farming/landowner families have suffered a schism effect on the family structure, whereby the children – the next generation of farmers, those who have completed most of the knowledge transfer in that they were raised on the properties, have generally vacated the property and if they are not encouraged to return an entire generation of 30,000 families will be lost to rural Australia.
- E) The ongoing vegetation plantings for post January 1, 1990 is paid by a tax on the polluter pays – in this case, it is the domestic aircraft, boats, bikes, motor vehicles – the car and all their consumables eg petrol, percentage of every landing fee, mooring fee, traffic fine, parking fee, sales tax, import duty, any item related to vehicles including parts and service for vehicles even any new road toll must incorporate the % proportion of this tax.
- F) The Government may well have many alternatives to funding the policy, such as the proposed Commonwealth Emissions Reduction Fund. They, the Government alone, would know when considering possible funds available across the social-economic sphere, as to which is the source best suited to this kind of funding for such a policy, however it would be good if the polluter pays principle was pursued as vehicles and petrol fuel burning is a big contributor to carbon in the atmosphere.

Advantages and general summary

The landscape would be open for change where by voluntarily land owners can choose to plant knowing they will use land not always suitable for cropping or grazing and the biodiversity will increase exponentially as the vegetation establishes new ecosystems which could be designed for specific flora and fauna species and landowners compensated or paid appropriate stewardships.

The crop of vegetation plantings is paid for in volume per tonnage, so if the terrain only produces a certain tonnage of carbon per acre it will not yield as much income for less fertile locations as if the vegetation was planted in a more fertile environment that had a much higher yield. This decision will also depend on the amount being paid for the carbon, a higher price will result in a higher yielding result.

The price must be at a food average commodity vegetation value otherwise 20 years into the program land owners could find the vegetation crops unprofitable and all lose confidence in the program. However the higher the price the more land will be converted including the high quality land.

Also the land owner when planting knows his trees as a crop that will not have the same market or weather requirements as his livestock or grain. Subsequently this diversification will provide another form of financial security.

Also if the vegetation planting is tied to disaster drought/fire/flood relief, if he does not plant vegetation in the program he will not be given normal disaster relief. Providing the price is good from a commodity point of view and very competitive – this will incorporate an annual disaster relief.

By the policy providing for profitable vegetation plantings and further, by allowing the land owner to manage his own natural disaster reparations and under certain conditions be permitted to access the drawdowns, it is anticipated the more profitable and sustainable the property becomes.

If drawdowns occur outside the rules then the tax benefit is lost. In fact the less the landowner actually draws down the more he is rewarded. So the land owner is rewarded for financial astuteness, but not disadvantaged by conditions beyond his control. Further the land owner and his property is providing a much needed community service – mitigating carbon produced by the nation by being the nation's commercial carbon sink.

To avoid economic stagnation, energy production for Australia is a growth industry and if the economic outlook is to be for growth, the carbon sink capacity must be capable of absorbing that growth therefore the economics of the model must be attractive for all parties.

As for the environment, it is the great winner, as this program does not force anyone to do anything, but it challenges all land owners to involve themselves as it is financially to their advantage to do so. Subsequently the vegetation plantings and increasing biodiversity and sustainable ecosystems will be a reality.

The human qualities the policy identifies – indeed challenges, are some of the finest qualities found in mankind, such as application, hard work and ingenuity, infused by the incentive, all which will, for the better, literally change the landscape.

Rural Australia needs a pick-me-up and this policy with this Government could be just that.

Too often today those that have cleared every tree off the landscape, like the wheat farmer, or those out west where there are not many trees do not have an interest in broad scale vegetation application – he cannot afford to. He will now look at the land differently and be far more creative. If, in the event that Australia requires an increase in vegetation to achieve a greater reduction of carbon through sequestration, all government has to do is increase the price offered to land owners for new plantings. The land owner will view the long term security and the price in the market, compare it with other commodities and their fluctuations and make a commercial decision. Provided the proposal is competitive then the vegetation plantings will be increased.

Facts and figures

“to what extent the current policy frameworks sufficiently encourage the abatement of environmental risks, protect and restore key ecosystem processes and prevent species extinctions”

FACT – Potentially productive farming land covered with protected uncleared ever thickening woody vegetation provides huge fuel burdens which create catastrophic firestorms as occurred with the Warrumbungles bushfires: On 13 January 2013, 10 DAYS OF HORROR The fire destroyed more than 51 homes near the National Park and damaged many others. 17 January, The Department of Primary Industries (DPI) announced that stock losses exceeded 12,000 head, mainly sheep and lambs. Wildlife losses were also significant. The farm infrastructure and fence damage from the fire was extensive, with hundreds of kilometres of fences lost or damaged, hay supplies destroyed and farm structures burnt. The Australian Government Disaster Recovery Payments totalled \$1,030,000. The Insurance Council of Australia declared the Coonabarabran bushfire a catastrophe, with the estimated cost from the bushfire \$35 million (<http://www.emknowledge.gov.au/resource/?id=3437>). How can a price be put on this destruction of biodiversity and environment when the native vegetation act 2003 RIS states that it is so invaluable that it cannot be costed!

FACT – More protected trees and woody scrub does not equal more biodiversity in a sustainable environment. In fact the opposite is occurring, refer to studies being conducted by Professor Lindenmayer from CEED ANU, etc.

FACT –

I have picked up a pen and after four years of submissions and letters to politicians all I have to show for my input is patronising platitudes and condescension. I ask the panel to take this review very seriously and to make real changes for rural and coastal NSW. If the communities living in the cities and urban environments require uncleared native vegetation to salve their consciences then they should either purchase their own private lands or pay compensation to the people who have been dispossessed of the innate property rights that Australia was renowned for.

Furthermore I consider the following aspects of the Native Vegetation Act (2003) to be of the utmost importance:

- The fact that it was introduced on the back of prejudiced bad science – the much publicised figure of annual clearing estimate of 150,000 hectares was provided to the NSW Vegetation Forum by Dr John Benson of the NSW Botanic Gardens. And to arrive at this total, Benson took detailed information on the clearing of Brigalow regrowth (now the subject of the Draft Invasive Native Vegetation RAMA) for the expanding Cotton industry on the Moree Plain and extrapolated to the entire state. The fact that most of the state had neither Brigalow nor interest from cotton growers (or any other expansive agriculture) was ignored. Indeed, much of that extrapolated clearing total would have been applied to districts that had been almost totally under cropping or pasture for decades. (Ian Mott, President, The Landholders Institute).
- The fact that it creates a precedent for the State to steal private freehold land use rights without compensation – if you have to ask for permission to use your own property for the purpose that it was purchased and is land use zoned for , do you in fact still own that property? How long before other property rights are stolen by regulation, such as the right to use or drive your vehicles where ever and whenever you wish without permission or being tracked and watched by an eye in the sky? Or the State can sell the mining rights to your property to mining companies who then may cause irreparable damage to water tables etc
- The fact that it has perverted our legal processes by reversing the onus of proof – a landowner who clears native vegetation without permission outside of ridiculously complex routine agricultural management activities is deemed guilty of environmental damage and subject to criminal charges no different to a thief or murderer.
- The fact that it was rushed through Parliament, and sensible parliamentary process was not followed – the Regulatory Impact Statement was not done properly, a full cost/benefit was not produced. The Productivity Commission Report was not properly reviewed as it was not available until three months after the Legislation was forced through and, when read, it was not supportive of the heavy handed regulations being applied to landowners.
- The fact that it has made hypocrites of our political leaders who, when in opposition, promised much but when in government have delivered very little to restore our farming property rights.
- The fact that hindsight shows it is not protecting the environment, with respect, IT IS NOT WORKING.