

## Submission to Biodiversity Legislation Review

I am a farmer in the Cobar area of western NSW; I have had extensive experience in the area of biodiversity legislation and the practical application, consultation process and compliance of these acts and the repealed associated acts in the past twenty years. Some of that hands on experience include;

Chairman of;

Western Catchment Landcare Steering Committee  
Mt Boppy Landcare Committee  
Cobar Branch NSW Farmers Association  
Cobar District Council NSW Farmers Association

Committee member of;

North Lachlan, Bogan Vegetation Working Committee  
Cobar Vegetation Management Committee  
Western Division Council NSW Farmers Association

Member of the NSW Rural Community Survival Group.

Note; All of these committees involved no payment to sit.

My first observation after participating in this onerous process in dealing with biodiversity legislation for nearly half of my working life is that the objectives of government, Federal, State and Local were set before any public consultation process has been undertaken. The process has been an insult to all who have participated and the people that they have represented.

The content of not one submission, community biodiversity plan and presentation has been considered at any level of government. The private property owners have been given the mushroom treatment of the highest level.

The cost of this process to the participants and the people they represent would be in the tens of million dollars for what has been a set agenda.

We do not have to go any further than this legislations foundation (Native Vegetation Act 2003) to conclude that this legislation is draconian and broken and unacceptable to all citizens living in a civilised society which adheres to the Constitution, the Rule of Law and the protection of Human Rights for all.

All Legislation has to go before an independent committee that reviews the Bill's to see if there have been any Human Rights violated.

Below are the concerns and recommendations from the Legislation Review Committee with regards to the Native Vegetation Bill 2003; Catchment Management Authorities Bill 2003 and Natural Resources Commission Bill 2003.

# Legislation Review

# Committee

## LEGISLATION REVIEW DIGEST

No 6 of 2003

36. The Committee notes that the right against self-incrimination (or “right to silence”) is a fundamental right. This right should only be eroded when overwhelmingly in the public interest.

37. The Committee refers to Parliament the question whether compelling a person to make self-incriminating statements that (although not themselves admissible in criminal proceedings) may inform criminal investigations or be admitted in civil proceedings, unduly trespasses on personal rights.

47. The Committee notes that the Bill reverses the onus of proof for owners, occupiers and managers of land in relation to native vegetation offences, once prohibited clearing of native vegetation is substantiated. The Bill effectively deems such persons guilty unless they can prove their innocence or provide evidence regarding the matters set out in the Bill.

48. The Committee refers to Parliament the question of whether this trespass on personal rights is undue, given the object of facilitating the protection of native vegetation.

52. The Committee notes that the Bill reverses the onus of proof for certain persons concerned with the management of a corporation in relation to native vegetation offences alleged to have been committed by the corporation. The Bill deems such persons guilty unless they can prove their innocence or provide evidence regarding the matters set out in the Bill.

53. The Committee also notes that individuals may be proceeded against and convicted even if the relevant corporation has been proceeded against and convicted under the Bill.

54. The Committee refers to Parliament the question of whether this trespass on personal rights is undue given the Bill’s object of facilitating the protection of native vegetation.

61. The Committee notes that the broad power of entry contained in clause 36 of the Catchment Management Authority Bill 2003 trespasses on individual rights.
62. The Committee refers to Parliament the question as to whether this is an undue trespass on rights.
63. The Committee further notes that there is no limitation on the class of persons to whom these powers can be conferred. In addition, there appears to be no formal instrument or procedure for conferring these powers on persons. Nor is there any requirement on such persons to produce identification.
64. The Committee has previously noted its concerns regarding legislation which confers powers which significantly affect rights, without setting appropriate limits or guidelines as to whom those powers can be conferred – or their qualifications.
65. The Committee has written to the Minister to seek his advice as to why there are no requirements regarding the qualifications or attributes of persons who may have powers of entry conferred upon them for the purposes of the proposed Catchment Management Authority Act 2003.
69. The Committee notes that by depriving members of the public of the ability to bring claims against an Authority to compel the Authority to carry out its functions, the provisions of the Catchment Management Authority Bill 2003 trespass upon individual rights to seek redress for nonfeasance by a Catchment Management Authority.
70. The Committee refers to Parliament the question as to whether this removal of the right to seek redress is an undue trespass on personal rights.
76. The Committee notes that a Catchment Management Authority is under the control and direction of the Minister, the Minister's approval must be given for a proposed acquisition, and the terms of any acquisition must conform to the requirements of the Land Acquisition (Just Terms Compensation) Act 1991.
77. The Committee refers to Parliament the question of whether such compulsory acquisition trespasses on personal rights.
80. The Committee notes that these matters to be prescribed by regulation are central to the effective and fair operation of the ensuing Act.
81. The Committee has written to the Minister to seek an explanation as to why the matters referred to in clause 15 and 28 are not prescribed within the Native Vegetation Bill 2003.

**82. The Committee refers to Parliament the question as to whether allowing these significant matters to be prescribed by regulation is an appropriate delegation of legislative power.**

IT is also appropriate to bring the Review Committee's attention to what the National Party said about these Bills when they were in opposition as they passed through parliament.

Below is some extracts from the attached Hansard.

The Second Reading  
Natural Resources Commission Bill 2003  
Native Vegetation Bill 2003  
Catchment Management Bill 2003

Mr Andrew Stoner

It is not just stakeholders and the Liberals and The Nationals who are deeply concerned by this legislation. This Parliament's Legislation Review Committee, which includes Labor, Coalition and Independent members, has released a damning assessment of these bills. Among other functions, the Committee's role is to report to Parliament on whether legislation coming before it trespasses unduly on personal rights and liberties and inappropriately delegates the legislative power. The Legislation Review Committee Digest No. 6 of 2003 dated just yesterday states on page 10:

The Committee notes that the right against self-incrimination (or "right to silence") is a fundamental right. This right should only be eroded when overwhelmingly in the public interest.

The Committee refers to Parliament the question whether compelling a person to make self-incriminating statements that (although not themselves admissible in criminal proceedings) may inform criminal investigations or be admitted in civil proceedings, unduly trespasses on personal rights. That finding refers to clause 32 of the Native Vegetation Bill.

The Legislation Review Committee also refers specifically to clause 40 of the Native Vegetation Bill in the context of trespass upon personal rights and liberties.

The report states:

Under cl 40 the burden of proof is effectively reversed. Once it has been established that prohibited native vegetation clearing has occurred, in the absence of a reasonable excuse, the landholder must prove that he/she was not responsible for the clearing to avoid liability.

The report also states in relation to clause 40 of the bill:

The Committee notes that the Bill reverses the onus of proof for owners, occupiers and managers of land in relation to native vegetation offences, once prohibited clearing of native vegetation is substantiated.

Mr Ian Slack-Smith: Russia sounds good.

Mr ANDREW STONER: As the honourable member for Barwon says, Russia's totalitarian Communist state is beginning to sound good.

The report also states:

The Bill effectively deems such persons guilty unless they can prove their innocence or provide evidence regarding the matters set out in the Bill. The Committee refers to Parliament the question of whether this trespass on personal rights is undue, given the object of facilitating the protection of native vegetation.

The report states in relation to clause 41 of the Native Vegetation Bill:

The Committee notes that the Bill reverses the onus of proof for certain persons concerned with the management of a corporation in relation to native vegetation offences alleged to have been committed by the corporation. The Bill deems such persons guilty unless they can prove their innocence or provide evidence regarding the matters set out in the Bill.

The Committee also notes that individuals may be proceeded against and convicted even if the relevant corporation has been proceeded against and convicted under the Bill. The Committee refers to Parliament the question of whether this trespass on personal rights is undue given the Bill's object of facilitating the protection of native vegetation.

The report also states in relation to clause 36 of the Catchment Management Authorities Bill:

The Committee notes that the broad power of entry contained in clause 36 of the Catchment Management Authority Bill 2003 trespasses on individual rights.

The Committee refers to Parliament the question as to whether this is an undue trespass on rights.

The Committee further notes that there is no limitation on the class of persons upon whom these powers can be conferred. In addition, there appears to be no formal instrument or procedure for conferring these powers on persons. Nor is there any requirement on such persons to produce identification.

The Committee has previously noted its concerns regarding legislation which confers powers which significantly affect rights, without setting appropriate limits or guidelines as to whom those powers can be conferred – or their qualifications ...

The Committee has written to the Minister to seek his advice as to why there are no requirements regarding the qualifications or attributes of persons who may have powers of entry conferred upon them for the purposes of the proposed Catchment Management Authority Act 2003.

In relation to clauses 15 and 28 of the Native Vegetation Bill, the committee notes that the matters to be prescribed by regulation are central to the effective and fair

operation of the ensuing Act. The committee has written to the Minister seeking an explanation as to why the matters referred to clauses 15 and 28 are not prescribed in the Native Vegetation Bill 2003.

The committee refers to the Parliament the question of whether allowing these significant matters to be prescribed by regulation is an appropriate delegation of legislative power.

That is just one example of what the committee says about these deeply flawed bills. The committee comprises members of Parliament from all sides of politics. It is not being political; it is simply saying that these bills are deeply flawed. I will now go through, bill by bill, the major concerns of The Nationals.

I note that these concerns are by no means exhaustive. As mentioned earlier, proposed section 40 removes a farmer's right to the presumption of innocence. That is a gross violation of the human rights of land-holders.

Mr Ian Slack-Smith: It is the Mugabe bill.

Mr ANDREW STONER: The honourable member for Barwon has an alternative title. What happened to the principle of innocent until proven guilty? It is no wonder that the Minister is backing away from this legislation and calling it a draft, as if he can have a bill somewhere between an exposure draft and legislation on the table of the Parliament, which until last night was going to be guillotined. I can understand why the Minister is backing away from it. From where has this notion, of removing a farmer's right to the presumption of innocence, come? It was not in the Sinclair report.

I want the Minister to give a full and frank explanation of how this came about. Under the Native Vegetation Bill third-party proceedings can be commenced in the Land and Environment Court regardless of whether a person's right has been or may be infringed because of a contravention. That leaves farmers open to vexatious litigation. A person is not excused from giving information, answering questions or producing documents under this provision on the ground that the information, answers or documents may tend to incriminate the person. Development consent for broadscale clearing is not to be granted unless the Minister is satisfied that the clearing concerned will "improve or maintain environmental outcomes". There is no definition of "improve or maintain environmental outcomes" and productive outcomes have been ignored. The Nationals have major concerns about the definitions in this bill.

I would like to know how the 1983 date for the western division and the 1990 date for other areas of the State were reached in relation to the definition of regrowth, particularly given the rate of growth of vegetation on the coast.

Mr Andrew Fraser: And in the Tablelands.

Mr ANDREW STONER: The honourable member for Coffs Harbour makes a good point. Native vegetation grows much more quickly on the coast and the Tablelands. A tree planted on the coast in 1990 will have grown substantially by now. It defeats the purpose of having a more recent date for regrowth on the coast as opposed to the western division. Proposed section 8 of the legislation defining broadscale clearing

will massively impact on farmers and land-holders. The removal of one tree in remnant native vegetation or protected regrowth for a fence post will see a farmer prosecuted for broadscale clearing. This was all about getting the Premier a cheap headline, but farmers will now have to deal with this draconian definition. Why did the Government not use the definition in recommendation 16.7 of the report that was ticked off by the Sinclair group? Proposed section 6 of the legislation defining native vegetation differs from the Sinclair recommendation in several ways, including defining vegetation as indigenous if it is of a species of vegetation or it comprises a species of vegetation that existed in the State before European settlement.

The above commentary confirms that the foundation of this legislation is broken and unfixable by any review process. The recommendation from the Review Committee must be to repeal the act in full.

Professor Suri Ratnapala is Professor of Public Law at the University of Queensland. His essay titled, *Constitutional Vandalism under Green Cover* is based on the QLD Vegetation Management Act 1999, which provisions are mirrored in the NSW Act.

The conclusion to that essay is below.

#### Conclusion

The VMA was supposed to combat environmental vandalism, but its provisions have vandalized Australia's cherished constitutional principles. The principles that have been sacrificed are not merely principles of constitutionalism and justice, but also of good governance. Parliamentary scrutiny and public discussion of delegated legislation, natural justice and procedural fairness, evidentiary safeguards, and compensation for government takings militate against arbitrary and erratic government. All these precautions are subverted by the VMA.

The VMA epitomizes the current philosophy and methodology of environmental regulation in Australia. It is a model that is replicated at State and federal levels. It is not clear at all that these extraordinary regulatory schemes are benefiting Australian society. As discussed in this paper, there is a strong body of scientific opinion that challenges the utopian aspirations and the efficacy of this model to promote the health of the environment.

The reason why these dissenting voices are largely disregarded by governments, media and academia is not easy to fathom. It is possible that environmental fundamentalism has become endemic in these key sectors as a result of several decades of unchallenged proselytizing. It is also the fact that sober reflection is no match for apocalyptic alarmism in the contest for public opinion. Politicians follow the currents of opinion. Until public opinion is swayed to the cause of a more open and objective debate about conservation, we are unlikely to see a change in political will, and constitutional government in this country, and the well-being of Australian society, will remain in serious jeopardy.<sup>32</sup>

This legislation has stolen the user rights of farmers and vandalised the Constitutional Guarantees that citizens in a civilised society will not tolerate and must not tolerate.

This draconian legislation must be repealed in full. Any replacement act must state clearly landowners continual user rights and there constitutional guarantee, being payed "Just Terms" for any taking or modification of those rights.

Australia's farmers are leading the world in conservation farming, soil conservation and grazing management with little assistance from government and no recognition from government.

The lack of morality and respect for The Rule of Law by all levels of government with regards to Biodiversity Legislation and respect for farmer's human rights is disgusting.

Attachments;

Legislation Review Committee  
Legislation Review Digest, No 6 of 2003.

Hansard- Second Reading  
Natural Resource Commission Bill 2003  
Native Vegetation Bill 2003  
Catchment Management Bill 2003

Professor Suri Ratnapala  
Constitutional Vandalism under Green Cover

Submission by;

Alastair Walter McRobert

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